Bibliography


Akehurst, M (1972–3), ‘Jurisdiction in International Law’ British Yearbook of International Law 46 145–266.


Bigos, O (2005), ‘Jurisdiction over Cross-border Wrongs on the Internet’ International and Comparative Law Quarterly 54 (3) 585.


Droz, G (1972), La Compétence Judiciare et l’Effet des Jugements dans la Communauté Économique Européenne (Dalloz).


Bibliography  


Franssen, J and R Budik (2005), ‘The European Remote Gambling Market’ Casino Lawyer (Fall) 8–9.


Howells, G and S Weatherill (2005), Consumer Protection Law (2nd edn (Farnham: Ashgate).


Laurent, F (1881), *Le Droit Civil International* (Brussels).


Mann, F A (1964), ‘The Doctrine of Jurisdiction in International Law’ *Recueil des Cours* 11 (1) 1–159.


Molfa, M (2005), ‘US Legislation on Cross-border Gambling Violates the
Murphy, J (2007), Street on Torts (12th edn) (Oxford: Oxford University Press).


Schwartz, D (2005), *Cutting the Wire* (Reno, NV: University of Nevada Press).


Social Sciences Research Centre of the University of Hong Kong (2005), *Study on Hong Kong People’s Participation in Gambling Activities Key Statistics*.


Van der Hof, S (2003), ‘European Conflict Rules Concerning International
Online Consumer Contracts’ (June) Information and Communications Technology Law 12 (2) 165.


Volk, A (2006), Glückspiel im Internet (Cologne: Carl Heymanns Verlag).


addiction see under problem gambling
advertising
children, and 129–3, 169
Directive 84/450/EEC
misleading/comparative advertising 244, 247–9
Interactive Gaming Council Code
76
online 15, 70, 72–4
online gambling, for, suppressing 122–30
Germany 38–9, 70, 82, 93
Hong Kong 70–71
regulation 70–74
UK see under UK regulatory regime
Remote Gambling Association Code
75
restrictions 123, 167–70
derogation 74, 168, 169–70
self-regulation 72, 75
age verification 16–17, 129, 155, 160
alcohol 162–3
credit card use 61–2
European Parliament, and 173–4
licensing conditions 27–8, 60–62
Remote Gambling Association Code
75–6
UK 61, 62, 68
Ahlstrom Osakeyhtio v Commission [1988] 84
Akehurst, M. 86
Alcoa case (1945) 84, 85
alcohol 162–3
Alderney
advertising 72
liberal online gambling regime 30
trade restrictions 172
Anonmar v Portugal [2003] 148–9, 160, 163
Antigua
advertising 72
regulatory regime 69–70
US, dispute with see under WTO-GATS
applicable law 223–57
contractual disputes see applicable law in contractual online gambling disputes
non-contractual disputes see applicable law in non-contractual online gambling disputes
applicable law in contractual online gambling disputes 223–36, 257
Brussels Regulation 223, 226, 232, 234, 235
business-to-business online gambling contracts 226
business-to-consumer online gambling contracts 226
Art 6, and 230–34
choice of law clause 230–32
conditions for Art 6 to apply 232–4
Rome I Regulation 223–4
Art 6 230–34
contract silent as to applicable law 228–30
determining applicable law 226–36
express choice of law clause in contract 226–8, 230
general rule under 226–30
inter-relationship with other EC legislative instruments 224–5
public policy 234–6
restrictively drafted 234
universal application 223
applicable law in non-contractual online gambling disputes 236–56, 257–8
Brussels Regulation, and 238, 239
Rome II Regulation 223, 235
‘civil and commercial matters’, meaning of 239
national rules, and 237–9
‘non-contractual obligations’, meaning of 238–9
party autonomy 239–41
public policy 254–6
restriction of free competition, disputes arising out of 249–51
tort or delict, disputes arising out of 241–3
unfair competition, disputes arising out of 244–49
determining applicable law 248–9
Directive 84/450/EEC misleading/comparative advertising 244, 247–9
Directive 2005/29/EC unfair commercial practices 244–9
universal application 238
unjust enrichment, disputes arising out of 251–4

Asia 30
Astrabet 134
AT &T Corp. v Coeur d’Alene Tribe (2002) 52
Atherton, Mike 12
Audio-visual Media Services Directive (2007) 143–4
advertising restrictions, and 167–70
country of origin rule 143–4, 167–70
average consumer, meaning of 245

banking information 109
Belgium 29, 135
Belize 30
BetOnSports Plc 45, 96
betting 5, 24
definition 5
Europe 29
exchanges 4, 13
fixed odds betting terminals 13
online odds betting terminals 29
shops 64
spread betting 13
Blair government 54
blocking access to gambling sites see filtering
Boyle, James 94
Braithwaite, John 75
Briggs, A. 214
British Gambling Prevalence Survey 2007 12–14
minors 15
British Telecommunications Plc 132
Brussels Convention 189, 196, 213, 216, 222
British Regulation applicable law see under applicable law
enforcement of judgments see enforcement of judgments
jurisdiction see jurisdictional rules in contractual online gambling disputes; jurisdictional rules in contractual online gambling disputes
Budd, Sir Alan 54
business to consumer online gambling contracts, jurisdiction in 195–207
specially protected 195–202
see also jurisdictional rules in contractual online gambling disputes
Bwin 96
Bwin v Santa Casa da Misericordia de Lisboa 159–61, 163

