

Watchdogs decry Kentucky's 141-site net casino land grab

Three civil liberties groups urged a Kentucky appeals court to overturn the seizure of domain names for some of the world's most popular gambling sites, arguing the move is based on „incorrect factual assumptions“ and violates Free Speech guarantees and other provisions of the US Constitution.

In a friend-of-the-court brief filed with the Court of Appeals of Kentucky, the Electronic Frontier Foundation, the Center for Democracy and Technology, and the American Civil Liberties Union of Kentucky warned that the seizure of 141 domain names in September would wreak havoc on the internet if allowed to stand. The seizure was commenced by state officials cracking down on gambling sites available to Kentucky residents and was upheld last month by a lower court judge.

„Critically, there is nothing in the court's analysis that would limit its application to gambling domains,“ attorneys for the groups wrote. „Under the court's theory, Kentucky would be able to seize any domain name, from anywhere in the world, that pointed to a website that Kentucky deemed to violate a local law.“

At issue are the domain names for sites including absolutepoker.com and ultimatebet.com, which permit visitors to bet on a variety of games. Online gambling is illegal in Kentucky and every other US state. Against the objections of website owners, Franklin County Circuit Judge Thomas Wingate upheld the state's right to seize the domain names, reasoning they tantamount to „virtual keys for entering and creating virtual casinos from the desktop of a resident in Kentucky.“

The Amicus Curiae took a decidedly different view of domain names, arguing they are more akin to maps or street signs that

do nothing more than direct people to the location – in this case the unique internet protocol address – of a computer server. As such, a government action suppressing the use of a domain name violates the Free Speech rights guaranteed by the First Amendment, the groups said.

„Any order purporting to transfer domain name registrations from registrants to the Commonwealth of Kentucky raises serious First Amendment concerns because it would necessarily impede access to material that is legal not only in Kentucky but throughout the country and the world,“ they wrote. „Moreover, it would chill speech of all types, not simply the speech directly at issue in this case.“

They went on to argue that Wingate’s decision violates the Constitution’s Commerce Clause by allowing Kentucky to impose its laws on the rest of the United States and world.

„The Commerce Clause of the US Constitution will not tolerate this exertion of authority, because it prohibits individual states from regulating ,Commerce with foreign nations, and among the several states,‘“ the attorneys wrote.

A spokesman for Kentucky Governor Steve Beshear’s office defended the action.

„We believe we put forward a compelling argument that this activity is illegal, unregulated and detrimental to Kentuckians and thus far the court has agreed with us,“ the spokesman, Jay Blanton, told The Register.

The seizure was commenced by Michael Brown, Kentucky’s Justice and Public Safety secretary, who filed the lawsuit under seal in August. At a secret hearing that was closed to the defendants, Wingate in September issued an order directing registrars of 141 domain names to transfer ownership to Kentucky officials.

Shortly after the order was issued, whois records for many of

the domains showed they were the property of Kentucky. Interestingly, the handful of addresses we checked at the time of writing appeared to have reverted back to their rightful owner. It's not clear who made the changes or why they were made.