



December 12, 2007

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket Number R-1298
Notice of Joint Proposed Rulemaking
Prohibition on Funding of Unlawful Internet Gambling

Valerie A. Abend
Deputy Assistant Secretary of the Treasury
Office of Critical Infrastructure Protection and Compliance Policy
Department of the Treasury
Room 1327, Main Treasury Building
Washington, DC 20220

Re: Docket Number Treas-DO-2007-0015
Notice of Joint Proposed Rulemaking
Prohibition on Funding of Unlawful Internet Gambling

Dear Ms. Johnson and Ms. Abend:

Founded in 1998, PayPal (www.paypal.com) enables any individual or business with an email address to securely send and receive payments online. With 164 million total accounts and availability in 190 markets, PayPal's service builds on the existing financial infrastructure of bank accounts and credit cards. In the third quarter of 2007, PayPal's total payment volume, the total value of transactions, was over \$12 billion.

PayPal's Acceptable Use Policy for users in the United States prohibits the use of the PayPal service for any activities, that, *inter alia*, "involve gambling and/or gaming activities, including, but not limited to casino games, sports betting, horse or greyhound racing, lottery tickets, certain games of skill, and other ventures that facilitate gambling unless the operator has obtained prior approval from PayPal and the operator and customers are located exclusively in jurisdictions where such gambling activities are permitted by law." PayPal has not granted prior approval to any such ventures in the United States, and to the extent PayPal has granted approval

to operators outside of the United States, it conducted strict diligence into legality in the operating jurisdictions and built detailed processes and procedures to ensure no users in the United States can send payments to those businesses.

As a money transmitter as defined in the Unlawful Internet Gambling Enforcement Act of 2006 (“the Act”) PayPal is subject to the Act. As such, we submit the following comments.

Remedial Action

Section .6(e)(2)(ii) states, as an example, that money transmitting businesses are reasonably designed to prevent or prohibit restricted transactions if they, “include procedures regarding ongoing monitoring or testing . . . to detect unauthorized use of the relevant money transmitting business, including their trademarks.” PayPal, like others in the payment system, and indeed like many other intellectual property right holders, takes action to protect its marks from unauthorized use. The proposal, however, converts that right into an obligation under the Act. Furthermore, the Section by Section Analysis that accompanies the proposed regulation proposes that the payment system “participant could consider taking legal action to prevent the unauthorized use of its trademark by an unlawful Internet gambling business.” Legal action is often expensive, impractical and unnecessary. When PayPal encounters the unauthorized use of its trademark on a website, it may choose to employ a variety of remedial actions depending upon the specific situation, but we do not feel any such actions should be required by the regulation. The regulation should be revised to reflect that payment system participants may, as they deem appropriate, choose to take remedial actions

List of Unlawful Internet Gambling Businesses

The proposal asks for comment on whether the agencies should create a list of unlawful Internet gambling businesses. The establishment of such a list would be helpful in determining which merchants to prohibit, especially in the light of the fact that neither the Act nor the proposed regulations define unlawful Internet gambling. The burden of making that determination is placed on the payment system providers, as is the risk of failing to make a proper decision that a business is an unlawful internet gambling business.

The analysis accompanying the proposal states that developing such a list “would required significant investigation and legal analysis. Such analysis could be complicated by the fact that the legality of a particular Internet gambling transaction might change depending on the location of the gambler at the time the transaction was initiate and the location where the bet or wager was received.” *We recognize that developing and maintaining such a list is no easy task.* Of course, these are the same problems facing all payment system participants, who are further burdened by the proposed regulation not clarifying the Act’s definition of unlawful internet gambling. While the proposed regulations do offer guidance by providing examples of policies and procedures to identify, block or otherwise prevent or prohibit restricted transactions, they do not provide much, if any, guidance on identifying those transactions. Clearly, the initial responsibility for determining the scope of the act should fall on the agencies, and having them prepare a list would be a great start, and make much more reasonable the burdens placed upon payment system participants.

Coding

We concur with the proposed regulation's conclusion that requiring participants to identify and block restricted transactions as they are processed should apply only to card systems. They are the only systems that currently have the capability to establish transaction and merchant codes that may be useful in identifying transactions that are subject to the Act, or alternatively, are not subject to it. Other systems should not be forced to fundamentally retool by requiring coding of all transactions. Financial institutions accepting exempt transactions already have "Know Your Customer" obligations and are required to take appropriate risk-based measures to detect and prevent illegal activities. However, we do support the Agencies monitoring technological developments in the field and in the future, revisiting, as appropriate, whether identifying and blocking in other systems is feasible or warranted.

We appreciate the opportunity to comment on the proposed regulation.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth E. Swab". The signature is fluid and cursive, with a large initial "K" and "S".

Kenneth E. Swab
Sr. Federal Government Relations Officer