Internet Gaming and Indian Country: The Trends and the Strategies

Excerpts of chapter that first appeared in *Inside the Minds: Emerging Issues in Tribal-State Relations* (2012 Edition) published by Aspatore Books. Excerpts reprinted with permission.

by Blaine I. Green

Blaine I. Green
Indian Law (American)
+1.415.983.1476
blaine.green@pillsburylaw.com

Blaine I. Green is a partner at Pillsbury Winthrop Shaw Pittman LLP where he leads the firm's Indian Law practice. Mr. Green serves as outside general counsel for several California-based tribes. In this role, he works on a wide variety of tribal-state disputes including, by way of example, disagreements over gaming compacts and state attempts to regulate tribal gaming; objections by states and localities to taking of land into federal trust for tribes; disputes relating to the application of sales and use tax; and disputes over application of state law on the reservation. Mr. Green has represented tribal clients in tribal, state and federal courts, including published opinions from the Ninth Circuit Court of Appeals and the Interior Board of Indian Appeals. He also advises companies doing business with Native American tribes and in Indian country.

Mr. Green received his J.D. from Harvard Law School in 1997 (*cum laude*), and his B.A. from Harvard University in 1994 (*magna cum laude*). He is admitted to practice in the U.S. Supreme Court, the Ninth Circuit Court of Appeals, the State of California and various U.S. District Courts.

I gratefully acknowledge my colleagues in our Indian Law practice, Daron Carreiro and Jessica Bogo, who provided valuable assistance on this chapter.

Introduction

For most of the twentieth century, gambling in the United States was confined to the State of Nevada. Much has changed in the last twenty-five years since adoption of federal law expressly authorizing Indian gaming. Today, hundreds of casinos are operated by tribes, on Indian lands throughout the country. Indian gaming accounts for nearly half of the industry.

Now, a change in position by the federal government—combined with the rapid growth and popularization of the Internet—has the potential to open a new frontier: Online gaming. The prospect of Internet gaming raises complex jurisdictional, regulatory, and other issues for Indian tribes and states. Does the Indian Gaming Regulatory Act support Internet gaming? Do existing laws and tribal-state compacts permit such gaming by tribes? What are possible subjects for legislation or tribal-state negotiation with respect to Internet gaming?

This chapter addresses each of these questions, and discusses the trends and strategies in this emerging area.

Background on Tribal Gaming

Modern American Indian tribal gaming is conducted pursuant to the Indian Gaming Regulatory Act ("IGRA"),[1] the stated purpose of which is "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments."[2] While traditional games and gambling have been a part of American Indian culture for centuries,[3] tribal governments began using modern forms of gaming in recent decades as a way to raise revenues for the operation of their tribal governments, and to provide much-needed tribal services to their citizens, including health care, education, housing, and infrastructure.

Prior to IGRA, federal law did not contain clear standards or regulations for gaming conducted by Indian nations on tribal lands. In 1987, in *California v. Cabazon Band of Mission Indians*,[4] the United States Supreme Court affirmed the right of American Indian tribes to offer bingo, card games, and other forms of gaming on their reservations, free from state regulation, provided that gaming was permitted in some form by the state within which they were located.[5] In *Cabazon*, gaming revenues were the sole income for the two tribes involved in the case (the Cabazon and Morongo Bands of Mission Indians), and gaming was also a major source

of employment for tribal members.[6] California prohibited the type of high-stakes bingo offered by the tribes, but did not prohibit all forms of gambling. For example, the state operated its own lottery and also permitted pari-mutuel horse-race betting. The Court held that California's gaming laws regulated rather than prohibited gambling,[7] and the federal and tribal interests at issue (raising revenue for tribal governments and providing employment for tribal members) outweighed California's professed interest in preventing infiltration of organized crime.[8]

