

## U.S. Department of Justice Travel Alert: U.S. Enforcement Efforts Likely to Curtail Business Travel Rather than Online Gambling

JOSEPH M. KELLY, ALEX A. IGELMAN, and KEITH FURLONG

**W**HAT RISK of criminal liability might an executive of a government-licensed Internet gaming company have if he visited a country where his company accepted wagers and where the legal status of the wager was unclear? Until 2006, nobody thought an executive would be detained without prior warning.

Until 2006, Internet offshore gaming operators were only rarely prosecuted by the U.S. Justice Department. An exception occurred in 1998 when the U.S. Attorney for the Southern District of New York indicted 21 defendants mostly for engaging in a conspiracy to violate the Wire Act,<sup>1</sup> which is a 1961 law designed to prevent illegal telephone sports betting. Only one defendant, Jay Cohen, was imprisoned, and only because he voluntarily left his Antigua-licensed sportsbook to demand a jury trial.<sup>2</sup> Many of the 21 defendants did not return to the United States, which did not necessarily stop the Justice Department from further action. For example, DOJ indicted William Scott, an Antiguan sportsbook operator, in 1998, and in 2006 it unsealed an indictment while simultaneously asking for civil forfeiture of about \$7 million in a Guernsey account.<sup>3</sup> Otherwise, the Justice Department generally restricted its activity to threatening letters to broadcasters,<sup>4</sup> ad-

vertisers,<sup>5</sup> and even state regulatory authorities<sup>6</sup> that attempted to legalize interstate Internet gambling.

One major reason for the lack of federal prosecution was the legal uncertainty as to whether existing federal law prohibited any online gambling other than sports betting. Since 1995, Congressional bills have been unsuccessful in prohibiting online gambling largely because of the issue of carveouts for interactive interstate horseracing and potential interactive lotteries. In December 2000, the Interstate Horseracing Act<sup>7</sup> was amended to allow state-licensed interstate horseracing, but the Justice Department insisted this amendment had no such effect.<sup>8</sup>

---

<sup>1</sup> 18 U.S.C. § 1084.

<sup>2</sup> *United States v. Cohen*, 260 F.3d 68 (2d Cir. 2001), cert. denied, 536 U.S. 922 (2002), post-conviction relief denied at *Cohen v. United States*, No. 04-1937-pr, 2005 U.S. App. LEXIS 7094 (2d Cir. 2005).

<sup>3</sup> For an excellent account of the Scott proceedings, see Emma Schwartz, *Legality of Online Gambling Debated in Case*, LEGAL TIMES (online), Aug. 28, 2006; *United States v. Scott*, No. CR05-122 (D.D.C., unsealed May 2006).

<sup>4</sup> Letter from John G. Malcolm, Deputy Assistant Attorney General, U.S. Department of Justice, to National Association of Broadcasters, June 11, 2003.

<sup>5</sup> Sporting News agreed to settle Internet advertising charges with the Justice Department and pay \$7.2 million on Jan. 17, 2006. INSIGHTS: SPORTING NEWS FALLOUT, INTERACTIVE GAMING NEWS (Feb. 2, 2006), <<http://igamingnews.com>>.

<sup>6</sup> Letter from David M. Nissman, United States Attorney for the District of the Virgin Islands, U.S. Department of Justice to Judge Eileen R. Petersen, Chair, U.S. Virgin Islands Casino Control Commission, Jan. 2, 2004.

<sup>7</sup> 15 U.S.C. §§ 1501 et seq.

<sup>8</sup> There is almost no scholarly support for the Justice Department position. See Robert Penchina, *What Does DOJ Have Against the Interstate Horse Racing Act?*, 10 GAMING L. REV. 446-452 (2006).

---

Joseph M. Kelly, Ph.D., J.D., co-editor of *Gaming Law Review*, is a professor of business law at SUNY College Buffalo and a consultant with the Haledon, N.J.-based Catania Group. Alex A. Igelman is counsel, gaming and entertainment, at Goodman and Carr in Toronto. Keith Furlong is vice president of the Catania Consulting Group, Inc., a New Jersey-based gaming consultancy and lobbying firm. Igelman and Furlong are also on *Gaming Law Review's* editorial board.

