“The General Data Protection Regulation” Compliance?

The Impact of GDPR on Attorneys and Law Firms in the U.S.
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Honoring the IMGL Regulators of the Year

By Jamie Nettleton

IMGL is looking forward to our 2018 autumn conference which is taking place in Prague from 5-7 September 2018. Stephen Ketteley and Robert Skalina and the Prague conference committee have put together a fulsome agenda, details of which are available on our website at imgl.org.

The conference will involve a number of topical discussions involving industry leaders, covering issues such as artificial intelligence, keeping crime out of gaming, promoting social responsibility and diversity.

There will also be a number of social highlights, including a Gala Dinner at the Lobkowicz Palace (which is being sponsored by the SAZKA Group) and an opening reception at Zofin Garden (being sponsored by CMS).

Plans are also underway for our reception due to be in Las Vegas on 9 October taking place at The Country Club at Wynn Las Vegas. Invitations will be forwarded to all IMGL members soon.

On the following day (10 October), IMGL will be hosting an IMGL Masterclass, which is being convened by Marc Ellinger and Marc Dunbar, to take place at the Sands Expo at the Venetian. Details are available on our website.

The various IMGL Regulator of the Year regional Committees have been busy in their selection of the IMGL Regulators of the Year. A number of highly qualified nominees have been proposed, and I am pleased to announce that the following awards have been made:

- Regulator of the Year – Americas—Sara Gonso Tait, Executive Director, Indiana Gaming Commission
- Regulator of the Year – Europe—Juan Espinosa Garcia, Director General de Ordenacion del Juego, Spain
- Regulator of the Year – Australasia—Michael Sarquis, Executive Director, Office of Liquor and Gaming Regulation, Department of Justice and Attorney General, Queensland, Australia
- Regulator of the Year – Indian Country—Gordon Dickie, Executive Director, Seminole Tribal Gaming Commission, Florida
- Outstanding Achievement Award – Europe—Joseph Cuschieri, Malta
- Outstanding Achievement Award – United States—A.G. Burnett, Nevada

Please join me in congratulating each of the recipients. Each is extremely well deserved and IMGL is pleased to recognize the leadership which each of these regulators has given. These awards will be bestowed at various IMGL events, with the American recipients being awarded plaques to recognize their awards at our VIP reception in Las Vegas on 9 October 2018.

Finally, I would like to thank our Executive Director, Sue McNabb, for her tremendous efforts given to IMGL in her capacity as IMGL Executive Director. Sue is retiring as IMGL Executive Director, and we thank her for the energy, integrity and the huge endeavours which she has brought to the role. Sue will continue to be involved actively as an IMGL member, and I am sure that you will continue to see her at various IMGL events from time to time. Please join me in wishing Sue well and thank her for her support as IMGL Executive Director.

I would also like to welcome Brien Van Dyke as IMGL’s Assistant Executive Director. She will be dealing with the support and coordination of IMGL matters going forward. Brien can be contacted at brienv@imgl.org.

We look forward to seeing you in Prague and other IMGL events, including an IMGL Masterclass near you. 😊
Letter from the Editor

The autumn edition of American Gaming Lawyer (AGL) is dedicated to honoring the 2018 Regulators of the Year and the recipients of the Outstanding Achievement Award, a new category whose recipients were not only outstanding regulators but also achieved recognition in the industry for overall contributions to the gaming industry. In the message from the president, Jamie Nettleton, IMGL president, announced the 2018 award recipients. These notable regulators will be honored at the Awards Luncheon in Prague or the private IMGL VIP ceremony and reception at the Wynn Atrium during G2E.

The articles in this issue reflect as always IMGL’s tradition of advancing gaming law through education. The diversity of articles reflects the broad spectrum of IMGL membership and publication subscribers.

The jurisdiction updates in this issue include articles on Austria, Japan and Brazil. Dr. Christian Rapani and Mag. Julia Kotanko present an overview of new developments in Austria with a discussion of Austrian policy regarding online gaming and the national monopoly on betting games with a view to the future developments. Hitoshi Ishihara discusses the Bill to Implement Specific Integrated Resort Areas in Japan, pointing out the key points in the debate. Neil Montgomery and Helena Calderano discuss the election year turmoil facing Brazil’s gaming development and the attempt to privatize LOTEX. They discuss the continued hot debate on potential “legal barriers” to privatization.

The May 2018 landmark United States Supreme Court sports betting ruling to repeal the Professional and Amateur Sports Protection Act (PASPA) created an opportunity for states to legalize and regulate sports betting. Philip Sicuso and Ali Bartlett Miranda draw parallels between virtual sports betting games and video games and slot machines. The authors present an entire area of sports betting opportunities. Next, Todd Grossman, Justin Stempeck and Carrie Torrisi present an analysis of the determination of the Joint Commission in Massachusetts which studied regulation of all aspects of online and fantasy sports gaming. The article discusses the Joint Commission’s review with input from the industry, the Attorney General and other gaming law experts to reach its conclusion and report to the Massachusetts legislature.

Combining the responsible gaming and gaming law policy areas, Hugo Luz dos Santos reviews the overall repercussions of legalized gambling in the UK and elsewhere and the question of duty of care. The author discusses the responsibility of both the casino and the problem gamblers.

Sean McGuinness and Katie Fillmore discuss the impact of the May 2018 United Kingdom’s new General Data Protection Regulation (GDPR) requirements. The authors present an excellent overview of the regulation and its implications for gaming attorneys and casinos in the US and worldwide. Emerging technology is a logical continuation of the GDPR impact on casinos and new developments in the US with implementation of new data protection legislation. Douglas Florence shares his vast knowledge of security and surveillance technology, ever evolving new developments. The scope of technology in new location tracking and facial recognition systems has brought many opportunities and implications for the gaming industry.

Switching to Law and Policy, Daniel Berkley discusses the potential inequities of collective bargaining between small to moderate size casinos and large resorts. The recent demonstration of labor unions’ potential disruption of the marketplace in Las Vegas has far-reaching potential economic impacts.

The book review section of AGL presents two articles. Professor William Thompson reviews Round Midnight, a book merging historical events with fictional characters and venues. Quentin Singleton next reviews Sports Wagering in America, an overview of the history of sports wagering in the United States by IMGL members Anthony Cabot and Keith Miller.

As always American Gaming Lawyer thanks the generous sponsors and contributors for making this autumn issue possible.

Sue McNabb has worked with the state legislature and served as Assistant Attorney General for the Louisiana Department of Justice and as an attorney for the Louisiana Legislative Auditor. She has an extensive background in corporate law in the private sector where she worked as General Counsel of an INC 500 Company and as Vice President of Administration with a national not-for-profit corporation.

Sue served on the board of directors of the Louisiana Association on Compulsive Gambling and was formerly a member of the board of the National Council on Problem Gambling. She also serves on the board of the Louisiana Center for Women in Government and Business and was appointed by Governor Bobby Jindal to serve on the Louisiana Women’s Policy and Research Commission. She received the IMGL president’s award for 2013. She served as the Executive Director of IMGL from May 2015 until July 2018.
Reacting quickly, the Massachusetts Attorney General’s Office promulgated first of their kind consumer protection regulations in November 2015. The Massachusetts Gaming Commission (“MGC”) also investigated the issues, hosting a day-long seminar in December 2015 with representatives from the DFS industry, government regulators and subject matter experts. Shortly, thereafter, the MGC published a white paper examining DFS, discussing the broader difficulties faced by regulators addressing rapidly evolving new technology in the gaming space and advocating for an omnibus approach towards future regulation. The Massachusetts legislature addressed DFS in August 2016 by enacting a placeholder law, legalizing fantasy sports contests through 2018.

To many, that ended the conversation as the hobby was officially sanctioned by law and placed under the watchful eye of the Attorney General’s office. However, the Massachusetts Legislature continued the inquiry, creating a Joint Commission “to conduct a comprehensive study relative to the regulation of online gaming, fantasy sports gaming and daily fantasy sports.” What followed was a unique, nine-month inquiry into a number of industries at the forefront of gaming and technology.

Per its enacting legislation the goal of the Commission was to review:

all aspects of online gaming, fantasy sports gaming and daily fantasy sports including, but not limited to: economic development, consumer protection, taxation, legal and regulatory structures, implications for existing gaming, burdens and benefits to the commonwealth and any other factors the commission

When the daily fantasy sports (“DFS”) fervor reached its initial crescendo, Massachusetts was at its center, due to the presence of DraftKings’ office in downtown Boston and a large, local population of fervent sports fans. What had previously been a niche hobby rose to prominence online and the advertising was unavoidable. Amidst the clamor of radio, television and online marketing were countless discussions about the legality of DFS, skill versus chance debates and questions about the adequacy of consumer protection.

Examining the Future of Online Gaming and Daily Fantasy Sports in Massachusetts

By Todd Grossman, Justin Stempeck and Carrie Torrisi
deems relevant. The special commission shall not include in its review a comprehensive review of the state lottery or its ability to provide lottery products online or over the internet.¹

The commission was made up of nine members representing various interests, including the governor’s office, the MGC, the Attorney General’s office and both the state Senate and state House of Representatives. Their mandated schedule required that a report be submitted to the legislature by July 31, 2017. To that end, the Commission set an aggressive pace, covering a wide swath of gaming topics, including DFS, Esports, relationships with brick and mortar casinos, and problem gaming, all in a relatively short period of time.

**Daily Fantasy Sports**

In order to investigate the then current status of DFS, the Commission heard from various stakeholders including attorneys representing Draftkings/Fanduel, legal experts, law professors, the Attorney General’s office, representatives from the MGC and representatives from the local casino licensees. Presenters updated the Commission on DFS’s contributions to the local economy, the current state of legislation nationwide and the comprehensive state of consumer protection regulations in place in Massachusetts. Additionally, there was discussion concerning the universal applicability of many of those same consumer protections to other areas of online gaming, including Esports. Local casino licensees Penn National Gaming, Wynn Resorts, and MGM also addressed DFS, noting that they had no interest in the area but were interested in legalized sports betting and had varying levels of interest in online gaming. After hearing extensive testimony on DFS over a matter of months, the Commission synthesized its findings in a report. The primary conclusions on DFS were that the activity should remain legal (the current Massachusetts provisional law sunsets in 2018); however, it should fall under the broad definition of online gaming crafted by the Commission and the activity should be regulated by the MGC. The Commission recommended that online gaming be defined as:

An activity, offered through the Internet or through other communications technology, that allows a person utilizing money or currency of any kind, to transmit electronic information to (1) risk something of value (2) on the outcome of an event (3) with an opportunity to win a prize.

The Commission opined that any workable definition of online gaming needed to be broad so that it would not have to be revisited with the introduction of each new online gaming product.

**Esports**

In addition to addressing the well-tread ground of DFS, the Commission heard testimony concerning Esports, including statistics regarding the size of the market, the number of players, the viewership, the prize pools and the day-to-day operations of an Esports team, including its business operations and streams of revenue. The Commission was also advised about the intersection of Esports with illegal gaming through betting on Esports competitions and skin² betting sites that resemble online casinos. In its report, the Commission explained the Esports phenomenon and its meteoric growth but did not detail any plan to address the known illegal gaming surrounding the activity. Instead the report advised targeting the non-gaming commercial opportunities associated with hosting Esports competitions at local convention centers and sports arenas.

Further, although the proposed definition of online gaming would on its face apply to Esports betting, the Commission specifically advised that all types of online gaming should be considered illegal unless permitted by statutory exception, thus making the state legislature the gatekeeper of any such activity. While only recommending that DFS be legal-

*Continued on next page*
Online Gaming

Much like with Esports, the Commission heard extensive facts and figures concerning the growing online gaming market. The Commission also heard directly from Massachusetts’ three casino licensees concerning their positions on online gaming. Interestingly amongst the three licensees there were different perspectives: Penn National supported online gaming if it was limited to brick and mortar casinos and was taxed appropriately, Wynn had no interest in online gaming but did agree that participation should be limited to casino licensees, and MGM was fully in support of online gaming. Notably MGM has experience offering online gaming in both Nevada and New Jersey while Penn National offers a broad slate of social gaming options nationally (social games prohibit a player from ever winning anything of value; however, real money can be spent to purchase credits to play the games themselves).