Congress enacted IGRA in 1988 in response to Cabazon. IGRA divides Indian gaming into three categories: Class I gaming, consisting of social games for prizes of minimal value or traditional games played at tribal ceremonies or celebrations;[9] Class II gaming, consisting of bingo, pull-tabs, lotto, and certain non-banked card games in which participants play against themselves rather than against the house;[10] and Class III gaming, consisting of "all forms of gaming that are not class I gaming or class II gaming" such as slot machines, blackjack, craps, roulette, and other casino-style games.[11] Under IGRA, tribal gaming must be conducted on "Indian lands," defined as lands within the limits of any reservation or held in trust by the United States for the benefit of any Indian tribe or individual.[12]

While continuing to recognize tribes' right to conduct and regulate gaming on Indian lands, IGRA granted federal and state governments certain authority in the area. IGRA established the National Indian Gaming Commission ("NIGC"), a federal agency within the US Department of the Interior, to oversee Indian gaming activities, to shield Indian tribes from organized crime, to ensure that Indian tribes are the primary beneficiaries of gaming revenues, and to ensure gaming is conducted fairly and honestly by both operators and players.[13] NIGC conducts investigations, undertakes enforcement actions, performs audits, reviews and approves tribal gaming ordinances, and reviews and approves certain contracts related to gaming.[14] Although NIGC shares common goals with tribes, it is not an advocacy group for tribal gaming interests, and often makes decisions adverse to tribes in purported furtherance of its mission.

With respect to state authority, IGRA formalized the rule from *Cabazon* for Class II gaming, permitting bingo, poker, and similar games on tribal lands in states that do not entirely prohibit gaming.[15] As for Class III gaming, IGRA permits it only if "conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State" in which the tribal lands are located.[16] States that permit gaming are required to "negotiate with the Indian tribe in good faith" to enter into Class III compacts.[17]

Indian gaming revenues have grown significantly since IGRA's passage in 1988. At that time, tribes operated approximately 100 bingo halls that generated about $100 million in annual revenues.[18] By comparison, during the past three years, there have been approximately 241 tribes in twenty-nine states operating between 405 and 422 gaming facilities, with combined total revenues of over $26.5 billion per year.[19] This amount represents approximately 41-43 percent of all gaming revenues nationwide.[20] Tribes generate additional revenues from related hospitality and entertainment services, including resorts, hotels, restaurants, golf, entertainment complexes, and travel centers.[21] As of 2009, tribal governments created 628,000 jobs nationwide (for Indians and non-Indians), and generated $2.4 billion in revenue sharing and regulatory payments to states.[22]

Background on Internet Gaming

When IGRA was passed in 1988, the Internet was still in the early stages of development. Much has changed during the twenty-five years since IGRA was adopted. The exponential growth of the Internet has had significant implications for traditional "brick and mortar" industries—and gaming is no exception.

Current estimates place worldwide online gaming revenues at more than $32 billion and climbing.[23] In 2010, less than 15 percent of the online gaming market came from the United States[24]—a figure kept low because of considerable uncertainty over the legality of Internet gaming under federal law. While several federal laws address issues related to Internet gaming, three sources in particular have been the subject of recent debate over the legality of online gaming: the Wire Act of 1961 ("the Wire Act"), the Unlawful Internet Gambling Enforcement Act of 2006 ("the UIGEA"), and a Memorandum Opinion released by the Department of Justice on December 23, 2011 ("the DOJ opinion").

The practical impact of the Department of Justice's change in position remains to be seen. At a minimum, the Department of Justice's new opinion suggests that legal resistance to online gaming is on the decline—at least at the federal level. With the most important federal obstacle to Internet gaming removed, the stage is set for states and tribes to consider the potential for Internet gaming within their respective jurisdictions, which raises the following questions:

1. Do existing laws and tribal-state compacts allow Internet gaming by tribes?
2. What are the potential subjects for legislation or tribal-state negotiation with respect to Internet gaming?
3. How are states and foreign jurisdictions addressing Internet gaming?

These questions are addressed below.

Do Existing Laws and Compacts Allow Internet Gaming By Tribes?

