



LAS VEGAS CASINO MOGUL LOBBIES TO END INTERNET GAMING – WITH POTENTIALLY PROFOUND IMPACT ON U.S. STATE LOTTERIES

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Sheldon Adelson, CEO of Las Vegas Sands Corporation (“LVSC”) and the nation’s 11th richest person,¹ has promised “to spend whatever it takes”² to stop online gaming in United States. He has reportedly hired “an army of lawyers and lobbyists to try to convince Congress” to pass a federal law that would ban it.³ At the same time, a draft bill (the “Bill”) has leaked that would amend the Wire Act⁴ so as to define “sporting event or contest” so broadly that the amended law would essentially prohibit all internet, mobile and telephonic gaming in the United States, with exceptions only for wagering on horse races pursuant to the Interstate Horseracing Act⁵ and participation in fantasy sports tournaments pursuant to the conditions set forth in the Unlawful Internet Gambling Enforcement Act of 2006 (the “UIGEA”).⁶

While the intention of the Bill may be merely to “restore the longstanding [U.S.] policy banning Internet gambling to where it was before the Department of Justice reversed course in 2011...,”⁷ its actual effect would be much less benign. Indeed, it would be draconian. The Bill would not only ban customer-direct online purchases of lottery products, such as tickets for draw games now being sold by the state lotteries in Georgia, Illinois and Minnesota, but it would also ban lottery ticket subscriptions now sold online by approximately seven state lotteries. Most alarming, however, the Bill would have the effect of prohibiting traditional sales of online lottery products – i.e., those sales by traditional lottery retailers – thus putting out of operation traditional lottery draw games, including the multistate games Powerball and Mega Millions.

The above conclusion is the inevitable result when one carefully reviews the Bill. The Wire Act presently prohibits a person (including a company or state government body) “being engaged in the business of betting or wagering [from] knowingly us[ing] a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers ... on any sporting event or contest” among other things. The Bill would make clear that when the Wire Act refers to the “use of a ‘wire communication facility for the transmission in interstate or foreign commerce of bets or wagers’ [it] includes any transmission over the Internet carried interstate, incidentally or otherwise.”⁸ The “Internet” is the means by which lottery retailers transmit bets and wagers, and although the term is not defined in the Bill, it would most likely be deemed to have the same meaning as the term is given in the UIGEA, where “Internet” is defined as “the international computer network of interoperable packet switched data networks.”⁹ As a result, and because “sporting event or contest” would include lotteries (among other things), the Bill would not only ban customer-direct online purchases of lottery products, but also traditional sales of online lottery products. While this likely was not the intended by the drafters of the Bill, the language is clear and unambiguous, and the Bill, if enacted, would make the traditional operation of state lotteries (except physical scratch-off tickets) unlawful.

Note that the Bill contains no grandfather clause. It would not exempt from its effect existing lottery activities or the non-lottery Internet gaming implemented by certain states last year. Accord-

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1) “Sheldon Adelson Says He Is ‘Willing To Spend Whatever It Takes’ To Stop Online Gambling,” by Nathan Vardi, Forbes, November 22, 2013, at <http://www.forbes.com/sites/nathanvardi/2013/11/22/sheldon-adelson-says-he-is-willing-to-spend-whatever-it-takes-to-stop-online-gambling/> (last accessed January 3, 2014). 2) *Id.* 3) *Id.* 4) 18 U.S.C. §§ 1081 and 1084. 5) 15 U.S.C. § 3001, et seq. 6) The UIGEA is codified at 31 U.S.C. § 5361, et seq. 7) Prepared Testimony of Andrew F. Abboud, Las Vegas Sands Corporation Senior Vice President, before the Subcommittee on Commerce, Manufacturing and Trade Committee on Energy and Commerce, December 10, 2013. 8) Draft Internet Gaming Ban House 2 10-15, Section 3, proposed new section (f)(3) of 18 U.S.C. § 1084. 9) 31 U.S.C. § 5362(5) (2008). 10) See footnote 7. 11) *Id.* 12) *Id.* 13) See for example: “Caesars to pay \$100,000 fine to settle under-age gambling, alcohol charges,” by Howard Stutz, Las Vegas Review-Journal, July 18, 2012, <http://www.reviewjournal.com/business/casinos-gaming/caesars-pay-100000-fine-settle-under-age-gambling-alcohol-charges> (last accessed Jan. 2, 2014); and “Harrah’s Resort Atlantic City is fined \$65k for

ingly, the Internet poker operations conducted in Nevada since April, 2013 and the Internet casino gaming conducted in New Jersey since November, 2013 would be rendered illegal and forced to shut down.

In summary, if enacted, the Bill would be a disaster for the lottery industry and would force the closure of nascent non-lottery Internet gaming operations under way in Nevada and New Jersey.

In his December 10, 2013 testimony to the House Committee on Energy and Commerce, Subcommittee on Commerce, Manufacturing and Trade, LVSC Senior Vice President, Andrew Abboud made the following principal arguments in favor of a total ban on Internet gaming:

First, Mr. Abboud argued that bricks and mortar casinos are more able than online gaming operators to prevent underage persons and problem gamblers from playing since the former environments are so “highly controlled,” with “[s]ecurity cameras mark[ing] every move, and professionals watch[ing] patrons to make sure they are not getting in over their heads.”¹⁰ He claimed that “[n]one of these protections are available to the same extent when gambling is done over the Internet.”¹¹

Second, referring to a 2009 report by the FBI’s Cyber Crimes Division, Mr. Abboud asserted that online poker can be manipulated and that online gaming facilitates money laundering – i.e., the transfer of unlawfully obtained funds among persons, therefore “cleansing” it – and that law enforcement is focused on higher priorities than unlawful internet gaming.

