The Regulation of Online Gaming Across Jurisdictions: Success, Standards and Stability

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Abstract

In 2005 the gaming market was worth an estimated six billion dollars, half of that represented by online gambling revenues. However not all jurisdictions (countries) regulate the industry the same. Some jurisdictions allow the industry to flourish while some go as far as banning the industry all together. I gather data on all 75 global jurisdictions that have some form of online gaming. I analyze which regulations allow the industry to prosper while maintaining quality standards, and which regulations do not work. Preliminary analysis shows that the amount of years a country has allowed online gambling, as well as the variety of online gambling options available have an impact on the number of companies a jurisdiction has operating inside of it. While the online gambling market continues to grow globally, the wealth provided by it has not been spread equally.

Introduction

In any discussion of the gambling industry and its future prospects anywhere in the world, the topic of online gambling always arises. Online gaming is happening across the world, whether regional, national, and state regulators and lawmakers like it or not. The amount of uncertainty that surrounds the size, scope, and often the legal basis of online gaming make it hard to assess its current and future impacts, or to plan strategies around it. While some countries allow the industry to flourish, some countries regulate the industry to the point of banning it all together.

A prime example of this can be seen when comparing countries such as Malta and the United States. While Malta has adopted a "regulate rather than ban approach," the United States has adopted the opposite approach. The Security and Accountability for Every Port Act of 2006 (SAFE Port Act) was an act of Congress in the United States covering port security and to which an online gambling measure was added. The attachment to the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) was the UIGEA, or Unlawful Internet Gambling Act. Essentially, the UIGEA seeks to cut off the flow of funds from U.S. gamblers to e-casinos. To that end, it mainly targets two actors: e-casinos and financial institutions. The interplay of sections 5363 and 5366 makes it a felony for a person (1) engaged in the business of betting or wagering to (2) knowingly accept money (3) in connection with unlawful gambling. The crime is punishable by up to five years in prison. Furthermore, federal regulators are required to draft regulations designed to compel financial institutions to identify and block restricted gambling transactions. Noncompliant financial institutions are subject to civil penalties (Alexander, 2008).

Although publicly traded gaming sites listed on the London Stock Exchange and similar markets stopped accepting funds from U.S. players, most non-public sites announced their intent

to continue allowing U.S. based players. This often leads to the question of whether or not online poker is truly illegal. As will be discussed later, this is a controversial topic. The UIGEA targets financial institutions and overseas casinos. The UIGEA language never explicitly states that playing online poker is illegal. Therefore, some online casinos still allow access to American players.

This would be the norm for online casinos until April 15, 2011, when the Department of Justice arrested members of the three major casinos (Pokerstars, Fulltitlt, and Cereus) on charges of money laundering and bank fraud. While some speculate that this will be the end of online gaming in the United States, this has not been the case. Many legislators have been working on bills that would give states the right to allow or disallow online gaming.

Another development is the U.S. Online Gaming Law 2011 convention. The convention took place on November 10th and 11th, 2011 and focused on legal and regulatory aspects of online gaming in the United States. In light of these events, I feel that the question of if the United States should regulate online gaming is a waste of time. Rather, I feel the question to research is how the United States should regulate online gaming. It seems as if the United States is certainly moving in the direction of legalizing online gaming in the United States. However, how they decide to regulate the industry will be of great importance. By looking at other jurisdictions I feel the United States can create a valuable and sustainable industry.

Literature Review

I.   Internet Regulation

The "four phases" development theory of internet regulation was developed by John Palfrey. The four phases of internet regulation are the "open internet" period, from the network's birth through about 2000; "access denied," through about 2005; "access controlled," through the

present day (2010); and "access contested," the phase into which we are entering (Palfrey, 2010).
During the time of the open internet, the dominant theory was that the internet itself was a
separate space, often referred to as cyberspace. Until 1990s, most states tended to regulate
online activities very lightly if there was even any regulation at all. When states did in fact
regulate online activity, they treated them far different from activities in real space.   Though the
era of the "open internet," as a descriptive matter is long past, there are important elements of the
theory that persist to the present day. This theory is at the core of the openness initiatives
championed and implemented by the Obama administration (Noveck, 2009). In December of
2009, President Obama issued the long-awaited Open Government Directive. The directive sets a
schedule for agencies to meet various goals related to access to information. The directive tells
agencies to share information with the public through "online, open, accessible, machine-
readable formats," according to a White House press release. Agencies are to inventory existing
information and establish time lines for publishing the inventories online (Ten Months After
Pladge, Obama Releases Openness Plan, 2010)

