A bill[1] [hereinafter “H.R. 4777”] to amend Title 18 [hereinafter “the Title”] of the United States Code was introduced into the House of Representatives on February 16, 2006. The primary purpose if the bill is to “expand and modernize the prohibition against interstate gambling.”[2] H.R. 4777 provides that the Title will be given the short name of the “Internet Gambling Prohibition Act” [hereinafter “the Act” or “IGPA”].[3]

I. SEC. 2. DEFINITIONS (AMENDMENTS TO 18 U.S. C. § 1081)

According to H.R. 4777, current Section 1081 of the Title will be subdivided into five paragraphs with the following alterations to the text, as indicated in bold:

(1) The term "gambling ship" means a vessel used principally for the operation of one or more gambling establishments. Such term does not include a vessel with respect to gambling aboard such vessel beyond the territorial waters of the United States during a covered voyage (as defined in section 4472 of the Internal Revenue Code of 1986 [26 USCS § 4472] as in effect on January 1, 1994).

(2) The term "gambling establishment" means any common gaming or gambling establishment operated for the purpose of gaming or gambling, including accepting, recording, or registering bets, or carrying on a policy game or any other lottery, or playing any game of chance, for money or other thing of value.

(3) The term "vessel" includes every kind of water and air craft or other contrivance used or capable of being used as a means of transportation on water, or on water and in the air, as well as any ship, boat, barge, or other water craft or any structure capable of floating on the water.

(4) The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or

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2 Id.
3 Id. at §1.
numbered under the laws of the United States nor documented under the laws of any foreign country, if such vessel is owned by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

(5) The term "wire communication" facility means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, satellite, microwave, or other like connection (whether fixed or mobile) between the points of origin and reception of such transmission. 4

Furthermore, the following new “terms” will be added to the end of Section 1081, that will begin with paragraph (6): “bets or wagers, foreign jurisdiction, gambling business, information assisting in the placing of bets or wagers, person, State, credit/creditor/creditor, credit card, electronic fund transfer, financial institution, insured depository institution, money transmitting business / money transmitting services, own or control / owned or controlled, Secretary, and Tribe / tribal.” 5

Paragraph (6) will define “bets or wagers” as the “staking or risking by any person of something of value upon the outcome of a contest of others, a sport event, or a game predominantly subject to chance, upon an agreement or understanding that the person or another person will receive something of greater value than the amount staked or risked in the event of a certain outcome.” 6 This includes the purchase of a “chance or opportunity to win a lottery or other prize.” 7 Excluded from the definition of ‘bets or wagers’ is (i) “a bona fide business transaction governed by the securities laws … for the purchase or sale at a future date of securities;” (ii) “a transaction on or subject to the rules of contract market … or to any transaction[s] subject to an exemption;” (iii) “any over the counter derivative instrument[s];” (iv) “a contract of indemnity or guarantee;” (v) “a

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4 Id. at § 2(1-2); see also 18 U.S.C. § 1081 (2006).
5 H.R. 4777, 109th Cong. at § 2(3).
6 Id. at § 2(3)(6)(A).
7 Id. at § 2(3)(6)(B).
contract for life, health, or accident insurance;” and (vi) the “participation in [a] game or contest in which the participants do not stake or risk anything of value.”8

An example of a ‘stake or risk’ of no value would be “personal efforts of the participants in playing the game or contest or obtaining access to the Internet.”9 “Point[s] or credits” can be awarded to winning participants by the sponsor of the game, as long as the participants aren’t charged.10 Also, participants may be granted free participation in future games.11

Further, if participating in “simulat[ed] sports game[s] or educational game[s] or contest[s]” the teams must be “fictional,” cannot be part of “an amateur or a professional sports organization,” and must meet three requirements.12 First, the participants must be aware of the prizes at the commencement of the game and the prizes value cannot be “determined … [by] the amount of any fees paid by those participants.”13 Secondly, the outcome of the game must be based on the “relative knowledge and skill of the participants” and determined by “accumulated statistical results of the performance” as would occur in “multiple real world sporting or other events.”14 Lastly, “no winning outcome [can be] based on … the score, point spread or any performance … of any single real-world team or any such combination of such terms,” or based on “any single performance of an individual athlete” in a single real world sporting event.15

8 Id. at § 2(3)(6)(C)(i-vii).
9 Id. at § 2(3)(6)(C)(vi)(I).
10 Id. at § 2(3)(6)(C)(vi)(II).
11 Id.
13 Id. at § 2(3)(6)(C)(vii)(I).
14 Id. at § 2(3)(6)(C)(vii)(II).
15 Id. at § 2(3)(6)(C)(vii)(III).
Paragraph (7) defines “foreign jurisdiction” as a “jurisdiction of a foreign country or political subdivision.”\textsuperscript{16}

