2004

U.S. Anti-Money Laundering Regulations: An Economic Approach to Cyberlaundering

Shawn Turner

Follow this and additional works at: https://scholarlycommons.law.case.edu/caselrev

Part of the Law Commons

Recommended Citation
Available at: https://scholarlycommons.law.case.edu/caselrev/vol54/iss4/15

This Note is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.
U.S. ANTI-MONEY LAUNDERING
REGULATIONS:
AN ECONOMIC APPROACH TO
CYBERLAUNDERING

It is my belief that economists, and policymakers generally, have tended to over-estimate the advantages which come from governmental regulation. But this belief, even if justified, does not do more than suggest that governmental regulation should be curtailed. It does not tell us where the boundary line should be drawn. This, it seems to me, has to come from a detailed investigation of the actual results of handling the problem in different ways. But it would be unfortunate if this investigation were undertaken with the aid of a faulty economic analysis. The aim of this article is to indicate what the economic approach to the problem should be.\(^1\)

The International Monetary Fund estimates that at least $600 billion is laundered annually, representing between two and five percent of the world’s gross domestic product.\(^2\) While “primarily a paperless crime, without physical violence directed at individuals,” money laundering can have a widespread detrimental impact on a nation’s economy.\(^3\)

Laundering undermines and manipulates legitimate businesses by allowing considerations other than sound business practice to influence decisions. It corrupts public officials, perhaps even entire governments, by buying votes and influencing the actions of politicians and career officials. It dis-

torts macroeconomic estimates, skews currency markets, and destabilizes financial institutions through the creation of illegal economies.\(^4\)

Money laundering may even destabilize the global economy.\(^5\) While the foregoing comments reflect strong criticisms of money laundering, one commentator suggests that efforts to prevent money laundering "all have in common that they view money laundering not as a reprehensible activity in itself, but as part of a larger criminal activity which is harmful to society."\(^6\)

While money laundering is not new,\(^7\) its importance in supporting criminal enterprises recently recaptured the attention of both politicians and the general population. As the intricate, well-planned terrorist scheme that culminated in the September 11, 2001, attacks is publicly unraveled, we are reminded just how pervasive money laundering is in criminal activities ranging from drug smuggling to acts intended to inflict mass casualties. Even though money laundering typically does not entail physical violence directed at people, the activities money laundering supports certainly threaten society in general. For instance, Treasury Department analysts estimate that a single global money laundering network channeled as much as $15 million to $20 million per year to the Al Qaeda organization responsible for carrying out the September 11, 2001, attacks on New York City, Washington, D.C., and Pennsylvania.\(^8\) Recognizing the potential social and economic impacts associated with widespread money laundering, the United States relies on regulations, international cooperation, criminal sanctions, and forfeiture to combat money laundering.\(^9\)

In this age of globalization, liberalized capital markets and technological advances have done more than reduce legitimate business transaction costs; criminal transaction costs have also


\(^{6}\) STESENS, supra note 2, at 85-86.

\(^{7}\) Daley, supra note 3, at 179 (claiming the term "money laundering" was first used in the United States to label the Mafia's blending of illegal income with legitimate business revenue, but has since been employed expansively).


been reduced. One commentator argues that the "internationalisation
of crime [is a] mere illegal spin-off of the globalisation of the
legal economy."10 Some authors argue that because money laun-
dering has blossomed into a widespread international phenomenon,
efforts to curtail money laundering must focus on building broad
international anti-money laundering standards in order to avoid a
"race to the bottom" wherein nations will offer lax money launder-
ing regulations in order to attract industry and the associated tax
revenues and job creation.11

This Note argues that the United States is taking the correct
economic approach to solving the money laundering problem. Af-
after introducing money laundering in Part I, this Note, in Part II,
will suggest that a race-to-the-bottom analysis may not be appro-
priate in the money-laundering arena. Money laundering creates
negative externalities, rather than the problematic market competi-
tion described in a race-to-the-bottom scenario. Recognizing
money laundering as an externalities issue has important implica-
tions for choosing the appropriate anti-money laundering regula-
tory scheme. As a result, Part III will examine U.S. anti-money
laundering efforts, both internationally and domestically, and will
argue that those efforts appropriately address money laundering
externalities issues in general. Part IV will examine how new anti-
money laundering efforts can be used to combat developing money
laundering technologies and will argue that the current regulations
provide the tools necessary to address internet-based money laun-
dering risks.

I. MONEY LAUNDERING: WHAT IS IT AND
HOW IS IT ACCOMPLISHED?

Laundered money is the fertilizer that nourishes criminal ac-
tivity. Money laundering has been defined as "the process by
which one conceals the existence, illegal source, or illegal applica-
tion of income, and then disguises that income to make it appear
legitimate."12 One author suggests, "Money laundering operations
generally boil down to 'a . . . complex process often using the lat-
est technology, of sanitising money in such a manner that its true
nature, source or use is concealed, thereby creating an apparent

10 STESENS, supra note 2, at 90.
11 Herbert V. Morais, The Quest for International Standards: Global Governance vs. Sov-
ereignty, 50 U. Kan. L. Rev. 779, 790-91 (2002) (arguing that the race to the bottom is "highly
undesirable because . . . such a practice can cause severe damage to the economy").
12 President's Comm'n on Organized Crime, Interim Report to the President
And Attorney General, The Cash Connection: Organized Crime, Financial Institu-
justification for controlling or possessing the laundered money."13 Dirty money is typically laundered in three steps: (1) placing money derived from criminal activities into a legitimate enterprise; (2) layering the money through multiple transactions to "obscure the original source"; and (3) integrating the clean funds into the "legitimate financial world in the form of bank notes, loans, letters of credit," or other recognizable financial instruments.14

Placement is the first stage in a money-laundering scheme. In this stage, the money must be transformed into a "flexible and legitimate form" and placed into a financial institution.15 Since anti-money laundering statutes impose reporting requirements on banks for certain transactions,16 launderers will typically channel funds through "front operations" like restaurants as a method to legitimate the funds.17 Alternatively, launderers can turn cash into other negotiable instruments like cashier's checks, money orders, or traveler's checks, which are less burdensome to smuggle and less likely to trigger reporting requirements when deposited into financial institutions.18 Perhaps most challenging to detect is the placement that occurs in nontraditional financial institutions such as "informal banking systems" and casinos.19

Layering is the second stage in the typical money-laundering scheme. During this stage, launderers have a range of options. Launderers transfer funds through various accounts, often using wire transfers in offshore accounts located in the Cayman Islands, Panama, and the Bahamas.20 The faster the wire transfers are carried out, the more difficult tracing the transactions becomes.21 International trade transactions also represent an extremely problematic form of layering.22 In this scheme, launderers use legitimate import-export businesses to over-invoice goods sold by a laun-

