Criteria and Points

Each application will be evaluated and scored on the basis of the following criteria:

(1) Juvenile crime statistics (25%);

(2) Percentage of eligible 6th, 7th, and 8th grade students the applicant proposes to teach, and the percentage of eligible students previously taught the G.R.E.A.T. core curriculum (35%);

(3) Presence of curriculum reinforcement programs (25%) (such as Elementary, After School/Summer Education/Booster Classes, and Family Component/Parent Involvement programs); and

(4) Support of National G.R.E.A.T. Program Training (15%).

Criterion 1. This criterion measures the magnitude of an applicant's youth crime problem using the number of Part I and II offenses reported in the Uniform Crime Reports (UCR) published annually by the Federal Bureau of Investigation (FBI). Part I and II offenses are defined and listed in Appendix II of the UCR. Please note that the most current UCR is usually two years in arrears. ATF will obtain the required juvenile crime figures directly from the FBI. Applicants must indicate which service area (*i.e.*, city, county, etc.) that ATF should use to obtain their most recent UCR juvenile crime figures.

In the event that an applicant does not provide annual data to the FBI for the UCR, the applicant should contact the G.R.E.A.T. Branch to determine how it can best submit information to measure its youth crime statistics.

Criterion 2. This criterion will measure middle school participation and consists of two sections:

- *Section A.* An applicant will receive points based on the percentage of middle school students proposed to be taught G.R.E.A.T. compared to the total population of middle school students in the jurisdiction.
- *Section B.* An applicant will receive points based on the percentage of middle school students who were taught G.R.E.A.T. during the last school year compared to last year's total population of eligible middle school students that could have been taught.

Criterion 3. This criterion is used to identify applicants who currently have life skills programs in place that reinforce the effectiveness of the G.R.E.A.T. middle school core curriculum. Life skill programs are those programs that instruct students in skills such as communication, active listening, empathy, avoiding peer pressure, conflict resolution, decision making, responsibility, citizenship, goal setting, cultural sensitivity, and behavior/anger management. Applicants will be asked to identify elementary, middle, and high school programs, as well as other summer, parent/family, and after school programs, in their service area.

Criterion 4. The G.R.E.A.T. Program depends on G.R.E.A.T. Officers to act as National Training Team (NTT) instructors at ATF's G.R.E.A.T. Officer Trainings sessions. Without this support, the program could not function. This criterion will recognize and reward applicants who provide NTT members for G.R.E.A.T. Officer training as delineated in the cooperative agreement.

Other Considerations

ATF will consider past year awardees previous spending of G.R.E.A.T. funds when determining their future funding levels. Unless sufficient documentation and support is supplied, applicants will not be funded at higher levels if past year spending indicates funds were underutilized. In order to assure that G.R.E.A.T. funds are spent in a fiscally responsible manner, ATF will also consider the cost per child for an applicant to conduct the program when awarding funds. ATF defines an agency's cost-per-child as the number of children to be taught divided by the eligible awarded funds.

Catalog of Federal Domestic Assistance (CFDA)

For the purpose of tracking Federal funds used in grants and cooperative agreements, the G.R.E.A.T. Program has been assigned CFDA number 21.053.

Paperwork Reduction Act

The collection of information contained in this notice has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1140–0048. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Authority and Issuance

This notice is issued pursuant to Office of Management and Budget Circular No. A–102 (Grants and Cooperative Agreements with State and Local Governments).

Approved: October 15, 2003.

Bradley A. Buckles,

Director.

[FR Doc. 03–26774 Filed 10–22–03; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. National Council on Problem Gambling, Inc.; Public Comment and Plaintiff's Supplemental Response

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Sections 16(b) and (d), the United States hereby publishes below an additional written comment received on the proposed Final Judgment in *United States of America* v. *National Council on Problem Gambling, Inc.,* Civil Action No. 1:03CF01278 filed in the United States District Court for the District of Columbia, together with the United States' supplemental response to the comment. Copies of the comment and the United States' supplemental response are available for inspection at the United States Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 200, Washington, DC 20530, and at the Office of the Clerk for the United States District Court for the District of Columbia, E. Barrett Prettyman Building, 333 Constitution Ave., NW., Washington, DC 20001.

Dorothy B. Fountain,

Deputy Director of Operations.

United States District Court, District of Columbia

United States of America, 209 S. LaSalle Street, Suite 600, Chicago, IL 60604, Plaintiff, versus National Council on Problem Gambling, Inc., 208 G Street, NE., Washington, DC 20002, Defendant. Civil Action No. *1:03CF01278.* Judge: Henry H. Kennedy.

