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GROWING SUPPORT FOR I-GAMING IN THE UNITED STATES: A REPORT FROM THE U.S. ONLINE GAMING LAW 2011 CONFERENCE

by Peter J. Kulick

The U.S. Online Gaming Law conference was held on November 10 and 11 at the Aria Resort & Casino in Las Vegas, Nevada. The conference featured a host of leading figures in the gaming industry. Since 2006 with the enactment of the Unlawful Internet Gaming Enforcement Act, the fundamental question has been: Will the United States – either federally or at the state level – ever authorize i-gaming? There was near unanimity among the conference delegates in answering the fundamental question – it is not a matter of “if,” but “when” i-gaming will be authorized in the United States. While the timing question is the ultimate issue with respect to the United States i-gaming question, several other issues were raised relating to the form and structure of i-gaming that may take place in the United States.

When will i-gaming be authorized in the United States? Literally, a billion dollar plus question in the United States. At the outset, the primary focus is on the timing of federal i-gaming legislation, rather than state legislation. Most commentators at the conference readily admit that they do not have a crystal ball to predict the future, with speculation that federal approval could come as soon as three months or take as long as five years. While most conference delegates felt that the timing of federal legislation is the great unknown, former Congressman Jon Porter (R-NV) offered a compelling case that we are on the precipice of authorizing federal i-gaming in the United States. The reasons identified by Mr. Porter included:

1. The role of Las Vegas and rampant expansion of commercial gaming.

Mr. Porter observed that gross gaming revenue reached approximately \$35 billion in the United States in 2010, meaning that gaming has developed into a significant economic force in the United States. Moreover, Mr. Porter also noted that Las Vegas has been told for 35 years that gaming as a continuing business will not work. However, the expansion of commercial gaming throughout the United States and the success of Las Vegas over the past 10 years proves otherwise. The bottom line point is not to doubt the economic viability of the gaming industry.

2. The sheer size of the United States i-gaming market.

While precise figures are not available, Mr. Porter pointed out that estimates place the number of Americans gambling online *daily* at approximately one million. Billions of dollars are wagered annually by Americans. It is entirely possible that the estimates are extremely conservative, with the actual number of daily players and gaming revenue greatly exceeding estimates. Hence, there is potentially a significant i-gaming market in the United States, a market that is likely presently underestimated based on the unavailability of reliable data.

3. The Economy.

Governments at all levels in the United States are searching for new revenue sources. I-gaming could be one of the new revenue sources.

4. American society is comfortable with Internet-based commerce.

5. Evolving political environment.

Mr. Porter was bullish that the political will exists in Congress to find a solution to federally authorize i-poker. While much of the focus has centered on the fact that the 80-some new Republican Members of Congress come from the Tea Party Movement, the assumption that the Tea Party embraces a social conservative – and, thus, an anti-gambling – agenda is dead wrong. Rather, as pointed out by Mr. Porter, the Tea Party Members of Congress are fiscal conservatives, not social conservatives.

Furthermore, Mr. Porter mentioned that there is growing support in the Republican caucus in the House of Representatives. The support for i-gaming legislation by Congressman Joe Barton (R-TX) and Congressman John Campbell (R-CA) are two examples.

While the political environment is changing, Mr. Porter also identified political challenges that must be addressed. While Senator Harry Reid (R-NV) is deservedly the champion for federal i-gaming, Senator Reid cannot carry the weight by himself. Rather, Mr. Porter opined that the industry needs to do a better job lobbying Republican Members of Congress. Furthermore, Mr. Porter submitted that the industry must develop a more cohesive and consistent position on the scope and form of i-gaming in order to achieve success. Conflicting messages to Members of Congress kill legislation.

Will state or federal legislation authorize i-gaming? The debate with regard to whether i-gaming will find approval in the United States through either state or, alternatively, federal legislation is the subject of intense debate. At the conference, Professor I. Nelson Rose boldly observed that federal legislation faces significant obstacles and, therefore, it was highly unlikely that federal legislation would be

enacted. Professor Rose pointed to the fact that the 112th Congress has enacted very little substantive legislation and, as a result, felt that it was unlikely the House Majority Republicans would allow i-gaming legislation to be enacted. Professor Rose further noted that the District of Columbia has already authorized i-gaming; however, the District of Columbia is mired with federal legal concerns that have delayed i-gaming going live in the District of Columbia. Thus, for many commentators, the focus was on a state legislative solution.