Does IGRA Support Internet Gaming?

The legislative history of IGRA expressly supports the use of evolving technologies in the context of class II games. According to the Senate Committee Report accompanying IGRA:

> The Committee specifically rejects any inference that tribes should restrict class II games to existing game sizes, levels of participation, or current technology. The Committee intends that tribes be given the opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility. In this regard, the Committee recognizes that tribes may wish to join with other tribes to coordinate their class operations and thereby enhance the potential of increasing revenues. For example, linking participant players at various reservations whether in the same or different States, by means of telephone, cable, television or satellite may be a reasonable approach for the tribes to take. Simultaneous games participation between and among reservations can be made practical by use of computers and telecommunications technology as long as the use of such technology does not change the fundamental characteristics of the bingo or lotto games and as long as such games are otherwise operated in accordance with applicable Federal communications law.[25]

Thus, Internet gaming involving forms of Class II games is already permitted under IGRA where gaming participants are physically located on the same reservation where the Internet gaming site or server is located, or where participants are spread out among various reservations across multiple states. Though not specifically addressed in the Senate Committee Report, Class III gaming should enjoy the same treatment and benefits of "computer[] and telecommunications technology," provided it complies with the relevant tribal-state compacts. Indeed, UIGEA contains a "safe harbor" provision applicable to both Class II and Class III gaming where the bet or wager is initiated and received exclusively within the Indian lands of a single tribe, or between the Indian lands of two or more tribes, provided that the bet or wager complies with the tribal gaming ordinance and tribal-state compact.[26]

The more significant obstacle posed by IGRA to cross-jurisdictional Internet gaming is the "Indian lands" requirement. IGRA's statutory text, legislative history, and preemptive effect over state gambling laws are all based on gaming that takes place on "Indian lands." Determining whether gaming takes place on such lands is more complex when the Internet is involved. With online gaming, if the actual game, servers, bank accounts, and financial transactions all occur on the Indian lands of one or more tribes, does it matter that a gaming participant initiates a bet from a computer in Washington, DC, or New Jersey or Illinois? UIGEA answers this question in part by excluding from its definition of "unlawful Internet gambling" any bet or wager initiated and received exclusively within the Indian lands of a single tribe, or between the Indian lands of two or more tribes, subject to additional requirements.[27]

The "Indian lands" question arose over a decade ago, when the Coeur d'Alene Tribe in northern Idaho created a National Indian Lottery open to participants not only on the reservation and within the State of Idaho, but also in thirty-three other states and in the District of Columbia.[28] The lottery was administered by the tribe entirely on the

tribe's reservation. Off-reservation individuals could participate by opening an account on the reservation, funding the account (either by credit card or by delivering funds to the reservation), and then purchasing tickets by telephone or by Internet. The lottery ticket itself remained on the reservation, and any winning tickets generated a credit to the participant's on-reservation account, which was redeemable in person or through the mail.[29]

The Coeur d'Alene Tribe and the State of Idaho entered into a compact permitting Class III gaming, including a lottery, and the compact was approved by the Secretary of Interior. As required by IGRA, the tribe submitted for NIGC approval the management contract for the National Indian Lottery (which detailed the system through which off-reservation participants would purchase lottery tickets) and a tribal resolution authorizing the lottery. The NIGC determined that the National Indian Lottery, including the purchase of lottery tickets by credit card from locations on non-Indian lands outside the state of Idaho, was not prohibited by IGRA.[30]

The National Indian Lottery encountered its most significant resistance not from the NIGC or the State of Idaho, but from other state attorneys general. For example, the State of Missouri filed suit to enjoin the tribe from offering the lottery in Missouri.[31] The Missouri litigation involved a series of jurisdictional challenges, including removals, transfers, appeals, and remands, with no definitive resolution of the "Indian lands" question in the published opinions. However, the US Court of Appeals for the Eighth Circuit did identify the "Indian lands" question as the critical issue for the lottery:

