

FOLLOW THE YELLOW CHIP ROAD: THE PATH TO LEGALIZING INTERNET POKER

Josh Chumbley*

I. INTRODUCTION

Some say it all started with an Academy Award winning actor playing the role of a law student. In the 1998 movie “Rounders,” Matt Damon¹ starred in the role of Mike McDermott, a law student who plays in underground poker games in order to earn money and help pay for law school.² The movie follows the exploits of McDermott as he struggles to balance his life as poker player with his desire to make a conventional life for himself as an attorney.³ Ultimately, thanks to advice given to him by his law school professor,⁴ McDermott decides that he is a poker player at heart and leaves law school to become a professional poker player.⁵

“Rounders” had a profound impact on poker in America.⁶ Professional poker players Dutch Boyd, Gavin Griffin and Hevad Khan all credit the movie with getting them interested in poker.⁷ Professional poker player Vanessa Rousso said, “the movie helped define the underground poker scene in New York and showed how judges, cops and ultimately the pros in Vegas were all hooked on a game of skill.”⁸

Another player who was influenced by “Rounders” is the appropriately named Chris Moneymaker.⁹ Although there is some debate on how much impact “Rounders” has had on the poker community,¹⁰ there

* J.D. Candidate, Southern Illinois University School of Law, May 2012. I would like to thank my friends and family for their support and encouragement and Melissa for her patience and love.

1. Matt Damon won an Academy Award for best screenplay in 1997 for Good Will Hunting and has been nominated for Best Actor in Good Will Hunting and Best Supporting Actor for Invictus. *Matt Damon—biography*, FILMBUG.COM, <http://www.filmbug.com/db/261> (last visited Dec. 21, 2011).

2. ROUNDERS (Miramax 1998).

3. *Id.*

4. Professor Abe Petrovsky, played by Martin Landau, tells McDermott: “Destiny chooses you, you don’t choose your destiny.” *Id.*

5. *Id.*

6. Sarah Polson, *Pros Discuss Rounders Impact on Poker*, POKER LISTINGS (Mar. 5, 2009), <http://www.pokerlistings.com/pros-discuss-rounders-impact-on-poker-37613>.

7. *Id.*

8. *Id.*

9. Scott Tobias, *The New Cult Canon: Rounders*, AVCLUB (Oct. 29, 2008), <http://www.avclub.com/articles/the-new-cult-canon-rounders,2512>.

10. *Id.*

is little debate as to the massive effect Moneymaker's run at the 2003 World Series of Poker (WSOP) Main Event¹¹ had on the recent poker boom.¹² The event was broadcast in an edited format on ESPN and was one of the first poker broadcasts in the United States to feature the use of a hole cam, a camera that revealed the players cards to the viewing audience, essentially letting them play along with the hand.¹³ Moneymaker earned his \$10,000 seat to the event through a \$39 satellite tournament¹⁴ at Pokerstars.com internet poker site.¹⁵ He eventually turned that \$39 seat into \$2.5 million by beating out 838 other players to take first place in the tournament.¹⁶ The rags-to-riches story of Moneymaker, an accountant from Tennessee, who turned \$39 into \$2.5 million quickly spread across the country and created what has been termed "The Moneymaker Effect."¹⁷ People began to dream that they may too be able to turn a small buy-in at an internet satellite event into millions of dollars and a place in poker history.¹⁸ This dream led to a staggering increase in the amount of participants at the WSOP.¹⁹ The number of players jumped from 839 in 2003 to 2,576 in 2004, 5,619 in 2005 and 8,773 in 2006.²⁰

During this poker boom, the United States government had a golden opportunity to capitalize on the phenomenon and develop methods to regulate and control internet poker but failed to act. Former New York Senator Alfonso D'Amato perhaps summed up this issue the best: "This is just about the only industry I know of that has basically begged to be taxed—only to be ignored by politicians who refuse to listen to the desires

11. The WSOP main event is the oldest, largest and most prestigious poker tournament in the world. *World Series of Poker history*, ESPN.COM, <http://espn.go.com/eoe/wsop/history.html> (last visited Dec. 21, 2011).

12. Tobias, *supra* note 9.

13. *History of the Hole Card Cam*, HOLLYWOODPOKER (June 1, 2006), <http://www.hollywoodpoker.com/green-room/poker-lifestyle/poker-news/pocket-cam-20060601.html>.

14. A satellite tournament is a poker tournament that does not award cash prizes, but instead awards seats to a bigger tournament. For example, if the larger tournament buy-in is \$300, a player could buy into a satellite tournament for \$30 with ten players, and the winner of the satellite tournament would earn a seat into the larger tournament. *What is a Satellite Tournament*, ONLINE POKER INDEX (May 12, 2010), <http://www.online-poker-index.com/article-item-26>.

15. Bernard Lee, *Chris Moneymaker—Poker Interview*, POKER-TOMORROW, <http://www.poker-tomorrow.com/poker/chris-moneymaker/> (last visited Dec. 21, 2011).

16. *Chris Moneymaker—Poker Player Profile*, POKERNEWSDAILY.COM, <http://www.pokernewsdaily.com/chris-moneymaker-poker-player-profile-4107/> (last visited Dec. 21, 2011).

17. Jon Fasman, *Shuffle Up and Deal*, ECONOMIST (July 11, 2010), <http://www.economist.com/node/16507670>.

18. *Id.*

19. Dan Michalski, *The Complete History of Main Event Entry Numbers and Nifty Charts*, POKERATI (July 5, 2010), <http://pokerati.com/2010/07/05/facebook-confirms-70-plus-of-wsop-fans-are-morons-main-event-numbers-game-nifty-historical-charts/>.

20. *Id.*

of the American people.”²¹ In fact, in the years since, the only legislation that has been passed on the issue has been aimed at making internet gambling, in all of its forms, illegal.²² There have been several proposed bills aimed at legalizing and regulating the multi-billion dollar industry, but all have failed to gain substantial support.²³ A main factor as to why these bills have failed to pass is that the scope of the legislation is too broad. The legislation does not properly address the issue of poker as a game of skill and does not provide adequate safeguards to protect the state’s interest in receiving gambling revenues. To increase their chances of success, sponsors of future bills must incorporate these concerns during the drafting and proposal process.

