

WRITTEN STATEMENT

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Before the

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

of the

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

July 12, 2001

Chairwoman Kelly, Ranking Minority Member Gutierrez, and Members of the Subcommittee, my name is Mark MacCarthy, and I am Senior Vice President for Public Policy for Visa U.S.A. Inc. Thank you for the invitation to participate in this hearing on Internet gambling.

The Visa Payment System is a membership organization comprised of 21,000 financial institutions licensed to use the Visa service marks. It is the largest consumer payment system in the world. Over 1 billion Visa-branded cards are accepted at over 20 million locations worldwide. Consumers use their Visa cards to buy over \$1.8 trillion in goods and services around the world. Visa U.S.A., which is part of the Visa Payment System, is comprised of 14,000 U.S. financial institutions. U.S. customers carry about 350 million Visa-branded cards and use them to buy over \$900 billion worth of goods and services annually.

In addition, it is important to note that Visa credit cards and debit cards are general purpose access devices that can be used at millions of merchant locations around the world -- including more than 4.3 million merchant outlets in the United States alone. Card issuers in other payment systems also issue millions of cards, and financial institutions open tens of millions of checking accounts, and these cards and accounts also can be used in transactions around the world.

VISA INITIATIVES

Visa has taken several steps to address Internet gambling. Our general policy is that Visa cards should be used only in connection with legal transactions. Visa card issuers are required by Visa to advise cardholders of this fact and explain that Internet gambling may be illegal in some jurisdictions and that their cards should be used only for lawful transactions. On the Visa Web site, we post the same warning:

Get the facts on Internet gambling.

Internet gambling may be illegal in your jurisdiction. Since Visa cards may only be used for legal transactions, you should confirm whether your jurisdiction allows gambling before paying with your Visa card. Display of a payment card logo by an online merchant does not mean that Internet gambling transactions are lawful in all jurisdictions in which cardholders are located.

While Visa card issuers are required to advise their cardholders that Internet gambling may be illegal in certain jurisdictions and that Visa cards should only be used for lawful transactions, we do not otherwise impose restrictions on the use of Visa cards for legal purposes. However, Visa U.S.A. has no interest in promoting Internet gambling. Internet gambling is a negligible part of the total transaction volume that flows through the Visa system; and Internet gambling transactions pose legal and operational risks for our members, including bad debts, enforcement problems and legal expenses.

Visa also understands that Internet gambling sites are illegal in most states, and we work cooperatively with law enforcement agencies in their efforts to put these operations out of business. When enforcement agencies come to us for information about a particular domestic site that they believe is involved in Internet gambling, we cooperate with them fully. When we receive independent information that a domestic site is accepting Visa cards for Internet gambling purposes, we inform law enforcement agencies.

Visa recognizes that Internet gambling can raise important social issues, especially regarding the access that the Internet can provide for problem and underage gamblers. Internet gambling also can create financial risks and customer service problems for our member financial institutions. For both these reasons, Visa has taken steps to enable Visa members to employ systematic declines for potentially illegal Internet gambling transactions. Some members also have established their own internal procedures to block gambling transactions, whether legal or illegal.

However, the sheer volume of transactions that flow through the Visa system requires us to rely on a merchant coding system to ascertain the nature of particular transactions. The Visa system now operates at a pace of 35.5 billion transactions per year. Visa currently processes an average of 2,500 messages per second, and has a peak capacity of 4,000 messages per

second. In an attempt to identify Internet gaming transactions without impairing the operation of the Visa system, Visa requires Internet gaming merchants that accept Visa payment cards to use a combination of the “gaming” merchant category code and the electronic commerce indicator code for all gaming transactions. These two codes are transmitted through the Visa network as part of the authorization message. The combination of these two codes informs the card issuer that the transaction is likely to be an Internet gambling transaction, and thereby enables the issuer to deny authorization for such transactions to protect the interests of both the card issuer and its cardholders. Many issuers have taken advantage of this capability and other tools they have devised to deny authorization to any transaction coded as an Internet gambling transaction.

Any such coding system has limitations, however. First, it depends on the merchant to accurately code a transaction. Visa merchants are required to properly code transactions, and there are penalties for failure to do so. But there are obvious incentives for some Internet gambling merchants to try to hide from Visa and its members. They know perfectly well that coding the transactions properly could result in a denial of authorization, and the incentives will only increase as more Visa issuers decline authorizations.

Second, the coding only informs the card issuers that the transaction is likely to be an Internet gambling transaction; it cannot tell the issuer whether this particular transaction is illegal or not. For example, a cardholder may be using his or her credit card to purchase non-gambling items on an online casino Web site and those purchases may be identified as Internet gambling transactions under the codes described above. In addition, Internet gambling is legal in many foreign countries and for certain types of gambling.

