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Gambling Breakout session

Notes, Links, and References (abridged)

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The gaming (or gambling, comp. US/UK term) industry is divided in three main markets:

- The lottery market (numerical games, instants/ pulltabs, passive)
- The betting market (sports, financials etc)
- Casinos and video lottery games

(Eadington, 2008) Current status of industry:

Roughly a US\$250 billion industry in a global context

U.S. market approximately \$90 billion, European Union \$80 billion, Australia/New Zealand \$20 billion, Asia \$20 billion, Canada \$15 billion, internet \$12 billion

MACAU – THE “LAS VEGAS OF ASIA”

Gross gaming revenues have increased from \$2.1 billion in 2001 to \$10.3 billion in 2007

– Q-I 2008 at \$3.7 billion => 60% year-over-year (YOY) growth

Macau’s casino revenue rose to \$3.2 billion in the first quarter of 2009, up 8.1 percent from the last three months of 2008. The increase in revenue stops a nine-month slide (Bloomberg.com report citing statistics from the [Macau Gaming Inspection and Co-ordination Bureau Web site](#))

2009 first-quarter revenue in Macau is still down 13 percent YOY from first quarter 2008

(Malone & Arland, 2008) The Tangled Web: Internet Gambling

January 17, 1995 – First Internet bet. Currently – Licensed in over ninety countries.

2005 estimate - 23 million Internet gamblers. Approximately 2,500 websites offering gambling with an estimated \$10 billion in revenues. Gray area games:

Video games (\$7.5 billion/year); On-line tournaments and/or direct play. Web-gaming – MSN, Yahoo, etc. Free games with pay-for-play option. Redemption sites, fantasy leagues, “texting” contests. Major Internet Gambling Countries:

Central America: Belize, Costa Rica, Panama.

Caribbean: Antigua-Barbuda, Dom. Republic, Grenada, Curacao, U.S. Virgin Islands.

Europe: Alderney, Isle of Man, Malta, U.K.

North America: Canada - Kahnawake Res. (Quebec); United States (horseracing).

Demographics of Internet Gamblers:

United States

52.34% male

47.66% female

Age

18-24 – 6.88%

25-34 – 14.91%

35-44 – 19.64%

45-54 – 23.95%

55+ - 34.62%.

United Kingdom

50.71% male

49.29% female

Age

18-24 – 15.30%

25-34 – 21.91%

35-44 – 23.78%

45-54 – 15.58%

55+ - 23.43%

The Study of Gambling Services in the Internal Market of the European Union (http://ec.europa.eu/internal_market/services/gambling_en.htm), composed by the Swiss Institute for Comparative Law at the request of the European Commission (EC), reveals: 2003 US total revenue from gambling (Gross Gaming Revenue or GGR) \approx €60.7 billion; EU \approx €51.5 billion. US betting services, including on-track and off-track betting on horses and sports, US\$3.9 billion (€3.2 billion) \approx 5% of US GGR; EU (€8.9 billion) \approx 17% of the EU total.

US commercial and tribal casinos \approx US\$42.1 billion (€35.1 billion) (58% of the US total); EU casinos \approx €7.5 billion, 15% of the EU total. US gaming machines (aka slot machines, Electronic Gaming Devices, or Video Lottery Terminals – VLTs) outside of casinos are still relatively uncommon \approx US\$3.9 billion (€3.2 billion), 5% of the US total; EU gaming machines \approx €9.7 billion, 19% of the EU total. US Lotteries \approx \$17.4 billion (€14.5 billion), 24% of US GGR; EU lotteries GGR \approx €23.0 billion, 45% of the EU total. US Bingo services and charitable gambling \approx US\$4 billion (€3.3 billion), 5% of US GGR; EU Bingo services \approx €2.4 billion, 5% of the EU total.