  The second phase, which ran from 2000 to 2005, is known as the Access Denied period.
During this second era, states and others came to think of activities and expression on the
internet as things that needed to be blocked or managed in various ways (Palfrey, 2010).
Although it may seem that the world is borderless when thinking from the perspective of
cyberspace, it is clear that there are in fact well established borders online. Through a
collaborative research effort called the OpenNet Initiative, the Citizen Lab at the University of
Toronto, the Berkman Center for internet and Society at Harvard University, and the SecDev
Group have together compared the internet filtering practices of a series of states in a systematic,
methodologically rigorous fashion over the past eight years (The OpenNet Initiative, 2010).

Filtering across the world is done in many different ways. Some states implement a software application developed by one of a small handful of United States-based tech providers. Others rely less heavily on technology solutions and more extensively on "soft controls." Sometimes the filtering regime is supported explicitly by the state's legal code; in other cases, the filtering regime is carried out through a national security authority (Palfrey, 2010). Overall, blocked content revolves around a vast array of subjects. These can include political views, religious beliefs, or social values.

The third phase, from 2005 roughly to the present day, is the "access controlled" phase. Palfrey describes this as a period during which states have emphasized regulatory approaches that function not only like filters or blocks, but also as variable controls. The SAFE Port Act as well as the UIGEA were implemented during this era and fit this model. The salient feature of this phase is the notion that there are a large series of mechanisms at a variety of points of control that can be used to limit access to internet. (Palfrey, 2010). Countries also use registration, licensing, and identity requirements to control what people may do on the internet. To legally publish information online, one needs to register themselves with the state as a publisher. Palfrey explains that the first-order controls associated with censorship are combined with legal controls and surveillance, the effect of which is to ensure that those publishing online know that they are being watched and that the state is capable of shutting them down.

Currently, we are in a fourth phase called access contested. The key notion, as Palfrey explains, is that there is, and will be more pushback against some of these regulations. These push backs are fueled by political debate about the way in which these regulations are carried out by nations around the world. These contests are also caused by the increasing centrality of online activities to life in general. To internet users, online activities are an increasing part of

everyday life, not a separate area to travel in occasionally. In summary, the controls and regulations applied in earlier phases of the internet are starting to give rise to strong responses from the private sector as well as other countries unhappy with its regulation. In response to pressure from countries including China and Vietnam, companies such as Google, Microsoft, and Yahoo! have joined together with human rights groups and academics to establish the Global Network Initiative. The goal of this organization is to help implement a code of conduct for handling such demands in a manner than upholds civil liberties (Global Network Initiative 2010). Although the UIGEA was first implemented in the third phase, the fourth phase will be equally important to online gaming regulation. This is especially true after the actions taken by the United States Department of Justice on April 15, 2011, where operators of three major casinos in the online gaming world were arrested on charges of fraud and money laundering.

Internet regulation has changed substantially from where it started in the open net era described by Palfrey (2010). The argument is no longer whether or not the internet should be regulated, but to what extent it should be regulated and how that regulation should be executed. The early theorizing about internet regulation centered on the extent to which states could, and would, regulate the activities of individuals in cyberspace (Johnson & Post, 1996). Over a few decades, the internet has gone from open net to a hotly contested environment. A great example of this can be seen in Egypt. In the face of continuing political unrest, Egypt took the unprecedented step of severing all internet connections while also shutting down all cell phone services. Palfrey suggests that the question about internet regulation, looking forward, needs to be inverted. Instead of asking whether the internet can be regulated, the question should be whether it will be regulated in precisely the same way, or more extensively, than the offline world as the stakes rise in the access contested era (2010).

