

ETHICS

ACROSS THE GAMING INDUSTRY

By Glenn E. Wichinsky and Keith C. Miller

All American law schools require a course called something like “Legal Ethics.” The class typically focuses on the Model Rules of Professional Conduct for practicing attorneys and helps students prepare for one part of the bar examination process, the Multistate Professional Responsibility Examination (MPRE). The MPRE is a sixty-question, two-hour, multiple-choice examination that is designed “to measure the examinee’s knowledge and understanding of established standards related to a lawyer’s professional conduct.” As the administrators of the MPRE openly acknowledge, the “MPRE is not a test to determine an individual’s personal ethical values.” Rather, the test is “based on the law governing the conduct of lawyers.”

While it is understandable that law schools may emphasize the Model Rules of Professional Conduct for their students, this vision of ethics is far too narrow for those involved in the gaming industry. Given the range of careers in gaming, it is important to recognize that in addition to *rules of ethics* for lawyers, there is an *ethic* that informs many aspects of the gaming industry. This ethic often is not codified by law but is functionally affected by one’s role in the industry. Whatever one’s role might be, careful attention to values of fairness, balance, and morality helps to foster a more positive image of the industry as a form of regulated entertainment. This image is in marked contrast to the one that previously associated gaming with organized crime and unsavory individuals, and where questions as to the basic immorality of gambling were prominent. Ultimately, the “personal ethical values” of all in the gaming industry *are* tested and judged by society. This article will address a few of the settings where how we discharge our responsibilities plays a critical role in how our industry is perceived.

The Manufacturer

The first situation we consider involves a manufacturer of gaming hardware, that is, the cabinet that a game board is integrated into in order to create the completed gaming device. In some instances the gaming hardware manufacturer may design and manufacture the gaming cabinets and market the content of the customer’s game contained inside the cabinet. By integrating the games into the cabinets and displaying them at gaming expositions, the manufacturer may give added exposure to the customer’s game and help increase the market audience. This exposure redounds to the benefit of the hardware manufacturer as well if it causes the customer to order

additional products from the manufacturer.

Does the gaming cabinet manufacturer in this situation have ethical obligations? To whom would they be owed? Even in the absence of specific statutes or regulations as to what game content may be publicly displayed, a manufacturer would have an ethical obligation not to display game content that might be attractive to an under-age audience. Along the same lines, what about game content that displayed matching symbols of partially clothed men or women as a primary game, with a secondary game involving animated rabbits? Though the manufacturer may not be prohibited from displaying this content, it might well conclude as a matter of ethics and standards of decency that such content was sexist and cast men or women in a bad light.

Also, a cabinet manufacturer will likely be applying the proprietary designs of several of its customers in the manufacturing process. While these designs are subject to intellectual property and patent protections, a scrupulous and ethical manufacturer will take steps to maintain the confidentiality of this information. For example, work will be segregated by customer, and access to the factory manufacturing floor will be carefully limited. Advanced scheduling of visits to the factory, a log which documents the company or entity that a visitor represents, and maintenance of overall security are steps reflecting an awareness of the critical role of ethics and confidentiality in the manufacturing process.

The Casino

The second setting for observing an ethic that informs gaming involves the casino itself. The goal of a casino owner and operator is to attract customers to and maintain their interest in the casino’s gaming machines and table games. Each game on the floor of a bricks and mortar casino must maintain a certain level of profit. This is based upon the win per day, per unit, and meeting or exceeding what is referred to as the “house average.” A profitable casino is one that attracts customers, offers games that have “player appeal,” and has a management team that develops and executes a good marketing plan, and makes intelligent line item budget decisions.

Where do ethics enter the decision-making process of casino owners and operators? The pursuit of the business objective—to create a financially successful and profitable casino enterprise, and provide partners and investors a reasonable return on their investment—needs to be balanced by concerns about taking advantage of



vulnerable players. Vulnerable players are those who are inclined to spend more money gambling than their reasonable discretionary entertainment budget can support.

One specific example of the interests that need to be weighed in this situation concerns the placement of automatic teller machines (ATM) on the casino floor. From an operations point of view, the ATM provides a quick means for players to access cash from their personal bank accounts in order to play in the casino. The surcharge on each transaction becomes another income stream to the casino, an income stream that is a function of whether the ATM is owned by the casino, is leased, or is vendor operated.

From an ethical perspective, however, some casino operators might conclude that placement of an ATM on the casino floor provides too strong of an inducement for a player to gamble beyond his means. Locating the ATM off the casino floor gives a player an opportunity to reflect before withdrawing more cash to gamble. While this may be regarded as inconvenient to, and by, the player, it is a measured step to blunt the momentum that often accompanies excessive, that is, "problem" gambling. Some might argue that this is a vain effort to protect the player against himself. But it also reflects a process of making business judgments in a considered manner with ethical concerns being put in the balance.

Such judgments are also made by regulators. Current technology exists which would provide connectivity between a specific gaming device and a player's personal credit or debit card. But regulators are properly concerned that this provides too ready a means for problem gamblers to access their funds. All members of the gaming industry are concerned about problem gambling. Some of the concern relates to a fear that problem gambling damages the industry's

image and can lead to oppressive regulation. But this does not detract from the fact that ethical considerations should be a conscious part of the decision-making process for all people in the gaming industry.

The Promoters

Another issue that broadly implicates ethics in gaming relates to the promotion of legislation that would create or expand gaming in a jurisdiction. Those in the gaming industry need to be sensitive to concerns of how pervasive gaming activities should be in a community. For example, questions of geographic separation and concentration are the subject of legislative and regulatory actions often initiated by those seeking to develop casino properties. There is an important balance to strike in providing attractive opportunities for business operators and investors, but in such a way that lessens the overall impact on the community. This can include measures such as zoning ordinances that restrict billboard placement of advertising for gaming operations and location restrictions connected to the proximity to a school, church or synagogue. These actions need to be grounded on, among other factors, an ethic of concern for the overall well-being of the community. A responsible and measured approach that acknowledges these considerations will still permit the industry to expand and flourish.

The Compliance Committee Member

Finally, membership on a gaming compliance committee implicates a number of ethical obligations. A person may learn of sensitive information pertaining to the company's internal or financial operations that cannot be disclosed to anyone outside the compliance committee. The obligation one owes as an attorney or as a business executive to maintain a high standard of ethics and to maintain the confidentiality of sensitive company information is paramount in maintaining the confidential interests of the parties involved.

Conclusion

A focus on an ethic of responsibility and balance by those in the gaming industry is not only the "right thing to do," it will enhance the public's perception of the industry. Rather than being an impediment to the gaming industry, this attention to ethics will promote a more durable, trusted, and yes, profitable enterprise. ♣



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