Third, Mr. Abboud claimed that because of the speed with which online games may be played, in comparison with real-world casino games, there is “the potential that players will lose significant sums before they know what has happened.”¹²

These arguments mislead and misstate the present environment in which lawful online gaming is conducted by state lotteries and the states of Nevada and New Jersey. First, I have found no reported case of underage Internet gambling in Nevada or New Jersey, or of underage Internet lottery play in Georgia, Illinois or Minnesota. Yet cases of underage play in bricks and mortar casinos are common,¹³ including cases involving casinos owned by LVSC,¹⁴ notwithstanding their “[s]ecurity cameras mark[ing] every move, and professionals watch[ing] patrons.” Technological and procedural solutions are proving effective in preventing online gaming by minors on lawful, regulated sites. Similarly, protections against irresponsible play are available for online gaming websites that do not exist in bricks and mortar casinos. Hourly and/or daily betting limits may be implemented, caps on daily losses may be put into place, the pace of games may be slowed, and players may exclude themselves from participation. All of these tools are monitored, enforced and have a high degree of reliability. At bricks and mortar casinos, by contrast, players can remain anonymous, betting and loss limits are not imposed (and automated cash dispensers are usually plentiful) and casinos do not share real time player betting information among themselves such that a player’s losses at one casino are known to (and the player’s subsequent play monitored by) casinos owned by different companies.

Second, online gaming technology has improved considerably since 2009, and Mr. Abboud’s reference to a four-year-old FBI re-

port suggests the weakness of his argument. Since then, there have been significant improvements in technology and cheating detection, and states in which online gaming is regulated (e.g., Nevada and New Jersey) have given law enforcement greater powers to detect and prosecute online gaming cheaters and those involved in unlawful online gaming. In addition, online gaming sites do not appear to be an attractive means of laundering money to begin with. A recent study on behalf of the Austrian testing and certification company TÜV Austria Group – “Potential Money Laundering and its Prevention” – indicates that fears of money laundering by means of online gaming sites are overblown. As stated by an author of the study, Professor Friedrich Georg Schneider: “In principle, the money-laundering risks in the regulated area of online gambling are rather small in comparison to other sectors, due to the technical possibilities of identifying customers and their gambling behaviour. These framework conditions have the consequence that online poker tends to be unattractive for money laundering.”¹⁵ Professor Schneider added: “General bans of online gambling will rather encourage the growth of the unregulated black market.”¹⁶ According to Professor Schneider, “not one single noteworthy survey anywhere in Europe has documented the money-laundering relevance of the online poker market. Measured in terms of the required efforts and transaction costs, money laundering via online poker is not profitable – also in view of a variety of technical mechanisms used to identify manipulation attempts, player collusion etc.”¹⁷

Third, the pace of online gaming is not necessarily any faster than gaming at bricks and mortar facilities. Slot machines at bricks and mortar casinos operate almost as fast as (if not just as fast as) online casino slot games. In general, the lower the stakes, the faster the game. However, even in higher stakes games such as high-roller roulette or craps, it is possible to lose many thousands of dollars in a matter of seconds. This is true whether the game is played online or at a bricks and mortar casino. Yet games played online may be subject to the betting and/or loss controls mentioned above.

Finally, it did not go unnoticed at the December 10, 2013 hearing that LVSC, through its arrangement with Cantor Gaming, offers the same type of online gaming which it now seeks to ban. Representatives Joe Barton (R-TX) and Jan Schakowsky (D-IL) pointed out to Mr. Abboud that customers at LVSC’s Las Vegas casinos may use their smart phones to place sports wagers while located on casino property. Both were blunt in their criticism of LVSC’s arguments, Ms. Schakowsky going so far as to call them “hypocritical.”¹⁸

In summary, although Mr. Adelson’s effort to ban online gaming in the United States is off to a rocky start, it bears careful monitoring by the lottery industry and states considering implementing online gaming as a way to increase revenues for good causes and/or to address budget shortfalls. The effect of a total ban, and in particular the effect of the Bill leaked in November of 2013, would be severe, and would have particularly disastrous effects on the state lottery industry. In light of these potential effects, and Mr. Adelson’s pledge to “to spend whatever it takes” to stop online gaming in United States, his effort should be watched carefully. ♦

failing to detect thefts by cashier, underage gambling,” by The Associated Press, March 24, 2011, http://www.nj.com/news/index.ssf/2011/03/harrahs_resort_atlantic_city_i.html (last accessed Jan. 2, 2014). 14) See: “Sands Bethlehem winner charged with underage play,” by Angela Burrows, Online Gambling News, August 18, 2013, <http://news.rouletters.com/sands-bethlehem-winner-charged-with-underage-play-0001725.html> (last accessed Jan. 2, 2014). 15) “Too expensive, too dangerous: Regulated online poker is unsuitable to money laundering,” by Anskar Lange, Gaminglaw.eu, October 8, 2013, at <http://www.gaminglaw.eu/news/too-expensive-too-dangerous-regulated-online-poker-is-unsuitable-for-money-laundering/> (last accessed January 3, 2014). 16) *Id.* 17) *Id.* 18) “House members call Adelson ‘hypocritical’ on online gambling,” by Kate Tummarello, The Hill, December 10, 2013, <http://thehill.com/blogs/hillcon-valley/technology/192647-house-members-call-adelson-hypocritical-on-online-gambling> (last accessed January 3, 2014).