Except for sporadic criminal action by states such as Wisconsin, Missouri, and Minnesota in the late 1990s, action since 2000 in states such as New York and New Jersey was limited primarily to respective civil proceedings against financial transaction providers such as Citibank or offshore sports operators. Interestingly, 49 state attorneys general supported federal prohibition of Internet gambling, which is most unusual since states are often wary of federal encroachment on their jurisdiction.<sup>9</sup> Eight states (Illinois, Indiana, Louisiana, Michigan, Nevada, Oregon, South Dakota, and Washington) had passed legislation to prohibit Internet gambling. The most extreme was a Washington state bill,<sup>10</sup> which amended a state statute in 2006 to make Internet gambling, even by a punter, a Class C felony which would be similar to a sexual assault allegation. There have been few prosecutions under state statutes and the only punter to be charged was in North Dakota where he received a \$500 fine and a one-year deferred sentence.<sup>11</sup>

Thus, the lack of prosecution resulted in Internet gaming operators making a visible profile throughout the United States. Calvin Ayre, CEO of Bodog and a Canadian citizen, was featured on the cover of *Forbes* magazine as a billionaire,<sup>12</sup> and he held high-profile “marketing” Internet conferences in Las Vegas in 2004 and 2005, and scheduled another event for July 2006 with a theme of “Ignite Your Online Gaming Business.” Bodog, based in Costa Rica, accepted U.S. sportsbet customers and conducted highly publicized interactive poker tournaments.

David Carruthers, CEO of Betonsports plc., a publicly traded company on the London Stock Exchange, had maintained not only an office in New York City but also campaigned publicly to have the United States pass legislation to legalize and tax Internet gambling. More significantly, Betonsports engaged in extensive advertising in the United States,<sup>13</sup> including \$1 million in ads on New York City buses and advertisements at professional football games.<sup>14</sup> About 70 to 80 percent of its business comes from U.S. customers.

Sportingbet, another London Stock Exchange publicly traded company that accepted U.S. sportsbet customers (65 to 80 percent of its

clients), also maintained a highly visible profile within the United States. Its CEO, Nigel Payne, had lobbied for a North Dakota bill that would have legalized interstate online poker.<sup>15</sup> He also publicized he would be available to comment on Internet gambling bills<sup>16</sup> and was interviewed on *60 Minutes* by Leslie Stahl on Nov. 20, 2005.

Suddenly, in the summer of 2006, David Carruthers of Betonsports and Peter Dicks, a non-executive CEO of Sportingbet, were arrested respectively by the U.S. government and the state of Louisiana. Carruthers was detained while stopping at a Dallas airport en route to Costa Rica and is currently freed on \$1 million bail, restricted to his hotel, and required to wear an ankle bracelet. The criminal proceedings have been continued until Jan. 22, 2007 and it is very possible he will plea bargain to some minor offense. Betonsports has publicly suspended trading on the London Sports Exchange, has stopped accepting U.S. customers pursuant to

<sup>9</sup> Attorneys General for 4(9) States Seeking Congressional Help, J. Rec. Legis. Rep., Mar. 23, 2006.

<sup>10</sup> S.B. 6613, 59th Leg. (Wash. 2006) (enacted June 7, 2006).

<sup>11</sup> BRADLEY VALLERIUS, ONLINE PLAYER SENTENCED FOR ILLEGAL GAMBLING ACTIVITY, INTERACTIVE GAMING NEWS (Aug. 15, 2003), <<http://igamingnews.com>>.

<sup>12</sup> Matthew Miller, *Catch Me If You Can*, FORBES, Mar. 27, 2006, at 112–125.

<sup>13</sup> Matthew Goodman & Dominic Rushe, *Dangerous game*, SUNDAY TIMES (London), July 23, 2006, Business at 5. “They were running everything but a dog and pony show to promote that company,” said another U.S. gambling source.” *Id.*

<sup>14</sup> It “disseminated advertising throughout the United States which falsely stated that Internet and telephone gambling on sporting events and contests was ‘legal and licensed.’” *United States v. Betonsports plc.*, No. 4:06-cr-00337-CEJ-MLM-1, at ¶ 26 (E.D. Mo. June 1, 2006) (indictment).

