

Op-Ed/Editorials - Casinos On Cruise Ships, Why Not On Airplanes?

December 21, 2005

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Ryanair has announced it may start in-flight gambling as early as March 2006. Its expectations are high. A spokesman described gambling on its aircraft and on its website as “a real wallet phenomenon.”

The low-cost airline will introduce a new system known as Digebox, with 6,000 gaming laptop units, which can be converted to play real-time gambling games. “The sky is the limit here. The potential is enormous,” Chief Executive Michael O’Leary was quoted in the Irish Independent. “I think these things will become as common as the in-flight magazine.” He believes gambling can bring in so much money that he will eventually be able to let everyone fly for free. This is the overly optimistic view common to entrepreneurs with no gaming experience, Ryanair is already operating its own lottery system, with scratchers. Tickets are sold once the planes enter international waters and only to “residents of countries on Ryanair routes.” Very few passengers bought tickets on a flight I took from Santander, Spain to Stansted, U.K. in June 2005. Still, the profits can be tremendous. The statement, “A contribution will be made to children’s charities in the U.K., Ireland and throughout Europe,” is the closest its literature comes to telling players the odds.

This isn’t the first time airlines have thought about onboard gambling. Singapore Airlines once installed two slot machines, only two feet tall with plastic rather than metal cases to save weight, at the back of a plane. In the late 1990s, Swissair introduced on-board video gambling, followed by Lauda Air. Singapore tried again. Harrahs entered into a joint venture with Sky Games.

But a terrible crash and U.S. laws ended the experiments. Swissair flight 111 crashed off Peggys Cove, Nova Scotia on September 2, 1998. There is a moving memorial on the rock-strewn coast for the 229 people who died in sight of the land. It was, and still is, generally accepted that the MD-11 was brought down by a fire caused by the onboard entertainment and gambling system.

Swissair had been operating under an exemption to an American law, the Gorton Amendment, passed in 1994, prohibiting gambling on planes flying into or out of the U.S.

Senator Slade Gorton (R.-Wash.) had fought gambling before. In fact, his opposition to Indian gaming eventually led to his not being reelected, when gaming tribes contributed millions of dollars to his opponent.

Like the airlines, U.S. cruise ships faced strong competition from foreign carriers in the 1990s. Anti-gambling fervor in the 1950s had resulted in federal laws making it a crime for U.S. flagships to even carry slot machines. Ships sailing under the flags of foreign nations were exempt, and would open their casinos as soon as they reached international waters. The situation got so bad that by 1990 there were only three U.S. flagged cruise ships in the world, sailing between the ports of Hawaii.

Congress reacted by passing the United States-Flag Cruise Ship Competitiveness Act of 1991. The aim, and the result, was a level playing field on the high seas. American and foreign operators now operate under the same rules, with gambling usually allowed once the ship leaves U.S. territorial waters.

But when Northwest Airlines lobbied Congress to permit gambling on international flights, to compete against foreign carriers, the reaction was exactly the opposite. Rather than allowing U.S. airlines to also have gambling, Congress, without discussion or debate, passed the Gorton Amendment: "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."

The playing field had been leveled, but in such a way as to make it almost impossible for any airline to offer legal gambling. The prohibition on even installing or transporting a gambling device meant aircraft had to do without, even if there was only a slim chance they might enter U.S. airspace.

Foreign airlines and other nations naturally objected. They created the International Coalition on the Rule of Law. They argued that one country, even the U.S., cannot tell other countries what they can and cannot do outside of its borders.

Nations normally have the power to regulate their own flagships, once they are in or over international waters. This spring, the "Paul Gauguin," registered in the Bahamas but sailing out of Tahiti under a French flag, installed slot machines for the first time in its casino, because Bahamian and French law now allowed them. No one asked the U.S. government for its opinion, even though many, if not most, passengers were Americans.

But countries also have the right to protect their borders. The U.S. can demand that there be no gambling on ships or aircraft within its territory. The problem arises when it tries to extend that power into international water.

The Gorton Amendment probably violates civil aviation treaties signed by the U.S., as well as generally recognized international law. Its strongest argument is that foreign airlines are only bound by this American law if they choose to fly to the U.S. Ryanair can have gambling because it never enters U.S. airspace.

But the U.S. has, by treaties, agreed to allow aircraft from other nations which meet certain safety requirements to land and take off. There is no mention of gambling. Congress probably does not have the power to amend these treaties without the consent of the other countries.

More importantly, what would happen if other countries also tried to impose their moral views on the rest of the world? Actually, we already know. The U.S. is opposed to poker, lotteries, sports betting and casino games on the Internet. The result is that Internet gambling has become a very big business, but not for American operators.

What do you think? Comments on this article can be addressed to Prof. I. Nelson Rose.