

Institution: Queen Mary University of London		
Unit of Assessment: 18 Law		
Title of case study: Preventing Online Gambling Harm Through Better Regulation		
Period when the underpinning research was undertaken: 2010-2019		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Prof Julia Hörnle Dr Alan Littler Dr Gareth Tyson Dr Maria Schmidt-Kessen	Role(s) job title(s): Professor of Internet Law CCLS- part-time Senior Lecturer, EECS, QMUL CCLS Post-Doc Research Assistant	Period(s) employed: May 2000-Pesent Jan-Dec 2018 Jun-Dec 2018
Period when the claimed impact occurred: 2018-2020		
Is this case study continued from a case study submitted in 2014? N		
<p>1. Summary of the impact</p> <p>Prof Hörnle has led a team at Queen Mary University of London to produce research responding to the significant and prolific risks of online gambling—including addiction, minors playing, indebtedness, fraud, money-laundering and manipulation of sports. Funded by the European Commission, Hörnle and her team have examined how to reduce these risks by strengthening the regulation of online gambling.</p> <p>The team’s research strengthened regulation and its enforcement throughout Europe, reducing the harms of online gambling. In particular, the research has benefited player protection and improved regulation in countries worldwide through five key impacts:</p> <ul style="list-style-type: none"> • capacity building for the benefit of regulators (including setting regulatory priorities) • influencing legal frameworks • assisting regulators to adopt more effective enforcement practices for better player protection • providing evaluation tools for assessing the effectiveness of regulation • creating a framework for international co-operation. <p>By informing and equipping regulators in this way, the research has enabled the safeguarding of online players using approaches that have not been considered or available previously, and contributed to new policies and regulations.</p>		
<p>2. Underpinning research</p> <p>Since 2010, researchers at Queen Mary have produced a body of work focused on effective regulation frameworks for online gambling [3.1, 3.2]. The research found that the internet has completely changed the enforceability of existing gambling regulations and exposed the limitations of the current regulatory regimes. Before the internet, unregulated gambling existed on a local basis and was regulated locally; by contrast, remote, online provision cannot be regulated in this way. Professor Hörnle has focused on the challenge of cross-border enforcement in cases where online gambling is provided remotely from a foreign country. A key line of enquiry pursued in the research is how can state A enforce its online gambling regulation in respect of online gambling services provided from state B and protect players in state A? [3.3, 3.4, 3.7, 3.8].</p> <p>Online gambling services can now be provided remotely, by operators establishing themselves (their personnel and physical equipment) in geographically distant states with a permissive legal regime. In Europe online gambling services have been provided remotely from offshore locations (such as Alderney, Cyprus, Gibraltar, Isle of Man, Malta), with operators avoiding a physical presence in the states whose citizens they target. The research demonstrated that gambling operators locate their services in permissive states, which has created a <i>de facto</i> impunity [3.1, 3.5, 3.6, 3.9, 3.10]. This has resulted in a large percentage of online gambling services in a specific country originating from a foreign, locally unregulated, gambling operator [3.1] – for example, 55% in Sweden before its reforms in 2017, and almost 80% for certain types of gambling in Germany.</p>		

This regulatory arbitrage has undermined traditional approaches to law enforcement which are territorially bound [3.1].

In 2017, due to her established research in this area, Hörnle was awarded a significant grant by the European Commission (EC) and led a team of four researchers to prepare the first major EU Report on this complex issue [3.3]. The research was carried out in close consultation with national regulators and the EC, in order to develop best practice standards to improve player protection. A reiterative dialogue with regulators and policy makers was a significant part of the research, and Hörnle's team interviewed 19 national authorities and 16 other stakeholders (e.g. affiliates, legal advisers, payment services, industry associations). The researchers met the EC and the national regulators four times in Brussels during 2018.

The report, which was published by the EU in January 2019, evaluated regulatory tools available for enforcing online gambling rules and based on this analysis, offered recommendations to EU Members States on how to improve gambling regulation [3.3]. It recommended three strategies for creating effective regulatory frameworks:

1. using local, domestic intermediaries *within* the country that wishes to regulate; for example, local payment providers blocking payments for unregulated online gambling, and local internet access providers being responsible for blocking unregulated gambling websites
2. controlling/prohibiting online advertising of gambling
3. strategic, international co-operation.