---

13 STESSENS, supra note 2, at 83 (citation omitted).
15 Daley, supra note 3, at 177.
16 See infra Part III.
17 See Daley, supra note 3, at 177-78.
18 Id. at 178.
19 See Andres Rueda, International Money Laundering Law Enforcement and the USA PATRIOT Act of 2001, 10 MSU-DCL J. INT'L L. 141, 175-76 (2001) (reporting that U.S. companies such as General Electric, Microsoft, Apple Computers, and General Motors have been used as money laundering facilities for Colombian drug traffickers through the "peso exchange").
20 Id. at 178.
21 Id. at 177 (suggesting the layering stage is "facilitated by the speed at which wire transfers can be performed between widely different jurisdictions, resulting in a web of transactions almost impossible to trace").
22 Id. at 178 (noting that "criminals and tax evaders have increasingly come to realize that money laundering through international trade is almost undetectable" because "law enforcement officials simply lack the capacity to analyze every single international trade transaction in the U.S.").
derer's front company or a legitimate offshore company. Another layering scheme is carried out through commodity and futures brokerages wherein brokers do not trade in their clients' names, thereby enabling the client to "buy and sell the same commodity, paying any trading losses with dirty money, and receiving in exchange a check legitimized as trading profits." Integration is the final stage in a typical money-laundering scheme. Once reintroduced into the "legitimate economy," the dirty funds are fully laundered. Money launderers can use legitimate bankers, lawyers, or other fiduciaries as integration vehicles. Launderers also use debit or credit cards issued through offshore banks, fake loans from offshore companies, and real estate "flips." Once filtered through these three cycles, the laundered money is ready to be used to nurture and support future criminal activity.

II. EXTERNALITIES: THE MAJOR ISSUE IN ANTI-MONEY LAUNDERING REGULATION

The manner in which regulators view the ills that flow from money laundering has significant policy and regulatory implications, both domestically and internationally. Some authors suggest global anti-money laundering standards are required to prevent a race to the bottom wherein nations will offer lax money-laundering regulations in order to attract industry and the associated tax revenues and job creation. However, why such a "race" will occur is not readily apparent. In fact, a race-to-the-bottom analysis may not be the appropriate framework for examining anti-money laundering regulations. Drawing on debate among environmental

23 Id. (commenting that examples of such transactions include importing safety razor blades "from Singapore for $2,952 each; apple juice from Israel for $2,052 per liter; flashlight lamps from Taiwan for $3,875.00; and missile/rocket launchers exported to Venezuela for $59.50 each").
24 Id. at 179.
25 Daley, supra note 3, at 178.
26 Rueda, supra note 19, at 179 (suggesting that "even after performing exhaustive due diligence," these individuals would not recognize the funds as laundered criminal proceeds).
27 Id. at 179-80 (describing real estate "flips").
28 Morais, supra note 11, at 790-91 (arguing that absent "sound and widely-accepted international standards . . . some countries [are] prepared and willing to offer lax legal and regulatory regimes as a way of attracting and keeping foreign investment," and that this kind of "regulatory arbitrage . . . [is] sometimes referred to as a race to the bottom"); see also Ayman Rizkalla, Money Laundering: The European Approach, 13 TUL. EUR. & CIV. L.F. 111, 123 (1998) (arguing that the European Community's requirement that new members align anti-money laundering regulations with the Community's before a new member will be considered for membership is "vital because any other policy would create "a race to the bottom").
29 See Richard L. Revesz, Rehabilitating Interstate Competition: Rethinking the "Race-to-the-Bottom" Rationale for Federal Environmental Regulation, 67 N.Y.U. L. REV. 1210, 1252-53 (1992) (arguing that theorists inconsistently apply race to the bottom to distinct scenarios,
regulation scholars, this section will describe the circumstances in which a race to the bottom occurs, and will compare this scenario with an alternative scenario based on negative externalities. This section will argue that social costs associated with money laundering stem from circumstances more similar to negative externalities than to the race-to-the-bottom scenario.

This section will suggest that the policy implications emanating from viewing the money laundering phenomenon as producing externalities rather than a race to the bottom. Finally, this section will argue that this externalities-based analysis justifies stringent, broadly applied domestic anti-money laundering regulation and unilateral efforts to coerce other nations to improve loose anti-money laundering standards. While this Note will not advocate completely abandoning efforts to create international standards, this Note will suggest that such efforts may actually increase costs already borne by compliant nations, rather than redirecting those costs to noncompliant nations, perpetrators, and industries most susceptible to money laundering.

A. The Race-to-the-Bottom Debate in Environmental Policy

The fundamental concept of "externality" must be addressed before describing a race to the bottom. According to Ronald Coase, the economist Paul Samuelson coined the term "externality" sometime in the 1950s to describe situations in which an "individual's actions have effects on others which he does not take into account in making his decisions." One writer defined "externality" as "an effect of one agent's actions on the welfare of another," Coase himself felt the term "externality" was "unnecessary" and preferred to rely on the phrase "harmful effects." Regardless, for simplicity's sake, this Note will use the term "externality."

---

30 See infra Part II.A (explaining "externalities").
31 COASE, supra note 1, at 23.
32 Id. at 23-24 (quoting Frank A. Hahn, Reflections on the Invisible Hand, LLOYDS BANK REV. 7-8 (April 1982)).
33 Id. at 27 ("Indeed, one of my aims . . . was to show that such 'harmful effects' could be treated like any other factor of production . . . and that it was unnecessary to use a concept such as 'externality' . . . I was clearly unsuccessful in cutting my argument loose from the dominant approach.")

including defects in interstate competitive processes, divergent interests over location decisions among principals and agents, and interstate externalities).
1. Single Jurisdiction Scenario

Professor Revesz elaborately described the elements of a race to the bottom in the environmental context. Assume jurisdiction A exists and is unaffected by events taking place outside its boundaries. Absent regulation, any firm in jurisdiction A will produce a level of pollution that will maximize profits. Unless the pollution adversely affects the firm, the firm will not consider the adverse health effects that jurisdiction A's citizens suffer from the pollution. Thus, the pollution becomes an externality and the firm's realized costs will be lower than its actual production costs. As a result, the firm will produce more output (and, consequently, more pollution) than it would produce if forced to internalize the pollution costs. In this scenario, any regulation enacted to achieve the "socially optimal level of pollution" must "force polluters to internalize the costs that they impose on breathers."