Supplemental Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby responds to one additional public comment received regarding the Proposed Final Judgment in this case. This response supplements the Response to Public Comments filed by the United States on September 17, 2003.

I. Background

On June 13, 2003, the United States filed a Complaint alleging that the National Council on Problem Gambling, Inc. (''NCPG'') had orchestrated an unlawful territorial allocation of problem gambling products and services along state lines in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Simultaneously with the filing of the Complaint, the United States filed a Proposed Final Judgment. A Competitive Impact Statement (''CIS'') was also filed with the Court at that time, and published in the **Federal Register**, along with the Proposed Final Judgment, on June 26, 2003 (*see* FR 38,093). Pursuant to 15 U.S.C. 16(c), a

summary of the terms of the Proposed Final Judgment and CIS was published in *The Washington Post,* a newspaper of general circulation in the District of Columbia, during the period of June 24 through 30, 2003.

Under the consent order, NCPG is prohibited from directly or indirectly initiating, adopting, or pursuing any agreement, program, or policy that has the purpose or effect of prohibiting or restraining any Problem Gambling Service Provider (''PGSP'') from: (1) Selling problem gambling services in any state or territory or to any customer; or (2) submitting competitive bids in any state or territory or to any customer. The NCPG is also prohibited from directly or indirectly adopting, disseminating, publishing, seeking adherence to or facilitating any agreement, code of ethics, rule, bylaw, resolution, policy, guideline, standard, certification, or statement made or ratified by an official that has the purpose or effect of prohibiting or restraining any PGSP from engaging in any of the above practices, or that states or implies that any of these practices are, in themselves, unethical, unprofessional, or contrary to the policy of the NCPG.

The consent order further provides that the NCPG is prohibited from adopting or enforcing any standard or policy that has the purpose or effect of: (1) Requiring that any PGSP obtain permission from, inform, or otherwise consult with another PGSP before selling problem gambling services or submitting bids for the provision of problem gambling services in any state or territory or to any customer; or (2) requiring that any PGSP contract with, provide a fee or a portion of revenues to, or otherwise remunerate any other PGSP as a result of selling problem gambling services in any state or territory or to any customer. Finally, the NCPG is prohibited from adopting or enforcing any standard or policy or taking any action that has the purpose or effect of: (1) Sanctioning, penalizing or otherwise retaliating against any PGSP for competing with any other PGSP; or (2) creating or facilitating an agreement not to compete between two or more PGSPs.

The sixty-day period for public comments expired on August 29, 2003. During the period for public comments, the United States was sent one additional comment which was not noted in its original Response to Public Comments filed on September 17, 2003. That comment was from Messrs. Nicholas Provenzo, Chairman, and S.M. Olivia, Senior Fellow, The Center for the Advancement of Capitalism (''CAC''). The United States has carefully considered the views expressed in that comment, but nothing in the comment has altered the United States' conclusion that the Proposed Final Judgment is in the public interest. Pursuant to Section 16(d) of the Tunney Act, the United States is now filing with this Court its response to the comment submitted by the CAC. Once this comment and this response are published in the **Federal Register,** the United States will have fully complied with the Tunney Act and will file a motion for entry of the Proposed Final Judgment.

II. Supplemental Response to Public Comments

The Center for the Advancement of Capitalism

Among the issues the CAC has raised in its comment are: NCPG's status as a nonprofit corporation; the relationship of the antitrust laws to the First Amendment; and the Court's public interest determination. The CAC also noted the absence of a barrier to entry analysis. A copy of the CAC comment is attached as Exhibit A.

The CAC argues that, as a nonprofit organization, the NCPG is exempt from the authority of the antitrust laws. Section 1 of the Sherman Act specifically states that ''[e]very person'' who acts in restraint of trade or commerce falls within its scope. 15 U.S.C. 1. The Supreme Court has consistently held that nonprofit organizations are not exempt from Section 1 of the Sherman Act. *See NCAA* v. *Board of Regents,* 468 U.S. 85, 100 n. 22 (1984) (''There is no doubt that the sweeping language of § 1 applies to nonprofit entities, and in the past we have imposed antitrust liability on nonprofit entities which have engaged in anticompetitive conduct.'' (citations omitted)); *American Soc'y of Mechanical Eng'rs, Inc.* v. *Hydrolevel Corp.,* 456 U.S. 556, 576 (1982) (''[I]t is beyond debate that nonprofit organizations can be held liable under the antitrust laws.''); see also *Goldfarb* v. *Virginia State Bar,* 421 U.S. 773 (1975).