> The on-Indian lands question is one of federal law, but its *unresolved* presence is not enough to confer federal subject matter jurisdiction over the entire case. If the Tribe's lottery is being conducted on Indian lands, then the IGRA completely preempts the State's attempt to regulate or prohibit. *See* 25 U.S.C. § 2710(d)(1). But if the lottery is being conducted on Missouri lands, the IGRA does not preempt the state law claims—indeed, it does not even appear to provide a federal defense—and the case must be remanded to state court.[32]

The Eight Circuit remanded Missouri's case to federal district court for a determination of "whether the Internet lottery is a 'gaming activity on Indian Lands of the Tribe.'"[33] There was no further published opinion by the lower court.

States also challenged the National Indian Lottery indirectly, by threatening the tribe's chosen toll-free telephone service carrier, AT&T, with alleged violations of federal and state laws.[34] After suit was filed in tribal court, AT&T challenged tribal jurisdiction and sought declaratory relief in federal district court. The United States District Court of Idaho held that the act of purchasing a lottery ticket occurred beyond the reservation boundaries: "Because the Tribe's Lottery consists of gaming activities that occur out-of-state and outside the limits of any reservation, state law applies to regulate that conduct."[35]

The US Court of Appeals for the Ninth Circuit reversed the district court's ruling, though on slightly different grounds. The Ninth Circuit held that the district court had improperly discounted NIGC's approval of the management contract and the tribal resolution authorizing the National Indian Lottery, both of which were final agency decisions entitled to deference. Furthermore, according to the Ninth Circuit, the only proper challengers of the NIGC determinations were the states and their attorneys general, not AT&T. Over thirty states joined in the AT&T case against the tribe as *amici curiae*, but none had challenged NIGC's decision directly under 25 U.S.C. § 2714. Absent such a challenge, the Ninth Circuit held that "both the Tribe and AT&T may continue their activities—and in AT&T's case meet its legal obligations—without fear of prosecution."[36]

NIGC, under a new Chairmanship, changed its position during the *AT&T* case, and signed on to the *amicus curiae* brief of the United States filed in support of AT&T and the other state *amici*. NIGC argued that the preceding Chairman who approved the management contract and tribal ordinance did not interpret IGRA as permitting the off-reservation features of the National Indian Lottery—an argument the Eighth Circuit characterized as "a stretch," since "NIGC is statutorily obligated to reject any lottery proposal that does not conform to IGRA."[37] In any event, NIGC clarified its position in subsequent guidance: "we have determined that Internet Bingo is not authorized by IGRA. We reach this conclusion because the play of

Internet Bingo does not necessarily occur on Indian lands.... [A] tribal gaming operation is not authorized to operate under IGRA if all or part of the gaming occurs at locations that do not fall within the definition of 'Indian lands.'"[38]

Do Tribal-State Compacts Permit Internet Gaming?

Over 240 tribal-state compacts are currently in effect,[39] and their provisions pertaining to online gaming vary. Compacts differ between states, and sometimes even within the same state there are differences from tribe to tribe. Some compacts contain specific language regarding online gaming. Others do not expressly address online gaming, but provide gaming exclusivity for tribes within a certain geographical area.

For example, the March 2006 Amended Compact between the Confederated Tribes of the Grand Ronde Community of Oregon and the State of Oregon provides a specific prohibition on most forms of Internet gaming. That compact provides: "No wagers may be placed or accepted via the Internet or by any telecommunications system or device, except to accomplish off-race course pari-mutuel wagering as permitted pursuant to state law."[40] But other Oregon compacts take a slightly different approach, by specifically contemplating the potential for negotiation over online gambling based on a change in state or federal law. In this regard, the Compact for the Burns Paiute Tribe states:

> This Compact is not intended to preclude the Tribe from seeking negotiation, consistent with the policies of IGRA and this Compact, to offer Internet gaming in the event of a final federal judicial decision binding in Oregon, final State of Oregon judicial decision, or congressional legislative action permitting Internet gaming.[41]