In its report to the Legislature in addition to summarizing the views of the local casino licensees, the Commission detailed the different approaches to the market employed by Nevada, New Jersey and Delaware as educational examples. Much as with Esports, the Commission did not advocate for the immediate legalization of online casino gaming, but noted that such activity would fall under its proposed definition of “online gaming” and could ultimately be carved out from the broad category of illegal gaming in the Commonwealth. Given that two of the three Massachusetts casinos are still under construction, the Commission recommended a “wait and see” approach to online gaming, but noted that brick and mortar casinos should get some form of consideration.

The Commission further recommended that the daily governance of online gaming, when legalized, should be vested in the MGC in order to draft appropriate regulations, audit and monitor participants for compliance, approve and register/license companies and penalize non-cooperative entities. Through its analysis of the approaches of other jurisdictions as well as the Attorney General’s DFS regulations, the Commission drafted a set of model recommended regulations that would equally apply to all online gaming and serve as a road map for best practices to be cemented in place by any supervisory agency. These recommended regulations included:

1. Clearly defined terms;
2. Legal gaming age set at 21;
3. Strong geolocation protections;
4. Strong suitability standards and operator licensing requirements overseen by a regulatory body;
5. Responsible gaming protections;
6. Transparency and fairness guarantees in gaming offerings;
7. Truth in advertising;
8. Sensitivity to any real or perceived conflicts of interest
9. Data/network security standards;
10. Fund processing / segregation / anti-money laundering protections.

Sports betting would clearly fall under the definition of online gaming drafted by the Commission to the extent that definition is adopted. Much like Esports or online gaming, sports betting would require a separate carve out by the Legislature to be made legal.

NEW DEVELOPMENTS IN JURISDICTIONS

Sports betting would clearly fall under the definition of online gaming drafted by the Commission to the extent that definition is adopted. Much like Esports or online gaming, sports betting would require a separate carve out by the Legislature to be made legal.

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1 The inability to discuss the lottery was a missed opportunity particularly given active efforts to introduce online lottery in Massachusetts, and given the potential overlapping nature of online lottery products and other online gaming products. Massachusetts’ neighbor to the north, New Hampshire, recently legalized online lottery, thus raising the stakes for a response by the Commonwealth.

2 A “skin” is a cosmetic enhancement on an in-game item that acquires real world value based on its rarity. Certain third-party websites allow players of the most popular Esports titles to essentially use skins as currency for online casino style games and cash out their winnings as real money.
The Commission did not specifically recommend any fees or taxes on online gaming; however, it suggested that the cost of regulation be borne by the online gaming industry, any fees/taxes be based on gross gaming revenue, regulation promote responsible gaming, and any fees/taxes not be so onerous as to suffocate an emerging industry.

**Sports Betting**

While several speakers that appeared before the Commission addressed the then pending Supreme Court case challenging the federal ban on sports betting, the Commission did not dedicate extensive time to discussing the matter. Similarly, the Commission’s final report to the Legislature only briefly mentions the potentially huge black market for illegal online sports betting.

Sports betting would clearly fall under the definition of online gaming drafted by the Commission to the extent that definition is adopted. Much like Esports or online gaming, sports betting would require a separate carve out by the Legislature to be made legal. The Legislature has not yet filed any placeholder legislation to address sports betting in response to the recent Supreme Court decision invalidating the Professional and Amateur Sports Protection Act; however, there are two pending bills that would permanently legalize DFS, place it under regulation by the MGC and create a study committee to examine sports betting in greater detail before the 2019 legislative session.

**Conclusion**

The Joint Commission was unique in both the spectrum of viewpoints of its members as well as the breadth of topics it addressed during its relatively brief tenure. Although the Joint Commission stopped short of recommending a pure omnibus approach to the regulation of online gaming, it took large strides in recognizing and drafting a broad definition of online gaming that would apply to existing products as well as future products sharing certain baseline characteristics. The Joint Commission further recognized the inevitability of the legalization of online gaming even if it continued to recommend that the Legislature be required to approve of each large category of online gaming before handing the matter over to the MGC. The Joint Commission’s view of an ongoing collaborative discussion between the Legislature and the MGC addressing future online gaming products is a progressive recommendation that is often overlooked when bills are drafted and submitted. Such a nuanced conclusion, submitted to the entire Legislature, suggests a future of progressive policy making as Massachusetts embraces the gaming industry.
NEW DEVELOPMENTS: VIRTUAL SPORTS BETTING

Will Sports Betting Decision Open Door to More Virtual Sports Betting in U.S.?

By Philip Sicuso and Ali Bartlett Miranda

On May 14, 2018, the United States Supreme Court issued a ruling overturning a 25-year-old federal statute that prevented states from enacting laws authorizing sports betting activity. The 7-2 ruling held that the Professional and Amateur Sports Protection Act (PASPA) “unequivocally dictate[d] what a state legislature may and may not do,” in violation of the 10th Amendment anti-commandeering clause.¹

The ruling allows states to begin crafting legislation to legalize and regulate sports betting in their jurisdictions. The decision has also shined a spotlight on wagering on live sports in the United States in general, something that, until now, has only been legal in a handful of states that were grandfathered in under PASPA. With the overturn of PASPA, millions of Americans who have either refrained from wagering on sports due to its illegality or wagered on the black market through offshore betting websites will have the opportunity to partake in sports wagering closer to home as more states move toward legalization. Many see the legalization of sports betting as an opportunity to cater to a new audience of bettors and expand the gaming market. However, the repeal of PASPA does not necessarily mean that there will be immediate opportunities for legal sports betting throughout the United States. Legalization and regulation still have to take place on a state-by-state basis; the overturn of PASPA simply set the ball in motion. However, for consumers interested in wagering on sporting events, there exists an alternative that states may be able to implement more quickly and which will supplement an eventual environment for traditional sports wagering: virtual sports betting.

An Alternative to Live Sports Wagering

Virtual sports games have been described by several sources as containing elements of video games, traditional sports betting and slot machines.² They resemble video games in that they are computer generated (although there is no “player-controlled” component); they resemble sports betting in that a virtual sports game may be designed to enable consumers to wager on the same elements of the game as they do when betting on a live sporting event with human competitors; and they resemble slot machines in that the outcomes of the games are determined through random number generation - thus making virtual sports betting a “game of chance.” In this way, although there may be an immediate tendency to associate virtual sports betting with traditional sports betting, virtual betting may share a stronger affiliation with lottery games than with bets offered through sportsbooks.

Nevertheless, comparable to betting on a live sporting event, the consumer has multiple wagering options for each race or match. The virtual sports program formulates the points spread and odds based upon historical sporting data.³ Real-life athletes’ historical data, statistics, and skills are used to create the program which may result in some of the “virtual athletes” bearing a strong resemblance to the skills we identify with popular athletes from the real world, but with game designers being careful not to violate real-life players’ legal rights with respect to unauthorized use of their image and likeness within the computer-generated games.⁴

Virtual sporting events, unlike their live sporting event counterparts, can occur 24 hours a day, seven days a week.⁵ Operators (be they casinos, lottery retailers, or other authorized vendors) can essentially dictate the start
and stop times for the virtual events they choose to run. For example, an operator can choose for a virtual event to last a fraction of the time that a live version of the same sport would take, thus allowing more frequent bets to be placed and ongoing fan engagement.6

The frequency with which virtual sports betting can occur is comparable to Keno and other monitor games frequently offered by lotteries around the United States and may have the effect of attracting bettors who prefer a more fast-paced game of chance, while also catering to the traditional sports bettor’s tastes. Flexible delivery options are also an advantage for virtual sports, allowing for a jurisdiction’s policy preferences, consumers may be given the option to bet on virtual sports: (i) through a kiosk, where they can select a match or game on demand; (ii) during pre-scheduled events that the operator shows on one or more central screen(s)/monitor(s); or (iii) via mobile devices.

The ability to control when virtual sports are offered is one of the reasons virtual sports betting has risen in popularity throughout Europe and other jurisdictions with existing frameworks for legalized traditional sports betting.7 A commonly cited statistic indicates that virtual sports betting makes up approximately 20 percent of revenue flowing from U.K. “betting shops.”8 Ed Andrewes, CEO of EA Gaming Consultancy, told the Virtual Sports Report last year, “Virtual sports betting in the European market has done particularly well as a ‘filler’ for live, real events in sports and race betting brick-and-mortar venues.”9

Virtual Sports Wagering in the U.S.

In the United States, virtual sports are not as widespread as in Europe. Only a few states currently offer virtual sports betting games, including Nevada, New Jersey and Pennsylvania.10 By way of example, William Hill US offers virtual horse racing at a handful of its land-based sportsbooks in Las Vegas.11

Last year in New Jersey, Rush Street Interactive received approval from regulators to allow customers to bet online on the outcome of virtual computer-generated sporting “events.”12 There are about two dozen online casinos in New Jersey, but only eight offer virtual sports betting at this time.13 Although this type of wagering is only available to people within the borders of New Jersey (in compliance with interstate wagering restrictions), it is also a potential model for other states to follow or to improve upon. Virtual sports available via these sites include horse racing, stock car racing, cycling, soccer, boxing, football, basketball, and tennis.14

This summer, the Pennsylvania Lottery began running a new game, “Xpress Sports.”15 Inspired Entertainment, Inc. is behind the virtual sports products available for wagering in the state.16 Initially, customers can wager on football games and racing events at retail locations where Keno is also available.17 The Pennsylvania Lottery expects Xpress Sports to add an additional $13 million to its bottom line in 2018.18

The Oregon Lottery is working with Inspired Entertainment to bring virtual sports to Oregon through brick-and-mortar lottery retailers.19 The goal is to have the program rolled out to retailers by Fall 2018. The Michigan Lottery is also working with Inspired Entertainment to launch virtual sports betting online within its borders.20 The timeline for rollout has not yet been determined.21 In offering higher-frequency games such as virtual sports betting, lottery operators are able to diversify their product portfolio and increase their bottom line.

Is Virtual Sports Betting Legal in the U.S.?

Now that the Supreme Court has cleared the way for states to decide whether to legalize traditional sports betting, several have begun considering regulations. The New Jersey legislature recently passed legislation that defines a “sports event” as “any professional sport or athletic event, any Olympic or international sports competition event and any collegiate sport or athletic event, or any portion thereof.”22 West Virginia defines “sporting event” under its new sports wagering legisla...
Because virtual sports betting is still relatively new in the United States, there is a lot of room for growth. This is due in part to the Supreme Court ruling paving the way for states to begin regulating traditional sports wagering.

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tion to mean “any professional sport or athletic event, any collegiate sport or athletic event, motor race event, or any other special event authorized by the commission.”25 In Indiana, legislation was proposed during the 2018 legislative session that would have defined “sports wagering” as wagering “on athletic and sporting events involving human competitors.”24 The legislation did not make it out of committee.

It is noteworthy that the legislation introduced or passed by these states focuses on sporting events that include either “human competitors” or a “professional” or “athletic” event. Virtual sports would not fit under these definitions, and therefore would not be covered by the legislation or any regulations created as a result.

Because a computer program dictates the results of the virtual sporting event, in the same way that the outcome of a slot machine wager is determined, it may be possible to regulate virtual sports games without wholesale changes to existing regulatory standards. In fact, virtual sports games may already fit into existing categories of regulated gaming activity as well as the rules and procedures governing slot machines, lottery draw games and other electronic games of chance.