Calvert v William Hill Credit Ltd [2008] 65–6
Canada 107
Caribbean 30
Index

casinos 5, 29
gaming 5, 29
Germany 32, 33, 36–7, 39
history 7
Indian lands see United States (US) regulation
self-exclusion 64, 65, 66
social concerns 129
traditional games offered online 1–2, 4
virtual and online 3–4, 9
due diligence obligations 20
UK 53, 54, 57
US 43, 46, 51, 129
Central America 30
charitable, cultural, sporting activities
regulation, and see under regulatory models and policy objectives
trade restrictions, and 145, 146–7, 154–7, 159, 164, 170–73
China 104, 132
Colomer, Advocate General Ruiz-Jarabo 191
commercial practices, unfair 244–9
meaning 245–7
Commission v Greece [2006] 153–4, 166
Commission v Italy (2007) 152–3, 154, 165
Common Frame of Reference 222
communication service providers 106–8, 110, 137
conflicts of law
applicable law see applicable law enforcement see enforcement of judgments
jurisdiction see jurisdiction
consumer protection and prevention of fraud 17–18
alcohol abuse 162–3
consumer fraud 17–18
credit card chargeback 112
identity theft 18
licensing private operators 26
licensing conditions 27, 56
monopolies, and 155, 157–8, 164, 165
prohibition of gambling 25
trade restrictions 144–50, 157–61, 163–4
contractual disputes see jurisdictional rules in contractual online gambling disputes
Convention on Mutual Assistance in Criminal Matters (1959) 109
Convention on the Transfer of Proceedings in Criminal Matters (1972) 105
corruption
state monopolies 26
US 44, 53
Costa Rica 30
Council of Europe 103, 105, 109
Court of First Instance 84
credit, gambling on 119
credit cards 15, 112–13, 119
age verification 60–61
UK 67, 68
US Travel Act 50
frequently prohibited 11
crime and money laundering 19–22
Antigua 70
definition of money laundering 19
due diligence obligations 19–20, 22, 120–21
WTO/GATS 179
European Parliament, and 173–4
licensing conditions 27, 56
monopolies, and 155, 157–8, 164, 165
prohibition of gambling 25
UK 21, 63
trade restrictions, and 146–9, 151–5, 157–61, 163–6, 170, 172
virtual money 120–21
criminal jurisdiction see international law and criminal jurisdiction
cross-border services, impact of national regulation on 78–139
enforcement against person or assets 95–6
enforcement cooperation 97–111
extradition see extradition
investigative cooperation/mutual assistance 105–11
prosecution jurisdiction 104–5
enforcement within territory 111–37
blocking access to gambling sites
see filtering
domain names 121–2
financial intermediaries see financial intermediaries
suppressing local advertising 122–30
international law see international
law and criminal jurisdiction
national jurisdiction rules and online
gambling 90–94
English law 90–93
German criminal law 92–3
US subject matter jurisdiction
93–4
public-private law distinction 78–9
risk management by online gambling
providers 137–8
Cybercrime Convention (2001) 105,
106–8
Cyprus 29
Curacao 30
data
content 135
interception 109, 110, 134–5
protection
consent 16
Data Protection Directive
95/46/EC 16
EU 16–17
identity theft 18
minors 16–17
retention, EU directive on 109–10
traffic 135
DCMS 60
De Lotto case see Stichting de Nationale
Sporttotalisator v Mr Bookmaker.com Ltd
Deibert, R. 131
Denmark 132
Directives
audio-visual media services 143–4
advertising restrictions, and
167–70
country of origin rule 143–4,
167–70
data protection 16
distance selling 224–5
e-commerce 124, 125, 135
advertising restrictions, and
167–9
country of origin rule 143,
167–8
Rome I Regulation, and 224, 225
misleading/comparative advertising
244, 247–9
unfair commercial practices 244–9
Distance Selling Directive 224–5
domain names 121–2
Domenica 30
Dostoevsky, Fyodor 7
Doyle, C. 48
Dumez France and Tracoba v Hessische
Landesbank (Helaba) [1990] 216, 217
eBay 136
E-commerce Directive 2003/31/EC 74,
124, 125, 135
advertising restrictions, and 167–9
country of origin rule 143, 167–8
Rome I Regulation, and 224, 225
EFTA Court 154–9, 163–6
EFTA Surveillance Authority v Norway
[2007] 154–6, 163, 165
electronic signatures 17
enforcement of gambling regulation
avoidance 30
cross-border see under cross-border
services, impact of national
regulation on
France 95, 96, 266–7
Germany 38–9
online gambling see enforcement of
online gambling
prohibition 23, 25
service providers by indirect
enforcement 3
UK 67–8
US 41, 44–7, 96
foreign judgments 95
enforcement of judgments 259–68
appealing from first instance
enforcing court’s decision
262–8
exhaustive grounds of appeal
263
irreconcilability with other
judgments 267
Index

