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# Video Gambling in Foreign Air Transportation

## EXECUTIVE SUMMARY

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### WHY THIS STUDY WAS DONE

The Gorton Amendment, section 205 of the Federal Aviation Administration Authorization Act of 1994,<sup>1</sup> added the following provision to the United States Code:

*An air carrier or foreign air carrier may not install, transport, or operate, or permit the use of, any gambling device on board an aircraft in foreign air transportation.<sup>2</sup>*

As a result of the Gorton Amendment, the United States today prohibits gambling on flights to or from this country that are operated by a foreign air carrier, as well as on all international flights of U.S. carriers and all commercial flights within U.S. airspace.<sup>3</sup>

Congress' intent in amending the law to encompass foreign-carrier flights to or from the United States was to ensure equal treatment of U.S.-flag and foreign-flag carriers and avoid putting U.S. airlines at a competitive disadvantage in providing international passenger service.<sup>4</sup> Prior to the amendment, a foreign airline could offer gambling on board its flights to or from the U.S. while existing law precluded our airlines from doing likewise. Instead of authorizing U.S. airlines to offer gambling on their international flights, however, Congress chose to prohibit gambling on all foreign-carrier flights to or from this country. During Senate deliberations,<sup>5</sup> concern was expressed that a different approach, such as allowing U.S. carriers to offer gambling on their international flights when outside U.S. airspace,<sup>6</sup> might be more appropriate for ensuring equal treatment at some future time. Consequently, the Gorton Amendment also directed the Secretary of Transportation to complete a study of:<sup>7</sup>

- ▶ The aviation **safety effects** of gambling applications on electronic interactive video systems installed on board aircraft for passenger use, including an evaluation of the effect of such systems on the navigational and other electronic equipment of the aircraft, on the passengers and crew of the aircraft, and on issues relating to the method of payment.

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<sup>1</sup>Public Law 103-305 (Aug. 23, 1994).

<sup>2</sup>49 U.S.C. 41311(a).

<sup>3</sup>Gambling is prohibited on international flights of U.S. carriers and on commercial flights within U.S. airspace under previously enacted legislation, popularly known as the Gambling Devices Transportation Act (also as the Johnson Act), codified in 15 U.S.C. 1171 *et. seq.*

<sup>4</sup>Congressional Record (Senate - June 9, 1994, pp. S6663-S6664).

<sup>5</sup>Congressional Record (Senate - *Ibid.*, and Aug. 8, 1994, p. S10954).

<sup>6</sup>Permitting gambling on commercial flights *within* the airspace of the United States is *not* at issue.

<sup>7</sup>Sec. 205 (b), *op. cit.*



- ▶ The **competitive implications** of permitting foreign air carriers only, but not United States air carriers, to install, transport, and operate gambling applications on electronic interactive video systems on board aircraft in the foreign commerce of the United States on flights over international waters, or in fifth freedom city-pair markets.
- ▶ **Whether gambling should be allowed on international flights**, including proposed legislation to effectuate any recommended changes in existing law.

### **RESULTS IN BRIEF**

The Department is not at this time recommending any changes to the law prohibiting gambling in foreign air transportation. Rather, we will monitor foreign airlines' implementation of gambling along with related developments and, depending on those developments, recommend legislative changes that we find are appropriate for assuring U.S. airlines remain competitive in providing international passenger services. Insofar as other nations allow, foreign airlines will continue to have the opportunity to offer video gambling on flights other than those to or from the United States; some foreign carriers have expressed an intent to do so. U.S. airlines, meanwhile, can continue to install interactive entertainment systems on their aircraft fleets, though they remain prohibited from offering video gambling as an entertainment feature. Should gambling on their international flights be authorized in the future, implementing the gambling feature would entail adding a software program to their installed systems.

By monitoring foreign carriers' progress and experience with video gambling, the Department believes that much of the uncertainty presently surrounding gambling aboard aircraft will be alleviated, enabling a more informed determination of whether to authorize gambling on international flights and how such gambling should be regulated. In this regard, our decision not to recommend any change in the law at this time is based on the following factors:

#### ***Congress is Concerned about Gambling's Impact***

- ▶ The Congress is deliberating proposals for a comprehensive study of gambling's impact on the nation. The proposals, which have bipartisan support and are endorsed in principle by the Administration (*see p. 14 and Appendix*), reflect growing concerns over the socio-economic costs resulting from the rapid spread of legalized gambling during the past several years. The Department is reluctant to recommend an enlargement of gambling's presence until those concerns are authoritatively examined. If approved, the proposed study would also provide information useful for determining the need to regulate gambling aboard aircraft and the appropriate scope of any regulatory scheme, particularly with respect to the issue of "problem" and "pathological" gambling behavior and the effectiveness of the existing federal-state regulatory framework.

