

# Canadian GamingLawyer

SHAPING THE FUTURE OF CANADIAN GAMING LAW

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## Big Data/ Big Brother

### BIG DATA AND SOCIAL CASINO GAMING

**Internet Gaming in the USA**

**Are Responsible Gaming Programs Important?**

**Testing for Compliance: Lessons Learned**

## MESSAGE FROM THE PRESIDENT



Welcome to another edition of the Canadian Gaming Lawyer.

I write this president's message coming down off a high from the IMGL's spring conference in San Diego. Following on from our 2013 conferences in Montreal and Oslo, San Diego certainly had a hard act to follow. It was, however, a success in every way. The efforts and dedication of our organizing committee, co-chaired by John Maloney and John Roberts, ensured that the more than 150 delegates in attendance benefitted from a great program. Hats off also to our moderators and speakers who engaged our delegates on highly relevant topics. Finally, mention must be made of our dinner on the USS Midway – a once in a life time experience!

Recently, Chambers and Partners published its annual 'Chambers Global Guide' for 2014. As you are no doubt aware, there is a section exclusively dedicated to 'gaming and gambling'. It is particularly pleasing to see that the vast majority of the 'ranked lawyers' out of 190 countries are IMGL members - I counted them. Believe it or not, 45 of the 55 leading individuals listed in this world wide ranking are well distinguished members of our organization - a share of more than 80 percent. This speaks volumes for the quality of the IMGL and its membership base. Congratulations to all of those listed – your recognition is much deserved.

A new event in the IMGL calendar created another landmark in May: East Meets West Regulators' Summit. This inaugural event was sponsored by the IMGL, and we hope that our association with this event will continue into the future. The mission of this summit is to bring leading regulators from South East Asia and western jurisdictions together and create a platform for the exchange of gaming regulatory principles and experience between these different parts of the world. This summit also brings to our attention two key themes for the future of the gaming industry. First, the rise of Asian markets as destinations for established and new gaming operators. The markets of Asia are some of the last great frontiers of the industry, and they promise a great deal for gaming operators. Second, we are helping to establish and deepen relationships with regulators and among regulators. As lawyers, we are in a critical position because we sometimes need to be the bridge between gaming operators and regulators. Our relationships with regulators have a great bearing on whether our gaming operator clients may or may not enter the market where we practice. The sponsorship of this summit is an important step to improve regulation and to expand the presence of the IMGL in the Asian regions.

Finally, I must draw your attention to the details of our autumn conference in Florence. We have confirmed the dates for November 5– 7, 2014, and our conference venue will be the splendid Westin Excelsior in conjunction with the St. Regis Hotel. As you would expect, the IMGL has arranged special rates for delegates – our website will be updated with the relevant information in the near future, so please keep an eye out for that. Aside from justifying a visit to the autumn conference to develop and solidify your network, you should take the opportunity to visit the renaissance city. It is truly one of the world's great cities, and it maintains its renaissance flair – looking forward to seeing you there!