However, the question remains as to whether considering virtual sports betting games to fall under existing regulations is the best way to move forward. As virtual sports betting grows in popularity throughout the country, thanks in part to the legalization of traditional sports betting and the convenience that virtual sports offer, states will need to determine how to regulate the activity.

Potential for Strong Growth in Virtual Sports Market

Because virtual sports betting is still relatively new in the United States, there is a lot of room for growth. This is due in part to the Supreme Court ruling paving the way for states to begin regulating traditional sports wagering. Virtual sports can work in tandem with traditional sports betting, filling in the gaps when live sporting events are not available for wagering or in places such as lottery retail locations, where traditional sports betting might not typically be offered or permitted.

Virtual sports may also help to generate a significant amount of revenue for existing casinos and for the states that choose to legalize traditional sports wagering. Ideally, the introduction of virtual and traditional sports betting will attract more customers to visit casinos, taverns, or other locations with virtual sports wagering. For these reasons, states should not overlook virtual sports when considering the future and how sports wagering will impact the overall gaming environment. States should also be aware that existing laws and regulations may already be sufficient for implementation of virtual sports betting even prior to the passage of legislation relating to traditional sports betting. For states looking to be on the forefront of virtual sports betting, what is the best way to classify and regulate virtual sports going forward?

Time will soon tell.

1 Murphy, Governor of New Jersey, et al v. National Collegiate Athletic Association, et al., 16-476
   virtual-sports/ (Accessed June 13, 2018)
3 Id
   sports-betting-us/ (Feb. 15, 2017)
5 Id
6 Id
7 See Supra Note 4
8 Id
9 Id
11 Id
   1st-us-offer-online-virtual-sport-betting/892658001/ (November 24, 2017)
13 See Supra Note 2
16 Id
17 Id
18 Id
21 Id
22 State of New Jersey 218th Legislature, Assembly Bill No. 411 (Passed June 11, 2018), http://www.njleg.state.nj.us/2018/Bills/AL18/53_.PDF
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EMERGING TECHNOLOGY—
“The General Data Protection Regulation” Compliance?
By Douglas Florence, Sr.

Over the past decade the IoT (Internet of Things) has resulted in a digital Geostorm of sorts and parallel to this, the issue of privacy or lack thereof has also kept pace requiring companies to invest heavily in compliance programs. In the realm of video that comes in many forms to include casino surveillance that now utilizes AI (Artificial intelligence) or machine learning to enhance decision making and business intelligence. Working with many software and hardware-based solutions over my career has provided a snapshot of what is being developed as well as the continued evolution of IP based cameras or sensors.

With the issue of privacy for personal data raising the legal bar and the need for compliance there are now some white papers that can be referenced to research what to expect from use of technology solutions to meet any level of compliance to the General Data Protection Regulation (GDPR). GDPR “… entered into effect on May 25, 2018, goes considerably beyond existing law in setting forth individual rights that allow data subjects to control how their personal data is used and how can those companies who process data ensure that they uniquely identify data subjects when administering their data subject rights.”*

At the core with regard to how do you locate or not “…the personal data or a data subject of a person who has made a request related to individual rights under the GDPR, using a technical tool for the electronic extraction of data is a first step in following the mandates of the Regulation.” Now there is an added impact from states like California adopting variations such as the California Consumer Privacy Act of 2018**.
With today’s data sets being in digital formats whether in the cloud or on-site servers with reliance on proprietary software lacking interoperability, how do we comply with these new laws? There are technology solutions, software, capable of associating the person to the data and data to the person. The data set was created by gaming operators CRM and CSM (rewards or loyalty programs), however what about the difficulties in dealing with disparate systems?

Enter Jeff Jonas, recognized as an IBM Fellow in 2012 with alum of under 300 people since 1963. Jeff’s contribution to Homeland Security began with the Senate Hearings held in July 2002 where it was revealed that his “NORA” (none obvious relationship awareness) software was being adopted by the FBI and other US government agencies.

This makes Jeff a real-world software data subject matter expert with a proven track record. In the EU when it comes to compliance to the GDPR, his new software offering from Senzing https://senzing.com/gdpr/ an API has an amazing dashboard with ease of use and provides the ability to use the spider web of data sets to locate the person and his data or not. This would reduce the amount of time it will require to investigate a claim or request to remove data on someone. In addition, a high number of people do not subscribe to a loyalty program or who use cash, so how can a property locate or remove or protect that data under the GDPR today or in California, the first state in the USA adopting a variation of the GDPR format as the CCPA 2018** that goes into effect by January 2020?

Another data set that can also be tracked is from a person’s mobile devices, the smart phone, watch or anything that can connect to the IoT. Where does anyone go without a smart phone? So, to know the duration of a person being on the premise can be tracked from the origin of entry to departing, their journey or experience on the property. This mobile device data that can be tracked with a very high proficiency when designed or implemented properly. The greatest adaptation of mobile devices is in APAC (Asia Pacific Asia Central) where over 90% of all Internet use is with a mobile device. In the USA 77% of all mobile phone users have a smart device, in Canada it is 90%, in Australia 86%, and even Ghana Africa is close to 95% of smart device use. Each mobile device has a MAC ID that can be tracked and associated to transactions, visitation, individuals and is a unique identifier or data set not relying on lighting, cameras or AI; however, it can be combined to other software and hardware solutions to enhance the accuracy.

Imagine the power of live tracking, 3G, 4G, 5G and/or using existing WiFi augmented with VRU’s (visitor recognition unit) positioned at entrances, valet, cashiers, restrooms and any critical area where video surveillance is prohibited. All of this allows companies to track a single individual’s experience, to locate employee resources, protect critical resources live or over time using low computing and storage capacity. Locality Systems, a Vancouver based technology provider www.localitysystems.com, offers this capability today for campus residential and retail environments. Imagine if this technology had been deployed in Las Vegas, tracking alerting to unusual behavior such as too many trips to a parked vehicle, loitering in hallways or an identified activity designed to thwart a terrorist or criminal act.

Continued on next page
NEW DEVELOPMENTS: TECHNOLOGY

The legal aspects of compliance to the GDPR or the CCPA 2018 will certainly be a topic that the IMGL will embrace and the use of technology with AI (artificial intelligence) capability combined to software API solutions are needed. Even the subject of Facial Recognition, that is reliant on camera placement, lighting conditions, overcoming disguises and a myriad of other challenges, can when combined or layered to emerging technology solutions be more reliable.

In conclusion, companies must invest in the right solutions, be it for compliance or security. Too often at the time of a crisis there is a rush to action followed by some level of complacency. There were major gaming properties in Las Vegas using VCR’s to record video up to the time of the tragedy of October 2017; they weren’t required to adopt better resolution up to that point. This tragedy spawned an immediate response given the significance of the event. Today we are reliant on technology in our everyday life. Adversity to tracking combined with the need for privacy will be considerable but the real need for security and safety perhaps trumps the adversity to what technology can contribute to our daily life and the consideration of how any business can be compliant to emerging privacy laws.

* The Importance of Accurate Retrieval of Data Subjects’ Personal Data in Complying with GDPR Individual Rights Requirements
By - Jan Dhont, Peter Swire & DeBrae Kennedy-Mayo

**Assembly Bill No. 375 CHAPTER 55. An act to add Title 1.81.5 (commencing with Section 1798.100) to Part 4 of Division 3 of the Civil Code, relating to privacy.
[ Approved by Governor June 28, 2018. Filed with Secretary of State June 28, 2018. ]

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What is GDPR and how does it impact American businesses?

On May 25, 2018, the European Union’s GDPR took effect. Although European Union (“EU”) laws typically don’t have a worldwide impact, the GDPR will impact businesses across the globe, including law firms/attorneys based in the United States. The GDPR has an extremely broad application, as it was adopted as an effort to hold businesses, including law firms/attorneys based in the United States, accountable for the use and protection of data belonging to EU citizens. As gaming is a worldwide industry, most U.S. gaming attorneys and law firms have clients (or individuals that are associated with a client entity) that have protected EU status under the GDPR. It also would apply to casinos in the U.S. that have EU citizen customers/patrons.

It is fair to say that by now U.S. attorneys should be somewhat familiar with the new General Data Protection Regulation (“GDPR”) requirements. We all have received numerous e-mails from various parties advising of new data privacy regimens. In addition, just casually surfing the Internet will bring pop-up notifications of data privacy updates. These are all related to what is called GDPR.

The Impact of GDPR on Attorneys and Law Firms in the United States

By Sean McGuinness and Katie Fillmore

Continued on next page
Gaming Law & Policy

Applicability
The GDPR applies not only to European entities, but also to entities located outside of the EU that offer goods or services to people in the EU or that monitor the behavior of people in the EU. Clearly, this would also apply to US-based law firms/attorneys as any business with EU resident customers/clients is required to comply. The GDPR applies to businesses offering goods or services to EU residents, regardless of whether payment for the good or service is required. As such, even a pro bono representation is implicated if it collects data from or monitors EU residents. A law firm would fall into these categories, especially if it does gaming licensing work for EU citizens. Of course, a US casino with EU citizen customers/patrons would also be subject to the GDPR.

Covered Data
The GDPR regulates “personal data” which is defined as any information related to a natural person or data subject that can be used directly or indirectly to identify that person. Personal data includes, for instance, a name, photo, email address, bank details, medical information, GPS location data, and IP address. Clearly, gaming applicants that are EU citizens would need to share personal data to gaming regulators. Accordingly, US-based attorneys/firms with such clients need to comply with the GDPR. This is also the case with US casinos with EU citizen customers/patrons.

Enhanced Privacy Rights
The GDPR significantly increases data privacy obligations, increases penalties, including fines as high as the greater of 20 million euros or four percent of annual worldwide revenue. One should anticipate that the GDPR is likely to increase enforcement activity, although it is not yet clear exactly how this will be done. The significant enhancements referenced above include the following:

Consent: Controllers and processors are required to be transparent with how information is used and, as a general rule, consent must be obtained from the individual. The request for consent must be in clear, plain language. Simply asking an individual to accept a privacy policy that is not provided is not sufficient.

Rectification/Erasure of Data: The GDPR confers rights to an individual to access his or her own data and rectify/erase inaccurate data.

Assessments: Controllers are mandated to conduct data protection impact assessments, involving routine evaluation of the potential impact of lost or diverted data.

Breach Notification: The GDPR mandates breach notification within 72 hours of awareness of the breach if the breach is likely to result in a risk for the rights and freedoms of individuals.

Indeed, we are starting to see gaming companies with EU citizens that would need to be licensed in the US sending data privacy questionnaires to US law firms/attorneys (in addition to requesting W-9 and typical vendor compliance diligence information). These address identifying what sort of personal information the law firm/attorney may be receiving; what jurisdictions that law firm/attorney will be using the personal data and what protocols would be in place for the EU citizen to receive notification concerning the date and where it is being transmitted to, as well as what security measures are in place to protect the personal data.

As mentioned above, the economic sanctions for noncompliance have the potential of being steep. The amount of the fine will vary depending on what provision is breached and the behavior of the organization, with the purpose of imposing an amount which is effective, proportionate, and dissuasive. EU residents can enforce the GDPR’s protections by lodging a complaint with the supervisory authority of the EU member state or by filing an action if the supervisory authority fails to address the complaint properly. Additionally, an EU resident may take direct action through class action proceedings. Thus, increased litigation of privacy issues in the EU is likely.
Legal Ethics Considerations

An aspect that hasn’t been discussed much concerning the GDPR’s applicability to U.S. law firms/attorneys is the applicability of legal ethics requirements administered by the various state bars in the U.S. Canon 4 states that a lawyer should preserve the confidences and secrets of a client. Certainly, the personal data of an EU citizen/client would fall under this canon. Similarly, Rules 1.6 (Confidentiality of Information) and 1.15 (Safekeeping Property) of the ABA Model Rules of Professional Responsibility would add the possibility of legal discipline from a state bar authority for non-compliance with the GDPR. Certainly an adverse GDPR action against a U.S. law firm/attorney would be problematic in a state bar disciplinary action concerning non-compliance with the GDPR (and any law firm/attorney should expect that if a legal action is made pursuant to the GDPR that a corresponding bar complaint would follow).