U.S. cardholders may visit these foreign countries and while there, use their credit cards to pay for online gambling transactions in a fully legal manner. Thus, not all transactions that would fall under the codes described above are illegal Internet gambling transactions.

In addition, the coding system applies only when an online gambler uses a Visa card to purchase goods and services from an online gambling merchant. But online gamblers often use the various electronic cash and account funding systems that create pools of electronically available funds which can be used for auctions, online purchases or possible Internet gambling. Thus, a cardholder could use his or her credit card to purchase e-cash on a Web site that does not itself offer gambling, but allows that e-cash to be used on another Web site that does offer gambling. The coding system described above would not capture these transactions as Internet

gambling transactions. It is our belief that these alternative forms of payment will become the payment system of choice for Internet gambling, in part to avoid the coding and blocking systems that Visa and the other traditional payment systems have established.

Even though the coding system is not perfect, it does give issuers an increased ability to identify potential Internet gambling transactions and the flexibility to deny authorization for potential Internet gambling transactions to protect the interests of both the card issuers and their cardholders.

LEGAL AND LEGISLATIVE ISSUES

While Visa has a general policy of prohibiting the use of its cards for illegal purposes, it is impossible for us or for any financial institution to determine quickly and efficiently whether a particular Internet gambling transaction is illegal. For example, as indicated above, Internet gambling is legal in many foreign countries. Internet gambling also may become legal in some states (like Nevada), or in some parts of states (like Indian reservations), or throughout states for certain types of gambling (like a charitable lottery). A complex case-by-case examination would be required with respect to each Internet gambling transaction to determine whether a particular Internet gambling transaction is illegal.

Part of the problem is simply ascertaining where a cardholder is originating the transaction. The same card could be used from a computer in the cardholder's home, where for the sake of argument let us assume that Internet gambling is illegal, or it could be used from a computer in a foreign country, or in international waters, where Internet gambling is clearly legal. It is impossible for a payment system to determine, from the information available to it, which of these circumstances is true in any particular case. After the fact it might be possible to detect the physical location of the merchant, but a payment system is not able to determine the physical location of the cardholder at the time of the transaction.

More fundamentally, however, the legal status of placing a bet on the Internet is not clear. When an Internet gambling casino is located in a foreign jurisdiction which allows Internet gambling, does the law of that jurisdiction apply? The law is not clear at this point. It is clear that the operation of an Internet gambling site in the United States is illegal under most state laws, but we understand that it is still uncertain whether an individual in the privacy of his own home who travels via the Internet to an online gambling site in Antigua is violating the law.

Going forward, it is our view that the responsibility for illegal acts should be placed squarely on the shoulders of the illegal actors

themselves -- the gamblers and the casinos who are engaging in illegal gambling activities. Payment systems operators, like Visa, are not in the gambling business. They assist participating financial institutions, merchants and cardholders throughout the world to promptly and efficiently engage in tens of billions of transactions every year. As indicated above, the Visa system alone currently is running at a pace of 35.5 billion transactions per year. The overwhelming majority of these transactions are lawful transactions in every respect, and are fundamental to the successful operation of the U.S. marketplace and those of many other countries as well.

Policymakers may be looking for a simple and effective way to control Internet gambling. But controlling Internet gambling is legally and operationally complicated for all payment systems, including Visa. Making payment systems responsible for policing Internet gambling simply is not a quick fix toward solving a complex social problem. Moreover, legislation authorizing the Justice Department or regulators to require Visa to cut all Internet gambling merchants off from the payment system would be a first. We are aware of no other case where law enforcement agencies have the authority to force private payment systems to become their deputies in order to exclude merchants -- who are engaged in a legal business -- from the payment system. Moreover, it is not necessary. Visa has a proud and long

history of working cooperatively with law enforcement agencies to aid their prosecution of a wide variety of criminal activities, from fraud to money laundering.

Finally, it is hard to see how Congress can address the role of payment systems in Internet gambling without clarifying the underlying legal landscape. To merely state that payment systems should block all Internet gambling transactions means that if we are successful, we will be preventing people from using their payment cards for perfectly lawful activities. To say that we should block all illegal Internet gambling transactions, without clarifying which ones are illegal, would put us in the impossible position of interpreting laws in myriad jurisdictions.

Even a law that makes all Internet gambling illegal would be hard for us to enforce. As mentioned before, a payment system depends entirely on coding by the merchants. If policymakers declare Internet gambling illegal, unscrupulous merchants will simply stop coding their transactions as Internet gambling, and payment systems will be unable to detect them.

Conversely, a more complex law that allows for multiple exceptions from a ban on Internet gambling, that allows such gambling to take place on an intrastate basis or that permits certain classes of gambling -- charitable lotteries or pari-mutuel betting, for example -- would be impossible for any

payment system to enforce. Even the most sophisticated coding system simply could not reflect these variations.

We appreciate the opportunity to testify and would be pleased to answer any questions.