This Comment will focus on what actions need to be taken by legislators to pass a bill that legalizes and regulates internet poker. Part II of this Comment will examine current internet gambling laws, including the effect that the Unlawful Internet Gambling Enforcement Act of 2006 has had on the recent state of internet poker. Part III will discuss recent bills that have been proposed to Congress concerning internet poker and the reasons they failed to pass. Part IV will analyze what steps legislators should take to increase the chance of passing a law that legalizes and regulates internet poker. It will first examine how legislators should conduct a study based on poker as a game of skill and how the legislation should be as narrow as possible. Then, it will examine how the legislation should include provisions aimed at diminishing the effect that a federally regulated regime will have on states’ traditional rights to receive revenue and regulate gambling.

II. CURRENT LAWS

The federal government interprets four statutes to outlaw all forms of internet gambling and, more specifically, internet poker. The first three, the Wire Act,²⁴ the Travel Act²⁵ and the Illegal Gambling Business Act (IGBA),²⁶ were all passed before the invention of internet gambling, but all provide a basis for finding internet gambling illegal.²⁷ The fourth statute,

21. Alfonse D’Amato, *On Politics, are Politicians Listening?*, POLITICO (July 23, 2010, 4:11 AM), <http://www.politico.com/news/stories/0710/40105.html>.

22. See 31 U.S.C. § 5363 (2006).

23. See discussion *infra* Part III.

24. 18 U.S.C. § 1084 (2006).

25. 18 U.S.C. § 1952 (2006).

26. 18 U.S.C. § 1955 (2006).

27. Kiran S. Raj, *Drawing a Line in the Sand: How the Federal Government Can Work With the States to Regulate Internet Gambling*, 56 EMORY L.J. 777, 783 (2006).

the Unlawful Internet Gambling Enforcement Act (UIGEA),²⁸ was passed in 2006, but has been shrouded in controversy ever since. Although none of the four statutes explicitly states that internet gambling is illegal, federal courts have interpreted these laws to hold as such.²⁹ In order to understand the reach of federal law and changes that may be made in the future, this section will analyze the current laws and recently proposed laws aimed at legalizing internet poker.

A. The Wire Act

Passed in 1961, the Wire Act³⁰ prohibited the transfer over wire of any information that assisted in the placing of bets or wagers on sporting events while the information was being transmitted.³¹ Several federal courts have analogized the provisions of the Act pertaining to “wire communication” to include the use of the internet to transmit the placing of bets and wagers.³² However, the Department of Justice has construed the Act to only apply to the taking of bets over the internet, not placing them.³³ Further, the District Court for the Eastern District of Louisiana found that the scope of the Act was limited to sporting events or contests and was not applicable to internet gambling on games of chance.³⁴

B. The Travel Act

Also passed in 1961, the Travel Act was another attempt by Congress to defeat and combat organized crime.³⁵ To show a violation of the Travel Act, the government must prove that an individual engaged in “(1) interstate travel or use of a facility in commerce (2) with the intent to promote an unlawful activity and (3) that the defendant *thereafter* performed or attempted to perform or facilitated the performance of an overt act in furtherance of the unlawful activity.”³⁶ Although proving interstate travel is simple in internet gambling cases due to the passing of information from state to state, the “furtherance of an unlawful activity”

28. 31 U.S.C. § 5363 (2006).

29. Raj, *supra* note 27, at 790.

30. The Wire Act was passed in an attempt to help states enforce their laws pertaining to gambling, bookmaking and similar offenses and to aid in the defeat of organized crime. *Id.* at 784.

31. 18 U.S.C. § 1084 (2006).

32. *United States v. Corrar*, 512 F.Supp.2d 1280, 1286-87 (N.D. Ga. 2007).

33. Alex Binkley, *Remote Game Legislation in the United States, a Burden on the System*, 27 REV. BANKING & FIN. L. 537, 540 (2008).

34. *In re MasterCard Intern. Inc., Internet Gambling Litigation*, 132 F.Supp.2d 468, 480 (E.D. LA 2001).

35. Raj, *supra* note 27, at 786.

36. *United States v. Childress*, 58 F.3d 693, 719 (D.C. Cir. 1995).

requirement is trickier to prove.³⁷ Federal courts have, however, expanded this definition to apply to gambling enterprises in general.³⁸ Despite the expansion of the definition, most gamblers would be considered mere customers of gambling enterprises, and therefore, not subject to prosecution under the Travel Act.³⁹

C. The Illegal Gambling Business Act

In 1970, Congress passed another statute targeted at organized crime called the Illegal Gambling Business Act (IGBA).⁴⁰ The IGBA prohibited the running of an illegal gambling business.⁴¹ Illegal gambling business is defined in the Act as: “five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.”⁴² Once again, the Act gave authority only to pursue those who ran the gambling operations, and not the customers themselves.⁴³

D. Unlawful Internet Gambling Enforcement Act

Passed in 2006, the Unlawful Internet Gambling Enforcement Act (UIGEA) was Congress’s answer to the poker and internet gambling boom.⁴⁴ The Act states that:

No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling—(1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card); (2) an electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person; (3) any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution; or (4) the proceeds of any other form of financial

37. Raj, *supra* note 27, at 786.

38. *Id.* at 787.

39. *Id.*

40. *Id.*

41. *Id.*

42. 18 U.S.C. § 1955 (2006).

43. Raj, *supra* note 27, at 788.

44. *UIGEA and its Effects a Month After D-day*, POKERSTOP (June 28, 2010), <http://www.pokerstop.com/blog/poker-law/uigea-and-its-effects-a-month-after-d-day/> [hereinafter *UIGEA Effects*].

transaction, as the Secretary and the Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.⁴⁵

Although the law makes it illegal for financial institutions to receive funds generated from internet gambling, it is silent on prohibiting the act of placing bets and otherwise participating in internet gambling.⁴⁶

The method used to pass the UIGEA is considered highly controversial.⁴⁷ The UIGEA was passed as a rider to the Safe Port Act (SPA), even though the SPA had nothing to do with internet gambling.⁴⁸ The UIGEA was attached to the SPA bill during the conference committee report and was not subject to amendment after that point.⁴⁹ Therefore, many members of Congress who considered it a necessity to pass the SPA were forced to decide whether or not to vote against the SPA, which they considered vital, or vote for the bill but allow for the passage of the UIGEA, which they did not support.⁵⁰ Further, other members of Congress claimed they had no idea that the UIGEA was attached with the SPA when they voted for it.⁵¹ Also, upon the signing of the SPA, President George W. Bush made mention of the importance of the passage of the SPA but failed to make any mention of the UIGEA or its effect on internet gambling.⁵²

Since its passage, the UIGEA has only had a minimal impact on the world of internet gambling. First, because the UIGEA is only aimed at denying the transference of funds, it does not explicitly prohibit an individual consumer from placing bets on the internet.⁵³ Therefore nothing in the UIGEA makes it expressly illegal to participate in internet gambling. Second, although several prominent publicly traded internet gambling companies began refusing to provide services to consumers located in the United States after the initial passage of the UIGEA, other privately held companies soon began to fill the void.⁵⁴ Third, although the UIGEA has effectively killed all credit card deposits to internet gambling casinos, consumers in the United States can still use e-wallets to transfer money

45. 31 U.S.C. § 5363 (2006).