#### ***Competitive Harm is Prospective***

- ▶ The adverse competitive impact on U.S. airlines as a consequence of the current gambling ban is *potentially* quite significant, assuming that *all*



foreign airlines are able to provide video gambling and elect to do so. Whether, when and to what extent foreign carriers will implement on-board gambling is not known, however. As of the end of March 1996, no international airline offered video gambling and, to our knowledge, introduction of gambling games was imminent for only one foreign carrier -- as a trial on a single aircraft.

***Behavioral Risk is  
Uncertain***

- ▶ Furthermore, while there is no evidence that on-board electronic entertainment systems increase safety risk from a *technical* standpoint, the potential for increased risk resulting from the *behavior* of certain passengers while gambling cannot be dismissed at this time, especially in light of concerns raised by the Association of Flight Attendants and other parties. On one hand, current flight-crew training requirements, along with the design and implementation of the gambling games promoted for use on aircraft today, would appear to minimize behavioral risks. On the other hand, no airline today has significant experience with video gambling, and the risk associated with the behavior of the problem or pathological gambler while aboard an airplane is not known. Indeed, both the incidence of pathological gambling among the current U.S. population and the costs imposed on the nation by pathological gambling behavior have yet to receive an adequate accounting. Pending evidence of *actual* competitive harm to U.S. airlines and better information on problem gambling, we are not persuaded that increasing the inventory of potential behavioral risks is warranted by authorizing on-board gambling at this time.

***Need for  
Regulation is  
Not Clear***

- ▶ In addition, allowing gambling on the international flights of U.S. carriers raises several policy and regulatory issues. It is not clear the extent to which, or by what means, regulation *should* occur. Airlines and gaming vendors stress that their gambling games are designed as simple, "fun" entertainment with low stakes, frequent pay-outs, and extended play. On the other hand, absent regulatory oversight, there may be no assurance that on-board gambling would remain benign, or that the integrity and fairness of the gambling games would be adequately safeguarded.

***KEY QUESTIONS  
EXAMINED***

The Department's study focused on the following questions regarding the safety, competitive and legal implications of video gambling in foreign air transportation:

***Safety Effects***

Do on-board electronic entertainment systems, which house video gambling games as well as other customer services, present an increased *technical* risk for air travel safety, *i.e.*, are the systems structurally sound and compatible with all safety systems, components and related operations aboard an aircraft? Moreover, would gambling itself present any increase in *behavioral* safety risk, *i.e.*, would it cause a passenger to behave in a manner that might interfere with or disrupt the safety-related duties of the aircraft's flight crew?

***Competitive  
Consequences***

In what manner and to what extent would the competitive position of U.S. airlines be harmed as a consequence of the existing U.S. gambling ban? How would their



competitive position be affected if the law were changed to permit gambling on foreign-carrier flights to or from the United States, or on the international flights of U.S. carriers as well?

***Bilateral Issues &  
Legal Framework***

What issues are raised regarding our bilateral aviation relations with other nations when the United States prohibits gambling in foreign transportation by non-U.S. carriers? Likewise, what statutory or regulatory issues are presented by removing or easing the current ban on gambling in foreign air transportation?

***EFFECTS ON  
SAFETY***

***Technical Risk***

The entertainment systems in operation today, including ones with a gambling feature, have been certificated as safe from a technical standpoint by the Federal Aviation Administration (FAA). FAA assesses technical risk in accordance with specific safety requirements and a well-established certification process. Under this process, an entertainment system proposed for installation on an aircraft is evaluated for electromagnetic interference with other equipment on the airplane, electrical power loading on the aircraft's power generation and distribution system, the potential for fire hazard, potential interference with emergency procedures and passenger evacuation, and other factors affecting the safe operation of the aircraft.

***Behavioral Risk***

Behavioral safety risk is addressed by FAA's flight-crew training requirements, which encompass behaviors ranging from passenger dissatisfaction with some aspect of an airline's service, to aberrant behaviors associated with fear of flying or other neuroses, and extreme behaviors that threaten the safety of occupants or the aircraft (*e.g.*, hi-jackers). The Department believes that the behavioral risk due to video gambling probably would be minimized given the scope of FAA's training requirements. We cannot, however, wholly discount the concerns cited by flight attendants and others regarding behavioral risk until adequate experience is gained with in-flight video gambling and the behavior of problem and pathological gamblers aboard aircraft.