II.   Internet Gaming Regulation (Overseas)

The question proposed by Palfrey can also be applied to the realm of online gaming regulation. The question should not be whether it can be regulated but how it should be regulated compared to their offline brick and mortar counterparts. Eighty-five jurisdictions around the world currently regulate some form of online gambling, but most such businesses are clustered in a few places. These include Antigua, Costa Rica, as well as Canada. These nations as well as a few others have legalized online gambling as an economic development strategy for attracting investment and jobs. Many anticipate that online gambling businesses will be drawn more and more to the United Kingdom as it implements its U.K. Gaming Act, which significantly liberalizes regulation of online gambling (Stewart, 2006). Although companies such as PartyGaming, Ladbrokes, and Sportingbet are publicly traded on the London Stock Exchange, the vast majority of online gambling companies are privately owned. At least two companies holding licenses in American jurisdictions have operated offshore internet gambling businesses that refused to accept bets from the U.S. or any other country where online gambling is against the law. Both MGM MIRAGE and Kerzner International operated those sites without objections from state regulators in the U.S., although both companies closed their online gambling sites due to business reasons (Stewart, 2006).

Leading jurisdictions have created regulatory structures that in some ways mirror the traditional regulation found for brick and mortar casinos in the U.S. and throughout the world. Stewart suggests that although they vary a little from each jurisdiction, they all share the following elements:

- All require that gambling licensees and key employees be "suitable," or persons of "integrity," or "fit and proper." The completeness of the background investigations for licensing may be subject to question; some, for example, accept licensure in another jurisdiction as prima facie evidence of suitability.

- All require that players establish their identification and residence. Again, the effectiveness of those requirements depends on how they are applied, which cannot be evaluated from the regulations themselves.

- All require that the games be conducted fairly, and many insist that the Web site's gambling technology be approved by the regulatory body or a designated testing facility. These requirements range from quite specific to fairly open-ended.

- On underage gambling, most online jurisdictions establish a minimum gambling age of 18, though Alderney (an island in the English Channel) accepts bets from anyone who has reached his own country's "age of majority". Some online gambling sites may apply the assumption that any holder of a major credit card is 18 years old, whether or not such an assumption is valid.

- On responsible gambling issues, several jurisdictions require that online players be provided a mechanism to set their own loss or betting limits, or limits on the deposits they can make into their online gambling account. Similarly, regulations ordinarily require that a player be permitted to exclude herself from gambling with the online

business, though such self-exclusions may be reversed quite easily. Some jurisdictions go beyond current U.S. gambling regulation by promising to exclude a gambler from its Web sites in response to a petition from a person other than the gambler who claims a "close personal interest in the welfare of the gambler".

- Certain jurisdictions ban the extension of credit to players, though others specifically authorize it.

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- All of the jurisdictions require some form of anti-money laundering monitoring, which may take the form of restricting customers to a single account with the online gambling business or identifying and reporting suspicious transactions or changes in a player's pattern of transactions.

To gain further respectability and acceptance from consumers, some online casinos have even formed a voluntary standard setting organization. This is known as "E-Commerce and Online Gaming Regulation and Assurance," or ECOGRA. The organization helps to establish minimum standards in areas such as fair gaming, conduct, and consumer protection.

III.   Internet Gaming Regulation (United States)

In 2005 approximately fifteen to twenty million United States gamblers placed bets online. The gaming market was worth an estimated six billion dollars, representing half the world's online gambling revenues (Alexander, 2008). Despite the official hostility of the federal government and most state governments, internet gambling among U.S. residents grew at a rate

of more than 20 percent a year (Stewart, 2006). Stewart suggests that even though federal and state governments insist that online gambling is illegal, it is truly thriving. Stewart provides a list of consequences of this contradiction between policy and reality:

- Millions of U.S. residents gamble online every day without the protection of reliable regulatory structures that ensure age and identity verification, the integrity and fairness of the games, or that responsible gambling features are included on a site.

