

U.S. Threatens Action Against Online Gambling

By Matt Richtel

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Federal prosecutors have begun a wide-ranging effort to curb the growing popularity of online gambling in the United States by quietly threatening legal action against American companies that do business with Internet casinos and sports betting operations based outside the country, lawyers and industry executives say.

The investigation into the activities of media, public relations and technology companies relies on a controversial legal concept that holds that the American businesses, by providing advertising and other services that support Internet gambling, are "aiding and abetting" online casinos. That gives prosecutors an indirect way to attack the overseas enterprises, whose operations are illegal here but fall outside their jurisdiction.

Lawyers said they were not aware of any charges that had been filed. Still, the campaign, which has gone on for months, has already chalked up some significant nonlegal victories. Several big media operations — including Infinity Broadcasting, Clear Channel Communications and the Discovery Networks — stopped running advertisements for offshore Internet casinos last fall in light of the threat of further scrutiny that might lead to prosecution.

The investigation of the Internet gambling industry, lawyers said, is being run by Raymond W. Gruender, the United States attorney in the Eastern District of Missouri. His office convened a grand jury last year in St. Louis that has issued summonses to a number of companies and individuals, including Sebastian Sinclair, a market researcher who provides economic analyses of the online gambling industry.

Mr. Sinclair said he received a subpoena at the end of February. He said it required him to testify before the federal grand jury next month.

The investigation comes as millions of Americans have turned to their home computers to place sports bets and play casino games. Using credit cards or other electronic payment methods, players can place wagers with the Internet casinos, most of them in Costa Rica, the Caribbean or the Isle of Man, between Ireland and Britain.

In trying to crack down on Internet gambling through American companies that provide support services, particularly advertising and marketing, the government may find itself on shaky legal ground, the industry, its lawyers and some independent legal analysts say.

The reason, analysts say, is that broadcasters and marketers could well be within their First Amendment rights in advertising on behalf of Internet casinos.

But others say prosecutors may be able to develop a sound case on the ground that American companies are profiting from the success of Internet casinos, a plainly illegal enterprise in the United States.

Even though the legal issues have not been resolved, the inquiry is already achieving some of its goals merely by raising questions.

"The government has floated these legal theories without having to prove anything," said Lawrence G. Walters, a Florida lawyer who specializes in Internet gambling law. "But they've achieved their end result: scaring the players and the industry."

Mr. Gruender, the United States attorney in St. Louis, declined to comment. His office referred inquiries to Justice Department officials in Washington. They also would not comment, saying the department does not discuss any potential or active investigation.

Broadcasters are already under scrutiny from regulators and legislators who are seeking to establish new standards regarding obscenity. Recently, Clear Channel, which operates the nation's largest chain of radio stations, stopped carrying the Howard Stern show in six cities.

The investigation also underscores the complex legal and political issues raised by the borderless Internet. The overseas casino operations are legal and licensed in the jurisdictions where they are based, permitting them to reach through the Web to customers in the United States, where federal and state laws forbid the operation of unlicensed casinos.

David Carruthers, chief executive of BetonSports.com, an online sports betting business based in Costa Rica, said he was licensed in that country, as well as in Antigua, the Dominican Republic and Britain. His company alone, he said, has 1.2 million registered American users and accepted 33 million bets from North America last year, the vast majority from the United States.

He said his advertisements had been banned recently from, among other places, the Howard Stern show, which is produced by Infinity Broadcasting, a unit of Viacom.

Media companies are "being held hostage," Mr. Carruthers complained. "Unless they stand up, they're going to lose millions in dollars from the advertising."

As recently as last September, Mr. Carruthers also advertised BetonSports.com on city buses in New York. But Viacom Outdoor, which placed the ads, no longer accepts online gambling advertisements, said Jodi Senese, a spokeswoman for Viacom Outdoor. She declined to give a reason for the decision or say precisely when the company's policy had changed.

Other media companies have also turned their backs on Internet gambling advertisements. The Travel Channel stopped running them this fall on the World Poker Tour, one of the channel's most popular programs. David Leavy, spokesman for the Discovery Networks, which operates the Travel, Discovery and other channels, said the policy against running ads for Internet gambling covers all its cable channels.

"Given the investigation," Mr. Leavy said, "we are taking a cautious approach to online gaming advertisements."

Similarly, Clear Channel, which operates 1,200 radio stations and 40 television stations, stopped running advertisements last fall after receiving a letter from prosecutors.

Some companies, however, have not changed their policies. Yahoo and Google continue to accept paid advertisements from online gambling operations.

Yahoo, in a statement responding to questions about its Internet gambling advertisements, said it was committed to a "high-quality and comprehensive online experience," adding that "we regularly evaluate our policies as part of our ongoing efforts to provide the best experience for consumers and advertisers."

A spokeswoman for Google said it continued to run such advertisements and to evaluate its policies.

While it is illegal to run an Internet gambling operation in the United States, state laws vary as to whether the bettor is committing a crime. New York, for instance, prohibits operation or promotion of an unlicensed casino, but it does not make the act of placing a bet a crime, said Kenneth M. Dreifach, chief of the Internet bureau for the New York attorney general, Eliot Spitzer.

The campaign by the federal government dates at least to last June, when John G. Malcolm, deputy assistant attorney general for the criminal division of the Justice Department, sent a letter to trade groups representing publishers and broadcasters. The letter warned the trade groups that their members might be in violation of the law by aiding and abetting online casinos.

While declining to comment further, Casey Stavropoulos, a department spokesman said, "John Malcolm's letter speaks for itself."

By sending an official notice, the government was giving companies "knowledge" that Internet gamblers were committing a crime, legal experts said, one of two main elements to the crime of aiding and abetting.

But aiding and abetting has a second element — whether the broadcaster is furthering the commission of a crime, said Jennifer S. Granick, the executive director for the Center for Internet and Society at Stanford University Law School.

Ms. Granick said case law suggested this might be hard for the government to prove; television and radio audiences are so broad that many, if not most, of the people watching or listening to an advertisement are not going to place a bet over the Internet. "It's not at all clear that they're breaking the law," Ms. Granick said, noting that the broadcasters could be seen as merely disseminating information. "There's strong reason to think the opposite because they are broadcasting to a general audience."

The investigation has recently spread beyond advertising. Mr. Sinclair, a research analyst for Christiansen Capital Advisors of New Gloucester, Maine, said the subpoena he received two weeks ago asked him to provide information not just about advertisers working with overseas Internet casinos, but also about public relations firms, consultants, banks, and software and telecommunications companies.

In the earlier subpoenas to media companies, the government sought information dating to 1997 about each company's relationship with online casinos..

Given the pressures on online casinos, Mr. Sinclair has recently downgraded his expectations for the growth of the industry, which derives about half its revenue from Americans. In 2002, he projected \$8.3 billion in sales for 2004; last fall, he dropped that projection to \$7.4 billion.