Paragraph (8) defines “gambling business” as a business of betting and wagering. “Information knowingly transmitted by an individual in a gambling business for use in placing, receiving, making, or otherwise enabling or facilitating a bet or wager.”\textsuperscript{17} One can post or report information for educational purposes on “how to make a legal bet or wager, or the nature of betting or wagering;” or advertise in an area where betting and wagering is legal.\textsuperscript{18} The posting, reporting, or advertising cannot “solicit or provide information for the purposes of facilitating or enabling the place or receipt of bets or wagers” in a location where these activities are illegal.\textsuperscript{19}

A “person” includes a “government” or “government entity.”\textsuperscript{20}

The term ‘State’ includes most United States jurisdictions – “a State of the United States, the District of Columbia, or “a commonwealth, territory, or possession of the United.”\textsuperscript{21}

“Credit, creditor, and credit card” will be defined by the Truth in Lending Act.\textsuperscript{22} ‘Credit’ is a right granted by a creditor to a debtor to postpone payment of debt.\textsuperscript{23} A ‘creditor’ is a person who “regularly extends … in connection with loans, sales of property or services, or otherwise, consumer credit which is payable …in more than four installments” or a finance charge may be required and whom “debt arising from the consumer credit transaction is initially payable on the face of the evidence of

\textsuperscript{16} Id. at § 2(3)(7).
\textsuperscript{17} Id. at § 2(3)(8).
\textsuperscript{18} H.R. 4777, 109th Cong. at § 2(3)(9).
\textsuperscript{19} Id.
\textsuperscript{20} Id. at § 2(3)(10).
\textsuperscript{21} Id. at § 2(3)(11).
\textsuperscript{23} Id.
indebtedness or … by agreement.” 24 A ‘credit card’ means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. 25

“Electronic fund transfer” will have the same meaning as used in the “Electronic Fund Transfer Act,” which defines it in the following manner:

any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include--

(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account:

(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated; as determined under regulations of Board. 26

Electronic Fund Transfer can also be defined as it appears in the Uniform Commercial Code:

(a) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed

24 Id.
25 Id.
by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.  

Also, IGPA will use the Electronic Fund Transfer Act to define “financial institution.”  

"Financial institution’ means “a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer.”

"Insured depository institution” means “any bank or savings association the deposits of which are insured by the Corporation.” An “insured credit union” is considered an insured depository institution, and is defined as “any credit union the member accounts of which are insured in accordance with the provisions of title II of this Act.”

As referenced in paragraph (16) of the Act, “money transmitting business” and “money transmitting service” will be defined in accordance with Title 31, section 5330(d), of the United States Code in the following manner:

(1) Money transmitting business. The term "money transmitting business" means any business other than the United States Postal Service which—

(A) provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers' checks, and other similar instruments or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;

(B) is required to file reports under section 5313 [31 USCS § 5313]; and

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(C) is not a depository institution (as defined in section 5313(g) [31 USCS § 5313(g)]).

(2) Money transmitting service. The term "money transmitting service" includes accepting currency or funds denominated in the currency of any country and transmitting the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal reserve bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network. 33

The terms “own or control” and to be “owned or controlled” will have the same meaning as provided in the Bank Holding Company Act of 1956. 34 “Secretary” in Paragraph (18) refers to the “Secretary of the Treasury.” 35 Finally, the terms, ‘Tribe’ or ‘tribal,’ mentioned in Paragraph (19) of the Act refers to Indian tribes. 36

II. SEC. 3. MODIFICATION OF EXISTING PROHIBITION -- SEC. 1084. USE OF A COMMUNICATION FACILITY TO TRANSMIT BETS OR WAGERS; PENALTIES (AMENDMENTS TO SECTION 18 U.S.C. § 1084)

The IGPA will provide more stringent penalties than the existing penalties under Section 1084 of the Title. Under the Act, violators will be penalized to a fine, imprisonment for no more than five years, or both, opposed to a two year maximum prison sentence under the current Title. 37 Under the IGPA, Section 1084 (a), any person who “being engaged in a gambling business, knowingly uses a communication facility” (1) for the “transmission in interstate or foreign commerce” within United States or to or from any nation outside the “special maritime and territorial jurisdiction of the United States,” with respects to “any transmission to or from the United States” of bets or wagers or “information assisting in the placing of bets or wagers;” (2) Or “for the transmission of a communication in interstate or foreign commerce” within or to or from any nation

