

Social Gaming in 2014/15: Where Is The Industry Going?

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As Internet gambling continues to pick up legal interest, it is hard to ignore the growth of social gaming. Today, the impact of social networking cannot be put aside; everyone's focus is now on going mobile, connecting with each other, and following actions based on social trends.

In 2007, social games were introduced to the world via Facebook. In 2013, there were over 750 million people playing social games worldwide, and experts expect that number to double by 2015.

There are generally two business models employed in the social games industry: up-front fee for the game or application, where the player needs to buy the application to use it; or a free game or application with in-game purchases available to enhance the entertainment experience.

It is a known fact that in order to succeed, a social game must go through Facebook's online platform, and then to its mobile platform, before being published in Google Inc. and the App store.

Where is Facebook going for new games? Israel!

Israel is the biggest export jurisdiction for selling gaming services and technologies to companies. Five of the developers of Facebook's ten largest social games in the Europe, Middle East, and Africa (EMEA) come from Israel. Indeed, Israel is a very advanced country for gaming and high-tech, offering leading software developers influential marketing positions and generating the biggest quantity of startups. Numerous multinational hi-tech, online gaming companies have their R&D centers based in Israel. Most prominent Israeli companies are engaged in developing technology for the gaming sector, which is largely

due to the success of "Playtika" and its successors.

The Israeli gaming industry is an up and coming star. Recognizable names with the Israeli link include: Playtech, the world's largest online gaming software supplier, which was founded by billionaire Teddy Sagi, 888, Bwin.Party, William Hill Online, Caesars Interactive Entertainment, Poker Stars, and many more. Expected to triple in income and revenue over the next two years, you can bet that Israel will continue to be an integral player in the game.

Legal Overview of Gambling in Israel

Almost all forms of online gambling are illegal in Israel, but that hasn't prevented a number of national companies from developing and creating the online gambling and gaming technology industry since the late 1990's. Gambling in Israel is highly regulated by the government, and not all forms of gambling are available. Indeed, standard casino games are not allowed, the Israeli government has even tried to filter the Internet to prevent local players from accessing foreign online gambling sites.

The Israeli Penal Law 5731-1977 pro-



hibits the organizing of lotteries, betting and games of chance, as well as operating venues where such activities take place. However, over time two exceptions from the general ban on gambling law were introduced in the Israeli criminal law.

In 1951 the law was amended to allow for the implementation and operation of a national lottery "Mifal Hapayis" which offers scratch cards, weekly subscription lottery, and various lotteries and raffles. In 1967, the Israel Sports Betting Board "ISBB" (a.k.a. the Toto) was awarded the right to organize and regulate sports betting for soccer and basketball games only.

The operations of Mifal Hapayis and the Israel Sports Betting Board are state monopolies supervised and regulated by the Ministry of Finance. However, the Supreme Court has distinguished between "virtual money" and "real money." This distinction can be used to establish the difference between social gaming and gambling.

What is the difference between Social Gaming and Gambling?

Social gaming is the activity or practice of playing an online game on a social media platform, in real-time, without winning “real money” or any prize that constitutes “money’s worth.” This can be seen in Australia, where social gaming in which there is no cash prize on the outcome and no cash at risk during the game does not constitute a prohibited gambling service. Social games are characterized by the fact that they are played for entertainment at little or no cost, through social networks, and are typically very simple games.

Many social games are designed with social interaction and competition amongst other players. Popular social games to name a few include: Candy Crush, Farmville, The Sims.

Gambling, on the other hand, means the user generally pays something of value to participate. By participating, the user also has a potential to win something of value, i.e. money’s worth prize or equivalent. To this extent, the difference between real money gambling games and free games relies on: payment, compliance, and licensing.

In the United States, gambling generally requires three elements: consideration (the payment of something is required to play the game), chance (the outcome of the game depends on chance not on skill), prize (money’s worth or something of real tangible value is awarded).

What is a “Prize”?

Crucially, a “prize” means “money or money’s worth” and is the basis on which social gaming distinguishes itself from gambling, by preventing players from taking the virtual currency they have “won” out of the game and reselling it.

In social gaming, there is no “cash-out;” it is a free ad-funded game where there is no conversion to real money. Gambling on the other hand is a game of chance, where players pay to play in order to win a monetary value prize. This creates a significant

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difference in behavior. While gamblers tend to get into a cycle of chasing cash, social gamers play for fun as they know they cannot win any money. To what extent should social gaming be regulated under restricting gambling laws?

Should Social Gaming be Subject to Regulation?

Regulation for online ventures is no longer a temporary challenge but a new reality. Last April, IMGL’s Spring Conference in San Diego highlighted one of the hottest debates amongst regulators nowadays: Is Social Gaming considered gambling? And if such, should Social Gaming be

subject to the same, strict, regulation?

Nowadays, social casino games are one of the fastest growing and most profitable online games. To this extent, a regulatory debate has recently engaged casinos and other gambling companies that entered the social gaming field, as well as their lawyers, advisors, and affiliates who enhance their traffic.

Legislators are still facing legitimate difficulties figuring out how to regulate online gambling, and there is still a lack of clarity concerning the differences between gambling and social gaming. Indeed, there is a very thin line between social casino games where players pay “real money” for virtual casino chips that cannot be cashed out, and online gambling where players can bet, lose, and win “real money.”