46. *Id.*

47. Ross A. Crutchfield, *Folding a Losing Hand: Why Congress Should Replace the Unlawful Internet Gaming Act with a Regulatory Scheme*, 45 TULSA L. REV. 161, 163-64 (2009).

48. *Id.* at 163.

49. *Id.* at 163-64.

50. *Id.* at 164.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* at 167.

back and forth.⁵⁵ Finally, the number of American internet poker players has increased since the passage of the UIGEA, showing that Act has done little to deter American players from participating in internet gambling.⁵⁶

Despite its shortcomings, the UIGEA was recently used to shake-up internet poker in the United States.⁵⁷ On April 15, 2011, a day dubbed “Black Friday” by the poker community, the Department of Justice indicted the three largest internet poker companies in the United States, PokerStars, Full Tilt Poker and Absolute Poker, on charges under the UIGEA, bank fraud and money laundering, among others.⁵⁸ The shutdown of these sites may greatly diminish the amount of internet poker players in the US, as Full Tilt Poker and PokerStars represented 80% of the United States internet poker market.⁵⁹ However, it is likely that other companies will continue offering services to American players.⁶⁰ The Department of Justice’s actions could also have the reverse effect of unifying the poker community in its efforts to legalize internet poker.⁶¹ As discussed in the next section, Representative Barney Frank feels the indictment may help recent efforts to pass legislation that would legalize internet poker.⁶²

III. RECENT DEVELOPMENTS

There have been several attempts made in the last few years to legalize internet gambling, and more specifically, poker. Although all of the attempts thus far have failed, they continue to gather increasing support. This section will examine several of these attempts and analyze reasons behind why they failed to pass.

A. The Internet Gambling Regulation and Enforcement Act

On April 26, 2007, United States Representative Barney Frank introduced the Internet Gambling Regulation and Enforcement Act (IGREA)⁶³ to the floor of the House of Representatives.⁶⁴ The purpose of

55. UIGEA Effects, *supra* note 44.

56. Nate Silver, *After “Black Friday,” American Poker Faces Cloudy Future*, N.Y. TIMES (April 20, 2011), <http://fivethirtyeight.blogs.nytimes.com/2011/04/20/after-black-friday-american-poker-faces-cloudy-future/?partner=rss&emc=rss>.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. H.R. 2046, 110th Cong. (2007).

the Act was to prevent tax avoidance, provide additional tax revenue and to provide protection against underage gambling, compulsive gambling, money laundering and fraud.⁶⁵ The IGREA “would create an exemption to the ban on online gambling for properly licensed operators, allowing Americans to lawfully bet online.”⁶⁶ The IGREA was broad in its scope and would allow for the legalization of almost all online gambling activities.⁶⁷ This may have been the reason for its downfall, as the bill never made it out of the House Committee.⁶⁸

On May 6, 2009, Representative Frank once again introduced legislation aimed at regulating internet gambling.⁶⁹ The Internet Gambling Regulation, Consumer Protection and Enforcement Act (IGRCPEA)⁷⁰ was very similar to the IGREA, but observers have noted that factors including a new Congress⁷¹ and global economic crisis may help IGRCPEA progress further than IGREA.⁷² The IGRCPEA would “provide for the licensing of Internet gambling activities by the Secretary of the Treasury, to provide for consumer protections on the Internet, to enforce the tax code, and for other purposes.”⁷³ As compared to the IGREA, the IGRCPEA provides more specific guidelines on how gambling should be regulated.⁷⁴ On July 28, 2010, the IGRCPEA was passed by the House Financial Services Committee by a vote of 41-22, but failed to proceed any further before the November elections.⁷⁵ Despite failing to pass, Michael Waxman, a

64. *Frank Introduces Internet Gambling Regulation and Enforcement Act of 2007*, U.S. HOUSE OF REPRESENTATIVES (Apr. 26, 2007), http://www.house.gov/apps/list/press/financialsvcs_dem/press042607.shtml.

65. *Id.*

66. *Id.*

67. Binkley, *supra* note 33, at 559.

68. *H.R. 2046: Internet Gambling Regulation and Enforcement Act of 2007*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=h110-2046> (last visited Dec. 21, 2011).

69. *Frank Unveils Internet Gambling Legislation*, U.S. HOUSE OF REPRESENTATIVES (May 6, 2009), http://www.house.gov/apps/list/press/financialsvcs_dem/press050609.shtml.

70. H.R. 2267, 111th Cong. (2009).

71. John Pappas of Poker Players Alliance said, “[i]t is also important to note that the new freshman class of Republicans have a different mindset than the social conservative Republicans that pushed UIGEA in 2006. The eighty-plus new lawmakers tend to be more libertarian minded.” Silver, *supra* note 56.

72. Martin Harris, *Rep. Frank Introduces Internet Gambling Regulation, Consumer Protection, and Enforcement Act*, POKERNEWS (May 6, 2009), <http://www.pokernews.com/news/2009/05/frank-introduces-internet-gambling-regulation-act-6533.htm>.

73. H.R. 2267, 111th Cong. (2009).

74. The IGRCPEA requires applicants for licenses to establish programs aimed at curtailing the ills of gambling, includes sections on cheating and fraud and requires the director to keep a list of unlawful internet gambling enterprises. H.R. 2267, 111th Cong. (2009).

