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Gambling Commission
Comm. & Legal Division

BEFORE THE WASHINGTON STATE GAMBLING COMMISSION

IN THE MATTER OF THE PETITION
OF MICROSOFT CORPORATION
FOR A DECLARATORY ORDER

DECLARATORY ORDER

I. INTRODUCTION

THIS MATTER came before the undersigned Commissioners of the Washington State Gambling Commission ("Commission") at the Commission's regularly scheduled meeting on September 11, 2014 in Tumwater, Washington on Microsoft Corporation's Petition for Declaratory Order pursuant to RCW 34.05.240 and WAC 230-17-180. Specifically, Microsoft seeks a declaratory order stating that "where online gambling ads are processed and served to IP addresses in states where such ads are legal, but not to IP addresses in any other state, including Washington, such ads do not violate Washington State's Gambling Law." Robert M. McKenna of Orrick, Herrington & Sutcliffe, LLP represented Microsoft Corporation. William Hayden, Senior Attorney, Microsoft, also was present and spoke on behalf of Microsoft.

The Commission considered Microsoft's Petition for Declaratory Order, dated August 8, 2014, and the subsequent Declaration of Microsoft Corporation signed by Mr. McKenna, Attorney for Microsoft, dated October 23, 2014. It also considered Microsoft's oral presentation on September 11, 2014. After reviewing the materials in this matter, the Commission finds that the record supports the Findings of Fact, Conclusions of Law, and Declaratory Order specified below.

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II. FINDINGS OF FACT

1. Microsoft Corporation provides a variety of Internet services, including enabling its computer network and servers for advertisements to Internet users browsing web pages through its platforms.

2. Microsoft seeks to service and process gambling advertisements via computer network equipment located in Washington State.

3. Microsoft will only provide or enable the computer network or servers and the Bing Advertisement platform for the gambling advertisements. Microsoft will not be responsible, in whole or part, for creating or developing the information or content of the gambling advertisements.

4. The advertisements processed through Microsoft's networks would only go to Internet users with IP addresses in states where gambling advertisements are legal. Internet users with IP addresses in Washington State would not be served by the gambling advertisements.

III. CONCLUSIONS OF LAW

A. The Gambling Act, RCW 9.46

1. Washington specifically prohibits the knowing transmission or receipt of "gambling information" over the Internet. Specifically, RCW 9.46.240 provides, in relevant part, that:

whoever knowingly transmits or receives gambling information by...the internet...shall be guilty of a class C felony subject to the penalty set forth in RCW 9A.20.02. However, this section shall not apply to such information transmitted or received or equipment installed or maintained relating to activities authorized by this chapter or to any act or acts in furtherance thereof when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted under this chapter.

2. RCW 9.46.0245 further defines "gambling information," in relevant part, as "any wager made in the course of and *any information intended to be used for professional gambling*. In the application of this definition, information as to wagers, betting odds and

1 changes in betting odds shall be presumed to be intended for use in professional gambling.”
2 RCW 9.46.0245 (emphasis added).

3 3. In turn, RCW 9.46.0269 states that a person is engaged in “professional gambling”
4 when “acting other than as a player or in the manner authorized by [RCW 9.46], the person
5 knowingly engages in conduct which materially aids any form of gambling activity.”
6 RCW 9.46.0269(1)(a). This includes conduct directed toward “the solicitation or inducement
7 of persons to participate” in any particular gambling activity, and, therefore, would include
8 advertising gambling activities. RCW 9.46.0269(2).

9 4. Based on the plain language of these statutes, the Commission concludes that a person¹
10 may transmit advertisements for gambling activities over the Internet in Washington State so
11 long as the advertisements are for authorized gambling activities (e.g., social card games,
12 bingo, raffles, tribal gaming, etc.). However, transmitting advertisements for unauthorized
13 gambling activities (e.g., online gaming) would likely fall within the prohibition and could
14 subject a person to criminal sanctions for illegally transmitting gambling information.²

15 **B. The Communications Decency Act, 47 U.S.C. § 230**

16 1. With respect to Microsoft’s petition and specified circumstances, however, federal law
17 provides certain protections to Internet Service Providers against state or civil enforcement
18 actions related to publishing online content. Specifically, the Communications Decency Act,
19 47 U.S.C. § 230, “creates a federal immunity to any cause of action that would make service
20 providers liable for information originating with a third-party user of the service.” *Zeran v.*
21 *Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997), *cert. denied*, 524 U.S. 937, 118 S. Ct.

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23
24 ¹ “Person” is broadly defined to include “natural persons, corporations and partnerships and associations
of persons.” RCW 9.46.0289.

25 ² RCW 9.46.0245’s definition of “gambling information” does not apply to newspapers of general
26 circulation or commercial radio and television stations licensed by the federal communications commission.
Thus, if these entities were to transmit such information, the information would not be presumed to be intended
to be used for professional gambling and subject to the prohibition. The statute is silent as to other entities, such as
Internet Service Providers such as Microsoft.

1 2341, 141 L. Ed. 2d 712 (1998).³ In other words, 47 U.S.C. § 230 bars the Commission from
2 taking any enforcement action against Microsoft for transmitting in Washington State what
3 would otherwise be illegal gambling information, so long as the company is only making its
4 network or servers available to content provided by a third-party.