California, with more than sixty-five tribal-state compacts, is an important jurisdiction for Internet gaming.[42] The California compacts authorize only those Class III gaming activities "expressly referred to" in the compacts.[43] These compacts expressly authorize the operation of "gaming devices" (defined as slot machines and facsimiles thereof) and banked card games.[44] The compacts also permit the operation of games "authorized under state law to the California State Lottery, provided that the Tribe will not offer *such* games *through use of the Internet* unless others in the state are permitted to do so under state and federal law."[45] Arguably, the California compacts' only prohibition on Internet gaming is that tribes may not conduct an Internet lottery (unless others are allowed to do so); there is no express prohibition on the operation of gaming devices through the Internet.[46]

Another noteworthy feature of some California compacts is tribal exclusivity. In 2004 and 2006, several tribes entered into compacts with the State of California that grant "exclusivity" in exchange for millions of dollars in revenue-sharing payments. Pursuant to the 2004 and 2006 compacts, the State promised not to allow any person (other than another federally recognized tribe) to conduct gaming activities within the defined "core geographic market" of each compacting tribe.[47] If the State allows another person or entity to conduct gaming within the tribe's "core geographic market," then the tribe is relieved of its obligation to make revenue-sharing payments.[48]

Similar exclusivity provisions are becoming more common in tribal-state compacts, as the consideration that states provide in exchange for revenue sharing. Generally, under IGRA, to bargain in good faith states may not insist on a share of tribal gaming revenues.[49] States attempt to find a way around this requirement by negotiating with tribes for additional benefits, including exclusivity, in exchange for revenue sharing.[50] For example, Connecticut allows its two tribes total exclusivity within the state in exchange for a 25 percent share of the revenue from the tribes' slot machines.[51]

Exclusivity agreements create unique challenges for states seeking to legalize online gaming, particularly where exclusivity does not apply to all tribes, or where states seek to allow online gaming by non-tribal entities. States not wanting to grant total gaming exclusivity to tribes are experimenting with how to reconcile exclusivity agreements with online gaming. For example, the State of Florida, in its 2010 compact with the Seminole Tribe of Florida, attempted to account for the possibility of adverse effects of online gaming by allowing a reduction in revenue sharing. Under the 2010 compact with the Seminole Tribe, the Tribe would not be required to pay the minimum guaranteed payments in revenue sharing if, after the legalization of online gaming, the Tribe's "net win" drops more than 5 percent

below its "net win" for the previous twelve-month period.[52]

Exclusivity agreements in tribal-state compacts can be used to block Internet gaming. In states where such compact provisions exist, Internet gaming may not be authorized except for tribes—and tribes, consistent with the terms of their compacts, have the right to enforce these provisions. In California, for example, the 2004 Compacts generally allow tribes two options in the event of a loss of exclusivity within its core geographic area: cessation of revenue sharing or the right to obtain an injunction against violation of its exclusivity.[53] The 2006 Compacts, do not expressly provide for an injunction but allow tribes the option to cease revenue sharing payments or terminate the compact.[54] Though not all California compacts provide for injunctive relief to enforce exclusivity, the threat of a single injunction could serve to block the State of California from authorizing any non-tribal entity to conduct Internet gaming.

Even if injunctive relief is unavailable, the potential loss of revenue-sharing payments—as in the case of the Seminole Compact or California's 2006 Compacts—is another practical impediment to a state's authorizing Internet gaming. Some states may need to perform a cost-benefit analysis to determine whether the revenues from Internet gaming (e.g. fees, taxes, licenses, etc.) would exceed the lost revenue-sharing from tribes.

Conclusion

The rapid growth and increased usage of the Internet is already impacting the casino industry: online gaming is prevalent outside the US, and the domestic demand is expanding. Within the last few years, many states have begun to consider legalizing Internet gaming within their borders, and these efforts are likely to accelerate in the wake of DOJ's recent opinion that interprets the Wire Act narrowly.

