

Submission on “Remote” Gambling to the Parliamentary Portfolio Committee
Responsible for Gambling Legislation

By

Professor Peter Collins, Executive Director, South African National Responsible
Programme

Introductory

1. “Remote” gambling – the term coined by the drafters of the 2005 UK Gambling Act - may conveniently be defined as gambling which occurs, via the internet, telephony, interactive TV or other technology, when the providers and consumers of gambling opportunities are located in different places. It is thus usually contrasted with “land-based” forms of gambling which take place in a particular venue rather than in cyberspace. It poses particular problems for legislators and regulators to the extent that suppliers and consumers of gambling services may be located in different jurisdictions.
2. Remote gambling – especially gambling on the internet - is already widely available to South Africans from servers located outside SA of which there are several hundred commercially successful ones. It is already fairly popular, with consumers world-wide, especially internet poker and exchange betting, but at present probably accounts for only about 2% of all gambling undertaken by South Africans. However, its popularity is likely to grow substantially here as increasingly user-friendly and cheaper technology becomes available, as South Africans become more generally used to participating in e-commerce, and as operators become more successful at attracting customers away from other forms of entertainment.
3. Thinking about, and devising good policy for remote gambling is, therefore, not about considering whether to authorise a new form of gambling: it is about considering how to minimise harm and maximise benefits from new ways of delivering mainly traditional commercial gambling products which are already readily available to South Africans from unauthorised jurisdictions abroad.
4. At present, such gambling is illegal in South Africa – although most South Africans appear to be unaware of this. It is not a prohibition which South Africa’s law enforcement agencies could reasonably be expected to enforce, e.g. by raiding people’s homes, confiscating their hard drives and ascertaining whether they have been playing poker online. Public opinion would not stand for such an extravagant use of law enforcement resources nor for such draconian infringements of individual liberties.

5. Thus the main challenge for South African legislators is how to subject this industry to appropriate regulation so as to protect actual and potential South African consumers, especially the young and those in danger of doing themselves and those close to them significant harm by gambling too much. It would also be desirable to regulate in such a way that some economic benefits accrue to the general public through various kinds of taxation, investment and employment.
6. In this respect, the challenge now facing the SA government in respect of remote gambling is very similar to that which faced the government in the early nineties with respect to authorising and regulating casinos in circumstances where illegal casinos proliferated in huge numbers in every large city and most medium-sized towns.

The Dangers of Remote Gambling

7. In general, gambling becomes more risky from the point of view of stimulating “problem gambling” (i.e. excessive and/or compulsive gambling) to the extent that it offers opportunities for:
 - continuous, “rapid action” play
 - high stakes
 - high and frequent prizes
 - convenience gambling which discourages people from planning and budgeting for their gambling and encourages them to gamble impulsively
 - gambling on whatever they like, as often as they like, for what ever amounts of money to people who are relatively ignorant of how gambling works, what are its dangers ad how to avoid them.

From all these points of view remote gambling via the internet or other technologies, especially when it is unregulated, is maximally risky from the point of view of encouraging problem gambling.

8. Even so, there is no reason to believe that the vast majority of people who gamble remotely, like the vast majority of those who gamble at land-based venues – and the vast majority of those who drink alcohol or go shopping – will not do so in a sensible and responsible way. (Roughly, the international consensus is that about 1% of adults in populations where commercial gambling opportunities are readily available are full-blown gambling addicts with an identifiable neurological disorder and about a further 4% gamble excessively to the point where they do significant damage to themselves by gambling too much largely because they don’t really understand what they are doing: e.g. they don’t understand odds or they are prey to all sorts of superstition. Research conducted here suggests that South African numbers are broadly in line with these international norms.)
9. It is also true that internet gambling is the form of gambling for which makes it easiest require operators to put in place safety measures likely to discourage people from gambling excessively. These include: prominent links to websites where players can self-test for gambling problems, where they can receive education about how to gamble safely, where they can be put touch with internet counselling facilities as well as being given the NRGP free helpline number and information about the other services which the expert and confidential services which the NRGP offers free of charge. Operators can also easily offer players, and encourage them to use, a facility for setting limits to their losses over a given time period after which they are automatically prevented from playing further.

