



Statement for the Record of

Harlan W. Goodson,

President, Interactive Skill Games Association

Before the

House Committee on the Judiciary

Hearing on “Establishing Consistent Enforcement Policies in the

Context of Online Wagers”

November 14, 2007

Mr. Chairman and Members of the Committee, thank you for the opportunity to submit written testimony on behalf of the Interactive Skill Games Association (“ISGA”). We appreciate the Committee examining the important issues surrounding the Unlawful Internet Gambling Enforcement Act (“UIGEA”), and are grateful for your willingness to consider the views of the interactive skill games industry.

ISGA is a trade association created to help shape the growth of the North American interactive skill games sector in compliance with Federal and state law, and to promote public understanding of the sector. A skill game is a contest that is won by the person who plays most skillfully. Well-known skill games include chess and trivia quizzes. They also include competitions in popular casual games, like Bejeweled, Scrabble Cubes and Tetris, in which players compete against other players for cash and prizes. More broadly, they include tournaments that appeal to many adults in the United States and abroad, and range from arcade-style games that may appeal to younger adults, to word or trivia games that may appeal to older adults. All of the leading Internet sites, including AOL, MSN, Yahoo! and hundreds of other popular Web destinations, offer skill games on their sites.



In contrast to games of chance, no person can expect to win a skill competition by mere random moves or solely as a result of one or more favorable chance events. Instead, skill competitions are based upon the fact that all participants begin on a level playing field and it is the one who plays with the greatest degree of skill who prevails in the end. For example, a two-person solitaire competition, which may be structured much like a duplicate bridge tournament, is distinguished from a game of chance because both players will receive a deck with an identical sequence of cards, thereby requiring the player's skill to determine the winner of a game. Chance is not the determining factor in skill games because skill involves: (a) the exercise of quickness or acuteness of sense perceptions; (b) intellect; (c) keenness of discernment or penetration with soundness of judgment; and/or (d) the ability to see what is relevant and significant. Playing and practicing skill games assists in the development of these skill sets. Ultimately, the player's skill, and not chance or other fortuitous circumstances, is the determining factor in the outcome of skill competitions.

Skill games have significant social value. Skill competitions like spelling bees have long been used to teach valuable skills to children and adults. There is also scientific support for the benefits of skill games. For example, a June 2003 study published in the *New England Journal of Medicine* found a significantly lower cumulative risk of dementia for elderly persons who play skill games compared to those who do not. This study appears consistent with the reduction of the risk of Alzheimer's. In another study, researchers at Case Western Reserve Medical School in Cleveland compared the leisure time activities of more than 550 people, nearly 200 of whom went on to develop Alzheimer's. The study found that "those who had engaged in stimulating activities throughout their life - everything from reading, doing crossword puzzles, and playing bridge, chess, or board games to visiting friends, practicing a musical instrument, and bicycling - were 2 1/2 times less likely to get Alzheimer's."

Interactive skill games are played competitively between individuals, not against the "House" or a "bank", and so the operator has no incentive to make the games particularly hard, other than for the enjoyment of the player. Players typically participate in a community experience, competing with each other in small structured tournaments where the winner takes the pot. Skill game operators act as impartial tournament hosts. They have no vested interest in the outcome of each competition.

Interactive skill games companies are growing quickly in number and size and include companies based in the United States as well as companies owned and operated by multinational media corporations. Building and maintaining skill sites involves many highly skilled individuals including game developers, graphic artists, computer programmers, animators, system analysts, accountants, and



many other employees. To pay their employees and add value for customers, skill games companies need to have revenue which is typically generated by collecting user fees. These fees are typically modest as competition tends to set pricing. The most common method is to invite persons to compete in a tournament or competition for a small fee with a cash or merchandise prize. This is akin to local bowling tournaments, spelling bees, baking contests or cheerleading competitions, where competitors pay a small entrance fee to enter and have the opportunity to win prizes. The entry fees defray the cost of hosting the competitions and furnishing prizes. The most common skill game tournaments involving 2-3 players have typical entry fees of approximately \$2.00 for a game that will generally last from three to five minutes with an average prize of about \$6.00.

For several years, the interactive skill games industry has steadily grown to serve millions of Americans. These players are not persons who you will read about in the media as either having won millions (like the latest state lottery winners) or who suffer devastating losses because of a gambling problem. The skill games players are simply everyday folks who enjoy entertaining themselves by participating in challenging skill competitions. According to industry surveys, two-thirds of the players frequenting skill games sites are women, with more than half between the ages of 25 and 54. Additionally, most of the players are married, and many have children. The players are drawn to skill games competitions for the challenge of competing against other players of equal ability, and also the mental escape associated with being engrossed in their favorite word, card or arcade games. Yet, the skill games industry has been drawn into a debate that is not pertinent to its industry but where the fallout from the debate and related federal government action threaten its very existence.