judgment in default of appearance 265–6
jurisdictional objections 267–8
public policy 263–5
right of appeal 262–3
limited powers of first instance enforcing court 261–2
online gambling judgment, applicability of Brussels Regulation to 260
requirements of an enforceable judgment 260–61
enforcement of online gambling 7–8
cooperation 18
notice and take down system 9
operations in different jurisdiction 9, 18
virtual worlds 9
Estonia 29
Eurojust College Guidelines 105
Europe charitable, cultural and sporting activities, funding 22
defining gambling 5
EEA 73, 3
filtering 131–7
history of gambling 6
liberal online gambling regimes 29–30
pressure to liberalize online gambling restrictions 30
restrictive gambling regimes 28–9
European Arrest Warrant 99–103, 108, 110
extradition compared 100
human rights 101–2
judicial decision 99–100
non bis idem principle 101
proportionality issues 101
European Commission 84, 161, 173
Brussels Regulation 198, 199
Rome I Regulation 199, 224, 229, 231
Rome II Regulation 254–5
WTO proceedings 182
European Convention of Human Rights fair trial, right to 28, 102
family life, privacy and respect for 101, 134
freedom of speech 89, 134
inhuman or degrading treatment 102
liberty, right to 102
punishment prescribed by law 102
European Convention on Extradition (1957) 103–4
double criminality 110
European Court of Justice advertising restrictions 168
Brussels Regulation ‘civil or commercial matters’, determining 187–93, 203
enforcement of judgments 263, 265–7
hybrid disputes 213–14
‘matters relating to tort’ determining 209–12
‘place where harmful event occurred’ 214–18
‘provisional including protective measures’ 218–20
German online betting ban, reference of 40
Rome II Regulation 235
trade restrictions 144–54, 159–66, 170–75
gambling operations as services 230
European Evidence Warrant 108–9, 110
limitations 109
European Parliament 144, 173, 254–5
European Union (EU) advertising 123, 124–5, 127–8
applicable law see applicable law arrest warrant see European Arrest Warrant conflicts of laws applicable law see applicable law jurisdiction see jurisdiction
data protection 16–17
Directives see Directives effects doctrine 84
European Evidence Warrant 108–9
extradition 103, 104
filtering 131–7
freedom to provide services 10, 73
gambling regimes 29
jurisdiction
contracts see jurisdictional rules in contractual online gambling disputes
non-contracts see jurisdictional rules in non-contractual online gambling disputes
jurisprudence on gambling prohibitions 11
Merger Regulation 84
mutual assistance 109
trade restrictions see under trade restrictions, national regulation as Treaty, EC 10, 73
Art 6 102
Art 30 162
Art 31 162
Art 60 230
Art 81 84, 250
Art 82 250
unfair competition see under unfair competition
extradition 97–104
double criminality principle 97–8
European Arrest Warrant see European Arrest Warrant
multiple requests 104–5
proceedings already commenced 104
treaty based 97, 103–4
US–UK Extradition Treaty 98–9
fair hearing 266–7
FATF 20
filtering 130–37
minors, protecting 17, 60, 129–30
nature of 130–31
financial intermediaries 111–21
anti-gambling laws against 114–19
credit cards and online gambling payments 112–13
online gambling prohibited, and 113
derivative liability 118–19
means of payment for online gambling 111–12
virtual currency in virtual worlds 119–20
Finland
internet gambling prohibitions 29
trade restrictions 145–6
Frahuil SA v Assitalia SpA [2004] 190, 191
France 174
enforcement 95, 96, 266–7
internet gambling prohibitions 29
territoriality jurisdiction 86–7
trade restrictions 171–2
fraud, consumer protection and see consumer protection and prevention of fraud
free competition restrictions, disputes arising out of 249–51
free movement of judgements principle 193
Freistaat Bayern v Blijdenstein [2004] 190
Gabriel v Schlank & Schlick [2002] 198–9
Gambelli case [2003] 149–51, 154, 155, 158, 165, 166
Gamblers, The (Dostoevsky) 7
Gambling Commission, UK 74
Codes of practice and Licensing Conditions 55, 58–9, 61, 62–7
credit gambling 67
discretion to impose licence conditions 54–5, 56, 57–9, 62–4
enforcement powers 67–8
establishment 54
gambling survey see British Gambling Prevalence Survey 2007
jurisdiction 91
money laundering 63
problem gambling 63–4
remote gambling 57–9, 62–3
age verification 61, 62, 68
revenues 3
software 58–9
role 56, 57
self-exclusion 14, 64–6
GamCare 76
gaming 5, 24
casino see under casinos
definition 5
equal chance 5
Germany 31
internet 34
machines 29, 32, 33–4, 48, 66, 145–6, 148–9, 153–6, 166
UK 5–6, 56
unlawful 31
virtual worlds 8
see also regulatory models and policy objectives

