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## **DRAFT POLICY FRAMEWORK FOR THE REGULATION OF INTERNET GAMING**

*To be considered by the NCLGS State-Federal Relations Committee on January 9, 2015.*

*Sponsored for discussion by Rep. Jim Waldman (FL)*

Recognizing both the threats and opportunities posed by new technologies and Internet gaming, the National Council of Legislators from Gaming States (NCLGS) has compiled suggested policy standards for Internet gaming legislation.

NCLGS believes an effective regulatory and licensing system for states wishing to participate in online gaming should increase public trust and confidence in legalized gaming, inhibit wagering by underage or otherwise vulnerable individuals, ensure that any games offered through the Internet are fair and safe, contain enforceable restrictions on unlicensed online gaming operators, and create jobs and economic development. Specifically, the policy framework was developed to address the following key legislative priorities:

- foster effective regulation and cooperation among states
- promote strong, stable, and diverse state economies
- protect both states that wish to participate in Internet gaming and those who do not
- facilitate cooperation and information exchange among state policymakers and gaming regulators
- support uniformity in Internet gaming legislation while protecting states' rights to regulate gaming within their respective states
- establish minimum "benchmark" requirements for states that wish to adopt Internet gaming
- support the establishment of strong consumer protection and responsible gaming standards
- research differing proposals and views regarding taxation and revenue sharing for interstate online gaming
- explore differing views on appropriate regulatory models and structures for Internet gaming

NCLGS believes that the standards contained in the framework<sup>7</sup> should serve as a guideline, but should also evolve in response to emerging state needs, trends, and advances in technology—in order to be of the greatest assistance to states. The framework will provide a model for policymakers considering enacting Internet gaming legislation within their respective states, as well as, multi-jurisdictional Internet gaming initiatives.

The following topics are addressed in the Framework:

1. player protections
2. problem gambling protections
3. taxation
4. licensing
5. enforcement
6. payment processing
7. age verification, geo-location, and player identification
8. regulatory authority
9. multi-jurisdictional agreements
10. game choice and legality

## 1. PLAYER PROTECTIONS

**1.1 Standards for data protection.** Legislation should contain requirements for high standards for data protection, similar to standards followed for online banking, in order to minimize the risk of theft of monies or personal information. [These standards should include protections of players' personally identifiable information, financial transaction information and online account information. \[Martin Shapiro, PokerXanadu.com\]](#)

**1.2. Fair and appropriate dispute resolution mechanisms.** Legislation should require that licensees develop dispute resolution mechanisms that are fair and reasonable for any problems associated with player accounts. [Legislation should require regulations include an appeals process for players with the state regulatory authority where such disputes remain unresolved or the resolution is not satisfactory to the player. Legislation should require multi-jurisdictional agreements to afford the regulatory authority the authority to determine and enforce a final appeals process for players of their own jurisdiction. \[Martin Shapiro, PokerXanadu.com\]](#)

**1.3 Procedures for fair game play.** Legislation should contain specific policy objectives to make sure that licensees conduct their games honestly and fairly and player collusion is prevented. [Legislation should require regulatory standards to address licensing and certification of Internet gaming software, hardware and network systems for: technical standards for the shuffle and deal of the cards; detection and prevention of cheating, fraud and theft by site personnel, players or third parties; systems cryptography and security; unauthorized use of software aids by players; and player multi-accounting. Legislation should require operators to retain historical records of all gaming, account and systems history for a minimum of ten years to facilitate investigations. \[Martin Shapiro, PokerXanadu.com\]](#)

**1.4 Notice to players of operator policies.** Internet gaming websites should be required to clearly and conspicuously notify players of their policies regarding software aids, dispute resolution, payment processing, [gaming promotions, privacy protection, gaming fees,](#) and other similar issues relevant to player protection. [\[Martin Shapiro, PokerXanadu.com\]](#)

**1.5 Reasonably tailored advertising restrictions.** States may wish to consider, pursuant to the U.S. Constitution, individual state constitutions, and other state and federal laws, reasonably tailored restrictions on advertising in order to curb misleading advertisements and protect consumers.