The debate over the social ills some people associate with gambling resulted in the passage of the UIGEA. The ISGA believes that the proposed regulations implementing UIGEA will have a profound negative impact on this legal and socially beneficial past time which is not, and should not be considered, gambling. UIGEA was enacted in response to the growth of the Internet gambling industry. That it never was intended to apply to pure skill games just because they can be played over the Internet is evident by legislative history. Yet, contrary to congressional intent in passing UIGEA, proposed federal regulations could unduly restrict the lawful skill games industry.

Under UIGEA, two agencies, the Board of Governors of the Federal Reserve System and Departmental Offices and the Department of the Treasury (collectively the "Agencies"), had a nine-month period (until July 2007) to propose rules (in consultation with the Department of Justice) to implement applicable provisions of UIGEA. Specifically, these regulations were intended to provide



guidance to the payment systems used by credit card companies, banks, payment networks including electronic fund transfers (“EFT”), stored value or money transmitting services, EFT terminal operators, and money transfer businesses (hereinafter, the financial transaction providers, or “FTP”) to: (a) identify and code restricted transactions; and (b) block the restricted transactions.

Restricted transactions are those transactions through which a gambling business accepts funds directly or indirectly from a player in connection with unlawful Internet gambling. UIGEA defines “unlawful Internet gambling” as “to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or state law in the state in which the bet or wager is initiated, received, or otherwise made.”

None of these definitions has any application to skill games. Simply, UIGEA was not intended to block lawful gaming transactions such as skill games. The proposed Agency rules, however, do not attempt to distinguish lawful skill competitions from illegal gambling games. The proposed regulatory solution as it relates to distinguishing legal and illegal gambling transaction is to shift the burden to particular FTPs in the financial transaction chain, with no guidance and only downside regulatory liability. Consequently, the regulations, as written, place the entire burden as to what are “lawful” or “unlawful” transactions on the FTPs.

The proposed Agency rules require certain FTPs to establish policies and procedures to terminate relationships with others who they think may have any connection with unlawful Internet gambling. By not defining “unlawful Internet gambling” the FTPs are left to simply apply whichever standards they decide to adopt. Some have indicated that they will terminate any relationship with those who offer competitions for prizes because the cost of doing due diligence to assure that the competitions are skill-based is too high. This results in shifting the fundamental purpose of the rulemaking under UIGEA to the FTPs to make policy and procedural decisions central to implementing UIGEA.

The Agencies have justified the refusal to establish procedures to ensure that legal gambling transactions are not blocked by claiming that “UIGEA does not provide the Agencies with the authority to require designated payment systems or participants in these systems to process any gambling transactions, including those excluded from the UIGEA’s definition of unlawful gambling if a system or participant decides for business reasons not to process such transactions.” Yet, the primary business reason for terminating business with skill-based companies is that the failure to adopt clear standards in the



rulemaking process creates due diligence costs that can be avoided by simply excluding service to the lawful skill games industry.

Most financial institutions want no part of the expense associated with this monumental undertaking and lack the necessary knowledge to conduct such an investigation into the legality of different Internet activities (whether it be illegal versus legal gambling or illegal gambling versus legal skill competitions). Therefore, their natural inclination is not to engage in any reasoned analysis to distinguish between a lawful industry like that represented by ISGA, but to assume that all transactions involving prizes are restricted and to ban any contact with the financial institutions' counterparts that deal in any way with sites that allow persons to win anything. For instance, as the commentary in the proposed regulations already notes: "payment system operators have indicated that, for business reasons, they have decided to avoid processing any gambling transactions, even if lawful ...." This is the natural inclination not only for lawful gambling transactions but also lawful skill contests and competitions. The skill games industry is already experiencing significant instances of financial institutions engaging in this reasoning.

The debate surrounding Internet gambling is not our debate, yet the consequences of the proposed remedy profoundly impact our business, our customers and our employees. Defining lawful skill games is not a difficult challenge. For example, the UIGEA contains an exception for fantasy sports. Without debating the relative merits of the skill aspects of fantasy sports versus, for example, chess, the exemption shows that carefully drafted definitions can easily protect the skill games industry without compromising the intent of UIGEA.

A great disservice is being done to millions of Americans who play skill games, to the companies and their investors that have built the legal skill games industry and to the thousands of skilled workers who earn a living in this vibrant industry.

We urge Congress to carefully review this issue and further clarify to the Federal Reserve Board and the Department of Treasury that they have an affirmative obligation to protect innocent industries from collateral damage resulting from the Internet gambling debate.

Mr. Chairman and Members of the Committee, thank you again for the opportunity to present ISGA's views on these important issues. I am available to discuss these issues further with Members and staff of the Committee.