Gemeente Steenbergen v Baten [2002] 189
Gencor Ltd v European Commission [1999] 84
geolocation tools 39, 86, 137–8, 200, 206
Georgiana, Duchess of Devonshire 6–7
German Lottery Association 39
German National Society for Addiction Issues 13
German regulatory regime 30–40
addiction, combating 34–5, 36, 37
advertising 38–9, 70, 82, 93
casinos 33
online 36–7, 39
criminal offence subject to exceptions 30, 31–2
advertising 70
financial intermediaries 119, 121
impact 39
online gambling regulation 37–40, 70
self-exclusion 64–5
financial intermediaries 119, 121
(gaming 31
(gaming machines 33–4
geolocation tools 39
horse-race betting 32–3, 34
intermediaries 34
jurisdiction, criminal law 92–3
jurisprudence 34–6, 37
lotteries 31, 34, 39
objectives 34–6
online gambling
banned 29, 30, 37
enforcement policies 38–9
jurisdiction rules for regulating 92–3
legality of prohibition 40
regulation before Framework Agreement 36–7
regulation in Framework Agreement 37–40
outline of arrangements 32–4
sports betting 31, 34, 38, 39
State monopoly, constitutionality of 34–5
State regulation inconsistent 30, 37, 40
trade or profession, right to carry out 34–6
EU, and 40
legitimacy of restrictions on 35, 40
unfair competition 31

Germany
casinos 32, 33, 36–7, 39
electronic signatures in lotteries 17
filtering 132, 133, 134, 136
German Constitution 34, 35, 40
horse-race betting 31, 32–3, 34
lotteries 31, 32, 34, 39
problem gambling 13, 34–5, 36
regulatory regime see German regulatory regime
revenue from gambling 32
self-exclusion 64–5, 66
sports betting 31, 34, 38, 39
territoriality principle 82, 88–9, 92–3

Gibraltar
advertising 73
liberal online gambling regime 30
PartyGaming 46
trade restrictions 172

Gillies, L. 232–3
Giuliano Lagarde Report 228
Goddard v Google (2008) 126
Gourmet International case [2001] 168
Greater New Orleans Broadcasting 128–9

Greece
online gambling banned 29
trade restrictions 153–4

historical background to gambling 6–8
HM Customs and Excise v Schindler see Schindler case
Hoeren, Professor Thomas 39
Hong Kong problem gambling 13 regulatory regime 40–42 advertising 70–71 criminal offence subject to exceptions 40, 41 financial intermediaries 119, 121 gambling definitions 41–2 horse-race betting 40 lotteries 40 online gambling 40–41, 42 outgoing services 41 single private operator 40 sports betting 40 US bets 41 revenue from gambling 41 Hong Kong Jockey Club 40–41 human rights 11, 101–2, 137 Hungary 29 identity verification 16, 20–22 Germany 36 identity theft 18 licensing conditions 27–8 Interactive Gaming Council 21 Codes 76 interception of communications 109, 110, 134–5 international law and criminal jurisdiction 79–90 case law 86–90 effects doctrine 83–6 online gambling, and 85–6 primary or reasonable effects 85 jurisdiction rules 79–80 principles 80–83 passive personality principle 80 protective principle 80–81 territoriality, principle of 80, 81–3, 85, 94 universality principle 80, 85 internet and online gambling addiction increasing 13–14 cross-border see cross-border services, impact of national regulation on enforcement see enforcement of gambling regulation money laundering 20–21 monitoring 21 remote provision enabling 2, 7–8, 30 social concerns 129 Internet Watch Foundation 132 Iran 132 Ireland 29, 143 Isle of Man advertising 72 liberal online gambling regime 30 trade restrictions 172 Israel 103 Italy 133–4 trade restrictions 146–7, 149–53 Japan 107 judicial review 28 jurisdiction 186–222 contracts see jurisdictional rules in contractual online gambling disputes non-contracts see jurisdictional rules in non-contractual online gambling disputes jurisdictional rules in contractual online gambling disputes 186–207, 223 applying jurisdiction rules under Brussels Regulation 187–94 ‘civil or commercial matters’, meaning of 187–93 difficulties in applying rules to cross-border online disputes 191–3 expansive interpretation 188–9, 191 nature of underlying law, relevance of 190–91, 192–3 optional jurisdiction 194 private entities, dispute between 191 public entities, disputes with 188–92 subsequent jurisdiction rules 194 business-to-business online gambling contracts 202, 205–7 difficulties of determining domicile 205
Index

business-to-consumer online gambling contracts 195–205
branches and agencies 201–2
cantricts not qualifying for special protection 202–5
directed activity 197–202
harmonizing consumer legislation 201, 221
specially protected B2C online gambling contracts 195–202
‘targeting test’ proposal 199–201
nature and role of online gambling contracts 187
jurisdictional rules in non-contractual online gambling disputes 207–22
determining jurisdiction 208–9
‘matter relating to tort’, whether subject-matter is 209–12
matters relating to tort and contract 213–14
place where harmful event occurred 214–18
‘provisional, including protective, measures’ 218–20

Keen, Andrew 12
Klomps v Michel [1981] 266
Krombach v Andre Bamberski 263
Kronhofer v Marianne Maier and Others [2004] 218

Ladbrokes Ltd 39, 71
Ladbrokes Ltd v Norway [2007] 156–7, 163

Lechouritou et v Dimosio tis Omopondiakis tis Germanias [2007] 191
licensing see under regulatory models and policy objectives

