

Facebook's gambling app fiercely criticised

Facebook introduced on 12 August its first real-money online gambling application. The US-based social media giant has launched a gaming app called Bingo Friendly, amid concerns about whether the presence of gambling on the social network will put minors at risk. Critics have expressed concerns about Bingo Friendly's marketing, claiming that the app's colourful graphics target minors. There are concerns that the nature of these graphics violates regulations set by the Advertising Standards Authority, which rules that gambling advertisements should avoid reflecting "youth culture" and thus appealing to minors.

Facebook, however, has referred to the age-gating feature it operates, which asks new users to the site to provide a date of birth when signing up, alongside geo-location technology that verifies a user's whereabouts during log-on. Facebook's age-gating measures prevent references to the gambling app from appearing on the site when Facebook is accessed by those registered as minors, for example by blocking mentions of the app on minors' news feeds.

IN THIS ISSUE	EU Data protection	03
	Germany I-gaming	04
	Ireland Betting amendment bill	06
	Taiwan Software rating regulations	08
	Cloning Tetris Holding v Xio Interactive	10
	Italy Customised betting programs	12
	Belgium A regulated market perspective	14

US regulation is "gaining momentum" as DoJ settles

PokerStars, the Isle of Man-based online poker company, has settled with US authorities over allegations of money laundering and bank fraud. PokerStars confirmed on 31 July it will pay \$731 million (£466 million) to avoid any further prosecution in the US. The deal includes a paragraph stating that PokerStars could potentially return to the US market, when online poker is legalised. The Chairman of PokerStars, Mark Scheinberg, said he is "delighted".

"The deal appears to be a win for all parties", said Lloyd Levine, President of Filament Strategies and a former Member of the California State Legislature. "The players will get their money, the companies assets will be merged, and they will be given a clean start in the US market, the Department of Justice gets settlement money, and nobody has to go to court."

It has also been agreed that PokerStars acquires the assets, and pays off debts, of Full Tilt Poker, a onetime rival that was also indicted on 15 April 2011, which became known as 'Black Friday'. On that day the US Department of Justice (DoJ) brought criminal charges against executives of PokerStars, Full Tilt Poker and Absolute Poker, shut their websites to US-based players and seized funds.

PokerStars will pay \$547 million to the DoJ and \$184 million to poker players outside the US who are owed money by Full Tilt Poker.

Levine stresses "the move to legalisation of internet gambling is gaining momentum." Although he adds "things here are moving at a snail's pace", Levine emphasizes that "we have gone from no legalisation, to three states being legalised, and five more states and Congress discussing it."

Linda Shorey, a Partner in the Harrisburg office of K&L Gates, thinks "there is a possibility of federal legislation being passed by Congress when it returns to work after the election." Whether Congress will propose any framework for regulation "depends on the results of the November election", Shorey said.

Levine explains the surge in enthusiasm for regulation because "obviously, money is a big factor. Governments at all levels are cash strapped and they see this as a way to bolster their budgets without increasing taxes."

Levine is convinced "were there not this much money involved it is likely the other efforts would have been a lot less effective." He predicts "legalisation will happen eventually. Not this year, but perhaps late in 2013 or 2014."

Michiel Willems

William Hill deny legal challenge to UK Government's POC tax

A Spokesperson for William Hill confirmed CEO Ralph Topping's comments concerning a legal challenge to the UK Government's plans to introduce a point of consumption tax for off-shore operators, but was keen to stress that William Hill are not currently embarking on such a legal challenge, merely that it is a consideration and if necessary there are legal grounds to make such a case.

Topping, during a press conference on 27 July, said that he had heard 'encouraging noises from betting lawyers that

a challenge against [the UK Government's intentions to tax online operators at point of consumption] could be successful in a court of law'.

"The proposed legislative changes will be open to challenge under the EU free movement rules and could involve a complaint to the European Commission or a judicial review case," said David Zeffman, Partner at Olswang. "Westminster appears to be responding to landbased operators," said Stephen McGowan, a Director at Lindsays.

"Landbased operators would benefit from a level playing field on the basis that they believe it inequitable that off-shore operators avoid UK regulation and are subject to differing taxation."

That said, "I am not surprised a significant operator is looking to challenge this," adds McGowan. But, "The success of any such challenge will depend on a number of factors," said Zeffman, "most importantly the evidence the Government puts forward in support of its argument that the existing licensing regime is not working to protect UK punters."

US Tribes & online gambling

Legalised online gambling has the potential to transform the US gambling industry like never before, allowing eligible US citizens to play online casino games via their mobile devices rather than being limited to the casino. Two US states, Nevada and Delaware, have been quick off the mark to approve online gaming following the Justice Department's decision that the Wire Act only applies to sports betting and as such does not prohibit other types of online gambling.

The rush towards online gambling by US states looking to tap into new revenue streams is unwelcome news to the \$27 billion a year tribal gambling industry, which has its roots firmly in the US land-based casino industry. 'Gaming has been the single most effective form of economic development for Indian Country,' said Daniel Akaka, Chairman of the Senate Committee on Indian Affairs. So

unsurprisingly Tribes have been hostile to the legalisation of online gambling, given that consumers will soon have the freedom to partake in gambling outside of their land-based casinos, which currently account for 40% of all gaming conducted in the US.

Now, in what seems like a reaction to the inevitable, Akaka presented a draft Tribal Online Gaming Act of 2012 at the Senate Committee's oversight hearing in July that looked to debate the 'Regulation of Tribal Gaming: From Brick & Mortar to the Internet'. The draft looks to kick off the discussion about tribal online gaming and to cement tribal inclusion within this as yet unknown marketplace.

The draft legislation declares that 'United States consumers would benefit from a program of regulated tribal online gaming that recognises that Indian tribes are sovereign governments with a right to operate, regulate, tax and

license online gaming.' However, the question as to whether such sovereignty extends off tribal lands remains to be seen, and given that most states looking to embrace gambling are doing so in pursuit of additional revenue, the additional clause that states revenue generated from tribal-operated online sites will remain untaxed, could cause concern. Unlike commercial casinos, tribal facilities do not pay direct state taxes because of their sovereign nation status. Equally attempts by some states to tax all online gambling including across tribal revenue gained from online ventures has set the scene for what could be a heated debate. But despite such early conflicts it must be remembered that in this – the early stages of tribal inclusion in online gambling – as Akaka announced during the committee meeting: 'This bill is intended to further the dialogue' rather than form a rigid piece of legislation.