The research led to several follow-up publications [3.4- 3.8]. Together these publications:

- demonstrated how the internet has changed advertising (social media influencers; affiliates) and analysed how advertising should be contained. The research argued that regulation cannot be limited to imposing obligations on gambling operators but should include obligations imposed on social media platforms and use data and artificial intelligence to prevent harm, for which a different set of regulations are required [3.2, 3.3, 3.4, 3.5].
- provided evaluation tools for assessing the effectiveness of regulators' frameworks, and showed the need for capacity building of regulators, and international co-operation of regulators with tech-companies, and other regulators [3.3-3.7].

3. References to the research

[3.1] Hörnle, J., & Zammit, B., (2011). *Cross-border Online Gambling-Law & Policy*, Edward Elgar 2010. Reviewed by Brooks, G. *International Journal of Law, Crime and Justice* 39,79-80.

[3.2] Hörnle, J., & Carran, M. A. (2018). A sieve that does hold a little water—gambling advertising and protection of the vulnerable in the UK. *Legal Studies*, 38(4), 529-548. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/legstd38§ion=35

[3.3] Hörnle, J. (2019). *Evaluation of regulatory tools for enforcing online gambling rules and channelling demand towards controlled offers*. European Commission. https://ec.europa.eu/growth/content/evaluation-regulatory-tools-enforcing-online-gambling-rules-and-channelling-demand-towards-1_en (Download Figure 9. October 2020: 1,137 downloads)

[3.4] Hörnle, J., Schmidt-Kessen, M., Littler, A., & Padumadasa, E. (2019). Regulating online advertising for gambling—once the genie is out of the bottle.... *Information & Communications Technology Law*, 28(3), 311-334. doi.org/10.1080/13600834.2019.1664001

[3.5] Schmidt-Kessen, M. J., Hörnle, J., & Littler, A. (2019). Preventing risks from illegal online gambling using effective legal design on landing pages. *J. Open Access L.*, 7, 1. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jopacc7§ion=6

[3.6] Hörnle, J. (2019). Written and Oral Evidence Submission, House of Lords, Select Committee on the Social and Economic Impact of the Gambling Industry, UK. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/gambling-industry-committee/social-and-economic-impact-of-the-gambling-industry/written/105048.pdf>

[3.7] Hörnle, J., & Schmidt-Kessen, M. J. (2019). EU-Kommissionsstudie zur Durchsetzung von Online-Glücksspielregulierung: Kanalisierung des Spielbetriebs hin zu kontrollierten Angeboten. *ZfWG—Zeitschrift für Wett-und Glücksspielrecht*, (5), 22-26. <https://online.ruw.de/suche/zfwg/EU->

[Kommission-zur-Durchse-von-Online-Gluecksspielr-5ca774fc40db9820b3d1429c630ebaeb?crefresh=1](https://doi.org/10.1089/glr2.2019.2365)

[3.8] Hörnle, J., & Littler, A. (2019). Evaluation of regulatory tools for enforcing online gambling rules and channelling demand towards controlled offers: An overview of the report completed for the European Commission. *Gaming Law Review*, 6, 1-10. <https://doi.org/10.1089/glr2.2019.2365>

4. Details of the impact

The research was designed from its inception to have impact on the regulation of online gambling in the Member States of the EU, and beyond. The European Commission Report [3.3], 'Evaluation of regulatory tools for enforcing online gambling rules and channelling demand towards controlled offers', has been widely used (with 1,137 downloads as of 1. October 2020). It has led 11 countries (Australia, Belgium, Czech Republic, Estonia, Finland, Hungary, Malta, Norway, Poland, Spain and Sweden) to take measures to protect local players and contributed to the movement in the UK for a reform of gambling regulation [5.13].

Hörnle has presented the key findings at various international fora, including the International Association of Gambling Regulators (IAGR) Conference in Copenhagen in September 2018 and the Gambling Regulators European Forum (GREF) in Cyprus in 2019. The recommendations have also received attention in industry specific journals [3.7, 3.8] and media outlets with a wider public audience, such as the Conversation, BBC Radio Digital Planet, Wired and The Daily Mail [5.14]. The report, and subsequent discussions with regulators and stakeholders of its key findings and recommendations, were welcomed across the industry.

