

Strong feelings over regulation of US e-gaming

US Senators Harry Reid (D-NV) and Jon Kyl (R-AZ), both politicians who have previously addressed US e-gaming issues have asked the Department of Justice (DoJ) to clarify its position on the matter. In a 16 July letter to the US Attorney General, they pointed to '[a] lack of activity from law enforcement [which] led to a significant and growing perception that operating Internet poker and other Internet gambling did not violate US laws,' and urged authorities to 'pursue aggressively and consistently those offering illegal internet gambling in the US.'

This aggressive stance comes as a surprise in the context of several state-level e-gaming proposals introduced in the past few months, notably in California. However, gaming Attorney Stuart Hoegner, believes that "the letter is meant to remind the DoJ that Congress has control of US e-gaming policy. The Senators only want to discourage intrastate regulation attempts - i.e. efforts by individual states - and leave the door open for Congress to regulate. They do not believe the DoJ's position on e-gaming has changed, because it has not changed."

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UK outlines licence scheme for foreign-based operators

Offshore gambling operators selling or advertising online gambling products in the UK should be regulated, the UK Government announced on 14 July. The Minister for Tourism and Heritage at the Department for Culture, Media and Sport (DCMS), John Penrose MP, said in the House of Commons that 'the Gambling Act should be amended so that remote gambling is regulated...[and remote gambling operators] will be required to hold a Gambling Commission licence'. Penrose said that the current regime provides 'very little consumer protection' when playing on an offshore-based website.

Carl Rohsler, Partner at Squire Sanders Hammonds, welcomes the move since the current regime "has an inherent flaw because it creates an incentive for UK operators to move offshore," but he believes "the

Commons statement is absolute nonsense. This is nothing about consumer protection and all about tax".

David Clifton, Managing Partner of Joelson Wilson LLP, shares that thought: "HM Treasury will be the major beneficiary. A further announcement in relation to their review of remote gambling taxation is eagerly awaited".

Rohsler expects that offshore operators will be prepared to pay the same 15% gross profits tax as paid by UK-based businesses since "it is a tax on profits, not on revenue, and is therefore more easily bearable," he said. "Operators will accept this because the UK market is still the largest in the EU."

According to John Hagan, Partner at Harris Hagan, the proposed tax is "quite reasonable by recent European online standards". Clifton thinks that

offshore operators will "have little choice [than to pay the tax] if they want to target British customers". He adds, however, that "the key question is how the new law will be enforced. Every indication to date has been that there will be no ISP or financial blocking, and that the route to enforcement will go down the path of regulatory cooperation between jurisdictions and the prohibition of foreign advertising".

Hagan predicts that the cost of doing business in the UK "will increase substantially. In addition to the tax there will be the higher licensing and regulatory costs," he said. "These are much more likely to be felt by UK gamblers than any marginal improvements in consumer protection. Sectors of the UK land-based industry will, I am sure, be delighted to welcome online operators to their world."

Michiel Willems

EU takes stance against several national gaming draft provisions

The EU has recently expressed doubts regarding the compatibility of several draft Member States gaming laws with EU legal principles, rejecting their potentially discriminatory character.

In Germany, the EU Commission issued an 18 July Opinion detailing the deficiencies of the new draft Interstate Treaty on Gambling, and, according to Joerg Hofmann, Partner at Melchers, "criticising a significant lack of justification for restrictions and unequal treatment of private operators

that might be regarded as discriminatory". This Opinion comes as a confirmation of the views taken by several operators, including Betfair, which deemed the proposed regime "anti-competitive" and have been vocal in their criticism of its protectionist character.

In Greece, the EU Commission took a similar stance in its 8 July Opinion, and singled out the licensing and tender requirements the draft text proposes, which the EU Gaming and Betting Association calls 'highly

questionable'. However, there are still questions the draft text does not answer, especially, says Krystallia Iatridou, Attorney at Karageorgiou & Associates Law Firm, "the eligibility conditions to the public tender for gaming machines (to be defined by ministerial decisions) and the subsequent role of the incumbent, OPAP - issues the EU Commission is concerned about".

The standstill period for both draft gaming laws still runs, giving more time for commentators to voice their opinions.

