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Research over rumour



Online gaming inspires polarised and passionate debate, and so has quickly become obscured by myth and innuendo. But when the outcome of this debate could affect Europe's market leadership, people's jobs and freedom of consumer choice, we need dispassionate consideration of the facts.

This is why the promotion of facts, figures and peer-reviewed research is an integral part of our remit. For this second edition of the EGBA News, you can read about Harvard University's groundbreaking research on addiction in online gaming, the latest market overview of the European online gaming market, as well the legal analysis of the concrete evidence Member States need to provide in order to justify market restrictions in the sector.

There's an old phrase, "Don't let facts stand in the way of a good story". EGBA is ensuring that the 'stories' of those with vested interests don't get in the way of the facts. Our message is simple: clarity over confusion, openness over obscurity, and research over rumour.

Sigrid Ligné, EGBA Secretary General



Facts versus fiction

Using actual internet gambling data to advance science and public policy



Howard J. Shaffer from
Harvard Medical School
explains the importance
of industry-research
collaboration.

To guide the development of public policies related to internet gambling, there is an ongoing need for quality scientific research about internet gambling.

Most gambling research utilises self-report – what study participants say about their gambling patterns and experiences – but this methodology is vulnerable to problems of memory, human error, and self-presentation biases. To avoid these problems and accurately describe internet gambling, as well as the factors that influence the development and maintenance of gambling-related problems, researchers need to examine actual internet gambling behaviour¹. Scientific studies of actual internet gambling require cooperation between the gaming industry and scientists. For example, bwin Interactive Entertainment AG (bwin) and Harvard Medical School faculty at the Division on Addictions (DOA) at the Cambridge Health Alliance are engaged in a diverse research agenda that rests primarily on the actual internet gambling behaviour of bwin subscribers.

The unique collaboration already has produced numerous publications available through peer-reviewed scientific journals. In the first seven database studies, we identified a cohort of more than 40,000 bwin subscribers representing more than 80 countries who registered during February 2005.

Epidemiological findings contradict the conventional view that most Internet gamblers exhibit excessive gambling behavior^{2,3,4}. Instead, the evidence shows that the vast majority of bwin subscribers engage in moderate betting behavior (e.g., 2.5 fixed-odds sports bets of €4 every fourth day, or 1 casino play every 2 weeks). These research studies also have identified some potentially vulnerable subscriber population segments of most involved bettors. Unlike the majority of subscribers who demonstrate rapid and profound adaptation to internet gambling, the most involved bettors maintain or increase their betting behaviour for a longer period of time⁵.

Finally, consistent with bwin's goal to promote responsible internet gambling, DOA researchers also have conducted product safety research^{6,7}.

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⁷ Nelson SE, LaPlante DA, Peller AJ, Schumann A, LaBrie RA, Shaffer HJ. Real limits in the virtual world: self-limiting behavior of Internet gamblers. *Journal of Gambling Studies* 2008;24:463-77.

⁸ Xuan Z, Shaffer HJ. How do gamblers end gambling: longitudinal analysis of Internet gambling behaviors prior to account closure due to gambling related problems. *Journal of Gambling Studies* in press.



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Findings from these studies suggest that:

- The use of self-defined limits and closing options for internet gambling can be useful tools for promoting responsible gambling practices.
- Interestingly, among gamblers who closed their accounts because of gambling-related problems, the research has yielded some surprising results: these account closers became more conservative gamblers as they approached their account closing. They placed fewer, larger bets on propositions that were less risky⁸.

Though these efforts provide researchers and the industry with important findings that can inform the development of strategies for dealing with gambling-related problems, with greater availability of data, exponential advancement is possible. Consequently, in a move to make scientific research more openly accessible and enhance public confidence in privately-sponsored scientific findings, with the founding sponsorship of bwin, the DOA has launched “The Transparency Project” (www.thetransparencyproject.org). Started in February 2009, this web-based data repository is the world’s first publicly available data repository for privately-funded addiction-related research datasets, including gambling.

