

THE DEFINITIVE GUIDE TO iGAMING IN THE UNITED STATES

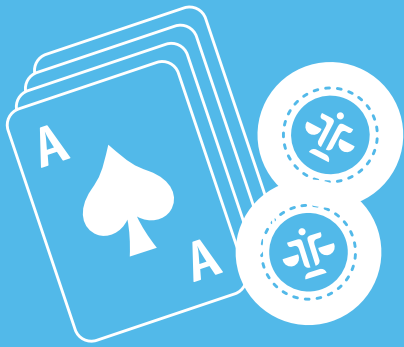


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I.

Introduction

By 2010, the Internet had become an indispensable part of virtually every aspect of our lives. We read newspapers, books, and magazines online instead of on paper, we shopped online instead of visiting the mall, and we streamed movies directly from the Internet rather than renting them from a video store. Also by this time, a large part of our daily interactions with other human beings occurred over the Internet, through email and social media. Yet in 2010, there was no legal Internet-based, real money gaming – or iGaming – in the United States. A number of companies, largely located offshore, offered online poker and other games, but did so in a legal gray area.

In 2011, the federal government announced that interstate online gaming was conducted illegally and shut down the largest Internet poker websites in the U.S. Soon after, states recognized their potential to profit from the iGaming vacuum and passed laws legalizing online intrastate iGaming. Now, in 2014, a growing number of states permit real-money online poker and other Internet games, and some of those states have even entered into agreements allowing their players to play against each other over state lines. The benefit to these states – as well as others that are considering making the jump – is clear. Legal iGaming offers the potential to increase in-state employment by requiring certain jobs and equipment to be kept within state boundaries, and states profit by collecting substantial state tax revenue and licensing fees. For states that already have brick and mortar casinos, iGaming offers opportunities to cross-market and thereby resuscitate struggling hotels and casinos with an influx of new patrons.

Although revenue figures have lagged behind the optimistic predictions forecasted by the first states to implement iGaming, it is still an important source of cash for state coffers. Venture capital firms and investment banks have begun to devote time, effort, and money to the industry – a sign that financial experts share the view that iGaming, ultimately, will be successful. Internet gaming will undoubtedly be a growing fixture in the gaming industry over the coming decades.

In this White Paper, we seek to provide a comprehensive discussion of the current status of Internet gaming in the United States. We begin with the topic of the business opportunities that iGaming offers. This is followed by a discussion on the legality of – and enforcement against – iGaming, including an analysis about the federal statutes that have been applied to iGaming and some of the significant milestones in federal law enforcement against the industry. We then provide detailed information regarding iGaming laws that states have passed or are considering. Next, we address how fantasy sports leagues, the “new kid on the block” of iGaming, will be viewed under state and federal law. Finally, we offer our predictions for iGaming trends in 2014 and beyond.

Our hope is to provide readers with an up-to-date resource on the current status of the iGaming industry in the United States, which will be updated regularly as developments occur.



II.

Business Opportunities in iGaming

● Gaming poses business opportunities for a number of participants, not only including entities involved directly with the games, but also an assortment of providers required in order to offer the product in a manner consistent with regulatory requirements. For the most part, iGaming is structured around the sharing of revenues and the costs and benefits of marketing.

a. THE CRITICAL ROLE OF LAND-BASED CASINOS

While iGaming offers many opportunities for profit, the industry is more restrictive than many others. Those restrictions limit profit to some extent and arise from the regulations imposed on providers in this field.

In the United States, iGaming has developed according to a model different from the way in which the industry operates in Europe and the rest of the world. A company wishing to offer iGaming cannot simply do so from the cloud; rather, iGaming is offered exclusively through contractual partnerships between the Internet platform operators and existing land-based casinos already holding gaming licenses from state regulatory authorities. iGaming developed along this path as a result of a number of factors, including the political power and economic leverage wielded by land-based operators and fear on the part of land-based operators that the iGaming business would cannibalize brick and mortar revenues. These fears have been largely assuaged as the casinos have realized that the customers coming to iGaming platforms are demographically different from their land-based customers, but the model still remains.

Each of the state regulatory schemes that has been enacted in the United States thus far has followed this model, requiring partnering with licensed land-based casinos. But of course there is a limited number of land-based casinos, making opportunities to offer iGaming similarly limited. And the cost of entry into the industry is fairly high – including the costs of acquiring a land-based license, the costs of acquiring a license as an iGaming provider, and the hard costs of setting up the servers in the brick and mortar locations to provide the infrastructure for the online gaming products.

Generally, iGaming providers partner with the land-based casinos in contractual agreements that focus on revenue-sharing. In some cases, the iGaming provider shares its portion of the revenue with other downstream participants – for example, in those cases in which the iGaming provider does not own the actual software used in the online gaming product.

Thus far, for the most part, the land-based casinos have taken a largely hands-off approach to the management of the online products, leaving it to the iGaming providers to handle those matters. On the other hand, in many cases, the entry point for consumers to use the online gaming product is via the land-based casino's website. This offers certain advantages for land-based casinos that are already

well-known and enjoy significant brand recognition. One exception to this general rule is Trump's online gaming, which is managed by Betfair and accessed through Betfair's website exclusively; however, that is an historical consequence of the buyout of Trump hotel with a reservation by Trump of the exclusive right to offer iGaming under the "Trump" brand name.

b. OPPORTUNITIES FOR OVERSEAS OPERATORS

While iGaming in the United States has attracted many overseas providers (and certainly offers them opportunities in this market), those overseas providers face some unique issues. The expense of marketing – which is substantial – has generally been laid at the feet of the iGaming providers. The hotels, which already have customer lists and loyalty programs, usually provide the contact information of their customers to their iGaming provider partners to use in marketing campaigns, but otherwise largely leave marketing (and the cost therefore) to the iGaming providers. For those who come from overseas, the responsibility for carrying the sole burden of marketing may be unusual, and the sheer cost of entry may be daunting for smaller entities. Also, as the continuing PokerStars licensing determination in New Jersey shows, providers who accepted U.S. players as customers after 2006 may face hurdles or even barriers to their entry into the U.S. state-regulated market now.

c. OTHER INDUSTRY OPPORTUNITIES

iGaming offers numerous opportunities for others as well. Because of regulatory requirements for security and safety, provision of online gaming also requires the involvement of banks (for payment processing) and security affiliates (for verification of age and identity), among others. In some states, some of these ancillary providers are required to be licensed by the regulatory authority, though in some states that process is less intense and less intrusive than the licensing process applicable to those entities that will be in direct contact with customers during the offering of the online gaming product. Because data privacy, cybersecurity and underage gambling are very important concerns for regulators, these ancillary providers are viewed by regulators as extremely important participants in the industry.

d. CONVERGENCE

In these first years of state-regulated iGaming in the United States, much business analysis has focused on "convergence" – the extent to which the success of the brick and mortar hotel and casino and the Internet-based gaming products are intertwined and mutually supportive. The use of existing hotel customer bases for marketing is one way in which the land-based partners have provided support for the marketing of their iGaming partners. The hope and goal of many hotel-iGaming partnerships is that iGaming, which is attracting a customer base from different demographic groups than the hotels themselves, will attract those new customer groups to spend

money at the land-based hotels and casinos. The possible means for doing this are limited only by the imagination of creative marketing professionals, but they include sponsorship of tournaments, loyalty point programs, coupon offers, and the like. The ultimate mark of true success for iGaming will be whether and when it achieves true convergence in this respect.

e. OPPORTUNITIES FOR TRIBAL CONSTITUENCIES

While theoretically Native American tribes could partner with iGaming providers, the structure of tribal gaming in the United States and the geographic limitations of the reservations on which those tribes are permitted to offer gaming pose special challenges. In several states – particularly California, Florida and Michigan – the tribes wield enormous political power with respect to gaming and have historically held a monopoly on gaming in those states. The future of Internet gaming in those states is dependent on the ability of the states to reach revenue sharing agreements with the tribes for the gaming that is permitted.