<sup>15</sup> The Justice Department letter to the North Dakota attorney general stating the bill would violate federal law may have been the factor most responsible for the bill’s defeat. *See* Letter from Laura Parsky, Deputy Assistant Attorney General, U.S. Department of Justice, to Wayne Stenehjem, Attorney General, State of North Dakota, Mar. 7, 2005.

<sup>16</sup> *Need a Source? Sportingbet PLC’s CEO Nigel Payne available to comment on proposed Congressional commission on online gambling*, P.R. NEWSWIRE U.S., Apr. 27, 2006. “Sportingbet . . . won the 2005 eGaming Award for best U.S.-focused company with its flagship brand sportsbook.com.” *Id.*

a federal U.S. court order, and has fired Carruthers.<sup>17</sup>

The indictment by the U.S. Attorney for the Eastern District of Missouri listed as defendants Carruthers along with 10 other individuals and four corporations. It was filed on June 1, 2006, but not unsealed until July 17, 2006. The 22-count indictment includes violations of the Wire Act<sup>18</sup> as well as numerous other crimes such as tax evasion and racketeering. What is most remarkable is that Carruthers is barely mentioned in the 26-page indictment. Instead, the real target seems to be Gary Kaplan, a mysterious bookie with a long history of gambling convictions and an early involvement in the establishment of Betonsports. Carruthers had been extradited to Missouri from Texas. By late September, BetonSports and the U.S. Justice Department reportedly were close to completing a settlement that would resolve all criminal and civil charges.<sup>19</sup>

Unlike the highly visible Carruthers, Peter Dicks of Sportingbet has no experience in gambling. As a non-executive CEO, his background was in deal making and venture capital. While traveling to the United States on business unrelated to gambling, he was arrested in New York City pursuant to a Louisiana warrant. Dicks is free on \$50,000 bail and is contesting extradition to Louisiana, claiming, *inter alia*, that he had not been to Louisiana for over 20 years. In mid-September, Dicks resigned from the company and returned to the United Kingdom. Governor George Pataki refused to extradite him to Louisiana because Dicks had not been in Louisiana for over 20 years.<sup>20</sup> The specific Louisiana statute states in relevant part:

E. Whoever designs, develops, manages, supervises, maintains, provides, or produces any computer services, computer system, computer network, computer software, or any server providing a Home Page, Web Site, or any other product accessing the Internet, Word Wide Web, or any part thereof offering to any client for the primary purpose of the conducting as a business of any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value in order to realize a profit shall be fined not more than

twenty thousand dollars, or imprisoned with or without hard labor, for not more than five years, or both.<sup>21</sup>

Louisiana law enforcement denies that there is any present federal connection and that the prosecution is separate from that of Carruthers. Louisiana authorities also state there were warrants issued for other as-yet unnamed Sportingbet executives.<sup>22</sup> The attorney general of Louisiana was unaware of the warrant, which was the responsibility of state police.<sup>23</sup> While Louisiana has widespread licensed casino gambling and slot machine operations (four land-based and 12 riverboat casinos), it also has a reputation for corruption. It is uncertain whether any state Internet gambling legislation might be in violation of the dormant Commerce Clause of the U.S. Constitution.<sup>24</sup>

What impact might these arrests have on online gambling? First, Betonsports may be irreparably harmed,<sup>25</sup> and it is reported that

<sup>17</sup> "Clearly, while he remains in custody of the U.S. government, he is unable to perform his duties," the company said in a statement. "BetonSports PLC removes David Carruthers as CEO following arrest in United States, A.P., July 25, 2006.

<sup>18</sup> 18 U.S.C. § 1084.

<sup>19</sup> Robert Patrick, *BetonSports is negotiating a settlement*, ST. LOUIS POST-DISPATCH, Sept. 20, 2006, at C1.

<sup>20</sup> Dicks' attorney stated, "It is very unusual for a governor to overturn a warrant so it appears he listened to our argument that Mr. Dicks has not committed any crime in Louisiana." Andrew Ward, *Sportingbet chairman resigns as U.S. court lets him go home*, FIN. TIMES (London), Sept. 15, 2006, at 19.