The CAC also argues that the Proposed Final Judgment violates the First Amendment by ''the shackling of NCPG's future speech and assembly'' and that this amounts to ''overt censorship by the United States.'' A horizontal agreement to allocate territories, whether by spoken or written word, is conduct within the reach of the Sherman Act.

. . . [I]t has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed . . . Such an expansive interpretation of the constitutional guarantees of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society.

California Motor Transport Co. v. *Trucking Unlimited,* 404 U.S. 508, 514 (1972), quoting *Giboney* v. *Empire Storage Co.,* 336 U.S. 490, 502 (1949). The California Motor Transport Court went on to say that ''First Amendment rights may not be used as the means or the pretext for achieving 'substantive evils' [citation omitted], which the legislature has the power to control.'' *Id.* at 515. *See also Associated press* v. *United States,* 404 U.S. 1 (1945).

With respect to the public interest determination, the CAC suggests the availability of other remedies in lieu of the Proposed Final Judgment. The territorial allocation alleged in the Complaint was a horizontal agreement among state affiliates, effectuated by the NCPG, the sole purpose and effect of which was to reduce competition for the sale of problem gambling products and services between and among state affiliates. The Proposed Final Judgment addresses the violation alleged in the Complaint—an unlawful territorial allocation of problem gambling products and services along state lines in violation of Section One of the Sherman Act. Nothing in the CAC's comment changes the view of the United States that the Proposed Final Judgment is in the public interest. In making its determination whether the Proposed Final Judgment is ''in the public interest,'' the ''court is without authority to 'reach beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made''' *United States* v. *Microsoft Corp.,* 231 F. Supp 2d 144, 154 (D.D.C. 2002) (quoting *United States* v. *Microsoft Corp.,* 56 F. 3d 1448, 1459 (D.D.C. 1995)).

Finally, the CAC also expressed concern about the absence of a barrier to entry analysis. However, the Division took into account all relevant economic and legal factors in its investigation of NCPG's practices.

III. Conclusion

After careful consideration of this public comment, the United States has concluded that entry of the Proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint, and is therefore in the public interest. Pursuant to Section 16(d) of the APPA, the United States is submitting this public comment and this response to the **Federal Register** for publication. After this comment and this response are published in the **Federal Register**, the United States will move this Court to enter the Proposed Final Judgment.

Dated:_____Washington, DC.

Respectfully submitted,

Rosemary Simota Thompson, IL Bar # 6204990, United States Department of Justice, Antitrust Division, 209 South LaSalle Street, Suite 600, Chicago, Illinois 60604, (312) 353–7530 (telephone), (312) 353–4136 (facsimile), *Rosemary.Thompson@usdoj.gov.*

Certificate of Service

I hereby certify that I served a copy of the foregoing Supplemental Response to Public Comments via First Class United States Mail, this _____ day of _____, 2003, on:

Sanford M. Saunders, Jr., Esq., Greenberg Traurig, LP, 800 Connecticut Avenue, NW., Suite 500, Washington, DC 20006.

Rosemary Simota Thompson, Attorney, Chicago Field Office, U.S. Department of Justice, Antitrust Division, 209 South LaSalle Street, Suite 600, Chicago, Illinois 60604, (312) 353–7530 (telephone).

United States District Court for the District of Columbia

United States of America, Plaintiff, v. National Council on Problem Gambling, Inc., Defendant. Civil Action No. 1:03CV01278. Before: Judge Henry H. Kennedy.

Public Comments of The Center for the Advancement of Capitalism

Pursuant to the United States' publication of a Proposed Final Judgment (PFJ) in the above-captioned action,[1] the Center for the Advancement of Capitalism (CAC)[2] files the following comments.

1. Material Facts

On June 13, 2003, the United States filed a complaint against the National Council on Problem Gambling, Inc. (NCPG), a nonprofit corporation headquartered in Washington, DC. According to NCPG, its mission is to ''public awareness of pathological gambling, ensure the widespread availability of treatment for problem gamblers and their families, and to encourage research and programs for prevention and education.''[3] NCPG only provides limited services through its national office, and instead relies on 34 state affiliates to produce and provide ''problem gambling services'' to customers. NCPG's customers include state governments.[4] NCPG's members adopted, through its board of directors, a series of internal agreements to coordinate the affiliates' work. Among these agreements, according to the United States, was a ''territorial allocation'' scheme that the Government considered a violation of section one of the Sherman Act, 15 U.S.C. 1.