The primary obstacle to the offering of iGaming by Native American tribes is the very limited geographic area covered by their reservations. In many cases, those reservations simply do not include sufficient population to support the offering of iGaming – particularly in the case of online poker, which depends on player liquidity for its success. One possible solution, championed by the Tribal Internet Gaming Alliance (TIGA), would be to combine the player pools of the various reservations across the country (similar to the combination of players through interstate agreements like the one now in place between Delaware and Nevada). The difficulty with this approach is that it may simply result in too much competition for too few customers.

III.

Recent History of the Legality and Enforcement of U.S. iGaming

The legality of online gaming in the U.S. has been the subject of debate since its inception. Inconsistent messages have been issued by federal and state lawmakers, regulators, enforcement bodies, and courts.

Government agencies have pursued enforcement actions against iGaming-related businesses and individuals pursuant to several federal laws. Many of the laws applied to online gaming predate the Internet itself by several decades, including the Federal Wire Act of 1961, 18 U.S.C. § 1084 and the Illegal Gambling Business Act of 1970 (IGBA), 18 U.S. Code § 1955. The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA), 31 U.S.C. §§ 5361–5367, was meant to provide clarity as to the legality of gaming transactions, but in some ways only served to muddy the waters. We discuss each of these laws in detail below, and analyze several significant events in which these federal laws were applied. Finally, we turn to the new and evolving area of state-regulated iGaming.

The Federal Wire Act of 1961, 18 U.S.C. § 1084

One of the oldest statutes applied to the online gaming industry is the Federal Wire Act of 1961.¹ The Wire Act prohibits businesses from transmitting sports bets or wagers over the telephone (or other wired devices) in states that have made such activity illegal. President John F. Kennedy and Attorney General Robert Kennedy sought to use the law, along with several other contemporaneous pieces of legislation, to pursue perpetrators of organized crime. Legislative history reveals that Congress's overriding goal in implementing the Wire Act was to stop the use of wire communications for sports gambling. Over the years, however, it has been used to combat other forms of online gaming.²

The Wire Act outlaws the use of telephones or other wire devices to transmit bets or wagers on sporting events. It also outlaws other communications that help further these bets or wagers, such as transmission of payments.³ The elements of a Wire Act violation are:

- (1) the defendant regularly devoted time, attention, and labor to betting or wagering for profit,
- (2) the defendant used a wire communication facility⁴: (a) to place bets or wagers on any sporting event or contest; (b) to provide information to assist with the placing of bets or wagers; or (c) to inform someone that he or she had won a bet or wager and was entitled to payment or credit, and
- (3) the transmission was made from one state to another state or foreign country.⁵

The Wire Act has not been used – nor was it intended to be used – against the casual or social bettor.⁶

But some courts have taken a somewhat broad approach to whom the statute applies: while some have interpreted “transmit” to apply to just the sender of a transmission,⁷ others have interpreted “transmit” to apply to the sender or the recipient.⁸ In other words, some courts have found a person guilty merely for receiving bets or payments on bets.

Prior to the passage of UIGEA in 2006, the Wire Act was one of the primary statutory weapons the DOJ used to pursue online gambling.⁹ The Department of Justice (DOJ) applied the theory that the Wire Act criminalized all forms of Internet gambling. The DOJ changed course, however, in 2011, when it analyzed the Wire Act and concluded that the Wire Act should not be applied to online gambling transactions.

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA), 31 U.S.C. §§ 5361–5367

The Unlawful Internet Gambling Enforcement Act of 2006 was pushed through Congress on the eve of a congressional recess. There was little review and virtually no discussion of the legislation, which was attached to an unrelated bill on port security.¹⁰

UIGEA seeks to combat online gambling by blocking the flow of funds from U.S. gamblers to online casinos. Lawmakers based the legislation on the questionable Congressional finding that Internet gambling is a growing problem for banks and credit card companies.¹¹ It targets casinos, financial institutions, and intermediaries who facilitate the funding of online gaming. But because liability is only triggered when the gambling activity has violated an underlying state law,¹² if online gaming is permitted within a state, and an online casino restricts gaming to players within that state (and adheres to that state’s laws and regulations), UIGEA does not apply.

UIGEA states that “[n]o person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling” certain forms of payment including credit cards, electronic fund transfers, checks, or the proceeds of any other form of financial payment.¹³ In brief, UIGEA makes it a felony for a person:

- (1) engaged in the business of betting or wagering
- (2) to knowingly accept money
- (3) in connection with unlawful gambling.¹⁴

UIGEA’s criminal provision applies only to one who “knowingly accepts” a bet, i.e., the online casino.¹⁵ It does not apply to a player who places a bet.¹⁶ A bet or wager includes risking something of value on

the outcome of a contest, sports event, “or a game subject to chance.”¹⁷

Another important aspect of UIGEA is the regulatory obligations it imposes on financial institutions. Regulations under the statute went into effect in June 2010 and require financial institutions and other payment processors to conduct “due diligence” when creating a relationship with a new commercial customer. The new due diligence standard is automatically met if the Internet gambling operator is part of state government, if it has a state or tribal license, or if it has a “reasoned legal opinion” that it is not involved in restricted transactions.

Illegal Gambling Business Act, 18 U.S. Code § 1955

The Illegal Gambling Business Act (IGBA) was enacted in 1970 to build on legislative initiatives to combat organized crime. The statute targets “[w]hoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business.”¹⁸ An “illegal gambling business” under the law is defined as a business that:

- (1) violates the law of a State or political subdivision in which it is conducted
- (2) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
- (3) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.¹⁹

Under the statute, “gambling” includes pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

The statute’s definition of gambling has been challenged and even questioned by federal courts. In an August 2012 ruling, a federal district court in New York held that IGBA was ambiguous as to what gambling it covered and that, as a game of skill, “Texas Hold ‘Em” poker was not covered by New York’s anti-gambling law. That judgment was later reversed by the United States Court of Appeals for the Second Circuit.²⁰ In February 2014, the Supreme Court refused a discretionary appeal from that ruling. For that reason, it is generally understood that people can still be prosecuted under IGBA for playing online poker in jurisdictions where it violates the law of the state where it is conducted.

Black Friday

On April 15, 2011 – known in the gaming industry as “Black Friday” – the Justice Department dealt

the industry a major blow when the U.S. Attorney's office in Manhattan indicted 11 individuals and launched a \$3 billion civil lawsuit against online poker firms PokerStars, Full Tilt, and Absolute Poker. Through the action, the DOJ seized about 76 bank accounts in 14 countries and five domain names.

The indictment alleged that the defendants had violated UIGEA and IGBA and were guilty of bank fraud (it conspicuously did not allege any Wire Act violations). It further alleged that, from 2006 to 2011, the three leading Internet poker companies doing business in the United States violated federal law by deceiving banks and financial institutions into processing billions of dollars in payments for illegal gambling activity on their sites. The defendants allegedly tried to circumvent federal rules with the help of individual payment processors, also named as defendants, who prosecutors claimed helped disguise gambling revenue as payments to phony merchants selling non-existent goods such as jewelry or golf balls.