5 2. Three elements are required to bar such action: (1) the entity must be a provider of an
6 “interactive computer service”; (2) the claims must treat the entity as a publisher or speaker of
7 information; and (3) the information must be provided by an “information content provider.”
8 *Schneider v. Amazon.com*, 108 Wn. App. 454, 460, 31 P.3d 37 (2001).

9 3. Here, the Commission concludes that, based on the record in this petition, Microsoft
10 meets each element under the Communications Decency Act. First, Internet Service Providers,
11 like Microsoft, are recognized providers of interactive computer services as defined by the
12 Communications Decency Act.⁴ See *Zeran*, 129 F.3d at 331; *Schneider*, 108 Wn. App. at 460.
13 Second, Microsoft could potentially be held liable under RCW 9.46.240 for transmitting illegal
14 gambling advertisements in Washington State even though it is not responsible for the actual
15 content of the advertisements. Third, Microsoft is not the information content provider of the
16 gambling advertisements.⁵ As attested by Microsoft, the company will not be responsible, in
17 whole or part, for creating, developing or modifying the advertisements; rather, third-party
18 advertisers are responsible for all content related to the online gambling advertisements.
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21 ³ 47 U.S.C. § 230(c)(1) provides “No provider or user of an interactive computer service shall be treated
22 as the publisher or speaker of any information provided by another information content provider.” In addition,
23 U.S.C. § 230(e)(3) states “Nothing in this section shall be construed to prevent any State from enforcing any State
24 law that is inconsistent with this section. *No cause of action may be brought and no liability may be imposed*
25 *under any State or local law that is inconsistent with this section.*” (emphasis added)

24 ⁴ “Interactive computer service” means “any information service, system, or access software provider
25 that provides or enables computer access by multiple users to a computer service, including specifically a service
26 or system that provides access to the Internet and such systems operated or services offered by libraries or
educational institutions.” 47 U.S.C. § 230(f)(2).

⁵ “Information content provider” means any person or entity that is responsible, in whole or in part, for
the creation or development of information provided through the Internet or any other interactive computer
service.” 47 U.S.C. § 230(f)(3).

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IV. ORDER

The Commission hereby orders that Microsoft's Petition for Declaratory Order is GRANTED for the reasons specified herein.

DATED this 14 day of November, 2014.


CHRISTOPHER STEARNS - CHAIR


BUD SIZEMORE - VICE CHAIR


KELSEY GREY, Ph.D.


JULIA PATTERSON


ED TROYER

NOTICE: RECONSIDERATION

PURSUANT TO THE PROVISIONS OF RCW 34.05.470 AND WAC 230-17-140 YOU MAY FILE A PETITION FOR RECONSIDERATION WITH THE COMMISSION WITHIN TEN (10) DAYS FROM THE DATE THIS FINAL ORDER IS SERVED UPON YOU. ANY REQUEST FOR RECONSIDERATION MUST STATE THE SPECIFIC GROUNDS FOR THE RELIEF REQUESTED. PETITIONS MUST BE DELIVERED OR MAILED TO:

WASHINGTON STATE GAMBLING COMMISSION
PO BOX 42400
OLYMPIA, WA 98504-2400

NOTICE: PETITION FOR JUDICIAL REVIEW

YOU ALSO HAVE THE RIGHT TO APPEAL THIS FINAL ORDER TO SUPERIOR COURT, PURSUANT TO THE PETITION FOR JUDICIAL REVIEW PROVISIONS OF RCW 34.05.542. ANY PETITION FOR JUDICIAL REVIEW OF THIS FINAL ORDER MUST BE FILED WITH THE COURT AND ALSO SERVED UPON BOTH THE COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL WITHIN THIRTY (30) DAYS AFTER THE DATE THIS FINAL ORDER IS SERVED UPON YOU.

BEFORE THE WASHINGTON STATE GAMBLING COMMISSION

IN THE MATTER OF THE PETITION OF MICROSOFT CORPORATION FOR A
DECLARATORY ORDER

DECLARATION

1. Name and address of the petitioning party.

Microsoft Corporation, One Microsoft Way, Redmond, WA

2. Background.

On September 11, 2014, representatives of Microsoft Corporation appeared before the Commission to answer questions regarding the above-captioned Petition. Petitioner requests that the Commission issue a Declaratory Order in which it rules that where online gambling ads are processed and served to IP addresses in states where such ads are legal, but not to IP addresses in any other state, including Washington, such ads do not violate Washington State's Gambling Law, including the RCW sections cited in this petition.

During that discussion, the Commission requested a declaration from Microsoft affirming that Microsoft will only provide or enable the computer network or servers for the gambling advertisements, and will not be responsible, in whole or in part, for creating or developing the information or content for such advertisements.

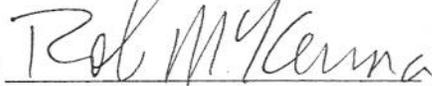
3. Declaration of Microsoft Corporation.

Microsoft declares that it will only provide or enable the computer network or servers and the Bing Advertising platform for the gambling advertisements, and will not be responsible, in whole or in part, for creating or developing the information or content for such advertisements. To that end, the "Bing Ads Supplemental State Lottery Advertising and Gambling Advertising Terms and Conditions for Advertisers in the United States" provide in relevant part that, "Microsoft will not make modifications to online gambling advertisements and Advertiser Content submitted to Microsoft must meet the requirements of the Bing Ads Program."

Respectfully submitted, this 23rd of October, 2014.

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