*Joerg Hofmann*

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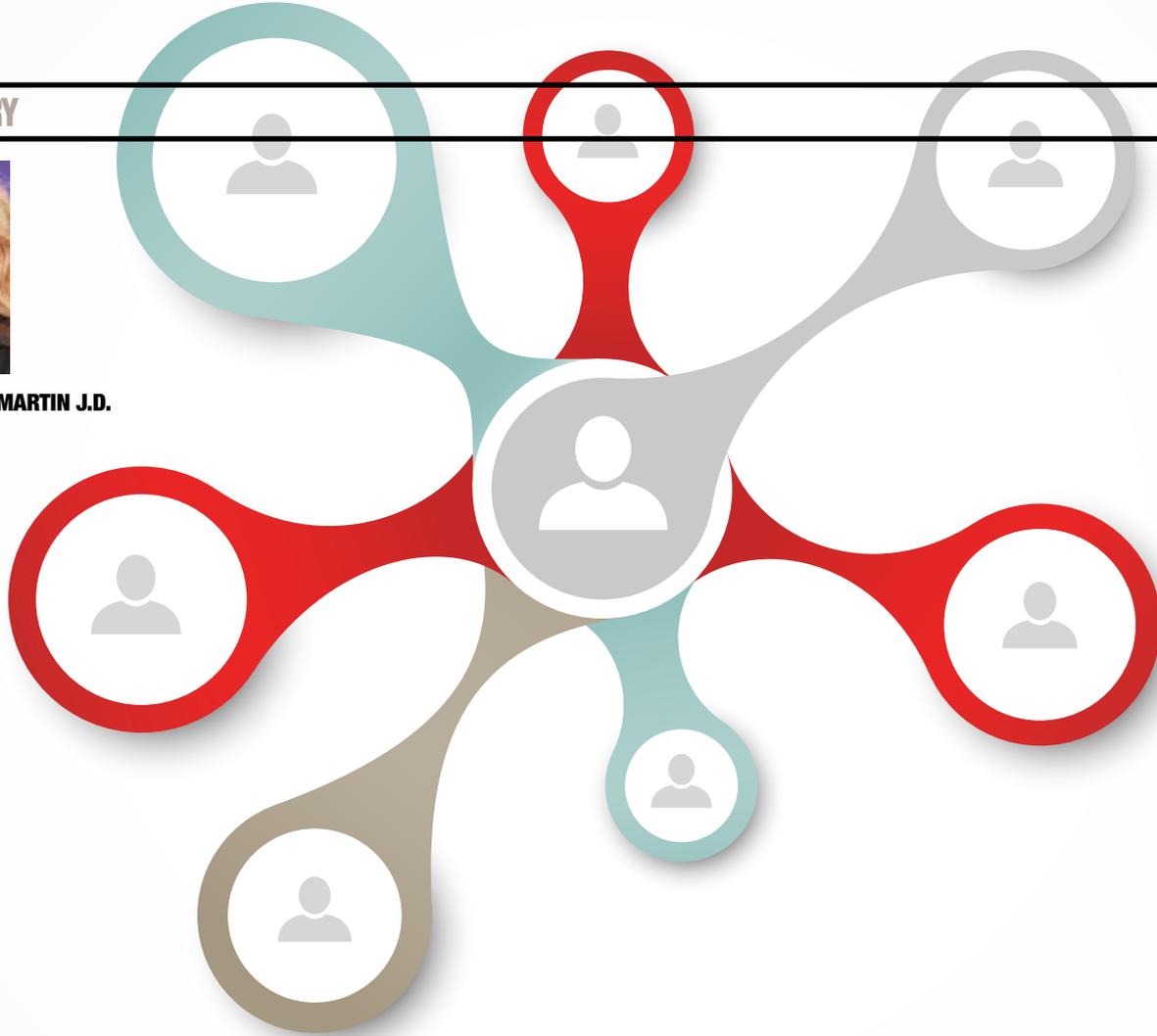
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BY CHRISTINE MARTIN J.D.



## Big Data and Social Casino Gaming

*Many people fear that big data will lead to increased privacy invasion. Those same people were alarmed by the news that the NSA is collecting private citizen data. For most of us there is an unspoken trade-off or exchange of privacy for greater access to information, wider/faster communication and the general benefits of digital connectedness. By now we have accepted the fact that market research firms are gathering massive amounts of consumer data about our online activities.*

Land-based casinos have long been tracking various customer experiences, including spending behaviors, slot activity, and even dining habits. This data is being used to provide better customer service and promote offers that keep good customers coming back, as well as provide recovery offers to dissatisfied customers who may have

suffered big gambling losses. According to Yahoo finance, Caesars' (the largest gaming company in the world) has more than 200 data scientists on staff.<sup>1</sup>

Online gambling is a diverse area including sports betting games, poker, slots, bingo, lottery, and other games. Regular online games largely use virtual money; however social casino

games use real money. According to SuperData.com, there are an estimated 173 million people playing social casino games worldwide. Morgan Stanley reports that social gambling is a \$1.7 billion industry within the \$391 billion global gambling industry<sup>2</sup> estimating that social gambling could grow up to \$7billion by 2015. Morgan

*“Demographic and behavioral information are more accessible than ever before via log-in data from social networks and mobile devices.”*

Stanley predicts that online gambling will be worth \$9.3 billion in the US by the year 2020.<sup>3</sup>

Globally, online gambling generates up to \$30 billion. According to one report, the UK and Europe are leading this trend at 54 percent of the market.<sup>4</sup> Social casino has become one of the most profitable gaming genres. As the gaming industry moves in this direction, the role of data scientists becomes increasingly important; the innovation behind big data provides a great deal of information that will help the industry.

#### **SOCIAL NETWORKS & MOBILE IDEAL FOR DATA MINING:**

There are close to seven billion mobile subscriptions worldwide. Facebook has more than one billion active daily users. The switch to social networks and mobile apps for gambling has vastly expanded the ability to access information and opportunities to gather data – providing a wealth of information for stakeholders, game owners, investors, developers, regulators, marketers, advertisers, and sociologists who are interested in studying the field.

Demographic and behavioral information are more accessible than ever before via log-in data from social networks and mobile devices. For example: location, gender, age, race, socio-economic status, friends, likes, dislikes, consumer activity and more. Social game data is being used not only for customer research but also for competitive intelligence. With the recent high profile mergers

and acquisitions, investors can actively research when to buy or sell a company or product.