AT A GLANCE

- USA** – The US Senate Committee on Indian Affairs has published a draft federal bill for licensing tribal online gaming.
- UK** – Facebook launches a new application that will allow UK users aged 18 and above the opportunity to partake in real-money gambling.
- Alderney** – The Alderney Gambling Control Commission has published amended regulations to, amongst other things, protect the integrity of sports.
- Germany** – European betting operators express doubts about Germany's online sports betting license approval procedure, which launched on 8 August.
- Spain** – Spain's gambling regulator Dirección General de Ordenación del Juego, is taking action against unlicensed online gaming sites, despite the new licensing regime only starting in June.
- USA** – PokerStrategy files claim against Full Tilt Poker's former owner Pocket Kings for an outstanding invoice.
- USA** – A number of US sports associations filed suit on 7 August against New Jersey Governor Chris Christie, to block the introduction of state regulated sports betting.
- Italy** – The Remote Gambling Association has advised the Italian Government to adopt a gross profit tax for online sports betting.
- USA** – New Jersey Governor Chris Christie signed the State's mobile gambling legislation into law on 8 August, which will enable casinos to offer mobile gambling.

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Monthly: launched September 2003
World Sports Law Report is designed to address the key legal and business issues that face those involved in the sports industry. PRICE £545 (£565 overseas).

DataGuidance

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The global platform for data protection and privacy compliance.
www.dataguidance.com

Gambling: the proposed General Data Protection Regulation

Technological innovation has enabled the gambling industry to diversify the traditional business model into a broader proposition. The online environment provides organisations with a vast amount of personal data. Data that can be mined for insights into betting patterns and financial affairs. The use of that data, however, is governed by data protection laws. It is imperative organisations comply with requirements to avoid stiff penalties. Privacy regulators, advocates and consumer groups argue that the regulatory framework, the European Data Protection Directive 95/46/EC, should be updated as it no longer provides sufficient protection to challenges posed by new technologies. The Directive has not been implemented uniformly, which has created problems for multi-jurisdictional organisations seeking a uniform approach to compliance.

The European Commission responded by proposing a General Data Protection Regulation (GDPR) to replace the Directive. The GDPR is likely to lead to greater harmonisation. Member States will have little room for manoeuvre in their interpretation, but prescriptive standards mean organisations will be held to higher account. The Commission looks to finalise the text within the next 12-18 months. It will then be subject to approval procedures and come into force two years after being agreed. Below are some of the provisions of the GDPR relevant to the online gambling industry.

Administrative sanctions

The GDPR proposes three levels of fines linked to global turnover of an organisation. An organisation with a minimal presence in the EU could nonetheless be subject to a large penalty. In addition, the maximum fine of €m or 2% of global turnover can be imposed for a wide range of offences-including not having requisite paperwork, regardless of whether the processing activity is non-compliant. This suggests the tiering of penalties may not be commensurate with the failing.

Accountability

The GDPR includes documentary obligations to demonstrate 'accountability', which includes recording of:

- the name and contact details of the data controller and data protection officer;
- the purposes of the processing;
- retention periods for the categories of personal data; and
- the controls put in place to ensure compliance.

Documentation must be available for inspection by the Data Protection Authority. Organisations in the gambling industry will need to identify flows of personal data, how that data is used, with whom it may be shared and how long it is retained.

Personal data security breach notification

Online gambling organisations have no legal obligation to notify their DPA in the event of a personal data security breach. Under the proposed GDPR, however, they must make notification of a breach 'without undue delay' and within 24 hours 'where feasible'. If 24-hour notification is not possible, a breach will have to be notified as soon as possible with a full explanation as to why 24-hour notification was not possible. The definition of what constitutes a security breach is wide. Organisations must create a register of breaches, documenting the reason, the remedy and future prevention. Where the breach

is likely to affect an individual, there is an obligation to notify the individual without undue delay, failure can lead to a monetary penalty. Of crucial importance are timely internal reporting mechanisms.

Consent

If organisations rely on consent to legitimise data-processing activities, the GDPR proposes that the burden of proof rests with the organisation responsible for processing, and that it must be explicit. Consent will no longer be valid if there is a significant 'imbalance' between individual and data controller.

Data Protection Officer

Companies employing over 250 staff, or whose core activities require systematic monitoring of individuals, must appoint a Data Protection Officer. The DPO must hold professional qualities and knowledge of data-protection law and practice. The appointment must be for a minimum of two years; dismissal is allowed only if the DPO no longer fulfils the requirements. The DPO must have independence within the organisation. There must be no conflict of interest. Companies must notify the DPA, employees and clients, of their selection.

Privacy notices

Individuals must be given privacy notices prior to collection of personal data. The GDPR proposes including:

- the legitimate interests relied upon to justify the processing;
- how long categories of personal data will be retained;
- the right to complain and contact details of the data protection regulator; and
- what data will be disclosed and might be transferred.

Organisations need to identify data collection points to ensure this information is available.

Privacy Impact Assessments (PIAs)

The GDPR requires that a PIA be completed if there is a specific risk to individuals in the processing, such as when monitoring, processing sensitive data or analysing behaviour. For example, if an organisation intends to adopt a fraud-prevention tool, which monitors betting activity, a PIA should be undertaken to assess the impact on privacy and adherence with the regulation.

Privacy by Design

Organisations would be required to build-in technical and organisational measures to protect personal data at the design development stage of a new process/solution to ensure adherence with the regulations. Organisations considering new products/services should consult the DPO at the earliest stage.

Concluding thoughts

The breadth of the GDPR and level of scrutiny organisations will now be under has taken some by surprise. Though it is likely to deliver harmonisation, the GDPR will bring substantial obligations. Organisations should monitor developments and begin assessing how the changes will affect them.