Compliance Tips

Given the expansive application of the GDPR and the practical difficulty of differentiating citizenship (there can be situations with individuals with dual citizenship) among customers/clients, many companies/law firms with worldwide operations/clients have opted to apply the GDPR principals to the management of all customer/client data. By comparison, the U.S. does not currently have an omnibus federal law regulating the collection, use, and disclosure of personally identifiable information (“PII”), but there are several sector-specific laws, such as the Health Insurance Portability and Accountability Act (“HIPAA”) applying to the use and disclosure of personal health information. However, all 50 states in the U.S. have enacted data protection laws, primarily governing cyber breaches. For a business with global operations, there is a patchwork of potentially applicable law and regulation. Defining a privacy policy that meets the most stringent requirements may likely be the best approach.

As an initial step, it is critical that companies/law firms conduct a comprehensive review of data collection and processing to ensure compliance with all applicable laws. Companies should consider what information is collected, why, and whether collection is necessary. Also, they should evaluate what privacy laws are implicated, both domestically at the state and federal level and abroad. The international gaming company’s data privacy questionnaire referenced above is helpful in this regard. Companies should also stay up to date with changes in the law, including interpretations in case law, agency guidance, and enforcement actions.

Additionally, companies/law firms should revise privacy statements and requests for consent. All customer-facing documentation will require revision to comply with the GDPR, which requires providing detailed information to data subjects regarding the processing of personal data in a concise, transparent, intelligible, and easily accessible form.

Companies may also want to invest in an insurance policy that provides cyber coverage, including protection for data breaches. Many traditional general liability insurers have added cyber liability exclusions to their policies. Companies should carefully read the terms of their insurance policies to fully understand what is covered and consider purchasing additional insurance.

Conclusion

The GDPR is arguably the most significant data privacy regulation that has been enacted to date, and the full breadth of GDPR is far beyond the scope of any article. It is essential that law firms/attorneys take the time to understand the various requirements and take steps to ensure compliance with the GDPR as well as other applicable data privacy laws. In this regard, it would be helpful to reach out to European lawyer colleagues whose firms may have experience in dealing with the GDPR. Sean McGuinness is a partner at Butler Snow LLP. He practices gaming law on a multi-jurisdictional basis and is licensed to practice in Nevada, Colorado, Iowa and Mississippi. He can be contacted at sean.mcguinness@butlersnow.com

Katie Fillmore is an attorney with the Austin, Texas, office of Butler Snow LLP. Her practice is focused on defense of tort and product liability cases, as well as general commercial litigation. She can be reached at Katie.Fillmore@butlersnow.com.
While the collective bargaining process should treat all employers with an even hand, Las Vegas locals and international affiliated unions in the gaming and hospitality industry do not follow that path. Perhaps other industries bear this out as well, with the "big dogs" setting the tone and the results; however, Las Vegas gaming and hospitality make it a high impact "sport."

Months before the collective bargaining agreements expire, the back rooms are all busy with the national and international consortia employers huddling with the unions. There is a lot at stake, since pickets and boycotts ripple through the casinos and resorts with a wide swath if labor peace is not achieved at the table or in the back rooms. These properties are physically wide open and not defensible in the face of labor unrest. The union exploits those facts.

While the employer’s financial reports often reveal the up and down swings of the balance sheets, the union adamantly seeks the top dollar and benefit packages available. Their close ties to the casinos themselves with the ease of access to casino earnings data make the bargaining a real challenge for the employers involved. At these large employer
The controversy and near strike conditions during the collective bargaining by the Culinary Union in Las Vegas were all the rage in the news of late; however, true to form, some of the major players settled their bargaining, and the threat of strike is over for those properties. It is likely that the others will fall in line, and peace will return to Las Vegas.

This experience does not reflect a particular employer; rather it is an amalgam of observations, experience and commentary by the author. Each employer is different and should make its own stand in the face of adversity and continue to operate at as high a level as possible.

The controversy and near strike conditions during the collective bargaining by the Culinary Union in Las Vegas were all the rage in the news of late; however, true to form, some of the major players settled their bargaining, and the threat of strike is over for those properties. It is likely that the others will fall in line, and peace will return to Las Vegas. That is, at least for the larger properties. Some of the smaller properties were not even contacted during the controversy nor were bargaining sessions scheduled.

Now the union is turning its attention to the smaller properties to “set them up” for the agreements. They will be proposing deals crafted from the large properties with a percentage factor to take into account the smaller size and earning capacity. That is what the union says. The union fails to account for the inability of these smaller properties to recoup the expenses with, for example, special costs and surcharges and other hidden charges to defer these expensive union contracts. It is unknown now whether any of the smaller properties will challenge the union in the bargaining. If I am called in to the table, I will almost certainly see a pre-designed CBA package and told to sign it or there will be action taken. Maybe it has always been this way; however, you just need to see the decline in some of the smaller properties, including infrastructure and capital investment, to understand the union is pricing them out of the market. Slowly and gradually the edges are fraying. The properties look tired.

“early sessions, the details are hashed out and the template is designed for all. This includes a scalable template which accommodates for size and few related factors. However, the nature and needs of the particular employers are generally not accounted for in the mix.

If a casino and resort are not among the high earning properties, and they need funds to maintain their status in the business, including infrastructure and innovation, those factors are generally overlooked. Bargaining takes place at the union’s design, at a specific time and location and date. There is participation by the parties, universal platitudes and many caucuses. Nevertheless, employers all need to conform to the template or face strikes or boycotts or worse. That cannot be tolerated. An adventurous employer can try to cut some sort of side deals, but that will not keep the doors open. Somehow it seems to work out for many employers, but the struggles remain, and the slow decline sets in, taking the value and experience down with it.

Maybe there is a bright light somewhere in this process with a tough union and a willing big lot of employers; however, it is dark down at or near the bottom of the economic scale.
Austrian Online Gaming
Status quo and outlook
by Dr. Christian Rapani and Mag. Julia Kotanko

Since the 2010 amendment of the Austrian Gaming Act, the terrestrial as well as online gaming industry in Austria has been facing inconsistencies in enforcement and judicial decisions. By the end of 2016 all three Austrian supreme courts formed a unified line of judgments confirming the legality of the Austrian monopoly on games of chance. Even so, the existing regulatory framework in Austria, especially affecting online games of chance and online betting, still raises questions under EU law and continues to be challenging for various reasons. Recent developments indicate that upcoming changes are probable and have the Austrian (online) gaming industry expectantly looking into the future.

Introduction to Austrian Online Gaming Law
Austrian gaming law distinguishes between games of chance and betting. The former is regulated under a national monopoly while the latter falls into the competence of the nine Austrian states, which therefore each have their individual betting laws.

Online Games of Chance
According to the Austrian Gaming Act [Glücksspielgesetz; GSpG], a game of chance is defined as a game in which the decision on the outcome exclusively or predominantly depends on chance. Online games of chance fall under the definition of the so-called “electronic lotteries” and, as such, are also subject to regulation under the national monopoly on games of chance.

Under the national monopoly on games of chance the Federal Ministry of Finance may transfer the right to operate games of chance by granting licenses. The only license for offering electronic lotteries has been granted with a term until 30 September 2027. While this license is valid, no new license for offering electronic lotteries may be issued.

Choosing to regulate (online) games of chance by maintaining a national monopoly has generated much public and legal debate, especially regarding the conformity of the monopoly on games of chance with EU law. Only a monopoly which is in conformity with EU law may legitimately infringe upon the principle of the freedom to provide services as guaranteed by EU law. Positions became so entrenched that first instance courts and even the three Austrian supreme courts (Supreme Administrative Court, Supreme Constitutional Court, Supreme [Civil and Criminal] Court) amongst each other could not agree on the question of conformity of the monopoly with EU law.

Ultimately however, by the end of 2016, all three Austrian supreme courts formed a unified line of decisions declaring the national monopoly on games of chance to be in conformity with EU law and subsequent decisions of all instances have since followed this assessment.

Nonetheless, in accordance with rulings from the European Court of Justice (ECJ), the question of whether a law is in conformity with EU law may always be posed to the courts and the way in which circumstances have developed after the regulation was adopted must be reviewed and considered anew in every case. With the progression of time new facts may therefore arise that would require each of the Austrian supreme courts to reevaluate their assessment of the conformity with EU law.

New legal circumstances of relevance in this context might be derived from ECJ judgments, such as the Sporting Odds Ltd. judgment of 28 February 2018, Case C-3/17, which
concerned the Hungarian gaming regulations, and one Austrian request for preliminary ruling from the ECJ, which is still pending. Furthermore, recent studies and legal publications provide for new findings and additional facts, which might require courts to (re)-consider and rule anew on the conformity of the national monopoly on games of chance with EU law.

Online Betting
As already outlined, Austria does not have a nationwide betting law. Betting is regulated at a state level and Austria therefore has nine separate betting laws.

The term “betting” is divided into “sports betting” (betting on sporting events) and “social betting” (e.g. betting on the result of presidential elections). “Live bets,” also referred to as “in-play betting,” present a subcategory of sports bets. The aims of the state betting laws do not all include regulations on social betting and/or live betting, which is why the following only pertains to sports betting in the narrow sense.

All states regulate sports betting by issuing licenses, which are not limited in number, and may be granted to anyone who fulfills the necessary conditions as per the relevant state laws.

Of the nine state laws, only two, namely the laws in Vorarlberg and Salzburg, explicitly regulate online sports betting. The Explanatory Notes of these two state laws provide that only sports betting operators, who have their servers within the respective states’ territory, fall within the scope of the state betting law.

This under- and/or non-regulation of nationwide cross-border online sports betting offerings leads to a fragmentation of the legislative framework and does not provide satisfactory legal certainty to national and international online sports betting operators in the Austrian market.

Overview of Recent Developments Impacting on the Status Quo
There have recently been a few developments, which might turn out to have great importance for the Austrian online gaming industry.

Ministerial Draft
A Ministerial Draft amending the Austrian Gaming Act, which also regulates the national monopoly on games of chance, was published in February 2018.

According to the Explanatory Notes, the goal of the Ministry of Finance, which published the draft, was to crack down on unlicensed – meaning non-Austrian licensed – operators of online games of chance. The amendments would have provided the responsible authority with increased enforcement powers, e.g. by allowing them to resort to IP-blocking measures to combat illegal online games of chance offerings. Furthermore, another section would have stated that contracts regarding illegal games of chance are null and void. The consequence would be the unraveling of the contract. The introduction of such an explicit qualification in the Gaming Act would have significantly facilitated the pursuit of legal claims by players. In Austria the statute of limitation for these civil claims is 30 years.

Consequently, the proposed amendments would have had a serious impact on all online operations of games of chance. The Ministerial Draft was, however, withdrawn within a few days after its release due to alleged “technical difficulties”, which gives hope for the matter potentially being reconsidered. At the time of writing, it remained unclear if, when and, if so, with what content the withdrawn Ministerial Draft or a new amendment might be (re-)published. The gaming industry therefore will have to await new developments in this respect.

Supreme Court Decision
Regardless of the possible adoption of the nullity of illegal games of chance contracts into the law, the Austrian Supreme Court has already ruled upon the online games of chance offering from one Maltese licensed operator in 2017.

In its judgment the Austrian Supreme Court stated that payments made by a player on grounds of an illegal and therefore void gaming contract are reclaimable.