<sup>21</sup> LA. REV. STAT. ANN. § 14:90(3)(E) ("Gambling by Computer").

<sup>22</sup> "A spokesman for the Louisiana State Police stated that 'the investigations aren't related.' A spokesman for the Louisiana State Police stated that other warrants have been issued, but he 'declined to name any of the other individuals charged,'" Lilly Vitorovich, *Sportingbet Trading in U.S. after Dicks' Arrest*, DOW JONES INT'L NEWS, Sept. 8, 2006.

<sup>23</sup> Andrew Ward, *Gambling cases are not connected: The arrest of the Sportingbet chairman this week is not directly linked to BetonSports*, FIN. TIMES (London), Sept. 11, 2006, Companies UK at 18.

<sup>24</sup> Joseph Kelly has asserted since 1999 that state regulation of the Internet may be in violation of the dormant Commerce Clause. See Joseph M. Kelly, *Internet Gambling Law*, 26 WM. MITCHELL L. REV. 117, 170-171 (2000).

<sup>25</sup> It was reported that Betonsports employees have sold customer lists to other operators and that its players are attempting a class action suit against Betonsports. Jim Armitage, *Betonsports client data 'for sale'*, EVENING STANDARD (London), Sept. 15, 2006, at 30.

investors may be suing the company that performed due diligence for Betonsports' listing on the London Stock Exchange.<sup>26</sup> Sportingbet has resumed trading on the LSE, but Louisiana police have indicated the investigation is ongoing and "focusing on Sportingbet."<sup>27</sup> Bodog suddenly canceled its Las Vegas online gaming marketing conference one week before it was scheduled. Other online operators have scaled down their U.S. advertising or eliminated the taking of bets from the United States. Continent 8 Technologies plc, an Internet supplier that is 40-percent owned by the Mohawks of Kahnawá:ke, Canada, decided to delay its IPO<sup>28</sup> on the London Stock Exchange.

The French government, through at least 10 police officers, perhaps inspired by the United States, has arrested two executives of the Austrian company BWIN. Unlike the United States, the executives were arrested for violation of French legislation that only permits wagering by licensed monopolies.<sup>29</sup> BWIN, a publicly traded company, has suspended its trading on the Vienna Stock Exchange. The executives were arrested in France while publicizing an agreement with a French soccer team. Most experts speculate the arrest was a result of pressure brought by Francaise des Jeux, which operates the national lottery, soccer (football) pools, and scratch cards, and by Pari Mutuel Urbain, which has a monopoly on horse race betting. In fact, a Francaise des Jeux spokesperson stated: "We are doing exactly the same as the authorities in the U.S. who arrested the British executives."<sup>30</sup> There are also rumors that Partoche and Berriere, two land-based French casino companies, had pressured French law enforcement to take action against BWIN, perhaps because they were denied approval to "land online versions of their casino products."<sup>31</sup>

Apparently a French magistrate had been investigating alleged illegal Internet wagering since November 2005 and Pari Mutuel Urbain and Francaise des Jeux had filed a complaint against BWIN in April 2005. By mid-September 2006, BWIN had also been prohibited from accepting sports bets in the German states of Saxony, Hesse, and Bavaria.<sup>32</sup> The two executives were kept in jail over the weekend and released on EUR 300,000 each and informed by the

French magistrate that they could be imprisoned for up to three years if convicted for violating French gaming laws.

Unlike the United States, France is subject to the laws of the European Community. The *Gambelli* decision<sup>33</sup> had prohibited member-state discrimination concerning licensed wagering in other member countries without a good reason. While *Gambelli* left uncertain what constitutes a "necessary and not discriminatory" reason, the EU Internal Market Commission had in April 2006 investigated seven member states as possibly engaging in impermissible discrimination concerning gaming services.<sup>34</sup> By mid-September, the European Commission announced it was scrutinizing France and seven other states for impermissible gaming discrimination. A spokesperson for the EU Market Commission, while refusing to comment directly on the arrest of the two executives, stated: "You cannot say to Operator A, which happens to be a state monopoly making a lot of money, 'Yes, you can do this,' and then tell Operator B, which is in the private sector, that it cannot do the same thing."<sup>35</sup>

Unlike France and the United States, Canada has taken no action against offshore operators.