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Confused: the state of online gambling in Germany

The German online gaming market is in a state of transition following the newly elected coalition government in Schleswig-Holstein and the recently enacted Interstate Treaty. The situation in Germany is far from clear in regards to online gambling as Dr. Wulf Hambach and Maximilian Riege, of Hambach & Hambach law firm explain.

There are two coexisting, but different regulatory regimes in Germany: the Gaming Reform Act (GRA) from Germany's northern state, Schleswig-Holstein and the new Interstate Treaty on Gambling (ITG). Recent drafts, acts and directives demonstrate that gambling operators have to be open to new developments in the German market.

The recently elected government in Schleswig-Holstein wants to repeal the GRA to join the ITG regime but it is proving more difficult than some thought. In fact, Schleswig-Holstein's ministry of the interior just announced that it is bound by law to comply with the act and issue licenses for sports betting and online casinos games as long as the GRA is in force. Germany's other 15 federal states still prohibit all kinds of online casino games but a tender procedure for 20 possible online sports betting licenses was published in the Official Journal of the EU and is open for application until 4 September 2012.

At the end of June 2012 the federal parliament (*Bundestag*) adopted an amendment to the German Horse betting and lottery Act (RWLG) that stipulates a tax burden of 5% turnover for all sports betting offers in Germany. Moreover, a draft Directive on Advertisement for the gambling industry is being monitored by the advertisement and gambling

industry. Shifts in the industry are also apparent given the new draft German Anti-Money Laundering Act, which stipulates strict requirements for online gaming providers, a direct reaction to recent regulatory reforms. The following analysis will address some of the core elements of Germany's new gambling regulation.

Schleswig-Holstein's GRA

To date, the GRA remains in force despite the election in May of a new left-wing coalition firmly against the law. When the government came into office opponents of the gambling liberalisation process were vocal. The head of the Social Democrats, Ralf Stegner, proclaimed that the time of the "Las Vegas in northern Germany" is over before it really started. But they were mistaken.

So far, seven sports betting licenses have been issued, and more may follow. In July, Schleswig-Holstein's minister of the interior, Andreas Breitner, admitted what experts predicted: It takes more to repeal a law than bold announcements. In this case, at least two parliamentary sessions and a notification to the EU Commission. According to restrictions, the GRA cannot be repealed before the end of the obligatory standstill period of at least three possibly four months after notification. A moratorium to stop the assessment of license applications before the GRA is formally repealed face severe constitutional obstacles.

Nonetheless, the government maintains its intention to repeal the GRA and join the ITG. It plans to hold the first parliamentary hearing in the first session after the summer break on 24 August 2012. However, since the GRA remains in force, the ministry of the interior must continue to assess

applications and issue licenses. Otherwise, the administrative court in Schleswig-Holstein has the power to order the ministry of the interior to issue a license. Two gambling providers have already taken legal action to force the ministry of the interior to issue a decision on their application.

The most likely scenario is that the GRA will remain in force until at least the end of 2012. Moreover, there is only a one vote majority in the governing coalition - so some politicians might wonder if it is a smart move to repeal the GRA that is compliant with constitutional and EU law in order to join an interstate treaty which faces strong criticism.

The ITG and the RWLG

The new Interstate treaty on Gambling (ITG) came into force as of 1 July 2012 since 14 federal states (all except Schleswig-Holstein and North Rhine-Westphalia) ratified the ITG in their regional parliaments. Contrary to Schleswig-Holstein's GRA the ITG prohibits online casino games and restricts the online sports betting market to 20 providers and a trial period of 7 years. The arbitrary limitation of 20 sports betting providers and differing regulation of online casino games, raises fundamental concerns in regards to the freedom to provide services and coherence principle stipulated in EU law.

The Germany Monopoly Commission, an independent committee authorised by the German Federal Government, criticised the regulatory approach of the ITG and questioned its viability to fight the grey and black market as well as its compliance with constitutional and EU law. It was argued that the trial period should also apply to online-casino games, since there is no reliable proof that online casino games

have a higher addiction potential than sports bets. Moreover, the monopoly commission argued that a taxation system based on gross profit as stipulated in the GRA would be more appropriate for the gambling sector than the turnover tax model of the RWLG.

Despite criticism the ministry of the interior of Hesse (the authority in charge of managing the application procedure) opened a tender procedure for gambling providers to apply for one of the 20 sports betting licenses. The requirements are comparable to those in Schleswig-Holstein. Applicants must prove reliability, expertise and in the second stage their performance potential. Applicants will have to provide a sales concept, a profitability concept, a security concept, a social concept and a payment concept.

However different to the Schleswig-Holstein license requirements: each license holder must provide a security deposit in the form of an unlimited bank guarantee of € 5 million which may be increased to € 25 million. In addition, the sports betting provider must name at least two persons to represent the applicant's IT and business department. These persons have to provide a CV that proves at least 5 years experience, including a diploma in IT or business studies.

The first stage of the tender procedure ends on 4 September 2012. Once the deadline is missed, a provider's last hope is the re-opening of the tender procedure if there are not enough successful applications for licenses. However, this remains at the regulator's discretion. In the context of the tender procedure another issue raised concerns the law firm 'CBH's' management of the tender procedure. This law firm is known to be the legal advisor of the state owned German gambling

A comparison between GRA and ITG shows that German gambling regulation is far from "coherent and consistent", two key requirements stipulated by the European Court of Justice for an EU law compliant national gambling regulation.

monopolist '*Deutscher Lotto- und Totoblock*'. The conservative party in Schleswig-Holstein is concerned about a conflict of interest and demands CBH be excluded from the tendering procedure.

Nonetheless, licenses for 15 German states should be issued before the end of the year and we will know then, how serious states take the intention to open the German sports betting market to private operators. But it will be the next few years that show if the ITG complies with constitutional and EU law. A comparison between GRA and ITG shows that German gambling regulation is far from "coherent and consistent", two key requirements stipulated by the European Court of Justice for an EU law compliant national gambling regulation.

Schleswig-Holstein has issued seven sports betting licenses based on the GRA's conditions. In addition 49 license applications (28 for sports betting and 21 for online casino games) are still pending. The other 15 German states are about to license up to 20 sports betting providers based on the ITG's conditions but still want to exclude online casino game operators from the German market.