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In an election year, when not only the president but also state governors and members of both houses of congress are running, and in a political climate fraught with corruption scandals including the imprisonment of former President Lula, politicians are weary of associating themselves with an activity that is still very much viewed as being closely linked to money laundering and illegal activity. It is always important to remember that Brazil is still the world’s largest Catholic country and that the morality that caused the ban to be instated nearly 80 years ago is still very much present in much of the Brazilian population who fear gambling addiction and mob-like crimes.

Both bills of law seeking the legalization of games of chance have so far had disappointing progress in congress. While the Senate’s Constitution and Justice Commission recently voted against the Bill proposed in such house, significantly reducing its chances of passing, the House of Representatives Bill, which was initially proposed in 1991, is moving at a very slow pace.

In this political scenario, the proposed privatization of the instant scratch-card Lottery LOTEX, formerly run by State-owned bank Caixa Econômica Federal, was viewed by many as an experiment and teaser to show those opposing the legalization of games of chance that a privately run institution could comply with strict compliance standards while at the same time promoting a relevant economic sector which could be used to help the country better its economy by creating jobs and generating revenue for the government in the form of taxes.

The privatization of LOTEX was also viewed as a way to show foreign investors part of Brazil’s potential and prepare the market generally for the much anticipated legalization of games of chance.

Brazil Continues to Scratch its Head With LOTEX Flop

by Neil Montgomery & Helena Calderano
The proposed privatization was, therefore, highly anticipated and its preparation included a road show to the UK and the U.S., public consultations, establishment of a virtual data room and more.

Given the above context, the result of the public bid was disappointing to say the least - no bids were received by the June 25, 2018, deadline. The federal government must now decide whether it will either open a new date for submission of bids, change the terms of the invitation to bid or give-up the privatization altogether.

The main factor in dissuading potential entrants in bidding was recent Provisional Measure No. 841/2018, issued by President Temer on June 12, 2018, which unifies public safety, granting part of the money raised by lotteries to fund public safety measures. While provisional measures are in force as of their enactment, they must be reviewed and approved by congress to continue to be effective within 120 days of their issuance. Therefore, Provisional Measure No. 841/2018 is currently being reviewed by congress, where it has already received 95 proposed amendments, many of which seek to reduce the funds destined to subsidize LOTEX and reducing its pay-out.

The uncertainty caused by Provisional Measure No. 841/2018 has deterred potential bids for the privatization of LOTEX. Given the 120-day deadline for congress to review the Provisional Measure, it must be voted by no later than October 10th, although the vote is currently scheduled for September 12th. It is interesting to note that the election that will decide the new members of Congress will be held on October 7th, which will certainly influence the outcome of the vote of Provisional Measure No. 841/2018 should the same occur prior to the election.

Depending on the outcome of the vote, it may be that a new bid for the privatization of LOTEX will be scheduled. Should the outcome of the vote on Provisional Measure No. 841/2018 require that the terms and conditions of the invitation to bid be changed, the bidding process will take longer to be implemented, with new deadlines for comments and oppositions, which would likely push the bid into 2019.

However, the enactment of Provisional Measure No. 841/2018 is not the only legal barrier causing uncertainty for the privatization of LOTEX. Many states were questioning the Federal Union’s right to grant exclusivity to a nationwide lottery operator before the Supreme Court, based on a law predating the Federal Constitution of 1988 that allowed states to run their own lotteries. Therefore, even if the bid proceeds, the winner may be faced with state-level competition on what was envisaged to be a national monopoly.

To complete this legal pandemonium, the Supreme Court is also currently reviewing the constitutionality of the restriction of games of chance, which predates the Federal Constitution and is argued to have been revoked by the latter. The decision of the Supreme Court in this case will bind all lower courts. Therefore, if the Supreme Court agrees with the argument that the restriction on games of chance was revoked by the Federal Constitution in 1988, Brazil could be faced with a lift on the restriction without any rules or regulations.

With so many opposing interests and views, the outcomes are uncertain and the variables are too many to factor. There is no doubt, however, given the geographical dimensions of Brazil and the size of its consumer market, that despite all the uncertainty, it is still a market to be watched. ◆
On July 20, 2018, the Act to Implement Specified Integrated Resort Areas (the “Casino Implementation Act”) passed the Japanese Diet which legalized gambling to be operated by private entities in Japan. While there are many aspects which have been delegated to the determination by the ministry ordinance (in fact there are 331 items that are up for the ministry ordinance to determine), following are several key points of the Casino Implementation Act.

Legalization of Casinos in Japan
The Japan’s Casino Implementation Bill

by Hitoshi Ishihara

On July 20, 2018, the Act to Implement Specified Integrated Resort Areas (the “Casino Implementation Act”) passed the Japanese Diet which legalized gambling to be operated by private entities in Japan. While there are many aspects which have been delegated to the determination by the ministry ordinance (in fact there are 331 items that are up for the ministry ordinance to determine), following are several key points of the Casino Implementation Act.

Size of casino facilities
While the Casino Implementation Act is still silent on the actual limitation on the size of the casino as this has been relegated to the cabinet ordinance (Article 41 of the Casino Implementation Act), the working team concerning the ruling party’s IR Implementation law issued their opinion regarding the size of the casino floor. Considering that the location and size has yet to be defined, rather than setting a limitation on the absolute value, it was determined that the gross floor area for the casino in IR facilities shall be limited to 3% or less.

The basis of the calculation shall be 3% of the “gross floor area” and not the land area, which should ensure the casino to be “only a part of the facilities.”
Limitation on the number of times of entry and means to verify identity

Chapter VII of the Casino Implementation Act provides for a strict limitation on the number of times of entry and entry fee to prevent problem gambling. While there is no limitation on the number of times of entry for non-Japanese residents, the Japanese residents are limited to three times in 7 days + 10 times in 28 (Article 69 of the Casino Implementation Act), and “My Number cards” shall be utilized for the verification of identity and the number of times of entry (Article 70 of the Casino Implementation Act).

Entry fee

The entry fee will be imposed to Japanese residents in the amount of 6,000 yen, the half of which shall be paid to the national government (Article 176 of the Casino Implementation Act) and the other half to the local government (Article 177 of the Casino Implementation Act).

Levy

While there was a discussion of whether a progressive system could be imposed, since this may reduce the incentive for entities to expand their business by additional investment and presents a risk to discourage investment to realize the commonwealth, the levy was fixed at the rate of 30% of gross gaming revenue, half of which shall be paid to the national government (Article 176 of the Casino Implementation Act) and the other half to the local government (Article 177 of the Casino Implementation Act).

Number of IR areas

Article 9 of the Casino Implementation Act provides that the number of location shall be limited to three (3). However, the Casino Implementation Act provides that after five (5) years have passed since the first designation, the Casino Implementation Act as a whole shall undergo a review and after seven (7) years have passed since the first designation of the IR, the number of location will be specifically reviewed giving consideration to local areas which desire and are preparing to establish the facilities while securing a period for determining the effect of IR (Article 4 of Supplementary Provisions to the Casino Implementation Act).

Relationship with cities where the facilities will be built

The Casino Implementation Act provides that the enforcement policy to be prepared by the local government requires consent of the city where the IR will be actually located (Article 6 of the Casino Implementation Act), requiring a method of consensus-building at the ground level.

As mentioned above, while the details on how to implement casinos are to be determined by the ministry ordinance, some of the major items which have been debated for some time are now clarified by the Casino Implementation Act to a certain extent, and it should be fair to say that Japan has taken a big step closer for the first ever opening of the legalized casinos.

Austrian Online Gaming

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Government Programme

Elections took place in Austria in autumn 2017 and the new government (coalition between the Austrian People’s Party and the Freedom Party of Austria) presented their joint “Government Programme 2017-2022.”

One of the defined goals of the new government is the “incorporation of sports betting operators (online sports betting) into the GSpG [Austrian Gaming Act] and purposeful dedication to sport.”

A Government Programme is inherently not very detailed and only presents objectives and implementation measures from a headline perspective. Nevertheless, including online sports betting in the agenda of the current government acts as a positive signal.

Looking Into the Future

The Austrian online gaming regulations are currently characterized by a prevailing fragmentation in the betting sector and a highly challenging situation impacting on online games of chance.

We are noticing an emergence of new facts, which could lead to a reevaluation of the conformity of the national monopoly on games of chance with EU law by all three Austrian supreme courts.

Recent developments such as the Government Programme and the (withdrawn) Ministerial Draft are strong indicators for upcoming changes shaping the Austrian regulatory landscape for online games of chance as well as for online betting.

Exciting times therefore lie ahead for the gaming industry in Austria.
Each autumn, International Masters of Gaming Law (IMGL) recognizes outstanding regulators based on stringent standards, including preeminence in the regulatory field and their noteworthy contributions to the overall body of regulatory work. The regulators are selected from various jurisdictions internationally based on a rigorous nomination and review process with the possibility of a regulator being chosen from each jurisdiction. The categories are Europe, North America, South and Central America, Australasia, Indian country, and Evolving Jurisdictions. A regulator is not necessarily chosen from each category and each year they are selected only if they receive the required nomination and meet the demands of the review procedure.

The specific criteria for the selection process include that the overall body of work as a regulator be exceptional and that the regulator make contributions to the gaming industry as a whole while demonstrating noteworthy achievements in the regulation of industry. The nominee must also provide a stable regulatory environment in the jurisdiction, be identified as a person of high integrity, and demonstrate service to the community.

Through this annual selection process IMGL continues its mission of “advancing gaming law through education” by selecting regulators who reflect a similar mission in their management style while serving as role models in the regulatory environment. This year’s recipients of the award for IMGL Regulator of the Year certainly reflect these characteristics in their professional approach to the task of regulating a challenging and diverse gaming market.

IMGL is proud to announce the 2018 Regulators of the Year:

- **Regulator of the Year - Australasia:** Michael Sarquis, Executive Director, Office of Liquor and Gaming Regulation, Department of Justice and Attorney General, Queensland;
- **Regulator of the Year - Americas:** Sara Gonso Tait, Executive Director of the Indiana Gaming Commission;
- **Regulator of the Year - Indian Country:** Gordon Dickie, Executive Director, Seminole Tribal Gaming Commission;
- **Regulator of the Year - Europe:** Juan Espinoza Garcia, Director General for Gambling Regulation, Ministry of Finance, Government of Spain.

There are several special awards for 2018.

- **The Outstanding Achievement Award for the Americas - A. G. Burnett,** formerly with the Nevada gaming commission; and
- **The Outstanding Achievement Award for Europe - Joseph Cuschieri,** formerly with the Malta regulatory agency.

IMGL has presented the Regulator of the Year awards since 2002. For a complete list of all past recipients, please visit our website at IMGL.org.
REGULATOR OF THE YEAR – AUSTRALASIA

MICHAEL SARQUIS

Executive Director, Office of Liquor and Gaming Regulation, Queensland

In October 2006, Mr. Michael Sarquis held the position of Executive Director of the Queensland Office of Gambling Regulation (QOGR), but was soon appointed Executive Director of the Office of Liquor and Gaming Regulation in July 2008. His responsibilities include managing the gaming and liquor regulatory license and compliance regimes and the Gambling Community Benefit Fund and implementing key elements of the responsible gambling strategy and harm minimization programs. Among the gambling operations regulated by his office are four casinos, an exclusive land-based and online betting operator, a sole land-based and online lotteries operator and gaming (or slots) machines which are installed in clubs and pubs throughout Queensland.

In addition to being a current member of the Gambling Community Benefit Fund Committee, he is a member of the Government’s Responsible Gambling Advisory Committee and is a former Vice President of the International Association of Gaming Regulators (IAGR).

Among other areas in gaming, Mr. Sarquis has been involved in the implementation of Australia’s first model for the regulation of online gaming, a regime that resulted in a number of license applications in the late 1990s. It was superseded by Australia’s Interactive Gambling Act that was introduced in 2001 and prevented the provision of many online gaming services to Australians.

