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Department of the Treasury,
Office of Critical Infrastructure
Protection and Compliance Policy,
Room 1327, Main Treasury Building,
1500 Pennsylvania Avenue, NW.,
Washington, DC 20220

Dear Department of the Treasury:

On behalf of the tens of thousands of law-abiding Americans who are members of the Poker Players Alliance, a non-profit membership organization, I am pleased to provide you with our comments on the proposed regulations implementing the Unlawful Internet Gambling Enforcement Act of 2006 (Docket Number Treas-DO-2007-0015).

To assist you in doing your difficult jobs, our comments will focus only on how to improve the proposed regulation, not on our strong opposition to the UIGEA itself.

Prohibit Unlawful Gambling, Not Games of Skill

The first word in the title of the UIGEA is "Unlawful" and the resulting regulation needs to be focused exclusively on "unlawful" gambling. Determining what activities constitute unlawful gambling is a matter of statute, not conjecture.

The UIGEA defines the term "bet or wager" to mean risking something of value on "the outcome of contest of others, a sporting event, or a game subject to chance...." Additional insight into the definition of "bet or wager" is found the section of the law that excludes participation in fantasy sports leagues from the definition of "bet or wager" in part because "All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results...."

You can see that the UIGEA is specifically differentiating between games where the outcome is based on the "relative knowledge and skill of the participants" and other games or contests in which the outcomes are primarily determined by chance. The same concept of defining gambling to refer to games of chance can also be found in Section 1955(b)(2) of Title 18 of the US Code which defines gambling as including but not limited to "pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting

lotteries, policy, bolita or numbers games, or selling chances therein.” With the exception of bookmaking which is specific to betting on sports and other “contest of others,” every single item in the statutory list (craps, roulette, lotteries, etc,) are games of chance. If the law was intended to include poker or other games of skill such as bridge, it would have done so. Instead, the statute clearly defines gambling as related to two types of activities:

1. Sports bets and other wagers on a contest of others; and
2. Games of chance such as numbers games, lotteries, and slot machines.

Hence, both the UIGEA and other federal gambling laws make clear that:

1. Interstate bets on games where winning/losing is determined predominately by random chance or on the outcome of others, are prohibited; and
2. Games where the outcome is predominately determined by the relative knowledge and skills of participants are permitted, such as managing fantasy sports teams, playing bridge, poker or engaging in other skill contests not prohibited by law.

Since poker players are participants, not spectators, the issue of a “contest of others” or a sporting event does not apply. Most importantly, poker is a game of skill and knowledge, not chance. The simplest way to disabuse a person of the mistaken idea that poker is a game of chance would be for them to play against experienced players. A novice sitting at a table with four skilled poker player would not win an average one pot out of five, which would be expected if the outcome were determined by chance. Instead of chance, poker involves a variety of knowledge and skills (psychology, negotiation, math, and more) that are learned and honed over time.

I want to point out that no federal law even mentions poker, let alone prohibits it.

If the regulation is going to treat internet poker as if it were prohibited by federal law, then the onus is on the government to make a clear, affirmative demonstration of what specific law(s) the game violates.

If the regulation is going to treat poker as if it violates state laws, then the onus is on the government to clearly, affirmatively demonstrate which specific states laws are being violated and to not prohibit poker-related transactions in states that do not provide a convincing basis for such restrictions. The proposed rule explained that the status of some transactions “could vary according to the location of the particular parties....”

With respect to state laws it is important to recognize that while virtually all regulate gambling, they have significantly varying definitions of what constitutes gambling. For example, in New Hampshire, the state code (New Hampshire Revised Statutes, 647:2) defines “gambling” as meaning “to risk something of value upon a future contingent event not under one's control or influence, upon an agreement or understanding that something of

value will be received in the event of a certain outcome.” At least a dozen other states, and possibly some Indian tribes, also have gambling definitions that in no way prohibit online poker.

Just because states regulate gambling does not mean that poker is considered gambling under state law, in many cases it is not.

Therefore, in developing the final regulation, the federal government cannot presume that all states prohibit internet poker. Any regulation that is based on the erroneous belief that all states prohibit online poker would:

1. Violate the UIGEA since the regulation would effectively criminalize a class of lawful behavior (playing poker) even though the Act explicitly states that no provision “shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.”
2. Not be in accordance with other federal laws since Section 1952 and Section 1955 of Title 18 of the US Code which require that there be a violation of state law to become operative – they do not themselves outlaw any activities themselves. Meanwhile, the Wire Act clearly pertains only to sports betting activities.

Block Only Prohibited Transactions

It is essential that the final regulation make explicit that banks and other financial organizations may block only those transactions which are prohibited by law and none other. As discussed above, more than a dozen states have laws which cannot be interpreted as banning online poker. Our concern, however, is that without a clear regulatory prohibition against “overblocking,” banks will simply block all poker-related transactions since that may be easier for them than to adhere to the laws of each state and Indian tribe.

It is legally incumbent on the government to prohibit overblocking of non-restricted transactions since, otherwise, the regulation would:

1. Lead to a *de facto* ban on internet poker in direct violation of the UIGEA’s explicit statement that it does not change any existing gambling laws and regulation;
2. Override state laws in those states that do not prohibit internet poker which would raise serious federalism issues even if done by proxy, *i.e.*, allowing banks to ban all internet poker even if that is not specifically called for in the regulation; and

3. Violate tribal laws and the UIGEA's specific prohibition against overblocking with respect to those tribal areas that do not have laws/regulations that ban internet poker

Respect Personal Privacy

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. ... They conferred, as against the government, the right to be let alone-the most comprehensive of rights and the right most valued by civilized men. To protect, that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.

– Justice Louis D. Brandeis
Dissent in *Olmstead et al. v. United States*

Law abiding citizens have a fundamental Constitutional and human right to be secure in their homes from unwarranted and unlawful snooping, including snooping by businesses which have been “deputized” by the federal government, such as banks. These regulations should not compel or even allow banks to scrutinize the private transactions of individual poker players and others. To allow such intrusions would be hostile to the personal and financial privacy of every American with a credit card or checking account.

If the government asks or permits banks and other companies to obtain information about the purpose of transactions, all personal privacy is lost, not just information about poker playing. Once banks and other companies are empowered to inspect, detect and reject private transactions, what is lost is privacy about every personal transaction in which people engage. The privacy protections enshrined in the Supreme Court's *Griswold* decision prohibit such routine invasions of personal privacy.

The regulation must prohibit any government or corporate inquiries and inspections into personal finances unless a court order is first obtained.

Current International Disputes Over Gambling Need to be Resolved Before New Ones Are Initiated

The World Trade Organization has found that the United States is out of compliance with its treaty obligations because of its attempts to ban international internet gambling. US consumers and businesses stand to suffer billions of dollars a year in damages as a result of the decision which is not yet finalized. In addition to the direct loses, the damage done to the global trade system by the U.S.'s refusal to honor its obligations may cause even greater damage to the US and global economy.

The proposed regulation would make the situation even worse since the regulation would codify the legality of some forms of internet gambling such as intrastate wagers and gambling involving Indian tribes.

I strongly recommend that the government withhold action on the proposed gambling rule until the current WTO dispute over gambling is resolved so as to not to further inflame the specific trade situation under review and further undermine America's international reputation. Thus, please do not initiate new sources of international dispute by finalizing the regulation prior to resolution of the already existent international gambling dispute.

Sincerely,

Alfonse D'Amato
Chairman, Poker Players Alliance