2. Competitive Jurisdictions Scenario

The race-to-the-bottom theory is based on several assumptions. First, assume that jurisdiction A competes with jurisdiction B and that actions in one jurisdiction affect the other jurisdiction. Next, assume pollution is contained in the jurisdiction in which it is produced, and that the total number of firms in both jurisdictions is fixed (i.e., firms can move jurisdictions, but firms cannot enter or exit the market). Remember, firms are still profit-maximizers and, as such, will want to minimize the costs associated with pollution control. As a result, firms will migrate to the jurisdiction with the least stringent pollution requirements so long as moving

---


35 Revesz, supra note 29, at 1213.

36 Id. at 1213-14.

37 Id. (arguing that adverse health effects are "externalities" or "social costs").

38 Id.

39 Id.

40 Id. (arguing that economic theory suggests "that the socially optimal level of pollution reduction is the level that maximizes the benefits that accrue from such reduction to the individuals who breathe the polluted air, minus the costs of pollution control"). Revesz notes that this theory assumes bargaining transaction costs between the polluters and breathers is high enough to "preclude bargaining from yielding the socially optimal outcome." Id. at 1214 n.6.

41 See id. at 1213-14.

42 Id. at 1214 (assuming "there are no interjurisdictional pollution externalities").

43 See id.
to the new jurisdiction costs less than complying with environmental standards in the current jurisdiction.\textsuperscript{44} Third, assume that each jurisdiction has the same preference for pollution.\textsuperscript{45}

In the competitive situation, regulators will set pollution standards at a level where the marginal benefit citizens enjoy for the given air quality is equivalent to the marginal compliance cost imposed on polluters.\textsuperscript{46} However, regulators will also have to consider other factors because attracting new firms will bring new jobs resulting in increased wages and taxes—benefits to the jurisdiction.\textsuperscript{47} In the end, regulators in these competitive jurisdictions will be forced to consider the benefits (an enlarged industrial base) resulting from less stringent environmental standards, and the costs (reduced industrial base) that may occur from more stringent standards.\textsuperscript{48}

Assuming the total number of firms in both jurisdictions is fixed, when jurisdiction A reduces pollution standards, jurisdiction A encourages industrial immigration and will reap the benefits from additional industrial activity.\textsuperscript{49} Jurisdiction B ultimately loses industry and the taxes and wages associated therewith.\textsuperscript{50} Consequently, jurisdiction B, in turn, will relax its standards to regain the lost industry.\textsuperscript{51} While either jurisdiction, acting individually, might decline to adopt high environmental standards that might lead to capital emigration to jurisdictions with lower standards, as the previous assumption mandates, both jurisdictions have the same preference for pollution and will adopt lower standards than they otherwise would prefer.\textsuperscript{52}

In the end, the readjustments between jurisdictional standards will reach equilibrium at which point the moving costs firms face will be greater than the compliance costs; therefore, neither juris-

\textsuperscript{44} See id.
\textsuperscript{45} Stewart, supra note 34, at 1212.
\textsuperscript{46} See Revesz, supra note 29, at 1215. See generally DAVID SCHOENBROD, CTR. FOR THE STUDY OF AM. BUS., TIME FOR THE FEDERAL ENVIRONMENTAL ARISTOCRACY TO GIVE UP POWER 9 (1998) (agreeing with Revesz); Wallace E. Oates, Thinking About Environmental Federalism, RESOURCES, Winter 1998, at 14 ("[T]he central idea emerging from the literature in public economics is that the responsibility for providing a particular public service should be assigned to the smallest jurisdiction whose geographical scope encompasses the relevant benefits and costs associated with the provision of the service.").
\textsuperscript{47} Revesz, supra note 29, at 1215.
\textsuperscript{48} See id.
\textsuperscript{49} Id.
\textsuperscript{50} See id.
\textsuperscript{51} See id. at 1216.
\textsuperscript{52} Stewart, supra note 34, at 1212 (arguing that the mobility of industry poses a risk for any individual state or community that decides unilaterally to adopt high environmental standards; communities may reasonably "fear that the resulting environmental gains will be more than offset by movement of capital to other areas with lower standards").
diction has an incentive to change its standards.\footnote{Revesz, \textit{supra} note 29, at 1216.} This race to the bottom results in both jurisdictions having equally permissive standards, and because industry will no longer flow between the jurisdictions, each jurisdiction will have the “same level of industrial activity that it would have had as an island jurisdiction.”\footnote{Id.} Overall pollution will increase and social welfare in each jurisdiction will be lower than the single island jurisdiction because the competitive jurisdictions will have adopted “suboptimally lax standards”—the ultimate race to the bottom.\footnote{Id.} The result is a defective “interstate competitive process” because, in the end, neither jurisdiction gains taxes or wage benefits, but each state has more pollution.\footnote{Id. (labeling this phenomena as the paradigmatic race to the bottom).}

Race-to-the-bottom theorists rely on this defective competitive process to justify federal government intervention. Based on the assumptions set forth above, and the reasoning following thereafter, race-to-the-bottom theorists argue that jurisdictions will compete for industry through establishing lower environmental standards than they would otherwise set “if there were some binding mechanism that enabled them simultaneously to enact higher standards, thus eliminating the threatened loss of industry or development.”\footnote{Stewart, \textit{supra} note 34, at 1212.} In other words, if the federal government steps in and mandates environmental standards, all the states will enact stringent environmental standards.

\textit{B. Defeating the Assumptions in the Money-Laundering Context}

\textit{1. Lax Anti-Money Laundering Regulations Spawn Interjurisdictional Externalities}

The circumstances surrounding money laundering defeat all the assumptions upon which the race-to-the-bottom theory is based. As already described, race-to-the-bottom theorists assume that pollution remains in the jurisdiction in which it is produced. Consequently, competition between the jurisdictions ensues, resulting in suboptimal standards, even in the “absence of interstate pollution externalities.”\footnote{Revesz, \textit{supra} note 29, at 1252.} This assumption does not hold in the international money laundering situation.\footnote{Choi & Guzman, \textit{supra} note 34, at 1874 (arguing that the race-to-the-bottom paradigm is “too simplistic for the international context”).} It is abundantly clear
that “pollution” in the form of laundered money travels across political borders because individuals seeking to launder dirty money logically will introduce the money into an economy that presents the lowest detection risk.\(^6\) Once the money is layered and cleaned, the individual can reintroduce the money into the country with more stringent regulations where the cleaned money can then be used to fund additional criminal activities. While the country with loose anti-money laundering standards benefits from the transaction costs associated with the initial placement, the country with more stringent standards bears the social cost incurred from increased crime. In other words, Country \(B\) produced an externality (money to fuel crime), and did not bear the costs (future crime).

Other indications suggest that this hypothetical is a reality. First, while money laundering itself is not “reprehensible,”\(^6\) money laundering derives from predicate criminal activities and “spread[s] the detrimental consequences of these criminal activities to many parts of society.”\(^6\) These externalities range far beyond money for increased crime. For instance, money laundering forces the demand for money to shift from one country to another, causing “money aggregates” to become more uncertain and ultimately resulting in increased exchange rates and interest rate volatility.\(^6\) Furthermore, legitimate transactions involving international investors are deterred because the legitimate investor seeks to avoid the risk that he or she will be associated with money laundering.\(^6\) Finally, as money laundering increases, the amount of laundered assets will likely be larger than annual cash flows from laundering activities, thereby substantially elevating economic destabilization risks and inefficient resource allocations.\(^6\)

\(^{60}\) STESENS, supra note 2, at 87 (claiming that “money launderers primarily look to jurisdictions that allow them to invest their criminally derived proceeds safely and to recycle them, even when this involves a lower rate of return”).

