APPENDIX 1: Foreign Jurisdictions Legislative Regimes

Illegal offshore wagering is a widespread problem, and many jurisdictions outside Australia have recognised its extremely harmful impact, from economic, integrity and general welfare perspectives, on local consumers, industry and sport.

In support of Racing Australia's submission on legislative and regulatory measures, the following examples are provided in relation to actions taken by other Governments to address the threat posed by illegal off-shore operators.

1. France

(a) The main purposes of Law No. 2010-476 of 12 May 2010 (the ***French Online Gambling Law***), most of which came into force on 13 May 2010, were to open the online gaming sector to competition (which until that time had been subject to a monopoly) and to establish a related legal framework. As part of that framework, the legislation established ARJEL (Autorité de Régulation des Jeux En Ligne, the French gambling authority) and made it unlawful to offer online gambling services to people in France without a licence from ARJEL.

(b) ARJEL was established specifically to deal with online gaming, particularly horse race betting, sports betting and poker. It provides opinions on any legal or regulatory text that is drafted in relation to the sector, and has been granted a set of investigative and enforcement powers by the French Online Gambling Law to combat illegal online wagering operators, whether based in or outside France, that provide services to French residents without a licence from ARJEL. The Gaming Advisory Committee, a separate governmental body under the authority of the Prime Minister of France, monitors gambling and games of chance in general, with a focus on the non-online sector (although it also publishes reports and information in relation to the online sector).

(c) Penalties for persons within the jurisdiction:

(i) An individual who offers unlicensed online gaming services may be punished by imprisonment for up to three years and/or fined up to €90,000. Other criminal sanctions include banning the individual from certain civic, civil and family rights (such as the right to vote and the right to assist or represent a party before a court), seizing his or her assets, and banning him or her from certain occupations (such as those involving public functions and those involving the management or administration of a company).

(ii) Corporate bodies and organised groups may be fined up to €450,000 and additional sanctions may be imposed such as dissolution or permanent or temporary closure of the company. These penalties may also be published as deterrent to other operators.

(iii) An unlicensed operator that advertises its services, or any other person who advertises the services of an unauthorised online wagering operator, can be fined up to €100,000 or an amount that is up to four times the relevant advertising expenditure.

(d) Enforcement options that may combat illegal offshore wagering:

(i) ARJEL may send a cease and desist notice to an unlicensed operator of online gaming, demanding that it cease conducting business in France.

(ii) If the operator does not comply with the notice, ARJEL may petition the President of the Paris First Instance Court to order an internet service provider (an ***ISP***) to block access to the website of the operator, and implement any other measures required to remove the website from directory or search engines. The President of the Paris First Instance Court can also ask the hosting service provider to take the necessary measures to ensure that the website is no longer accessible.

(iii) ARJEL may request that the Minister for Budget block any transfer of funds to or from accounts identified as being held by unlicensed operators. The ban can last up to six months and is renewable.

(iv) Judicial police and customs officers are allowed to participate under a pseudonym in online wagering sessions and record necessary information in order to catch illegal wagering operators and gather evidence, and they will not be held liable for that.

(e) It has been reported that unauthorised online gambling operators represented approximately 65% of the online gambling market in 2009, and by 2011, after introduction of the French Online Gambling Law, that percentage decreased to 20%. In its Raport D'Activité 2014–2015 (which is not available in English), ARJEL indicated that a large number of formerly illegal operators are now operating lawfully in the regulated market.

(f) The following table indicates the number of illegal online wagering operators that have been pursued since the introduction of the French Online Gambling Law. As far as Racing Australia is aware, there is no publicly available breakdown of these figures by onshore and offshore operations.

	2010	2011	2012	2013	2014
Number of cease and desist letters sent by ARJEL	236	766	254	277	103
Number of illegal websites blocked after a Court decision	1	2	31	31	43

The following are some specific examples of offshore operations:

(i) In 2010, the ISPs Numéricable, Orange France, France Télécom, SFR, Free, Bouygues Telecom, Darty Telecom and Auchan Telecom were ordered to block access to the illegal wagering website www.stanjames.com using any appropriate measures. The operator of the website, Gibralter-based Stan Gibraltar Ltd, had ignored a cease and desist notice sent by ARJEL.

