

**Testimony of Frank J. Fahrenkopf, Jr.**  
**President and CEO**  
**American Gaming Association**  
**Before the Senate Banking Committee**  
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Mr. Chairman, distinguished members of the committee, thank you for inviting me to testify today about the American Gaming Association's position on Internet gambling.

I am Frank J. Fahrenkopf, Jr., president and CEO of the American Gaming Association (AGA). The AGA is the national trade association of commercial casino companies, gaming equipment manufacturers, and other vendor-suppliers to the gaming industry. The association acts as a national clearinghouse for information about commercial casinos and as an advocate on federal legislative and regulatory issues for its member companies, including tens of millions of employees, patrons and shareholders. Other trade associations represent Native American casinos, the lotteries, the pari-mutuel industry, and other legal gaming entities. Our member companies are industry leaders such as Alliance Gaming, Ameristar Casinos, Argosy Gaming, Aristocrat Technologies, Atronic Americas, Aztar, Boyd Gaming, Harrah's Entertainment, Horseshoe Gaming, IGT, Isle of Capri Casinos, JCM American, Kerzner International, Konami Gaming, MGM MIRAGE, Mikohn Gaming, Park Place Entertainment, Penn National Gaming, Pinnacle Entertainment, Shufflemaster, Station Casinos and Wynn Resorts. Our casino companies operate land-based and riverboat casinos in 11 states across the country, and our manufacturers sell equipment to those casinos. A majority of our members are publicly held companies listed on the New York and NASDAQ stock exchanges.

On behalf of the AGA, I appreciate this opportunity to address the topic of Internet gambling generally and, more specifically, discuss our position on S. 627, a bill introduced last week by Senator Kyl that would in essence prevent the use of credit cards and other financial instruments for illegal Internet gambling.

The position of the American Gaming Association has remained constant since Congress first began considering Internet gambling legislation. The AGA maintains the view that the technology necessary to provide appropriate regulatory and law enforcement oversight does not presently exist with regard to Internet gambling so as to properly regulate the integrity of the games and the security and legality of financial transactions, and to minimize the potential for underage and pathological gambling. Unless and until those concerns can be adequately addressed, the AGA remains opposed to Internet gambling.

In addition, it is our view that any bill considered by this committee should meet three tests: 1) It should not create an unfair advantage for any one segment of the gaming industry; 2) It should not impinge upon or curtail states' rights; and 3) It should not make anything that is currently legal illegal.

Let me briefly address each of those elements.

First, we would not support any bill that gives preferential treatment to any other form of legal gaming at the expense of our segment of the industry. In other words, all forms of legal gambling should be treated with parity.

Secondly, we oppose any changes to the 200-year-old framework for state-based oversight of gambling. Federal law has always “back stopped” the right of each state to determine its own policies on gambling. The 10th Amendment of the U.S. Constitution states that any right not explicitly granted to the federal government lies with the states or with the people. As a result, each state should have the right to determine whether or not it will allow any form of gambling and, if so, how it would be regulated and taxed. Federal Internet gambling legislation should follow the model of the Wire Act and permit states to make decisions about the use of technology within their borders by licensed gaming companies.

Finally, I would ask you to take into account the rapid advances in technology today and not criminalize activity that is currently legal. Our industry, like other businesses, will want to take advantage of these new technologies to make operations more efficient. Because some of those technologies will involve the Internet and others will involve non-Internet interactive computers, it’s important that this reality is taken into account in considering any new legislation. Examples of these new technologies include common pool wagering, interactive computer systems, the use of the World Wide Web to advertise casino resorts or accept hotel and show reservations, and new technology to facilitate and safeguard the operation of intrastate account wagering on sporting events.

In short, we feel that it’s important to draw a distinction between the use of technology to circumvent federal and state restrictions and regulations (as is done today by those operating offshore Internet gambling sites) and the use of technology by licensed operators to more efficiently deliver their services where, to whom, and under what conditions they are authorized by federal and state law to do so. Any changes to federal or state laws in the pursuit of making Internet gambling illegal should not be drawn so broadly as to lump the use of technology within otherwise legal limits into the same prohibited status as technology used by illegal operators. This position is consistent with the policy of the Wire Communications Act, which, since the 1960s, has permitted the use of the wires for wagers and information assisting in the placing of wagers where the transactions are entirely *intrastate* or between states in which the wagering in question is legal.

Our major concern with illegal Internet gambling as it exists today is that it allows the approximately 2,000 offshore Web sites to circumvent state policies, including current restrictions on the availability of gambling within each state. Although all states except three allow some form of legalized gambling, illegal Internet gambling makes casino gambling and sports wagering available in every state, regardless of existing federal or state laws.

Illegal Internet gambling also allows unlicensed, untaxed, unsupervised operators to conduct business alongside gaming operators who are subject to some of the most comprehensive federal and state controls of any industry in this country. Nearly every aspect of a commercial casino business—from licensing to operations—is strictly regulated. In the 11 states where commercial casinos are legal, they are not permitted to operate without prior state approval, which includes

exhaustive background checks on key personnel and major investors. Some states do the same for major vendor-suppliers.

In addition to state regulations, there are important federal requirements applicable to commercial casinos and other forms of legal wagering. For example, U.S. commercial casinos are subject to federal corporate taxation, publicly traded companies comply with financial disclosure and other Securities and Exchange Commission rules, casinos file information reports on larger winnings with the IRS and withhold federal taxes on certain winnings, and casinos adhere to anti-money-laundering statutes and regulations administered by the U.S. Treasury Department's Financial Crimes Enforcement Network. By contrast, those engaged in the business of illegal Internet wagering in the United States from offshore are not subject to U.S. law enforcement jurisdiction on these important matters of public administration.