Five key impacts have arisen from the research and its dissemination.

Capacity building for the benefit of regulators including setting regulatory priorities

Regulators who lack the resources to do research have used the report as evidence to justify the need for regulation. The Ministries of Finance in Estonia and Poland said the report was an authoritative evidence-base to justify their strategies and build enforcement solutions [5.5, 5.8]. The Chief Policy Officer of the giant software company Playtech, who was Italy's former gambling regulator, described it as 'the most remarkable and serviceable study in the field of gambling that I have read in my 12 years of experience in the sector'. He described the innovations recommended as a 'catalyst for change and improvements' in gambling regulation [5.3] and that the research was of 'high benefit to European regulators and beyond who are not all so well resourced or equipped to carry out such [research]' and described the report as the 'reference handbook for every current regulator' [5.3].

Furthermore, the research provided under-resourced regulators with legal instruments to enforce player protection against the tide of unlicensed online gambling offerings from abroad. For example, in Norway the research assisted a small regulator in protecting consumers against foreign, multi-billion-dollar interests. In a case brought by several well-funded gambling operators challenging the Norwegian regulation, the Norwegian Court quoted the research extensively to confirm the legality of the payment ban. In this way the research helped to protect players in Norway by giving the regulator the instruments it needs to enforce the law [5.7].

Influencing legal frameworks (changes in law)

The research has improved legal frameworks for enforcement and progressed initiatives for legal change in Belgium, Denmark, Estonia, Finland, Norway, Sweden and the UK. Hörnle gave oral and written evidence to the UK's House of Lords' Select Committee, which informed four recommendations forwarded in the Committee's final report [5.13, paras 149, 177, 381, 515]:

- The Committee approved the finding that online gambling companies are in a position to control overspending by gamblers on the basis of the data they collect [5.13, para 177].
- It also approved the recommendation that a duty of care, enforceable in the civil courts, would provide an incentive for gambling companies to comply with best practices of player protection [5.13, para 381].

- The Committee referred to the finding that prohibition of online advertising of gambling should be considered [3.2, 5.13, para 515].
- It accepted the recommendation that the largely ignored problem of foreign unlicensed gambling in the UK must be better addressed [5.13, para 149].

These recommendations have now garnered strong support by the UK Parliament and the UK government. Additionally, it has had a tangible effect on legal frameworks in other countries:

- Finland's Interior Ministry stated that the report was instrumental in overhauling the Finish enforcement model. In Finland the gambling monopoly is mainly enforced through criminal law (which is slow and cumbersome). As a consequence of the report, the government is, for the first time, implementing other forms of enforcement as an alternative to criminalization [5.4].
- In Belgium, Hörnle's research influenced a royal decree adopted in late 2018, which introduced new restrictions on online gambling advertising. Belgian's gambling regulator confirmed that this research has provided it with novel enforcement solutions [5.10].
- In Norway, the judgment in the aforementioned case changed administrative law by confirming that two types of enforcement methods are a legitimate exercise of power by the Norwegian regulator: the ban on payments made to unlicensed online gambling operators and co-operation with social media companies [5.7]. Estonia's Ministry of Finance said that it relied heavily on the Report when amending the country's Gambling Act and its enforcement methods [5.5].
- In Sweden, the Gambling Authority confirmed that the Report inspired changes in secondary law and guidelines [5.9].

Denmark's newspaper Videnskab published a summary of Hörnle and colleagues' research article [3.4], influencing the debate on targeted marketing and social media advertising there. In consequence of this and media voices, Denmark's Tax Ministry announced regulatory action against such advertising.

