

# Interactive television gambling: a matter for concern?

With the advent of betting on the Internet, by telephone, and through interactive television (iTV), gambling has arrived into the home. In the UK, uptake of interactive digital television is crucial to Government plans for universal internet access and for turning off the analogue signal by 2010. Back in 2001, the research firm Jupiter MMXI claimed that gambling would become the surprise "killer application" and predicted that by 2005 more people would access the internet through their television than through their computer. At present this looks highly unlikely but gambling growth through iTV is likely to flourish. The combination of gambling's impulsive nature, and the ubiquitous ease of television, may prove hard to resist. This article examines the implications of this development for socially responsible gambling.

In February 2003, BSkyB reported that it had generated £33m of revenues through iTV gambling in the final six months of 2002. Through the television remote control, punters can bet at the push of a few buttons. Such income streams are likely to grow rapidly with many interested parties hoping to cash in (e.g., bookmakers, broadcasters, sports rights-holders etc.). Merrill Lynch predicts the global online gambling industry will be worth £125 billion by 2015, and that iTV gambling is likely to account for 50% of the income. This would be more than 10% of the overall world gambling industry (estimated at £600 billion). In addition, Datamonitor published a report 'iTV Games and Gambling in Europe' (2003) noting that games and gambling are two of the most profitable revenue streams for iTV. The report also noted that "pay-per-play" business models will dominate iTV games service provision, accounting for over 60% of revenues by 2007. They also predicted that by 2007, lotteries would account for almost three-quarters of iTV gambling revenues, and that the UK and France would have over 50% of the market share.

There is little to stop such developments moving forward. Interactive television gambling will bring new and more immediate gambling opportunities. Punters will be able to make spontaneous bets during sporting events, everything from whether someone will score from a penalty in the FA Cup final through to who will win the tie-breaks at Wimbledon. There are many other ideas that have been floated around. For instance, one attractive idea for broadcasters is to have punters from all around the world competing for a horserace jackpot worth millions of pounds. In each continent, punters would try to predict the

winners of eight races staged over several hours in a number of different countries.

In the UK, most betting takes place on just three sporting activities (70% horse races, 20% dog races, and 5% football matches). Bookmakers and broadcasters know this could substantially change with iTV gambling. Television viewers could gamble on a much wider array of events via credit card payment through their digital interactive service. This could include many non-sporting events like the who will win the Eurovision Song Contest, who will be evicted from the *Big Brother* house, or who will pick up an Oscar. Such non-sport betting may also bring in new clientele such as female gamblers. The take up of iTV gambling may also be very popular with those people who would not dream of going to a casino or betting shop. The use of iTV gambling may help change people's attitudes about gambling by de-stigmatising and de-masculinising it. Such gambling could lead to a more social experience shared by clientele across the demographic spectrum.

Whether iTV gambling will ever reach the masses is not known. In the UK, only 3% of betting has migrated online. The technology that allows punters to gamble on the outcome of a penalty kick is still some way off. However, the field appears to be moving fast. Interactive Systems Worldwide claim they have developed a betting platform for iTV gambling that will eventually be able to handle more than 1.5 million gamblers simultaneously in 32 regions.

Furthermore, Sky has made no secret that it wants to earn £400 a year from each of its digital viewers (in addition to its basic subscription package). The plan is to recoup the cost of interactive

### Looking ahead

Existing law specific to the advertising and promotion of gambling consists of a patchwork of provisions spread across four different acts, none of which contemplated the advent of online or m-gambling. This old regime will be swept aside by the Gambling Bill, published in November 2003, which contains a future-proof definition of "remote gambling" encompassing gambling via the internet, telephone, radio or "any other kind of electronic or other technology for facilitating communication".

Although the Bill was silent on the issue of advertising, more detail has since emerged in the form of a policy note published by the Department for Culture, Media and Sport in February. The broad policy objective is "to reflect the changed status of gambling as an acceptable leisure activity albeit one giving rise to specific risks of harm." The DCMS proposals start from the premise that "legitimate gambling businesses should be allowed to advertise in the same way as other businesses, and subject to the same general requirements...in terms of compliance with ASA, OFCOM and other relevant codes, except in so far as specific additional controls are needed to deal with those risks."

The government's views on risks in the online context were set out almost a year ago in the DCMS position paper, which suggested the need for, among other things, identity checks to safeguard against under age gambling, and a range of "reality checks" to prevent players from playing for too long.

The key points set out in the latest DCMS policy note are as follows:

- the offence of advertising illegal gambling: it will be an offence to advertise gambling which is illegal

in Great Britain. Advertising will be defined widely to include the internet and other forms of e-communications. There will be defences for those lacking knowledge as to the intended purpose of the advertisement (in an offline context, those involved in printing, for example). In the mobile context this defence would potentially be available to service providers whose only role is to transmit the calls or text messages in question.

- advertisements for legal gambling: advertising by holders of Gambling Commission ("GC") operating licences will be governed by conditions in those licences. Advertising by others in the supply chain will be subject to equivalent safeguards. These will be set out in secondary legislation and will relate to, for example, the appearance, location, manner, timing and means of publication and the types of media used. (Whether there could be specific rules tailored to mobile platforms remains unclear.) The GC will be required to consult relevant bodies such as the ASA (see above). Broadcast advertising will be regulated by OFCOM under the Communications Act 2003.

- controls on advertising from other jurisdictions: another issue for the mobile sector to watch out for is the potential under the Bill for the Secretary of State to place restrictions (to the extent permitted by EU law) on remote gambling from outside Great Britain.

### The new regime's impact

While the mobile gambling industry waits for the fine detail of the new advertising regime to emerge, the fact that the DCMS has acknowledged the risk of regulatory overlap - and has committed to avoiding duplication - is encouraging. In practice, it

seems likely that the main touchstone for compliance will be the ASA Code - albeit in modified form, to meet the GC's requirements. The DCMS policy paper concludes with the possibility of reserving to the GC the regulation of more technical aspects of advertising such as statements about relative odds. In other words, even with the dawn of the streamlined new regime, it is likely that the industry will still need to keep on the right side of a number of different regulators.

### Claire Walker

Professional Support Lawyer, Olswang  
[claire.walker@olswang.com](mailto:claire.walker@olswang.com)

### USEFUL LINKS

The Privacy and Electronic Communications (EC Directive) Regulations 2003  
<http://www.legislation.hmso.gov.uk/si/si2003/20032426.htm>  
 ICSTIS Guideline No. 15 - Betting Tipster Services  
[http://www.icstis.org.uk/icstis2002/pdf/Guideline\\_15.pdf](http://www.icstis.org.uk/icstis2002/pdf/Guideline_15.pdf)  
 ASA British Code of Advertising, Sales Promotion and Direct Marketing (11th Edition)  
[http://www.asa.org.uk/the\\_codes/index.asp](http://www.asa.org.uk/the_codes/index.asp)  
 Mobile Marketing Association Code of Conduct  
[http://www.mmaglobal.co.uk/imgs/MMA-Code-of-Conduct\\_Dec03.pdf](http://www.mmaglobal.co.uk/imgs/MMA-Code-of-Conduct_Dec03.pdf)  
 UK Mobile Operators' Code of Practice  
<http://www.o2.co.uk/abouto2/ukcodeofpractice.html>  
 DCMS Policy Memoranda No. 6 - Advertising of Gambling  
<http://www.culture.gov.uk/NR/rdonlyres/ereuyrdjvqiqb3ok37fkraaafzr5ndvujpajfjjc4q3vzhzpfqquok26k5hkwcwpyrgfcdjo24zwbxhyryu4zra/policydoc29consolidatedraft030204.pdf>