Black Friday had a major chilling effect on iGaming. As of April 2011, many estimated the U.S. online poker industry to be worth up to \$6 billion.²¹ Within a week, worldwide online poker traffic dropped 22 percent.²² And since Black Friday, "online poker in the United States has become a market with very little to no supply, either in the form of regulated or unregulated operators."²³

September 2011 DOJ Opinion on the Wire Act

While Black Friday seemed to shutter online gaming in the U.S., a window was opened by the Justice Department just months following the April 15, 2011 indictments. In a 13-page legal opinion (dated September 2011 but released to the public in December 2011),²⁴ the DOJ determined that the Wire Act applies only to sports betting: that is, that "interstate transmissions of wire communications that do not relate to a 'sporting event or contest' fall outside the reach of the Wire Act."²⁵ The DOJ's opinion was a game-changing moment for iGaming. It eased fears among state lawmakers that money involved in online gaming would incur a violation of federal law as soon as it crossed state lines. As Poker Player's Alliance Executive Director, John Pappas stated: "This is a much needed clarification of an antiquated and often confusing law. For years, legal scholars and even the courts have debated whether the Wire Act applies to non-sporting activity. [This] announcement validates the fact that Internet poker does not violate this law."²⁶ After the DOJ's announcement, many states stepped up initiatives to begin regulating online gaming within their borders.

IV.

Legal iGaming: State-by-State

While there has been significant lobbying of the U.S. Congress by iGaming interests, it is widely believed that the prospects for a federal law legalizing online gaming are dim at best. In part for that reason, progress in the legalization and regulation of online gaming has rolled out on a state-by-state basis. By predicating its violation on the question of whether conduct violates a state's gambling statutes, UIGEA recognizes that a state may legalize Internet gambling within its borders. States have the authority to determine (1) what type of gambling is legal within their borders, (2) where and how gambling can be carried out, and (3) who can gamble (*i.e.* age and location limits).

While several states are considering legislation to recognize online gaming, currently three states offer regulated iGaming: Nevada, Delaware, and New Jersey. These three states vary in population size and have taken different approaches to what type of online gaming they will allow. Whose approach is best may be difficult to determine as success depends largely on demographics. But as states pool their iGaming resources, the states' success will be less dependent on their respective populations. To date, payment processing and geolocation difficulties continue to hamper these states' markets. Nevada and Delaware are further challenged by low populations and consequent market liquidity. But as more states join the regulated iGaming market, and as more states enter reciprocal agreements to pool their players, liquidity issues should be reduced dramatically.

NEVADA

Nevada was the first state to authorize online gaming (referred to as "interactive gaming" in the state). Even before the DOJ reversed its position on the Wire Act in late 2011, which was the impetus for many states to consider iGaming regulations, the Nevada State Legislature had passed a bill ordering its state's regulators to prepare for licensing Internet poker. The state's Gaming Commission thus adopted regulations for online gaming in December 2011. Nevada's initiatives were stepped up in February 2013 with the passage of a new law to allow for interstate gaming. Nevada sought to be at the forefront of regulated iGaming in order to have a strategic advantage when negotiating compacts with other states. As Pete Ernaut, president of government affairs for R&R Partners, noted: "We have the most mature financial, auditing and collection capabilities, much greater than some of those states, and they have the players."²⁷

TIMELINE

The rollout of interactive gaming in Nevada has come in two stages: (1) legislation calling for regulated iGaming within Nevada in 2011 and (2) legislation allowing for interstate iGaming agreements in 2013.

In March 2011, the Nevada legislature introduced AB 258, which instructed the Nevada Gaming Commission to adopt regulations for the licensing and regulation of Internet poker.²⁸ Progress on legislation was stymied by the Black Friday indictments of April 2011. But by December 2011, the Commission had adopted amendments to its regulations to make possible the licensing and operation of online gambling within the state if the federal government sanctioned the practice.²⁹ In June 2012, the Commission issued the first two licenses in the nation for Internet gaming to two of the largest slot machine manufacturers: International Game Technology and Bally Technologies, Inc.³⁰

Broadening the scope of Nevada's gaming laws, in 2013 the state enacted legislation that would allow for interstate iGaming.³¹ On February 21, 2013, Nevada enacted AB 114³², which revised provisions governing interactive gaming.³³ The legislation allows players located outside of Nevada to register with one of the Nevada licensed operators (provided that play is limited to time within the state). The law also allows Nevada licensees to enter compacts with other states that have legalized online gaming.

LAWS AND REGULATIONS

Internet gaming is overseen by the Nevada Gaming Commission.³⁴ Nevada regulations governing iGaming are largely focused on internal controls and the record keeping requirements licensed operators must maintain. These include player age and location restrictions and player registration and activity records. As with the other regulated states, to qualify to become an operator, license applicants in Nevada must be able to prove their ability to maintain controls on player registration, prevent underage play, and establish the location of players. Nevada regulations call for extensive oversight of player accounts and player activities. For instance, detailed records that must be maintained include account activity including date, time and location of each player while logged in, and deposits and withdrawals of player funds.³⁵ Records must be maintained for at least five years. One of the most notable distinctions between Nevada and the other regulated states, *i.e.* Delaware and New Jersey, is that the only online gaming Nevada recognizes is poker.³⁶

Unlike New Jersey and Delaware, the only online gaming that Nevada offers is poker; it offers no other casino games.³⁷ Licensed operators in Nevada run their respective gaming sites independent of competitor sites within the state. As of May 2014, Nevada offers the selection of three iGaming sites through which to play.³⁸ However, there may be as many as six online poker sites operating out of the state by the end of 2014.³⁹ The three currently offered are, Real Gaming, World Series of Poker, and Ultimate Poker.⁴⁰

DELAWARE

In 2012, Delaware became the second state in the nation (after Nevada) to legalize online gaming.

Another “second” for the state is that it is the second smallest in the nation. Its small size and population mitigate against player liquidity, making it less attractive to players who seek more game options. To overcome these limitations, the state entered an agreement with Nevada whereby the two states can merge poker player pools. The carefully drafted agreement, which Ifrah Law helped to draft as outside counsel to the Delaware State Lottery Office, provides a structure for states to share player pools but maintain their respective player revenues and enforce their respective gaming laws. The states’ interstate agreement, which also created a Multi State Internet Gaming Association, may become the foundation for a broader base of players as more states roll out iGaming regulations and seek reciprocal arrangements. To date, however, Delaware’s statistics demonstrate the need to build its base – perhaps through more robust marketing initiatives – and potentially open its operator space.