Canada's gambling laws are entrenched in the Criminal Code of Canada and most

<sup>26</sup> *BetonSports' shareholders threatening to sue advisors*, AFX INT'L FOCUS, Aug. 13, 2006.

<sup>27</sup> Andrew Ward, *Dicks Decision Balance*, FT.COM, Sept. 22, 2006.

<sup>28</sup> Don MacDonald, *Mohawks' gamble delayed: Volatile industry; U.S. government crackdown feared*, GAZETTE (Montreal), Aug. 1, 2006, at A1.

<sup>29</sup> Adam Sage, *Number up for gaming executives, says French state lottery*, TIMES (London), Sept. 16, 2006, Business at 53.

<sup>30</sup> *French police arrest heads of Austria's BWIN for allegedly marketing online gambling*, A.P., Sept. 15, 2006.

<sup>31</sup> CHRIS KRAFCIK, FRENCH AUTHORITIES NAB BWIN EXECS, INTERACTIVE GAMING NEWS (Sept. 15, 2006), <<http://igamingnews.com>>; ROB VAN DER GAAST, BWIN EXECS MAKE BAIL, SCHEDULED TO APPEAR IN COURT TUESDAY, INTERACTIVE GAMING NEWS (Sept. 18, 2006), <<http://igamingnews.com>>.

<sup>32</sup> *Id.*

<sup>33</sup> Case C-243/01, Tribunale di Ascoli Piceno (Italy) v. Gambelli, 8 GAMING L. REV. 43 (2004) (E.C.J. Nov. 6, 2003).

<sup>34</sup> *EU ready to get tough on member states over gambling restrictions*, AGENCE FRANCE PRESS, Sept. 18, 2006.

<sup>35</sup> Eric Pfanner, *Private-public clash on gambling; Detention of executives seen as move to protect state revenue*, INT'L HERALD TRIB., Sept. 19, 2006, Finance at 12.

activities related to gambling are illegal except for those explicitly sanctioned by the Criminal Code. Most notably, the provincial governments are permitted to conduct and manage games of chance and this is the statutory basis for the existence of provincial lotteries and games.

Canada has long been associated with Internet gaming because of the numerous gaming software companies based there (Chartwell, CryptoLogic, and Excapsa, to name a few) and the existence of the Kahnawá:ke gaming licensing jurisdiction outside of suburban Montreal.

As a sovereign nation, Kahnawá:ke has some very valid constitutional arguments that support its legal position,<sup>36</sup> and, to date, no challenges have been made by any level of government to this sovereignty.

Canada has not pursued legal sanctions against any operators since the Starnet case in 1999 and the subsequent guilty plea and forfeiture of funds by the company in 2001.<sup>37</sup>

Recently, provincial governments have been meeting behind closed doors in an attempt to

deal with the growth of the Internet gaming industry.

It is yet to be seen whether the provincial governments will embrace Internet technology for their benefit, as is the case with the British Columbia Lottery Corporation,<sup>38</sup> or move to curb its growth through some form of enforcement action.

Unfortunately, a government might utilize passenger lists not to detain suspected terrorists but also to arrest executives of publicly traded gaming corporations. Anyone connected with the online gaming business must take care when visiting the United States or France. It would appear that the spirit of the 17th-century Star Chamber and the Inquisition of Torquemada is alive and well.

---

<sup>36</sup> Morden C. Lazarus, Edwin D. Monzon, & Richard B. Wodnicki, *The Mohawks of Kahnawá:ke and the Case for an Aboriginal Right to Gaming under the Canada Constitution Act, 1982*, 10 GAMING L. REV. 369–378 (2006).

<sup>37</sup> Bob Mackin, B.C.'s sporting bet, *The Vancouver Courier.com*, Feb. 7, 2005, <<http://www.vancourier.com/issues05/022105/news/022105nn1.html>>.

<sup>38</sup> *Id.*