

US LEGAL PERSPECTIVE

Minefield for the Unwary:

By: Harsh P. Parikh & Heidi McNeil Staudenmaier

Snell & Wilmer



Gaming operations in the United States have traditionally been supply-side driven. Sheldon Andelson, CEO and Chairman of Las Vegas Sands Corp., recently analogized the industry to the movie *Field of Dreams*: If you build it, they will come. Indeed, nothing is a better example of this than growth of brick-and-mortar tribal gaming: from being almost non-existent two decades ago to now generating more than \$27 billion a year.

The Department of Justice's reversal of its long-held stance regarding the Federal Wire Act may have created a major opportunity for gaming expansion in the United States: this time, into cyberspace.

In the last two years, individual states have begun legalizing online gaming and investments are flowing into the igaming sector. Everyone from already-established Las Vegas-based industry giants to household igaming European

operators to Silicon Valley start-ups are all aiming on capitalizing on America's untapped online gaming market. Investors in online gaming endeavors in the United States, however, should proceed with caution.

For one, at this point, a federal internet gaming regulatory framework seems almost implausible. After the widely-rumored Harry Reid gambling bill failed to even be introduced during Congress's lame duck session in 2012, there aren't many positive signs of a future Congressional bill.

The legalization of internet gambling is moving forward on a state-by-state basis. To date, three states — Delaware, Nevada and New Jersey — have passed legislation to allow their residents to gamble on the internet. Each state, however, has its own regulatory body, and its own governing standards and regulations. These divergent approaches create a myriad of

complex challenges that need to be carefully maneuvered.

For instance, online gaming in Delaware will be run only by the Delaware State Lottery. Delaware is currently selecting its vendor for internet gaming system and services. On the other hand, New Jersey and Nevada will allow online gambling websites to be operated by any properly licensed entity. Any potential licensee in Nevada must deal with the "bad actor" provision, which disqualifies any person or entity which operated online gambling (including poker) prior to December 31, 2006, the date when Congress passed the Unlawful Internet Gambling Enforcement Act of 2006. There is no such "bad actor" clause for licensees seeking to operate online gaming in New Jersey.

These complicated and often conflicting state-based legislative schemes require any vendor or operator to carefully plan ahead before entering the market. Fur-

Cautiously Optimistic Outlook on Online Gaming Expansion in the United States

ther, each of these states currently only allows intrastate wagers – that is, a player in Delaware cannot place a bet on a website run by a licensed New Jersey operator. These states may look for ways to work together to create an interstate pool of players, which is essential for games like poker.

Even if igaming on an interstate basis could be workable, these three states have a combined population of less than 13 million – about 4% of the total population of the United States. The focus of most stakeholders remains on the potential expansion of online gaming to other states.

Yet, gaming expansion into other states continues to face obstacles. In Illinois, politics may lead to Governor Pat Quinn's veto to the proposed bill (SB 1739). California is a potential cash cow for online gaming (SB 51 and SB 678). However, any online gaming expansion will need the support of the Golden State's 110 tribes and their 67 brick-and-mortar casinos, and efforts to pass a poker-only bill have failed in the state for the last three years. Massachusetts appears to be the only other state that is seriously considering online gaming (SB 197).

Even if the stars align and the United States can establish and manage a national online gaming infrastructure (either through interstate compacts among the states

“ Sheldon Andelson, CEO and Chairman of Las Vegas Sands Corp., recently analogized the industry to the movie *Field of Dreams*: If you build it, they will come.

or a national regulatory scheme), the internet gaming market will be demand based rather than supply based. The market likely will be saturated with a large volume of potential operators all competing for the same business. The American Gaming Association's opposition to PokerStars' entering the New Jersey market is only a microcosm of the types of competition expected in the future.

Nonetheless, igaming expansion will be lucrative for operators and vendors who can successfully navigate the maze of political and regulatory roadblocks. Just as IGRA was a boon for tribal gaming, igaming expansion may also indeed become a major market in the United States.

www.swlaw.com

Harsh Parikh is an associate in Snell & Wilmer's Orange County, CA office. His practice is concentrated in commercial litigation, gaming law and intellectual property litigation. He represents individuals, businesses, institutional and public entity clients in all facets of litigation in state and federal courts. He counsels major manufacturers and operators of gaming equipment on various state and federal regulations. Harsh also consults and advises financial stakeholders and publicly traded corporations on pending state and federal legislation related to gaming and sports betting.
hparikh@swlaw.com

Heidi Staudenmaier is a partner in Snell & Wilmer Phoenix, AZ office, is nationally recognized in the areas of Indian Law, Gaming Law and Business Litigation.

Snell & Wilmer

Snell & Wilmer L.L.P.

Founded in 1938, Snell & Wilmer is a full-service business law firm with more than 400 attorneys practicing in nine locations throughout the western United States and in Mexico, including Orange County and Los Angeles, California; Phoenix and Tucson, Arizona; Denver, Colorado; Las Vegas and Reno, Nevada; Salt Lake City, Utah; and Los Cabos, Mexico. The firm represents clients ranging from large, publicly traded corporations to small businesses, individuals and entrepreneurs.