Linden Lab 8–9
Lipkin Gorman v Karpnale Ltd [1991] 252
Lithuania 29
lotteries 5, 24
Germany 31, 32, 34, 39
history 6
Hong Kong 40
meaning 5–6
regulation 24, 29
state operators 29
UK 54, 56
importation of lottery tickets 144–5
National Lottery 14, 54, 56
US 42, 43
Lotus case (1927) 83–4
LTU v Eurocontrol [1976] 188

Macao
domain names 122
problem gambling 13
Malta 30
fair hearing 266–7
intervening 262–3
jurisdiction decisions 205–7, 212, 214, 217–18, 264–5, 267
Lotteries and Gaming Authority 262
trade restrictions 172
Mario Cisneros v Yahoo and Google (2008) 126
Mark 6 Lottery 40
Mastercard International Inc Internet Gambling Litigation, Re (2002) 46

minors, protection of see protection of minors
money laundering see crime and money laundering
Monte Carlo 96
mutual trust principle 193
national courts and trade restrictions 170–72
National Indian Gaming Commission 52
Netherlands enforcement 96
filtering 132
jurisdiction decisions 205–7, 211–12, 214, 218
online gambling banned 29
Netherlands State v Ruffer [1980] 188–9
New Zealand
financial intermediaries 119, 121
problem gambling 13
non-contractual disputes see jurisdictional rules in non-contractual online gambling disputes
Norway 13, 132, 134
trade restrictions 154–6
Obama administration 183
Office of Fair Trading, UK 250
OpenNet Initiative 134
organized crime
licensing private operators 27
links to gambling 18
money laundering, and see crime and money laundering
US see under United States (US)
outgoing services
domestic services, and 2–3, 24–5
Hong Kong 41
regulatory models and policy objectives 2–3, 24
UK 98

PartyGaming 46
pathological gambling see under addiction
People v World Interactive Gaming Corporation (1999) 82
Perrin case [2002] 89–90
Petry, Nancy M. 14–15
Placanica case 149, 151–2, 154, 160, 165, 166
Pocket Kings Ltd v Safenames Ltd [2009] 122
Poland 29
Portugal
internet gambling prohibitions 29
trade restrictions 148–9, 159–61
Preservatrice fonciere TIRAD SA v Staat der Nederlanden [2003] 190
private international law 78
private operators see under regulatory models and policy objectives
problem gambling
addiction 2, 11–15, 154
European Parliament views 173
monopolies, and 155–8, 164
trade restrictions, and 154–8, 166, 170, 173
British Gambling Prevalence Survey 2007 12–14
consequences 12, 64
definition of problem gambling 12
debt 2, 6–7, 11, 67
see also credit, gambling on
European Parliament, and 173–4
Germany see under Germany
Interactive Gaming Council Code 76
internet and online gambling, increased by 13–14
licensing conditions 27
minors 15
monopolies, and 145–6, 154–8, 164, 165
online gambling more addictive 173
pathological gambling 12, 13, 14–15
Antigua 69
prohibition of gambling, and 25
Remote Gambling Association Code 75, 76
trade restrictions, and 154–8, 163–4, 166, 170
types of gambling and different risks 158, 166
UK 13, 14, 63–4, 68
Remote Gambling Association Code 75, 76, 246
US 13, 14–15
self-exclusion 14
Antigua 69
casinos 64, 65, 66
duty of care 65–6
Germany 64–5, 66
national systems 64–5, 66
remote gambling 64
UK 14, 64–6
prohibition of gambling see under regulatory models and policy objectives
proportionality principle 11
Index

protection of minors 15–17
advertising 129–3, 169
age verification 16–17
data protection 16–17
debts 15
filtering see filtering
internet gambling 15
licensing conditions 27–8, 56
prohibition of gambling 25
UK 60–62, 91, 102
US 136
WTO/GATS 179
public entities 188–90
public gambling provision 1
reasons against gambling 1–2
moral reasons 1, 2, 11, 23
gambling as vice 2, 10
regulation, and 11
risks of gambling 2, 3
financial losses 2, 6–7, 11,
15–16
problem gambling see problem
gambling
socially harmful 10
reasons for gambling
human rights 11
legitimate pursuit 2, 10–11
lucrative 1
neo-liberal economic arguments 2,
10–11
profits to good causes 2, 10, 22
trade liberalization 10–11
Rees, P. 214
regulatory models and policy objectives,
23–77
advertising regulation see under
advertising
Antigua see Antigua
creation of criminal offences 23
domestic and foreign providers 24
domestic services and outgoing
services 2–3, 24–5
Europe 28–9
Germany see German regulatory
regime
Hong Kong see under Hong Kong
licensing private operators 23, 26–8,
29
conditions 27–8
judicial review 28
ongoing supervision 28
limiting gambling to charitable
entities 2, 10, 22, 23, 29
limiting gambling to state monopolies
1, 10, 23, 25–6, 29
funding charitable, cultural and
sporting activities 2, 10,
22, 25
online gambling 24
prohibition raising barriers to
entry 25
effect of state monopoly, 26
overview 23–30
piecemeal approach 24
pressure to liberalize online gambling
restrictions 30
prohibition 1, 2–3, 18, 23, 25
self-regulation role 74–6
UK see under United Kingdom (UK)
US see US regulatory regime
Reichert v Dresdner Bank A.G. [1992]
210
Remote Gambling Association 75–6
Social Responsibility Code 75, 76,
246
revenues from gambling see under States
Riefa, C. 232
Rome Convention on the Law
Applicable to Contractual
Obligations 199, 224, 225, 226
228–9, 231–2, 235
Rome I Regulation
applicable law, and see under
applicable law
jurisdiction, and 199, 200, 221,
222
Rome II Regulation
applicable law see under applicable
law in non-contractual on-line
gambling disputes
jurisdiction 222
risk management by online gambling
providers 137–8
risks of online gambling
addiction see under problem
gambling
financial losses 2, 6–7, 11
minors 15–16
Royal Bank of Scotland 49
Julia Hörnle and Brigitte Zammit - 9781848443020
Downloaded from Elgar Online at 12/13/2018 10:19:13AM
via free access
**Cross-border online gambling law and policy**