Since 2006 his office has overseen considerable changes in gaming and liquor regulation including the merger of the state’s liquor and gaming regulatory regimes, a red tape reduction initiative, expedited online client services, Tackling Alcohol Fueled Violence Strategy, and partnering with other state agencies to procure the development of the $3.6 billion Queen’s Wharf Brisbane integrated resort including the issuance of a casino license.

IMGL President Jamie Nettleton states, “The Queensland regime is recognized globally by regulators as being of the highest standard, particularly in relation to its probity investigations. This is due principally to the efforts of Mike and his team.”

When asked about his favorite position in the gaming industry, Mr. Sarquis states his favorite role was as Executive Director of QOGR where he concentrated on the gambling industry working closely with industry on all regulatory aspects of casino operations, gaming machines, keno, wagering, online gambling, lotteries and charitable and other not-for-profit gaming. This role also led to his appointment to the Gambling Community Benefit Fund, a fund to provide grant funding for worthy projects to the not-for-profit sector, currently providing grants in excess of $54 million per year.

Regarding the roles that best prepared him for a career as a regulator Mr. Sarquis says, “My project roles in the licensing of two casinos and in particular the Director, Compliance position. Those roles provided comprehensive exposure to all aspects of a gaming regulators’ responsibilities.”

A meaningful achievement in the industry occurred in 1996 when Mr. Sarquis was part of a small team involved in a major review and restructuring of the gaming machine regulatory arrangements in Queensland. The amendments to the regulatory structure for gaming machines in Queensland included a progressive tax system, transferring ownership from state government to licensed gaming machine sites, increasing the number of machines for hotels and clubs, and increasing the return to player percentages, and changing administrative procedures to ease the regulatory burden.

Responding to a question regarding what Mr. Sarquis considers his greatest challenge as a regulator, he responded, “In 2008 integrating the liquor and gaming agencies into a functioning cohesive unit and transitioning the agency to be a more client service focused organization and finding the right balance to meet the needs of the community government and industry.”

Mr. Sarquis further states that regulators need to be “agile and responsive to their environment... the need for that agility is even more apparent now with the rate of change accelerating as digital technology impacts gambling products, including a convergence of products and the array of different online and digital products being introduced to the market...”

The speed of change in technology creates a challenge for regulatory standards and taxation models. “For most regulators, their responsibilities extend beyond harm minimization, ensuring the integrity and fairness of games and the probity of those conducting gaming to include ensuring the community, government as well as industry benefit from legal gambling. Consequently it is important that policy and legislation is updated to cater for this quickly changing environment.”

Sharing general advice to attorneys, industry executives, educators and regulators, Mr. Sarquis states, “Organizations such as IMGL are well placed to influence this policy and legislative development.”
Early in her gaming career Sara Gonso Tait accepted a staff position with the Indiana Gaming Commission in 2011 and was promoted to Director of License Control, charged with combating illegal gambling operations. She was later promoted to the agency’s top legal position in 2014, serving as Chief Legal Counsel until her appointment as Executive Director. She is the chief regulator of Indiana’s 13 casinos, an industry that brings in more than $500 million in tax revenue each year to the state. Gaming is Indiana’s fourth largest source of revenue and employs over 12,000 people.

Sara Tait received a Bachelor of Arts degree in psychology from Miami University, Oxford, Ohio, and her law degree from Indiana University Robert H. McKinney School of Law. She is not only an outstanding regulator but also an accomplished athlete, attorney and mother of three children.

Mrs. Tait states, “The General Counsel position unexpectedly became vacant when I was eight months pregnant with twins and the Executive Director position became available less than a year later.” These opportunities came at what appears to be less than ideal times, but she states, “I believe more women should have a seat at the table. To not have pursued these opportunities would have required me to act against my own convictions.” Pursuing these opportunities as a mother of three children under four years of age reflects in her strong conviction.

As general counsel Sara Tait was tasked with implementing a “cut red tape” initiative and making substantial revisions to the rules. She states, “I became passionate about eliminating requirements that serve neither the IGC nor the gaming industry.” She considers one achievement to be maintaining a strong regulatory jurisdiction while aggressively initiating discussions with the industry about reform. Sara Tait states that she was challenged by new initiatives to contribute to the economic development of Indiana gaming; gaming in her state is a huge driver of revenue and employment, particularly in economically challenged areas where manufacturing has declined. “Providing stable and adaptive regulatory oversight contributes to the success of the industry and our state.”

One of her greatest challenges is being responsible for administering and creating a regulatory scheme and often creating something for which there is no model. Of her management style, Sara Tait states, “I am approachable manager with an open-door policy. I try to foster teamwork through a collegial and collaborative environment.”

Discussing challenges to regulators in general, Sara Tait says, “Open communication with stakeholders is key to resolving issues whether from casino operators to legislators to agency employees.” Sharing advice to regulators and those they regulate, she believes building relationships in other jurisdictions is very important.

“I believe more women should have a seat at the table. To not have pursued these opportunities would have required me to act against my own convictions.”

Sara Tait’s management style provides predictability and continuity, both admirable objectives. Tom Auriemma, a gaming consultant states, “Indiana should be proud of Sara’s accomplishments. She represents the first female casino regulator in North America that IMGL has recognized for this prestigious honor.”
Gordon Dickie’s career in gaming began in September 1980 when he joined the Nevada Gaming Control Board in Las Vegas. Prior to that, he was a San Diego police officer at the age of twenty-two. He states, “I loved the job and the officers I was lucky enough to work around.” After leaving the San Diego Police Department as a result of an injury, Mr. Dickie was asked if he would consider working with the Nevada Gaming Control Board to which he stated, “I’m not into fish and game.”

While at the Nevada Gaming Control Board, Mr. Dickie worked in an undercover unit and in the special investigations and intelligence unit. He was later recruited by Hilton Hotels Corporation to help start up their corporate security division where he learned about casino operations, surveillance, F & B, marketing, purchasing and entertainment. After eight years with Hilton, he worked various positions in the industry before joining Harrah’s in 1996 as Director of Security and Surveillance.

He next moved to Oregon to work in management at a tribal casino and later to New Mexico to work as General Manager with another tribe and then returned to California as a regulator with the Cabazon Tribe. In 2002, he returned to Las Vegas as Vice President of Compliance and Government Affairs for Shuffle Master.

Later, in 2006 Mr. Dickie was approached to join Cadillac Jack and to assist with licensing in Pennsylvania. In researching this offer, Mr. Dickie discovered through rumor and tabloids that Russian ownership was allegedly associated with Adnan Khashoggi, the arms dealer and fixer, and Bin Laden. Mr. Dickie immediately contacted his friend and former Gaming Control Board agent with expertise and a law degree, John Maloney. Mr. Dickie states, “Together John and I held the compliance and licensing in place to keep Cadillac Jack alive until they sold the company to Amaya.”

Following this experience, in September 2014 he accepted a position and soon became Executive Director of the Seminole Tribal Gaming Commission in 2015.

Mr. Dickie has without a doubt a varied and successful gaming regulatory background. He says the position that best prepared him to be a regulator was his law enforcement training and experience as a police officer. “I have been involved in some very intriguing investigations, arrests, and interviews of very important gaming names but at the end of the day, I must say being able to mentor tribal and non-tribal members on how to be the best regulator is most meaningful.”

Mr. Dickie further says that his greatest challenge as a regulator is protecting the assets of the tribal nation that is dependent on the Tribal Gaming Commission to ensure that those assets are protected for generations to come.

Mr. Dickie’s advice to readers of IMGL publications is to “ensure the integrity of gaming through the use of accounting, administrative and internal controls to assist regulators and casinos in monitoring gaming operations and the licensing process to help identify and deter unsavory opportunists and organized crime.” Kevin Quigley of IMGL states of Mr. Gordon Dickie, “Gordon’s broad-based experience in Indian gaming regulation and compliance, and along with his vast experience with commercial gaming interests and the Nevada gaming industry over a three decade career dedicated to compliance and gaming regulation enforcement, has allowed him to develop a deep understanding of many different regulatory issues and practices. He has shared this deep body of expertise with many in actively promoting best practices for tribal regulators countrywide.”

Finally, when notified of the IMGL Regulator of the Year Award, Mr. Dickie eloquently responded, “I have spent the past 39 years in the casino industry, half of it as a regulator and or compliance executive both in state and tribal jurisdictions. I have been mentored by the best in the industry and counseled by some of the best gaming lawyers in your organization. My law enforcement career, my regulator career, my compliance career, my casino operations career, manufacturing career have finally culminated to this great honor. I absolutely and humbly accept this award.”
Mr. Juan Espinosa García was appointed in December 2016 by Royal Decree as Director-General for the Regulation of Gambling. Prior to his term as Director General, Mr. Espinosa served as Deputy Director General for Gambling Regulation. In addition, he also has extensive professional practice in the field of design and analysis of regulation for all sectors of economic activity. He holds a degree in law from the University of Grenada, a Master of Arts in Economics for Competition Law from the University of London – Kings College, and a Master of Social Sciences in European and International Politics from the University of Edinburgh.

Early in his career as Deputy Director of Regulatory Affairs, Mr. Juan Espinosa worked to ensure the viability of the second licensing process in Spain, introducing new license operators to the market. He further obtained approval of two regulations for online slots and betting exchange that have significantly increased the size of the Spanish market since 2015. Among other accomplishments, Mr. Espinosa also launched the licensing process for online operators and achieved a reduction in the gambling tax to not only enable operators to have better economic results in Spain but also to offer better odds and prices to players.

Under his leadership DGOJ’s website offers total transparency including criteria on controversial aspects and decisions on licensed operators. In addition, under his leadership Spain has approved agreements on shared liquidity with Portugal, France, and Italy for poker products. Mr. Espinosa is also working with regulators from Latin America where the Spanish regulatory model is a main reference. IMGL member Santiago Asensi, Managing Partner of Asensi Abogados states, “I can confirm that in Columbia, the first country in the region that has fully regulated gambling, as well as in Peru, the first draft of the Gaming Act - which is not public yet - is full of similarities with the Spanish regulation.”

Commenting on his achievements as a regulator Mr. Espinosa says, “For me, the biggest achievement has been to lead the development and consolidation of online gambling in Spain via regulation witnessing the market consolidate from €229 million in 2013 to around 700 million in GGR presumably in 2018, whilst at the same time keeping it a largely socially sustainable industry, with prevalence rates being maintained in the range of 0.3 to 0.5% according to different studies.”

Speaking of his greatest challenge as a regulator, he refers to running the whole organization with public interest at the forefront “but at the same time a business-like mind set in terms of priorities, efficiency and efficacy…” He also refers to managing dichotomies in regulation, the public versus private dimension, the monopoly versus the competitive market, the land base versus remote, regulation versus innovation, market versus protection of players and society itself. He continues stating that bridging the gap between what best serves the purpose of public interest and how public stakeholders and society perceive gambling is not always easy and gambling regulators find themselves in that position every so often.

He refers to two main challenges that regulators deal with: first, how to strike a balance between allowing the activity and protecting society sufficiently, and second, technology and the risk of regulation arriving too late only to become obsolete soon thereafter… There is the challenge of making technology better to protect players and better serve the public interest. “A good example is how to improve standards in terms of responsible gambling or fraud via artificial intelligence and sophisticated data management.”

Discussing his advice to regulators he states: leave preconceptions and biases aside (be pragmatic); develop evidence-based approaches to decide regulatory outcomes; and do not try to reinvent the wheel but fearlessly look at what is being done elsewhere.

As a final comment to attorneys, industry executives, educators and regulators, all readers of IMGL publications, he states, “Please be sure that whatever the responsibilities, scope and duties - whether to shareholders or clients, - to remember that we are all part of a sensitive industry and how professional and caring we are does have a bearing on the whole phenomenon of gaming and gambling.”