75. Donnie Peters, *Top Ten Stories of 2010: #2, Online Poker Legislation*, POKERNEWS (Jan. 1, 2011), <http://www.pokernews.com/news/2011/01/top-ten-stories-of-2010-2-legislation-9558.htm>.

spokesperson for the Safe and Secure Internet Gambling Initiative,⁷⁶ stated that the bipartisan vote was “nothing short of historic.”⁷⁷

Taking the lead in 2011, Republican Representative John Campbell teamed with Democratic Representative Barney Frank to make changes and continue the work laid out by the IGRCEA.⁷⁸ On March 17, 2011, Campbell introduced the newest form of the IGRCEA.⁷⁹ The bill was referred to the Subcommittee on Crime, Terrorism and Homeland Security.⁸⁰

B. The Internet Gambling Study Act

United States Representative Shelly Berkeley took a different approach when she introduced the Internet Gambling Study Act (IGSA)⁸¹ on May 3, 2007.⁸² The purpose of the IGSA was to authorize a federally funded study that would examine the issues posed by the growth in internet gambling.⁸³ The issues to be examined included a review of existing laws, an assessment of the availability of internet gambling, an assessment of the impact of the UIGEA, an assessment of modern technological advances and their impacts on internet gambling, an analysis of the issue of federalism given the interstate character of internet gambling, and an analysis of the potential tax revenue that may be generated by legalizing internet gambling.⁸⁴ The IGSA did not make it past the House Committees.⁸⁵

-
76. The Safe and Secure Internet Gambling Initiative promotes the ability of individuals to gamble online with the proper safeguards in place to protect them. *The Initiative*, SAFE & SECURE INTERNET GAMBLING INITIATIVE, <http://safeandsecureig.org/content/initiative> (last visited Dec. 21, 2011).
 77. Stephan A. Murphy, *Poker Bill Passes Out of Committee—Now What?*, CARDPLOYER (July 29, 2010), <http://www.cardplayer.com/poker-news/9507-poker-bill-passes-out-of-committee-now-what>.
 78. Jennifer Newell, *Update (or lack Thereof) on Potential Federal Online Gaming Legislation*, EPICPOKER (October 21, 2011), <http://www.epicpoker.com/news/blog-pages/2011/10/law-blog-update-on-potential-federal-online-gaming-legislation.aspx>.
 79. H.R. 1174, 111th Cong. (2011).
 80. *H.R. 1174: Internet Gambling Regulation, Consumer Protection, and Enforcement Act*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=h112-1174> (last visited Dec 21, 2011).
 81. H.R. 2140, 110th Cong. (2007).
 82. Lisa Lester, *Beating the Odds: Regulation of Online Gaming Stateside and Abroad*, 28 J. NAT'L ASS'N ADMIN. L. JUDICIARY 621, 666 (Fall 2008).
 83. *Id.* at 667.
 84. H.R. 2140, 110th Cong. (2007).
 85. *H.R. 2140: Internet Gambling Study Act*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=h110-2140> (last visited Mar. 26, 2011).

C. Skill Game Protection Act

The Skill Game Protection Act (SGPA)⁸⁶ was introduced in 2007 by Representative Robert Wexler in an attempt to add exceptions to the Wire Act and UIGEA for games involving the use of skill.⁸⁷ The SGPA would amend the Wire Act by inserting a section stating: “As used in this section, the term ‘bets or wagers’ does not include operating, or participation in, poker, chess, bridge, mahjong or any other game where success is predominantly determined by a player’s skill.”⁸⁸ The SGPA would amend the UIGEA by including section 5368, which relates to regulations involving “Games of Skill”⁸⁹ and including the following provision: “participation in any activity which does not constitute ‘bets or wagers’ within the meaning of section 1084(f) of title 18⁹⁰ and is operated in compliance with the regulations issued pursuant to section 5368.”⁹¹ As with the previous bills aimed at legalizing internet poker, the SGPA did not make it out of the House Committee.⁹²

D. Senator Harry Reid’s Internet Poker Bill

During the lame duck Congress session at the end of 2010, Senator Harry Reid attempted to push through a bill that would legalize certain internet poker games.⁹³ The bill estimated that the United States could generate over \$3 billion in annual revenues if it legalized internet poker.⁹⁴ Senator Reid stated: “The legislation I am working on would get our collective heads out of the sand and create a strict regulatory environment to protect United States consumers, prevent underage gambling and respect the decisions of states that don’t allow gambling.”⁹⁵ Although the bill was similar to the IGREA in that it proposed the issuance of licenses for internet gambling, it was much narrower in that it would only legalize the playing of certain poker games, whereas IGREA would legalize other internet betting games as well as poker.⁹⁶ Although Reid failed in his attempt to pass the

86. H.R. 2610, 110th Cong. (2007).

87. Binkley, *supra* note 33, at 559-60.

88. H.R. 2610, 110th Cong. (2007).

89. *Id.*

90. 18 U.S.C. § 1084 (2006).

91. H.R. 2610, 110th Cong. (2007).

92. *H.R. 2610: Skill Game Protection Act*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=h110-2610> (last visited Dec. 21, 2011).

93. Dan Eggin, *Sen. Reid gives online poker legislation a push*, POST-GAZETTE (Dec. 11, 2010), <http://www.post-gazette.com/pg/10345/1110031-84.stm>.

94. *Id.*

95. *Id.*

96. *Id.*

bill during the Congressional session, his effort did raise awareness that legalizing internet poker was a possibility.⁹⁷

E. Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2011

On June 24, 2011, the Internet Gambling Prohibition, Poker Consumer Protection and Strengthening UIGEA Act of 2011 (IGPCPSUA)⁹⁸ was introduced by Representative Joe Barton.⁹⁹ The bill is specifically focused on legalizing poker at a federal level, while allowing states and Indian tribes the ability to afford outs when requested.¹⁰⁰ The bill has been referred to the Subcommittee on Crime, Terrorism and Homeland Security.¹⁰¹

Although not directly related to either the IGRCPEA or the IGPCPSUA, the House Subcommittee on Commerce, Manufacturing and Trade held a hearing about the issue of internet gambling as a whole in late October 2011.¹⁰² Representative Barton commented on the hearing: “It’s a first step to showing why the current law is a lose/lose for everyone—the public, the taxpayer, the banking industry, and the people who want to play poker openly and honestly on the Internet. I look forward to an open exchange of ideas.”¹⁰³

IV. ANALYSIS

Despite the lack of success that legislators have had in passing bills aimed at legalizing and regulating internet poker, there are several steps legislators may take to greatly increase their chance of passing such a bill. First, legislators should conduct a study and include statistics which show

97. Matthew Kredell, *An Analysis of Harry Reid's Internet Poker Legislation in Retrospective*, POKERNEWS (Dec. 20, 2010), <http://www.pokernews.com/news/2010/12/an-analysis-of-harry-reid-s-internet-poker-legislation-in-re-9535.htm>.

98. H.R. 2366, 111th Cong. (2011).

99. *H.R. 2366: Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2011*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=h112-2366> (last visited Dec 21, 2011).

100. Jennifer Newell, *Update (or lack Thereof) on Potential Federal Online Gaming Legislation*, EPICPOKER (Oct. 21, 2011), <http://www.epicpoker.com/news/blog-pages/2011/10/law-blog-update-on-potential-federal-online-gaming-legislation.aspx>.