*Ruffer case* see *Netherlands State v Ruffer*
Russia 103

*SA Regie Nationale des Usines Renault v SpS Maxicar and Orazio Formento* [2000] 262
Saudi Arabia 132

Schengen Implementation Convention (1990) 109

*Schindler case* [1994] 144–5, 146, 147, 153

Second Life 8–9

enforcement by notice and take down system 9

gambling 9

virtual money converting 120

self-regulation see under problem gambling

self-regulation, role of 74–6

insufficient to address regulatory concerns 174

*Shevill v Presse Alliance SA* [1995] 216
Singapore 13

Slovakia 29

social policy and regulatory models 10–77

motives of regulation 10–11

regulatory models and policy objectives see regulatory models and policy objectives

social policy objectives and online gambling risks 11–23

addiction see addiction charitable, cultural and sporting activities, funding 2, 10, 22

consumer protection see consumer protection and prevention of fraud

crime see crime and money laundering

protection of minors see protection of minors

see also charitable, cultural, sporting activities

*Somafer SA v Saar-Ferngas AG* [1978] 201

*Sonntag v Waidmann* [1993] 189

South Africa 103, 107

sovereignty 78, 79–81, 100

Spain 104

Sportingbet 96

sports betting 4, 13

charitable funding 22

Germany 31, 34, 38, 39

match and race fixing 18, 173–4

minors 15

see also charitable, cultural, sporting activities

spread betting 13

St Kitts 30

*State ex rel Nixon v Coeur d’Alene Tribe* (1999) 51

states

attracting gambling providers 1, 2–3

cross-border services see cross-border services, impact of national regulation on monopolies 162–3, 165

see also under regulatory models and policy objectives

national courts and trade restrictions 170–72

policy objectives see social policy and regulatory models

revenue from gambling 1, 2, 10, 11, 29

monopolies, and 155, 162–3, 164, 170

trade restrictions, and 149–50, 153, 155, 164, 170, 172

trade restrictions see trade restrictions, national regulation as

*Stichting de Nationale Sportotalisator v Mr Bookmaker.com Ltd* [2005]