These federal and state regulations exist to, among other things, guarantee the fairness of the games; ensure proper taxation of revenues; acknowledge problem gambling and offset any potential consequences; prevent underage gambling; and prevent theft, loss, embezzlement or any other illegal activity—all safeguards that are vital to maintaining public trust and confidence in our business.

Illegal Internet gambling threatens the integrity of all businesses involved in legalized gambling in the United States. S. 627 attempts to find a way to address this problem by essentially banning the use of credit cards and other financial instruments to conduct illegal Internet gambling. The AGA does not oppose similar legislation in the House. However, that position evolved only after careful evaluation and negotiation, which could be jeopardized by any modifications that violate the three tests outlined earlier in my remarks. The AGA will need to evaluate this bill to determine if our position on it is any different than our position on the House version of this legislation. If there are no significant differences between the two versions, our position on the Senate bill will likely mirror our position on the House bill.

Despite our industry's consistent position on Internet gambling, some misperceptions persist, so I'd like to take a few moments to address them.

There have been assumptions by many, particularly those in the media, that the commercial casino industry is concerned about Internet gambling because we are worried about competition from Internet gambling sites. The fact is that if Internet gambling were legalized, it is our members—the well-branded casino companies—who would be best positioned to garner the major share of the market. Many of our companies have explored Internet gambling as a business strategy, some more aggressively than others, in the event that it becomes legal here in the United States.

There is simply no comparison between the social, group-oriented entertainment experience of visiting a casino resort and the solitary experience of placing a bet or wager using a personal computer. Visiting a casino today is about much more than legal wagering opportunities. Whether measured by how people spend their time or how they spend their dollars, guests of U.S. commercial casinos are increasingly attracted as much or more by restaurants, shows, retail, recreation, and other non-gaming amenities.

The view that Internet gambling is not a competitive threat to U.S. commercial casinos is shared by financial analysts at major Wall Street firms, whose job it is to analyze the competitive impact of market developments on the industries and firms they cover, including the major publicly traded gaming companies the AGA represents.

Another common misperception is that the state of Nevada has legalized Internet gambling. The fact is that with Internet gambling growing by leaps and bounds, Nevada, the world leader in the gaming industry, believed it had the responsibility to step forward and act to determine what current and future regulatory actions might be taken in this area. As a result, the Nevada legislature passed a bill in 2001 authorizing the Nevada Gaming Commission, the state body that sets regulatory policy, to promulgate regulations IF—and that was a big IF—certain conditions could be met: 1) The state had to be in compliance with all federal laws; 2) There had to be an effective way to restrict access to those under age 21; 3) There had to be an effective way to limit access to those residing in jurisdictions that permitted Internet gambling; and 4) It had to be determined that Internet gambling would promote the general welfare of the state.

The legislation established a licensing framework similar to the stringent requirements already in place to acquire a casino operator's license. Only existing Nevada licensees were eligible to become licensed Internet gambling operators. There were other requirements, depending on the location of the establishment within the state, that required existing licensees to have either a resort-hotel, a certain number of rooms or seats or have held a license for at least five years. Each licensee would be required to pay a fee of \$500,000 for the first two years, in addition to a renewal fee of \$250,000 a year. In addition, each operator would be required to pay a 6.25 percent tax on gross gaming revenue, the same tax rate paid by the land-based casino. Identical licensing requirements would apply to equipment manufacturers and suppliers. Any operators who created a site without the proper license would be subject to felony prosecution.

While they were not spelled out in the legislation, other factors were considered by the Nevada Gaming Commission to provide additional safeguards for customers who might not be able to gamble responsibly. The commission was going to ensure self-exclusion for individuals who wanted to prevent their access. It also planned to establish betting limits and time limits that would apply to not just one site but across all Nevada Internet gambling sites.

Recently, activity in Nevada to legalize Internet gambling came to a screeching halt when the first of those conditions set forth in the legislation was not met: According to an August 2002 letter from the U.S. Department of Justice, the federal government declared Nevada's proposal illegal under the 1961 Wire Act. Today, this view is in direct conflict with a November 2002 decision by the U.S. Court of Appeals for the Fifth Circuit (*Thompson v. MasterCard International et al.*), which affirmed a lower court ruling that sports betting conducted over the Internet is illegal, but casino games are legal. Perhaps today when you hear from the Justice Department you will learn how they plan to proceed now that the courts have reached a different conclusion.

Another area of confusion is the differing views of our member companies on Internet gambling. As I mentioned earlier, some of our member companies already are pursuing Internet gambling

as part of their business strategies. MGM MIRAGE, for example, has launched an Internet gambling site on the Isle of Man. The difference between the MGM MIRAGE site and other sites located offshore is that [www.playmgmmirage.com](http://www.playmgmmirage.com) is located in a jurisdiction that has instituted tight regulatory requirements and limited its licenses to a small number of companies that met strict criteria. The MGM MIRAGE site only accepts wagers from jurisdictions where Internet gambling is clearly legal—in other words, not from the United States—and is employing technology to address concerns about underage gambling and problem gambling. If MGM MIRAGE were to engage in conduct in direct contrast to regulatory requirements in its U.S. jurisdictions, it could jeopardize the company's casino licenses in Nevada, Mississippi and Michigan. When you work in a privileged industry such as the gaming industry, you must adhere to certain standards wherever you conduct your business.

The bottom line is that the AGA is a trade association. Our members may make different business decisions as individual companies, but they also recognize the need to reach consensus on some of those issues as an industry. While we may be taking slightly different paths, we all share one thing in common: We are all opposed to illegal, unregulated gambling.

Thank you again for the opportunity to discuss our views on questions surrounding Internet gaming. I would be pleased to answer any questions you may have on this matter.