**1.6 Extending Player Protections.** [States may wish to consider extending their consumer protection laws and standards to cover all Internet and mobile games, including non-traditional and non-gambling games like "social gaming" and "social casinos," that are offered in their jurisdictions via the Internet that involve any type of fees or financial transactions. \[Netsweeper Inc.\] \[Alderney Gambling Control Commission, generally\]](#)

**1.7 Common testing standards.** [States may wish to consider common testing standards for eGambling games to eliminate multiple certification of the same equipment in neighboring jurisdictions with slightly different technical standards. \[Alderney Gambling Control Commission\]](#)

## 2. PROBLEM GAMBLING PROTECTIONS

**2.1 National Council ~~ef-on~~ Problem Gambling (NCPG) Internet Responsible Gaming Standards.** In January 2014 NCLGS passed a resolution supporting the NCPG standards as best practices for responsible Internet gaming. The standards include, among other things, information on staff training, player assistance procedures, self-exclusion policies, advertising and promotion, free play games and site features, research,

and dedicated problem gambling funding. Similar standards should be contained in any legislative proposals. [In order to provide the highest level of consumer protection there should be a collated cross-border, self-exclusion database supported by a uniform program administered by the likes of NCPG, especially when there is the potential for interstate, and offshore, compacts. This would provide consistent and more coordinated assistance where required. A person can then be excluded from all licenses in a state and under a compact. \[UC Group Limited/SecureTrading Inc.\]](#)

**2.2 Pro-active problem gaming measures.** States may wish to consider policies that obligate licensees to adopt appropriate pro-active measures to detect potential problem gambling behaviors [and games that may be contributing to problem gambling behaviors \[Netsweeper Inc.\]](#), including automated systems for behavior analytics. [\[Martin Shapiro, PokerXanadu.com\]](#)

**2.3 Information sharing and self-exclusions lists.** Currently, a number of states do not allow information on individuals who have self-excluded to be shared across state lines. Any multi-jurisdictional agreements should consider whether to establish procedures for information sharing, with strong security protections, in order to ensure that problem gamblers are adequately protected.

### 3. TAXATION

**3.1 Taxation rates and federal law.** Tax rates should be crafted to ensure they comply with federal laws, such as the Internet Tax Freedom Act. [However, states should consider modifying any existing state income tax law which effectively excludes carry-over to state personal income tax returns of the federal itemized deduction for gambling losses to avoid excessive taxation burdens on players. \[Martin Shapiro, PokerXanadu.com\]](#)

**3.2 Taxation rates and methods.** While creating uniformity of policy is an important goal, each state's gaming market, population size, and market demographics are unique and taxation rates and methods should be established based on that. For that reason there is no recommendation on a suggested tax rate or method. [However, states should take into consideration the negative impact on player participation of over-taxation when determining their tax rates and methods. \[Martin Shapiro, PokerXanadu.com\]](#)

**3.3 Internet v. terrestrial gambling taxation rates.** Internet gambling taxation rates should be consistent with rates applied to terrestrial gambling games, where applicable. [If the states can protect Internet gambling operators by keeping out illegal competition to the same level as they protect the terrestrial gambling operators from illegal competition, then there should be no need to give one sector of the gambling industry an unfair advantage by having differing tax rates on the same games. \[Netsweeper Inc.\]](#)

[3.3 A state wishing to participate in a cross-border compact should have the ability to forego levying their own state tax in lieu of tax being levied, collected and remitted by the licensing jurisdiction based on a point of consumption approach, as being implanted in the UK. \[UC Group Limited/SecureTrading Inc.\]](#)

[3.4 To strengthen the above point of consumption approach, the use of a net deposit tax can both simplify the overall process and to assist regulators and operators alike with enhancing tax compliance. \[UC Group Limited/SecureTrading Inc.\]](#)

### 4. LICENSING

**4.1 Licensing standards for operators.** As relevant for Internet gaming, the character, honesty, criminal history, associations with criminals, financial resources, [gaming site history](#), and business competency of those subject to suitability determinations should be appropriately considered in the licensing process. [\[Martin Shapiro, PokerXanadu.com\]](#)

4.2 Cross-border compacts, both interstate and overseas, should be accommodated. Some states may not have the resource or expertise to regulate this industry and may wish to utilize the expertise of another state with such expertise and participation in a regime with acceptable consumer protections and remittance of applicable taxes, such as New Jersey and Nevada. [UC Group Limited/SecureTrading Inc.]

**4.3 Service provider licensing and general services.** General services providers who do not provide services directly related to the operation of gaming or the security of games and gaming platforms, such as utility companies or telecommunications providers, should not be required to obtain a service provider license. Payment processors should be licensed, as there have been involvement of the payments sector in illegal activity. Licensing of processors also will assist the card companies in readily and expediently differentiating between legal and illegal transactions, and lead to a higher acceptance level for these transactions. [UC Group Limited/SecureTrading Inc.]

**4.4 Hosting provider licensing.** Hosting providers, i.e., data centers or server farms, should not be included in the groups of services NOT requiring regulation, as it is necessary to ensure that server hosting is "safe and secure." Most Internet regulators have some form of approval for this process. [Alderney Gambling Control Commission]

## 5. ENFORCEMENT

**5.1 Anti-fraud and anti-money laundering policy.** Depending on the state's existing laws, the state legislature may find it in the state's interest to pass additional laws providing new or enhanced tools for state law enforcement agencies to ensure that fraud and money laundering do not occur in connection with Internet gaming. For example, delineated rule-making authority should include "among other things" within the language.