Time for change: the industry's approach to self-exclusion

The UK is the world's most mature online gambling market and is continuing to grow as more people switch from land-based to online gambling. However, as the industry grows, there are also public health concerns that an increasing prevalence of gambling could have negative impacts on young and other vulnerable people. The 2011 British Gambling Prevalence Survey reported a problem gambling rate of 0.9%, up from 0.6% reported in 2007¹. Whilst these figures and gambling prevalence surveys globally indicate that the majority of people gamble responsibly, the absolute numbers of problem gamblers are large in public health terms. One of the key features in place to protect vulnerable gamblers is self-exclusion - a system in place whereby the player requests from the operator to be excluded from playing on a platform for a certain amount of time. However, self-exclusion processes suffer from major weaknesses, and given the UK Government's recent announcement to reform the UK's gambling laws, now is the right time for the industry to re-think its approach to self-exclusion, as Simo Dragicevic, CEO of Bet-Buddy, discusses.

Online player protection

Back in 2004, a study of UK online operators found that 97% offered no self-exclusion, 77% had no reference to controlled gambling, and 37% had no age verification at registration². Since then, the industry has progressed significantly, partly due to the implementation of the UK Gambling Act in 2005, which required UK-licensed online operators to offer self-exclusion and age verification protection. Today, jurisdictions and operators are using new technologies to innovate and offer even more advanced player protection features. These include the use of behavioural analytics to identify problem gambling behaviour by analysing online player data, technology that has previously been used primarily for online marketing and fraud detection. Land-based operators, such as the Ontario Lottery and Gaming Corporation, are implementing innovative new player protection features such as facial recognition technology to strengthen self-exclusion processes. The Australian Government is also considering controversial proposals to implement pre-commitment technology across all Video Lottery Terminals.

Self-exclusion

It is estimated that there were no fewer than 65,000 self-exclusions in the UK in 2008/09, 45,000 in connection with remote and 20,000 with non-remote gambling³. A major weakness in the current self-exclusion process is that operators have no means of knowing whether their players have self-excluded from other operators. It is certainly true that it should ultimately remain the personal responsibility of individuals to stop themselves from gambling should they need

to. However, gamblers can be their own worst enemy due to the nature of addiction, for example, by excluding from one betting operator and then gambling with another. Therefore, the idea of providing the opportunity for a gambler to self-exclude from more than one operator is beneficial to the gambler and supports the notion of the gambling operator providing a duty of care to vulnerable customers.

During a series of interviews with senior industry stakeholders for a research project at Cass Business School, City University London in 2010⁴, stakeholders stressed a need for a more centralised approach to online self-exclusion. For example, Tim Phillips, then Director of European Corporate Affairs at Betfair, said that 'adopting a pan-European approach makes sense [for self-exclusion], such as a common database where operators share relevant data'. However, the industry raised a number of legitimate implementation challenges that have held-up progress in adopting a centralised self-exclusion service, including data privacy, cost, trust and assurance and technology standards.

Self-exclusion - UK licence conditions and codes of practice for remote gambling

An assessment of the UK's self-exclusion social responsibility code provisions and ordinary code provisions⁵ suggests that the pace of technology change is rendering some provisions out of date and that more could be done to strengthen self-exclusion processes. Social responsibility code provisions, which are conditions of licensing, stipulate that 'licensees must have and put into effect procedures for self-exclusion and take all reasonable steps to refuse service or to otherwise prevent an

individual who has entered a self-exclusion agreement from participating in gambling? Does this provision mean that the online operator must take all reasonable steps to prevent a self-excluded gambler from gambling on any gambling website? Whilst this is a matter of interpretation, previous case law suggests not. In the UK, the most high-profile self-exclusion case is *William Hill v Calvert*⁶. The court ruled that despite Calvert running up debts of £2.1 million having self-excluded from his William Hill accounts, there was no causation in this case as Calvert would have accrued the gambling loss anyway given his addiction. The judge stated ‘the conclusion flows in my judgment naturally from the inherently limited effectiveness of self-exclusion as a remedy for the underlying problem.’

The nature of online gambling allows for much easier data capture and sharing amongst gambling operators compared with land-based gambling. The industry is therefore well placed to support more innovative self-exclusion approaches, such as using cross-operator self-exclusion service. The data is certainly available to share as it is a UK licensing condition to maintain a register of self-excluders, including data such as appropriate records (name, address, other details), and a record of any payment cards, for example. Whilst some raise legitimate data privacy concerns to sharing player data, data encryption technology can be implemented in a manner that deters even the cleverest of hackers, and even in the unlikely event that an encrypted record could be reversed, when combined with anonymised player records, means that they cannot be linked to personal details. Ordinary codes do not hold the same status as social responsibility codes but are