- Neither federal nor state governments receive tax revenues from online gambling.

- Disrespect spreads for laws that are neither enforced nor evidently enforceable against an activity that enjoys wide and growing popularity.

- The online gambling industry creates no jobs in the United States and American businesses earn no returns from online gambling.

- Current inconsistencies in U.S. internet gambling policy could lead to sanctions by the World Trade Organization (WTO).

Mentioned earlier was the question of whether or not online gaming is illegal. Although most states declare that online gambling is in fact illegal, fewer than 25 people have ever been prosecuted in the United States for gambling (Rose I. N., 2006). Much of the activity surrounding internet gambling has focused on the federal Wire Act, 18 U.S.C. § 1084, which was

adopted in the early 1960s to address telephone bookmaking and strictly prohibited gambling over the "wires" (Rose I. N., 2006). Both the Clinton and Bush administrations have shared the viewpoint that this act covers all forms of internet gambling. However, it is interesting to note that the U.S. Court of Appeals for the Fifth Circuit ruled that the language only refers to "bets or wagers on any sporting event or contest" (5th Cir. 2002).

Alexander argues the UIGEA is arguably broad enough to encompass not just game of chance but hybrid games such as poker as well. Where the UIGEA is sometimes controversial is in its broad phrasing of games of chance. Here Alexander argues that even games requiring skill are subject to some degree of chance. In games like blackjack, draw, poker, and bridge, the outcome of any single hand is determined substantially by chance, but the outcome of a series of repeat iterations seems not to be (Alexander, 2008). Therefore, it appears that even skill games such as poker and blackjack may be covered by the Act's definition.

Although the DOJ has consistently stated that internet gambling violates federal law, federal prosecutors have not been very active in pursuing internet gambling offenses. The DOJ has declined time and time again to prosecute those placing illegal bets online with gambling businesses. It can be argued that this is mainly to avoid political and social backlash. It is also important to note that because all internet gambling businesses are located offshore, the current policy has also left the DOJ with few targets for prosecutions.

This is not to say that all regulation in the United States concerning internet gambling has been prohibitive. In fact, the proposed Goodlatte bill, H.R. 4777, would allow states to legalize intrastate internet gambling, and tribes to conduct internet gambling entirely on tribal lands. The bill was introduced by Rep. Robert Goodlatte in 2006 to amend title 18, U.S. tax code, to expand and modernize the prohibition against interstate gambling (Bill Summarry & Status 109th

Congress, 2006). However, the bill never made its way out of the committee process. In his article written for the American Gaming Association (an organization dedicated to legalizing online gambling in the United States), Stewart (2006) offers a number of potential benefits from this approach:

1. The state could protect its citizens by requiring that online gambling businesses operate honestly according to that state's rules. State regulation would include social protections, such as enforcing standards against underage gambling, requiring mechanisms such as loss limits that gamblers could use to control their gambling, and mandating the delivery of responsible gaming information to online players.

2. The state could tax online gambling revenues, creating an additional source of funding for public services. Although revenue projections are always speculative, a small state with only one percent of the nation's population might expect to rise close to $20 million in taxes directly from in-state online gambling, without considering additional revenues that would flow from an increase in overall economic activity in the state.

3. In-state legalization would end the widespread disrespect for the law fostered by the current mismatch between policy and reality, as millions of ordinary Americans gamble online on a daily basis despite the official prohibitions against such gambling.

4. A state could nurture a new industry within its borders and stanch the flow of its citizens' dollars to overseas businesses. By requiring that online gambling businesses locate their operations in-state, the state could create employment opportunities for its citizens.

IV.   Conclusion

In summary, the Wire Act and the UIGEA have proved to be ineffective at times. It is also important to realize the growth of online gambling that has taken place over the last decade. It is reasonable to infer from the previous literature that while businesses from overseas have seemed to benefit from this growth, the United States has struggled with deciding how to handle the industry. Since it seems the United States is inching closer and closer to legalization it is important to ask the question of how the industry should be regulated.