There is a dizzying display of quantitative data on the economic growth of the social casino markets in Canadian, US, UK and globally. There is no shortage of financial reports of quarterly revenues, projected revenues, market share and profit analysis. Further, the blogosphere and dedicated game and technology news sites<sup>5</sup> are avidly reporting on the sky-rocketing acquisition deals, M&A activity, and new game development as well as the comparisons of market supremacy of mobile vs Facebook. There is a veritable cottage industry of conventions, forums and online gambling community events where the analytics are a central topic of conversation.<sup>6</sup> These events are large and costly and often sponsored by analytic companies promoting their services to game owners and investors.

#### **MOUNTAINS OF DATA, REVENUE PREDICTIONS**

There is a mesmerizing amount of measurement of DAU (daily active users), ARUP (average revenue per user) and LTV (Lifetime Value of players). Stakeholders in this industry (investors, etc.) must digest a plethora of data analytics of the rapidly changing statistics – for example the ARPDau of any particular game.

#### **MOBILE DOMINANCE = DATA EXPLOSION**

In the United States, more states are accepting the presence of real money social casinos. And now that New Jersey

is launching its own mobile casino<sup>7</sup> – these developments will increase the presence of online casinos in the US.

For the first time, the mobile online gambling market is growing faster than Facebook, which has until very recently been the leader in social casino game revenue. Adam Krejčík from Eilers Research has stated mobile is becoming a much more important distribution platform for social casino games. By some reports the mobile gambling market is set to be worth \$100 billion by 2017.

#### **FACEBOOK'S SHARE OF SOCIAL CASINO MARKET:**

Facebook may be losing some ground to mobile but it gains large revenues from social casino games. Most Facebook gaming revenues are generated from social casino games – Facebook reported \$213 million in payment revenue in Q1 2013.<sup>8</sup> More than 250 million people have been playing games on Facebook each month; as of February, 55 percent of the top 400 grossing iOS apps were integrated with Facebook; some 20 percent of all users play games on the social network; and game installs on Facebook have increased 75 percent compared with a year ago.<sup>9</sup> Facebook claims more than 100 developers generated upwards of US \$1 million last year, and more than \$2 billion was paid out to game developers in 2012.<sup>10</sup>

#### **TOP GLOBAL GAMES BY THE NUMBERS**

There are a few games at the top that continue to get the lion's share of the market. The top 10 companies combined accounted for roughly

67% of the market. At the very top is Caesars' recently surpassing Zynga as the Global leader. According to Eilers Research, Caesars' remained the largest social casino publisher with 15% market share. Zynga, formerly the global leader is the still leading on Facebook, with 70% penetration into Facebook gaming system.<sup>11</sup>

Also at the top of the food chain is IGT (International Game Technology) with its high-profile acquisition of DoubleDown Interactive for \$500 million<sup>12</sup> ensuring IGT/DoubleDown an impressive 14% market share.<sup>13</sup> "Big Fish Casino" is the largest stand-alone social casino app on mobile and will generate an estimated \$120m revenue in 2013. Three big UK game companies include, bwin.party with reported earnings of €145.7m<sup>14</sup>, 888 (a poker site popular in the US and UK) earning \$94 million revenue in Q3 of 2013<sup>15</sup> and PaddyPower, a popular social sports betting site, saw profits rise with mobile applications to €379.8 million.<sup>16</sup>

### GAME ANALYTICS IS BIG BUSINESS

Budgets for data and marketing analytics are increasing; in 2012, it was \$4.3 billion according to the CMO survey. Today, the majority of marketing and design budgets are going to analytics.<sup>17</sup> These analytics are so sought after that the firms can command big fees for their monthly and annual reports. SuperData Research is a leading provider of consumer insights for the digital games market. SuperData produces a monthly Social Casino Games Market report – available for \$999. Their annual US social casino survey is also not cheap at \$3,000.<sup>18</sup>

There is a no shortage of analytic companies serving this market. To name a few: Kognito, Kontagent, Playmetrix, Karmasphere, Flurry, Mixpanel, Totango, Claritics, Games Analytics (UK), and Vertica (UK).

### DATA QUANTIFICATION FOR GAME MONETIZATION

It is notable to mention King company's game Candy Crush, a very popular game with women.<sup>19</sup> Candy Crush is played on Facebook and through iOS mobile apps with an impressive daily revenue of \$884,004.<sup>20</sup> According to AppData, a leading expert in application metrics for Facebook, iOS, and Google Play apps.<sup>21</sup> On Facebook Candy Crush has a staggering 50 million daily active users (DAU) and 100 million monthly active users (MAU).

Other impressive numbers of users of the top social gambling apps are:

#### Zynga Poker

6 million DAU      23 million MAU

#### Slotmania

1.8 million DAU      4 million MAU

#### Double Down Casino

1.7 million DAU      7 million MAU

#### Bingo Bash

0.7 million DAU      3 million MAU

### KEY METRICS FOR RETENTION, ENGAGEMENT AND MONETIZATION

Advanced analytics are providing rich player insight, demographic and behavioral trends for design, and monetization opportunities for game designers/developers. The promise of predictive analytics and real-time analytics are irresistible to anyone who has a stake in this market.