101. *H.R. 2366: Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2011*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=h112-2366> (last visited Dec. 21, 2011).

102. Earl Burton, *Potential Online Poker Legislation to Get First Hearing Next Week*, POKERNEWS DAILY (Oct. 21, 2011), <http://www.pokernewsdaily.com/potential-online-poker-legislation-to-get-first-hearing-next-week-20432/>.

103. *Id.*

that poker is a game of skill. They should also narrow the scope of the legislation to include only those poker games which require the highest level of skills and account for the varieties of games that lessen the ills associated with gambling. Second, the legislation should include provisions aimed at lessening the effects that a federally controlled regime will have on states' traditional rights to regulate and receive revenue from gambling. They can accomplish this feat by allowing states some control over what games they allow, provide support for land-based casinos to operate their own internet poker websites and create a system of revenue sharing. The next two sections analyze these areas in more depth.

A. Skill v. Luck

The classic debate among poker circles is whether the game involves more skill or luck. Mike McDermott in *Rounders* held the view most common among poker professionals: "Why does this still seem like gambling to you? I mean, why do you think the same five guys make it to the final table of the World Series of Poker every single year? What, are they the luckiest guys in Las Vegas? It's a skill game."¹⁰⁴ Professional poker player David Sklansky¹⁰⁵ stated: "expert players do not rely on luck. They are at war with luck. They use their skills to minimize luck as much as possible."¹⁰⁶ Unfortunately for poker players, federal and state courts have traditionally classified poker as a game of luck. However, recent court decisions have shown that this view may be changing. This section will examine the dominant factor test and traditional and current views taken by state and federal courts, examine recent scientific studies on this issue and analyze the difference in skill of the many variants of poker.

1. *Historical Views and the Dominant Factor Test*

Most federal jurisdictions use the dominant factor test to determine whether or not a particular activity is one of chance or skill.¹⁰⁷ Under the dominant factor test, a court will find that an activity is not a game of skill if "an element of chance dominates the distribution of prizes, even though

104. *ROUNDERS* (Miramax 1998).

105. Sklansky is the author of thirteen books on poker and gambling, including the often-praised *The Theory of Poker*. See *About David Sklansky*, POKERLISTINGS.COM, http://www.pokerlistings.com/poker-player_david-sklansky (last visited Dec. 21, 2011).

106. *At War with Luck*, *ECONOMIST* (July 8, 2010), <http://www.economist.com/node/16507710>.

107. Jonathan Conon, *Aces and Eights: Why the Unlawful Internet Gambling Enforcement Act Resides in "Dead Man's" Land in Attempting to Further Curb Online Gambling and Why Expanding Criminalization is Preferable to Legislation*, 99 *J. CRIM. L. & CRIMINOLOGY* 1157, 1162 (Fall 2009).

such a distribution is affected to some degree by the exercise of skill or judgment.”¹⁰⁸ The dominant factor test can be viewed as a continuum with games of pure skill (i.e. chess) on one side and pure chance (i.e. roulette) on the other.¹⁰⁹ The middle of the continuum is the separation point between where a game will be considered either predominated by skill or chance.¹¹⁰ Traditionally, federal and state courts have found that poker falls on the chance side of the continuum.¹¹¹

The Fourth Circuit categorized poker alongside lotteries and other games of chance.¹¹² Likewise, the Second Circuit classified poker alongside roulette, blackjack, dice and other games of chance.¹¹³ The Ninth Circuit also considered poker a game of chance, including it on a list, which included craps and slot machines.¹¹⁴ State courts in North Carolina, Rhode Island and New York have all found that poker is a game of chance.¹¹⁵ State statutes in Maine, New Mexico and Ohio also declare poker as a game of chance.¹¹⁶

Despite these decisions, other state courts have recently concluded that poker is a game of skill. While applying the predominant factor test, trial courts in Pennsylvania and Colorado both concluded that poker was a game of skill.¹¹⁷ Although both decisions were later overturned on appeal,¹¹⁸ the decisions made by the lower courts may signal a trend for the future. Further, a South Carolina judge found that Texas Hold’Em poker is a game of skill under the predominant factor test,¹¹⁹ and a California court found that poker is a game of skill as well.¹²⁰

108. *Roberts v. Communications Inv. Club of Woonsocket*, 431 A.2d 1206, 1211 (R.I. 1981).

109. Anthony Cabot and Robert Hannum, *Poker: Public Policy, Law, Mathematics, and the Future of an American Tradition*, 22 T.M. COOLEY L. REV. 443, 458 (2005).

110. *Id.*

111. *Id.* at 459.

112. *Johnson v. Collins Entm’t Co., Inc.*, 199 F.3d 710, 720 (4th Cir. 1999).

113. *Mashantucket Pequot Tribe v. State of Conn.*, 913 F.2d 1024, 1027 (2nd Cir. 1990).

114. *Percifield v. United States*, 241 F.2d 225, 226 (9th Cir. 1957).

115. Joseph M. Kelly, Zeeshan Dhar & Thibault Verbiest, *Poker and the Law: Is It a Game of Skill or Chance and Legally Does It Matter?*, 11 GAMING L. REV. 3,193-94 (2007), available at <http://www.liebertonline.com/doi/pdfplus/10.1089/plr.2007.11309>.

116. *Id.*

117. Chuck Humphrey, *Poker as a game of skill: Recent Cases*, GAMBLING-LAW.US (Oct. 11, 2010), <http://www.gambling-lawus.com/Articles-Notes/Recent-Cases-Poker-Game-Skill.htm>.

118. *Id.*

119. Findings of Facts and Order at 3, *Town of Mt. Pleasant v. Chimento* (S.C. 2009), available at <http://www.scribd.com/doc/12654899/SC-Judges-Decision-on-MtPleasant-Poker-Case-021909>.

120. *Bell Gardens Bicycle Club v. Dep’t of J.*, 36 Cal. App. 4th 717, 743 (Cal. Ct. App. 1995).

2. *Scientific Studies*

Because of the conflicting views among legislators and state and federal courts, sponsors of new legislation aimed at legalizing and regulating internet poker should first conduct a scientific study on whether poker is a game of skill to accompany the recent court decisions in their favor. This study may be similar to the one proposed in the IGSA. However, if support is lacking to spend federal funds to conduct such a study, the sponsors should look towards grass roots organization, professional poker players, current internet poker companies and other supporters of legalizing internet poker for monetary support and contribution. Fortunately, the events that transpired on “Black Friday” may increase the chances to gain financial backing as many professional and leisure poker players may not be able to access internet poker as they once had and wish to contribute to a cause that could help place everything back the way it was. Furthermore, there are already two such studies that have been conducted from which the sponsors may build.