There is even software which can detect patterns of play characteristic of problem gamblers and alert players accordingly.

Legislative and Regulatory Options

10. Prohibition of internet gambling was introduced into Australia by the Federal Government after having been legalised by various State (i.e. provincial or regional) governments. It has also recently been prohibited in the US by making it a criminal offence, identical to supplying illegal gambling services, for banks to facilitate illegal internet gambling transactions. In Italy, for a short period, the Government sought to prohibit Italian Internet Service Providers from doing business with known internet gambling sites. This, however, fell foul of European law and the Italian Government backed down when Malta – also an EU member and a jurisdiction keen to attract internet gambling businesses – complained. As with other forms of prohibition, measures such as these may diminish, but are most unlikely to eliminate remote gambling at offshore sites since there are many ways round the banking and ISP restrictions and, in general, the consequence of prohibition is to ensure that the prohibited goods and services are provided illegally, often by organised crime.
11. Prohibition, however, is usually favoured, despite this, by a somewhat unholy alliance between those who believe, on moral or religious grounds, that all gambling should be banned or as severely restricted as possible and those who wish to protect their existing businesses from unwelcome competition – often, as in many European jurisdictions and in Canada, governments who own and operate land-based gambling businesses.
12. The alternatives to prohibition are to have a free market or to have a regulated industry. I will discuss a free market only briefly since no government anywhere in the world subscribes to the view that there should be a free market in gambling. Even in Las Vegas, electronic gambling machines may not be located in homes for the elderly and infirm. It should, however, be noted that a free market is pretty much what results when any form of e-commerce, including gambling, is left unregulated and something close to a free market in gambling services is what we currently have on the internet.
13. The principal jurisdictions which have so far authorised internet gambling are small self-governing territories such as Antigua, Costa Rica, Vanuatu, Gibraltar, Alderney, the Isle of Man and Malta. For a while internet gambling was authorised by individual Australian States, starting with Queensland but these initiatives were subsequently outlawed by the Federal Government. Otherwise, the only large jurisdiction in the developed world so far to have legalised and devised regulations for remote gambling is the UK, which incorporated them into its 2005 Gambling Act whose provisions come full into force on September 1st this year. Here, however, they have decided to tax remote gambling at the same rate as other forms of gambling and because European law prevents them from restricting the right to advertise gambling to companies regulated and taxed in the UK, the expectation is that no significant internet gambling companies will opt to be regulated in the UK.
14. Most other European jurisdictions are seeking to prohibit “foreigners” from supplying internet gambling services to their citizens even though, as noted, this has been found to contravene EU law.

15. If the SA Government rejects, as is proposed in the current bill, both prohibition and a free market, then the principles which ought to govern the legalisation and regulation of remote gambling are essentially the same as those which should (and do) govern the legalisation of land-based gambling. These are:
- the questions of whether to permit any commercial gambling, and, if how much and of what type, should be decided through normal democratic processes in which government both leads and responds to public opinion
 - governments should ensure, in respect to whatever forms of gambling it does authorise, that the potential negative social impacts, especially in terms of crime and problem gambling, are minimised
 - in particular, government should protect minors, ensure that consumer choices are adequately informed choices and require the industry to do all that it reasonably can do to minimise the incidence of, and harm caused by excessive gambling
 - governments should additionally seek to secure some benefits for the general public over and above the benefits which are secured for those who enjoy gambling and those who profit from providing the opportunity to gamble on a commercial basis. This is typically achieved by raising abnormally high taxes from gamblers or enhancing exports by encouraging more expenditure by visitors to the jurisdiction (or both)
 - governments should respect the religious and other convictions of those who believe that gambling is immoral but also insist that in a free society individuals must be free to decide for themselves how to live their own lives, including how to spend their own time and their own money in pursuit of entertainment, even if others think their choices are foolish or dangerous or wicked
 - governments should not disturb legitimate existing interests save for good cause shown.
 - Governments should not place or retain on the Statute book laws which are unenforced and unenforceable because this undermines respect for the law in general.