Methodology

My research focuses on which types of regulations affect growth, success, and the stability of the online gambling industry in different jurisdictions around the world. My units on analysis are the 73 jurisdictions (countries) around the world that regulate and allow online gambling.

The first test I ran was a difference of means test between the variables total gaming, has poker?, has casino?, has sportsbook?, has lottery?, has other?. I ran this test to find out which of the previous games accounted for the biggest impact on total gaming score. Total gaming is a variable that measures the total gaming score of a jurisdiction. Jurisdictions can receive a score from 0-5 depending on the variety of games available. The games used in the rating are poker, sports betting, casino, lottery, and other. My hypothesis is that poker will have a bigger impact on total gamin score than any other game.

The variables in my second test are NumGamSites, and total gaming. My hypothesis is that jurisdictions with higher total gaming scores will contain more gaming sites than those jurisdictions with lower total gaming scores. At this point it is important to differentiate between a game and a gaming site. A gaming site is simply an internet portal that provides access to different types of games. Some sites may contain multiple games while some may offer only one type of game. My hypothesis relies on the assumption that the more sites a jurisdiction has, the more financially successful they will be. The dependent variable, NumGamSites is an interval level variable which simply measures the number of gaming sites a jurisdiction has within it. The independent variable, total gaming is a variable that measures the total gaming score of a jurisdiction.

My third test uses the variables Stability and NumYearsGaming. The dependent variable, NumYearsGaming is an interval level variable that simply measures the amount of years a jurisdiction has allowed gaming. Stability is a variable I created by adding together the scores each jurisdiction receives in three areas. These are Governingbody? (whether the jurisdiction has a governing body), AntiLaunder (whether a jurisdiction has anti-money laundering regulations in place), and ECOGRA. ECOGRA is a variable that codes whether or not a jurisdiction has at least one site that is a member of ECOGRA (a third party review board). Each category is worth one point with the highest possible score three. This will be my independent variable. I am running tests with these two variables because I would like to find out if gaining higher stability is simply a product of longevity.

My fourth test uses the variables GrowthPerYear, AnnualLicFee, and StartupLicFee. Growth per year is a variable I created by dividing the total number of gaming sites by the number of years a jurisdiction has allowed online gambling. This will be my dependent variable. AnnualLicFee is an interval level variable that measures the cost of annual licensing fees within a jurisdiction. StartupLicFee is also an interval level variable and measures the cost of startup licensing fees in a jurisdiction. These two variables will be my independent variables. I am running tests to find out how licensing fees affect the growth of the industry within jurisdictions.

Interpretation of the findings

Figure one shows the results of a difference of means test using TotalGaming as the test variable, and HasPoker, HasCasino, HasSportsbook, and HasLottery (coded 1 for yes and 2 for no) as the grouping variables. The mean for countries offering poker is 3.35, while the mean for

countries not offering poker is 1.3396. This gives us a mean difference of 2.0104. The mean for countries offering casino play is 2.9, while the mean for countries not offering casino play is 1.1860. This gives us a mean difference of 1.71395. The mean for countries offering sports betting is 2.3846, while the mean for countries not offering sports betting is 1.3235. This gives us a mean difference of 1.06109. The mean for countries offering lottery is 2.2667, while the mean for countries not offering lottery play is 1.2857. This gives us a mean difference of 0.98095. These are all significant at the .05 level.

(Figure 1 about here)

The second experiment I ran was a linear regression test to see how total gaming correlates with the number of gaming sites within a jurisdiction. The test shows that there is in fact relationship between the two variables. The constant is -56.381. This is the estimated value of Y when X equals 0. The regression coefficient is 47.549. This tells us that for every one unit of increase in the total gaming score, there is an increase of almost 48 sites within a jurisdiction. This is significant at the .05 level. The adjusted R-Square is equal to .349. This tells us that of all the variation in NumGameSites, 35 percent can be explained by the independent variable TotalGaming.