(ii) In 2012, the Paris Court of Appeal ordered the ISPs Numéricable, Orange France, France Télécom, SFR, Free, Bouygues Telecom, Darty Telecom and Auchan Telecom to block access to the illegal wagering websites www.5dimes.com and www.fivesdimes.com. Both the operator of the website, Costa Rica-based 5DIMES, and the website hosting service provider had ignored a cease and desist notice sent by ARJEL.

(iii) On 25 September 2013, the Paris Criminal Court ordered the illegal waging operator Globet International Sports Betting Ltd, a company based in Great Britain, to pay a fine of €200,000 euros and to cease its activities in France.

(g) In its last annual report, Raport D'Activité 2014–2015, ARJEL indicated that it is considering potential legislative reforms that will strengthen the current legal framework and allow it to keep up with the evolution of online gambling offerings.

2. United States of America

(a) The federal *Wire Act* prohibits sports-related online gambling in USA but not other forms of gambling (for example, online casinos). Penalties for violation of the *Wire Act* include monetary fines and up to two years imprisonment.

(b) Internet gambling of all forms is illegal at the state level in 47 states. Nevada, Delaware and New Jersey permit online gambling directed to residents of their states, but only pursuant to a licence issued from the state. The licence requirements in each state are strict, and the fees associated with obtaining a licence are high. For example, in Nevada the initial license fee to establish an Internet gambling service is $500,000, and a license is restricted to those entities that are already in the casino business and have not previously operated online gambling services in violation of state or federal law. In Nevada, only three entities have been licensed to offer Internet gambling services since the state law was passed permitting online gambling in 2011. Further, offshore gambling operators cannot obtain the necessary license in these states unless they enter into a formal legal relationship with an existing United States casino entity in the state.

(c) Federal and state anti-gambling laws generally restrict liability to gambling operators and their customers. The United States Congress has therefore passed

two laws designed to increase the scope of liability for persons who assist or facilitate gambling operations:

(i) The *Illegal Gambling Business Act* (the ***IGBA***), which imposes monetary fines and up to five years' imprisonment on those who conduct, finance, manage, supervise, direct, or own all or part of a gambling business that is illegal under state law. This law was primary intended to extend liability to members of organised crime operations engaged in illegal gambling activity.

(ii) The *Unlawful Internet Gambling Enforcement Act 2006* (the ***UIGEA***), which outlaws the financial transactions that support illegal Internet gambling. The UIGEA prohibits gambling businesses from knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the Internet and that is unlawful under any federal or state law. The UIGEA also requires federal regulators to draft regulations to compel financial institutions to implement systems to identify and block illegal gambling transactions. Significantly, the UIGEA permits the United States Department of Justice to enforce the UIGEA against not only the operators of illegal offshore Internet gambling sites but also the financial institutions that process the payments between the operators and their customers. An individual convicted under UIGEA faces substantial fines and/or imprisonment of up to five years.

(d) Neither IGBA nor UIGEA extends liability under federal or state anti-gambling laws to certain other businesses whose support is necessary to sustain offshore Internet gambling operations, including advertisers and ISPs. However, the Department of Justice has used the threat of prosecution under "aiding and abetting" principles against these entities to force them to stop providing services to illegal offshore gambling operators.

(e) Passage of UIGEA, which barred banks from processing payments to offshore gambling websites, had an instant impact on the share prices of publicly listed interactive gambling firms, with valuations falling significantly. Shares of PartyGaming, the world's biggest Web poker company, fell 58% in one day, while 888 Holdings, a specialist in online casino and card games, lost more than a quarter of its value. Sports betting site Sportingbet, which received 50% of its unique visitors from USA, fell 64%.

Evidence suggests that, prior to the introduction of the UIGEA, United States consumers comprised a significant proportion of interactive gambling participation in certain high profile online gambling sites. An example in the literature is of the Gibraltar-based online company PartyGaming PLC, which reported a reduction in daily revenues from $3.6 million to around $872,000 after it decided to terminate customer relationships with United States consumers. It should nevertheless be noted that those online gambling operators who chose to remain in the United States market after the passage of the UIGEA received a sharp increase in United States web traffic and revenues.