34 H.R. 4777, 109th Cong. at § 2(3)(17).
35 Id. at § 2(3)(18).
36 Id. at § 2(3)(19).
37 Id. at § 3(a-b).
outside the United States “with respect to any transmission to or from the United States” that allows “the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers,” in both instances will be subject to a penalty under the Act.\textsuperscript{38}

Furthermore, pursuant to Section 1084(b) any person engaged in a gambling business who “knowingly accepts, in connection with the transmission of a communication in interstate or foreign commerce,” within or to or from any nation outside the United States “with respect to any transmission to or from the United States of bets or wagers or information assisting in the place of bets or wagers,” credit [including the proceeds and/or a credit card], an electronic fund transfer or funds “transmitted by or through a money transmitting business [including the proceeds],” a check or draft [“or similar instrument”] drawn through a financial institution, or “the proceeds of any other form of financial transaction as the Secretary … may prescribe by regulation which involves a financial institution as a payor” will be penalized.\textsuperscript{39}

There are several exceptions to the restrictions on internet gambling, as provided in subsections (c) and (d). The Act permits the transmission of information assisting in the placing of bets or wagers ‘for use in news reporting,’” if it “does not solicit or provide information [that would] facilitat[e] … the placing or receipt of bets or wagers in a jurisdiction where [the] betting is illegal.”\textsuperscript{40} Information can be transmitted “from a State or foreign country where such betting or wagering is permitted under Federal, State, tribal, or local law into a State or foreign country in which such betting on the same event

\textsuperscript{38} Id. at § 3(a).
\textsuperscript{39} Id. at § 3(b).
\textsuperscript{40} H.R. 4777, 109th Cong. at § 3(c)(1).
is permitted.”  

Additionally, the Act allows the “interstate transmission of information relating to a State-specific lottery between a State or foreign country” as long as it is legal and an “out-of-State data center for the purposes of assisting in [its] operation” exists.  

IGPA allows for “the use of a communication facility for the transmission of bets or wagers or information assisting in the placing of bets or wagers” if “at the time the transmission occurs,” the person placing the bet or wager or providing information that would assist in the placement of bets or wagers, the gambling business, or any entity processing the bets or wagers, are “physically located in the same State.”  

Even more, State must have an efficient “customer verification and age verification” to confirm the ages and the residencies of the participants.  

With respect to “class II or class III gaming under the Indian Gaming Regulatory Act,” such betting or wagering or games are allowed, as long as the transmission physically takes place on the “Indian land within that State” and the betting or wagering or games comply with the Indian Gaming Regulatory Act.  

Also, a state must “explicitly authorize” or license the operation of the gambling business or facility processing the bets or wagers.  

As the same, a Tribe can “explicitly authorize” or license the operation of a gambling business or a processing facility on Indian land.  

Class III gaming must be “authorized under” and “conducted in accordance with, the respective Tribal-State compact of the Tribe having jurisdiction over

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41 Id. at § 3(c)(2).
42 Id. at § 3(c)(3).
43 Id. at § 3(d)(1).
44 Id.
45 Id.
46 H.R. 4777, 109th Cong. at § 3(d)(4).
47 Id. at § 3(d)(3).
48 Id.
the Indian land,” and the games must take place physically on the Indian land.\textsuperscript{49} The Tribal-State compact must “expressly” provide “that the game may be conducted using a communication facility to transmit bets or wagers or information assisting in the placing of bets or wagers.”\textsuperscript{50}

Subsections (e) through (g) limit the scope of this section. Section 1084 will not provide for “immunity from criminal prosecution.”\textsuperscript{51} Provisions in the section should not be construed to prohibit any activity under Interstate Horse Racing Act.\textsuperscript{52} Furthermore, this section does not “authorize any activities that are prohibited under chapter 178 of title 28, United States Code” concerning professional and amateur sports protection.\textsuperscript{53}

Lastly, subsection (h) provides “when any common carrier, subject to the jurisdiction of the Federal Communication Commission, is notified in writing by a Federal, State, tribal or local law enforcement agency that any communication facility furnished by it is being used or will be used by its subscriber for the purpose of transmitting or receiving gambling information,” the common carrier “shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice.”\textsuperscript{54} “No damages, penalties or forfeiture, civil or criminal,” will be held against a person or entity, or common carrier that adheres to a notice given by a law enforcement agency.\textsuperscript{55} In civil actions, a law enforcement agency can obtain “injunctive or declaratory relief to restrain or prevent any person from paying or assisting in the

\textsuperscript{49} Id. at § 3(d)(5).
\textsuperscript{50} Id. at § 3(d)(6).
\textsuperscript{51} Id. at § 3(e).
\textsuperscript{52} H.R. 4777, 109th Cong. at § 3(f); see also 15 U.S.C. §§ 3001-07 (2006).
\textsuperscript{53} H.R. 4777, 109th Cong. at § 3(g).
\textsuperscript{54} Id. at § 3(h).
\textsuperscript{55} Id. at § 3(h)(i)(2)
payment of bets or wagers, or communicating information assisting in the placing of bets or wagers, in interstate or foreign commerce.”