**5.2 Authority for regulators to define cheating.** Depending on the state's existing laws, the state legislature may find it in the state's interest to pass additional laws to provide regulators with authority to define cheating in terms of collusion, illegal software, illegal scripts, and other issues. New or enhanced penalties may be required to properly police online cheating.

**5.3 Effective detection and blocking of illegal websites gambling operations.** Depending on the state's existing laws, the state legislature may find it in the state's interest to pass additional laws providing methods to detect, block, restrict, or otherwise penalize illegal websites Internet gambling operators [Netsweeper Inc.]. Multi-jurisdictional agreements should provide for the co-management of enforcement efforts between member jurisdictions, while allowing each jurisdiction to retain authority over gamblers within their borders.

**5.4 Effective compliance enforcement.** Depending on the state's existing laws, the state legislature may find it in the state's interest to pass additional laws providing methods for the Internet gambling regulators to detect, block, restrict, or otherwise sanction non-compliant licensees. [Netsweeper Inc.]

**5.5 World Bank Financial Action Task Force (FATF).** States will need to meet World Bank's FATF principles in the area of anti-money laundering (AML). These define the general areas of concern and the appropriate considerations, specifically defining the "customer not present" attribute to place the eGambling sector into a high risk area requiring enhanced controls. [Alderney Gambling Control Commission]

## 6. PAYMENT PROCESSING

**6.1 Use of credit, debit or prepaid cards to fund gaming accounts.** As a matter of policy, legislation may seek to limit the use of credit cards, or access to credit for online wagering. Other forms of electronic payment as far as debit cards and forms of prepaid cards should be determined by the regulator, in order to respond

effectively to changes in technology. [COMMENT: While no credit should be extended to online gamblers, there should be no attempt to prohibit the use of credit cards. Prohibition is counter-productive to ensuring the most robust system of controls is in place, something with which credit cards and the financial sector can assist. \[UC Group Limited/SecureTrading Inc.\]](#)

**6.2 Restrictions on in-person cash deposits.** As a matter of policy, legislators may wish to consider prohibiting or mandating that regulators have specific requirements regarding cash transactions, as an anti-money laundering mechanism, [unless deposits are readily linked to a registered \(identified\) player and traceable through the approved system, both the source and destination of the funds. Anonymous payments solutions/options should not be considered. \[UC Group Limited/SecureTrading Inc.\]](#)

**6.3 Methods for withdrawal.** As a matter of policy, legislation may direct regulatory bodies on broad standards for payment processing, but the specific methods of funding and removing funds from accounts should be determined by regulations. Overly prescriptive statutes may impede use of the best and most appropriate payment-processing technologies. [States may wish to require that withdrawal be only to the same source as the original deposit, unless with enhanced controls, to effectively circumvent AML concerns. \[Alderney Gambling Control Commission\]](#)

**6.4 Protection of player funds.** Legislation should consider how best to protect player funds, such as requiring account segregation, [trusts, or sureties; reimbursements of player funds by operators for losses due to cheating, fraud or theft; fair policies for treatment of dormant player accounts; \[Martin Shapiro, PokerXanadu.com\]](#) or [stipulating \[technical-staff\]](#) that withdrawals can only be made to the same source as the original deposit, [while ensuring states' unclaimed property laws are followed. \[North American Association of State and Provincial Lotteries \(NASPL\)\].](#)

## 7. AGE VERIFICATION, GEO-LOCATION, AND PLAYER IDENTIFICATION

**7.1 Geo-location standards.** Public policy must ensure that play is only accepted from jurisdictions where it is legal and regulated. Robust geo-location methods shall be required in any legislation; however, the exact methodology, specific forms, and types of such controls should be left to the regulator to define, and should not be specified in law.

**7.2 Age and identity verification standards.** Public policy must ensure that underage players are prevented from wagering and play is only accepted from authorized players. Robust age and identity verification methods shall be required in any legislation, however, the exact methodology, specific forms, and types of such controls should be left to the regulator to define, and should not be specified in law.

**7.3 Penalties for unauthorized play.** Where necessary depending on current state law, penalties for companies that knowingly or recklessly accept unauthorized play, as well as for players that knowingly and purposefully participate in unauthorized play should be proscribed by the legislation or legislation should authorize regulators to impose such penalties. Sample penalties could include fines, account closure, and confiscation of winnings.

## 8. REGULATORY AUTHORITY

**8.1 Future technological innovations and unforeseen changes.** The state body authorized by the state legislature to regulate Internet gaming should be given broad authority, so that it can adapt to technological innovations and other environmental changes, while continuing to ensure the strong and sound regulation of Internet gaming. Legislation should provide general policy guidance to the regulator and only provide specific instructions on policy areas of particular importance.

