

Online Gambling: the Department of Justice flexes its muscles

The US Department of Justice (DoJ) has launched a civil and criminal claim against four companies and eleven individuals including BetonSports Plc, its founder Gary Kaplan and its Scottish CEO, David Carruthers. BetonSports plc is AIM-listed and provides an online and telephone sportsbook betting service. BetonSports is reported to earn as much as 90% of its gross win from punters in the US. What are the implications of this prosecution for online gambling?

A grand jury in the US District Court in the Eastern District of Missouri sealed an indictment on 1 June 2006 and the indictment was opened on 17 July 2006 after five of the individuals had been arrested, including Mr Carruthers who was arrested in the departure lounge of Dallas Airport en route from the UK to Costa Rica. The criminal charges relate to felony violations of federal laws including: the Wire Wager Act 1961 (Wire Act), Racketeer Influenced and Corrupt Organisations (RICO) Conspiracy, interstate transportation of gambling paraphernalia, interference with the administration of Internal Revenue laws and tax evasion.

The DoJ's press release in relation to the indictment focuses on the charges against Gary Kaplan which is, perhaps, indicative of whom it sees as the real villain.

The press release summarises the background as follows:

"The indictment alleges that Gary Kaplan started his gambling enterprise via operation of a sportsbook in New York City in the early 1990s. After Kaplan was arrested on New York state gambling charges in May 1993, Kaplan moved his betting operation to Florida and eventually off-shore to Costa Rica. According to the indictment, BetonSports.com, the most visible outgrowth of Kaplan's sports bookmaking enterprise, misleadingly advertised itself as the "World's Largest Legal and Licensed Sportsbook." The indictment also alleges that Kaplan failed to pay federal wagering excise taxes on more than \$3.3 billion in wagers taken from the United States and seeks forfeiture of \$4.5 billion from Kaplan and his co-defendants, as well as various properties."

Nonetheless, it is interesting that the DoJ launched their arrests at a time when Gary Kaplan was out of the country, but David Carruthers was in the country. This certainly sends a message to foreign executives of online gambling companies.

The DoJ's high profile prosecution of an online gambling company has impacted shares across the sector. Trading in BetonSports' shares has been suspended since 18 July 2006 and the prices of other shares in the sector have fallen sharply. Whilst companies such as Sportingbet which also offer sportsbook betting to the US have been the hardest hit, shares in online gaming companies which do not offer sportsbook betting, such as PartyGaming and 888, have also fallen.

The legality of internet gambling in the US

The DoJ takes the position that all internet gambling is a violation of federal laws and a DoJ spokesman, Brian Sierra, has warned that *"those that conduct this business do so at their own risk."*

However, the legality of online gambling in the US is not clear cut. The Wire Act prohibits the provision of bets or wagers on any sporting event or contest if a wire communication facility is involved. The Wire Act predates the internet and it is likely, but not clear, that internet betting is covered. It is less clear whether non-sports' betting is also prohibited.

The law in relation to internet gaming is an even greyer area. The DoJ suggests that it is prohibited but has not yet pressed the issue. The DoJ has focussed its efforts recently against third parties that support internet gaming, such as payment processing providers and organisations which accept internet gaming advertisements. The DoJ has not been alone in this push and Google and Yahoo! no longer accept gambling advertisements following a large class action brought by Californian residents under Californian state law.

Earlier this month the US House of Representatives passed the Leach-Goodlatte Internet Gaming bill. The bill, if enacted, would crack down on internet gambling by:

- Clarifying that the Wire Act covers all types of gambling and all types of communication facilities including the internet.
- Regulating payment systems to prevent money being transferred to internet gambling companies. This will prevent American credit card providers and other financial institutions from making payments to gambling companies.
- Giving law enforcement agencies the power to seek injunctions against people who facilitate internet gambling.
- Obliging the US Government to advance international cooperation in law enforcement against illegal gambling and related money laundering.

The Leach-Goodlatte bill was passed with a strong majority in the House of Representatives. However, commentators have suggested that it is unlikely that Senate will have time to consider the legislation in the current session and even if it is considered passage is far from certain. The fact that the bill was passed is seen by some as political posturing in advance of November's elections.

Is this the start of a crackdown?

Although the DoJ has been making strong statements that all those who conduct internet gambling do so at their own risk, the BetonSports prosecution does not at first blush appear to extend the companies within the DoJ's sights.

There are a number of points to note in this regard:

- BetonSports is a sportsbook betting and not a gaming company.
- The prosecution reflects the DoJ's existing policy of prosecuting internet gambling when it is part of other criminal activity: in this case what is alleged to be mail and wire fraud based on false advertising (in particular a claim that the telephone services and websites were "*legal and licensed*") and a claim of tax evasion.
- Advertising of illegal gambling has been the focus of the Eastern District of Missouri for several years.
- There was significant activity by BetonSports in the US, such as significant direct marketing being sent to US addresses.
- Gary Kaplan has a history with the DoJ and was arrested on New York state gambling charges in May 1993 following which he relocated his business to Florida and then Antigua before finally moving it to Costa Rica. It is possible that Mr Kaplan has been in the DoJ's sights for some time and the DoJ's press release reflects this focus.

Extradition

Following the high profile extradition of the so-called "NatWest Three" the issue arises whether the US may seek extradition from the UK in gambling cases.

An offence is only extraditable if the conduct on which the offence is based is punishable under the law of both countries by imprisonment for a term of one year or more. If this is the case, under the Extradition Act 2003 the UK Courts no longer need to be persuaded that there is a case to be answered, but only that the request for extradition contains admissible evidence for the offence sufficient to establish a prima facie case.

Internet gambling is not illegal per se in the UK (subject, of course, to compliance with the regulations and the fact that an online gaming company cannot be set up in this country until the Gambling Act 2005 comes into force next year).

It is of note that the majority of offences under the Gambling Act 2005 are punishable by fines or imprisonment for a term not exceeding 51 weeks. The exceptions are cheating (punishable by two years imprisonment) and inviting or enabling a person in a prohibited territory to participate in remote gambling - the penalty for which will be set by the Secretary of State by order.

The greater risk therefore lies with the DoJ also prosecuting additional offences which would also be punishable in the UK by imprisonment for a term of one year or more, such as tax evasion.

Summary

The BetonSports prosecution appears to be a test case for the DoJ. The outcome will be watched with great interest and baited breath by the entire online gambling community.

For further information in relation to these issues please contact:

Richard Taylor
Richard.Taylor@olswang.com

or

David Zeffman
David.Zeffman@olswang.com