Draft Advertising Directive

Advertisement is a key tool to channel customers to the regulated market. However, the first draft of a directive on advertising for the gambling industry contains restrictions that stakeholders call 'censorship'. The directive refers to all parties involved in advertising. This is a fundamental change to the existing 'rule of separation' in German advertising law. The most controversial issue is that the draft requires regulatory approval for each advertising campaign. The authority will assess each advertising campaign and issue

permission on a case-by-case basis. The criteria for each permission will be i) content, ii) distribution channel, iii) presentation of warnings and safety instructions, iv) addiction potential and v) does the campaign channel players to the regulated market.

Recently there were indications that the draft could be revised and requirements for advertising campaigns softened.

Anti-Money Laundering Act (*Geldwäschegesetz, GWG*)

As a reaction to the recent developments the Federal German government adopted a new draft German Anti-Money Laundering Act. If ratified in the German parliament (*Bundestag*), the draft would increase the GWG's scope to include licensed operators and agents of online games of chance. Banks and financial institutions as well as issuers and acquirers involved in payment proceedings related to online gaming would have to comply with additional monitoring and control requirements.

According to the draft, gambling providers will be obliged to take measures to avoid money laundering and financing of terrorism and install appropriate risk-management. The draft only allows one player account per player per gaming provider. Gambling providers would be obligated to fully identify the player before registering and establishing an account. In addition, transactions from a player's payment account to his player account and vice versa would only be allowed via certain transaction methods.

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Publication of the Irish Betting (Amendment) Bill 2012

The long awaited Irish Betting (Amendment) Bill 2012 was published last month by the Irish Minister for Finance, Mr Michael Noonan T.D. If the Bill becomes law, it will introduce a new licensing and taxation regime for remote bookmakers and betting intermediaries, and introduce changes for land-based bookmakers, as Áine Matthews, Associate Solicitor at LK Shields Solicitors, discusses.

The Irish Betting (Amendment) Bill 2012 (the Bill) has been expected since May 2010 when the then *Taoiseach*, Brian Cowen, (the Irish Prime Minister), announced that the Irish Government intended to tax online betting and to introduce licences for overseas betting providers.

Upon publication of the Bill Minister Noonan stated: "This bill will bring into place a fair and equitable licensing and regulatory regime for all bookmakers and betting intermediaries. This bill, once enacted, will allow for the extension of betting duty to remote bookmakers and will ensure that all bookmakers activities offered in the State are taxed equally. The fact that off-shore bookmakers were not subject to the betting levy represented a competitive disadvantage to on-shore firms and also narrowed the State's yield from the levy".

Main points of the Bill

- Applications can now be made to the Revenue Commissioners for a remote betting licence and/or a remote betting intermediary's licence. A remote betting intermediary is defined as "a person who, in the course of business, provides facilities that enable persons to make bets with

other persons (other than the first mentioned person) by remote means". The Bill defines "remote means" as including "the internet, telephone and telegraphy (including wireless telegraphy)". Essentially, the same requirements exist for remote licences as a land-based bookmaker's licence.

- A company can now apply for a bookmaker's licence in addition to an individual. A company's managing director, chairperson, CEO or persons acting as such can be held personally liable for any breaches of the Betting Acts 1931 to 2012. Those persons must apply for and hold a Certificate of Personal Fitness (CPF) from the Superintendent of the *Garda Síochána* (a high ranking Irish police officer).

- A bookmaker's licence will also allow the bookmaker to accept bets by remote means (e.g. telephone) provided that the annual value of all such bets does not exceed the lower of €200,000 or 10% of the bookmaker's turnover. A remote licence is required if remote bets exceed the aforementioned threshold. Land based bookmakers can accordingly compete with online bookmakers subject to the aforementioned cap without having to apply for a remote licence provided they trade within the caps.

- The excise duty for a remote betting licence and a remote betting intermediary's licence will be €5,000. The relatively low licence fee is presumably designed to attract overseas providers to apply for a licence in Ireland, thereby bringing them within the taxation net in Ireland.

- The 1% turnover tax will be extended to remote bookmakers. Provision was made in the Irish Finance Act 2011 for the taxation of remote bookmakers and betting exchanges, subject to a Ministerial Commencement order. The

turnover tax model rather than a gross profit tax will no doubt be the subject of much debate. It is understood that the existing betting tax regime brought in €27 million to the Irish Exchequer in 2011 and is expected to raise €26 million this year. Commentators have said that the extension of the duty to online operators could add as much as €14 million to that amount in a full year, much needed revenue for the Irish State.

- A 15% commission tax will be introduced for remote betting intermediaries.

- Surprisingly, Ireland has not followed the lead of the UK by removing the prohibition on enforceability of bets in court: wagering contracts remain void. However, a Superintendent of the *Garda Síochána* can refuse to grant a CPF if a bookmaker has "unreasonably refused to pay sums due to persons who had won bets".

- A person must be a licensed remote bookmaker to carry on business as a remote bookmaker from a place outside Ireland by means of an internet website that may be accessed by a person from a place in Ireland. Remote betting intermediaries must also have licences to carry on their business. This means that unless remote operators have an Irish licence, they must block access from people in Ireland or risk incurring extensive sanctions. It is expected that remote operators with licences in other jurisdictions will raise concerns with the Government and the European Commission with regard to the legality of these provisions.

- Only a licensed remote bookmaker who carries on the business of or acts as a remote bookmaker from a place outside Ireland may communicate or attempt to communicate with a person by remote means for the purposes of the making of a bet or

bets. The same licensing obligation applies to remote betting intermediaries. The Bill defines what it means for a person to "communicate" with another person but the definition will be the subject of much debate.

● Contravention of the above mentioned prohibitions will allow the Minister for Justice and Equality to serve what is known as a "Notice". A Notice is a document which specifies the contravention and sets out the steps to be taken for the purposes of securing the cessation of the contravention. If the Notice is contravened, the person shall then be guilty of an offence and liable to substantial fines.