\(^{61}\) Id. at 84-85 (“The impetuses for attempting to tackle money laundering operations are numerous, but they all have in common that they view money laundering not as a reprehensible activity in itself, but as part of a larger criminal activity which is harmful to society.”).

\(^{62}\) Id. at 84.

\(^{63}\) Peter J. Quirk, Money Laundering: Muddying the Macroeconomy, at http://www.worldbank.org/fandd/english/0397/articles/0110397.htm (last visited Feb. 22, 2004); see also STESENS, supra note 2, at 87 (asserting that “[v]olatility in exchange rates and interest rates, and asset price ‘bubbles’ resulting from the disposition of ‘illegal’ money, may also be counted among the possible externalities of money laundering”).

\(^{64}\) Quirk, supra note 63.

\(^{65}\) Id. (asserting that economic growth suffers because “the underlying criminal activity redirects income from high savers to low savers, or from sound investments to risky, low-quality investments”); see also STESENS, supra note 2, at 86 (arguing that money laundering results in misallocated resources because labor and capital are used in illegal and socially disruptive activities, and world capital tends to be less optimally invested than would be the case absent money laundering).
One study suggests that increased laundering coincided with significant reductions in annual GDP growth rates from 1983 to 1990.66

The negative impact money laundering has on the financial sector and the economy at large constitutes the “most powerful impetus for devising” anti-money laundering strategies.67 Because laundering typically involves contact with third parties engaged in legitimate business transactions, laundering can lead to corruption, “and more generally a warped functioning of some institutions such as banks.”68 These findings conclusively establish that the circumstances surrounding money laundering defeat the first race-to-the-bottom assumption that “pollution” remains in the jurisdiction in which it is produced.

2. Jurisdictions Do Not “All Reason in the Same Way”

The diverse anti-money laundering regulations around the world suggest that the second race-to-the-bottom assumption also fails. Under the second race-to-the-bottom assumption, jurisdictions must reason in the same way, or stated differently, they must have the same preference for a certain activity. However, nations around the world do not reason in the same way when it comes to anti-money laundering regulations.69 A race-to-the-bottom proponent is hard-pressed to reconcile the strict and increasingly burdensome anti-money laundering regulations in the United States and other countries with the idea that the nations around the world reason in the same way. Some nations may value anonymity more than the increased transparency other countries value in their fight against money laundering.70 In fact, money-laundering “pollution” results from certain nations giving preferential treatment to revenue generated from lax money-laundering regulations, while simultaneously passing the costs associated with increased money

66 Quirk, supra note 63; see also STESSENS, supra note 2, at 87 (“Taken together, the externals of money laundering are likely to impact the growth rate of the world economies.”).
67 STESSENS, supra note 2, at 86.
68 Id.
70 See Daley, supra note 3, at 199 (describing bank secrecy laws in “haven” jurisdictions).
laundering off to other nations. Absent the requisite uniform preferences, "it is by no means clear that competition between jurisdictions will lead to a lower level of [anti-money laundering regulations]."  

C. Policy Implications for "Externality-Based" Analysis

Based on the foregoing analysis, the money-laundering phenomenon's characteristics convincingly defeat the main assumptions upon which the race-to-the-bottom theory is based. Thus, the problems associated with competition between jurisdictions are logically distinct from problems associated with interstate externalities. Recognizing this distinction, the solution to the externality problem associated with money laundering must focus on the appropriate cost allocation rather than improving defective market competition.  

This section will discuss the manner in which those who benefit from money laundering can be forced to internalize the costs associated with money laundering.

In addition to the money launderers, who obviously benefit from money laundering and thus should be subject to criminal penalties, the commercial vehicles used to facilitate money laundering transactions frequently benefit from such transactions through accumulated transaction fees. Historically, this situation pits politicians and legislators, who want to overemphasize the money-laundering phenomenon and increase anti-money laundering regulations imposed on commercial entities, against those commercial entities who seek to underemphasize the money-laundering phenomenon in an effort to minimize compliance costs. The presence of these commercial entities impacts the focus of regulatory schemes. Some commentators argue that regulators should not focus on completely eliminating externalities because many externalities result from desirable economic activity; instead, regulators should focus on forcing commercial entities to internalize the externalities:

Even if all negative externalities are internalized and the private cost of production equals its social cost, pollution will

---

71 BUTLER & MACEY, supra note 69, at 19 (applying this principle to environmental policies).
72 Howard F. Chang, An Economic Analysis of Trade Measures to Protect the Global Environment, 83 GEO. L.J. 2131, 2146 (1995) ("Unless each nation internalizes the negative externalities generated by pollution, for example, each government will have too little incentive to limit pollution.").
73 See id.; see also COASE, supra note 1, at 119 (suggesting that "economists, and policymakers generally, have tended to over-estimate the advantages which come from governmental regulation").
still not be eliminated. Instead, the result of internalization will be that those causing pollution will be required to pay the full social costs associated with their activities.\(^{74}\)

Conceivably, if regulators force firms to completely eliminate money-laundering risks, compliance costs may increase so much that firms cease operations. This leads to the first premise upon which appropriate anti-money laundering regulations should be based: While those commercial entities that benefit from money-laundering transactions should be forced to internalize money-laundering costs, compliance costs should not be so high that commercial entities are forced to cease operations.

Second, nations maintaining loose standards also benefit from increased tax revenues and wages that money-laundering transactions generate. Commentators often cite binding multijurisdictional agreements as appropriate remedies for situations in which one jurisdiction benefits at another jurisdiction’s expense.\(^{75}\) However, it is important to note that this scenario does not presuppose a “specific type of regulatory response.”\(^{76}\) Rather than giving multijurisdictional bodies the discretion to impose generic standards on nations, the United States should force noncompliant nations and their decision makers to bear the full costs associated with their lax anti-money laundering standards.\(^{77}\) This leads to the second premise of anti-money laundering regulations: Unilateral action may be preferable to international agreements because international agreements are often difficult to negotiate and expensive to implement and monitor.\(^{78}\)

---

\(^{74}\) BUTLER & MACEY, supra note 69, at 7.

\(^{75}\) Id. at 17 (describing the argument for federal regulation when states with pollution sources do not account for all costs when formulating their environmental policies).

\(^{76}\) Id.

\(^{77}\) COASE, supra note 1, at 25 (arguing that “[i]f the costs of investigation and administration are sufficiently high and/or the results obtained are sufficiently uncertain, with the consequence that the expected gains from governmental intervention are less than the costs involved” then intervention is not warranted); see also BUTLER & MACEY, supra note 69, at 17 (suggesting that “the interstate-externalities problem can be addressed by reallocating environmental authority in a manner that would force states and state decision makers to bear the full costs of their decisions regarding the regulation of pollution”); Doyle, supra note 5, at 282 (suggesting that nations with lax money laundering standards should face “the costs of risks associated with illegal transactions”).