The Department of Justice and State Attorneys General have been aggressive in pursuing executives from companies suspected of being in violation of the federal and state anti-gambling legislation. A notable recent development has been the FBI and Department of Justice's use of information supplied by Australian Internet entrepreneur, Daniel Tzvetkoff, to prosecute Tzvetkoff and the founders of the three largest offshore online poker companies, PokerStars, Full Tilt and Absolute Poker. The Department of Justice charged each with illegal gambling, money laundering, and bank and wire fraud for their involvement in a scheme to deceive banks about the true nature of transactions with them in order to evade the financial transaction controls of the UIGEA. In that case, the Department of Justice prosecuted 11 individuals in total, including Chad Elie, a payment processor based in Las Vegas who pled guilty to violation of the UIGEA and agreed to forfeit $500,000 he earned as a result of the scheme.

This prosecution effectively shut down Absolute Poker, which later declared bankruptcy. PokerStars (which acquired Full Tilt during the pendency of the prosecution) entered into a settlement agreement with the Department of Justice under which it paid more than $500 million to the United States government and agreed not to engage in unlicensed Internet gambling in USA. Recently, PokerStars was granted a licence to operate Internet gambling legally within the state of New Jersey.

Other notable prosecutions under United States law include the following:

(i) Bodog Entertainment Group and its founder Calvin Ayre were prosecuted for violations of the IGBA and money laundering. The prosecution is currently stalled due to complications in extraditing the Canadian and Costa Rican defendants, but the action has resulted in the shutdown of the website at www.bodog.com.

(ii) In 2013, nine men pled guilty to running an illegal offshore Internet sports betting business based in Costa Rica and conspiracy to commit money laundering. The Department of Justice is seeking forfeiture of $8.1 million in assets stemming from the defendants' operations.

(iii) In 2012, the New York District Attorney prosecuted 25 individuals associated with Pinnacle Sports, an online sports betting operator based in Curaçao that allegedly removed itself from the American market after 2011. Pinnacle Sports was the recent subject of a *New York Times* investigation which found that, despite the 2012 prosecution, the company maintains a presence on American soil and continues to offer its services to American customers.

3. Singapore

(a) Under the *Remote Gambling Act 2014*, which came into effect on 2 February 2015, it is an offence to provide a remote gambling service (whether from inside or outside Singapore).

(b) A person may apply to the Ministry of Home Affairs to be exempt from the operation of the law. As of June 2015, two entities had applied, including the Singapore Turf Club. The Ministry has indicated that it will take 9–12 months to process an application.

(c) Penalties for persons within the jurisdiction:

(i) A person who provides remote gambling services without an exemption may be punished by imprisonment for up to seven years and fined up to $500,000.

(ii) Individual gamblers who use non-exempt services are also exposed to penalties.

(iii) It is also an offence to publish or authorise the publication of a remote gambling services advertisement, or to promote remote gambling in Singapore, in either case punishable by a fine of $20,000.

(d) Enforcement options that may combat illegal offshore wagering:

(i) An authorised officer (which could be a police officer, employee of the Media Development Authority or other public officer appointed to exercise powers under the *Remote Gambling Act 2014*) may direct the Media Development Authority to order an ISP to block access to a website if the officer is satisfied that the website can be used by people in Singapore to gamble, or the website contains an advertisement for online gambling.

(ii) Where an authorised officer is satisfied that a person has engaged in online gambling, the officer can direct the Media Development Authority to serve a blocking order on a financial institution or financial transaction provider, which requires it to: (a) refrain from accepting credit or cheques from the person; (b) refrain from making or accepting electronic funds transfers to or from the person; or (c) block payments or prevent transactions where they use merchant category codes (or equivalents) customarily associated with gambling transactions.

4. Canada

(a) In Canada, each province is entitled to regulate online gambling within that province. The Quebec Government introduced state-controlled online gambling in 2010.