202, 205–7, 211–12, 214, 218, 220

Sweden 13, 132

advertising restrictions 168

trade restrictions 162–3

Switzerland 13

Tasmania 72

*Toben case* (2001) 88–9

Tipp24 39

trade restrictions, national regulation as 11, 24, 110–11, 140–75, 184

advertising restrictions 123, 167–70

derogation procedure 74

Julia Hörnle and Brigitte Zammit - 9781848443020
Downloaded from Elgar Online at 12/13/2018 10:19:13AM via free access
diversity of regulatory models and harmonization 142, 173–4
EU Treaty provisions 140–42
freedom to provide services 144–66
eyearly case-law 144–9
liberalization, towards 149–54
taking steps back 154–61
national courts 170–72
necessity test 152, 158–9, 165–6
no country of origin regulation 142–4
proportionality test 141–2, 157–61, 164, 165, 166, 184
advertising restrictions 168
nature of risks, and 166
questioning national measures 149–54
soft 144, 146, 147, 149
recent developments and policy 173–4
State monopolies 162–3, 170
summary of ECJ/EFTA Court jurisprudence 163–6, 170–75
TRIPS agreement 181, 182
Turkey 96
types of gambling
betting see betting
casinos see casinos
e-mail gambling 50
gaming see gaming
lotteries see lotteries
online gambling 3–4
betting 13
betting exchanges 4, 13
poker tournaments 4, 8, 9
sports see sports, betting on
virtual casinos see casinos, virtual and online
virtual racing 4, 24
virtual world gambling see virtual world gambling
UK regulatory regime 53–68
advertising 54, 71–5
children, to 60, 71
foreign operators 72–3, 91
online 72–4
self-regulation 72, 75
age verification 61, 62, 68
Betting and Gaming Act (1960) 53–4
Betting and Gaming and Lotteries Act (1963) 53–4
casinos 53, 54, 57
credit gambling 67, 68
definitions of gambling 5, 55
domain names 122
enforcement 67–8
creation of criminal offences 59–60
outgoing services 98
Gambling Appeals Tribunal 68
Gambling Commission see Gambling Commission, UK
Gambling Review Body 54
Gambling Act (1892) 67
Gambling Act (1968) 54
gaming and betting 5–6, 56
Gaming Board for Great Britain 54
history 53
jurisdiction rules 90–92, 102
licences 57–9
licensing objectives 56
lotteries 54, 56
open licensing system 54, 56
online gambling 54, 55, 68
age verification 60–62
European Arrest Warrant, and 103
jurisdiction rules for regulating 90–92
minors’ protection 60–62
offences 59–60
remote gambling 54–5, 56, 57–8
protection of minors 60–62, 91, 102
remote gambling licences 57–9
self-exclusion 14, 64–6
summary of regime 54–6
unlicensed gambling 59–60
virtual gambling and betting 57
see also United Kingdom (UK)
unfair competition
EU 40, 84, 244–51
Directive 84/450/EEC misleading/comparative advertising 244, 247–9
Directive 2005/29/EC unfair commercial practices 244–9
Germany 31
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unibet</td>
<td>96</td>
</tr>
<tr>
<td>United Kingdom (UK)</td>
<td></td>
</tr>
<tr>
<td>Advertising Standards Authority</td>
<td>71–2</td>
</tr>
<tr>
<td>casinos</td>
<td>53, 54, 57</td>
</tr>
<tr>
<td>Consumer Credit Act (2006)</td>
<td>67</td>
</tr>
<tr>
<td>consumer protection</td>
<td>67, 68</td>
</tr>
<tr>
<td>Criminal Justice Act (1993)</td>
<td>92</td>
</tr>
<tr>
<td>extradition</td>
<td>97</td>
</tr>
<tr>
<td>illegal online gambling</td>
<td>98</td>
</tr>
<tr>
<td>US, treaty with</td>
<td>97, 98–9, 103</td>
</tr>
<tr>
<td>European Arrest Warrant</td>
<td>102–3</td>
</tr>
<tr>
<td>filtering</td>
<td>132, 133</td>
</tr>
<tr>
<td>Fraud Act (2006)</td>
<td>92</td>
</tr>
<tr>
<td>gaming and betting</td>
<td>56</td>
</tr>
<tr>
<td>Human Rights Act (1998)</td>
<td>101</td>
</tr>
<tr>
<td>lotteries</td>
<td>54, 56</td>
</tr>
<tr>
<td>importation of lottery tickets</td>
<td>144–5</td>
</tr>
<tr>
<td>National Lottery</td>
<td>14, 54, 56</td>
</tr>
<tr>
<td>money laundering</td>
<td>21, 63</td>
</tr>
<tr>
<td>Obscene Publications Act (1959)</td>
<td>89</td>
</tr>
<tr>
<td>outgoing services</td>
<td>98</td>
</tr>
<tr>
<td>problem gambling</td>
<td>13, 14, 63–4, 68</td>
</tr>
<tr>
<td>Remote Gambling Association Code</td>
<td>75, 76, 246</td>
</tr>
<tr>
<td>self-exclusion</td>
<td>14, 64–6, 76</td>
</tr>
<tr>
<td>regulatory regime</td>
<td>see UK regulatory regime</td>
</tr>
<tr>
<td>remote gambling</td>
<td>14</td>
</tr>
<tr>
<td>revenue from gambling</td>
<td>54</td>
</tr>
<tr>
<td>territority principle</td>
<td>89–90, 92</td>
</tr>
<tr>
<td>trade restrictions</td>
<td>144–5, 172</td>
</tr>
<tr>
<td>United States (US)</td>
<td></td>
</tr>
<tr>
<td>Antigua, dispute with see under</td>
<td></td>
</tr>
<tr>
<td>WTO-GATS</td>
<td></td>
</tr>
<tr>
<td>Constitution</td>
<td>43, 95, 128, 136–7</td>
</tr>
<tr>
<td>Cybercrime Convention</td>
<td>107</td>
</tr>
<tr>
<td>casinos</td>