Access to the valuable log-in information from social networks and mobile data provides important information. Game developers can study this data to improve future designs. Designers and developers can create segmentation campaigns to engage new players and create new revenue streams.

Possible study areas from game metrics:

- New game designs specifically for women.
- New games designs for specific

country and/or region.

- Monetization strategies – encourage more people to switch to real money activity.
- Study when and why do players spend money on games.
- Test advertising strategies.
- Track conversion rates from non-paying to pay-to-play gamblers.
- What triggers to pay-to-play conversion decisions?
- When does someone purchase virtual goods?
- What ads work best in the social casino space?
- Who are the whales (big spenders) and how to keep them?
- When do players like, follow and share game activity with friends?

### THE SOCIAL MEANING OF ONLINE GAMBLING

Why do we play games? What meaning can we derive from studying this data? How will it help society? The utopian promise of big data is to learn more about human behavior, improve channels of communication, provide life enriching entertainment, and increase the feelings of connectedness.

### GAMES AND SOCIALLY-POSITIVE ACTIVITY

Much has been said about video games and violence; however, more recently, social researchers have begun to report on the positive cognitive effect of video games. Video games have been proven to help rehabilitate stroke victims and assist them gaining back motor skills.<sup>22</sup> New research also suggests that older adults who play video games are happier.<sup>23</sup>

Analytics are good public relations for the gambling industry, promoting gambling as mass entertainment. Popularity on social networks and via mobile indicates a new mass market appeal, helping to mitigate negative stereotypes or stigma that gambling may have drawn in the past.

Players can share winnings, give gifts, and follow other players in ways that were not practical with land-

based casinos. These positive social aspects may help curb the threat of negative effects (excesses/addiction/abuse.) Developers could learn ways to make social casino games even more socially positive, build stronger communities, strengthen friendship networks and encourage more sharing of our digital lives.

The following are some of the potential positive social effects of playing games (including digital games and social casino games); social interaction, alleviate loneliness and boredom, encourage relaxation and stress relief, promote improved cognitive activity such as memory, reaction time, provide emotional connection; joy, excitement, humor, anticipation, alleviate anxiety, sponsor pride and personal satisfaction.

#### BEHAVIORAL TRACKING:

By tracking game playing behaviors we can learn about how players across the globe play differently. Recent changes in the profile of social and casino game players include more women and other important changing demographics such as age and location.

#### MEASUREMENT POTENTIAL

- How do men and women play online games differently?
- Do men and women have different design preferences?
- How do women spend and pay differently than men?
- How does age make a difference in play behaviors, betting styles, game preferences?
- Do younger players engage differently than older players?
- How do players differ in Canada, the US, UK, Europe and Asia?
- Tracking financial data: different payment habits, from PayPal, debit cards, checking account, gift cards, etc.
- Play habits: when and how long: length of session?
- Social behavior: sharing habits, communication habits, gifts, voluntary game promotion.
- When and why do players purchase virtual goods?
- Advertising consumption: targeted ads, effectiveness of ads in game space?

#### CONCLUSION: BIG DATA ENCOURAGES SELF-REGULATION

With the shift to real money games online, there are worldwide threats

of government imposed regulatory action, including possible legal limits and taxation.

The study of Big Data can help game companies find acceptable/responsible ways to self-regulate (for example set goals/limits to protect vulnerable players) before government regulators impose from the outside. Data analytics can allow companies to track spending/betting habits, and potentially provide warnings to minors and other vulnerable populations. Other voluntary regulation may include putting age limits on certain games. The SGA is a social gaming association which encourages socially responsible standards and educates detractors and policy makers concerned about social gaming.<sup>24</sup>

Gambling is as old as the Bible and digital games are here to stay, advanced data analytics are the best way for us to understand player behaviors and give us important insight into the future trends of the social casino industry. **CGL**

*Christine Martin J.D. specializes in digital investigations and social analytics for the legal industry researching public sentiment for crisis and/or reputation matters. Contact: christinemrtn8@gmail.com*

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BY PETER J. KULICK



## Internet Gaming in the United States: Here Today, Gone Tomorrow?

*Internet gaming (or “i-gaming”) is the talk of the global gaming industry. European jurisdictions have long been pioneers within this industry sector by authorizing i-gaming several years ago. As a result, a burgeoning legal i-gaming market has developed in Europe. The story in the United States has been much different and has followed the quintessential American narrative.*

I-gaming initially operated in a “Wild West” legal gray area. The federal government and states then stepped in with efforts to prohibit i-gaming. These efforts culminated with Congress enacting the Unlawful Internet Gaming Enforcement Act, 31 USC §§ 5361 et seq., (“UIGEA”) in 2006. The Wild West era continued until April 15, 2011,<sup>2</sup> when the United States Department of Justice (“DOJ”) unsealed criminal indictment of three then-industry leading i-poker operators, Full Tilt Poker, PokerStars and Absolute Poker. The indictments alleged the i-poker operators activities violated UIGEA and, interestingly, did not rely on the Wire Act.