\(^{78}\) See Comstock, supra note 69, at 152 (arguing that “no agreement will entice unscrupulous nations to comply with money laundering agreements”).
III. UNITED STATES ANTI-MONEY LAUNDERING STRATEGY: FORCING COST-INTERNALIZATION THROUGH STRONG DOMESTIC REGULATION AND INTERNATIONAL LEVERAGE

As described above, three groups benefit from money laundering: the launderers; the facilities earning transaction fees for intentionally or unintentionally laundering funds; and the nations that attract capital and the associated benefits thereof, through offering lax anti-money laundering regulations. Consequently, the United States should focus its efforts on developing and monitoring an anti-money laundering regulatory scheme that shifts the costs the United States is forced to bear from money-laundering activities onto the three groups that benefit the most from money laundering. This section will discuss the manner in which current U.S. anti-money laundering efforts impose costs upon these beneficiaries.

A. The Bank Secrecy Act of 1970: Allocating Costs to Potential Laundering Vehicles

Through the reporting requirements set forth in, and promulgated under, the Bank Secrecy Act ("BSA"), the United States minimizes the risk that commercial institutions might be used as money laundering vehicles. These reporting requirements constitute an effort to force those who might facilitate the transactions, and thereby benefit from fees associated with those transactions, to share in the costs resulting from money laundering. The BSA, the first legislative act focused on curtailing money laundering, grants the Secretary of the Treasury the authority to develop and implement various record-keeping and reporting requirements that financial institutions must follow. The BSA’s stated purpose is to “require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.” The BSA establishes reporting and record-keeping requirements for all foreign and domestic currency transactions over $10,000, and sets forth civil and criminal penalties for non-compliance. The philosophy underlying the reporting and re-

80 Id. § 5313(a) (authorizing the Secretary of the Treasury to establish anti-money laundering regulations, and charging the Treasury Department with overseeing compliance with the reporting requirements); see also Daley, supra note 3, at 189 (noting the United States “had attempted to address the use of domestic banks in the money laundering process with the passage of the Bank Secrecy Act of 1970, which provided the foundation upon which future U.S. anti-money laundering legislation was built”).
82 See id. § 5313.
83 See id. §§ 5321-5322.
cord-keeping requirements was the creation of a paper trail that could lead investigators from the laundered money to the criminal activity that originally generated the funds.84

Money launderers quickly learned to circumvent the BSA’s requirements. First, in order to avoid bank detection, money launderers broke transactions greater than $10,000 into segments less than $10,000, thereby avoiding the BSA’s reporting requirements through a process known as “smurfing.”85 Additionally, since the BSA was limited to “specified financial institutions,” money launderers worked through non-bank currency exchanges and other exempt financial service providers often in amounts greater than $10,000.86

Eventually, criminals began using wire transfer systems, which were unregulated until 1995, for international money laundering purposes.87 This “internationalization of money laundering” significantly increased the “difficulty and cost of following the paper trail of illegitimate money.”88 Consequently, in 1995, the Financial Crimes Enforcement Network (“FinCEN”)89 and the Federal Reserve Board amended the BSA regulations in an effort to improve the use of wire transfer systems to trace money laundering.90 Under the new regulations, financial institutions91 performing wire transfers must maintain certain records92 regarding payment orders for a period of five years.93

---

84 Rueda, supra note 19, at 146 (quoting Money Laundering and the Drug Trade: Hearings Before the Subcomm. on the Crime of House Comm. on the Judiciary, 105th Cong., at sec. III.1 (1997) (statement of Michael F. Zeldin, Principal, Price Waterhouse)); see also Doyle, supra note 5, at 287 (stating the intent underlying the BSA was to “enabl[e] government enforcement agencies to track down lucrative and illicit criminal enterprises”).

85 Daley, supra note 3, at 189; see also Rueda, supra note 19, at 148 (describing “smurfing” as the practice of splitting the total amount available for deposit into amounts below the $10,000 threshold).

86 Daley, supra note 3, at 189-90.


89 FinCEN is a division within the United States Department of Treasury charged with enforcing anti-money laundering regulation. See generally www.fincen.gov.


92 Amendment to the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds Transfers and Transmittals of Funds by Financial Institutions, 60 Fed. Reg. 220, 229-31 (Jan. 3, 1995) (to be codified at 31 C.F.R. pt. 103) (establishing reporting requirements for transfers of
In addition to traditional banks, the category "financial institutions" also includes non-bank institutions that, under the BSA, are assigned to the category "money services businesses" ("MSBs"). Money transmitters, check cashers, currency exchanges, and issuers, sellers, and redeemers of traveler's checks, money orders, and stored value are each considered MSBs. In 1999, FinCEN broadly construed the manner in which BSA regulations applied to "money transmitters." The new definition included as a "money transmitter":

Any person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or . . . [a]ny other person engaged as a business in the transfer of funds.

Additionally, in 2001, the USA PATRIOT Act ("Patriot Act") extended the definition for "money transmitter" to include "any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money." The Patriot Act extended the definition for "financial institutions" to include foreign banks, and gave U.S. district courts jurisdiction over certain foreign money launderers.

In conclusion, the BSA's broadening scope brings vast numbers of institutions within the BSA's coverage. This broad application imposes stringent maintenance and compliance costs on the

U.S. $3,000 or more).

93 Id. at 228 (defining "payment order").
94 31 C.F.R. § 103.11(uu) (defining "money service business").
95 Id.
97 31 C.F.R. § 103.11(uu)(5).
99 Id. § 359(a), 115 Stat. at 328.
100 Id. § 377, 115 Stat. at 342 (extending 18 U.S.C. § 1029 to conduct committed abroad, so long as the tools or proceeds of the crimes pass through or are in the United States); see also Weerasinghe & Kaempfer, supra note 69, at 32 (pointing out that a "sufficient nexus to the United States" must exist in order for jurisdiction to kick in).
institutions falling under the BSA. In fact, some institutions are beginning to complain about the hassles and expenses they face when trying to comply with these regulations. Consequently, these institutions are clearly being forced to internalize the costs associated with money laundering.

B. The Money Laundering Control Act of 1986: Shifting Costs to the Launderers

The Money Laundering Control Act of 1986 ("MLCA") was the first regulatory scheme to criminalize money laundering and knowingly assisting in criminal money-laundering acts. Additionally, the MLCA criminalized "willingly accept[ing] money that are the fruits of illegal activity, or to structure transactions for the purpose of avoiding the reporting requirements." Furthermore, the MLCA contains civil and criminal forfeitures for "money launderers and the financial institutions they utilize." As a result, the MLCA represents an effort to force money launderers to bear the costs associated with their activities.