While the pro-state i-gaming solution crowd stated their case, several other commentators opined that it was far more likely that federal legislation would be enacted prior to any state authorizing legislation. Several reasons have been offered to support this position. The reasons include uncertainty with regard to the reach of the federal Wire Act of 1961, 18 USC § 1804, *et seq.* The United States Department of Justice (“DOJ”) has consistently publicly taken the position that the Wire Act prohibits all forms of i-gaming. Thus, many states appear to be reluctant to enact legislation authorizing i-gaming without assurances from the DOJ that it will not seek to criminally prosecute intrastate i-gaming that is otherwise authorized by state law.

One of the more interesting and surprising predictions came from Kirk Uhler, Vice President of US Digital Gaming. Mr. Uhler predicted that Iowa would be the first jurisdiction in the United States to authorize i-gaming by early 2012. The justification offered was that Iowa likes to be “first in the Nation,” such as with its presidential primary caucus, and was relatively close to enacting i-gaming legislation during its last session. The Iowa Racing and Gaming Commission has also recently completed a study on i-gaming.

While the argument that Iowa will be the first state to authorize i-gaming has sentimental appeal, in many regards logic seems to dictate otherwise. For example, major international casino operators have a presence in Iowa. Major operators uniformly have stated a clear preference for federal, not state, legislation authorizing i-gaming. Thus, it would be reasonable to expect the major international operators that have a presence in Iowa to seek to delay or otherwise outright defeat any state legislation. Iowa also has not sought clarification from the DOJ with respect to whether intrastate i-gaming would be susceptible to a Wire Act prosecution. Additionally, the question that has never been answered is whether there is sufficient player liquidity in Iowa to make intrastate i-gaming economically viable.

What form will i-gaming take in the United States? The types of gaming authorized in the various i-gaming proposals range from poker to various forms of games of chance. For example, the New Jersey legislation that was ultimately vetoed by Governor Chris Christie would have authorized various forms of gaming, while the federal legislation that has been introduced in the 112th Congress would similarly authorize various gambling games. In contrast, the proposals in California and other states have been limited to poker only. While some of the legislation has embraced a broad class of gaming, the

consensus at the conference was that poker-only legislation is the only viable approach. Poker is widely socially acceptable in the United States. Other forms of gambling games have historically been viewed differently in the United States, particularly from a morality standpoint among social conservatives. As a result, legislation authorizing a broad class of gambling games faces a greater obstacle. Generally, delegates at the conference agreed that Internet sports wagering was a non-starter in the United States.

What role will state lotteries play in i-gaming? Five state lotteries in the United States are presently offering some form of gambling via the Internet. The activities are primarily limited to the online sale of lottery tickets. However, just like the commercial gambling industry, lottery officials recognize that the future for lotteries may rest with the Internet. As a result, the role of lotteries must be considered from a policy perspective as i-gaming is debated in the United States. Divergent views of the role of lotteries were expressed at the conference.

What is the means to an end? A few predictions... I-gaming has already arrived in the United States. The policy question facing Congress and state legislative houses is whether to leave i-gaming in a state of an unregulated, black market or to authorize and regulate i-gaming. The growing consensus is that i-gaming should be authorized and regulated in the United States, whether at the state or federal level. Whether i-gaming will be authorized through state legislative houses or Congress is still an open question; however, the signs are starting to point towards a preference for congressional action authorizing i-gaming. In fact, two hearings are scheduled for this week in house committees.

The means for enacting federal legislation is likely to take the form of i-poker-only provisions that are added as a rider to other legislation, likely budget-related legislation.

The “when” question is much more difficult. Without the benefit of a crystal ball, nobody knows for certain *when* i-gaming legislation will be enacted. Mr. Porter does state a compelling case for congressional legislative action happening sooner, rather than later. A fact lost on many commentators is the growing influence of the younger generations, such as the group at the age of 25-40, which typically favor authorizing i-poker. As younger generations become more engaged politically – both from an advocacy and financial perspective – the odds for federal legislation authorizing i-poker also increase.

ASIAN GAMING MARKET SET TO EXPAND

by Robert W. Stocker II

Speakers at Beacon’s well attended Asian Casino and Gaming Congress held in Singapore last week reaffirmed that the Macau and Singapore gaming markets continue to post very strong financial results that are beyond expectations. In particular, the Singapore market is exceeding all predictions notwithstanding the absence of a strong junket market. Once the Singapore authorities comprehensively address the licensure

of junket operators, it is anticipated that the junket market will have a major additional positive impact on the Singapore gaming market.