The “modern era” to relax restrictions on i-gaming arrived five years later with the United States Department of Justice (“DOJ”) publicly releasing a memorandum opinion on December 23, 2011 (the “DOJ Memorandum”) that concluded the Wire Act of 1961, 18 USC § 1084, et seq. (the “Wire Act”) only extended to sports betting. Subsequently,

three states -- Delaware, Nevada, and New Jersey -- moved forward to authorize intrastate i-gaming.

As the i-gaming market has gained some traction to gaining legal acceptance in the United States, powerful political forces are now seeking to forestall that progress and enact an outright ban on i-gaming in the United States. Thus, the question is quickly raised whether legalized i-gaming will continue to expand or if the United States will return to a prohibitory approach.

#### WHERE THE UNITED STATES WAS BEFORE BLACK FRIDAY -- THE WILD WEST OF I-GAMING

Prior to the 2006 adoption of UIGEA, i-gaming operated ostensibly in a gray area of the law. Some i-gaming operators were willing to offer full-scale gaming through the Internet to United States residents. A prime example was Michael Cohen, who operated an Antigua-licensed i-gaming site, which was available to Americans. Gamblers could place



*Pictured here, clockwise from top left: Robert W. Stocker II, Michael D. Lipton, Peter H. Ellsworth, Dennis J. Whittlesey*

*Robert W. Stocker II and Michael D. Lipton are Tier I gaming attorneys in Chambers Global and all four lawyers pictured here are listed in Best Lawyers.*

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*“The criminal indictments of three market leading i-poker sites effectively ended the last remnants of a wide-scale i-poker industry in the United States.”*

wagers on sporting events, including horse races, through Mr. Cohen’s website. Ultimately, Mr. Cohen gained the attention of United States federal law enforcement agencies and was the subject of a criminal prosecution for violating the Wire Act. The DOJ secured a conviction of Mr. Cohen. On appeal, Mr. Cohen trotted out the legal arguments that would become familiar to the America gaming bar. However, the United States Court of Appeals for the Second Circuit, in a published opinion, rejected the arguments in upholding Mr. Cohen’s conviction.<sup>3</sup> The Cohen conviction, and Court of Appeals decision upholding the conviction under the Wire Act, was the first blow to the unregulated “gray” i-gaming market in the United States.

In 2006, Congress enacted a game-changer with UIGEA. Rather than simply create a federal criminal statutory, which UIGEA does, the act also requires certain financial providers to identify and block or otherwise prevent any “restricted transaction.” UIGEA defines a “restricted transaction” to essentially include any financial transaction involving “unlawful Internet gaming.”<sup>4</sup> After the enactment of UIGEA, many i-gaming sites left the United States market.

Despite Mr. Cohen’s conviction under the Wire Act and the enactment of UIGEA, several enterprising individuals launched i-poker sites which allowed residents in many states to play online poker for real money stakes. After UIGEA’s enactment, most of the wide-scale purportedly lawful i-gaming in the United States was limited to i-poker. The legal reasoning supporting the legality of i-poker sites went something like the following: first, the plain language of the Wire Act only extends to sports betting, thus reducing the risk that a federal criminal conviction could be obtained;<sup>5</sup> and, second, most United States state criminal laws define gambling using the traditional common law definition of gambling which consists of three elements – chance, consideration and prize. Proponents of i-poker sites argued that poker was a game of skill, not chance. Thus, because one of the common law elements was not

present -- chance -- the i-poker sites could not violate state criminal laws prohibiting gambling.<sup>6</sup>

Consequently, the i-poker sites that continued to operate after UIGEA by most accounts flourished financially. The i-poker sites operated openly and notoriously in many United States states, often sponsoring TV broadcasts of poker tournaments and heavily advertising across the United States. Then came the i-gaming industry’s Black Friday. The criminal indictments of three market leading i-poker sites effectively ended the last remnants of a wide-scale i-poker industry in the United States.<sup>7</sup>

#### **THE DOJ MEMORANDUM AND THE DEVELOPING INTRASTATE UNITED STATES I-GAMING MARKET**

The DOJ delivered an early Christmas present to the gaming states in the United States on December 23, 2011. On that date, the DOJ publically released the DOJ Memorandum, which was prepared in response to requests from New York and Illinois with respect to the legality under federal law of selling lottery tickets online. In a bombshell, the DOJ took its long-standing interpretation of the Wire Act to task. For decades, the DOJ (under both Republican and Democrat Administrations) had argued that the Wire Act extended to a wire transmission of any bet or wager. The DOJ Memorandum abandoned this interpretation and concluded that the Wire Act only applies to sports betting. Before the DOJ Memorandum was released, the DOJ had refused to opine on the legality of state authorized i-gaming under the Wire Act and, in some instances, even threatened criminal prosecutions if intrastate i-gaming was authorized. Thus, the door opened to states moving forward with authorizing intrastate i-gaming under less fear of federal criminal prosecutions.<sup>8</sup>