Tribal and state governments have a major stake in this industry. Gaming revenues are crucial to support strong tribal governments, self-sufficiency and economic independence—and, pursuant to tribal-state compacts, revenue-sharing is important to many states. Going forward, tribes and states should, as a matter of both legal (under tribal-state compacts and IGRA) and economic (to preserve governmental revenues) necessity, work together on a government-to-government basis to evaluate the potential for Internet gaming, without violating existing legal obligations or jeopardizing mutual economic benefits.

Key Takeaways

- Pay careful attention to how tribal-state compacts treat Internet gaming, including what types of gaming are authorized, what exclusivity provisions exist (if any), and what remedies are available in the event of a change in state or federal law.
- In gaming compact negotiations, keep in mind the potential for Internet gaming and how tribal exclusivity can be maintained.
- Anticipate and evaluate the impact of online gaming on brick-and-mortar operations. Consider whether, and in what forms, Internet gaming can provide an opportunity for the tribe to expand into new operations and customer bases, instead of being an instance where income is lost.
- Watch out for, and consider whether to support, any federal legislation or regulations concerning the meaning of "Indian lands" under IGRA or that may define where Internet gaming occurs for purposes of federal law.
- Bear in mind the legal battle of the Coeur d'Alene Tribe (over its National Indian Lottery) when evaluating any similar online gaming proposal that could cross states lines.

Endnotes

1 25 U.S.C §§ 2701-2721.

2 *Id.* at § 2702(1).

3 *See, e.g.,* Kathryn Gabriel, *Gambler Way: Indian Gaming In Mythology, History And Archeology In North America* (1996).

4 480 U.S. 202 (1987).

5 *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

6 *Id.* at 204.

7 *Id.* at 210-11.

8 *Id.* at 218-22.

9 25 U.S.C. § 2703(6).

10 *Id.* § 2703(7).

11 *Id.* § 2703(8).

12 *Id.* § 2703(4).

13 *Id.* § 2704; *see also* National Indian Gaming Commission, Mission and Responsibilities, *available at http://www.nigc.gov/About_Us/Mission_and_Responsibilities.aspx.*

[14] *Id.; see also* 25 U.S.C. §§ 2705-2706, 2711-2713.

[15] 25 U.S.C. § 2710(b)(1)(A)-(B).

[16] *Id.* § 2710(d)(1)(C).

[17] *Id.* § 2710(d)(3)(A). IGRA grants federal district courts original subject matter jurisdiction over tribal claims that a state failed to enter into negotiations or failed to negotiate in good faith. *Id.* § 2710(d)(7)(A)(i). IGRA does not expressly abrogate state Eleventh Amendment immunity, however, so states that have not waived their immunity cannot be sued under IGRA; but states that have waived Eleventh Amendment immunity under IGRA (such as California) can be sued. *See, e.g., Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996) (holding that Florida has not waived Eleventh Amendment immunity under IGRA); *Rincon Band of Luiseno Mission Indians of Rincon Reservation v. Schwarzenegger,* 602 F.3d 1019 (9th Cir. 2010) (holding that California has waived its Eleventh Amendment immunity from suits under IGRA), *cert. denied* 131 S. Ct. 3055 (June 27, 2011).

[18] S. Rep. No. 100-446, 100th Cong., 2d Sess., at 2.

[19] *See* National Indian Gaming Association, Gaming Tribe Report (Feb. 9, 2012), *available at http://www.nigc.gov/Portals/0/NIGC%20Uploads/readingroom/listandlocationoftribalgamingops/state1.pdf; see also* National Indian Gaming Association, NIGC Tribal Gaming Revenues Report 2006-2010, *available at http://www.nigc.gov/LinkClick.aspx?fileticket=1P8h79gnJOU%3d&tabid=67; see also* National Indian Gaming Association, 2009 Economic Impact Report, *available at* http://www.indiangaming.org/info/NIGA_2009_Economic_Impact_Report.pdf.