Relief granted against an “interactive computer service” is limited to “the removal of … disabling of access to, an online site …. Hypertext link to an online site violating this section, that resides on a computer server that such service controls or operates.” This limitation is inapplicable if the “the service is violating this section or is in active concert with a person who is violating this section” and actual notice of the relief is provided. Secondly, the relief granted must be “available only after notice to the interactive computer service and an opportunity for the service to appear.” Thirdly, the interactive computer service is not obliged to “monitor its service or to affirmatively seek facts indicating activity violating this section.” Fourth, the relief granted must indicate the applicable interactive computer service. Lastly, the relief granted must “specifically identify” the location of the site or hyperlink that should be removed.

III. SEC. 4. AUTHORIZATION OF APPROPRIATIONS

Despite funds already allotted for the investigations and prosecutions of violations, 10 million dollars will be “appropriated for each fiscal years 2007 through 2010.”

IV. ACTIONS SINCE THE INTRODUCTION OF THE BILL

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56 Id. at § 3(h)(i)(1).
57 Id. at § 3(h)(i)(3); see also 47 U.S.C. 230(f)(2) (2006) (defining “[i]nteractive computer service” as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.”).
58 H.R. 4777, 109th Cong. at § 3(h)(i)(3)(A).
59 Id.
60 Id. at § 3(h)(i)(3)(B).
61 Id. at § 3(h)(i)(3)(C).
62 Id. at § 3(h)(i)(3)(D).
63 Id. at § 3(h)(i)(3)(E).
64 H.R. 4777, 109th Cong. at § 4.
On February 16, 2006 the bill was referred to the House Committee on the Judiciary, but no action was taken.\(^65\)

On April 5, 2006, a hearing by the House Subcommittee on Crime, Terrorism, and Homeland Security was held.\(^66\) As of date, the committee’s report has not been prepared. However, testimonies were heard from Representative Bob Goodlatte and Bruce Ohr, the Chief, Organized Crime and Racketeering Section of Criminal Division of the Department of Justice [hereinafter “the Department”]. Rep. Goodlatte views the bill as a necessary entity to reduce illegal internet gambling activities.\(^67\) Congressman Goodlatte focuses on the “unlicensed, untaxed, and unregulated,” as he calls them, “fly-by-night Internet gambling operators.”\(^68\) Furthermore, he mentioned the “anonymity of the Internet” as providing a venue for minors to have access to online gambling.\(^69\) Additionally, he states that Internet gambling, as does casino gambling, leads to many socio-economic problems such as - “addiction, bankruptcy, divorce, [and] moral decline.”\(^70\)

Bruce Ohr presented the advantages and disadvantages of the bill when applied to the criminal investigation or prosecution of illegal Internet gambling.\(^71\) Ohr supports the

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\(^68\) Id.

\(^69\) Id.

\(^70\) Id.

\(^71\) Bruce G. Ohr, Statement of Testimony of Bruce G. Ohr Chief - Organized Crime and Racketeering Section - Criminal Division of the United States Department of Justice, (2006) Available at
increased penalty for violation of Section 1084, the prohibited forms of payment, and to provide for civil enforcement action against such activity.\textsuperscript{72} On the other hand, he voices the Department’s concerns regarding some of the provisions of the bill.\textsuperscript{73} The bill would change the current Section 1084 to permit interstate transmission of bets and wagers on horse races and “intrastate” wagering over the Internet without verifying where the transmission originated.\textsuperscript{74} Even more, the Department feels that the provisions in the bill will “weaken or alter existing federal law or standards pertaining to civil injunctive relief” by “[limiting] the relief that [would] be granted against an Internet service provider.”\textsuperscript{75} Lastly, the Ohr mentions that the bill’s requirements for “secure and effective customer verification and age verification” to address the issues of gambling by minors and compulsive gamblers would be inadequately handled.\textsuperscript{76}

On May 3, 2006, the Subcommittee on Crime, Terrorism and Homeland Security approved the bill for full committee action.\textsuperscript{77}

On May 25, 2006, The House Committee on the Judiciary ordered the Bill to be reported as amended; voting Yeas and Nays: 25-11.\textsuperscript{78}

\textsuperscript{72} Id.
\textsuperscript{73} Id.
\textsuperscript{74} Id.
\textsuperscript{75} Id.
\textsuperscript{76} Id.