Nevada and New Jersey are the bell-weather gaming states in the United States. Not surprisingly, Nevada and New Jersey were two of the first three states to authorize intrastate i-gaming in the United States. Nevada has taken the cautious

approach of only allowing i-poker, while New Jersey has authorized most traditional forms of gaming to be offered through the Internet.

With i-gaming having gone live in both Nevada and New Jersey, the early returns can be assessed. So far, the reaction has been a mixed bag. The statistics freely thrown around at gaming conferences across North America is that roughly 40% of i-gaming financial transactions in New Jersey are being blocked by financial service providers pursuant to UIGEA. While the New Jersey i-gaming market is still in its early infancy, the financial results have not reached the initial projections. Nevada is a small population state and may never develop into a significant i-gaming market. Nevertheless, the fact that Delaware, Nevada and New Jersey have authorized and launched intrastate i-gaming has generated significant interest among the other major United States gaming states, most notably the populous State of California.

#### THE NEXT WAVE: WILL I-GAMING BE GONE TOMORROW?

The most significant development within the i-gaming sector in the United States came this spring. Casino mogul Sheldon Adelson has long been a vocal critic of i-gaming. Mr. Adelson also happens to be one of the wealthiest and a most prominent donor to Republican political interests.

Mr. Adelson's keen interest in forestalling the expansion of i-gaming in the United States gained the attention of United States Senator Lindsay Graham (R-S.C.) and Congressman Jason Chaffetz (R-Utah). On March 26, 2014, Senator Graham and Congressman Chaffetz introduced companion legislation in the United States Senate and House of Representative, respectively, that would criminalize i-gaming in the United States. The legislation, dubbed the "Restoration of the Wire Act" is impressive in its simplicity. The three-page bill would amend the Wire Act by striking the reference to "any sporting event or contest" and replacing it with the phrase "any bet or wager." The legislation would also expressly provide that the Wire Act applies to Internet

communications.<sup>9</sup> The Restoration of the Wire Act has already attracted a broad bipartisan collation of sponsors, notably including the California liberal stalwart, Senator Diane Feinstein.

What are the chances that the Restoration of the Wire Act will actually be enacted? At this stage, the answer to this question is anybody's guess. Politically scuttlebutt suggests that proponents of i-gaming in the United States better take the legislation very seriously. The House of Representatives is controlled by Republicans, who have historically been antagonistic to legalizing gaming. In the Senate, Republicans hold 45 seats. While some Republican Senators are likely to vote against Senator Graham's bill, as evidenced by Senator Feinstein co-sponsoring the bill, some Democrats will inevitably support the measure. Thus, if fifteen to nineteen other Democrats join Senator Feinstein, the prospects for the Restoration of the Wire Act start to look increasingly better. As a result, it may be difficult to prevent invoking cloture on the bill in order to prevent an ultimate vote.<sup>10</sup>

#### CONCLUSION

Where is the United States i-gaming market headed? The recent trend has been at the state legislative chambers to authorize intrastate i-gaming. This trend is likely to continue in the near future. The wild card, however, is whether Congress will act on Senator Graham's and Congressman Chaffetz's legislation to amend the Wire Act to expressly criminalize any i-gaming in the United States. While it is difficult to handicap the odds of the federal legislation being enacted, it is a measure that the gaming community should carefully monitor. **CGL**

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2. April 15, 2011 became known as the "Black Friday" for the i-poker industry in the United States.

3. See *United States v. Cohen*, 260 F.3d 68, 71 (2nd Cir. 2001).

4. See 31 USC § 5362(10). "[U]nlawful Internet gambling" is defined by cross-reference to gambling activity that is unlawful under applicable State law or federal law.

5. The statutory language of the Wire Act, 18 USC § 1084, provides that: [w]hoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

6. While the argument has appeal, state courts have not always uniformly agreed that poker is a game of skill, rather than chance. Moreover, many states define prohibited gambling conduct to include any card game played for a reward. The latter statutory regimes completely undercut the game of skill argument.

7. The Black Friday indictments may have kicked several large i-poker operators out of the United States, it by no means ended the "gray" (or, for the more conservative legal advisers, "black") i-gaming market in the United States.

Rather, i-gaming opportunities still exist to this date for United States residents and will continue to exist, regardless of the state of the United States law. Quite simply, the United States market is too lucrative for some entrepreneurs to avoid.