The MLCA contains two sections. Section 1956 pertains to those financial transactions involving the proceeds of any "specified unlawful activity." Under § 1956(a)(1), an individual is guilty of money laundering when she conducts a financial transaction involving dirty money (i.e., proceeds from a "specified unlawful activity") with the intent of promoting a specified unlawful activity, concealing the dirty money's origin, or avoiding a reporting requirement. An individual violates § 1956(a)(2), and is thereby guilty of money laundering, if he carries out any of these three offenses by transmitting, transferring, or transporting a monetary instrument or funds outside the United States. A "monetary transaction" is defined in property derived from specified unlawful activities. A "monetary

---

101 See infra Part IV.B.
104 Id.
105 Id., supra note 3, at 190.
106 See 18 U.S.C. § 1956(a). The phrase "specified unlawful activities" is used in both § 1956 and § 1957. "Specified unlawful activities" was expanded in scope from covering traditional organized crime conduct ranging from drug trafficking, RICO predicates, murder, kidnapping, espionage, and Food Stamp Act violations, to terrorist conduct. Id. § 1956(c)(7).
107 Id. § 1956(a)(1)(A)(i).
108 Id. § 1956(a)(1)(B)(i).
109 Id. § 1956(a)(1)(B)(ii).
110 Id. § 1956(a)(2).
111 Id. § 1957(a).
transaction" is any transaction, such as a deposit, withdrawal, transfer, or exchange of funds or a monetary instrument, carried out through a financial institution.\(^{112}\) Section 1957 does not require the government to prove a defendant knew that the underlying offense from which the dirty money originated was a specified unlawful activity.\(^{113}\) Consequently, an individual cannot circumvent money-laundering liability through willful blindness.\(^{114}\) While the predicate offenses contained in the MLCA are not punishable under the statute, they are a "precondition to the statute's applicability."\(^{115}\) Like the BSA, the MLCA sets forth both criminal and civil penalties. Criminal penalties include imprisonment for up to twenty years, and fines amounting to the larger of $500,000 or twice the amount laundered.\(^{116}\) Civil penalties include fines no greater than $10,000 and forfeiture.\(^{117}\)

C. International Efforts Towards Allocating Costs to Nations with Lax Standards and the Money Launderers Therein

The United States uses economic coercion to force nations with loose anti-money laundering standards to internalize the social costs resulting from money laundering. The U.S. uses its dominant position as a global financial leader to compel assimilation to adequate anti-money laundering regulation by threatening to "cut off access to the U.S. financial system" unless uncooperative nations comply with stringent banking standards.\(^{118}\) Furthermore, the United States, historically, has successfully conditioned financial aid and tariff concession with Caribbean territories on cooperation in improving anti-money laundering regulations.\(^{119}\) It is also important to note that the United States belongs to the Financial Action Task Force on Money Laundering, a large multinational organization charged with developing international anti-money laundering standards.

\(^{112}\) Id. \(\S\) 1957(f)(1).

\(^{113}\) Id. \(\S\) 1957(c).

\(^{114}\) Id. \(\S\) 1957.

\(^{115}\) Rueda, supra note 19, at 149.

\(^{116}\) 18 U.S.C. \(\S\) 1956(a)(2).

\(^{117}\) Id. \(\S\) 1956(b)(1).


\(^{119}\) Id. at 73. But see Doyle, supra note 5, at 290 (arguing that these moves "undermine the stability of the financial markets they purport to stabilize by introducing political unrest, local distrust of bank managers and regulators and legal uncertainties").
IV. THE USA PATRIOT ACT: ALLOCATING COSTS IN THE CYBERLAUnderING ERA

"Unlawful activity is not unique to the Internet—but the Internet has a way of magnifying both the good and the bad in our society... [W]hat we need to do is find new answers to old crimes."

--Al Gore, Vice President of the United States of America
August 5, 1999

The manner in which current anti-money laundering regulations apply to new technology, and in particular, electronic payment systems, and how effective these regulations will be are matters up for debate. The United States successfully uses its stringent and comprehensive anti-money laundering regulations to "insulate its banking sector from large-scale exploitation by money launderers." While evidence shows the September 11th terrorists made extensive use of email and the Internet in carrying out their operation, which cost an estimated $500,000, some critics argue that the Patriot Act fails to clearly address email and other emerging technologies such as cyberbanking and Internet payment systems. This section takes the opposite position. After briefly introducing the cyberlaundering risks that new Internet-based payment systems present, this section will argue that the recently enacted Patriot Act appropriately enhances the United States' anti-money laundering regulations and brings Internet-based payments systems and other informal value transfer systems within the regulatory framework.

A. Cyberspace: Money Laundering's Future Medium

Cyberlaundering occurs when individuals use the Internet and associated technologies to transform criminal proceeds into clean funds that are untraceable. Speed, anonymity, and the abil-
ity to transfer unlimited value make electronic value transfer systems attractive vehicles for money laundering. Cryptography makes tracing the numerous electronic money transfers that take place during the layering and placement stages virtually impossible. These factors make cyberlaundering a unique challenge for regulators.

Electronic money ("e-money") is the currency used in Internet-based commercial transactions, and represents "tokens of monetary value that take digital form." The Internet is particularly attractive to businesses and consumers alike because the Internet facilitates virtually instantaneous value transfers while substantially decreasing transaction costs inherent in hard currency-based relationships. While early e-money prototypes like CyberCash and the Mondex electronic purse card were not commercially successful, American Express, Visa U.S.A., and Visa

---


125 **FINANCIAL ACTION TASK FORCE, 1996-1997 REPORT ON MONEY LAUNDERING TYPOLOGIES** 26 (1997) ("The rapid movement of e-money ... will make it difficult for law enforcement to identify or track these fund transfers.") [hereinafter FATF REPORT], available at http://www.fincen.gov/fatf.pdf (last visited Feb. 23, 2004).

126 Id. at 19 ("Electronic money (e-money) has the potential to make it easier for criminals to hide the source of their proceeds and move those proceeds without detection."); see also Sheila C. Bair, Following the Money and Seizing the Assets: Comments at the Seventh Annual Institute on the Emerging Law of Cyberbanking and Electronic Commerce (Feb. 7, 2002) ("Challenging issues to be confronted will include: how to identify clients who may only engage in Internet transactions for which no physical face-to-face meeting is ever necessary."), available at http://www.treas.gov/press/releases/0989.htm (last visited Feb. 23, 2004).

127 See Wendy J. Weimer, Cyberlaundering: An International Cache for Microchip Money, 13 DEPAUL BUS. L.J. 199, 221 (2001) ("The cyberstream provides the perfect instrumentality to launder this money due to the speed of the transaction, its security by means of anonymity, and the unlimited amount that can be transferred.").