In 2008, Case Western Reserve University doctoral student Michael DeDonno conducted two studies to determine whether poker is a game of skill or luck.¹²¹ In the first study, 41 students who had little experience playing poker, played 200 hands of Texas Hold’Em, with half of the students receiving poker strategy advice beforehand.¹²² The second study followed the same parameters as the first, except that 720 hands were played.¹²³ Both studies confirmed that the group who received strategic advice did better than the group that did not.¹²⁴ DeDonno concluded, “this article provides empirical evidence that [poker is based on] skill and not luck.”¹²⁵

A March 2009 study conducted by Cigital¹²⁶ analyzed over 103 million Texas Hold’Em poker hands played at PokerStars.com.¹²⁷ The study found that 75.7% of the time the hands ended before any player saw anything other than his/her own cards and some or all of the community cards.¹²⁸ For those hands that reached a showdown,¹²⁹ only 50.3% of the

121. *In Poker, Psychologists Place Bets On Skill*, SCIENCEDAILY (Mar. 25, 2008), <http://www.sciencedaily.com/releases/2008/03/080321125835.htm>.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. Cigital is a software security and quality consulting firm. *About Cigital*, CIGITAL.COM, <http://www.cigital.com/about-us/> (last visited Dec. 21, 2011).

127. Paco Hope & Sean McCulloch, *Statistical Analysis of Texas Hold’Em*, (March 4, 2009), available at <http://www.scribd.com/doc/13710664/Cigital-100M-Hand-Analysis-Report>.

128. *Id.*

time was the hand won by the person who would have made the best hand had all of the players at the start of the hand stayed until the showdown.¹³⁰ Therefore, only about 12% of the time did the player who could make the best five-card hand at the end of the hand with the cards he or she was dealt at the beginning of the hand actually win.¹³¹ Thus, the study concluded that the outcome of Texas Hold'Em poker hands is largely determined by a player's decisions, not luck.¹³²

Moreover, one of the areas in which the study should focus is the differences in the variety of poker games that may be played, as this is an important element in determining the level of skill involved.

3. *Varieties of Poker and Narrow Scope*

Unfortunately most courts and legislation define all poker games alike and do not take into consideration the different variants of poker.¹³³ Such decisions defy the mathematics of poker as different variants.¹³⁴ For example, the skill involved in a Texas Hold'Em tournament style of play vastly outweighs the skill involved in typical video poker machines. These differences may be the determining factor by which a court or a legislator determines whether poker is a game predominated by skill or luck. By failing to separate out the different varieties of poker, courts and legislators are ignoring the significant difference in the levels of skill involved.

Due to the difference in the level of skill involved, it is important to understand the differences between the many variants of poker. There are four main categories for which a poker game may fall under: draw games,¹³⁵ stud games,¹³⁶ community card games¹³⁷ and miscellaneous games.¹³⁸ The most popular poker variant, and the variant most important

129. The showdown is the period at the end of a hand where the players reveal their cards to determine the winner of the hand. *Showdown definition*, POKERZONE.COM, <http://dictionary.pokerzone.com/Showdown> (last visited Dec. 21, 2011).

130. Hope & McCulloch, *supra* note 127.

131. *Id.*

132. *Id.*

133. Cabot, *supra* note 109, at 497.

134. *Id.*

135. Draw Games allow the player to exchange their cards for other cards in the deck. *Draw Games*, POKERZONE.COM, <http://dictionary.pokerzone.com/Draw+Game> (last visited Dec. 21, 2011).

136. Stud Games involve a mix of exposed and un-exposed cards with the players using only the cards in his or her hand. *Poker Terminology*, STUDHIGHLOW.COM, <http://www.studhighlow.com/seven-card-stud-terminology.html> (last visited Dec. 21, 2011).

137. Community card games involve cards being dealt face up in the middle of the table, which all the players may use to make the best hand. *Community Cards*, POKERZONE.COM, <http://dictionary.pokerzone.com/Community+Cards> (last visited Dec. 21, 2011).

138. Cabot, *supra* note 109, at 451-52.

to this Comment, is Texas Hold'Em, which falls under the category of community card games.¹³⁹

There are also differences in the way poker is played. Casino poker is similar in style to other casino games in that the player is playing against the house, not other players.¹⁴⁰ Card room poker, on the other hand, is when players are playing against other live players and not the casino. Casinos provide card room services in exchange for a certain percentage of each hand.¹⁴¹ Success in live poker is more predicated on skill than casino poker because it requires the use of “[s]kills such as psychology, assessing competition, reading hands, recognizing tells, exploiting position, and money management.”¹⁴²

There are also three main game formats played in internet poker. Cash games are the typical form of casino poker where players may buy-in with as much money as they wish, and cash out at any time.¹⁴³ The ability of players to bring as much money as they wish to the table has the ability to create a competitive disadvantage for those players with less money available. Sit n' gos are poker tournaments with no scheduled starting time that start whenever the necessary players have put up their money.¹⁴⁴ Ordinarily, participants in sit n' gos all pay the same entry fee and start the tournament with the same amount of chips/money. Single-table sit n' gos, with nine or ten players, is the norm, but multi-table games are common as well.¹⁴⁵ Regular tournaments are similar to sit n' gos, except that they have no predetermined player size and start at a designated time. As compared to cash games, sit n' gos and regular tournaments help curb the ill effects associated with gambling by limiting the amount of money a player may use during the game to the amount of the buy-in.

Due to these differences, the legislation should narrow which forms of internet poker it legalizes. First, it should only allow poker games played against other players in the network and not allow games played against the house. This will eliminate the social concern over the ills associated with a high house win percentage. Second, the legislation should only allow the playing of Texas Hold'Em games, because it is the most widespread and popular. People who have actually played the game of poker will have a

139. *Id.* at 452.

140. *Id.*

141. *Id.* at 453.

142. *Id.* at 486.

143. *Cash game definition*, POKERZONE.COM, <http://dictionary.pokerzone.com/Cash+Game> (last visited Dec. 21, 2011).

144. *Sit n'gos definition*, ABOUT.COM, <http://poker.about.com/od/pokerglossary/g/sng.htm> (last visited Dec. 21, 2011).