(b) Part VII of the *Canada Criminal Code* concerns gaming and betting and contains a list of offences relating to facilitating gambling. These offences are punishable by a maximum of three years in prison. In the 2001 case of *R v Starnet Communications International Inc*, Part VII was used to prosecute an offshore entity that had a subsidiary in Vancouver for offering online gambling.

(c) In March 2015, the Finance Minister of Quebec announced plans to introduce legislative amendments requiring provincial ISPs to block illegal online gambling websites.

5. Denmark

(a) Online gambling is prohibited without a licence. The Danish state-owned Danske Spil has a monopoly on providing lotteries and the provision of betting on horse races (as well as dog and carrier pigeon races).

(b) Penalties for persons within the jurisdiction:

(i) A person who provides gambling activities in Denmark without a licence may be punished by a fine or imprisonment for up to six months.

(ii) It is an offence to promote participation in unlicensed gambling, punishable with a fine.

(c) Enforcement options that may combat illegal offshore wagering:

(i) If an unlicensed provider directs the provision of gambling to the Danish market, the Danish Gambling Authority may request that the Bailiff's Court order an ISP block the website.

(ii) The Danish Gambling Authority is entitled to request that the Bailiff's Court make an order blocking payments to unlicensed operators.

6. United Kingdom

(a) The *Gambling Act 2005* prohibits the supply of online gambling services without a licence and established the Gambling Commission to regulate commercial gambling in Great Britain.

(b) A person who provides facilities for online gambling without a licence may be punished with up to 51 weeks (six months in Scotland) in prison and/or a fine of up to £5,000. Previously, this only applied if at least one piece of 'remote

gambling equipment' (such as equipment to store information relating to the supply of the online gambling facilities) was situated in Great Britain . However, the *Gambling (Licensing and Advertising) Act 2014* amended that qualification so that an offshore wagering operator will be liable if its facilities are used in Great Britain and the operator knows, or should know, that the facilities are being used, or are likely to be used, in Great Britain.

(c) The *Gambling (Licensing and Advertising) Act 2014* came into force on 1 November 2014 and reformed the existing regulatory regime by shifting the focus from the place of supply to the place of consumption. In its 2014/2015 Annual Review, the Gambling Commission stated that the purpose of the legislation was "to ensure that, in future, all overseas gambling operators offering gambling to players in Britain would be subject to the same standards and requirements as those based in Britain". The Gibraltar Betting and Gaming Association, which is a trade association representing nearly all Gibraltar-based online gaming operators, challenged the legislation in the High Court of Justice of England and Wales on the basis that it breached the Treaty on the Functioning of the European Union, but was unsuccessful. It is estimated that 55% of wagering operators offering services to customers in Great Britain are based in Gibraltar.

(d) It is also an offence in Great Britain to advertise unlawful gambling, punishable by up to 51 weeks (six months in Scotland) in prison and/or a fine of up to £5,000.

(e) In its 2014/2015 Annual Review, the Gambling Commission also stated the following in relation to the *Gambling (Licensing and Advertising) Act 2014* and its activities generally:

(i) "Over 85% of the domestic remote (online) gambling market is supplied by overseas. Now those operators are within our regulatory regime, our capacity to raise standards is significantly increased, both in terms of the nature and reach of our regulatory powers and in terms of the additional specialist resources we can now employ."

(ii) "A few small operators withdrew from the British market rather than apply.. . We had identified about 150 operators trading into Great Britain on white list or EU licences and, almost without exception, they are now trading on Commission licences. The remaining few have withdrawn from the British market and, where necessary, are blocking British players."

(iii) "As far as unlicensed activity is concerned, we have found no evidence yet of operators 'moving underground' or the emergence of any scale of illegal websites targeting Britain. Of the small number of illegal operators identified, some responded immediately to our request to stop operating, while others have been cut off from accessing the British market following our work with the main payment providers and advertising platforms.

Arrangements with payment service providers, platforms such as Google and Facebook and with advertisers are working well and we have received a great deal of support in disrupting the activities of the unlicensed, for example, on five occasions between 1 November 2014 and1 April 2015 unregulated access to the British market was prevented. We are now also seeing payment providers approaching the Commission in advance for guidance, when they perform due diligence on prospective merchants."