Assisting regulators to adopt more effective enforcement practices for better player protection

The report has assisted regulators in strengthening their enforcement practices in Australia, Belgium, Czech Republic, Estonia, Hungary, Malta, Norway, Poland, Spain and Sweden [5.1, 5.2, 5.5-5.12]:

- Belgium's regulator said that the research provided new perspectives for its policy on the use of website and app blocking. The report's recommendations contributed to the development of an effective gambling policy to protect players. In particular the finding that 'regulators should have a wide range of sanctions at their disposal, ideally ranging from criminal sanctions to informal sanctions such as regulatory notices, dialogue between the regulator and tech industry, and voluntary requests for information' led them to recalibrate their practice accordingly [5.10].
- Sweden's Gambling Authority confirmed that the report had a direct impact on its policy and strategy discussions in the field of enforcement. Furthermore, it stated that the research is shaped its new payment blocking power [5.9].
- Australia's regulator, the ACMA, stated that the report's analysis of where foreign, illegal gambling websites are hosted had been particularly useful, and provided new strategic insights. In particular, the research on social media influencers introduced the ACMA to 'an aspect of the online gambling industry and its promotion which they had not seen canvassed before'. The report's analysis of new advertising technology assisted the ACMA in its own policy decisions [5.6].
- Malta's Gaming Authority pointed out that the 'insights in respect of social media/influencer advertising show that a new regulatory approach is needed' [5.11].

Providing evaluation tools for assessing the effectiveness of regulation

The research has given regulators the tools to measure and evaluate the effectiveness of their regulation and develop best practices by comparing their standards to those of regulators in other countries. Dialogue with regulators established that such evaluation tools had been missing

previously. For example, Spain's Finance Ministry stated, 'your research is a clear benchmark for new regulations all around Europe' and 'really helped us to contrast our current regulation and enforcement measures with regards to other European regulators, which is something very valuable by itself.' [5.12]. Regulatory authorities in Australia, Czech Republic, Hungary, Malta, Spain, and Sweden also confirmed that they will use the report to benchmark the effectiveness of their regulation [5.1, 5.2, 5.6, 5.9, 5.11, 5.12].

Creating a framework for international co-operation between regulators and with tech companies

Gaming authorities in Australia, Belgium, Finland, Norway and Sweden said the report inspired them to share more information and seek contacts with gaming authorities in other countries with a view to international exchanges [5.4, 5.6, 5.7, 5.9, 5.10]. For example, Australia's Communications and Media Authority has stated that recommendations on strategic cooperation with like-minded regulators were useful and had provided the Australian regulator with approaches to implement [5.6]. Similarly, Belgium's Gaming Commission said the report changed its view on international co-operation, both in respect of regulators in other countries and international co-operation with tech and social media companies [5.10]. Co-ordination between regulators across state borders represents an entirely uncommon practice and is significant, because online gambling and tech companies operate across national borders and urgently require a co-ordinated approach to player protection.

5. Sources to corroborate the impact

- [5.1] [Testimonial] Gambling Supervision Board of Hungary, 1 July 2019.
- [5.2] [Testimonial] Ministry of Finance of the Czech Republic, 10 June 2019.
- [5.3] [Testimonial] former Italian regulator and now Chief Policy Officer at Playtech, 10 October 2019. [Corroborator 1]
- [5.4] [Testimonial] Finland's Ministry of the Interior, 3 June 2019. [Corroborator 2]
- [5.5] [Testimonial] Estonia's Ministry of Finance, 5 June 2019.
- [5.6] [Testimonial] the Australian Communications and Media Authority, 1 July 2019. [Corroborator 3]
- [5.7] [Testimonial] Norway's Gaming and Foundation Authority, 15 October 2019; Court Judgment in Norway, 21 January 2020, pp. 43, 44, 57, 58-59. [Corroborator 4]
- [5.8] [Testimonial] Poland's Ministry of Finance, 29 May 2019.
- [5.9] [Testimonial] Sweden's Gambling Authority, 11 June 2019.
- [5.10] [Testimonial] the President of Belgium's Gambling Authority, 28 October 2019.
- [5.11] [Testimonial] Malta's Gaming Authority, 24 October 2019.
- [5.12] [Testimonial] Spain's Ministry of Finance (Directorate General for Gambling Regulation), 20 November 2019. [Corroborator 5]
- [5.13] [Report] House of Lords, Select Committee on the Social and Economic Impact of the Gambling Industry, Report of the Session 2019-2021, Gambling Harm- Time for Action 2. July 2020, <https://publications.parliament.uk/pa/ld5801/ldselect/ldgamb/79/79.pdf>
- [5.14] Media Portfolio