145. *Roadmap to SNG success*, SITANDGOPLANET.COM, http://www.sitandgoplanet.com/sitandgo/sng_roadmap/SNG_Success_Part1.html (last visited Dec. 21, 2011).

better understanding of the high level of skill that is involved.¹⁴⁶ Since it is likely that more legislators will have played Texas Hold'Em as compared to other poker variants, it is more likely that they will understand the level of skill involved and look beyond the historical view of poker as a form of gambling. Third, the legislation should only allow the playing of tournament style poker. This will help eliminate the concern that a player may "bet the house" as they will be limited as to how much they can gamble. Finally, the legislation should place a limit on the maximum amount of buy-ins to tournaments. By placing a limit on how much a player can buy into a tournament, it will help minimize the losses that a player can accrue over a given period of time.

If courts continue to follow the current trend, poker may one day be viewed as a game of skill and therefore not subject to anti-gambling laws. There is ample scientific and statistical evidence that there is a high degree of skill involved in poker, but the historical view that poker is an immoral form of gambling will be difficult for proponents of legalizing internet poker to overcome. However, it will be interesting to gauge how the opinion of the courts change as more judges and Congressmen ascend into power whose perceptions of poker were formed after the poker boom of 2003. For the purposes of this Comment's analysis, it will be assumed that poker will not garner enough support as a game of skill over the next few years to disqualify it under anti-gambling laws through the courts. However, the changing view taken by members of Congress will have a profound effect on the likelihood of passing legislation aimed at regulating internet poker.

Therefore, proponents of bills aimed at legalizing internet poker should take into consideration these views when drafting proposed legislation and include the forms of evidence previously mentioned concerning poker as a game of skill. They should also limit the scope of the legislation to only Tournament-style Texas Hold'Em games played against other live players. Along with these limits, the legislation should include precise definitions of all the terms, especially the variety of games allowed, to ensure that no ambiguities will exist that would allow internet poker companies to broaden the intended scope of the legislation. By doing this, it will help eliminate some of the traditional concerns and social ills associated with gambling and enhance the proposed legislation's likelihood of success.

146. Cabot, *supra* note 109 at 498.

B. State vs. Federal Control

Traditionally, states have regulated and controlled gambling inside their borders and received the revenues there from.¹⁴⁷ However, due to the international and interstate connectivity of the internet, the federal government has the power to regulate internet poker through the Commerce Clause.¹⁴⁸ This creates several conflicts between state and federal governments. First, all fifty states have varying degrees of gambling laws within their borders and the creation of national internet poker laws would destroy the states traditional rights to make decisions about what types of gambling in which it should allow its citizens to participate¹⁴⁹ Second, the legalization of internet poker would create competition for in-state casinos and gambling operations which could cause states to lose revenue.¹⁵⁰ However, there are several ways to curb or reduce these conflicts, including allowing individual states to have control over what types of internet poker they allow, encouraging state run casinos to develop their own forms of internet poker and creating a revenue sharing system. This section will examine the federal government's power under the Commerce Clause and possible solutions to the conflicts that would be created by a federally controlled internet poker regime.

1. *Dormant Commerce Clause*

The Dormant Commerce Clause under the United States Constitution prohibits states from regulating activities that discriminate against or burden interstate commerce.¹⁵¹ By attempting to control internet activities, states may violate this clause by regulating activities that are subject to federal control due to their interstate nature or by regulating activities that occurs within another state's borders.¹⁵² Most commentators have reached the conclusion that state regulation of internet gambling activities violates the commerce clause¹⁵³

One method that states may use to get around the Dormant Commerce Clause is to require users to self-report their location when using internet poker websites. By doing this, states are assured that the information being

147. Raj, *supra* note 27, at 778.

148. *Id.*

149. Edward A. Morse, *Barriers to Financing Internet Gambling Under UIGEA*, A.B.A. SEC. OF BUS. LAW (Apr. 2009).

150. *Id.*

151. *General Motors Corp. v. Tracy*, 519 U.S. 278, 287 (1997).

152. Kevin F. King, *Geolocation and Federalism on the Internet: Cutting Internet Gambling's Gordian Knot*, 11 COLUM. SCI. & TECH. L. REV. 41, 52 (2010).

153. *Id.*

distributed over the internet will stay within its borders, and not cross over into other states.¹⁵⁴ Although internet poker websites could block a state's citizens from using the website's services by asking the user to specify which state they were from, this would require the user to accurately self-report where he/she was located.¹⁵⁵ Further, a state law requiring users to self-report their location would still govern conduct outside of the state because it would apply to websites wholly outside the borders of the state who serve non-state residents.¹⁵⁶ This "extraterrestrial reach" would presumably violate the dormant commerce clause.¹⁵⁷

Another method that states may use is geo-location devices.¹⁵⁸ Geo-location devices use global positioning system technology to automatically report a user's geographic location.¹⁵⁹ The use of this technology would automatically report where the user was located and thus, eliminate the potential inaccuracy of self-reporting.¹⁶⁰ Traditionally, courts have found that geographic location detection of internet users was impossible.¹⁶¹ However, recent technological advances have increased the accuracy of geo-location enough to be used for legal purposes.¹⁶²

Despite the availability of geo-location to create internet borders between the states, it also is accompanied by many shortcomings.¹⁶³ States could effectively enact laws requiring internet poker sites to customize their offerings to state residents, which could in turn, require owners of internet poker websites, and all other websites for that matter, to provide different levels of service for each of the fifty states.¹⁶⁴ Further, state governments could create walled environments with highly filtered and screened content, a practice common in China and other countries.¹⁶⁵ Therefore, using geo-location technology to allow states to control internet poker sites could contribute to the demise of the internet as a worldwide network that brings

154. Venkat Balasubramani, *Washington Anti-Online Gambling Law Survives Dormant Commerce Clause Challenge—Rousso v. State*, TECH. AND MKTG. LAW BLOG (Sep. 28, 2010), http://blog.ericgoldman.org/archives/2010/09/washington_stat_1.htm.

155. *Id.*

156. *Id.*

157. *Id.*

158. Eric Goldman, *Geolocation and a Bordered Cyberspace*, TECH. AND MKTG. LAW BLOG (Nov. 13, 2007), http://blog.ericgoldman.org/archives/2007/11/geolocation_and.htm.

159. *Id.*

160. *Id.*

161. King, *supra* note 152, at 59.

162. Dan Jerker B. Svantesson, *Geo-Location Technologies and Other Means of Placing Borders on the "Borderless" Internet*, 23 J. MARSHALL J. COMPUTER & INFO. L. 101, 101-02 (Fall 2004).