128 William R. Spernow, Cybercrooks on the Net: Why Traditional Law Enforcement Will Be Unable to Cope with Threats to the Electronic Commerce System, in 1 MONEY LAUNDERING, ASSET FORFEITURE AND INTERNATIONAL FINANCIAL CRIMES 14 (Fletcher N. Baldwin, Jr. & Robert J. Munro, eds., 1997) ("Unbreakable encryption is the primary factor that puts CyberCrooks at an advantage over law enforcement ... [C]urrent CyberCops agree and predict that there will be a substantial increase in cases where [they] were able to avoid prosecution because evidence that would have convicted them is encrypted and therefore unexaminable."); see also Scott Sultzer, Money Laundering: The Scope of the Problem and Attempts to Combat It, 63 TENN. L. REV. 143, 195 (1995) (asserting that as cryptography technology is improved, criminals will be able to expand their money laundering capabilities).

129 Hoffman, supra note 88, at 842 (1998) (discussing how criminals quietly found ways to evade the requirements of the BSA).


International are developing various cards containing computer chips that can store information and offer payment capabilities with various security features. Additionally, Internet payment systems and other electronic payment systems, like PayPal, are growing in popularity and, as such, they will likely be used to facilitate widespread money laundering transactions in the future.

Over the past few years, regulators around the world have started focusing on cyberlaundering threats. “[L]egal authorities around the world look on with increasing anxiety as technological innovations drive the development of payment systems that threaten to emasculate current money laundering safeguards.”

In fact, the Financial Action Task Force, established at the July 1989 G-7 Summit in Paris and charged with exploring anti-money laundering measures, listed several concerns in its 1996-1997 Annual Report, including:

(a) the need to review and potentially revise existing regulatory regimes to ensure adequate supervision of all types of e-money providers; (b) whether accurate and adequate records of transactions and persons involved will be available; (c) stored value cards may be more difficult to detect than physical currency; and (d) the speed and volume of e-money transactions may make it more difficult to track or identify unusual patterns of financial transactions.

Others have expressed concerns about current anti-money laundering regulatory schemes’ ability to address, and prevent, money laundering through digital payment systems. In fact, the U.S. Department of Treasury is conducting a study on the ways in

---


133 See Weimer, supra note 127, at 200 (arguing that the Internet will be the “predominant source of online banking by year 2020”).

134 Hoffman, supra note 88, at 844; see also Weimer, supra note 127, at 201 (“The method of physically commingling funds from legitimate and illegal activities to lose the indicia of their origins is no longer a necessity due to the unregulated, anonymous, innovative banking conduit, the Internet.”).

135 FATF REPORT, supra note 125, at 15.

136 Rueda, supra note 19, at 143 (arguing “law enforcement is constantly playing a game of catch-up” because the current anti-money laundering regulatory system is “static” and “does not allow for a tailored law enforcement approach responsive to the latest money-laundering gimmick”); see also Tavakol, supra note 130, at 1199 (expressing general skepticism about the regulation of online electronic trade).
which terrorists might use the Internet to move funds without detection.\textsuperscript{137}

\textbf{B. Allocating Costs in Cyberspace}

United States anti-money laundering regulations provide the appropriate tools to address cyberlaundering. As shown earlier, the proper anti-money laundering regulatory scheme must allocate costs to those parties benefiting the most from money laundering.\textsuperscript{138} Additionally, the appropriate regulatory scheme should not force compliance costs so high that commercial entities are forced to cease operations. Regulating money laundering in cyberspace presents additional concerns. First, the “Internet, like most new technologies, is an inherently value-neutral tool: It can be used in ways that are socially beneficial or socially harmful.”\textsuperscript{139} As such, because the Internet has “enormous potential economic and social benefits,” anti-money laundering regulation should protect against new criminal methods “without unintentionally stifling its growth.”\textsuperscript{140} Second, technology-specific regulation may be based upon assumptions that do not exist in the current circumstances.\textsuperscript{141} Implementing technology-specific laws will force legislators to constantly revisit regulations to make sure the regulations are technologically updated. This will add significant monitoring costs and could encourage money launderers to develop and use new technologies for money laundering.\textsuperscript{142} Finally, technology-specific laws may solidify a certain technology’s use in the industry and prevent or hinder new, and perhaps economically and socially beneficial, technological developments.\textsuperscript{143} The Patriot Act\textsuperscript{144}  


\textsuperscript{138} See supra Part II.

\textsuperscript{139} U.S. Dep’t of Justice, The Electronic Frontier, supra note 120.

\textsuperscript{140} Id.

\textsuperscript{141} Id. (suggesting that regulations pertaining to “wire communications” may not have contemplated, and consequently may not apply to, wireless or satellite communications).

\textsuperscript{142} Id. (“Regulation tied to a particular technology may quickly become obsolete and require further amendment.”); see also Mark D. Schopper, \textit{Internet Gambling, Electronic Cash & Money Laundering: The Unintended Consequences of a Monetary Control Scheme}, 5 CHAP. L. REV. 303, 326 (2002) (warning that “Congress should be very careful . . . not to encourage an anonymous form of e-money before it is prepared to deal with the consequences,” and that Congressional over-regulation will “encourage” the development of new money-laundering technologies); Weimer, supra note 127, at 220 (suggesting that cyberlaundering’s escalating popularity results from a strong finance and banking industry’s strict adherence to tight federal anti-money laundering regulations).

\textsuperscript{143} U.S. DEP’T OF JUSTICE, THE ELECTRONIC FRONTIER, supra note 120 (“Technology-specific laws and regulations may also ‘lock-in’ a particular technology, hindering the development of superior technology.”).

\textsuperscript{144} Title III of the USA PATRIOT Act entitled “International Money Laundering Abate-
satisfies these concerns while facilitating the spread of cyberlaundering costs across the appropriate actors through regulation, criminal sanctions and forfeiture, and international cooperation.\textsuperscript{145}

1. Costs Spread over New Service Providers

With the Patriot Act’s addition, United States anti-money laundering regulations continue to address cyberlaundering through cost allocations in two ways. First, the Patriot Act expands the BSA’s scope to include informal value transfer systems.\textsuperscript{146} The Patriot Act expands the definition of “financial institutions” and “money services businesses” in a way that captures emerging technology providers.\textsuperscript{147} In particular, section 359(a) of the Patriot Act brings “informal money transfer systems” under the BSA’s reporting requirements.\textsuperscript{148} In November 2002, the United States Treasury Department concluded that Internet-based vehicles such as PayPal and other electronic payment systems constituted types of “informal value transfer systems.”\textsuperscript{149} Second, it is important to realize that value transferred via the Internet must enter cyberspace through a real world-cyberspace transaction. As a result, if an Internet payment system or other electronic payment system misses a suspicious transaction, or the reporting requirements are not triggered, the “real world” participant’s reporting requirements will most likely be triggered because the Patriot Act extends re-

\textsuperscript{145} CONG. RESEARCH SERV., supra note 9, at CRS-24; see also 147 CONG. REC. H7159 (daily ed. Oct. 23, 2001) (recognizing that “outmoded and inadequate statutory provisions” impede U.S. anti-money laundering efforts, especially when such laundering involves “foreign persons, foreign banks, or foreign countries”).