● In circumstances where bookmakers, remote bookmakers or remote betting intermediaries are believed to be in contravention of certain prohibitions under the Betting Acts 1931 to 2012, the Minister may make an application to the District Court for the following orders:

1. An order that credit institutions cease conducting business with the bookmaker, remote bookmaker or remote betting intermediary;
2. An order that advertising in the State on behalf of the bookmaker, remote bookmaker or remote betting intermediary be prohibited;
3. An order that any sponsorship of a sporting event by the bookmaker, remote bookmaker or remote betting intermediary be prohibited; and
4. An order that telecoms providers and internet service providers prohibit access to the websites of the offending remote bookmaker or remote betting intermediary.

These are significant orders and there is no doubt that they are intended to act as a major deterrent. Enforcement will however be key and the

Almost all parties in Ireland have long been in agreement that the current gambling laws which date back to 1931 do not adequately address online gambling.

enforcement mechanisms set out in the Bill are novel and interesting.

● The Bill provides for prosecutions in *absentia*, which will deal with prosecutions against overseas bookmakers who fail to present themselves before an Irish court.

● A register of Licensed Bookmakers and Remote Bookmaking Operations will be published on the internet by the Revenue Commissioners.

● Carrying on business as an unlicensed bookmaker and/or remote bookmaker and/or remote betting intermediary constitutes an offence. In addition, persons holding themselves out as a bookmaker and/or remote bookmaker and/or remote betting intermediary constitutes an offence. Persons guilty of such an offence could be liable for fines of up to €150,000.

When will the Bill become Law?

It is expected that the Bill will become law in early 2013, subject to any amendments made by the Houses of the *Oireachtas* (Ireland's upper and lower Houses of Parliament), and amendments that may be required by the European Commission. Certain sections of the Bill have to be notified in draft to the European Commission in accordance with the Technical Standards and Regulations Directive 98/34/EC, as amended by Directive 98/48/EC. The Directive is intended to assist in avoiding the creation of new technical barriers to trade within the Community. It requires Member States to notify technical regulations to the Commission in draft, and then to observe a standstill period of at least three months before adopting the regulation, in order to allow other Member States and the Commission an opportunity to

raise concerns about potential barriers to trade.

Conclusion

Almost all parties in Ireland have long been in agreement that the current gambling laws which date back to 1931 do not adequately address online gambling. The Bill is to be generally welcomed as it introduces significant reforms in terms of creating a proper regulatory and licensing regime for remote bookmakers and remote betting intermediaries. The Minister argued that the new licensing system for remote operators will serve the public interest in preventing crime and protecting consumers against fraud and will ensure that all businesses offering betting services from Ireland or to persons in Ireland are regulated appropriately.

Ireland as a jurisdiction relies heavily on foreign direct investment. The horseracing sector, including betting operations, is seen as a key element of the overall economy. The government hopes that by creating a regulatory environment for online gambling operators, significant down stream revenue from investment by major gambling firms in Ireland will be generated. It is no secret that such major firms prefer to base themselves in a properly licensed and regulated regime.

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The full text of the Bill is available here:
<http://www.oireachtas.ie/documents/bills/28/bills/2012/6812/b6812d.pdf>

Software rating management regulations expanded

Amendments to the ratings of gaming software in Taiwan came into force in May and could have consequences for offshore software providers serving the Taiwanese market. The amended Regulations require games to be rated and categorised in regards to content and given appropriate age restrictions set out in the amended Regulations. Marcus Clinch and Indy Liu, of Eiger Law in Taiwan, discuss the changes, the penalties and the grace period before full compliance is mandatory.

Taiwan brought amendments to the Regulations for Computer Software Rating into force at the end of May 2012. These changed the name to the Regulations for Game Software Rating Management and redid and extended the existing ratings system to cover all game software regardless of platform. A registration requirement for games has also been established under the regulations - the rating and plot of each game must be registered on a central database. The ratings system has potential consequences for companies not directly releasing gaming software in Taiwan, but those making gaming software available to Taiwanese consumers either online or as a download offshore. The authorities have the power under the Regulations to take action and prevent access to offshore non-compliant gaming software.

The original Regulations came into force in January 2007, but only applied to games playable on a computer, console, or handheld software. The legal basis for the regulations is the Children and Youth Welfare and Rights Protection Act. The original

Regulations came about under Article 27 which required that the competent authorities establish a classification system for publications, computer software, and the internet. The continued expansion of gaming delivered through an online platform or via mobile applications brought about the impetus to broaden the Regulations. Amendments to the Children and Youth Welfare and Rights Protection Act came about in 2011, and Article 44 on the amended Act extended the classification requirement to include game software. The amendments to the original Regulations then followed.

Amended regulations

Game software under the amended Regulations 'refers to software that integrates digital text, sound and light, music, pictures, video or animation, allowing the user to achieve a certain goal by playing games through the operation of electronic equipment.' (It does not include software used in electronic game machines as mentioned in the Electronic Game Arcade Business Regulation Act). This extends to games delivered through an online platform or via a mobile application. There is also a further category of game software referenced for minimum classification that has been defined as, 'Board, puzzle, and entertainment game software: refers to the simulation of mahjong, poker, dice, steel balls, horse racing and roulette, or online games containing Xiao Ma Li, slot machines, or fruit plate image content.' These games at a minimum must be rated 'Protected'.

Game software must be rated on the basis of its content - five categories have been established: i. Restricted category: only people over the age of 18 may play; ii.

Parental Guidance over the age of 15 category: only people over the age of 15 may play; iii. Parental Guidance over the age of 12 category: only people over the age of 12 may play; iv. Protected category: only people over the age of six may play; v. General audiences category: Anyone of any age may play. Each category finds definition within the regulations.