The United States alleges that from 1995 to 2001, NCPG enforced a policy restricting individual state affiliates from offering problem gambling services—such as counseling and educational programs—in a state served by another NCPG affiliate. For example, the United States alleges NCPG ''asked'' its Minnesota affiliate to cease efforts to contract with the State of Nebraska, and instead support that the state's NCPG affiliate.[5] The Government charges acts such as this violate the Sherman Act violation because customers are denied the ''benefits of free and open competition'' and that ''innovations in problem gambling products and services [are] stifled.''[6]

The United States further claims NCPG maintained ethical guidelines designed to support the organization's illegal anticompetitive conduct. In 1996 and 1999, for instance, NCPG's directors and affiliates adopted an ''ethics resolution'' which codified the non-competition policy. According to the Government, NCPG could sanction a member internally, with ''fines or revocation of NCPG membership,'' for offering services in a state served by another affiliate without the incumbent affiliate's permission.[7]

The PFJ now before the Court resolves the Government's concerns by restricting NCPG's future conduct. The PFJ prevents NCPG from ''prohibiting or restraining'' any state affiliate from selling problem gambling services to any customer in any state. The PFJ further prohibits NCPG from declaring such competition ''unethical, unprofessional, or contrary to the policy of the NCPG.'' The PFJ will expire 10 years from the date of entry by the Court.

2. NCPG's Actions and Barriers to Entry

The major flaw in the Government's case is their complete failure to demonstrate, or even allege, that NCPG's actions created a barrier to competition in the market for ''problem gambling services.'' The United States typically alleges in antitrust cases that the defendant's actions create a de facto barrier to entry because of the relative difficulty in entering the marketplace. Here there is no such allegation. All the United States argues is that NCPG restrained competition among its own membership. This is not a sufficient basis to find entry of the PFJ is in the public interest.

In the first place, the ''problem gambling services'' market does not possess any substantial natural barriers to entry. The United States itself defines the market in very general terms:

> ''Problem gambling services'' means all services relating to the treatment or prevention of problem or compulsive gambling, including dissemination of information regarding problem gambling, telephonic hot-line or help-line services, training of problem gambling counselors, certification of various problem gambling training programs, and provision of any product or service aimed at assisting problem gamblers.[8]

It is unclear from the Government's definition how many or much of these services one must offer to be considered part of the market, but it is fairly clear that entry itself is not difficult. Any individual or organization could disseminate information on compulsive gambling and operate a hotline for gambling addicts. NCPG is not a monopolist in this market, but rather a successful group of experienced problem gambling service providers.

The United States presents no evidence that NCPG created, or attempted to create, any barriers to prevent any interested party from entering the market. From all accounts, NCPG's policies and actions were limited to governing the voluntary association among its own affiliates. Furthermore, NCPG and its affiliates are all nonprofit organizations. They are not organized to compete with each other, but rather to provide beneficial services to the public without regard for maximizing profit or paying dividends to stockholders. For the United States to hold NCPG to the same antitrust standards as a for-profit corporation or association both misconstrues the intent of antitrust laws, and imposes an unreasonable burden on NCPG's operations.[9]

3. Free Speech and Free Assembly

The most disturbing aspect of the PFJ is the shackling of NCPG's future speech and assembly. Section IV(B) of the PFJ prohibits NCPG from adopting or making any statement that ''states or implies'' intrastate competition of the type at issue in this case is ''unethical, unprofrofessional, or contrary to the policy of NCPG.'' This requirement does nothing to enhance competition, and in fact is overt censorship by the United States. The Government is not content to simply restrict NCPG's commercial conduct; they also seek to prevent NCPG from expressing, or even holding, ethical views that contrast those of the United States.

The First Amendment forbids the federal government from ''abridging the freedom of speech.'' The PFJ's restrictions on NCPG's future speech plainly violate this constitutional commandment. The United States possesses no authority, under either the Constitution or the Sherman Act, to prevent private associations from declaring conduct ''unethical'' or ''unprofessional''. Indeed, if the Government had such power, it could easily prohibit individuals, under color of antitrust enforcement, from making

[1] 68 FR 38,090–38,098 (June 23, 2003).

[2] CAC is a District of Columbia nonprofit corporation which regularly files public comments in Tunney Act proceedings. *See, i.e., United States* v. *Mountain Health Care,* 68 FR at 44,591 (July 29, 2003), *United States* v. *The MathWorks, Inc., et al.,* 68 FR at 3,270–3,272 (January 23, 2003).

[3] *http://www.ncpgambling.org/about.htm.*

[4] *See* Competitive Impact Statement at 8–9 (NCPG affiliates contracted with the State of Nebraska and the Arizona lottery.)

[5] Id.

[6] Complaint at 5.

[7] Competitive Impact Statement at 7.

[8] Proposed Final judgment at 3.