“Please be sure that whatever the responsibilities, scope and duties – whether to shareholders or clients, – to remember that we are all part of a sensitive industry and how professional and caring we are does have a bearing on the whole phenomenon of gaming and gambling.”
A.A. Burnett's career in gaming started in 1998 when he worked as an agent for the Nevada Gaming Control Board (GCB). His early career also included a position as Senior Deputy Attorney General and Deputy Chief of Corporate Securities of the Gaming Control Board. He also worked with various state agencies including the Nevada Gaming Commission and the Nevada Commission on Sports.

He was appointed as a member of the board in 2011 and shortly thereafter was appointed as Chairman of the Board in 2012. He served with the GCB until December 2017. During his service on the GCB, Mr. Burnett was the state representative before the Nevada legislature on gaming matters and was responsible for negotiating sovereign tribal compacts. Among the many issues before the board during his service were growth of the Esports industry, mobile wagering, skill-based gaming, legalization of medical and then recreational marijuana, and daily fantasy sports.

Regarding the tragic events of October 1, 2017, IMGL member Stephen Martino states, “He was consistently available and in constant communication with MGM resorts as well as federal, state and local law enforcement. I’m confident in saying that no gaming regulator has ever faced a tragic incident like this. Many of A.G.’s decisions during this time were ‘focused on ensuring the thoroughness of the investigation and the ongoing stability of the property for its guests and employees.’

Discussing his greatest achievement as a regulator, Mr. Burnett states, ‘I am proud that as an agency we were able to constantly move and shift according to the demands of the gaming environment.’ Under his leadership the board confronted new issues in technology and investigative issues directly: ‘We were able to promulgate regulatory changes that kept Nevada at the forefront of gaming regulation.’ Mr. Burnett says that the greatest challenge for a board chairman is managing time and people and keeping up with the constant barrage of information. He managed six divisions, 400 employees and 3000 gaming licenses. ‘Time management and information management are critical to stay in front of complex issues.’ Mr. Burnett further states, ‘Staying ahead but keeping your cool is a great challenge.’ There will always be challenges and Mr. Burnett states that the agency is working with multi-billion dollar corporations and dealing with new forms of technology and new forms of financing. ‘It is important to be educated on all issues and to research as much as you can.’ When pressed to give advice to other regulators and those they regulate, Mr. Burnett said, ‘Be fair. Be impartial. Study the issues and know the law. Stand your ground and do what is right.’

Sharing an anecdote from his time as director, he recalls a licensing hearing for an individual that did not go well for the individual. ‘He was very upset and he turned up in front of the office later with a sign in protest and yelled, ‘down with A.G. Burnett and all his minions.’ I remember laughing thinking, ‘I have minions?’

Finally sharing advice to attorneys, industry executives, educators and regulators, Mr. Burnett’s response appears to be his personal motto; ‘Be honest. Be straight up and don’t hold back. Don’t play games. Any problem can be fixed. Just do it openly and honestly. Confront everything head on and don’t shirk your duties.’

OUTSTANDING ACHIEVEMENT AWARD
JOSEPH CUSCHIERI
Malta

In 2013, Joseph Cuschieri was appointed Executive Chairman of the Malta Gaming Authority. Prior to that appointment he served in many executive positions in the private and public sector. Mr. Cuschieri has recently been appointed and currently serves as Chief Executive Officer of the Malta Financial Services Authority.

Mr. Cuschieri is a certified public accountant by profession, holding a Master of Business Administration degree and an Advanced Diploma in Management Accounting. Mr. Cuschieri also served as a member of the block chain task force where he assisted in developing a new regulatory framework for virtual currencies and distributed ledger technology.

When Joseph Cuschieri joined the Malta Gaming Authority in 2013, gaming in Malta was a growing industry with a need for modern and updated laws and regulations to replace the regulations adopted over ten years previously. Many developments had occurred in gaming technology markets and consumer behavior during that time, particularly in online gaming. According to one gaming attorney who works in Malta, there was a ‘lack of noteworthy judicial precedent as well as the lack of a coherent set of written and publicly available policies.’ Presently Malta has experienced considerable success in the international remote gambling market. During his tenure, Mr. Cuschieri encouraged healthy competition and laws which set best practice standards that would work into the future embracing technology.

Mr. Cuschieri’s mission was to transform the authority, set a new direction and modernize gaming regulations and laws. He states, “Continuous improvement in the effectiveness of the regulator’s supervisory processes is key to minimize the level of risk exposure and advance consumer protection. Reputational risk is key for any regulator, and it needs to be protected through the integrity and the quality of governance and oversight.” Among the areas of focus for Mr. Cuschieri were regulated skill games, particularly fantasy sports, block chain technology and crypto currencies, risk management and governance. Use of those initiatives was developed to address anti-money laundering including guidelines for the future.

During Mr. Cuschieri’s tenure as Executive Chairman, the Malta Gaming Authority’s focus on reforming the gaming sector included legislation which led to the enactment of the new Gaming Act which came into force in August 2018.

Mr. Cuschieri states, “The greatest challenge to regulators is ensuring a high level of consumer protection and AML supervision without stifling innovation and sectoral investment in technology and user experience.” When asked about his advice to regulators and those they regulate, Mr. Cuschieri states that there should be a focus on “evidence-based regulation” to ensure better quality in decision making and policy outcomes. “The regulated, on the other hand, need to play their part by investing more in self-regulation and being more transparent with regulators to ensure a higher level of trust and integrity in the entire supply chain within the gaming ecosystem.”

James Scicluna, an IMGL member who practices in Malta states, “Joe is regarded by those who have had professional dealings as a person of upmost integrity, demanding but fair, driven yet measured in his approach, a person with a private sector drive, political astuteness and a keen awareness of his responsibilities as a regulator.”
I-Introduction: Responsible Gambling in the United Kingdom - the aftermath of entry into force of Gambling Act of 2005

After the Gambling Act of 2005 came into force, the rate of problem gambling in Great Britain has remained largely unaltered (0.5% to 0.8% of the adult population) between the time of the first British Gambling Prevalence Survey in 1999 and the most contemporary consolidated Health Surveys in 2012 (see Sproston et al, 2000; Wardle et al, 2007; Wardle et al (2011); Wardle et al (2014), Gambling Commission, Public Perceptions of Gambling, 2015, Sproston et al, 2000; Wardle et al, 2007; Wardle et al (2011); these data are ordinarily used to advise that despite the augmentation of the gambling market (and the creation of new products), no supplementary harm has been caused. There is a wide range of reasons to exercise caution when considering this perspective. For one, it disregards research on adaptation– that in the absence of supply-side change, rates of problem gambling will decay over time as exposure effects wear off. Stable rates of problem gambling may not necessarily signify an absence of additional harm. The very facts of the rapid expansion of gambling’s availability, the significant growth in expenditure and the shift in consumption towards fast, repetitive forms – as well as the increasing physical dislocation between operator and customer – should prompt further enquiry.

In its 2010 report, the Australian Productivity Commission identified a number of limitations of prevalence survey findings, expressing concerns about representativeness, the likelihood that problem gamblers would answer questions honestly, the subjective nature of any scoring mechanism and the appropriateness of using diagnostic screens designed for clinical settings. Some have questioned whether asking people to assess their own behaviour – even where done honestly and accurately – is likely to be effective in identifying harm. As Shaffer (2001) wrote, “One of the primary concerns about DSM-IV centers on how it has advanced the reliability of psychiatric diagnosis at the cost of diagnostic validity.” Lastly, “problem gambling screens are designed to capture something of the individual’s relationship with gambling. They do not attempt to identify actual harm to the gambler or to others – such as family members or employers. Unfortunately, there is no agreed framework in place to understand the true extent of gambling-related harm in Britain (just as there is no yardstick for its benefits).”

Do Casinos Owe a Duty of Care to Problem Gamblers in the UK?

Beware of What You Wish!

By Hugo Luz dos Santos
II-Background -
What is problem gambling?
First things first. How can one outline an accurate definition of problem gambling or problem gambler?7

Despite the existence of problem gambling, there have been continuous difficulties with establishing a broadly accepted definition. Conversely, despite being widely used, the terms “responsible gambling” and “responsible provision” are also scarcely defined. Albeit, differences in definition are paramount because they impact solutions provided to solve (directly or indirectly) the problem.8

For illustration, the Australian Productivity Commission (1999), inserted a wide assortment of definitions of problem gambling that variously highlighted either symptoms (e.g., loss of control, illusion of control about the outcome of the game, loss chasing behaviour) or effects (e.g., disruption, turmoil, and damage to personal, family or work life, constant work absence, domestic violence, suicide, murder). One broadly accepted definition is that carved out by the Victorian Casino and Gaming Authority (VCGA) which emphasizes that problem gambling occurs “where a person’s gambling activity gives rise to harm to the individual player, and/or to his or her family, and may extend into the community.”9

On the other hand, “Problem Gambler” is widely characterized as any person whose ability to resist the impulse to gamble has been impaired, or whose gambling has seriously compromised, disrupted, or damaged personal family (domestic violence, suicide), or vocational pursuits.10

As outlined above, while gambling may be considered by many as a dazzling form of entertainment and an amusing leisure pursuit, its core nature encompasses a wide range of social risks. Problem gambling (PG) behaviours take place when individuals gamble in a manner that exceeds their means, for more money than they can afford and spending excessive time gambling, all which can cause detrimental effects on the lives of the gambler and of his family (if any). Such effects may encompass overlooking family, job concerns and duties, health, hygiene, and even employment, as well as financial obligations, which vigorously portray the deleterious phenomenon of Problem Gambling or excessive gambling as not only an issue at the individual level, but also for wider society.11

III-Discussion –
Do casinos owe a duty of care to problem gamblers in the UK: paradigmatic case
Calvert v. William Hill (UK High Court, 2008)
A rather alluring test case concerning the (putative) duty of care owed to problem gamblers and the public was heard in the United Kingdom High Court in 2008. It related to Graham Calvert, a compulsive and excessive gambler who eventually reached debts totaling over £2 million. The case orbited around Mr. Calvert’s early request to William Hill, with whom he placed the bulk of his bets, to carry out casino “self-exclusion.” This means that, at the gambler’s request, the bookmaker shuts down the excessive gamblers’ account, ordinarily for a period of six months, and bans or restricts them from placing any bets for the same period. The main aim of this facility is to give problem or excessive gamblers a feasible way to curb their excessive gambling problem once they have acknowledge that their gambling activity is spiraling out of control and becoming a problem. “Mr. Calvert sued William Hill because, two months after he excluded himself, he was able to open a new account in his own name, and continue gambling. He claimed that the bookmaker had breached the duty of care owed to him when they allowed him to return to gambling. The judge eventually dismissed Mr. Calvert’s claim.”12 There is a wide range of reasons for this which provide an insightful explanation of the very concept of the duty of care. In the first instance, the case portrayed the gradations (or shall we say layers?) of this duty. The judge stated that there was a double-layer duty in the case of bookmakers or even casinos; he subsequently ruled that there was a lesser duty owed to cash gamblers (customers) than there was to credit customers.13

This case depicts the intricacy of the legal arguments concerning duty of care and its close relation to negligence and compensation (redress) claims in the United Kingdom. Albeit Calvert’s case was unsuccessful, it is fully expected to spark an overhaul (or more modestly, a rethink) of both gambling legislation and the bookmakers’ internal and commercial policy. More broadly, it is likely to become a touchstone case for other breach of duty claims.14

Our question remains fully unanswered: do casinos of the United Kingdom owe a duty of care to problem gamblers? One ought to emphasize this is a murky question. One cannot pro-

Continued on next page
provide a straightforward and plain answer to this intricate and complex issue. Moreover, the pointed out difficulty has been felt elsewhere.\footnote{1}

Generally, as to the claim in negligence, while casinos cannot investigate every problem gambler, there might exist an obligation to do so where a gambler is unmistakably addicted to (excessive) gambling. Moreover, the factual finding that casinos would go out of business requires an evidentiary record as does the conclusion that indeterminate liability\footnote{2} would be the outcome of acknowledging a duty of care limited to players or gamblers who are conspicuous problem gamblers. Noticeably, Courts of Common Law use the analogy of commercial alcohol providers who owe a duty to blameless third parties to demonstrate that it is not transparent and evident that the claim will fail.\footnote{3}</p>

"On the other hand, in the duty of care analysis, there is a possibility that foreseeability may be established. However, there is no reasonable prospect that sufficient proximity could be found and, even if it were found, there would be residual policy concerns of indeterminate liability which would negate a duty of care."\footnote{4}

Finally, one should not forsake or disregard the self-responsibility of problem gamblers. Although their mental health disease (problem gambling) should be taken into account, that does not override the axiom that problem gamblers should spare no efforts to refrain themselves from resuming gambling in the casinos of United Kingdom or elsewhere. When it comes to resuming gambling, self-restraint is a word that problem gamblers should put in practice rather than just vaguely pronouncing it.