'Restricted' and 'PG15' involve varying degrees of the following content: i. sex; ii. violence/horror; iii. drugs, alcohol, and/or tobacco; iv. strong language; v. deviant behaviour; and vi. other adverse content. 'PG12' involves a lesser degree of the following content: i. sex; ii. violence/terror; iii. language; iv. match making and virtual relationships; and v. other adverse content. The presence of any one item of content to the degree specified in the Regulations triggers the rating. 'Protected' includes the following content: i. mild violence; ii. the aforementioned board, puzzle, and entertainment game where the game uses a virtual game currency for game play; and iii. other adverse content. The classification of board, puzzle, and entertainment games within 'Protected' is a minimum rating and the presence of other classified content would trigger the higher classification. Content outside of the aforementioned four categories shall be rated as 'General'. It should also be noted that the product packaging of the game software, and the instructions, downloads, or content of the homepage cannot contain content in excess of its rating.

The obligation to rate a game falls on the individual or entity that releases, acts as an agent, rents and sells, distributes, displays and exhibits, or provides downloads of the game software. The initial obligation falls on the individual or

entity that releases the game or the party that acts as their agent in Taiwan. If those parties are absent then the obligation falls on the actual party that supplies the game. A game must not just be rated, but it must also have its rating and plots (triggering content) registered in a database maintained by the competent authorities. The system involves online self-registration at a dedicated site.

Categories

Actual ratings symbols have been provided for each of the five categories and must be marked or otherwise included in some form per specifications in the Regulations. This obligation to mark the rating also includes advertising - where the game has not yet been rated then this must be indicated in the advertisement. The plots or triggering content must also be marked on the game's product packaging or game software instructions, download, or homepage. The Regulations specify how the plots must be marked and when multiple plots appear in the game. If more than three plots appear then at least three plots should be marked proportionally. The main plots identified for listing include: i. plots which involve sex, violence, terror, tobacco and alcohol, drugs, strong language or deviant behavior; ii. the board games, puzzles, and entertainment where the game uses a virtual game currency for game play; and iii. plots encouraging users to have virtual romances or marriages. Warnings, plots, and ratings must obviously be in Chinese.

Warnings

The following warnings must also be clearly marked on product packaging of the game software, and game software instructions, download, or homepage: i. note the

The obligation to rate a game falls on the individual or entity that releases, acts as an agent, rents and sells, distributes, displays and exhibits, or provides downloads of the game software.

length of usage time; avoid hazards of excessive gameplay, or other similar warnings; ii. the purchase of game points (card), the virtual game currency, or virtual treasure as payment methods, the content of its payment and amount, or that a part of the content of the game or service would be subject to payment of other fees, or other similar warnings; and iii. restricted game software shall be further marked with warnings that only people over 18 years old may purchase or use it. Restricted game software must also be displayed to the consumer in a specific area and separated from games of lower ratings. Measures must also be in place to prevent children and youths from coming into contact with Restricted game software when being placed on the market. The Regulations also state that parents, guardians, or any other persons who are, in practice, taking care of children and young people should assist children and young people in complying with the rating regulations.

Parties with an obligation to rate and register a game under the Regulations, but do not, face fines of between TWD50,000 (approximately USD1,666) and TWD250,000 (approximately USD8,300). Parties who rate and register a game under the Regulations but do so incorrectly face fines of between TWD30,000 (approximately USD1,000) and TWD150,000 (approximately USD5,000). Parties who fail to prevent children and youths from accessing inappropriate games face fines of between TWD20,000 (approximately USD666) and TWD100,000 (approximately USD3,333). Authorities also have the power to order the removal and rectification of game software not in compliance with the Regulations.

Where games have not been specifically released in Taiwan, but where users in Taiwan may access or download the game online and where the game has not been registered or rated then the authorities may: i. notify the internet platform provider and request that it take measures to restrict access to the game by children and youths or to remove access to the game software; or ii. notify the relevant service provider in Taiwan and request that it terminate the relevant service.

The amended Regulations came into force at the end of May 2012 but parties have been provided a grace period in which to comply. Games entering the market after 29 May 2012 must be in compliance before 1 January 2013. Games that entered the market before 29 May 2012 must comply before 31 December 2013.

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Game cloning: Tetris Holding v Xio Interactive

At the end of May, the US District Court for the District of New Jersey ruled on a case involving the alleged infringement of copyright in the popular game 'Tetris' by Xio Interactive, Inc. The case received considerable attention in the games press as it touched on the topical subject of computer games cloning. Alex Tutty, an Associate at Sheridans, discusses the case in detail.

Game cloning

Game cloning (the development of a game which closely or exactly copies an existing game) has increased dramatically alongside the increase in routes to market for computer games. A quick internet search of a popular game can often reveal a large number of games that closely resemble it. The Tetris case made headlines as it gave a positive angle in what can often be a bleak outlook for developers trying to combat clones. In the US case Tetris Holding, LLC and The Tetris Company, LLC v Xio Interactive, Inc (Civil Action No. 09-6115, United States District Court, D. New Jersey, 30 May), the judgement does not change the law but clarifies a number of points, most importantly the difference between non-protectable elements such as functionality and mechanics and those elements linked to that and protectable elements such as the artistic copyright in aspects of the game. The importance of this is that companies accused of cloning have defended their actions by stating that the two are inseparably linked. This is not the case in the US and it is not the case in England.

Background

The case concerned the game called Mino developed by Xio

Interactive, Inc. The developer of Mino admitted that it had been inspired by Tetris and had downloaded Tetris in order to aid Mino's development. Mino was released on the Apple App Store in July 2009 (as a paid for and free version known as Mino Lite). Tetris Holding became aware of Mino and sent a DMCA takedown to Apple in August 2009. Apple removed Mino and Xio's legal counsel sent two counter-notifications to Apple. Apple informed Tetris Holding that unless court proceedings were commenced it would reinstate Mino. Litigation commenced in December 2009 on the grounds of copyright infringement and copying of the Tetris trade dress.

Tetris Holding argued that Xio had infringed the elements of the Tetris game that were protected by copyright. More specifically the Mino game copied 14 elements of Tetris that were summarised as follows:

- Seven Tetrimino playing pieces made up of four equally-sized squares joined at their sides.
- The visual delineation of individual blocks that comprise each Tetrimino piece and the display of their borders.
- The bright, distinct colours used for each of the Tetrimino pieces.
- A tall, rectangular playfield (or matrix), 10 blocks wide and 20 blocks tall.
- The appearance of Tetriminos moving from the top of the playfield to the bottom.
- The way the Tetrimino pieces appear to move and rotate in the playfield.
- The small display near the playfield that shows the next playing piece to appear in the playfield.
- The particular starting orientation of the Tetriminos, both at the top of the screen and as shown in the 'next piece' display.