8. Many United States legal commentators have summarily concluded that the DOJ Memorandum effectively ends the debate with respect to the applicability of the Wire Act to non-sports betting. While the DOJ Memorandum is helpful, and maybe even extremely helpful, it absolutely does not end the debate with respect to the scope of the Wire Act. First and foremost, the DOJ under a new Administration (which will happen following the 2016 Presidential Election) could easily withdraw the DOJ Memorandum. Furthermore, at least two published federal court decisions have reached opposite conclusions. The federal Fifth Circuit Court of Appeals has stated in an opinion that the Wire Act only applies to sports betting. However, a federal district court has reached a contrary result and concluded that the Wire Act applies to any form of gambling. The plain language of the Wire Act suggests that the DOJ Opinion is legally sound. However, there is no absolute certainty until -- and IF -- the United States Supreme Court decides the issue.

9. Amending the Wire Act to eliminate the "any sporting event or contest" qualifier makes sense if the intent is to reach all forms of gambling. It is interesting that Senator Graham's and Congressman Chaffetz's legislation would also add express language providing that a "wire communication" includes communications through the Internet. Courts have already reached this conclusion based on the present language of the Wire Act.

10. In the United States Senate, invoking cloture is a procedural vote to end the debate on legislation and require a final up-or-down vote on the bill. The process of continuing debate is known more popularly as the filibuster.



BY ARNIE AND SHEILA WEXLER

## Are Responsible Gaming Programs Important?

*Some casinos have acknowledged gambling addiction as a legitimate disorder but have debated how far they should go to assist problem gamblers and whether such efforts work. The industry leaves itself open to lawsuits if they don't deal with problem gamblers who are known to have signs and symptoms of gambling addiction. The most frequent lawsuits to date, filed by problem gamblers against casinos, claim that casinos failed to protect gamblers who voluntarily banned themselves from the premises. The lawsuits are a fallout from exclusion lists that many casinos have created on their own as well as lists that have been enacted by law in several casino locations in the U.S. and Canada.*

As the gaming industry tackles the issue of problem gambling head-on, training employees on how to spot, talk to and aid potential compulsive gamblers becomes vital. You will need to look at techniques that can be used to identify compulsive/problem gamblers. Behaviors, actions and conversations that may help identify those gamblers with a problem will also be explored, along with taking the next step, including exclusion policies and treatment options.

Sheila and I have been doing Responsible Gaming Programs, employee and executive staff training for casinos for over 25 years. We have trained over 40,000 casino workers and we have been members of many Responsible Gaming Committees. We have written mission statements, and policy and procedures for Responsible Gaming Programs in the U.S. and Canada.

We tell them “You’re not clinicians, you’re not counselors. It’s not your job to run over to a customer and say, Hey buddy, you’ve got a gambling problem.” But you can kick it upstairs to an officer in your casino and they can intervene and take care of it. You can let a supervisor know about it.

Every time we do a training session we get workers coming over to us and asking for help for themselves or a family member, and even for a player. Some employees are reluctant to approach us at the training, so they keep our number and contact us at another time. Over the years many executives in the gaming industry have reached out to us to help themselves or a player or one of their own workers. We have gotten calls from CEOs of casinos to help some of their top executives who were addicted gamblers. One was a CEO of a casino and another was the top legal person at the casino.

Here is one example of a call we have gotten from a casino executive: The woman and her husband (both

regular customers in Atlantic city) lost \$100,000 in two days in early January. And they now owe over \$200,000 to five Atlantic City casinos, with no realistic prospects of paying it back. She picked up the telephone and called her host (a vice president of player development, whose job it is to keep gamblers happy — and coming back). “This is more than I can handle. I want to kill myself,” she told him. “I’m in over my head. All of my real estate is underwater. I don’t know what I’m going to do.” The host was concerned. “She sounded desperate,” he recalled. “I could hear it in her voice.” He told her to call “Arnie Wexler”. We were able to help her get into recovery and to work out payments to the casino.

We have found that these programs have not only been beneficial to customers, but to casino workers as well. One of the real secrets in the gaming industry is that there is a high percentage of workers who have a gambling addiction.

