



### ***How Do Tribes Capitalize on Internet Gaming?***

by Gene Johnson

There has been a great deal of excitement surrounding Internet gaming since the Department of Justice issued their December, 23, 2011 opinion. But what does this mean for tribes?

#### **Opportunity**

Taking bets over the Internet has long been considered illegal in the United States and in the absence of any legal framework to regulate this practice, which germinated from U.S. technology and a U.S. player base, a new and flourishing industry has been established overseas. Globally, Internet gaming revenue is estimated at \$30 billion in 2011, comprising almost nine percent of all gaming revenue worldwide.

The DOJ opinion, issued in response to requests by the New York and Illinois state lotteries and instigated by the queries of Senators Reid and Kyl, constituted a surprising reversal of the long-held Justice Department position that Internet wagering violated the 1961 Wire Act. The opinion held that the Wire Act applies only to sports betting and that Internet wagering would face no Federal challenge provided it was legal under state law. This opinion was viewed by many as a gift to state lotteries, thereby removing the threat of Federal action if they moved to online sales. This opinion also appears to be an opportunity for U.S. tribes due to their sovereign status. However, current interpretation of IGRA may limit Indian gaming to wagers placed solely on the reservation. What is certain is that legislation must be passed at either the Federal or state level to enable any entity to legally take bets over the Internet. For U.S. tribes, it is likely that political action and litigation efforts will also be required to assure their place at the table.

#### **Interstate or Intrastate?**

The DOJ opinion further tilts the playing field towards the intra-state model. Given the current gridlock in Washington, it now appears most likely that Internet gaming will gradually become legal on a state by state basis as individual state legislatures pass enabling laws allowing gaming providers to offer specific games over the Internet. Intra-state legalization will benefit those tribes that already have successful casino operations located in the ten to twelve states with the largest population. For Internet poker, where liquidity is king, this most likely means the states of California, New York, Florida, Illinois, Pennsylvania,

and Ohio. Intra-state legalization may well favor state lotteries, the reason why some called the December 23rd DOJ opinion a Christmas present to the states, several of which have moved quickly to reserve the Internet for state lottery operations by seeking to exclude tribal and commercial casino interests.

Legalization at the Federal level, the inter-state solution, would most likely provide greater protection to tribal gaming operators. Federal legislation would provide a faster track to Internet gaming and presumably also answer the question of taking online bets off the reservation. In the absence of a Federal bill, expect to see state lotteries move aggressively to secure enabling legislation for online lotto sales in the short term and in the long term putting draw, scratch and social games online including bingo and even poker.

In the case of either legalization model, smaller tribes will be challenged to assemble the capital and provide the liquidity necessary for maximizing the opportunity presented by online gaming. It will be in the best interests of the smaller tribes to band together with other like-minded tribes to establish consortiums or confederations and build gaming networks. Technically this is relatively simple as many iGaming suppliers have already created the software to allow multiple sites to sit players in a networked casino while retaining the individual property's logos and branding.

#### **Tools for Success**

Of course there are hurdles to starting an online gaming operation. Tribes will need capital, equipment, and expertise in order to get going. Capital and equipment may be the easiest to acquire as expertise is in demand on this side of the Atlantic. Obviously anyone wishing to enter the iGaming space will need hardware and software to operate their online casino or poker room. In the 1990s, software platforms were unreliable and iGaming procedures were still in the development process. Today there are fully developed systems and dozens of proven providers. Even building a system from scratch is easier now since the wheel does not have to be completely reinvented. However, any new market entrant will need to establish a technical knowledge base, acquire talented people, and grow those key resources to fulfill the needs of online operations.

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Expertise in marketing and operations will be the most important need to fill. The “offshore” Internet gaming sites operating primarily in Europe utilize some of the most sophisticated marketing, database analysis and player identification techniques in existence. Perhaps the most crucial needs will be in the areas of player acquisition and retention which new operators will find to be very different from their experience in land-based casino marketing. In addition, the nature of the business of online gaming requires unusually robust 24/7 operational, security, and fraud prevention procedures.

### **Assessing the Competition**

Likely competitors include commercial casinos, offshore operators, state lotteries, gaming equipment manufacturers, and other tribal gaming operators. Obviously commercial casinos will be a competitor in online gaming. Caesars has positioned itself very well and with its Dragonfish partnership is currently operating the Europe facing *Caesars.com* and other commercial casino companies including MGM and Station have recently unveiled online play for free sites. Offshore operators cannot wait to exploit the U.S. market, and the efforts of both commercial and tribal casino operators to craft legislation should seek to protect the domestic market from offshore operators, particularly those who took bets from Americans after UIGEA.

State lotteries, as mentioned above, will be aggressive competitors. In states where there is little tribal or commercial casino presence, expect state lotteries to move into Internet poker and casino gaming once traditional lottery games go online. This is the case in a number of northern European countries and Canadian provinces. For example, the British Columbia Lottery Corporation’s *PlayNow.com* website is the exclusive legal provider of Internet wagering in a wide variety of online games that include lotto, keno, scratch, poker, casino, sports betting, bingo, and a selection of social games including fantasy sports and board games.

Several gaming equipment manufacturers are betting the house on the Internet. Tribal operators could be potential competitors or partners. But the greatest threat to commercial casinos may come from state lotteries which are well positioned to take advantage of the DOJ opinion through their current operations, deep pockets, and existing relationships with state governments. Tribes must defend their sovereign rights in preserving the ability to compete with state lotteries on the Internet.

### **Getting Started**

The quickest path to creating an iGaming capability is to begin immediately to establish a play for free site built around the casino brand. Play for free operation is not inexpensive but it represents a much smaller marketing investment than cash play. It also constitutes an intermediate step where a casino property can assemble the technical expertise and operational base required to field an iGaming operation while acquiring and training personnel for the future. Play for free will also allow a casino to experiment with online marketing, customer loyalty programs, and player retention initiatives, testing promotions, practicing for real money play and fine tuning those programs that prove most promising.

Most tribes will need to partner with iGaming providers in order to get started on this initiative. There are many offshore firms and European consultants who are offering to come to America to demonstrate how to take players online. However, iGaming in the U.S. will most likely evolve somewhat differently than the current European model and be more centered on land-based casino brands and lotteries.

Internet gaming should be an added asset to your overall casino operation. It probably will not be a silver bullet to vault a casino to worldwide market dominance. Experience has shown that online poker tends to be dominated by the few brands that do the best job of marketing and establishing the maximum liquidity but in an intra-state environment there may be room for many local market leaders. Online casino operators will tell you that poker is an essential game to have on your site as a social anchor, even if the majority of revenue is generated by slots, table games, and sports betting. The future is definitely a bright one and the next few years should prove to be exciting as Internet gaming has definitely moved from the realm of “if” to “when” it will become a reality in the U.S. Each tribe who is interested will have to consider the pros and cons and decide their path. What it means for tribes most importantly is a stake in the future of casino gaming as a younger generation using mobile devices becomes a more prominent feature of the player landscape.

For tribes planning to engage the Internet for gaming, the best advice is to get started sooner, rather than later. The future is out there and it is not going to wait. ♣

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