**8.2 Legislative review.** State lawmakers may wish to include one or more of the following to assist with legislative oversight and ensure that administrative rulemaking produces sound regulation, (1) a reasonable sunset provision for any Internet gaming law, (2) regulatory data gathering and research requirements, and/or (3) a requirement for periodic review of all Internet gaming regulation for compliance with modern technologies and other changes.

[8.3 Gaming commissioners should actively regulate the industry and not rely on self-regulation by gaming sites. Self-regulation has not proven to be in the best interest of consumers, nor, in the long term, the interests of gaming sites who may lack the expertise and the incentive to fully and thoroughly investigate and prevent all aspects of fraud and cheating. \[Poker Innovations Ltd\]](#)

[8.4 The role of 'policing and regulating' should be separated to avoid conflicts of interest, the same as exists in other industries, such as the banking and financial services industries. An independent organization can provide the expertise to protect consumers and help build the gaming industry into a more credible and ultimately a more profitable business sector. \[Poker Innovations Ltd\]](#)

[8.5 Security can always be checked by reviewing historical data \(unlike live games\) thus it is possible to supervise security and ensure it is maintained to the highest standards. Independent companies with the required expertise exist and regulators should consider their use as a means of efficiently supervising online poker. \[Poker Innovations Ltd\]](#)

## 9. MULTI-JURISDICTIONAL AGREEMENTS

**9.1 Congressional consent.** Multi-jurisdictional agreements having certain qualities do not require congressional consent. Such Internet gaming agreements or compact should be carefully crafted as to not require congressional consent.<sup>1</sup>

**9.2 Compliance with member jurisdictions' laws.** For example, the New Jersey Constitution and gaming laws require that all player wagers must be processed on servers located within Atlantic City. Therefore, absent amendment to the New Jersey Constitution, any multi-jurisdictional agreement involving New Jersey would need to provide that bets from players located in New Jersey be processed only by a server located in Atlantic City. [In comparison, Delaware does not require that servers be located in-state. \[Delaware Lottery\]](#)

**9.3 Tribal government consideration.** Any multi-jurisdictional agreement should allow for participation by tribal governments, in a legally permissible manner.

[9.4 Any multi-jurisdictional agreement should require player protections of equivalent standards in all jurisdictions, and allow for cross-jurisdictional cooperation in regulatory and law enforcement investigations, enforcement of findings and criminal prosecutions. \[Martin Shapiro, PokerXanadu.com\]](#)

## 10. GAME CHOICE AND LEGALITY

**10.1 Types of Internet gaming permitted.** Each state is unique with varying priorities concerning gaming and different sensibilities of its citizenry, as such; each state should be free to decide what, if any, Internet gambling should be allowed within its borders.

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<sup>1</sup> See, *U.S. Steel v. Multi-State Tax Commission*, 434 U.S. 452 (1978).

**10.2 Internet gaming on tribal land.** In states that chose to legalize Internet wagering, and which have tribal land within their borders; Indian tribes must themselves be able to determine the legality of Internet gaming within their own jurisdictional borders.

**10.3 Sports wagering prohibitions.** Unless and until there is a change in federal law via the congressional legislative process or court action, sports wagering cannot be included in any Internet gaming legislation.<sup>2</sup>

**10.4 Internet gaming and federal Indian law.** The legalization of Internet gaming by any state, or group of states, shall not violate tribal government rights guaranteed through existing tribal-state compacts and through the Indian Gaming Regulatory Act.<sup>3</sup>

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*NCLGS is the only non-partisan organization of state lawmakers that meets on a regular basis to discuss issues in regard to gaming. NCLGS does not support or oppose gaming, but supports effective regulation and believes that decisions related to gaming should be made by the citizens of the individual states and their elected officials. More information is available at [www.nclgs.org](http://www.nclgs.org).*

The following interested parties submitted written comments between December 2013 and February 2014 to assist with the development of the framework:

- American Gaming Association
- State Rep. Paul Clymer, Pennsylvania
- The Council on Compulsive Gambling of New Jersey
- Delaware Park
- Dover Downs
- Gaming Laboratories International
- GTECH Corporation
- MasterCard Worldwide
- National Council on Problem Gambling
- National Indian Gaming Association
- Netsweeper, Inc.
- North American Association of State & Provincial Lotteries
- Brad J. Polizzano, Esq.
- Larry Runkle
- Martin Shapiro, Xanadu.com
- Marco Valerio
- Poker Innovations Ltd.
- Wali Wruble

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<sup>2</sup> See, The Wire Act, 18 U.S.C. § 1084; The Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701.

<sup>3</sup> 25 U.S.C. § 2701 et seq.