TIMELINE

On June 28, 2012, Delaware Governor Jack Markell signed the Delaware Gaming Competitiveness Act of 2012, allowing the Delaware State Lottery to operate full-scale casinos online.⁴¹ On September 10, 2013, the Delaware State Lottery issued their final Rules and Regulations for the Delaware Internet Lottery.⁴² The website was launched on November 8, 2013. The comprehensive launch made Delaware the first state to launch a full-scale online gambling operation.⁴³

LAWS AND REGULATIONS

The Delaware State Lottery Office⁴⁴ is responsible for oversight of Internet gaming. Gaming regulations are addressed in the Rules and Regulations for the Delaware Internet Lottery.⁴⁵ While the Delaware regulations are not as extensive as those in other regulated states, they authorize substantial oversight by the state Lottery Office. For instance, the Lottery Office Director is to review and approve each operator’s system of internal procedures and administrative and accounting controls.⁴⁶ Documentation that is necessary or sufficient for licensing purposes is largely commended to the discretion of the Director.⁴⁷ Regulations further require the Director to examine and approve equipment used in Internet gaming.⁴⁸ As in Nevada, Delaware regulations mandate the registration and monitoring of player accounts and call for stringent internal controls for gaming operators, with minimum control standards to be established by the state Lottery Office.⁴⁹ Like other states, the Delaware regulations also address player protections – from data security and data privacy to problem gambling resources. Because Delaware operates the gaming platform through which players access the licensed gaming sites, the state lottery director is responsible for selecting technology providers to develop and maintain the gaming platform and processed data (*e.g.*, player accounts, tracking, and reporting).⁵⁰

Unlike Nevada and New Jersey, online gaming in Delaware is funneled through a single online poker room into which all authorized brands feed. Delaware’s three casinos – Delaware Park, Dover Downs, and Harrington Raceway – operate the branded portals.⁵¹ The gaming platform is a joint venture of

Scientific Games (the current live slots provider in Delaware) and 888 Holdings (including the 888 online poker platform).⁵² Delaware offers several poker games, as well as roulette, blackjack, and slot titles. While state regulations allow the pooling of players under agreements with other states, some anticipate that Delaware's single-provider system will mean that only operators running on the 888 poker platform (such as WSOP.com) will have the opportunity to coordinate with the state.

NEW JERSEY

In the race to be the first state to legalize online gaming, New Jersey almost won. But legal obstacles issued by Governor Chris Christie had to be addressed before any legislation could be enacted. After several volleys between legislators and the governor, New Jersey ultimately became the third state to legalize iGaming. The end-result is a very comprehensive legal framework within which gaming operators in New Jersey must operate; a framework that centralizes the New Jersey iGaming infrastructure in Atlantic City.

TIMELINE

In November 2010, the New Jersey Senate passed the first online gaming bill.⁵³ The legislation then easily passed the state Assembly in January 2011.⁵⁴ But before the state could become the first to legalize online gaming, Gov. Christie vetoed the legislation, calling for revisions to the proposed legislation.⁵⁵ A new online gaming bill made its way through both state houses by the end of December 2012.⁵⁶ Though the governor provided a 31-page conditional veto to the new legislation,⁵⁷ the bill was revised swiftly to meet the governor's requested revisions. On February 26, 2013, Gov. Christie signed into law an amended version of the New Jersey Casino Control Act, which allowed the licensing and regulation for online poker in the state.⁵⁸ The regulations took effect as of October 21, 2013, and the first websites launched on November 26, 2013.

LAWS AND REGULATIONS

New Jersey's Division of Gaming Enforcement oversees the drafting and enforcement of iGaming regulations in the state. The Casino Control Act, which was revised to incorporate Internet gaming into legalized gaming within the state, contains certain provisions that Gov. Christie required in order to enact the legislation. These include: (1) an enhanced level of funding for compulsive gambling treatment programs and (2) a requirement that state employees and legislators disclose any representation past or present of entities seeking Internet gaming licenses. Other major legal provisions of note include a requirement that all equipment necessary for iGaming be located in an Atlantic City casino facility.⁵⁹ While New Jersey has not yet entered into any reciprocal agreements with other regulated states, its law provides for that possibility, noting that persons not physically present in New Jersey may make wagers pursuant to a reciprocal agreement with the state.⁶⁰

New Jersey regulations governing online gaming, the Internet Gaming Regulations,⁶¹ are breathtakingly detailed and cover nearly all facets of online gaming operations, from organizational structure to required employees and related employee responsibilities to website content and operation. Unlike Delaware and Nevada, New Jersey specifies many website elements that casinos must incorporate in order to increase player awareness of time and financial investment in play. For instance, New Jersey requires sites to display information on 1-800-GAMBLING during player login of logoff and requires a continuous display of current time and time elapsed since beginning play. Another interesting detail that the other states do not include is a sunset provision for iGaming: the regulations state that authorization to conduct Internet gaming shall expire on October 21, 2020.⁶² The comprehensive nature of New Jersey's iGaming regulations may make them onerous for new market entrants, but with a field of several licensed operators and more than a dozen gaming sites, competition for the current player pool may already pose a challenge.

New Jersey offers several online gaming options through its brick and mortar Atlantic City casinos. They include Borgata, Caesars, Golden Nugget, Tropicana, Trump Plaza, and Trump Taj Mahal.⁶³ As in Nevada, each of the networks operates on its own platform, and several of the networks have multiple sites from which to choose. As in Delaware, New Jersey offers several games online, including poker, blackjack, roulette, craps, slot machines, and video poker. Offerings vary on a site-by-site basis.⁶⁴



V.

**States Considering
iGaming Laws**

The legalization of iGaming by Nevada, New Jersey, and Delaware has brought increased attention to other states that are actively considering bringing iGaming within their boundaries. States of particular interest include California, Hawaii, Iowa, Massachusetts, and Pennsylvania. While the status of bills that have been introduced in these states can change rapidly, we provide a brief history of iGaming legislation in each state, the high-level details of what the different bills propose, and the status of each bill as of publication of this white paper.

CALIFORNIA

Several iGaming bills have been introduced in California, a key state to watch given that it boasts the world's 8th largest economy.⁶⁵ In December 2012, State Senator Roderick Wright introduced SB 51⁶⁶, which was returned to the Secretary of the Senate on February 3, 2014 pursuant to Rule 56⁶⁷ and, thereafter died. In February 2013, Senator Lou Correa introduced an intrastate iGaming bill, SB 678. The bill was returned to the Secretary of the Senate pursuant to Joint Rule 56 on February 3, 2014.

In February 2014, two new iGaming bills were introduced. State Senator Lou Correa introduced SB 1366⁶⁸ and Assemblyman Reggie Jones-Sawyer introduced AB 2291.⁶⁹ Both bills legalize online poker, requiring that players be physically located within California's boundaries. They limit operator licensing to: (1) federally-recognized California tribes that have conducted on-premises casino gaming under the Indian Gaming Regulatory Act (IGRA) for a minimum period of time or (2) licensed card rooms that are in good standing with the California Gambling Control Commission.⁷⁰

AB2291 is notably restrictive in two key areas:

1. It would prohibit California "from affirmatively electing to be subject to a federal Internet gambling law, as specified, and would require the state to opt out of, or would prohibit the state from opting into, any federal Internet gambling scheme." If the state were to violate these provisions, the bill includes penalties.
2. It also would prohibit California "from participating in any Internet gambling agreement between states or foreign jurisdictions."⁷¹

It is widely held that gaining the support of Native American tribes, many of whom operate land-based casinos in the state, is critical to the passage of any iGaming bill in California. SB 1366⁷², titled The Internet Poker Consumer Protection Act of 2014, is considered to be nearly identical to SB 678. It is backed by a coalition of Native American tribes, including the San Manuel Band of Serrano Mission Indians, the United Auburn Community, and the Rincon Band of Luiseño Indians, among others. AB 2291 is backed by a consortium of Native American tribes, including the Pechanga Band of Luiseño Indians, and at least seven other state tribes.⁷³

Status: Both bills were referred to their respective Governmental Organization Committees on March 17, 2014.⁷⁴

NEW YORK

In March 2013, the New York Senate attempted to legalize online poker by including it in its first version of the state budget.⁷⁵ While the attempt failed, on March 28, 2014, State Senator John Bonacic introduced Senate Bill 6913. This bill would allow “certain interactive poker games that are consider [sic] to be games of skill rather than games of luck.”