Overview of EU Gambling sector (Swiss Institute of Comparative Law, 2006)

Lotteries	43.7%	(24% US)
Casino Gaming	15.9%	(58% US)
Machine Gambling outside casinos	18.3%	(5% US)
Betting	17.3%	(5% US)
Bingo	4.8%	(5% US)

According to La Fleur's "World Lottery Almanac 2008" (<http://www.lafleurs.com>), the global Lotteries and Gaming Industry in 2007 reached the record amount of \$224 Billion, a 10.8% increase from 2006. This figure does not include sales generated via alternative channels (Internet, SMS, mobile, interactive TV) and sales by Betting Exchanges which are the new market trends. The European lottery and betting industry holds a prominent position; EU \approx half of the turnover stipulated above. Among European industry giants, the Greek state-run OPAP (third highest per capita spending in the world) posted a record revenue of 5.06 € Billion; the Italian Lottomatica \approx 720 € Million (Italian lottery market only). Other traditional Betting and Lotteries institutions such as the Spanish Lotteries y Apuestas del Estado, the French La Francaise des Jeux, and the U.K. National Lottery have posted healthy returns and promising growth prospects. The U.S. market posted \$52.7 Billion sales, led by the N.Y. Lottery with \$7.5 Billion.

US Law highlights

Barney Frank on H.R. 2267 (Frank, 2009, <http://www.npr.org/templates/story/story.php?storyId=9884085>):

"I spend a lot of energy trying to protect people from other people. I have none left for protecting people from themselves."

- **DE, MT, NV, OR allowing sports betting (effective in NV; MT offers pari-mutuel fantasy sports wagering; OR discontinued 7/1/07; DE voting to reenact; UPDATE: Bill passed Fri May 8, 2009:**

- <http://legis.delaware.gov/LIS/LIS145.nsf/vwLegislation/050812EA73CE613C852575850056C7AB?open>) – NJ would have been the 5th...
- ... after the Professional and Amateur Sports Protection Act (1992) aka “Bradley Act” (28 U.S.C. § 3701, *et seq.*)... to no avail
 - *Interactive Media et al. v Holder et al.*
3:2009cv01301 (D.N.J. 3/23/09) *PASPA v. Con. Law*
 - CA, LA, NV prohibit (+online) betting beyond state borders
 - Interstate Wire Wager Act (18 U.S.C. § 1084) + Internet
 - Four major elements:
 - 1. being engaged in the business of betting or wagering;
 - 2. knowingly using a wire communication facility;
 - 3. for the transmission in interstate or foreign commerce of bets or wagers or information assisting in their placement;
 - 4. on any sporting event or contest.
 - Exemption for “placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.” 18 U.S.C. 1084(b)
 - Unlawful Internet Gambling Enforcement Act (*Title VII of SAFE Port Act 31 U.S.C. § 5361*)
(amended 12 CFR Part 233, 31 CFR Part 132, 11/12/08)
 - Interstate Horse Racing Act (15 U.S.C. § 3001) + Internet horse race bets in CA, NV, OR, SD...
 - Other applicable statutes: RICO Act, Travel Act, Illegal Gambling Business Act, Interstate transportation of wagering paraphernalia Act...
 - *In re MasterCard Int'l, et al.*, 132 F. Supp. 2d 468, (E.D. La. 2001), No. 01-30389 (5th Cir. 2002):
Gambling losses are enforceable because “*the Wire Act does not prohibit non-sports Internet gambling.*” (DOJ disagreed)
 - Federal gambling law does not address games of skill... (Fantasy Sports, Poker...?)
 - *Humphrey v. Viacom*, 06-2768 (D.N.J., June 20, 2007)
 - *Pennsylvania v. Dent*, 733/2008 (Ct. Comm. Pl. 26th Dist. Columbia Cty, Pa Criminal Div. 1/14/2009)
 - *The Betcha.com twist: Internet Community v. Washington*, 37079-4-II (Ct. of App. Div II WA, 2/10/09)
 - IL, IN, LA, MI, NV, OR, SD, WA prohibiting unauthorized internet gambling
 - HI, UT prohibiting any form of public gambling
 - ND legislative efforts to legalize and regulate online poker operations
 - 2008 Elections: MO Proposition A eliminated a \$500 limit a gambler could lose during any two-hour period at the same casino (more state developments under: <http://www.ncsl.org/programs/econ/gamblingdev.htm>)