The Transparency Project allows scientists and stakeholders from around the world to engage for the first time in the exchange of quality-reviewed data from privately-funded research. The availability of these datasets will help foster more rapid growth in knowledge related to addictive behaviour and advance the process of finding answers to global public health concerns. We invite and encourage other scientists and companies to create data contributions to the Transparency Project.

The collaboration between bwin and DOA represents a research model that already is yielding important findings. As industry-research partnerships emerge and evolve, we can advance our collective knowledge about internet gambling. Gaining this knowledge is essential to advance our shared goal of preventing or alleviating the burdens caused by addictive behaviors. ■

Y. Evelyn Chao, Ph.D.
Debi A. LaPlante, Ph.D.
Howard J. Shaffer, Ph.D.

Harvard Medical School, Division on Addictions, The Cambridge Health Alliance

www.divisiononaddictions.org

Europe leads on interactive gaming... but for how long?



H2 Gambling Capital, the leading independent global gaming analyst, finds that Europe has consolidated its position as the largest market for eGaming, but the continent's dominance may be under threat. **Simon Holliday, Director at H2 Gambling Capital**, looks at the facts.

H2 Gambling Capital's analysis of the global interactive gambling industry (internet, mobile, ipTV) in 2008 shows a year of European consolidation, with the continent retaining its title as the largest eGaming region. Of the €17.1bn of gross win (stakes minus winnings) generated globally in 2008, more than 40 per cent was attributable to European players, up from less than 32 per cent in 2006.

The €6.9 billion of gross win generated by Europe's online gambling industry in 2008 represented only 7.7 per cent of the continent's total gambling business, up from 6.3 per cent in the previous year. This compares to the corresponding global figures of 6.7 per cent and 5.5 per cent. Going forward, we expect interactive gambling to account for over 12 per cent of European gross win by 2012 and over 9

per cent globally, though the latter could be significantly higher should the US go down the regulatory route. During 2008, sports betting remained the most popular European interactive gambling product, accounting for just over €2 billion in gross win — equivalent to 29 per cent of the total market.

The European market grew at an average rate of 36 per cent between 2005 and 2008. This isn't just because of developing private operators businesses — state monopolies have been growing faster in recent years. In France, for example, PMU's interactive turnover reached approximately €588m in 2008, with its horserace-only gross win nearly 65 per cent of bwin's total sports betting revenues, 33 per cent greater than the equivalent combined number for Ladbrokes and William Hill.

Including lotteries, state monopolies accounted for over 26 per cent of Europe's interactive gambling during 2008. In Scandinavia, the proportion was much higher, with an estimated share of around 40 per cent.

With the notable exceptions of Austrian Lotteries' WebClub and Veikkaus' Onnet, which have operated as early as 1998,

state monopolies have been late to online gaming. But they are moving into the space quickly. Spain's Loterías y Apuestas del Estado established an internet presence last year, and the online market share of the monopolies and former monopolies is set to grow.

Europe's lead, however, could soon be challenged by changing attitudes in the US. We could see the US online gambling market regain its mantle as the largest in the world unless there is acceleration in the rate of gambling market openings across Europe, especially at a time when governments start seeing the potential economic and fiscal upside of it. ■

For further details, please visit www.h2gamblingcapital.com

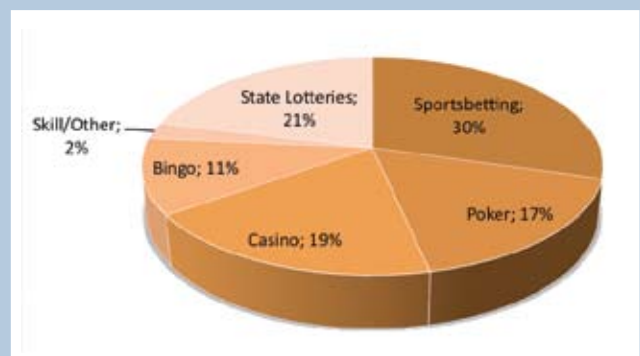
“ The €6.9 billion of gross win generated by Europe's online gambling industry in 2008 represented only 7.7 per cent of the continent's total gambling business. ”

European Interactive Gambling as a Percentage of the Global Total 2001-2012E (Based on Gross Win)



Source: H2 Gambling Capital, March 2009
(NB. Does not include forecasts for a regulated US market)

European interactive gambling by product 2008 (based on gross win)



Source: H2 Gambling Capital, March 2009



In each issue of *EGBA News*, Professor Dr. Dr. h.c. Claus-Dieter Ehlermann provides his opinion on legal questions at the heart of the online gaming debate.