#### HOW TO PUT A RESPONSIBLE GAMING PROGRAM IN PLACE

##### A CASINO WILL NEED TO DEVELOP THE FOLLOWING:

- A corporate commitment
- Written policies and procedures
- Internal practices to support the program
- A comprehensive training program for both line staff and executives (and as new employees come on board)
- Information on YOUR website about Responsible Gaming
- Information about getting help
- Referral and consultant service for employees and customers.
- Collateral materials, written and used in conjunction with the responsible gaming programs
- Responsible gaming program task force that meets at least 2 times a year

- Partnership with experts in the field of gambling addiction
- Offering Gambling treatment for employees and their families
- A Team approach in deciding Exclusion policies (If someone goes on an Exclusion list and then removes themselves after a period of time and begins playing, again; the casino is taking a real gamble as the player may say “they knew I had a gambling problem and the let me play, anyway”)

In forming a policy you need to ask your task force committee some of the following questions:

- When you develop a Responsible Gaming Policy do you follow thru with the specifics established in your policy? (do you say what you mean and do you do as you say?)
- What type of collateral materials do you provide employees and customer?
- How do you intervene and who is responsible on staff, when a customer and/or employee ask for help?
- Do you mandate all employees (and /or executive) to get staff training on gambling addiction?
- Does your program include a Responsible Gaming Committee?
- How often do they meet?
- Who makes up this committee? **CGL**

*Arnie and Sheila Wexler have provided extensive training on Compulsive, Problem and Underage Gambling, to more than 40,000 gaming employees (personnel and executives) and have written Responsible Gaming Programs for major gaming companies. They also run a national help line (1 888 LAST BET) and work at Recovery Road, a treatment facility in Palm Beach Gardens, Florida that specializes in the treatment of those suffering with gambling addiction. [www.aswexler.com](http://www.aswexler.com)*



BY ARRYN BLUMBERG AND BRYSON TAN

## Testing for Compliance: Lessons Learned in Delivering iGaming Testing for Regulated Markets

*As more and more regulated markets legalize online gaming, there is an ever-increasing need to ensure that the gaming platform, games, data, operations, and people that supply and operate online gaming can continuously meet the regulations of each individual jurisdiction.*

This is particularly important for government run operators that are looking to provide online gaming. The reputational damage, political fallout, and loss of public trust from a government operator losing player data or offering games that do not function correctly could be immense.

However, this is easier said than done and as with so many things the devil is in the detail.

In essence, many jurisdictional regulations are similar in their intent, and yet the specifics can vary widely, forcing suppliers and operators to have to modify code, operational practices, and such like on a “per instance” basis. This in turn means that each differing piece of code, server, data warehouse, cloud service, operational process etc. is potentially in-scope for testing in each and every regulated market.

This is not dissimilar to how financial services or health care is

regulated, but it is relatively new for online gaming operators who have traditionally provided B2C/B2B services in markets that do not require exhaustive testing, such as the UK or some other European markets, where market forces or other enforcement bodies are used to manage compliance.

The USA, Canada, emerging regulated markets in Europe, and potentially Asia are taking a different approach focusing more on absolute compliance to their jurisdictions specific regulations. There are emerging trends in testing that are worth being cognisant of as these new markets expand and shape the future of online gaming.

### **1. Testing is now about more than RNGs and pay tables.**

Operational processes, corporate governance, management oversight, hiring processes,

background checks, or any other area that can influence the gaming systems is now in-scope for some form of testing or audit.

### **2. The scope of testing is not limited to the gaming platform or games suppliers.**

Data centre security used to host the gaming systems, what cloud services are in use, or what personal player data AML engines have access to, is just as important as the primary supplier’s code. Regulators are now looking at the gaming ecosystem holistically; bringing third party suppliers in-scope for testing.

### **3. Having testing solely performed by the supplier or vendor is not necessary sufficient.**

Many regulators are moving to a model where testing performed by independent testing houses and audit firms accountable

*“Where testing has been performed already, being able to provide the regulator with specific details of what types of testing, to what regulations, the outcomes, and other details, can help reduce the test cycle.”*

to the regulator directly, rather than relying on the vendors to do it themselves.

**4. Risk or principle based testing is becoming more prevalent.**

Although testing is more exhaustive it is focused on those areas that pose a greater risk such as geolocation of players or data storage of player personal information, rather than marketing email systems.

**5. Providing previous testing for other jurisdictions is of value.**

Where testing has been performed already, being able to provide the regulator with specific details of what types of testing, to what regulations, the outcomes, and other details, can help reduce the test cycle. To emphasize this is only of value when full test details are provided, a game pass one-page certificate will not suffice.

**6. Build in security, and compliance will follow.**

Finding and fixing security bugs can cost up to 30 times more at the deployment

stage as compared to fixing it at the development stage. By taking a pro-active, strategic approach to building security into the Software Development Life Cycle (SDLC), you can increase the ROI early on and reduce inefficiencies and expense related to compliance requirements in the long term.

**7. Getting better at the basics. Most security compromises typically occur when foundational core processes fail.**

Patch, configuration and upgrade management are the usual culprits. Ensuring that the processes are working the way they should by performing periodic spot checks in the form of security assessments will help catch breakdowns sooner and give you ample time to course correct.

In summary, achieving and maintaining compliance in regulated markets for online gaming can be a challenge. However, with the right proactive planning and consideration for each jurisdiction's regulatory detail, compliance from day one is

achievable. This in turn leads to a more secure, reliable and trusted system that is good for players and suppliers alike. **CGL**

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