163. Goldman, *supra* note 158.

164. *Id.*

165. *Id.*

people together.¹⁶⁶ For these reasons, the proper right to control and regulate internet poker should belong to the federal government.

Although the geo-location technology should not be used to allow states to have full control over internet poker websites inside of their borders, it may be used to eliminate some of the concerns associated with federally controlled gambling by granting certain rights to states.

2. *State Control*

Both the IGREA and IGRCPEA include provisions that allow for states to limit or prohibit the types of bets and wagers that it would allow in internet gambling.¹⁶⁷ The bills also allowed for states to place restrictions on internet gambling which would go beyond the federal regulations.¹⁶⁸ Under the bills, internet gambling companies could establish their business in a state that allowed internet gambling and could accept players from all other states, except that it could not accept funds from players in states that prohibited internet gambling.¹⁶⁹ These provisions would allow states that viewed gambling as a social ill that should not be allowed under any circumstance to continue to prohibit it within its borders, while allowing other states that wished to benefit from the increased revenue that legalized internet gambling would bring to regulate the industry.¹⁷⁰

Despite maintaining the traditional control that states have had over gambling, these provisions do have several downfalls.¹⁷¹ First, if some states prohibited internet gambling, then the amount of potential gamblers would be much lower and therefore, gambling licenses would hold a much smaller value.¹⁷² Second, the provisions would put states into direct competition with one another to attract internet gambling companies which would encourage states to come up with systems that regulated and taxed the least amount possible.¹⁷³ This relaxed approach to regulation could lead to a reduction in the protections afforded to players.¹⁷⁴ Finally, the rationale associated with allowing states to control land-based gambling operations does not apply to internet gambling.¹⁷⁵ Land-based gambling casinos have a much broader affect on the state as a whole through their

166. *Id.*

167. *See* H.R. 2046, 110th Cong. (2007); H.R. 2267, 111th Cong. (2009).

168. Crutchfield, *supra* note 47, at 187.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.* at 187-88.

physical placement, traffic issues, zoning laws, building permits and other considerations.¹⁷⁶ However, internet gambling is an activity that is primarily done in the privacy of one's home and has little effect on the state as a whole.¹⁷⁷

In order to balance these competing interests, proposed internet poker legislation should include a floor which represents the minimum amount of legalization and regulation that states must allow and a ceiling which represents the maximum amount of legalization and regulation states may allow. For example, the floor could represent the allowance of only tournament Texas Hold'Em poker for a maximum buy-in of \$100 per tournament, while the ceiling could represent the allowance of all varieties of non-video style poker, either cash games or tournament, with no maximum buy-in amounts. By providing for this scheme, the states will still maintain a wide degree of latitude as to what forms of poker they allow, and at the same time, allow internet poker companies the ability to reach across state lines and help limit relaxed regulations brought on by competing states.

3. *Casino Websites*

Another method that may be used to curtail the potential loss of revenue that states may suffer as a result of legalizing internet poker is for the federal government to assist land-based casinos in establishing their own internet poker websites. The federal government could establish a system to help each of these casinos set up their own internet poker websites to help them from losing out on revenue. Further, the individual websites could offer special deals and programs, similar to the reward points programs offered by many casinos¹⁷⁸ to encourage in-state gamblers to use their website for internet poker and to visit the live casino.

Using geo-location, the website owners could limit user locations to those that are within their borders to allow the casino and the state to receive a much higher percentage of the taxes generated. In the alternative, the casino websites could allow for users from every state and split the revenue based on the location of the users. For the states that currently do not have commercial or Indian casinos, this could allow them the opportunity to partake in the revenues generated from commercial gambling by the residents of their state. In order to fund the creation of the website, the regulatory scheme could establish more lenient licensing

176. *Id.* at 188.

177. *Id.*

178. Liz Benston, *Las Vegas Sands cuts bait: Comps*, LAS VEGAS SUN (Feb. 28, 2011), <http://www.lasvegassun.com/news/2011/feb/28/sands-cuts-bait-comps/>.

guidelines for traditional commercial and Indian casino websites, or use some of the revenue generated by internet poker to assist in the creation of the websites.

4. *Revenue Sharing*

Another way to prevent states from losing revenue through a federally controlled regime is to develop a revenue sharing system. Through the use of geo-location, it will be possible to pinpoint where users of internet poker websites are located.¹⁷⁹ Therefore, it will be possible to determine the state in which an internet poker player is located. Armed with this data, revenue can be shared to the states based upon how many users are located within the state and how much revenue is being generated for the federal government by their use. Legislators should conduct a study, which could coincide with the study on the skill involved in poker mentioned above, to determine a reasonable percentage of revenues that should pass to the states. Then, the legislators should include a provision in their proposed legislation, which would allow states to receive revenue based on this reasonable percentage. This provision will increase the likelihood of the legislation to pass because it helps eliminate some of the lost revenue states may incur through a federally regulated internet poker regime.

The likelihood of passing a bill that legalizes and regulates internet poker may hinge on the legislators' ability to intertwine the states traditional rights to gambling revenues into a government controlled scheme. If the proposed legislation contains provisions which allow for limited state controls, land-based casino website support and revenue sharing, it will be more likely to garner support from other legislators.

V. CONCLUSION

In order to overcome the challenges to legalize internet poker, proposed legislation must be carefully researched and created. First, a study should be undertaken focused on gathering information about internet poker, including whether poker is a game of skill or luck. Second, proposed legislation should be as narrow as possible and only allow for the legalization of certain types of poker games that involve the highest degree of skill to lessen the ills associated with gambling. Finally, proposed legislation should include provisions that lay out how the regulatory scheme will account for the traditional rights of states to regulate and receive revenue from gambling.

179. Goldman, *supra* note 158.

The global internet gambling industry has grown from \$7.5 billion in 2003 to an estimated \$29.95 billion in 2010 and is expected to reach over \$35 billion by 2012.¹⁸⁰ Global internet poker revenues have grown from \$300 million in 2003 to an estimated \$5.6 billion in 2010 and are expected to reach \$6.7 billion by 2012.¹⁸¹ Hopefully, a legalized and regulated internet poker landscape will soon become a reality in the United States and we can all enjoy the benefits from taxing a multi-billion dollar a year industry.

180. Simon Holliday, *The Global Internet Gambling Universe: H2 Market Forecasts/Sector Update*, H2GC (May 20, 2010), http://www.h2gc.com/downloadfiles/newspdfs/h2_barclays_pres_20-05-10.pdf.

181. *Id.*