[20] National Indian Gaming Association, Internet Gaming and Marketing Overview (Oct. 2011), *available at http://www.indiangaming.org/events/legislative/Internet_Meeting/NIGA_Midyear_Internet_Gaming_Report-Joseph_Eve.pdf.*

[21] National Indian Gaming Association, 2009 Economic Impact Report, *available at http://www.indiangaming.org/info/NIGA_2009_Economic_Impact_Report.pdf.*

[22] *Id.*

[23] H2 Gambling Capital, Preliminary Results 2011, *http://www.h2gc.com/article/preliminary-results-2011-h2-egaming-dataset-now-available* (last visited Mar. 14, 2012).

[24] American Gaming Association, *Online Gambling, http://www.americangaming.org/government-affairs/key-issues/online-gambling* (last visited Mar. 14, 2012).

[25] S. Rep. No. 100-446, 100th Cong., 2d Sess., at 9.

[26] 31 U.S.C. § 5362(10)(C).

[27] *Id.*

[28] *See AT&T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899, 902 (9th Cir. 2002); *see also AT&T Corp. v. Coeur d'Alene Tribe,* 45 F. Supp. 2d 995 (D. Id. 1998), *rev'd*, 295 F.3d 899 (9th Cir. 2002).

[29] 295 F.3d at 901-02.

[30] *Id.* at 902.

[31] *See State ex rel. Nixon v. Coeur d'Alene Tribe*, 164 F.3d 1102 (8th Circuit 1999), *cert. denied*, 27 U.S. 1039 (1999).

[32] *Id.* at 1109 (emphasis in original).

[33] *Id.*

[34] 295 F.3d at 902-03.

[35] 45 F. Supp. 2d at 1004, *rev'd*, 295 F.3d 899 (9th Cir. 2002).

[36] 295 F.3d at 909-10.

[37] *Id.* at 908 (citing 25 U.S.C. § 2706(b)(10)).

[38] *See* Letter from NIGC General Counsel regarding Lac Vieux Desert Internet Bingo Operation (Oct. 26, 2000), *available at http://www.nigc.gov/Portals/0/NIGC%20Uploads/readingroom/gameopinions/bingo/lacvieuxdesertInternetbingo.pdf.*

[39] *See* Indian Gaming Facts from the National Indian Gaming Association (NIGA), Tribal Court Clearinghouse, *http://www.tribal-institute.org/lists/gaming.htm* (last visited Mar. 14, 2012).

[40] Amended and Restated Tribal-State Compact for the Regulation of Class III Gaming between the Confederated Tribes of the Grand Ronde Community of Oregon and the State of Oregon, March 2006, *http://www.nigc.gov/Portals/0/NIGC%20Uploads/readingroom/compacts/Grande%20Ronde,%20Confederated%20Tribes%20of/granderonderestatecomp5.12.06.pdf* (last visited Mar. 14, 2012).

[41] Amended and Restated Tribal-State Compact for the Regulation of Class III Gaming between the Burns Paiute Tribe and the State of Oregon, December 26, 2002, *http://www.nigc.gov/Portals/0/NIGC Uploads/readingroom/compacts/Burns-Paiute Tribe/burnspaiuteamendrestatedcomp12.26.02.pdf* (last visited Mar. 14, 2012).

[42] The State of California entered into Class III gaming compacts with more than fifty different tribes in September 1999. *See http://www.cgcc.ca.gov/?pageID=compacts.* These compacts (and others entered into based on the 1999 model) are sometimes referred to as the "1999 Compacts." The State of California entered into amended compacts in 2004 and 2006 with a dozen tribes. These amended compacts are sometimes referred to as the "2004" or "2006" amended compacts.

