

# Court of appeals hears gambling Web site case

Louisville, Kentucky – Kentucky authorities want to seize 140 Internet domain names, saying the web sites bring illegal gambling within the borders of the commonwealth.

Attorneys for a trade association for the gambling web sites countered that Kentucky lacks the authority to make that move because the domain names aren't property and, besides, they are based offshore and beyond Kentucky's jurisdiction.

A three-judge appeals court panel in Kentucky is now weighing whether a state can seized a web site domain name to curtail gambling within its borders, even if it means cutting the rest of the world off from the site.

The question arose after Franklin County Circuit Court Judge Thomas Wingate ruled in October that the state's lawsuit seeking to block Kentuckians' access to more than 140 online casinos could go forward. Wingate also ruled that he planned to hold a hearing about whether the state could seize the web sites.

The hearing has not been held pending the outcome of the appeal heard Friday.

The state sued the web sites after determining that they allowed Kentuckians to gamble illegally and asked a judge to either force the sites to block Kentucky users or allow the state to take possession of the domain names. Kentucky already allows gambling on horse racing and bingo and has a state lottery.

Attorneys for the state and the web sites estimated that about 13,000 people in Kentucky use the online casinos.

William Johnson, who represents five of the web sites, said Kentucky's laws do not spell out that the state can seize domain names. Because lawmakers haven't acted since the law was written in 1974, the state lacks the authority to seize the web sites and shut them down, Johnson said.

„If they had wanted to correct this law, they could have done so annually,“ Johnson said. „That is a matter for the legislature to decide.“

Attorney Jon L. Fleischaker, who represents Interactive Media Entertainment and Gaming Association, Inc., an online gambling trade association, said that by trying to seize the web sites, Kentucky was aiming to apply a criminal penalty to a civil proceeding.

„What they have done is turn the law on its head,“ Fleischaker said. „If they want to bring a criminal case, they should bring a criminal case.“

Eric Lycan, who represented the Kentucky Justice Cabinet, referred to the online gambling sites as a „massive, global, offshore criminal enterprise“ whose owners know they are violating the laws of nearly every state in the country by fostering gambling via the Internet.

More than 80 percent of the revenue generated by the web sites comes from the United States, giving any state willing to try jurisdiction over the sites, Lycan said.

„They are doing this because they don't think anyone can catch them,“ Lycan said.

Judge Michelle Keller asked Lycan why the state doesn't handle the illegal gambling the same way it handles illegal drug transactions – by making both the sale, purchase and use of the drugs against the law.

„It's illegal to sell the drugs and it is also illegal to use

the drug," Keller said. „I don't see much of a difference here.“

Lycan said the decision to only criminalize the offering of gambling was a decision made by lawmakers.

„The legislature specifically exempted the player from the legislation," Lycan said.