

# The Regulatory and Policy Challenges Facing Gambling on the Internet

Tuula Sundström

SNSUS 21.5.2007



# Definition of Internet



The **Internet** is a worldwide, publicly accessible network of interconnected computer networks that transmit data by packet switching using the standard Internet Protocol (IP). It is a "network of networks" that consists of millions of smaller domestic, academic, business, and government networks, which together carry various information and services, such as electronic mail, online chat, file transfer, and the interlinked web pages and other documents of the world wide web.

# Gambling. COM



Like it or not, internet gambling is exploding across cyber space. The number of internet gambling sites is now into the thousands and the odds are that this figure is set to rise.

# Internet Gaming Regulation



- European Union
- 27 Member States, 492 million citizens, 22 languages
- 27 different systems; **No common definitions**

# Internet Gaming regulation



- Different licensing requirements
  - Legal monopoly
  - Single gaming license
  - Number of operators limited
  - Total ban
- Specific requirements for operators
  - Type of legal entity entitled to operate (non-profit legal entity)
  - Nationality requirements
  - Residence or domicile requirements
- Specific requirements for players
- Specific requirements for the use of the proceeds (charitable purpose)

# Internet Gaming regulation



- No internal market concerning gambling
- Gambling excluded from
  - E-commerce directive (2003/31/EC)
  - Services directive (2006/123/EC)
- National legislation
- Guidelines for regulating gambling (also on the Internet) come from the ECJ judgement

# ECJ Guidelines

- Schindler (C-275/92)
- Läärä (C-124/97)
- Zenatti (C-67/98)
- Anomar (C-6 /01)
- Lindman (C-42/02)
- Gambelli (C243/01)
- Placanica etc. (C-338/04, C-359/04, C-360/04)

Since Schindler (C-275/92) it has been clear that gambling is a service.



# ECJ Guidelines



- Accepted criteria for restriction by the ECJ
  - Maintenance of public order
  - Consumer protection (prevention of damaging individual and social consequences)
  - Prevention of gambling from being a source of private profit

# ECJ Guidelines

- Member states have a **sufficient degree of latitude to determine** what is required to **protect the players** and, more generally, in the light of the specific social and cultural features of each Member State, **to maintain order in society.**
- In those circumstances, it is for MS to assess not only whether it is necessary to **restrict gambling**, but also whether they should be **prohibited**



# ECJ Guidelines



- Restrictions must be
  - Non discriminatory
  - Necessary
  - Effective
  - Proportional

# ECJ Guidelines



- **Financing of social activities** may only be an **incidental beneficial consequence** and not the **fundamental justification**
- The restrictions must reflect a desire to bring about a **genuine diminution** of gambling opportunities and to **limit activities** in that sector **in a consistent and systematic manner**
- The member state has the **burden of proof** that the justification ground is really existent

# Internet gaming in Finland



- 2002 Lotteries Act covers all distribution channels
- 3 operators have single licenses for different gaming sectors
- 2 operates on the Internet, no casino games on the Internet

# Veikkaus Internet Gaming



- Started Internet gaming in December 1996
- All products can be played on the Internet
  - Live Betting June 2004
  - Scratch cards May 2005
- 440 000 registered players
- 15 % of the turnover comes from Internet games

# Veikkaus Internet Gaming



- Playing on credit is forbidden by law
- Ministry of the Interior approves the rules of the games (stake limitations)
- 18 years age limit
- The identity of the player is checked from the Population Register Center (18 years age, Money Laundering Act)

# Veikkaus Internet Gaming



- Playing at night is not possible; the gaming system is only open until 10 pm
- The player can self exclude himself from internet gaming (min. 3 months)
- Starting from June 2007
  - “Panic Button” (self exclusion for the rest of the day)
  - Player can set daily/weekly/monthly limits

# Legal Situation in Finland



- Läärä C-124/97
  - Finnish system with the exclusive right has been regarded as complying with the EC Treaty
- Supreme Court Judgement (KKO:2005:27)

There is no reason to question the fundamental ruling that the ECJ has already issued regarding the Finnish Lottery Act, in accordance with which the Finnish system with the exclusive right has been regarded as complying with the EC Treaty.

