

Kentucky domain name seizures

On 18th September, the Franklin County Circuit Court ordered the seizure of 141 domain names of online gambling businesses including some of the most well known names in the online poker and casino industry (Poker Stars, Full Tilt and Microgaming).

It was an interim (i.e. temporary) order and a further hearing took place on 3rd October where applications to dismiss the order were rejected. The Court has upheld the interim seizure order until a full hearing now scheduled for 17th November.

So far, at least 4 gambling web sites with domains hosted in the US are down and any user trying to access those websites is diverted to a Kentucky state government page. Other sites with US domain registrars are still operating.

The basis of the seizure order seems strange to say the least. Kentucky claims the power to regulate all gambling activities that take place within the state, including online gambling. Because the State has not granted any licences to any online operators, it has taken the view that online gaming is illegal within the state of Kentucky. Accordingly, any operator offering its services to a Kentucky resident is said to be in violation of Chapter 528 of Kentucky Revised Statutes, and is liable to have its illegal gambling devices or records forfeited to the State. The trouble is that gambling devices are clearly defined under that law as slot machines or other machines or mechanical devices etc used for gambling.

There are also various US constitutional barriers to the Kentucky government's actions: the regulation of interstate commerce is a federal government prerogative, and Kentucky may have overstepped its jurisdiction. In addition, there is an argument that restricting access to particular websites is a form of censorship and contrary to the free speech advocated by the First Amendment.

An order of this nature could set a dangerous precedent for governments around the world who decide to seize domains whose contents are deemed by them as objectionable. The judgement of 16th October sidestepped this issue by stating that such a *"doomsday argument does not ruffle the Court. The Internet ... is not above the law whether at international or municipal level"*.

Such a judgement will almost certainly be subject to appeal in a higher court. It is not clear whether domain names are assets that are even capable of being seized. A case before the Supreme Court of Virginia ([Network Solutions, Inc. v. Umbro International, Inc \(2000\)](#)) rejected the idea that a domain name is an asset and instead viewed it as a product of the agreement between registry and domain name holders, and subject to that particular contract.

The Kentucky action comes against a backdrop where Kentucky is looking to licence an additional 18,000 slot machines over the next few years, and already benefits from large revenues gained from betting related to the famous Kentucky derby and other horse races. The State Governor has admitted that online gaming takes away players from licensed gambling venues which are taxed by Kentucky. The website located at [Twinspires.com](#) allows punters to place online horserace bets, and is affiliated with the Churchill Downs racecourse. This site despite being one of the most prominent in Kentucky is not targeted amongst the 141 domain names subject to forfeiture. This is evidence that the state is not targeting online gambling as a whole, but trying to remove competition to Kentucky gambling businesses. The view is reinforced by the 16th October ruling, which amended the interim seizure order to exempt sites blocking Kentucky users from being seized by the State.

Should the Kentucky Court continue to confirm the forfeiture of the 141 domain names, the consequences are concerning. The domain name seizure may include IP logs associated with the domain which may constitute personal data, from which users can be identified, and many users will be uncomfortable with such data falling into the hands of the Kentucky government.

The outcome of the full hearing on 17th November and any appeals by the affected parties will be the next indication as to whether this case is going to prove a real problem for online gambling operators or another short lived swipe at the industry.

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