\textsuperscript{146} See 31 U.S.C. § 5312(a)(2) (2000) (including in the definition of “financial institution” to include, among others, “(R) a licensed sender of money or other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of conventional financial institutions system”); see also Rueda, supra note 19, at 149 (arguing that the Patriot Act widens the BSA’s scope “to levels unseen in money laundering legislation anywhere in the world”).

\textsuperscript{147} Rueda, supra note 19, at 149; see also U.S. May Extend Curbs on Laundering, WALL ST. J., Feb. 20, 2003, at B8 (discussing the U.S. Department of Treasury’s plans to extend anti-money laundering regulations to dealers in precious stones, dealers in precious metals, travel agents, and dealers in cars, trucks, and/or boats).

\textsuperscript{148} A REPORT TO CONGRESS, supra note 96, at 6.

\textsuperscript{149} Id. at 6-7 (arguing that § 359(a) of the Patriot Act makes it “clear that under U.S. law all money transfer remitters, including those that operate on an informal basis, or outside the scope of the conventional financial sector, are subject to the BSA’); see also id. at 19 (including in the “range” of informal value transfer systems such mechanisms as “stored value transfers” and “internet-based payment systems”). Interestingly, the Department of Treasury appears to use the terms “money” and “value” interchangeably, which suggests the Treasury is looking to function over form. Id. at 6.
porting requirements and "know your customer" standards beyond traditional financial institutions.\textsuperscript{150}

As suggested earlier, over-regulation is a concern. This concern is mitigated somewhat because legitimate businesses tend to value the security the United States regulatory system provides, as a whole; consequently, businesses are less cost-sensitive when it comes to increased regulation. On the other hand, recent developments suggest that regulators are approaching the threshold. In late 2002, the Treasury Department backed off information-sharing requirements it promulgated earlier in the year because bankers complained that the regulations were too burdensome.\textsuperscript{151} This situation highlights an important distinction: implementation problems and structural defects in the regulations are different issues. In conclusion, while the implementation procedures present challenges between balancing the government's interest to money laundering information and businesses' interest in minimizing compliance costs, the regulatory framework itself provides an appropriate cost-allocation system to combat cyberlaundering.\textsuperscript{152}

2. Costs Allocated to Would-be Money Launderers

The Patriot Act treats on-line money laundering the same way traditional off-line money laundering is treated. After the Patriot Act, cyberlaunderers will be subjected to the same criminal punishments and forfeiture procedures to which money launderers using traditional means are subjected because § 359(a) of the Patriot Act also expanded the money-laundering methodologies covered under the MLCA to include Internet technologies.\textsuperscript{153} This treatment represents a technology-neutral standard that should not inadver-

\textsuperscript{150} Id. at 22 (asserting that since informal value transfer systems must "interface with the formal banking sector when they make deposits, [and] engage in wire or other transfers," regulations applicable to the traditional banking sector will assist in detecting money laundering). See generally U.S. DEP'T OF TREASURY, A REPORT TO THE CONGRESS IN ACCORDANCE WITH SECTION 356(C) OF THE UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBLSTRUCT TERRORISM ACT OF 2001 (2002) (discussing the manner in which the Act applies to various investment companies), available at http://www.fincen.gov/365report.pdf (last visited Feb. 24, 2004).

\textsuperscript{151} See Rob Garver, Hearing Complaints, Treasury Suspends Data-Request Rule, AM. BANKER, Nov. 21, 2002, at 4 (explaining how the compliance requests from the Treasury Department in conjunction with the requirements set forth in the Patriot Act are overwhelming bankers).

\textsuperscript{152} See A REPORT TO CONGRESS, supra note 96, at 10 (arguing that money laundering problems "do not arise from lack of pertinent statutory or regulatory tools"); see also Paul Beckett & Carrick Mollenkamp, Western Union Nipped by Patriot Act, WALL ST. J., Dec. 20, 2002, at A3 (alleging this was the first time the Patriot Act was used against a "major financial firm").

tently encourage would-be money launderers to develop new technologies in their effort to avoid detection. Additionally, the Patriot Act expands the United States district courts’ jurisdiction to money launderers in foreign countries. As a result, under the Patriot Act, the barriers to money laundering have increased along with the costs would-be money launderers must bear.

3. Influence over International Jurisdictions

Finally, the U.S. should continue to wield its economic influence over those jurisdictions with lax standards that operate money laundering safe havens. While this Note by no means suggests that the U.S. should abandon international efforts to influence compliance, this Note recognizes the limitations on international consensus building. Instead, the United States should constantly re-evaluate its role in these ventures, preferring unilateral action over resource-consuming international consensus building. Most resources should be placed on economic coercion. Some authors argue that these methods constitute economic bullying. On the other hand, and perhaps more damaging, the hold-up potential that exists when attempting to build international consensus, and the risk that signatory nations will shirk on agreements, will enable those jurisdictions who already export money laundering costs to the U.S. to extract additional costs. Furthermore, wielding economic influence does not always entail cutting off funding or implementing refusals to deal. It may be beneficial to offer noncompliant nations financial and trade incentives for compliance, rather than restrictions for noncompliance.

This Note should not be construed as advocating that the United States completely abandon international efforts to fight money laundering. Instead, this Note is simply arguing that the United States should focus its primary effort on unilateral incentives rather than incur additional costs in complete reliance on international cooperation.

155 See supra Part II; see also Comstock, supra note 69, at 162 (arguing that cooperative agreements create “an incentive for some nations to cheat”).
156 Comstock, supra note 69, at 166, 168 (proposing that the United States use tariffs to induce cooperation and to “penalize those nations which profit from money laundering . . . [and] ensure that profits from money laundering are more than offset by the decrease in international trade”).
157 See Doyle, supra note 5, at 281.
159 See Chang, supra note 72, at 2149 (arguing that “[w]hen cooperation is not forthcoming, positive incentives are the best way to achieve sustained inter-governmental cooperation”).
CONCLUSION

Nations with permissive money laundering regulations create social costs. These social costs do not result from defective market competition; instead, the social costs result from the producing nation’s failure to recognize these costs when setting policy. This observation holds significant policy implications for money laundering regulators in the United States. Based on this observation, this Note suggests ways to address cyberlaundering. More importantly, however, this Note indicates what the economic approach to the cyberlaundering problem should be.

SHAWN TURNER†

† J.D. Candidate, 2004, Case Western Reserve School of Law; M.B.A. Candidate, 2004, Weatherhead School of Management. I would like to thank Lindsay Needler-Turner for her constant encouragement and enthusiasm.