

Crackdown on Online Gambling Presents Continued Risks for Media

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Recent developments in the federal government's ongoing effort to curb online gambling make clear that media outlets that run advertisements for gambling sites continue to face significant legal risks.

Earlier this month, federal law enforcement authorities arrested the chief executive officer of BetOnSports plc, an online gambling company incorporated in the United Kingdom, and three other individuals associated with the company, on criminal charges related to the company's offering of sports betting activities to consumers in the United States. The arrests accompanied an indictment that charged the CEO and several other people involved with the company with racketeering conspiracy and other crimes in connection with the company's activities. Notably, the indictment also includes charges against three marketing firms that were described in the indictment as having provided "promotional services" to the company, and four individuals associated with the marketing firms. The indictment specifically mentions the false and misleading nature of print and broadcast advertisements that suggest online gambling is legal.

The arrests took place as federal legislators are considering taking their own steps to combat online gambling. The House of Representatives recently passed broad anti-gambling legislation that would supplement the federal Wire Act (which explicitly prohibits sports betting, but not poker and other casino-style games), and a similar measure is being pushed in the Senate.

The BetOnSports arrests highlight the willingness of federal prosecutors to employ increasingly aggressive tactics in their crackdown on online gambling websites, which are typically operated by offshore companies located in jurisdictions where gambling is not prohibited. (The CEO of BetOnSports was arrested at an airport in Dallas while en route from the United Kingdom to Costa Rica, where the company's operations are based.) In addition, by including charges against firms that assisted BetOnSports with its promotional efforts, the prosecution also serves as a reminder that companies that do business with online gambling providers – including media outlets that run their advertisements – may also find themselves subject to prosecutorial scrutiny. Indeed, in 2003, a federal prosecutor specifically advised the National Association of Broadcasters that broadcasters who run advertisements for offshore gambling sites may be guilty of aiding and abetting illegal activities, and suggested they might wish to "consult with their counsel or take whatever actions they deem appropriate" with respect to such advertisements. Similar letters were sent to trade associations representing other media. Soon thereafter, federal prosecutors in St. Louis issued subpoenas to a number of media outlets seeking information relating to online gambling advertisements, followed by the seizure from Discovery Communications of \$3.2 million that the company had received for commercial airtime purchased by an offshore online casino. The prosecutors subsequently reached settlements with other media outlets in connection with their airing of advertisements for online gambling sites, including a highly-publicized settlement with The Sporting News earlier this year that involved a forfeiture of \$4.2 million and required the publisher to undertake a \$3 million anti-gambling campaign.

Media companies that do business with gambling website operators face pressure from state authorities as well. For example, an extraordinarily broad anti-gambling law recently took effect in Washington state, making it a felony to knowingly transmit or receive "gambling information" by "telephone, telegraph, radio, semaphore, the Internet, a telecommunications transmission system, or similar means." According to news reports, since the law took effect, a publisher of gambling

magazines has ceased distributing them in the state, citing the new law. It has also been reported that a Washington-based website featuring reviews of Internet casinos and advertisements for the sites shut down after a local newspaper quoted a state official as saying that the site probably violated the law.

Another aspect of the online gambling controversy that is likely to draw further attention is the advertising of “.net” sites. These sites are affiliated with gambling sites and are accessible at a URL that is virtually the same as the gambling site, except that it ends with “.net” rather than “.com” (for example, a gambling website located at allgambling.com might have a companion site at allgambling.net). The content of these sites vary, but they all tend to avoid directly offering paid gambling services. Many of them are limited to offering gambling-related information, and others offer users the opportunity to play games such as poker and blackjack but without paying a fee or receiving a prize. A number of media outlets now run advertisements for “.net” sites, believing they are sufficiently removed from actual gambling activity to minimize the threat of governmental scrutiny. Some also have attempted to protect themselves by carefully reviewing the content of the “.net” sites to make sure they do not offer gambling services, promote such services or link directly to gambling sites. Some have gone so far as to require advertisers to verify that the sites do not promote gambling and that funds used to pay for the advertising space are not derived from gambling activity. It is not yet clear how prosecutors will approach the “.net” sites, but given the continued attacks on the online gambling industry by federal and state authorities, those media outlets that accept ads for these sites should, at a minimum, take the actions suggested above, but even then they must remain prepared for the possibility of governmental scrutiny.

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