- **Internet Gambling Regulation Consumer Protection & Enforcement Act (2009 Barney Frank bill)**
http://www.house.gov/apps/list/press/financialsvcs_dem/press050609.shtml
- **Amateur Sports Integrity Act (2003 bill)**
- **Student Athlete Protection Act (2000 bill)**
- **NCAA DI & DII Bylaw 10.3 + Pro leagues policies**

Interactive Media Entertainment and Gaming Association

IMEGA v. Holder, 3:2009cv01301 (D.N.J. 3/23/09)

Complaint under:

<http://www.imega.org/wp-content/uploads/2009/03/imega-v-holder-federal-paspa-challenge.pdf>

iMEGA refers to DoJ letter to Jo Biden, 91 Chair of Sen. Jud. Comm. opposing PASPA passing (10/28/92) (a) Congress defers to the states re: revenue (b) Federalism (c) Enforcement via sports orgs.

Terms' clarification and enforcement issues – Struggling horse-racing industry

2/23/2009 NJ SR12 urges US Congress to lift US ban on sport betting

iMEGA members operate legally in various world jurisdictions, but due to PASPA may not engage in internet sport betting

Counts: 1) US Con. Commerce Clause uniform legislation v. PASPA allowing four states' sport betting; 2) 14th Am. US Con. Equal Protection (residents of 4 v 46 states); 3) Vague and Overbroad – 5th Am. US Con.; 4) 10th Am. (a above); 5) 11th Am. (c above); 6) 1st Am. Sen Lesniak (restriction of his freedom to legislate) 7) Procedural Due Process (4th, 5th, 14th Am.) (unable to challenge enforcement by sports orgs.) 8) Substantive Due Process (4th, 5th, 14th Am.) 9) Con. Right to privacy.

UIGEA Revised Regulations (11/12/2008):

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20081112a1.pdf>

<http://www.treas.gov/press/releases/reports/unlawfuinternetgambling11.12.08.pdf>

“a single, regulatory definition of “unlawful Internet gambling” would not be practical.”

Deferred definition of gambling to state and federal law.

Comment: poker is a game of skill and not of chance... application of a dominant factor test as a means of distinguishing a skill game from a game subject to chance.

Fed Agencies: “The Act defines the term “bet or wager” as including a “game subject to chance.” However, the Act also defines the term “bet or wager” as including the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance).”The fact that Congress used “subject to chance” in one paragraph and “predominantly subject to chance” in the next paragraph in the same subsection suggests that Congress intended the element of chance in "game subject to chance" to be less than predominant. The Agencies believe that if Congress had intended chance to be the predominant factor in determining the outcome of a "game subject to chance," Congress would have inserted the word “predominantly” as it did subsequently in the same section. Therefore, even if chance is not the predominant factor in the outcome of a game, but was still a significant factor, the game could still be deemed to be a "game subject to chance" under a plain reading of the Act.”

Opportunity for involvement:

Commercial customer may receive license from appropriate gambling authorities, rendering gambling activities as lawful...

If a commercial customer does not have such a license, the participant may request that the unlicensed Internet gambling business provide a reasoned legal opinion that it does not engage in restricted transactions. If a participant has questions or concerns regarding the reasoned legal opinion, it should verify (or have the commercial customer verify) the conclusions presented in the reasoned legal opinion with the appropriate licensing authority.

Reasoned legal opinion means a written expression of professional judgment by a State-licensed attorney that addresses the facts of a particular client's business and the legality of the client's provision of its services to relevant customers in the relevant jurisdictions under applicable federal and State law, and, in the case of intratribal transactions, applicable tribal ordinances, tribal resolutions, and Tribal-State compacts. A written legal opinion will not be considered "reasoned" if it does nothing more than recite the facts and express a conclusion.