Professor Dr. Ehlermann, Senior Counsel at WilmerHale and a former Director-General of the Legal Service of the European Commission.

Are Member States free to restrict the access to their gambling sector?

No. To establish the Common Market, the EC Treaty guarantees several fundamental freedoms. Under the constant jurisprudence of the Court of Justice, offering gambling services is an economic activity and therefore covered by the fundamental freedom to provide services and often also by the fundamental freedom of establishment. Given that fundamental freedoms are the rule and restrictions thereof are the exception, any Member State measures restricting fundamental freedoms must satisfy several strict conditions.

Under what conditions can Member States restrict gambling?

Firstly, Member States can only restrict gambling services for reasons of overriding general interest. The Court of Justice has identified a limited number of overriding reasons to restrict the freedom to provide gambling services; they thus far are consumer protection, the prevention of fraud and incitement to squander on gambling, and the general need to preserve public order.¹ Only these reasons can be invoked by a Member State to prevent a private operator from any Member State from offering its service.



The legal view

Burden of proof

Secondly, if the objective of a Member State's policy indeed falls within these overriding reasons, then the measures that are taken to attain that objective are also subject to certain conditions. They need to be suitable for achieving the objective which they pursue (which *inter alia* requires them to be consistent and systematic), they must not go beyond what is necessary in order to attain it, and they must in any event be applied without discrimination. The Court of Justice has constantly ruled that the measures 'in each case' should be 'examined' to determine that they indeed comply with these requirements.

Who bears the burden of proof?

Because the restrictions are an exception to the general rule of fundamental freedoms, the burden of proof with regard to the aforementioned tests is on the Member State. It is not sufficient for a Member State to simply allege that there are reasons of overriding general interest. Rather, the Member State has to provide concrete analysis and evidence to justify its restrictive measures.

The *Lindman* judgment makes particularly clear that without such evidence, these measures cannot be justified: 'In that regard, the reasons which may be invoked by a Member State by way of justification must be accompanied by an analysis of the appropriateness and proportionality of the restrictive measure adopted by that State.'²

What proof needs to be provided?

In the same judgment, the Court of Justice set a standard for providing evidence, stating that it was unable to draw 'any conclusion as to the gravity of the risks connected to playing games of chance or, a fortiori, the existence of a particular causal relationship' without being provided with 'statistical or other evidence' to support that claim.

In a series of judgments following *Lindman*,³ the Court of Justice has further developed and refined its jurisprudence on the nature and scope of the required evidence. For instance, more recent judgments require both an analysis and specific evidence, while earlier judgments including *Lindman* seemed to consider both analysis and evidence to fall into one. The general evidentiary standard for justifications of restrictions of fundamental freedoms that can be deduced from the Court's jurisprudence can be summarised as follows:

The reasons which may be invoked by a Member State in order to justify derogation from a fundamental freedom must be accompanied by an analysis of the appropriateness and proportionality of the restrictive measure adopted by that Member State, and by statistical or other precise evidence enabling the necessity for and proportionality of the measures adopted to be evaluated. ■

¹ See Judgment in Joined Cases C-338/04, C-359/04 and C-360/04 (*Placanica*), para. 46 with further references.
² See Judgment in Case C-42/02, paras. 25 et seq.
³ See Judgments in Case C-8/02, paras. 45 et seq.; in Case C-147/03, paras. 63 et seq.; in Case C-137/04, paras. 25 et seq.; in Case C-185/04, paras. 22 et seq.; in Case C-254/05, paras. 36 et seq.; in Case C-227/06, paras. 63 et seq.; in Case C-319/06, paras. 51 et seq., and in Case C-161/07, paras. 36 et seq.