# Legal Situation in Finland



- KKO:2005:27

The ECJ's ruling in the Gambelli case does not change this conclusion, since the circumstances that were the object of the ruling in that case, were different.

- KHO 13.3.2007 (KHO:2007:28)

The practices of control and application, laid down in the Finnish Lotteries Act, when assessed as a whole, are aimed at the implementation of the objectives concerning gaming activities that have, in turn, been acknowledged as being in harmony with the requirements established in the ECJ case-law.

# Legal Situation in Finland



- KHO (KHO:2007:28)
  - Marketing and product development activities undertaken by Veikkaus Oy are not in unproblematic harmony with the requirements established by the European Court of Justice in its ruling in the Gambelli case.
  - This is further reinforced by the fact that the company's marketing activities are regulated solely by the ethical rules imposed by the company itself, rather than by regulations established by the authorities.



# Supreme Administrative Court

- As regards the **lacks in the activities undertaken by Veikkaus Oy**, as mentioned above, they can be removed by **enhancing and specifying the legislation and its implementation.**

# Infringement Procedure



## The European Commission

- Article 226 EC
  - Letter of Formal Notice
  - Reasoned Opinion
  - ECJ

# Infringement



- Letter of Formal Notice; April 2006
  - Finland, Sweden, Denmark, Germany, Hungary, Italy, The Netherlands
  - National Legislation on Sports Betting Services are contrary to the EC Article 49

# Infringement



- Letter of Formal Notice; October 2006
  - Austria (casino; promotion and advertising)
  - Italy (blocking websites)
  - France (betting on sports and horses)

# Infringement



- Reasoned Opinion, March 2007
  - Finland, Denmark and Hungary
- Complementary letters of formal notice; March 2007
  - Germany and The Netherlands

# Infringement



- Reasoned opinion sent to Finland
  - Financial monopoly
  - Licensing
  - Prevention of game addiction/Veikkaus product advertisement, sponsorship and PR activities
  - The Commission has not found valid justifications with regard to financial crimes and money laundering for Finland's view that all cross-border betting services should necessarily be restricted

# Infringement

- The Commission is after mutual recognition even though the operator only partially meets the requirements of the country of destination
- Control measures conducted by other members are sufficient to prevent criminal activity and money laundering in Finland



# Infringement

- Opinion of the Advocate-General Gulmann (case 275/92) 16.12.1993  
If the individual Member States **must admit lotteries which are held in a lawful and proper manner in all other Member States**, they are denied the possibility of controlling the number of lotteries held, the number of draws, and the amount of the authorized turnover. **The supply in the Member States will in fact be determined by overall supply in all the Member States.**



# Gulmann



- The competition would, presumably, also be conducted on the basis of the size of prizes.
- A major parameter for competition would therefore be what proportion may be used for prizes and what proportion must be devoted to public or public-interest purposes.

# Gulmann



Acceptance of the competition that would result from the opening of the markets cannot, in my view, be regarded as a necessary consequence of the attainment of the internal market.

# Challenge to regulate?



- Internet is just a distribution channel

Providing games on the internet can in this respect be compared to, for example, the selling of lotteries by mail (KKO:2005:27)

- Same rules apply to Internet gaming than to the land based gaming ?



## Challenge to regulate?

- Latest developments
  - Germany; total ban
  - The Netherlands; test license for casino
  - Belgium; Draft of the new law; server in Belgium; certificate for operator
  - France; Law 5 March 2007, Online advertising for gambling is forbidden, fine 30 000 Euros.
  - Finland; more restrictions to law

# A single licence in EU?



- There can't be any single EU-license that allows to operate from one MS to 26 others without ;
  - Common definitions
  - Common rules for protection of players
  - Common rules for identifying the players
  - Harmonized taxation rules (Business will go where the taxation rate is low)
  - Common technical standards for supervision
  - etc.

But what about the world outside EU?.....



Thank you for your attention!

Tuula.Sundstrom@veikkaus.fi