

Internet Games: Increased Hits or Illegal Gambling?

Before setting up a sweepstakes or other game of chance on your website, consider that unlicensed gambling is generally illegal in all of the United States and there is wide disparity in state Internet gambling laws -- if the issue has even been addressed. While the State of New York recently banned Internet gambling, other states have split on the decision of whether to prosecute. For example, as far back as 1985, the State of Minnesota filed suit against a Nevada based Internet gambling operator for the promotion of a gambling operation within Minnesota. The Florida attorney general, on the other hand, has declined to prosecute Internet gambling.

In addition, your scheme to increase traffic to your site may also violate the laws of other countries where your website is accessible. And -- depending on the degree of interactivity with users of your site -- you may be subject to the jurisdiction of foreign courts, which could apply unfamiliar foreign law.

Some background: federal criminal law prohibits betting and wagering businesses from knowingly using a wire communications facility for transmission in interstate or foreign commerce of bets or wagers, or even providing information to assist in the placing of bets or wagers, on any sporting event or contest. There is also pending congressional legislation which would forbid Internet gambling, and hopefully settle the inconsistent patchwork of state laws.

Although there is little direct precedent with Internet applications, a court faced with a Web-based gambling issue would likely look to settled common law principles. Historically, illegal gambling involves the elements of chance, consideration and a prize. A game is based on chance where the result of a contest depends more on fortuitous or accidental circumstances than on the skill of the players. Generally, where skill predominates, a game is not considered gambling -- for example, chess.

In turn, consideration connotes sacrifice on the part of players. A contest may avoid being an illegal lottery by having free entry, since entrants make no financial sacrifice, but this is easier said than done. Even for contests with free entry, other elements may be constitute consideration: the expenditure of effort to play; requiring entrants to incur online costs; the time spent in navigating a website, if it is extensive or complicated; and even the requirement of considerable personal information for registration or entry.

Finally, a prize is something of value. This clearly includes cash, but probably also encompasses checks, notes, chips, and other instruments which can be exchanged for cash or other valuable items.

In a legal contest, by contrast, a prize, premium, purse or other valuable thing is offered to the winner of a contest, and the person or entity offering the reward does not compete and stands no chance of winning back the thing offered.

All in all, Internet games are a legal minefield and potential Netpreneurs would be wise to consult legal counsel before embarking on this seemingly easy way to drive business to their sites.