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still admissible as evidence in criminal or civil proceedings. They stipulate that ‘licencees should encourage the customer to consider extending their self exclusion to other remote gambling operators’. The code suggests that ‘the licencee should provide a statement to explain that software is available to prevent an individual computer from accessing gambling internet sites’. However, given the pace of technological change, such approaches cannot effectively solve the problem. Not only are there different operating systems (e.g. PC, Mac, Linux), more importantly, with betting increasingly taking place via texting, smartphones, tablets and interactive TV, PC-blocking solutions are becoming obsolete. In addition, many online operators are now offering self-exclusion via gaming vertical, an industry innovation which effectively renders PC blocking software redundant given it can only support blanket self-exclusion.

Cross-operator self-exclusion

Given these weaknesses, in the current self-exclusion process, Bet Buddy has been consulting with charities such as GamCare and industry associations to launch a pilot of VeriPlay.org, a service that has been developed that allows safe and secure exchange of operator data to better protect vulnerable gamblers. VeriPlay.org maintains a central database of self-excluded players. Operators can upload anonymised player records, meaning data always remains anonymous and meaningless to anyone except the operators sending and receiving the data. The VeriPlay.org algorithm encrypts the data and then matches player data across a number of data attributes that are uploaded daily, weekly or monthly, depending on the needs

of the regulator and industry. Operators can check whether one, ten, or all of their players are on the central list of self-excluded players, which can be accessed either via secure web services or via a web portal. The solution can support both blanket self-exclusion and self-exclusion via gaming vertical. It is envisaged that the majority of operators would use web services to integrate such a service, since it enables low-touch straight through processing, like geo-filtering and age verification. A benefit of the web portal is that it allows for easy access for both land-based and online operators to share encrypted data.

Incentives for sharing data

Whilst credit should be given to the industry for its efforts to share data to identify suspicious sports betting transactions now is the time for operators to start sharing their data and collaborating to better protect vulnerable gamblers. In today’s digital economy, one of the most important enablers of value creation is combining data from multiple sources. However, market failures still exist for the sharing of data because of a lack of incentives for stakeholders⁷. Policy makers may therefore have to apply regulation to ensure that data is shared in industries where there is a clear public benefit to do so, for example, doctor or pilot errors. In such cases, government has a clear interest in making this type of data available as it benefits society. It comes as no surprise that Representative Joe Barton’s recent Bill to licence and regulate online poker in the United States stressed the need for a centralised self-exclusion list that all operators can access⁸.

Conclusion

Across all industries, regulators have always struggled to keep pace

with technological innovation and the gambling industry is no different. Whilst challenges exist to implementing collaborative industry technology solutions, the use of secure data encryption algorithms, anonymised player records, and cloud-hosted architectures make not only such solutions now incredibly secure but also on demand and affordable. The recent Sony Playstation customer data failure⁹ demonstrates that whilst it is right that the industry is focused on protecting customer data, the focus should now shift to using data to better protect the customer. The experience of the UK in 2007 following the implementation of age verification and self-exclusion protection demonstrates that online operators can and will quickly implement new safety features when required to do so. Importantly, the implementation of these necessary features has not negatively impacted industry growth.

At a recent industry debate¹⁰, in London, on the future of gambling, leading industry figures from the business-to-consumer and business-to-business online gambling sectors stressed the importance of innovation in developing richer and more varied gambling experiences across multiple channels. Whilst innovation cannot be halted and should be encouraged, it must also focus on leveraging advances in academic and scientific research and technology to better protect vulnerable customers.

John Penrose, the UK Minister responsible for gambling policy and regulation, announced in July 2011 reforms to how the UK regulates remote gambling, stating that ‘the current system for regulating remote gambling doesn’t work’ and that ‘British consumers who gamble online

may have little or no protection depending on where the operator they deal with happens to be based’¹¹. By announcing these reforms, the UK Government has created a fantastic opportunity to demonstrate leadership and a progressive approach to player protection by addressing the weaknesses in the current self-exclusion provisions.

The industry is also well-placed to enhance existing player protection regulations by driving the responsible gambling agenda on the front foot and demonstrating to regulators and policy makers that it is doing everything it can to protect vulnerable customers. And the best way to influence policy makers is by framing the consumer protection debate in the context of what is best for the consumer rather than what is best for the operator. It is only by championing innovative and new approaches to player protection, such as cross-operator self-exclusion, that the industry can effectively avoid onerous and heavy-handed regulations in the future.

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