Recommendations from the South African National Responsible Gambling Programme to address problem gambling by those who engage in remote gambling

13. The NRGP is gambling-neutral: we take no view on whether or not it is a good thing that people enjoy buying the products which commercial gambling businesses sell. In general, we believe this is a matter which should be left to individual choice unless there are very compelling reasons for using the law to restrict people's freedom of choice.

14. We think that, although remote gambling is not yet a serious source of gambling problems in SA, it may well become one, and this is more likely to happen if internet gambling remains prohibited than if it is well regulated with operators are required to put in place the safety measures described in para 9 above

15. We believe that, in relation to remote gambling, it will be possible to use technology to tame technology. Specifically, we think it imperative that the legislation:

- include a requirement that would-be suppliers demonstrate that they have effective player-identification procedures, especially for ensuring that children cannot gamble at their sites
- requires operators to conform to a code of practice which the South African Responsible Gambling Trust will draw up
- specifies that links to a source of web-based information about the dangers of gambling be prominently advertised on, and easily accessed from all gambling websites
- requires sites to provide easy access to a self-test for problem gambling
- requires operators to publish the fact prominently that the prominent display of, and easy access to the NRGPs' free, confidential and expert counselling for problem gambling can be obtained by calling the helpline number and/or by accessing the counselling services web-page. For this purpose gambling sites must contain a link to the relevant part of the NRGPs site
- makes specific mention of the illegal gambling which currently occurs via cell phones (which are readily available to minors), especially illegal lotteries using premium telephone lines
- makes specific mention of legal gambling available on interactive tv, again using premium telephone lines or pay-tv payment methods.
- requires operators to keep records of customer transactions for a period sufficient to enable identification of patterns of excessive play
- requires operators, as a condition of licence, to demonstrate social responsibility and to conform to a code of practice to be drawn up under the auspices of the South African Responsible Gambling Trust (a joint committee of four regulators and four gambling industry representatives, chaired by an individual who is independent of both government and the gambling industry, which is responsible, ultimately to Government, for the operation of the National Responsible Gambling Programme).

16. The NRGPs, however, favours the legalisation and regulation of remote gambling proposed in the Bill precisely because it will make possible the imposition and enforcement of these provisions for the avoidance of problem gambling.

Other Considerations

17. In order to persuade suppliers of remote gambling services to submit to regulations laid down by the SA government and thus minimise the risks associated with problem gambling (and at the same time secure tax revenues), it is necessary to provide operators with incentives. The strongest incentive will be the right to advertise which will be restricted – to companies which are headquartered in South Africa for regulatory and taxation purposes. They could also be required to have a “.za” suffix to their web address. Being regulated by the South African Government would also entitle them to advertise this fact on their sites and this could be expected to increase consumer confidence, especially amongst South Africans.

18. It is also necessary that any equipment they use which is required to conform to specifications set by the SA regulatory authorities be inspectable. This does not necessarily mean that it has to be located in SA. It requires only that the companies licences enable SA inspectors to satisfy themselves that the equipment meets the requirements of the Government, particularly in terms of preventing criminal activity, including defrauding customers and ensuring adequate consumer protection.
19. It is not possible to protect land-based operations from cheaper competition from the internet. However, such competition is likely to be more damaging if such competition comes from unregulated sites abroad than from well-regulated South African sites which, of course many existing SA gambling companies may be expected to operate successfully themselves and where they will enjoy distinct advantages in respect of marketing and reputation.
20. For what it's worth, my own view remains that remote gambling – at least in the medium term – is more likely to supplement rather than to supplant land-based gambling in the same way that video rentals supplement rather than supplant cinema visits.

Prof Peter Collins

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