



Seattle University School of Law

Center for Indian Law & Policy

INTERNET GAMING IN INDIAN COUNTRY

March 28, 2012

Indian law Program

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Even if you are on the right track, you'll get run over if you just sit there.

Will Rogers

Overview of the Industry

- 237 Tribes operate 442 facilities that generate annual gross revenues of \$26.7 Billion.
- Commercial gaming facilities generate \$34.6 Billion in annual gross revenues.
- World wide Internet gaming is lawful in 80 countries and generates \$30 Billion in annual gross revenues. US citizens account for about \$6 Billion of that revenue.

Overview of the Industry

- United Kingdom, Denmark, France, Italy, Belgium and Australia authorize and regulate Internet gaming.
- Any US citizen with a checking account can deposit money in an offshore account and play poker, casino games or bet on sports events and horse races through an Advance Deposit Wager (ADW).

Overview of the Industry

- Several states are developing scratch off lottery tickets that can be sold and used on the Internet.
- They play like a slot machine. A player purchases tickets and deposits them into a playing account. Each ticket displays several values on the screen. When the values match, the player wins; if they don't match, the player draws again.

Overview of Regulatory Authority

- States have always had the primary responsibility for determining which gaming activities will be lawful.
- The federal role has been to prevent the infiltration of criminal elements and to shape the overall boundaries of the authorized activities to avoid conflicts between states.
- By default, gaming is illegal unless authorized. Only Utah and Hawaii do not permit any form of gaming.

Indian Gaming Regulatory Act

- Gaming must be on Indian lands.
- 25 U.S.C. § 2703(4) – The term “Indian lands” means –
 - (A) all lands within the limits of any Indian reservation; and
 - (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual subject to

Indian Gaming Regulatory Act

restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

- 25 U.S.C. § 2719 –
 - With five exceptions, gaming cannot be conducted on lands acquired in trust for the benefit of an Indian tribe after October 18, 1988 unless -

Indian Gaming Regulatory Act

- the lands are located on or are contiguous to the boundaries of the reservation on that date;
- the Secretary determines that the gaming is in the best interest of the tribe and the surrounding community and the Governor of the state concurs;

Indian Gaming Regulatory Act

- the lands are taken into trust as part of the settlement of a land claim;
- the lands comprise part of the initial reservation of a tribe that is newly acknowledged by the Secretary;
- the lands are restored to a tribe that is restored to federal recognition.

IGRA

- 25 U.S.C. § 2720 –

Tribal lotteries are exempt from the requirements of 18 USC §§ 1301 – 1304 if the lotteries are conducted pursuant to a compact.

This permits tribal lotteries to transmit lottery tickets across state lines and through the mail.

National Indian Lottery

- State ex rel. Nixon v. Coeur d'Alene Tribe, 164 F. 3d 1102 (8th Cir. 1999)
- The lottery was operated by the Tribe pursuant to a compact with Idaho. Computer users electronically register to play from their local homes or offices, establish a gambling account funded by charges to their credit cards and begin gambling once the account is funded.
- It was offered to the residents of 36 states who had Internet access.

National Indian Lottery

- Attorney Generals in Wisconsin and Missouri commenced suits against the lottery in their respective state courts. The suits were removed to federal court.
- Internet gambling is illegal in Missouri. The District Court concluded that IGRA preempted state law.
- Reversed and Remanded.

National Indian Lottery

- IGRA established a comprehensive regulatory regime for gaming on Indian lands and that is the extent of its preemptive force.
- Nothing in IGRA suggests that Congress intended to preempt state regulatory power over gaming conducted off of Indian lands.
- By letter of June 22, 1999 the NIGC notified the Tribe that the off-reservation gaming involved in the lottery was not authorized by IGRA.

National Indian Lottery

- AT&T Corporation v. Coeur d'Alene Tribe, 295 F.3d 899 (9th Cir. 2002).
- District Court concluded that AT&T was not required to provide toll free telephone service for the Tribe's lottery.
- The administration of the lottery is conducted only on the reservation.

National Indian Lottery

- Off-reservation participants may purchase tickets by telephone from outside Idaho.
- Player accounts are maintained on the reservation and are funded by credit card or by delivery of funds to the reservation.
- Off reservation players participate by telephone or the Internet.

National Indian Lottery

- The lottery is conducted pursuant to the compact approved by the Secretary and a management contract approved by NIGC.
- Tickets are purchased through deductions to the account. Winnings are credited to the account.

National Indian Lottery

- Pursuant to 18 U.S.C. 1084(d) several state Attorneys General notified AT&T that the lottery violated state laws and AT&T discontinued telephone service for the lottery.
- The Coeur d'Alene Tribal Court enjoined AT&T from refusing to provide the requested service.
- AT&T sought relief in the federal district court.

National Indian Lottery

- The district court concluded that IGRA requires a participant in the lottery to be present on Indian lands when purchasing a ticket; that the lottery was not within the scope of IGRA and that AT&T was not required to furnish toll free service.
- Reversed and Remanded.
- The Tribal Court lacked jurisdiction to enforce the Federal Communications Act against AT&T.

National Indian Lottery

- Only the FCC and the federal district courts have jurisdiction to enforce the FCA.
- NIGC concluded that the lottery was within the scope of gaming permitted by IGRA.
- Under 18 USC § 1166 only the US has jurisdiction over criminal prosecutions for violations of state gambling laws by tribes.
- The Attorney Generals did not have jurisdiction under the Wire Act to demand that AT&T refuse

National Indian Lottery

to provide telephone service where state gambling laws may be violated.