Social gaming is a global phenomenon, but there is no global government. The main concern relates to the international scope of social gaming. It seems unlikely that there will be a global regulation for social gaming as regulators may very well reach different conclusions on a state by state or region by region basis, creating legislative inconsistency. We are therefore facing the risk of a fragmented regulatory market which may be a key concern for operators.

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Advocate and Notary Tal I. Ron graduated from Haifa University School of Law (LL.B.) and Faculty of Computer Science (B.Sc.), and further obtained a Master’s Degree in Computer Science from Bar Ilan University (M.Sc.). After working in the prestigious law firm of Gornitzky & Co., Tal became one of the first International lawyers specializing in FX and Financial Technologies, Digital Currencies, Gaming, Affiliates and Online Capital practices. Tal is a member of International Masters of Gaming Law (IMGL) and provides legal consultation and representation to worldwide companies and assists numerous start-ups to become successful companies and major players in the industry.



Stephanie Attias

Financial Jurist Stephanie Attias graduated from the Faculty of Law in Nice (France) with an L.L.B. in Law and Political Science and further obtained a Master of Business Law and Economics, followed by a Specialised Master in Financial Engineering with Magna Cum Laude Honors. After working in the Securitization Department of the prestigious law firm of Gide Loyrette Nouel in London and Paris, Stephanie joined Tal Ron Drihem & Co.’s Law Firm in 2013 as Head of European and Financial Law. She is also a sought-after speaker for conferences and events in the industry, presenting in major conferences worldwide in Israel and Europe.

PRESIDENT'S MESSAGE

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introducing the possibility of creating a personal profile and uploading articles and many other exciting new features. You may witness the launch of our new site on 5 November at the IMGL Autumn Conference in Florence. After the launch I encourage you to get familiar with the site, try out the new features and make this site your site.

Hoping to be in touch and preferably see you at one of our upcoming IMGL events. ♣

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whether a commission or fee can be charged by the clubs in the form of an extra charge along with the sitting fees, for the playing cards which were supplied by the club to the players. The SC observed that clubs usually charge an extra amount for anything they supply to their members because the extra payments are used to manage the club and provide other amenities and observed that merely charging an extra fee for playing cards (unless excessive) will not amount to the club making a profit or gain so as to render the club a common gaming house. It is noteworthy that the SC also made an observation that

[I]f there is evidence of gambling in some way or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes, the offence may be brought home.

The Madras High Court in the matter of *Director General of Police, Chennai v. Mahalashmi Cultural Association*¹⁰ interpreted the Satyanarayana Judgment differently and held that Rummy played with stakes would amount to gambling. This new judgment has unsettled a rather settled position of law. Different interpretations by different High Courts have given rise to ambiguities on the position of law on collection of stakes from games of skill, especially Rummy and Poker. This matter is in appeal before the SC¹¹ which has currently temporarily stayed the operation of the aforementioned part of the order. Importantly, while the said appeal pending before the SC pertains to playing Rummy with stakes on physical premises, certain online platforms offering Rummy have also filed Special Leave Petitions before the SC challenging the Madras

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obstacles faced by iGaming resulting from stringent regulations and the banking industry's hesitance to accept credit card payments for online gambling.

Finally and most importantly, *Casino Lawyer* appreciates the articles submitted from IMGL members and others, making this legal journal achieve a respected position in gaming law publications. With distribution to more than

twenty-five thousand international recipients, *Casino Lawyer* is proud of its growth and educational outreach. The IMGL officers and editor sincerely appreciate the law firms and gaming companies who support the educational objectives of IMGL and *Casino Lawyer* with their advertisements and contributions. ♣

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Concerns which might introduce Regulation

Because social games are not regulated and can be played for free, there is a strong concern about attracting underage gamers. Social gaming is problematic for young people as the games may stimulate real forms of gambling. Therefore, age verification needs to be dealt with scrutinously in order to protect vulnerable people from being harmed or exploited. However, it is important to note that most children who are spending money on in-app purchases are not playing casino-style games.

Another concern that is mentioned by regulators throughout the world is the lack of transparency. Indeed, regulated "real-money" games have to be fair and purely random. They have to be socially responsible and protect players from themselves. As there is no "money's worth" in social gaming, game manufacturers are free to set the odds of the game at any level they want to make the game addictive. Players are not always informed that social games are not random.

What does the future hold?

The European Union wants to fight this lack of transparency and might require operators to tell players that the game's



randomness is not what they actually see and perceive. It is strongly advised for websites to add disclaimers stating that the social games which they provide are not random.

In Europe, a draft decree was suggested to reform the Belgian legislation and expressly cover social gaming. Norway, Sweden and Spain are also said to be seriously considering the issue. Further to this issue, legal experts in Nevada expressed that social gaming activities do not constitute "gambling." However, concerns about consumer protection and harm to children could see regulation being introduced faster than expected.

A few words to conclude

It is a fact that social gaming ventures need ongoing legal advice from experts in gaming law, as they might not be immune from regulatory compliance in the long run. The higher the profitability and growth of social gaming operators, the higher their profile will become, and the more likely they are to be subject to regulatory scrutiny. Overall, social games where free play is the primary method of entry and where no tangible money's worth prize is awarded possess strong legal arguments. However social games that award cash or merchandise face a more difficult analysis and need to be careful with legal and regulatory requirements. ♣