[9] The United States argues that NCPG's policies did not ''enhance economic efficiency'' (Complaint at 5). Once again, nonprofit organizations are not generally designed to maximize economically efficiently. And even if this were the case, there's no evidence that lack of ''efficiency'' is itself anticompetitive. Under this standard, for example, one could hold an amateur sports association in violation of the Sherman Act for limiting the number of games member teams may schedule in a season.

such statements as well. Had the United States chosen to name NCPG's officers individually, they could have extended the Section IV(B) speech restrictions to them.

The First Amendment also protects the right of individuals to ''peaceably'' assemble and ''petition the Government for a redress of grievances''. The PFJ imposes restraints on these rights. By forbidding NCPG from expressing views that disagree with the United States' position on competition, NCPG is arguably prohibited from lobbying other branches of the government, such as Congress, to alter or abolish the policy set forth by the Department of Justice in this matter. The United States is trying to prevent any future dissent or discussion of the merits of NCPG's policies with respect to competition among its affiliates. This not only violates the plain meaning of the First Amendment, but it usurps the potential role of Congress and the judiciary in making future assessmens arising from this case. Such drastic measures bear no relation to the stated objectives of the PFJ, namely to prevent allegedly anticompetitive conduct. The Constitution makes a clear distinction between punishing speech and punishing actual illegal conduct. The United States failed to make this distinction in formulating the PFJ.

Finally, the entire PFJ unreasonably interferes with the free association and assembly rights of NCPG and its members. For all the Government's complaining over alleged restraints of trade, this case arises solely from the voluntary actions of NCPG's members. The state affiliates agreed to participate in, and abide by, NCPG's collective decision-making process. They agreed to restrict their competitive conduct, as was their right. A key element of contract law is that a party may agree not to do something in exchange for consideration, which in this case was continued membership in NCPG. These rights should not be impugned upon by the United States for no better reason than certain consumers might be temporarily inconvenienced. Consumers, in this context, have no right to demand NCPG act a certain way or promulgate certain rules. There is a right to contract; there is no corresponding right to demand a service from certain producers, as the United States erroneously argues.

4. Availability of Other Remedies

The United States does not identify any specific ''private'' customers that were allegedly injured by NCPG's policies, only a few state governments. It is odd for the United States to contend state governments are powerless to direct the procurement of particular services as the result of a private association's ''anticompetitive'' actions. For instance, the United States contends Nebraska was denied the benefits of competition when the Minnesota NCPG affiliate was barred under the organization's rules from bidding for Nebraska's business. If this were the case, and Nebraska was unhappy with the options presented, why then didn't Nebraska simply create another option? If NCPG is getting in the way, a state could easily create its own agency to provide problem gambling services. Alternatively, the state could impose licensing or other professional requirements to ensure problem gambling services are provided on terms deemed acceptable to the state's interests.[10] In any case, there appears to be little practical justification for wielding a blunt federal remedy like this PFJ to dispose of a matter that could be dealt with better by the states.

5. Conclusion

For the numerous independent grounds discussed above, the Court should reject the PFJ as inconsistent with the public interest under the Tunney Act. The Government has not alleged facts sufficient to warrant any antitrust relief, and the remedies contained in the PFJ unreasonably restrain NCPG's First Amendment rights, as well as the right of NCPG members to voluntarily contract.

Respectfully Submitted, The Center for the Advancement of Capitalism

Nicholas P. Provenzo V, Chairman & CEO, P.O. Box 16325, Alexandria, VA 22302–8325, Telephone: (703) 625–3296, Facsimile: (703) 997–6521, *E-mail: info@capitalismcenter.org.*

S.M. Oliva, Senior Fellow, 2000 F Street, NW., Suite 315, Washington, DC 20006, Telephone: (202) 223–0071.

Dated: August 25, 2003.

[FR Doc. 03–26660 Filed 10–22–03; 8:45 am]

BILLING CODE 4410–11–M

[10] CAC does not support any governmental use of force to affect economic outcomes. Nor do we consider ''problem gambling services'' the proper domain of the state. This case, however, involves only the alleged restraint of competition in the marketplace, and to that end, our suggestion is merely that state customers can remedy their situation without resorting to federal antitrust intervention.

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day emergency notice of information collection under review: reinstatement, with change, of a previously approved collection for which approval has expired; claim for death benefits.

The U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by October 30, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–5806, Washington, DC 20503. Comments are encouraged and will be accepted for 60 days until December 22, 2003.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments, suggestions, or questions regarding additional information, including requests for copies of the proposed information collection instrument with instructions, should be directed to Sharon Williams via e-mail at *SharonW@ojp.usdoj.gov* or via facsimile at (202) 307–0036.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who