<td>43, 46, 51, 129</td>
</tr>
<tr>
<td>Department of Justice</td>
<td>53, 96, 177, 181</td>
</tr>
<tr>
<td>effects doctrine</td>
<td>84–5</td>
</tr>
<tr>
<td>extradition</td>
<td></td>
</tr>
<tr>
<td>bilateral treaties</td>
<td>103, 104</td>
</tr>
<tr>
<td>EU, treaty with</td>
<td>103, 104</td>
</tr>
<tr>
<td>UK, treaty with</td>
<td>97, 98–9, 103</td>
</tr>
<tr>
<td>filtering</td>
<td>131, 136–7</td>
</tr>
<tr>
<td>General Accounting Office</td>
<td>21</td>
</tr>
<tr>
<td>horse-race betting</td>
<td>43, 52–3</td>
</tr>
<tr>
<td>Indian lands</td>
<td>29, 51–2, 129</td>
</tr>
<tr>
<td>interstate horse-racing</td>
<td>29</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>52</td>
</tr>
<tr>
<td>pressure to liberalize online gambling restrictions</td>
<td>30</td>
</tr>
<tr>
<td>problem gambling</td>
<td>13, 14–15</td>
</tr>
<tr>
<td>regulatory regime see US regulatory regime</td>
<td></td>
</tr>
<tr>
<td>revenue from gambling</td>
<td>129</td>
</tr>
<tr>
<td>sports betting</td>
<td>42, 43, 45, 46, 47, 53</td>
</tr>
<tr>
<td>territority principle</td>
<td>82</td>
</tr>
<tr>
<td>United States v Aluminium Co of America (1945)</td>
<td>84, 85</td>
</tr>
<tr>
<td>United States v Corrar (2007)</td>
<td>50</td>
</tr>
<tr>
<td>United States v McDonough (1988)</td>
<td>46</td>
</tr>
<tr>
<td>United States v Ross (1999)</td>
<td>82</td>
</tr>
<tr>
<td>United States v $6,976, 934.65 (2007)</td>
<td>48–9</td>
</tr>
<tr>
<td>unjust enrichment, disputes arising out of</td>
<td>123–9</td>
</tr>
<tr>
<td>US regulatory regime</td>
<td>42–53</td>
</tr>
<tr>
<td>advertising</td>
<td>47, 50</td>
</tr>
<tr>
<td>suppressing</td>
<td>123–9</td>
</tr>
<tr>
<td>arrests/prosecutions of foreign nationals</td>
<td>96</td>
</tr>
<tr>
<td>banning gambling</td>
<td>8–9</td>
</tr>
<tr>
<td>casinos</td>
<td>43, 46, 51, 129</td>
</tr>
<tr>
<td>charitable gambling</td>
<td>42, 48</td>
</tr>
<tr>
<td>conspiracy</td>
<td>53, 118–19</td>
</tr>
<tr>
<td>corruption</td>
<td>44, 53</td>
</tr>
<tr>
<td>cross-border gambling</td>
<td>29, 46, 48, 49–50</td>
</tr>
<tr>
<td>derivative liability</td>
<td>118–19</td>
</tr>
<tr>
<td>domain names</td>
<td>121–2</td>
</tr>
<tr>
<td>enforcement</td>
<td>41, 44–7, 96</td>
</tr>
<tr>
<td>foreign judgments</td>
<td>95</td>
</tr>
<tr>
<td>Federal Communications</td>
<td></td>
</tr>
<tr>
<td>Commission</td>
<td>128, 129</td>
</tr>
<tr>
<td>federal regulation</td>
<td>43–4</td>
</tr>
<tr>
<td>Crime Control Act, 53</td>
<td></td>
</tr>
<tr>
<td>exceptions in statutes</td>
<td>51–3</td>
</tr>
<tr>
<td>Federal Communications Act (1934)</td>
<td>128</td>
</tr>
<tr>
<td>Illegal Gambling Business Act</td>
<td>47–9, 53, 178</td>
</tr>
<tr>
<td>Indian Gaming Regulatory Act</td>
<td>51–2</td>
</tr>
</tbody>
</table>
Interstate Horseracing Act  52–3, 179, 180–82
Interstate Transportation of Wagering Paraphernalia Act  50–51, 53, 94
Racketeer Influenced and Corrupt Organizations Act  53, 118–19
seizure of funds  48–9
Travel Act  49–50, 53, 94, 178
Unlawful Internet Gambling Enforcement Act (2006)  114–18
Wire Act  44–7, 53, 82, 94, 119, 124, 126, 137, 178, 180–81
financial intermediaries  114–18, 121
aiding, abetting and conspiracy  118–19
foreign and interstate gambling  44, 45
horse-race betting  43, 52–3
illegal gambling business, definition of  47–8
Indian lands  42, 51–2, 129
jurisdiction  93–4
lotteries  42, 43
online gambling  42, 44–51
cross-border  50
financial intermediaries  114–18
horse-race betting  52–3
Indian lands  51–2
jurisdiction rules for regulating  93–4
organized crime  44
protection of minors  136
sports betting  42, 43, 45, 46, 47, 53
online casinos  46
State regulation  29, 42–3
inconsistent  42, 53
see also United States (US)

Vanuatu  30
Verein für Konsumenteninformation (VfK) v Henkel [2002]  189, 210–11
Villeneuve, N.  131
Virgin Islands, British  49
Virgin Islands, US  30
virtual world gambling  8–9, 119–21
enforcement  9
potential applications  8
use of platform for cross-border activities  9
virtual money regulation  120–21
virtual racing  4, 120

Wood Pulp case [1988]  84
World Health Organisation International Classification of Diseases  12
WTO-GATS  11, 175–85
advertising, restrictions on  123
dispute between Antigua and US  53, 139, 175, 177–9
implementation of rulings  180–83
significance of case  183–4
European Commission proceedings  182
international negotiations on market access  176–7
most favoured nation principle  176
proportionality test  179
purpose of GATS  176
remote provision of services provisions  176–7
restrictions exceptions  177, 178–9, 181–2

Yahoo case (2000)  86–7, 95

Zenatti, Questore di Verona v [1999]  146–7, 150, 165