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Proposal: Prohibition on Funding of Unlawful Internet Gambling

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Name: Phillip R Miller

Affiliation:

Category of

Affiliation:

Address:

City: Petaluma

State: CA

Country: UNITED STATES

Zip: 94952

PostalCode:

Comments:

December 11, 2007 Jennifer J. Johnson Secretary, Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue, N.W. Washington, DC 20551 RE: Comments, Docket No. R-1298 Dear Secretary Johnson: I am writing in regard to the requested comments concerning overblocking, creating a list of illegal sites and developing merchant codes as requested concerning implementation of the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA). Though you request comments on each section individually, the three are intimately linked and dependent on the other so I am commenting as a group. The development of merchant codes IS necessary and required in order to comply with the UIGEA, 2006 section that states on Page 233- Line 13-18 (4) ensure that transactions in connections with any activity excluded from the definition of unlawful internet gambling in subparagraphs (B), (C) or (D)(i) of section 5362(10) are not blocked or otherwise prevented or prohibited by the prescribed regulations." This REQUIREMENT of the regulation to prevent overblocking MUST be addressed in the actual regulations. Legal transactions include but are not limited to licensed Horse Racing, licensed Greyhound Racing and a myriad selection of games of skill readily available from both domestic and foreign companies. The companies include America Online (AOL.COM), Microsoft (MNS.COM), YAHOO! (yahoo.com) and World Winner (worldwinner.com), all of which are American Companies with offices in the United States. These companies offer various CARD games, board games, puzzle games and other games classified as skill such as backgammon, rummy, spades and hearts. Also, marketed as 'SKILL' is variations of poker, both domestically via 'clubs' and foreign companies in a pay as you play system. Quoting from the proposed regulations on page PAGE 56688 D. Processing of Restricted Transactions, Prohibited, Section 5 they state, "Some payment system operators have indicated that, for business reasons, they have decided to avoid processing any gambling transactions, even if lawful,

because, among other things, they believe that these transactions are not sufficiently profitable to warrant the higher risk they believe these transactions pose.” Though the regulations next state correctly that the Agencies do not have the authority to REQUIRE processing of legal transactions, clearly the Agencies are REQUIRED by the UIGEA to provide an environment that is safe and without risk to processors and banks that wish to do so. It is the fear that will have profound effects on companies offering legal wagering as detailed above. This can be handled by the proper establishment of Merchant Codes, developed by the processors and banks AND approved by the Agencies. As noted in the proposed rules and I quote, “The proposed rule does not include specific methods for identifying and blocking restricted transactions as they are being processed within the examples of procedures for any designated payment system other than card systems because the Agencies believe that only the card systems have the necessary capabilities and processes in place”. Additionally, it is stated, “The policies and procedures of participants in a card system are expected to address methods for identifying and blocking restricted transactions as they are processed, such as by establishing one or more transaction codes and merchant business category codes that are required to accompany the authorization request from the merchant for a transaction and creating the operational functionality to enable the card system or the card issuer to identify and deny authorization for a restricted transaction. Card systems may be able to develop one or more merchant category codes for gambling transactions that are not restricted transactions under the Act. This, however, is NOT possible without properly designed guidelines ALLOWING a PROPER determination as to what business types are assigned a specific code. You first note above that payment system operators are DECLINING to process legal transaction because of the risk then you state you believe the card systems have the necessary processes in place. This obviously is NOT the case considering the former portion of your proposal as noted above concerning the declining of transaction, again, due to the risk created by lack of a defined guideline. In your analysis, the proposal looks at creating a list of sites that should / should not be blocked as an option is not feasible. I agree, a defined list of sites is not possible as they do come and go. With this in mind, I feel it only appropriate that a guiding definition of what constitutes UNLAWFUL Internet Gambling be established rather than a list of sites. For example, one need only look at the state laws to see IF there is a SPECIFIC prohibition against Internet wagering an IF there are clauses or court rulings allowing / exempting games of Skill that by several state and at least one Federal Court in New Jersey have ruled games of skill / contests between players do NOT constitute gambling. By adopting this simple standard and simply looking at which states these player to player / person to person contests ARE allowed in a simple coding system can be established, thus allowing the overblocking prevention portion of the UIGEA to be fulfilled. This simple, but yet effective determination and analysis will alleviate the problems of overblocking legal internet gaming as described previously and offer both domestically and internationally, allow processors to properly create a coded system that will remove the risk of inadvertently processing illegal transaction while at the same time creating by proxy a virtual list of unlawful gambling sites AND a list of LAWFUL Gaming sites.

Sincerely