The bill states that New York courts have applied a “more rigorous test in identifying a ‘contest of chance’ than is applied by most states” in the United States. It uses Texas Hold ‘Em Poker and Omaha Hold ‘Em Poker as examples of games of skills that “do not fall under the definition of gambling as prohibited by the penal law.” The Commission would be able to authorize up to ten interactive gaming operator licenses.⁷⁶

S 6913 has many similarities to New Jersey’s iGaming bill. For instance, the licensing process in the legislation requires operators, suppliers, and vendors to apply for licenses, indicating New York’s intention to have significant oversight of the iGaming process. The bill also calls for (1) immediate enactment of the bill; (2) a 180-day period after enactment for regulators to draft rules and regulations; and (3) a 180-day period after promulgation of regulations for operators to obtain a license.

The S 6913 bill was referred to the Committee on Racing, Gaming and Wagering on March 28, 2014, and has not been pushed further to date. However, Assemblyman J. Gary Pretlow (D-Mt. Vernon) introduced an almost identical bill to the New York Assembly on May 5, 2014, Bill 9509, which contemplates licensing to begin with Texas Hold ‘Em and Omaha Hold ‘Em. The legislation also provides for the same 180-day drafting and licensing periods.

Status: In an Associated Press piece published by the Miami Herald on March 31, 2014, Senator Bonacic was quoted as saying, “I don’t intend to push this this year, but we need to start a discussion.”⁷⁷ However, the recent introduction of legislation to the New York Assembly may motivate both houses to pursue this legislation more rapidly.

HAWAII

Senator Gilbert Kahele introduced senate Bill 768 in January 2013. The bill is also sponsored by Donovan M. Dela Cruz and Malama Solomon.⁷⁸

The bill cites the DOJ's September 20, 2011 reversal of its previous interpretation of the Federal Wire Act, 18 U.S.C §1084 as allowing "state governments, subject to certain restrictions, to legalize and regulate internet gambling operations and capture that revenue for the benefit of state governments." The Act proposes the establishment of the Hawaii Internet lottery and gaming corporation. This corporation will have authorization to "offer Internet wagering on games of chance and games of skill, including lottery, poker, and casino games." The corporation will be authorized to enter into multistate agreements and offer sweepstakes that are geared towards bringing tourists to Hawaii. It restricts the number of land-based gaming events to two per year, and they must be geared towards attracting tourism to the state.⁷⁹

Status: SB 768 was scheduled to be reviewed at a public hearing on February 14, 2013, with the committees on Economic Development, Government Operations and Housing, Technology and the Arts, and Judicial and Labor. The bill was deleted from the hearing agenda and carried over to the 2014 Regular Session on December 18, 2013. As of June 2014, there has been no further movement.

IOWA

Senate Study Bill 1068 was introduced on January 23, 2013 by Senator Danielson.⁸⁰ The bill is a reintroduction of the online poker legislation filed by Senator Danielson in 2011.⁸¹ That bill passed the Senate with broad bi-partisan support, but it died in the House.⁸²

The bill seeks to allow the state's 21 casinos⁸³ that "operate gambling games on an excursion boat, gambling structure or racetrack enclosure to operate internet wagering on poker." Licensees would need to complete an application on a form created by the Iowa Racing and Gaming Commission. The Commission will conduct a thorough investigation of the applicant to ensure that the service provider hasn't violated any laws related to Internet wagering. Internet wagers may be placed from any location within Iowa or "from any other location where authorized by law."⁸⁴

Status: The bill was passed to the Iowa Senate State Government Committee in March 2013. While it had the same language as the 2011 bill, it did not receive the same level of support and died in the 2014 session. On April 8, 2014, we spoke with Senator Danielson, and he said that he plans to reintroduce the bill next year. For him, this is "an issue that won't go away." He

considers this to be part of the broader category of e-commerce, stating that there “is a whole host of business and products outside of gaming that we are going to have to embrace, understand and have a decent policy for [this new technology].”

MASSACHUSETTS

Senate Bill 197 was introduced on January 18, 2013 by Senator Bruce Tarr.⁸⁵ It is a petition for legislation on gaming. Senate Bill 101 was introduced on January 22, 2013.⁸⁶ The bill is sponsored by Senator Jennifer Flanagan, Representative Michael Rush, and Representative Danielle Gregoire. It is an “Act relative to lottery online products.”⁸⁷

SB 197 requests that Chapter 23K of the general laws be amended to authorize a gaming license to “conduct gaming operations via the internet.” It would require “that such operations do not include or reflect gaming mechanisms operated by the state lottery program of those simulating or resembling slot machines” and that an Internet Gaming License is obtained.⁸⁸

SB 101 proposes amending Section 24 of chapter 10 of the General Laws to include references to “a lottery or lotteries conducted online or over the internet.” It also proposes amended Section 24A of chapter 10 of the General Laws to allow for multi-jurisdictional lottery games to be “conducted online or over the internet.”⁸⁹

Status: On January 22, 2013, SB 197 was referred to the Joint Committee on Economic Development and Emerging Technologies. On April 8, 2014, a legislative advisor in Senator Tarr’s office confirmed that SB 197 had a hearing with the committee on Nov. 13, 2013. The committee recommended placing the bill into a study order, which makes it highly likely that there will be no further action this session. The bill would need to be refiled in January 2015 to be considered for the 2015-16 session.

On January 22, 2013, SB 101 was referred to the Joint Committee on Consumer Protection and Professional Licensure. As of April 8, 2014, the Senator’s office had been asked to work with the Massachusetts Gaming Commission do a formal study into online gaming in Massachusetts. The Senator also plans to refile the bill for the 2015-16 legislative session.

PENNSYLVANIA

State Representative Tina Davis introduced HB 1235 on April 22, 2013. The bill was co-sponsored by eleven other Pennsylvania legislators. It explicitly allows for internet gaming, which includes any game approved by the Pennsylvania Gaming Control Board.⁹⁰

In early December 2013, the Pennsylvania State Senate passed SR 273, sponsored by Senator Joseph Scarnati. This resolution called for the Legislative Budget & Finance Committee (LB&FC) to study the current status of casino gaming in Pennsylvania, as well as the impact of expanding gambling to include online gaming. The report was published on May 7, 2014. The report provides in-depth coverage of iGaming, as a whole and in relation to Pennsylvania. One of the report's findings is that iGaming would provide "\$68 million in direct tax revenue in the first year, and \$110+ million annually thereafter."⁹¹ This report was presented in a hearing on June 3, before the Senate Community, Economic & Recreational Development committee. In light of the report's findings, Senator Erickson introduced SB 1386 on June 17, 2014, which would legalize online poker.⁹²

Status: In late June, we spoke with Jason Brehouse, Executive Director of the Senate Community, Economic & Recreational Development committee. He said that online gaming is an issue that will be pushed as long as people are actively talking about it and that he could foresee there being future hearings at the appropriate time. However, he was unable to speculate as to when any new legislation might be developed.

VI.

iGaming Funding

Regulated Internet gaming in the U.S. faces many challenges, from technical glitches to player liquidity. One of the greatest challenges, however, is helping players fund their accounts. Since the DOJ focused on cutting down unregulated Internet gaming by going after payment processing (four out of the eleven individuals indicted on Black Friday were payment processors, one was a bank chair, and three were directors of payments for gaming companies), credit card companies, and the banks that issue credit cards have been reluctant to take on the regulated iGaming market. The three states currently regulating iGaming (Nevada, Delaware, and New Jersey), along with several major payment processors, have been working hard to distance the regulated market from past legal challenges. Most notably, the New Jersey Attorney General issued an opinion in November 2013, affirming the legality of payment processing in the regulated Internet gaming market.⁹³ Regulated jurisdictions are aware that if players cannot easily fund their accounts or access their funds, they will turn to unregulated gaming sites.

