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Gaming & Hospitality

GAMING & HOSPITALITY LEGAL NEWS

PREDICTIONS FOR GAMING AND HOSPITALITY TRENDS IN 2020

by Greg Gemignani, Jeff Silver, Jennifer Gaynor, Kate Lowenhar-Fisher

The dawn of a new year always brings an opportunity to engage in speculation about significant events for the next year. At this time, the Gaming and Hospitality Group will do the same.

SPORTS WAGERING EXPANSION CONTINUES

In the wake of the demise of the Professional and Amateur Sports Protection Act (PASPA), more than a dozen states now offer legal sports betting within their borders. And several more states, such as Illinois, Michigan, Tennessee, and Washington D.C. have enacted legislation to permit licensed sports wagering in their states, and stand ready to begin engaging in the activity in 2020.

The trend toward licensed and regulated sports wagering is likely to continue in 2020 and several additional states have pending legislation to address sports wagering in the new year.

We also foresee continuing tweaks to the sports wagering laws and regulations among the states where such wagering has been recently introduced, as these states that are new to sports wagering work through balancing revenue generation with the growth of legal operations, discouraging the black market, and addressing problem gambling concerns.

The jurisdictional split as to whether “fantasy sports” is merely entertainment or a gaming activity requiring full licensing will continue.

In addition, direct relationships between gaming companies and the major sports conferences will continue to show new ways in which sports franchises are embracing gaming activities for their fans, especially in the online space which represents most of the sports wagering market in New Jersey. This is a welcome sign for Nevada which is poised for an expansion of its professional sports profile with the Las Vegas Raiders and possible NBA and MLB entrants to the market.

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ONGOING WRANGLING OVER INTERPRETATION OF THE WIRE ACT

In 2019, the United States Department of Justice (DOJ) released an opinion it drafted late in 2018 that restated the DOJ's interpretation of the Federal Wire Act in a way that would apply the Federal Wire Act to all forms of gaming, not just sports wagering. The net effect is that the DOJ asserted that (1) all interstate wagering was prohibited by the Federal Wire Act and (2) that the Federal Wire Act prohibits all forms of online intrastate wagering. This was a departure from the Obama-era DOJ opinion that the Federal Wire Act applied only to sports wagering in interstate and foreign commerce.

In 2019, the New Hampshire Lottery and one of its vendors sued the DOJ over the new interpretation and a federal district court in New Hampshire issued an opinion consistent with the Obama-era DOJ and set aside the new DOJ opinion as it applied to the litigating parties. The DOJ has appealed the district court's decision, and the First Circuit Court of Appeals will likely address the matter in 2020.

Meanwhile, as online wagering products and sports wagering products expand nationally, there will be pressure from states to repeal the Federal Wire Act or limit its interpretation. Similarly, there will likely be pressure on the DOJ to support its new opinion through an assertion or threat of enforcement. However, with the backdrop of an election year, it is unlikely that legislation will repeal or limit the Federal Wire Act and overly aggressive DOJ action will be discouraged. The net result will be that pressures will continue, the courts will weigh in, gaming will continue to expand, and the status quo of growth and expansion will continue.

GAMING AND HOSPITALITY MARKET DIVERSIFICATION LIKELY TO CONTINUE

In 2019, we saw significant mergers, acquisitions, and sell-offs of property in the gaming and hospitality space. Provided the U.S. national economy stays strong, the trend toward market diversification, particularly in concentrated markets like Nevada, is likely to continue. News stories already abound about potential deals for casino acquisitions and spin-offs in 2020. Like many elements of business that are cyclical, the ebbs and flows

between consolidation and diversification appear to be moving away from consolidation into diversification.

REDUCTION OF DEBT, INCREASE IN CASH FLOW AND MARKET SATURATION

More recently, MGM and Caesars, following the lead of Penn National, have embarked upon programs to reduce debt by selling underlying real estate to a REIT with leaseback rights, or disposing of properties entirely, such as the sale of Circus-Circus to Phil Ruffin and the Rio to a New York Investor Group. With the Eldorado acquisition, sales of properties in other jurisdictions will also make these mega-license holders more nimble, so that they can take advantage of new opportunities, both international and domestic.

"ME TOO" IMPACTS WILL CONTINUE TO BE FELT

The attention given to the sexual-harassment issues faced by workers in the gaming and hospitality industry in 2019 has created an environment, both through new regulation and enhanced internal policies at gaming and hospitality companies, where workers who are victims of such treatment should feel more comfortable coming forward to report abuses, and where potential harassers will understand that such behavior will not be tolerated.

FOCUS ON ALTERNATIVE PAYMENT METHODS

Several companies and regulators have indicated an increased focus on developing a more diverse array of payment options for patrons, including allowing for deposits and cash-outs to be made via local card payments and bank transfers, and use of electronic wallets and alternative payment methods. Again, growth in this area will require regulators to consider how these options can be expanded while still maintaining responsible gaming controls.

ARTIFICIAL INTELLIGENCE AND "MACHINE LEARNING"

At a recent symposium held at the William S. Boyd School of Law, experts in the emerging digital age spoke about the use of smart computers to identify and improve the experience for casino customers while identifying persons whose profiles mimicked those with problem gambling characteristics. Although such technology



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will bring obvious security and marketing benefits, these advancements can easily create a conflict with the privacy concerns that have come into new focus of late (see below).

Computer programs have also been adapted to run game simulations which can create interesting and exciting proposition wagers to enhance the in-game experience. It is indeed a brave new world!

PRIVACY, PRIVACY, PRIVACY

Last – but certainly not least – In 2020 the gaming and hospitality industry will face head-on the challenge of compliance with California’s Consumer Privacy Act (CCPA), which went into effect in January 2020. We expect to see lawsuits and enforcement actions, which will help to define for the industry just how the CCPA will be interpreted and enforced. In addition, we expect to see other states, such as Massachusetts, follow suit with similar regulation, as the United States moves closer to a GDPR-like model regarding the privacy of its citizens.

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