*(*Figure *2 about here)*

Figure three shows the results of a linear regression test between dependent variable NumYearsGaming and the independent variable stability. The results show that there is a relationship between the two variables. The constant, 0.924, is the estimated value of Y when X equals 0. The regression coefficient is 2.857. This tells us that for every one unit of increase in the stability score, there is an increase of 2.857 in the total number of years a jurisdiction will allow online gambling. This is significant at the .05 confidence level. The adjusted R-square

value is 0.224. This tells us that of all the variation in the variable NumYearsGaming, a little

more than 22 percent can be explained by the variable Stability.

(Figure 3 about here)

Figure four shows the results of a bivariate correlation test between the dependent

variable GrowthPerYear, and the independent variables AnnualLicFee and StartupLicFee.

GrowthPerYear is an interval level variable that is coded by dividing the total number of sites

within a jurisdiction by the number of years online gambling has been available within the

jurisdiction. AnnualLicFee and StartupLicFee are also both interval level variables. They are

coded by the cost of each fee within a jurisdiction. My hypothesis is that in a study of

jurisdictions, those with higher licensing fees will have smaller amounts of growth per year than

those with little or no licensing fees. Therefore, I am expecting a negative Pearson's r value for

both variables.

The results show that there is in fact a correlation between the variables. The Pearson's r

is -0.183 for AnnualLicFee. This shows that there is a weak correlation between these two

variables. However, the level of significance is .549, which makes it insignificant at the .05

level. The Pearson's r for StartupLicFee also shows a negative relationship between the two

variables with a value of -0.597. This shows a much stronger relationship and is significant at

the .05 level with a level of significance of .031.

(Figure 4 about here)

Conclusion

After analyzing the results, it appears there are some regulations that allow the industry to grow within a jurisdiction. Figure two shows that there is a correlation between the number of sites within a jurisdiction and the variety of games available. Jurisdictions looking to regulate the industry may want to offer a variety of games depending on the number of sites they wish to have. More interesting is the fact that there is a relationship between the type of games offered and the total gaming score. The analyses of figure one shows that poker does in fact have the largest impact on a growing total gaming score.

Figure three shows that number of years gaming can be tied to certain elements of stability. It shows us that being members of third party review boards such as ECOGRA could have an effect on the number of years a jurisdiction allows online gaming. Having governmental bodies in place as well as anti-money laundering systems may also be something for new jurisdictions to consider.

Finally, figure four shows that the cost of startup fees has an effect on the number of gaming sites a jurisdiction averages per year. This could also be useful when deciding how to regulate the industry for new jurisdictions. The relationship between growth and annual fees also showed a relationship. However, this relationship was very weak and was insignificant at the .05 confidence level. Overall, the evidence in my research does show support for my hypotheses. However, there is certainly more research that can be done to figure out how certain jurisdictions are successful in growing the online gambling industry.

Appendix

Figure 1: Difference of Means Test

Difference of Means			
	With Game	**Without Game**	**Mean Difference**
Poker	3.3500	1.3396	2.01035*
Casino	2.900	1.1860	1.71395*
Lottery	2.26671	1.2857	0.98095*
Sports Betting	2.3846	1.3235	1.06109*

*p<.05

Figure 2: Linear regression test between number of gaming sites and total gaming score

Linear Regression Between Number of Gaming Sites and Total Gaming	
Constant	-56.381 (-3.379)*
Total Gaming regression coefficient	47.549 (6.294)*
R Square	.358
Adjusted R Square	.349

*p<.05

Figure 3: Linear regression test between number of years gaming and stability score

Linear Regression Between Number of Years Gaming and Stability	
Constant	.924 (.570)
Stability Score regression coefficient	2.857 (3.854)*
R Square	.240
Adjusted R Square	.224

*p<.05

Figure 4: Bivariate correlations (growth per year and licensing fees)

Bivariate Correlation: Growth Per Year, Annual License Fee, Start-up License Fee		
Growth Per Year	Annual Licensing Fee	Start-up Licensing Fee
Pearson Correlation	-.183	-.597*

*p<.05

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