Most importantly, a major new destination gaming market is emerging in Asia – the Philippines. The state-owned Philippine Amusement and Gaming Corporation (PAGCOR) controls the licensing of all Philippine casinos as well as serving as one of two licensing entities for online gaming, with First Cagayan Leisure and Resort Corporation serving as the other online gaming licensing entity. PAGCOR is developing Entertainment City Manila, consisting of four integrated resort, recreation, and entertainment gaming facilities in response to the phenomenal success of gaming in Macau and Singapore. The consortium of Belle Corporation and Leisure & Resorts World Corporation has commenced building a Manila Bay gaming resort complex. In addition, PAGCOR has licensed four groups to implement its Entertainment City Manila project (Travellers International Hotel Group Inc., the SM Consortium, Bloomsberry Investments, and Aruze Group). The resorts being developed by Bloomsberry and the SM Consortium are commencing construction of their resorts, with projected openings of the first phases in 2014. All four developers of Entertainment City Manila are committed to invest a minimum of \$1 billion US in their respective projects. When all four projects are completed, it is projected that they will have revenue-generating capacity approximately equal to Singapore’s two gaming complexes. There will be at least 3200 hotel rooms within the complex, with each resort focusing on a different theme. With strong connections to the United States (including both a large expat community and a strong US-based tourist market) as well as a strategic Asian market geographical location for attracting gaming business from Japan, Korea, and several Chinese provinces, the PAGCOR complex should become the third Asian gaming superstar. With excellent international airline connections to Manila, the Philippines is a true “destination” market. Perhaps most importantly, the Manila integrated gaming resorts should be more diversified, including a variety of East Asian countries as well as the United States, which will be a substantive difference from the Macau gaming market that is heavily dependent on the Chinese mainland market, Chinese junket operators, and the mood of the Chinese government.

The expansion of gaming developments in other Southeast Asia gaming markets continues to be very much an “if come” environment. The largest potential market is Japan, but there appears to be little likelihood of any dramatic expansion of gaming there in the near term. Several other countries continue to consider various options (Cambodia, Vietnam, Laos, Taiwan, and Korea), but none of them have demonstrated any inclination towards a bold strategic strategy in developing integrated resort gaming on a scale that remotely approaches PAGCOR’s strategic vision in the Philippines.

In all events, the Asian gaming market is strong, healthy, and booming. The countries and developers that respond quickly to the opportunities presented in the market are going to be the big winners.

DETROIT CASINOS' OCTOBER REVENUES INCREASE FROM SAME MONTH LAST YEAR: MICHIGAN GAMING CONTROL BOARD RELEASES OCTOBER 2011 REVENUE DATA

by Ryan M. Shannon*

The Michigan Gaming Control Board ("MGCB") released the revenue and wagering tax data for October 2011 for the three Detroit, Michigan, commercial casinos. The three Detroit commercial casinos posted a collective 1.7% increase in gaming revenues compared to the same month in 2010. Aggregate gross gaming revenue for the Detroit commercial casinos also increased by approximately 1.5% compared to September 2011 revenue figures, continuing a trend of increase in revenues from September to October in prior years.

MGM Grand Detroit posted positive gaming revenue results for October 2011 as compared to the same month in 2010, with gaming revenue increasing by slightly more than 3.3%. MGM Grand Detroit continued to maintain the largest market share among the three Detroit commercial casinos and had total gaming revenue in October 2011 of approximately \$48.3 million. MotorCity Casino had monthly gaming revenue approaching \$37.7 million and posted a 0.9% improvement in October 2011 over its October 2010 revenues. Greektown had gaming revenue of over \$29.5 million, which approximates its revenues for October 2010.

The revenue data released by the MGCB also includes the total wagering tax payments made by the casinos to the State of Michigan. The gaming revenue and wagering tax payments for MGM Grand Detroit, MotorCity Casino, and Greektown Casino for October 2011 were:

Casino	Gaming Revenue	State Wagering Tax Payments
MGM Grand Detroit	\$48,333,490.57	\$3,915,012.74
MotorCity Casino	\$37,656,236.01	\$3,050,155.12
Greektown Casino	\$29,539,400.92	\$2,392,691.47
Totals	\$115,529,127.50	\$9,357,859.33

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