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Let's Not Forget About INTERNET GAMBLING

By Jennifer Roberts, Andre Wilsenach, and Patrick Harrington

Since the U.S. Supreme Court invalidated the federal Professional and Amateur Sports Protection Act in *Murphy v. NCAA*, states are now in a position to legalize and regulate sports wagering. As of the writing of this article, there are currently four states offering full-scale wagering on sporting events — Nevada, New Jersey, Delaware, and Mississippi — while others, such as West Virginia, Rhode Island, and Pennsylvania, should have it ready before NFL season.

As states study and evaluate whether sports wagering will benefit them, the states also should consider whether the time is ripe to legalize and regulate internet gambling. There are many similarities between sports wagering and internet gambling, especially since mobile technology is increasingly commonplace for sports betting. As a legitimized mechanism for wagering, the expansion into internet gambling in a mobile and online environment is made simpler. Further, many of the same arguments that support the legalization and regulation of sports wagering also apply to internet gambling. States should seriously contemplate the addition of internet gambling as a legal form of betting.

While much of Europe has a mature, robust internet gambling market, the United States has encountered several obstacles on the path toward legalizing and regulating internet gambling across the country. As technology became the ever-increasing method to advance commerce, Nevada chose to legalize gambling conducted through "communications technology" to facilitate computer-based wagering in 2001.[1] This form of electronic gaming was classified as "interactive gaming."[2] However, before regulations could be adopted and implemented, the Nevada Gaming Control Board was advised by the U.S. Department of Justice (DOJ) that it was the position of the federal government that internet gambling was illegal

pursuant to the Wire Act and other federal criminal laws.[3]

Over the next decade, the DOJ maintained its position that internet gambling was illegal. As state lotteries were starting to look at offering online lottery products, U.S. Senators Harry Reid (D-NV) and Jon Kyl (R-AZ) submitted a request to the DOJ on July 14, 2011, asking for clarification of the DOJ's interpretation of the Wire Act.[4] Acting under a different administration than before, the DOJ issued an advisory opinion on December 23, 2011, that reversed its prior interpretation of the Wire Act.[5] Pursuant to the advisory opinion, the Wire Act, a federal criminal statute that prohibits the interstate transmission of bets or wagers or of information used to assist with placing bets or wagers, only applies to sporting events or related contests. Therefore, internet gambling and lotteries were no longer considered by the DOJ to be criminally prohibited by the Wire Act.

The day prior, the Nevada Gaming Commission adopted regulations governing "interactive gaming," but limited internet gambling to poker only.[6] That poker-only limitation remains in effect today. On April 30, 2013, the first licensed poker site launched in Nevada – Ultimate Gaming.[7] However, Nevada's limited population, lack of liquidity, and costs may have contributed to the site closing less than two years later. Meanwhile, the European market continued to advance with gambling products being offered in both the online and offline spaces.

Delaware began offering online casino gaming in November 2013,[9] which was the same month several Atlantic City casinos launched their internet gaming sites.[10] As of last year, these initial internet gambling states – Delaware, Nevada, and New Jersey – now compact to pool poker play.[11] Although one would think that three states legalizing some form of online gaming would have resulted in some momentum, it took four years for the next state to take action. Pennsylvania became the fourth state to legalize internet gambling and the state is now in the process of accepting applications to operate.[12]

Since states are currently looking at legalizing and regulating sports betting, now is the opportunity to revisit internet gambling. Many of the same arguments that applied to the push for legal sports wagering similarly apply to internet gambling, namely:

- Legalize and regulate to take it out of the illegal market – Surely, people are gambling on the internet and on their phones on unlawful internet gambling sites.
- Capture revenues from the illegal market – One of the major factors justifying the legalization of sports betting is the estimated billions of dollars being wagered offshore. Equally, those dollars wagered on illegal online slots or casino games could benefit states, especially since some games operate at a much higher margin than sports wagering.
- The legal, regulated oversight provides added transparency and protections – Internet gambling that is strictly regulated like land-based gambling provides information

access, a patron dispute process, protection of player funds, clear game rules, and responsible game play messaging.

- The UK and much of Europe has been doing it for years – The UK and most of Europe have had a lengthy history of regulated internet gambling. Many jurisdictions in Europe continue to modernize tax rates and improve regulations to favor the internet gaming market. In addition to the three states operating internet gambling in the United States, one can look to European markets for guidance.

- Internet gambling can be complimentary to land-based gambling – Sports wagering is often viewed as an amenity to the large resort hotel casinos in Nevada. Similarly, internet gambling can help drive revenues for partnered land-based casinos. For example, in New Jersey, the five Atlantic City casinos that offer online gambling have found that there has been no negative impact on visitation or in-person gambling activity.[13] In fact, most of the customers engaged in internet gambling were new customers, rather than existing land-based customers.[14]

Experience has shown that sports wagering lends itself to being offered through mobile technology. This means that states that already have or are in the process of legalizing sports wagering have, by implication, already "put their toes in the online water." It is anticipated that, contrary to developments elsewhere in the world, the legalization of the sports betting vertical in states throughout the U.S. will inevitably lead to an increase in internet gambling legislation and regulation since sports wagering is quite complementary given its increased use of mobile technology and account wagering mechanisms. It is also anticipated that, as states where sports wagering is legalized and regulated become more comfortable with the use of mobile or online technology for gambling purposes, they will add other gaming products onto these platforms. This should result in all gaming products being offered through land-based and online or mobile options. In fact, this would not be too dissimilar to the way in which all other leisure entertainment industries offer their products to market.

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[1] *See* AB 466, 2001 Stat. of Nev. 3075-76.
[2] *Id.*
[3] U.S. Dept. of Justice, Criminal Division, Letter to Dennis K. Neilander, Chairman of Nev. Gaming Control Bd., dated August 23, 2002.
[4] Chris Sieroty, "Reid, Kyl write letter seeking answers on online gaming policy, *Las Vegas Review Journal* (July 18, 2011).
[5] U.S. Dept. of Justice, Criminal Division, *Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act*, dated Sept. 20, 2011.
[6] Nev. Gaming Comm'n Reg. 5A.140(1)(a).
[7] Richard N. Velotta, "Online poker play may be making a comeback," *Las Vegas Review-Journal* (May 5, 2018).
[8] *Id.*
[9] Chris Barish, "Del. Begins online blackjack, poker, roulette, slots" *USA Today* (Oct. 31, 2013).
[10] New Jersey Office of the Attorney General News, "DGE Announces 4th Quarter and Year-End 2913 Results," at 4 (Apr. 7, 2014).
[11] "New Jersey signed interstate compact with Delaware , Nevada," *iGamingBusiness* (Oct. 16, 2017).
[12] Andrew Maykuth, "Internet gambling, and the winner is Pa.'s treasury," The Inquirer Daily News, philly.com (July 17, 2018).
[13] Steve Ruddock, "Five Out of Five New Jersey Casino Operators Agree: Regulated Online Gambling is Good for Business" Online Poker Report (May 8, 2017).
[14] *Id.*