- The display of a 'shadow' piece beneath the Tetriminos as they fall.
- The colour change when the Tetriminos enter lock-down mode.
- When a horizontal line fills across the playfield with blocks, the line disappears, and the remaining pieces appear to consolidate downward.
- The appearance of individual blocks automatically filling in the playfield from the bottom to the top when the game is over.
- The display of 'garbage lines' with at least one missing block in random order; and
- The screen layout in multiplayer versions with the player's matrix appearing most prominently on the screen and the opponents' matrixes appearing smaller than the player's matrix and to the side of the player's matrix.

There was no debate over the material facts and Xio conceded that Tetris Holding owned the copyright in Tetris and to having downloaded and copied Tetris deliberately and purposefully. Rather Xio claimed to have carefully researched copyright law to ensure that Mino did not infringe the copyright protected elements of Tetris. Xio stated that the elements copied were not protected by copyright as they were not the original expression; they were part of the game play itself. Xio believed, based on its research, that it could freely copy any element of Tetris that was based on the 'rule of the game', or as Xio viewed, functional to the game.

Xio stated that while it had copied the visual expression of Tetris it argued that this wholesale copying was allowed as the visual expression of Tetris was a result of the underlying idea and functionality. This is an argument that is often raised by those accused of cloning. The court disagreed.

The judgement clarifies that in

assessing whether there is copyright infringement of the artistic expression of the game (as opposed to copying of the source code) the court should look at what is the underlying idea and functionality and what are the elements of the game which are protected as aesthetic, original artistic choices.

In the Tetris case the description of the underlying functionality was described by the court as a 'puzzle game where a user manipulates pieces composed of square blocks, each made into a different geometric shape, that fall from the top of the game board to the bottom where the pieces accumulate.' It goes on to describe how the game works and confirmed that this is not protectable under copyright.

Protection

The ruling then sensibly delineates between what is not protected and what is. For instance the physics based mechanics of Angry Birds can be copied but not the visual appearance of the game. Similarly Xio would have been entitled to release a puzzle game where a user manipulates blocks to form lines which disappear, but it was not entitled to release a game which did this and which also copies another game so that the 'the style of the pieces is nearly indistinguishable, both in their look and in the manner they move, rotate, fall, and behave. Similar bright colours are used in each program, the pieces are composed of individually delineated bricks, each brick is given an interior border to suggest texture, and shading and gradation of colour are used in substantially similar ways to suggest light is being cast onto the pieces.'

The court sensibly rejected the often used argument put forward by parties accused of copying a

Companies who believe that a game that they own the rights to has been cloned may also look to rely on the additional actions of passing off and unfair competition.

game that the unique artistic aspects and the look and feel of a game should not be protected. Removing this protection would result in such limited protection for developers of games that it would effectively remove any protection a developer would have against non-literal copying. Xio also argued that the US doctrines of merger and scenes are applied. The court disagreed with these arguments.

In addition to the copyright claim Tetris also relied on the Lanham Act in that Xio had copied the trade dress of Tetris. This was accepted by the court.

In commenting on the Tetris decision and its similarities and differences to the English legal position it is likely that should a similar case reach the English courts in that a game is developed where the look and feel and the visual appearance of the game have been copied it is likely that a similar ruling would be reached on similar reasoning in that the visual appearance of a game is protected by copyright as an artistic work and the link between functionality and expression is as described by the New Jersey District Court. It is important to draw a distinction to this case on its facts. Tetris was inherently distinctive and highly original at the time of its release, which made it easier to distinguish unique characteristics. This should be contrasted with the Nova Productions decision, which comprised of more commonplace features.

Companies who believe that a game that they own the rights to has been cloned may also look to rely on the additional actions of passing off and unfair competition. More specifically that the alleged clone of the game is copying the trade dress of the original game in an attempt to take an unfair advantage of the goodwill of the

original game and that consumers will be confused into buying the clone. These arguments have been used successfully in the past and will be used again in the future to take action against clones of games. While the judgement has not changed the law in England (or in the US for that matter) it has provided a timely reminder that there are steps which can be successfully taken in instances where cloning is suspected. It also helpfully provides a good summary of the factors to be considered and a rejection of the spurious arguments usually raised in instances of alleged cloning. It is interesting to note that recently in Europe a community of games users have taken to public forums and Twitter to take action against those companies which are perceived to have cloned games, which has often resulted in the removal of the alleged infringing game without the need for legal action.

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Customised betting programs to increase market appeal

Recent draft legislation set forth by the Italian regulator are setting the scene to introduce new bets and new betting programs in order to face the slight betting market fall registered in 2012 compared to previous years. Valérie Peano, Attorney-at-Law at *Studio di Consulenza Societaria e Tributaria*, provides a detailed update on the long-awaited customised betting programs draft decree.

On 16 July the EU compulsory stand-still period for the draft directorial decree on customised events betting programs complementing the one offered by the Italian regulator, the Autonomous Administration of State Monopolies (AAMS) as notified to the European Commission¹, came to end. As no objections were raised within the European notification process, the enactment process of the draft decree is now in progress.

The draft regulates the licensees' offering of customised programs on sports and other events, in addition to those offered by the AAMS (so called '*palinsesto*' in Italian gambling parlance) according to basic legislation, namely Decree no. 111 of the Minister for Economic and Financial Affairs of 1 March 2006. It follows other recently notified drafts decrees regulating betting on virtual events and remote betting exchange and represents a long-awaited innovation within the Italian betting system. This set of newly drafted provisions is aimed to enable licensed operators to broaden their betting portfolio and to significantly diversify their offerings in the Italian betting market.

Italian central system and

customised program

According to the current legislation, each bet in Italy is part of an events program ('*palinsesto*') that includes sports events and some variants on traditions (such as the Sanremo music Festival, Miss Italy elections, etc). Moreover, licensee's processing system must be connected to the national central system (the national tote) of the AAMS according to specific communication protocols established by the regulator.