Nevada, Delaware, and New Jersey have taken slightly different approaches in their regulations on how player accounts may be funded – varying in levels of specificity and funding options. However, the states are consistent in certain account limitations. For instance, all three states:

- Limit players to one account per player for each licensed operator.⁹⁴
- Prohibit the transfer of funds from one player account to another.⁹⁵
- Prohibit players from having negative account balances.⁹⁶

Review of State Regulations

NEVADA

Nevada regulations allow player accounts to be funded by (1) cash, (2) personal check, cashier's check, wire transfer, or money order, (3) funds held for the player at the casino, (4) debit or credit card, (5) bank or Automatic Clearing House (ACH) transfer or other e-commerce transfer, or (6) "other means approved by chairman."⁹⁷ Nevada prohibits the transfer of funds to a different financial institution than the one used to deposit those same funds.⁹⁸ They further prohibit the transfer of funds from one player to another.⁹⁹ Otherwise, Nevada regulations do not specify when or how withdrawals may be made, only that an operator shall comply with an undisputed withdrawal request within a reasonable amount of time.¹⁰⁰

Nevada-based gaming sites currently offer the following options to fund player accounts: ACH, credit card, wire transfer, personal check, or cash deposit at the land-based casino. One of the three current Nevada sites, Ultimate Poker, notes that players can withdraw funds in person at the land-based

casinos (though processing can take several days) or remotely by request for a paper check.

DELAWARE

Delaware player accounts may be funded by credit card, bank transfer, or “other means approved by the Director.”¹⁰¹ Players may not transfer funds between accounts with different gaming operators, nor may they transfer funds to another player’s account.¹⁰² Withdrawals may be made by bank transfer, bank draft, or “other means approved by the Director.”¹⁰³ Each of the three Delaware operators (Delaware Park, Dover Downs, and Harrington Gaming) provide for funding of accounts by ACH, Visa credit or debit card, or MasterCard. Withdrawals are limited, however to bank transfers (to avoid misuse of gaming accounts, sites will not allow withdrawals to be made from credit card payments).

NEW JERSEY

New Jersey regulations provide several options for funding player accounts:

- A deposit account including cash equivalent, casino check, casino affiliate check, annuity jackpot trust check, complimentary cash gift, chips, plaques, slot tokens, prize tokens, wire transfer, electronic fund transfer, gaming voucher, and electronic credits;
- Credit or debit card;
- Reloadable/non-transferable prepaid card;
- Cash complimentaries, promotional credits, or bonus credits;
- Winnings;
- Adjustments made by casino operator; or
- “Any other means approved by the Division.”¹⁰⁴

Like Nevada and Delaware, New Jersey does not allow the transfer of funds from one player’s account to another player’s account.¹⁰⁵ The regulations provide that funds originating from credit or debit cards be refunded to those cards before any additional withdrawal.¹⁰⁶ They further specify how funds may be withdrawn. For instance, players can cash-out at a casino cage immediately for amounts less than \$250 or within 72 hours for undisputed amounts greater than \$250.¹⁰⁷

The numerous iGaming sites that operate through New Jersey (as of May 2014, New Jersey has seven licensees running sixteen sites) offer additional funding options to those available through Nevada and Delaware operators. Like Nevada, New Jersey sites allow players to fund accounts through credit or debit card, ACH, cash deposit at the land-based casino, wire transfer, and personal check. New Jersey sites also allow players to fund accounts through e-wallets, such as Neteller and Skrill, and proprietary prepaid cards. These additional funding options can provide flexibility to players and help to overcome

challenges faced by funding through credit and debit cards.

Review of Funding Options

CREDIT AND DEBIT CARDS

It might seem like the easiest way to fund an iGaming account would be to use a credit or debit card. In theory, the option is available through regulated gaming sites. In reality, however, players regularly encounter problems using credit and debit cards. The problem is that many card issuers, like Bank of America and Wells Fargo, will not process online gaming transactions, even in states where iGaming is regulated. These banks, concerned with government enforcement actions or negative publicity, have opted to “hard block” any Internet gaming transactions. The result is that as many as one third of credit card transactions have been declined.¹⁰⁸ MasterCard has been able to improve approval rates by using a new code for the transactions. Payment processors like Vantiv are encouraging Visa to do the same. In the interim, many casino sites provide a list of card issuers through which players may more easily fund accounts, including TD Bank and US Bank for Visa and Citibank, USAA Bank and ING Bank for MasterCard.

An important limitation for players to keep in mind when funding accounts with credit cards is that they generally cannot withdraw or transfer those funds out of their player accounts. At best, they will be able to withdraw winnings in excess of amounts deposited through credit card transaction.

BANK OR ACH TRANSFERS

Bank and Automatic Clearing House (ACH) transfers, whereby funds are transferred directly from a player’s bank account to their iGaming account, have had a much higher success rate than credit and debit card transactions. These transfers, made directly from a player’s bank account to their iGaming account, are instantaneous and generally do not carry any fees. Players may also withdraw funds from their player accounts back to their bank accounts within a few days.

E-WALLET SOLUTIONS

E-wallets, or digital wallets, are supposed to be the electronic equivalent of an individual’s physical wallet, containing funds and facilitating online transactions. E-wallets have fluctuated in popularity in the iGaming world over the past several years. Now that New Jersey online gaming recognizes this payment solution, their use may again be on the rise. A main benefit that players enjoy is the ability to transfer funds between different poker accounts through their e-wallet. There are drawbacks, however, as the e-wallet still faces some of the limitations of credit cards and several sites include transaction fees for their use.

Currently two e-wallet providers are available in New Jersey: Skrill and Neteller (and there is talk that PayPal may come on board). Skrill e-wallets can be funded through credit card, bank transfer, or prepaid card. Neteller e-wallets can be funded through Visa or MasterCard. Unfortunately, players who attempt to use MasterCard to fund their Skrill account may run into issues. According to one report, Party Poker rejects these deposits.¹⁰⁹ While players may deposit and withdraw funds through their Skrill accounts, players using Neteller can only deposit funds with their e-wallet and must use another method to obtain funds.

PREPAID CARDS

Several of the New Jersey gaming sites offer players the option to use proprietary prepaid cards to fund their gaming accounts. These include the Borgata¹¹⁰, Golden Nugget, and Ultimate¹¹¹. The prepaid cards can be funded by the same methods used to fund an e-wallet: by credit or debit card or bank transfer. One of the major drawbacks to using the proprietary prepaid cards, in addition to the need to jump through a few hoops in order to set up an account,¹¹² is the fee structure: the prepaid cards charge monthly maintenance fees and other service fees.

ONLINE CURRENCIES

Online currencies, such as Bitcoin, are not yet options for funding regulated gaming accounts in the U.S. In the unregulated market, however, Bitcoin is growing as a viable alternative, touting instant funding and short delays for withdrawals. The site Seals With Clubs exclusively accepts Bitcoin and is growing in popularity. Other sites, including Americas Card Room, are also now accepting Bitcoin. Calvin Ayre, industry expert and Bodog founder, predicted that, "2014 will see some major online gambling operator take the bold step by listing Bitcoin as a routine option for deposits and withdrawals."¹¹³ Given the unregulated nature of Bitcoin to date, and the general anonymity of the currency, it is unlikely that regulated iGaming jurisdictions will start incorporating the currency as a funding option.

VII.