[43] *See* 1999 Compacts, Section 4.1. *See, e.g.*, Tribal-State Gaming Compact between the State of California and the Middletown Rancheria of Pomo Indians of California, Sept. 10. 1999, *http://www.cgcc.ca.gov/documents/compacts/original_compacts/Middletown_Compact.pdf* (last visited Mar. 14, 2012). The 2004 and 2006 amended compacts incorporate Section 4.1 of the 1999 Compacts. *See, e.g.*, Amendment to the Tribal-State Gaming Compact between the State of California and the Pala Band of Mission Indians, *http://www.cgcc.ca.gov/documents/compacts/amended_compacts/palabandamend082004[1].pdf* (last visited Mar. 14, 2012) and Amendment to the Tribal-State Gaming Compact between the State of California and the Pechanga Band of Luiseno Indians, *http://www.cgcc.ca.gov/documents/compacts/amended_compacts/Pechanga%202006%20Amended%20Compact.pdf* (last visited Mar. 14, 2012).

[44] *Id.*

[45] *Id.* (emphasis added).

[46] *Id.*

[47] *See* 2004 and 2006 Amended Compacts, Section 3.2. *See, e.g.*, Amendment to the Tribal-State Gaming Compact between the State of California and the Pala Band of Mission Indians, *http://www.cgcc.ca.gov/documents/compacts/amended_compacts/palabandamend082004[1].pdf* (last visited Mar. 14, 2012), and Amendment to the Tribal-State Gaming Compact between the State of California and the Pechanga Band of Luiseno Indians, *http://www.cgcc.ca.gov/documents/compacts/amended_compacts/Pechanga 2006 Amended Compact.pdf* (last visited Mar. 14, 2012).

[48] *See* 2006 Amended Compact, Section 3.2. *See, e.g.*, Amendment to the Tribal-State Gaming Compact between the State of California and the Pechanga Band of Luiseno Indians, *http://www.cgcc.ca.gov/documents/compacts/amended_compacts/Pechanga 2006 Amended Compact.pdf* (last visited Mar. 14, 2012).

[49] *See* 25 U.S.C. § 2710(d)(7)(B)(iii)(II) (2006). Under IGRA, a state may not require revenue sharing unless it is bargained for in exchange for a "meaningful concession." *Rincon Band of Luiseño Mission Indians v. Schwarzenegger*, 602 F.3d 1019, 1033 (9th Cir. 2010).

[50] *See, e.g.*, Gatsby Contreras, *Exclusivity Agreements in Tribal-State Compacts: Mutual Benefit Revenue-Sharing or Illegal State Taxation?*, 5 J. GENDER RACE & JUST. 487, 494 – 95 (2002).

[51] Duke Chen, *OLR Backgrounder: Slot Machine Payments to Connecticut*, State of Connecticut General Assembly Office of Legislative Research, February 14, 2011, *http://www.cga.ct.gov/2011/rpt/2011-R-0087.htm* (last visited Mar. 14, 2012).

[52] *See* Gaming Compact between the Seminole Tribe of Florida and the State of Florida, April 7, 2010, *available at http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType= Committees&CommitteeId=2527&Session=2010&DocumentType=General%20Publications&FileName=Compact%20Final%20%28Updated%29.pdf* (last visited Mar. 14, 2012).

[53] *See, e.g.*, Amendment to the Tribal-State Gaming Compact between the State of California and the Pala Band of Mission Indians, *http://www.cgcc.ca.gov/documents/compacts/amended_compacts/palabandamend082004[1].pdf* (last visited Mar. 14, 2012) (it should also be noted that certain revenue sharing provisions persist, even if otherwise revenue sharing ceases, if the Tribes operate more than 2,000 gaming devices).

[54] *See, e.g.*, Amendment to the Tribal-State Gaming Compact between the State of California and the Pechanga Band of Luiseno Indians, *http://www.cgcc.ca.gov/documents/compacts/amended_compacts/Pechanga 2006 Amended Compact.pdf* (last visited Mar. 14, 2012) (it should also be noted that, as with the Amended 2004 Compacts, certain revenue sharing provisions persist, even if otherwise revenue sharing ceases, if the Tribes operate more than 2,000 gaming devices).