

# US iGaming expansion

## iGaming update

More than twenty five years ago, gaming in the United States faced a conundrum as Indian Tribes and States debated the legality of gambling on tribal lands. The issue culminated in a landmark decision in the United State Supreme Court, *California v Cabazon Band of Indians*, 480 U.S. 202 (1987), and eventually led to the passage of the Indian Gaming Regulatory Act (IGRA), Pub. L. 100-497.

The Obama Administration's 20 September 2011 opinion, made public on 23 December 2011, has now created a similar uncertainty in the realm of online gaming. The Department of Justice reversed its long-held position regarding the Wire Act of 1962. In a new opinion, the Executive Branch concluded that the Wire Act applies only to sport-related gambling activities in interstate and foreign commerce.

Many have now taken the view that virtually all federal barriers to internet gaming have been removed. The reach of the DOJ's new position, however, remains unclear. Regardless, in this brave new world without a clear federal roadblock, iGaming expansion in the United States will occur in one of two ways: (1) patchwork, state-by-state laws, or (2) a federal 'opt-in' framework.

### Patchwork legalisation

The DOJ's new memorandum opinion of the Wire Act paved the way for states to do what they want with intrastate internet gaming, and it didn't take long for states to react. Since January, bills that might legalise online gaming have been proposed in almost a dozen states, including California, Iowa, Maryland, New Jersey, Mississippi, Hawaii, Missouri and the District of Columbia. Most of these bills, however, died in session because of infighting among stakeholders.

Only two states and the America Virgin Islands succeeded in their quest to legalise and regulate online gaming. On 28 June 2012, Delaware's Gov. Jack Markell signed a bill allowing the State Lottery to operate full-scale online casinos. At the same time, Nevada's Gaming Commission begun issuing licenses to internet gaming operators; on 20 June 2012, Bally Technologies, Inc. and International Game Technologies were the first to receive licenses.

This type of patchwork legalisation may be problematic. For one, without a federal framework, tribal gaming interests are left at the mercy of individual states, with small gaming operators unlikely to participate in any expansion. Moreover, without players from other states, states with small populations will likely struggle to create an efficient and popular cyber gaming environment. Variations in laws across the nation will also lead to a labyrinth of differing regulations for operators of online gaming. A Federal framework that allows interstate wagering is, thus, the most efficient avenue for iGaming expansion.

### Federal Movement

Federal movement on iGaming has shown little promise. Currently, the House of Representatives has introduced two bills: H.R. 1174 and H.R. 2267. In the Senate, Majority Leader Harry Reid recently indicated another bill is also in the works. Nevada's Democratic senator, along with his Republican colleague Dean Heller, even attempted to slide internet gaming into legislation concerning cyber security. Recently, in June 2012, the US Senate Committee on Indian Affairs held a hearing on the 'Regulation of Tribal Gaming: From Brick & Mortar to the Internet', and retiring Daniel Akaka (D-HI) circulated a draft bill outlining tribal gaming interests on the matter.

At this time, there is no indication that any of these bills will be acted upon in the current session. Legalisation of gambling has traditionally been a state issue. Because states are now free to legalise intrastate gaming, federal action may be seen as being unnecessary. To that end, the National Conference of State Legislatures (NCSL) on 9 August 2012, passed a policy resolution urging the federal government to respect state sovereignty. The North American Association of State and Provincial Lotteries also announced that there is now no need for federal legislation.

### Prediction for the future

Despite the benefits of a nationwide framework for iGaming, the current Congressional stalemate and the upcoming election make federal action highly unlikely. State lotteries, casino operators and game makers across the United States will likely turn to their state's legislators for any gaming expansion into cyberspace.

Just as the IGRA was a boon for tribal gaming, leading to over 460 Indian gaming establishments across the United States, iGaming expansion promises to lead to a proliferation of gaming across the states. The question is not if, but rather how online gaming will be legalised in the United States.

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