**Online Sports Betting,
Fantasy Sports and Lottery**

While much attention is given to the legislation surrounding casino-related iGaming, and its potential as a growth industry in the U.S., there are other online gaming avenues that are worth exploring. These opportunities include sports betting, fantasy sports and online lottery ticket sales.

Sports Betting

In 2011, New Jersey voters endorsed sports betting in a nonbinding referendum. Soon after, the state enacted a law to allow betting at racetracks and casinos. Professional sports leagues, the NCAA and the DOJ challenged the law and an injunction was issued by U.S. District Judge Michael Shipp. After attempts to overturn the ban failed, the state appealed to the U.S. Supreme Court, which declined to hear the case.

In September 2014, the New Jersey Attorney General's office issued a directive to the state's casinos and racetracks allowing them to offer sports betting as long as it does not involve New Jersey's college teams or any collegiate events within the state. Acting State Attorney General John Hoffman said that the state was not regulating, licensing or authorizing sports betting, but was alerting casinos and racetracks that they won't be held liable for offering sports betting. The New Jersey Governor's office supported this move, stating that "Based on the arguments of the sports leagues and the United States Department of Justice, the 3rd Circuit has already ruled that New Jersey can carry out sports wagering as described in today's statewide directive."¹¹⁴

The administration filed a motion in federal court asking Judge Shipp to lift the injunction that was issued in 2011. On Oct. 17, 2014, Gov. Chris Christie signed legislation that partially repealed the state's sports betting prohibitions, and was expected to pave the way for legalized sports betting at New Jersey's casinos and horse-racing tracks, starting at Monmouth Park.¹¹⁵ On Oct. 20, 2014, the NCAA, NFL, NBA, NHL and MLB filed suit, asking for a permanent injunction. They also claimed that the state's 2014 Sports Wagering Law violates the Professional and Amateur Sports Protection Act of 1992 (PASPA). On Oct. 24, 2014, Judge Shipp granted a temporary restraining order to the NCAA and major professional sports leagues, stating that the leagues would suffer irreparable harm if sports betting were allowed.¹¹⁶ Pending final arguments, Judge Shipp will decide whether or not to grant a permanent injunction, as requested by the sports leagues.

Fantasy Sports

UIGEA provides an explicit carve out for fantasy sports that are not considered gambling, as long as the game meets the following criteria:

- (1) No fantasy sports team is based on the current membership of an actual team that is a

member of an amateur or professional sports league.

(2) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.

(3) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individual athletes in multiple real world sporting events.

(4) No winning outcome is based on the score, point-spread, or any performance(s) of any single real world team or combination of such teams or solely on any single performance of an individual athlete in any single real-world sporting event.¹¹⁷

This explicit “safe harbor” for fantasy sports is unique to UIGEA and does not appear in any other federal statute. While there is no known case law that explicitly addresses the UIGEA fantasy sports carve out, it is generally accepted that season long fantasy sports contests are legal in states that do not have more restrictive gaming laws. Two federal cases have addressed fantasy sports games in the context of state qui tam loss recovery statutes. In one case, *Humphrey v. Viacom*, a plaintiff sought to recover under the qui tam gambling loss recovery statutes of several states against several fantasy sports operators that were offering season long fantasy sports games.¹¹⁸ In an unpublished decision, the district court resolved the case without directly addressing the issue of skill in season long fantasy sports games, but noted that, “[t]he success of a fantasy sports team depends on the participants’ skill in selecting players for his or her team, trading players over the course of the season, adding and dropping players during the course of the season, and deciding who among his or her players will start and which players will be placed on the bench.”¹¹⁹

Fantasy sports games must comply with state gambling laws to be offered in those states for real money. In the vast majority of states, fantasy sports are considered a game of skill and therefore not subject to the states’ gambling laws. However, there are some states where the law is less clear or fantasy sports are explicitly banned and real money fantasy sports games cannot legally be offered in those states.

In 2012, Maryland, which previously had a state gambling law that made it unclear whether fantasy sports were permitted, passed a law that tracked the language from the UIGEA fantasy sports carve out and explicitly allowed for fantasy sports to be exempted from the scope of the state’s gambling law.¹²⁰ This year bills were introduced in both Iowa¹²¹ and Arizona¹²² that would allow residents of those states to participate in real money fantasy sports contests, but those bills both failed.

The latest development in fantasy sports has been the rapid emergence of daily fantasy sports games. Whereas traditional fantasy sports games typically take place over the course of an entire season, daily fantasy sports games typically last one day. Daily fantasy sports companies structure their games to comply with the requirements of fantasy sports games under UIGEA as outlined above. The one requirement under UIGEA of daily fantasy sports games is the requirement that, “[a]ll winning outcomes reflect the relative knowledge and skill of the participants.”¹²³ This requirement has become the focus of the debate over the legality of daily fantasy sports games. There is no known case law that has addressed the issue of the level of skill involved in daily fantasy sports games and if that level of skill is sufficient to operate under the UIGEA fantasy sports carve out.¹²⁴ Until there are judicial or legislative clarifications, it cannot be stated with complete certainty that daily fantasy sports games are explicitly legal. However, the body of literature strongly supports the position that daily fantasy sports games are games of skill.

Online Lottery Ticket Sales

Out of fear that selling lottery tickets online could violate federal law, in 2009, New York and Illinois asked the DOJ to clarify its stance on the application of the Wire Act to online lottery ticket sales.

When the DOJ released its September 20, 2011 memo (in December 2011), its position with regard to the sale of online lottery tickets was clarified. The memo stated that, “nothing in the materials supplied by the Criminal Division suggests that the New York or Illinois lottery plans involve sports wagering, rather than garden-variety lotteries. Accordingly, we conclude that the proposed lotteries are not within the prohibition of the Wire Act.”¹²⁵

In March 2012, Illinois became the first state in the country to offer online lottery ticket sales by initially offering sales of Mega Millions and Lotto online. Later in 2012, the Illinois Lottery expanded to offer Powerball ticket sales, and in the first two years of operation the Illinois Lottery has totaled online ticket sales of nearly \$37 million.¹²⁶ Four states currently offer online lottery ticket sales within their borders: Delaware, Georgia, Illinois, and Minnesota. Illinois is currently the only state with a mobile app to sell tickets.

In these states, consumers who wish to purchase lottery tickets online must be residents of the state, of legal age to purchase lottery tickets, and physically located in the state at the time of the purchase. The states use geolocation¹²⁷ and age verification¹²⁸ technology, just as online gaming sites do, to ensure that players are located within their borders and of the legal age.

The Minnesota Lottery went live earlier this year with sales of scratch off tickets online. This was done without express authorization from the legislature, which has led to a flurry of activity in the state legislature. Several bills were introduced that would have prohibited the sale of lottery tickets online,¹²⁹

establish a moratorium on online lottery ticket sales,¹³⁰ or expressly authorize the sale of scratch tickets online, but none of the bills passed.¹³¹

Other states are considering legislation to allow for online lottery ticket sales within their borders. Massachusetts¹³² and New Jersey¹³³ are currently considering legislation to allow for online lottery ticket sales. Florida introduced a bill to authorize online lottery ticket sales this year that failed. Michigan is moving forward with plans to offer online lottery ticket sales in the final quarter of 2014 and Kentucky announced plans to launch online sales by the middle of 2015. West Virginia has introduced a bill that would authorize a study on online lottery and online gaming in an effort to provide the state's residents with additional lottery game choices and to improve the competitiveness of the state lottery.¹³⁴ On the opposite end of the spectrum, Colorado¹³⁵ enacted a law prohibiting online lottery ticket sales and Maryland¹³⁶ enacted a law that placed a one year moratorium on online sales.