***COMPETITIVE  
CONSEQUENCES***

***Measuring  
Competitive  
Impact***

To measure competitive impact, the Department assessed the opportunities for foreign carriers to offer video gambling compared with the major U.S. airlines on flights involving the Atlantic and Pacific regions, assuming (1) the current U.S. gambling ban remains in force, (2) the law is changed to permit only foreign airlines to provide gambling on flights to or from the United States, or (3) the law is changed to allow gambling on the international flights of U.S. airlines as well as foreign-carrier flights to or from the United States. For analysis purposes, it was also assumed that all foreign-carrier passenger flights in the relevant markets offer video gambling. We then developed estimates of the revenue impact associated with these assumptions. Much of our analysis draws upon the results of a survey of U.S. international air travelers that was conducted at the Department's direction by Yankelovich Partners Inc., a nationally recognized consumer survey firm. We limited our analysis to routes involving the Atlantic and Pacific regions because they are the routes where we believe video gambling will be offered initially and because



the Department-directed survey was targeted to trans-Atlantic and trans-Pacific air travelers.

***Entertainment  
Systems Are a  
Competitive  
Necessity***

Our analysis concludes that U.S. airlines will install electronic entertainment systems on their international fleets regardless of whether or not they are allowed to offer video gambling. If U.S. carriers did not install entertainment systems, an estimated 4 percent of their international traffic in the Atlantic and Pacific regions would shift to foreign carriers having entertainment systems. Since a 4-percent traffic shift would amount to an annual revenue loss of over \$490 million, U.S. airlines of competitive necessity will implement entertainment systems. We estimate the cost to install those systems on the U.S. international fleet serving the Atlantic and Pacific regions at about \$401 million, and that additional fuel costs due to the weight of the systems would amount to about \$43 million annually.

Given that both U.S. and foreign airlines will install entertainment systems for competitive reasons, we also conclude that the ability of foreign carriers to offer gambling could provide them with a substantial competitive advantage over their U.S. rivals. Specifically:

***Impact of Current  
Gambling Ban***

- ▶ The absence of video gambling *per se* on U.S. airline international flights is not likely to have a material effect on the U.S.-carrier share of international passenger traffic in the Atlantic and Pacific regions. Passenger *fare* revenue, in other words, would not be significantly affected by the presence or absence of video gambling.
- ▶ However, if video gambling *is* offered, an estimated 18 percent of passengers will use it. Because the great majority of foreign-carrier flights in the Atlantic and Pacific regions do not involve flights to or from the United States, and therefore are not affected by the current U.S. gambling ban, foreign airlines have a potential new revenue source not available to their U.S. counterparts. We estimate the revenue from gambling aboard foreign-carrier flights (exclusive of those to or from the U.S.) at approximately \$480 million per year, some of which would be earned in direct competition with U.S. carrier service in fifth-freedom markets. This new revenue would be available to the foreign airlines to defray the cost of their entertainment systems, reduce fares where they have the flexibility to do so, or otherwise support their operations worldwide. In this respect, the current gambling ban may not provide a level competitive playing field for U.S. airlines.

***Foreign-Carrier  
Flights to/from U.S.***

Further, if the U.S. law were changed to permit gambling only on foreign-carrier flights to or from this country, we estimate that foreign airlines could receive an additional \$112 million in gambling revenue per year. Again, some of this revenue would be earned on flights competing directly with U.S. airline service on which gambling would continue to be banned.



***U.S. Airlines'  
International  
Flights***

Finally, if U.S. airlines were allowed to offer video gambling on their international flights, we estimate they could earn \$300 million per year in gambling revenue from their international service in the Atlantic and Pacific regions combined. Net of direct operating expenses, which we estimate at approximately \$75 million per year, video gambling could yield net revenues of about \$225 million annually for U.S. carriers.

***BILATERAL  
ISSUES &  
LEGAL  
FRAMEWORK***

The Gorton Amendment and the Department's request for public comments on the issues of this study have engendered formal diplomatic protest to the Department of State concerning the regulation of foreign-airline conduct outside the territorial limits of the United States. Changing the law to allow gambling on foreign-carrier flights to or from the U.S. could be expected to eliminate this concern on the part of our bilateral aviation partners.

***Regulation  
Needed?***

In principle, there are a variety of frameworks of gambling regulation and enforcement which could be applied to U.S. air carriers if gambling were authorized on their international flights. Before that authority were granted, however, certain issues would have to be addressed regarding how -- or even whether -- a given framework *should* be applied:

***Communication  
By Wire***

- ▶ Since it is envisioned that gambling activities aboard aircraft would require the use of communications facilities, a decision to allow gambling in foreign air transportation must address whether 18 U.S.C. 1084, concerning wire communications, would or should apply. If applicable, it may be difficult to implement air-to-ground verification of credit card accounts for gambling activity, for example.

***Federal or State  
Regulation***

- ▶ Under current Federal law, the regulation of gambling operations is largely left to the States. Pursuant to 49 U.S.C. 41713, however, a State is preempted from enacting or enforcing a law, regulation, or other provision related to a price, route, or service of a U.S. carrier. Thus, a decision to allow gambling must also address what entity, if any, would regulate the gambling operations and ensure the integrity of gambling devices on board U.S. aircraft.