It is conceivable that casinos should employ a considerable amount of effort in order to proactively identify the problem gamblers and prevent them from resuming gambling in their facilities, especially whenever problem gambling foreseeability has been thoroughly established. However, in light of the United Kingdom legal framework, one can scarcely asserts that casinos do owe a boundless duty of care to problem gamblers. Stating otherwise might just exonerate problem gamblers from their own unwitting decisions. Placing a limitless duty of care onto casinos will shift the burden from the self-responsibility of problem gamblers altogether and that is not acceptable.

As a result, before one can foresee it, a Pandora’s box will open of unlimited liability of casinos of United Kingdom regarding problem gamblers: do we really want that to happen? Beware of what you wish!

**IV- Conclusion**

The gaming industry has been good for the United Kingdom, as the thriving of that leisure industry has brought along fun for all, the ultimate purpose of casinos worldwide.

Nonetheless, the gaming leisure industry has also brought along some social costs to United Kingdom, such as problem gaming or excessive gaming. Although there can be room for an exquisite temptation to place the burden onto casinos regarding preventing problem gamblers from resuming their noxious and harmful gambling activity, the preferable approach should be the one that squares the self-responsibility of problem gamblers to seriously exercise their self-restraint, with the obligation of the casinos to proactively identify and track down the problem gamblers and, when feasible, to prevent them from returning to the casinos and placing their bets.

Other exotic (shall we say hazardous?) approaches would be prone to open the deleterious Pandora’s Box of boundless (and unacceptable) liability of casinos of United Kingdom.\footnote{5}

\footnote{1} PhD Researcher of the Faculty of Law of the University of Macau (China)/Editorial Board Member of International Journal of Law and Society, Science Publishing Group (New York, USA)/Chair of the Board of Vantage 10, Leading in Dispute Resolution Worldwide (London, United Kingdom); Magistrate Public of the Public Prosecutor (Portugal), on long term sabbatical leave.

\footnote{2} DAN WAUGH, “Budd Revisited – Gambling in Great Britain 15 years on”, in: *UNLV Gaming Research & Review Journal*, Volume 20 Issue 2, pp. 141-161, (2010), whose research we have been following very closely in this point.

\footnote{3} DAN WAUGH, “Budd Revisited – Gambling in Great Britain 15 years on”, cit. pp. 141-161.

\footnote{4} DAN WAUGH, “Budd Revisited – Gambling in Great Britain 15 years on”, cit. pp. 141-161.

\footnote{5} DAN WAUGH, “Budd Revisited – Gambling in Great Britain 15 years on”, cit. pp. 141-161.

\footnote{6} DAN WAUGH, “Budd Revisited – Gambling in Great Britain 15 years on”, cit. pp. 141-161.

\footnote{7} DAN WAUGH, “Budd Revisited – Gambling in Great Britain 15 years on”, cit. pp. 141-161.


\footnote{10} HELEN BREEN/BULUTJENS/HING, id. p. 44.


\footnote{13} J.A. ARANSON, *Duty of Care*, (2014), p 1, we have been following closely on this matter.


\footnote{16} For instance in June, 2016, the Court of Appeal of Canada released its decision in the *Paton Estate v. OLGC*, 2016 ONCA 458 regarding the candard issue of duty of care of casinos to wards problem gamblers.

\footnote{17} Although this decision (*Paton Estate v. OLGC*, 2016 ONCA 458) may be regarded as an jurisprudential development of the ‘concepts of foreseeability and proximity in negligence’, the vast majority of the Court of Appeal did not go so far as to conclude that casinos owe a duty of care to third party victims of problem gamblers but, rather, only determined that the question should be answered with the benefit of a full factual record. Moreover, the vast majority’s decision on the verismilitude of the claim in negligence appears to have been based fundamentally on its newness as opposed to a full application of the established *Anns/Cooper* analysis (that we have mentioned earlier in this article) used to ascertaining the existence of a duty of care. An unrestricted application of the *Anns/Cooper* analysis has been undertaken by Associate Chief Justice Hoy, who, in discord, concluded that there was scarce proximity between the plaintiffs (problem gamblers) and defendant (casino) and that the proclaimed duty of care would unclotne the defendant to ‘liability in an indeterminate amount for an indeterminate time to an indeterminate class’ see DAVID ELMAN/LAURA DAY, *Duty of Care to Victims of Problem Gamblers not “Hopeless”*, (2016), p. 1.
MEMBERS IN THE NEWS

Congratulations to IMGL Members in the News

**Tom Foley**, one of IMGL’s earliest members and acclaimed Indian gaming attorney, has announced his candidacy to be the next Minnesota Attorney General. In addition to his 20+ years gaming law private practice, Tom has had a multi-faceted distinguished law enforcement and public service career in enforcement initiatives and programs. Good luck Tom!

**Glenn E. Wichinsky** a long time IMGL member was recently invited to teach a course in Gaming Law and Regulation during the spring 2019 Intersession at the University of the Pacific, McGeorge School of Law in Sacramento, California. Glenn states, “It is an exciting opportunity for me to teach my legal specialty to the student body of the law school where I had once attended and earned my law degree.”

**IMGL founder Anthony Cabot** gaming law expert joins the UNLV William S. Boyd School of Law as Distinguished Fellow in Gaming Law.

**Ellen Whittemore** has been officially named Wynn Resorts general counsel. Ellen has more than thirty years’ experience in gaming law in Nevada.

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The modern history of Las Vegas casinos dates back to 1931. That course of nearly nine decades has been recorded by myriad journalists, academic historians, criminologists, economists, and psychologists. Yet the writers (including this reviewer) have for the most part confined their writings to chronologies of casino properties, ownership events and notable personalities like mobsters Bugsy Seigel and Meyer Lanky, movie mogul Howard Hughes, and entrepreneurs Kirk Kerkorian and Steve Wynn. These recordings of personalities, places and events leave readers with a true notion that Las Vegas is a special location for entertainment and excitement but also with a void. Las Vegas has been a fast growing community of “real” people carrying on activities of “real” lives both tied to the casinos as well as outside of their milieux.

This void has now found a “real” degree of fulfillment in the words of novelist Laura Mc Bride on the pages of her book ‘Round Midnight. Mc Bride does use a platform of academia as she is a Ph.D. professor of English at the College of Southern Nevada. However her “platform” goes beyond mere historical events untied to direct human involvement. In Las Vegas people live and carry on the ordinary activities of life. Other writers often overlook realities highlighted by Mc Bride’s work.

She looks at Las Vegas through the prisms of racial segregation, troubled public schools, broken highways, and ineffective health care and hospitals. Unlike most other academics examining the local scene, she tells of a history using stories she generates with a focus upon a fictional El Capitan Casinos with its “Midnight” showroom and theater, lounge and cafe. Around (‘Round) this venue she places the main personalities of the book. These included the top executive and casino owner who worked his way up from a manual labor job that began at age 12 to an industry owner. Beside the owner on his rise to the top was his wife, who focused her attention on entertainers in the Midnight venue. The husband and wife found a touch of magic as they discovered and then promoted a charismatic singer who (it was in the late 1950s) happened to be an African American. His race ties the story to a time when Las Vegas was a racially segregated city. The story draws in the brief history of the integrated Moulin Rouge casino on the city’s north side. The African American players as well as prominent entertainers were not welcome on the Las Vegas Strip—except when they were performing. By the onset of the 1960s, civil rights leaders were responding to segregation with protest parades and threats to close Las Vegas down. The leader of the El Capitan joined in their cause, especially after the murder of his top assistant, an African American he had befriended in his youth.

Following the murder, the casino owner reached out to his assistant’s wife. When his own wife gave birth to an illegitimate daughter fathered by the charismatic singer, the chief executive in effect kidnapped the child and clandestinely placed her with his late assistant’s wife. As decades passed the child stayed out of sight while developing into an effective teacher in Las Vegas schools. The owner’s son became the casino chief executive after the death of his father.

One casino story revolved around a high roller who was fully “comped” whenever he visited Las Vegas and the El Capitan. A rich loner, he had sponsored a “mail order” bride from the Philippines. He brought her to the casino, but as fate had it, he was “using her” but he had not bothered to actually marry her. An interesting gambling story developed as the loner gambles at tables and leaves his “bride” to play the machines on her own. Luck takes a twist as she hits a “megabucks” machine and has a win worth over a million dollars.
The casino has to follow the law and award the entire jackpot to the woman—who quickly disappeared from the rich loner. She stayed hidden in Las Vegas living clandestinely with her own daughter. Another character comes to the casino as an illegal (undocumented) alien who also helps the “bride.” She is effective in keeping the woman safe when the loner discovers their location in Las Vegas. The story seems to move toward a violent ending but the room attendant manages to take a gun away from the loner and they all hide what has happened from the police. In the meantime the school teacher daughter also manages to gain a reunion with her natural mother.

The book offers a very good read with each of the main personalities giving a bit of natural light to interacting lives of myriad casino actors and the natural and ordinary citizens of what has become the “Sin City” of America.

William N. Thompson is a professor emeritus at the University of Nevada Las Vegas. He is a frequent contributor to American Gaming Lawyer and has authored over a dozen books on many gambling subjects.

BOOK REVIEW

Sports Wagering in America:
Policies, Economics, and Regulation

By Quinton Singleton

Thorough, thoughtful and timely. In Sports Wagering in America, Cabot and Miller continue adding significant thinking and education to our gaming lexicon.

It contains a concise overview of the complex history of sports wagering in the U.S. and sets out many of the sports wagering policy issues that should be considered at a time when legislatures and regulators are acting quickly to enact legislation and promulgate regulations in preparation for the U.S. market opening for legal and regulated sports wagering.

Sports Wagering in America, therefore, serves an important purpose. Cabot and Miller have provided policymakers with a significant tool to use in their deliberations when establishing the legal and regulatory structure for sports wagering and engaging industry stakeholders.

Quinton Singleton works in the gaming industry and currently focuses on entry and preparedness for sports betting and igaming in the U.S. Previously, Quinton served as an executive with B2B and B2C sportsbook and igaming operators and suppliers, is a CPA formerly with Deloitte and an attorney formerly with Lewis Roca Rothgerber Christie. He can be reached at qsingleton@gmail.com

Book: Sports Wagering In America: Policies, Economics and Regulation
Author: Anthony Cabot, Keith Miller
Publisher: UNLV Gaming Press
LOOKING AHEAD

IMGL Masterclass® at EASG Conference
SEPTEMBER 12, 2018
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IMGL Masterclass® at International Association of Gaming Regulators (IAGR)
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