VIII.

**Predictions & Trends:
Looking Toward 2015**

When we first published our white paper in mid-2014, we noted that the future of iGaming is bright. As we look ahead to 2015, this still holds true. While it is hard to predict what will happen with any certainty, Michigan, New York and Pennsylvania are states where progress toward legalization could occur in the coming year.

Legislation

Many believe that in 2015, conservative Republican and casino magnate Sheldon Adelson will move his agenda forward. Adelson aims to prohibit existing and future online gaming in the U.S. through the Restoration of America's Wire Act (RAWA). The bill prohibits online gaming at the state level, but some believe it would be modified to allow a state carve out (i.e. maybe for poker rather than a casino games). We predict that while Adelson's agenda and the bill he sponsors will get a lot of attention in 2015, it will not ultimately pass.

Revenue

One of the big developments in 2014 was that Ultimate Gaming, the first operator to offer fully legal online gambling in Nevada, ceased operations in that state due to poor revenue and a limited player pool. Part of that failure may be due to the requirement that online operators partner with land-based casinos: this revenue relationship strains the economic feasibility of online gaming. In 2015 we will be watching to see if any other operators leave the U.S. market due to disappointing performance. We will also watch to see whether the land-based coupling of online gaming is eliminated, though we suspect this will not change in the short term.

In 2015, we anticipate fewer payment processing problems and more functional mobile apps being released in Nevada, New Jersey, and Delaware. As a result, we believe revenue will increase. The impact of a new market entrant – for example, if Amaya gets a license in New Jersey – could also help with revenue generation. If online gaming develops momentum in California, we predict that Google will reverse its refusal to offer real money apps. But with only three states offering online gaming, there is no good business reason to allow real money apps; if California comes online, that may change.

Sports Betting

New Jersey's brand new sports betting legislation was dealt a blow by the Oct. 20, 2014 suit filed by the NCAA, NFL, NBA, NHL and MLB, asking for a permanent injunction against sports betting in New

Jersey. But the NBA commissioner's September 2014 comment that he believes sports betting in the U.S. is "inevitable" may be more significant in the long term.¹³⁷ While we expect no change in 2015, we believe groundwork will continue to be laid as additional leagues say there is a place for legalized sports betting in the U.S. The only way it is going to happen legally is for all of the leagues to come out in favor of it and use their influence in Washington. The question in 2015 is: Who is the next league? The word on the street is that it will be the NHL, the second largest league. As for the largest league, the NFL, it's questionable whether or not NFL leadership is willing to take a stand at this time.

IX.

About Ifrah Law

Ifrah Law was founded in 2009 by Jeff Ifrah, one of the world's foremost attorneys on iGaming law. The only American listed on the 2012 Gaming Intelligence Magazine Hot 50 Winners in the Category of Law and Regulation, Jeff applies his complex litigation skills to defend clients who find themselves at the intersection of interactive gaming and government regulation.

Since its founding, Ifrah Law has grown to 12 attorneys in four offices. The firm has become a leading provider of litigation and compliance services to companies active in iGaming. The firm's attorneys boast outstanding legal training and experience that few law firms can match. Ifrah Law's attorneys include a former assistant U.S. Attorney, Department of Justice National Security trial attorney and Manhattan Assistant District Attorney, and a special assistant U.S. Attorney. The firm also has a number of highly trained veterans from some of the nation's largest and most respected law firms. These attorneys have all developed a deep understanding of how businesses operate in the online space, and they focus the majority of their time counseling and representing companies who rely on the Internet for their livelihood. The firm's attorneys share their insights into iGaming regulation on their blog, IfrahOniGaming.com.

Over the past four years, Ifrah Law has been at the center of most of the important prosecutions and lawsuits in the iGaming industry. The firm's clients include Full Tilt Poker, PokerStars, and the Interactive Gaming Council (IGC). The firm also serves as Special iGaming Counsel to the State of Delaware and the Delaware State Lottery, advising on iGaming-related legal issues. The firm is known for its negotiation of the historic agreement between the Department of Justice, PokerStars and Full Tilt. Ifrah Law also assists with U.S. gaming licensure for Internet gaming operators and defends trademarks and copyrights in the online space.

Based in Washington, D.C., Ifrah's main office is located just half a block from the White House.

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¹ 18 U.S.C. § 1084.

² See Larry Josephson, Betting history 101: The story behind the 1961 Wire Act, Covers.com; available at <http://www.covers.com/articles/articles.aspx?theArt=260073>.

³ 18 U.S.C. § 1084(a).

⁴ The Wire Act defines “wire communication facility” as “any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.” 18 U.S.C. § 1081.

⁵ *United States v. Lombardo*, 639 F. Supp. 2d 1271, 1278 (D. Utah 2007).

⁶ *United States v. Baborian*, 528 F. Supp. 324, 328 (D.R.I. 1981) (quoting 107 Cong.Rec. 16,534 (1961)).

⁷ See *Telephone News Sys., Inc. v. Illinois Bell Telephone Co.*, 220 F. Supp. 621, 638 (N.D. Ill. 1963), *aff'd*, 376 U.S. 782 (1964).

⁸ See *Sagansky v. United States*, 358 F.2d 195, 200 (1st Cir. 1966), *cert. denied*, 385 U.S. 816 (1966) (focusing on the phrase “uses a wire communication facility for the transmission” the court held that an individual who holds himself out as being willing to and does, in fact, accept offers of bets or wagers over an interstate telephone line has used a wire communication facility); see also *United States v. Pezzino*, 535 F.2d 483, 484 (9th Cir. 1976); *United States v. Tomeo*, 459 F.2d 445, 447 (10th Cir. 1972).

⁹ See The “Internet Gambling Prohibition Act”: Hearing on H.R. 4777 Before the H. Comm. on the Judiciary and the Subcomm. on Crime, Terrpros, amd Homeland Security, 109th Cong. (2006) (statement of Bruce G. Ohr, Chief of Organized Crime and Racketeering Section, U.S. Dept. of Justice).

¹⁰ I. Nelson Rose, Viewpoint: The Unlawful Internet Gambling Enforcement Act of 2006 Analyzed, 10 GAMING L. REV. 537, 538 (2006) (“According to Sen. Frank R. Lautenberg (D-N.J.), no one on the Senate-House Conference Committee had even seen the final language of the bill.”)

¹¹ 31 U.S.C. § 5361.

¹² See Charles Doyle, Internet Gambling: Overview of Federal Criminal Law (Cong. Res. Service, Nov. 29, 2004).

¹³ 31 U.S.C. § 5363.

¹⁴ 31 U.S.C. §§ 5363, 5366.

¹⁵ 31 U.S.C. § 5363.

¹⁶ Rose, *supra* note 10.

¹⁷ 31 U.S.C. § 5362(1)(a).

¹⁸ 18 U.S.C. § 1955(a).

¹⁹ 18 U.S.C. § 1955(b).

²⁰ U.S. v. DiCristina, 726 F. 3d 92 (2nd Cir. 2013).

²¹ Oskar Garcia, Prosecutions Turn Online Poker Into a Shaky Bet, ASSOCIATED PRESS (Apr. 21, 2011).

²² Id.

²³ Dr. Ingo Fiedler and Dr. Kahlil Philander, U.S. Online Poker Report: An Academicon Market Analysis and Forecast, Pokerscout.com, available at <http://www.pokerscout.com/DataReports/PokerScoutUSMarketContent.pdf>.

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