For UIGEA challenges, also review:

IMEGA v. Keisler, 08-1981 (3rd Cir. 11/13/2008)

Ps reply brief:

<http://www.imega.org/wp-content/uploads/2008/11/imega-reply-imega-v-keisler-et-al.pdf>

IMEGA v. Judge Thomas D. Wingate (Ky S. Ct. 1/21/09) appeal under:

<http://www.imega.org/wp-content/uploads/2009/01/notice-of-appeal.pdf>

<http://www.imega.org/wp-content/uploads/2009/01/imega-decision.pdf>

<http://www.imega.org/wp-content/uploads/2009/02/motion-to-file-brief-exceeding-page-limitations.pdf>

"It stretches credulity to conclude that a series of numbers, or Internet addresses, can be said to constitute a 'machine or any mechanical or other device . . . designed and manufactured primarily for use in connection with gambling'"

[KY App. Ct. reversed trial ct. decision allowing KY to seize 141 gaming web site names]

IMEGA v. Gonzales, 2008 U.S. Dist. LEXIS 16903, (D.N.J. 3/4/2008)

"... [I]t is not the Court's role to pass on the wisdom of a Congressional act or speculate as to its effectiveness. The Court has determined that the challenged statute was lawfully enacted and does not impermissibly intrude on the Constitution's guarantees..."

EU Law Highlights

- **EC Treaty** [The Treaty establishing the European Community (as amended by the Treaty of Amsterdam)] C 325/35, 12/24/02: EC Treaty promotes competitive market economy and prevents barriers to integration of the single European market

- **Article 3** (c, g): Abolition of obstacles for free flow of services, no competition distortion
- **Article 49**: “...restrictions on freedom to provide services within the Community shall be prohibited...” +//Art. 54: *As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of the first paragraph of Article 49*
- **EC Art. 49 exemptions**
- ***Discretionary power of Member States to decide about the number and type of operators & type and volume of games***
- ***National restrictions are compatible with EC Treaty if (Gambelli, paragraph 67; EC Art. 54):***
 - ***Non discriminatory and proportionate;***
 - ***Justifiable by imperative requirements: Consumer protection, prevention of fraud and crime, maintenance of order in society (Public Order);***
 - ***Restrictions must reflect a concern to bring about a genuine diminution of gambling opportunities;***
 - ***Financing of good cause/state is no imperative requirement.***
- **European Court of Justice Jurisprudence**

Case Law (on EC Treaty Articles 49; 81 and 82 – Restrictions on provision of services; Competition rules, restraint of trade and abuse of dominant position)
- ***C-275/92; Schindler (Import of lottery ads; Netherlands-UK)***
- ***C-368/95; Familiapress (Distribution of pub+prize; Austria-BRD)***
- ***C-124/97; Läärä (Exclusive right to operate slot machines; FIN)***
- ***C-67/98; Zenatti (Operation of sports betting agency/book; ITA)***
- ***C-6/01; Anomar (Operation of gaming machines; POR)***
- ***C-243/01; Gambelli (Monopoly of collecting bets; ITA-UK)***
- ***C-42/02; Lindman (Taxation of winnings; FIN-SWE)***
- ***C-338/04; Placanica (Betting licenses restrictions; ITA)***
- ***C-260/04; Italian Republic (Horse-racing licenses renewal; ITA)***
- ***C-49/07; Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio***
- ***Pending:***
 - ***C-42/07; Liga Portuguesa (extending national restrictions to online sport betting)***
 - ***C-584/08; Real Madrid F.C. et al. (jurisdiction and enforcement of judgments on internet gambling companies)***
 - ***C-258/08; Ladbrokes (scope of national restrictions)***
 - ***C-153/08; Commission v Kingdom of Spain (lottery/betting earnings taxation discrimination)***
 - ***C-46/08; Carmen Media v Land Schleswig-Holstein***
 - ***C-212/08; Zeturf***
 - ***C-409 & 410/07; Avalon & Happel***
 - ***(and four more in re: German states restrictions)***

Gambling research institutes and centers

<http://www.ncrg.org/>

<http://www.unr.edu/gaming/index.asp>

http://www.law.whittier.edu/faculty_admin/members_bio-rose.html

<http://www.gamblingandthelaw.com/>

<http://gaming.unlv.edu/index.html>

<http://www.gamblingstudies.salford.ac.uk/>

<http://www.isdc.ch/en/>

Associations:

International Association of Gaming Advisors

International Masters of Gaming Law

International Association of Gaming Regulators

American Gaming Association

European Gaming & Betting Association

Remote Gambling Association

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CALENDAR YEAR 2006

SUMMARY OF WORLDWIDE LOTTERY SALES (IN US \$ MILLIONS)

SOURCE LAFLEURS 2007 WORLD LOTTERY ALMANAC

CONTINENT OR REGION	LOTTO	NUMBERS	KENO	OTHER	SPORTS BETTING	DRAW	INSTANT S	TOTAL
AFRICA	683	2	23	72	55	21	150	1,006
AUSTRALIA	3,030	20	116		10	85	524	3,785
ASIA/ MIDDLE EAST	15,521	6,889	267	3,730	2,246	7,025	1,477	37,155
CENTRAL & SOUTH AMERICA	2,128	532	20	3,146	89	614	80	6,609
EUROPE	47,749	3,536	3,941	2,938	7,555	13,605	14,588	93,912
NORTH AMERICA	13,625	9,438	3,040	827	435	1,056	31,673	60,094
TOTALS	82,736	20,417	7,407	10,713	10,390	22,406	48,492	202,561
PERCENTAGES	(40,84%)	(10,08%)	(3,66%)	(5,29%)	(5,13%)	(11,06%)	(23,94%)	
US (Fiscal Year 2006)	11,015	8,856	2,675	560	15		28,474	51,595
	(21,35%)	(17,2%)	(5,2%)	(1,1%)	(0,0%)	(0,0%)	(55,2%)	(100,0%)
CANADA (Fiscal Year 2006)	3,567	131	449	192	413		1,949	6,701
	(53,2%)	(2,0%)	(6,7%)	(2,9%)	(6,2%)	(0,0%)	(29,1%)	(100,0%)

**COMPARISON OF SELECTED US LOTTERIES AND OPAP
CALENDAR YEAR 2006 SALES (IN US \$ MILLIONS)**

LOTTERY	POPULATION (IN MILLIONS)	LOTTO	NUMBERS	KENO	SPORTS BETTING	OTHER	INSTANTS	TOTAL	PER CAPITA
CALIFORNIA	36.5	1,239	149	155		13	1,882	3,438	\$94
FLORIDA	18.1	1,085	572			200	2,298	4,155	\$230
GEORGIA	9.4	299	730	60		10	2,107	3,206	\$341
MASSACHUSETIS	6.4	232	341	783			3,196	4,552	\$711
NEW JERSEY	8.7	451	708			10	1,161	2,330	\$267
MICHIGAN	10.1	284	713	455		10	753	2,215	\$219
NEW YORK	19.3	964	1,542	448		190	3,467	6,611	\$343
TEXAS	23.5	520	303			53	2,868	3,744	\$159
OPAP S.A.	10.7	73	111	2,498	3,235	337		6,254	\$584

SELECTED U.S. LOTTERY PRIVATISATION INITIATIVES

(IN MILLION \$US)

STATE	2006 SALES (1)	2006 GOVERNMENT REVENUES (1)	ESTIMATED CAPITALIZED VALUE 2005 (2)	ESTIMATED UPFRONT CAPITAL FROM LEASING	MULTIPLE OF CURRENT EARNINGS
INDIANA	816	216	2,600	1,000-2,000	4.6-9.2
ILLINOIS	1,964	646	7,100	10,000	15.5
TEXAS	3,775	1,090	12,700	14,000	12.8
CALIFORNIA	3,585	1,259	13,600	15,000	11.9
NEW JERSEY	2,407	844	8,600	10,000-12,000	11.8-14.2
ALL US LOTTERIES COMBINED	51,600	17,200	202,700	N/A	11.8

Notes:

1. Sales and Government revenues (Net profits) are for fiscal years ending in 2006 from LaFleurs 2007 World Lottery Almanac
2. Estimated capitalized values are based on Fiscal Year 2005 operating results including VLT operations in 6 states (DE, NY, OR, RI, SD & WV) and are from a study by Christiansen Capital Advisors LLC.