- The states have an adequate remedy at law if they choose to challenge the NIGC determination that the lottery is lawful under IGRA.

Unlawful Internet Gaming Enforcement Act

- UIGEA was enacted in 2006 and prohibits any person engaged in the business of betting or wagering from accepting any credit card payments, checks or electronic fund transfers from another person in connection with that person's participation in "unlawful Internet gambling." 31 U.S.C. § 5363.

Unlawful Internet Gaming Enforcement Act

- “Unlawful Internet gambling” means to place, receive, or otherwise knowingly transmit a bet or wager by any means that involves the use, at least in part, of the Internet in a jurisdiction where federal or state law makes such a bet illegal. § 5362(10)(A).

Unlawful Internet Gaming Enforcement Act

- Unlawful Internet gambling does not include bets “initiated and received or otherwise made exclusively within a single state.”
§ 5362(10)(B)
- “[T]he intermediate routing of electronic data shall not determine location or locations in which a bet or wager is initiated, received or otherwise made.” § 5362(10)(E)

Unlawful Internet Gaming Enforcement Act

- Class II or III gaming under IGRA is permitted, but the players must be located on Indian lands to make or receive wagers.
§ 5362(10)(C)
- If a state permits non-banked poker or bingo on the Internet, tribes in that state could offer it as class II gaming, but only on Indian lands.
- Compact amendments would be necessary to authorize class III Internet gaming.

DOJ Opinion – September 20, 2011

- Issues: (1) Do the Wire Act (18 U.S. C. § 1084) and UIGEA (31 U.S.C. § 5361 et seq.) prohibit a state-run lottery [New York and Illinois] from using the Internet to sell tickets to in-state patrons where the transmission using the Internet crosses state lines? (2) Whether these statutes prohibit a state lottery from transmitting lottery data associated with in-state ticket sales to an out- of-state transaction processor during or after the ticket purchase.

DOJ Opinion

- Conclusion: Because the state lottery proposals don't involve wagering on sporting events or contests they are not prohibited by the Wire Act. Therefore it is not necessary to address the Wire Act's interaction with UIGEA.
- As a result of the opinion only Internet gambling involving sports betting or that is illegal under state law is currently prohibited.

NIGA Position

- 1. Indian Tribes are sovereign governments with a right to operate, regulate, tax and license Internet gaming and those rights must not be subordinated to any non-federal authority.
- 2. Internet gaming authorized by Indian tribes must be available to customers in any locale where Indian gaming is not criminally prohibited.

NIGA Position

- 3. Consistent with long held federal law and policy, tribal Internet gaming revenues must not be subject to taxation. Tribes will use Internet gaming revenues for governmental purposes, consistent with the requirements of IGRA.
- 4. Existing tribal governmental rights under Tribal/State compacts must be respected. No renegotiation of compacts should be required.

NIGA Position

- 5. IGRA should not be opened for amendments.
- 6. Federal legalization of Internet gaming must provide positive economic benefits for Indian country.

Pending Legislation

- H.R. 1174 and H.R. 2366 would prohibit Tribes from regulating Internet poker if they are a licensee or operator, but States would still be permitted to own, operate and regulate lotteries.
- Only commercial Internet gaming would be permitted.
- Both bills were referred to the Judiciary Committee, Subcommittee on Crime, Terrorism and Homeland Security, chaired by Rep. Sensenbrenner.

Pending Legislation

- H.R. 1174 would authorize the Secretary of the Treasury to regulate Internet gambling and enforce licensing requirements for operators of Internet gambling activities.
- It would be unlawful for an operator to accept wagers from persons located in the United States without a license issued by the Secretary.
- States and Tribes, along with the Secretary, would prescribe regulations for problem gambling programs.

Pending Legislation

- States and tribes could opt-out of Internet gambling activities within their respective jurisdictions.
- Prohibits sports betting, except pari-mutuel racing.
- Prohibits the use of credit cards for Internet gambling.

Pending Legislation

- H.R. 2366 would authorize the Secretary of Commerce to establish the Office of Internet Poker Oversight to regulate state and tribal licensing of Internet gaming operations.
- Allows states and tribes to opt-out of Internet gaming or to set limitations on it.
- Prohibits wagers on sports events and games and the use of credit cards for Internet gaming.

The Players

- States –
 - Nevada – has approved Internet poker, including when played in other states where it is permitted, and is accepting license applications.
 - Utah – considering a ban.
 - Massachusetts, Iowa and New Jersey are considering approving Internet gambling.
 - Illinois and New York have the infrastructure in place for Internet lotteries.

The Players

States (cont'd)

- Illinois, Indiana, Louisiana, Montana, Oregon, South Dakota, Washington, and Wisconsin prohibit Internet gambling (except pari-mutuel horse racing).

Manufacturers

- Ballys and others are manufacturing Internet gambling products for use in poker networks.

The Players

- Poker Players Alliance and the American Gaming Association – support federal legislation to legalize Internet poker.
- California On-Line Poker Association – Tribes and Card Rooms support changes to state law to permit intrastate on-line Internet poker.

Potential Impacts

- If poker is the only game authorized, the impact will be small.
- Poker only accounts for about 1% of tribal revenues.
- If slots and table games are authorized, the impact will be significant. These are the source of most tribal gaming revenues.
- State lotteries that play on line and resemble a slot machine could have a significant impact.