With this draft of directorial decree entering into force, licensees will be able to offer supplementary events and bets to the '*palinsesto*', having as subject matter sporting events and non-sporting events, such as the news or gossip, as identified by the licensees and verified by the AAMS.

There are general limitations concerning events on which bets may be placed in accordance with the draft decree. First of all, the events and bets shall not already be listed in the events program provided by AAMS. Nevertheless, in relation to events listed within the '*palinsesto*', the licensee may offer any bets not included in the AAMS program in the supplementary program. To be noted, horseracing and simulated bets are for now excluded from the customised programs².

Finally, subject matter of the bets within the supplementary program must not include any sort of violent, indecent or discriminating offer or be against data protection³.

The AAMS has the power to verify the results of such events, according to a prior endorsement by the regulator of the events listed in the licensee's supplementary programme and a real-time acquisition of the events shown in the supplementary programme by the central system - national tote, as further described below.

Entities entitled to offer such customised programs

According to this draft decree, the entities authorised to offer and manage the supplementary program are the current licensees authorised to collect and operate fix-odds sports bets on physical networks and/or remote channels (telephone, interactive TV and internet), connected to the national tote. Indeed, the tender procedure for the awarding of up to 200 new gaming licenses according to the AAMS decree dated 9 March 2011, ended by 31 December 2011.

The decree set forth a specific application to be submitted to the AAMS describing the events and bets included in the supplementary schedule (the sporting discipline or pertinent category for non-sporting events; the show at/in which the event is to take place), the nature of new event types and/or any bets which it intends to include in the program and the procedures to verify the results of events.

Indeed, technical documentation within the application must specifically contain the characteristics of the licensee's processing system used to manage the supplementary betting programme and describe the organisational and technical procedures to manage and certify events included in the supplementary programme, including managing live events, which must involve the use of at least two documented sources of information to verify results, to be identified in relation to the type of event on which the bet is placed⁴.

Technical documentation must also describe the compulsory registration procedures, real-time time stamping, storage and traceability of data related to events included in the supplementary programme for at least 10 years. Licensees shall adopt solutions to

facilitate AAMS's access to information (especially of documents related to complete live events) so it can carry out its' monitoring and inspection activities. The application shall be approved by AAMS within 30 days that will add the events in the supplementary program along with their results, in real-time through the national tote to form an integral part of the official events program.

Supplementary programs containing sporting and non-sporting events on which bets are placed must be publicised by the licensees through their own sales channels, which shall provide information to anyone who requests it, specifying which events and bets form part of the supplementary program and the rules used to verify the results in the supplementary program.

Article 7 of the draft decree requires the licensee to promote responsible gambling and to prevent its own staff, and anyone else involved in developing its gaming platform in any way, from gambling. In general, the licensee is obliged to promote responsible gaming conduct, monitor its adoption by players and exclude access to gaming by minors, and display prohibition signs in each of the virtual gaming environments it runs, either in betting facilities or through remote gaming channels. For remote gaming, licensees are required to implement self-limitation and self-exclusion devices to enable players' access to the gaming area.

Conclusions

This interesting scenario to foster the current Italian betting system is not as perfect as it seems. First of all, it is worth recalling that even if the program is established and verified by the licensee, it must be connected in real time with the

The scenario to foster the current Italian betting system is not as perfect as it seems. First of all, it is worth recalling that even if the program is established and verified by the licensee, it must be connected in real time with the national tote according to the specific communication protocol

national tote according to the specific communication protocol that must validate the program and the bets, while the results of the events and the winnings must be communicated.

Another issue is, according to art. 12 p. 2 of the draft decree, the additional taxation of 0.5% on the bets should be added to the current taxation⁵. This is objectionable for at least two reasons. Firstly, current taxation is still fixed on the total of the bets (with a year average of 4.2% for 2011) instead of on gross profits (net of winnings). This decree is no doubt another missed occasion to move the taxation basis to gross profits as it has been done for the virtual betting draft decree (whereby taxation is set at 20 % of gross profits).

Secondly, the additional taxation to be added reduces significantly the appeal of customised betting towards the licensees. Indeed, the verification of event results in relation to the events shown in the supplementary program is the financial responsibility of the licensee.

It reduces its competitiveness, especially with regard to international unlicensed operators that still operate in Italy, through data transmission centres or over the internet, without being properly challenged. Consistency with the aim of the Legislative Decree No 39 of 28 April 2009 on urgent action to assist people affected by the earthquake in the Abruzzo region in April 2009 was to enable the products offered by authorised licensees to take bets to be adapted to international standards, ensuring greater flexibility in terms of games offered and enabling individual licensees to differentiate their offering with a view to combating and limiting illegal gambling - could be challenged.

The Italian betting story and notably recuperation of gaming shares from the illegal market has not yet ended.

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1. Notification under no. 2012/238/l.
2. Fixed-odds betting on simulated events should be introduced with a pilot phase by the end of this year according to a separate draft decree notified to the European Commission under no. 2012/30/l.
3. Article 3 states it shall not: "relate to events or conduct contrary to ethics, public order or decency; directly or indirectly incite crimes or administrative violations, or incite violence or discrimination based on racial or ethnic origin, language, gender, economic status, sexual orientation, religious beliefs, membership of political parties, trade unions or religious, philosophical, political or labour associations or organisations, or based on physical or mental disabilities; and/or pertain to the results of pending or potential judgments before the courts in Italy or overseas or by boards of arbitration; and do not concern, or in any way involve, sensitive data or any other areas of private life protected by the "Code on Personal Data Protection" under Legislative Decree No 196 of 30 June 2003 and subsequent amendments and additions."
4. Such as the registration of videos related to events; official sources of information from sporting federations or similar institutions; independent sources of information of proven reliability.
5. Art 12. p. 2 set forth a commission: "the licensee, in relation to the supplementary program, must also pay AAMS a commission for the technical/administrative management of the supplementary program equivalent to 0.5 per cent of its bet revenue".

Belgium: perspectives from a regulated e-gaming market

January 2011 saw internet gambling fall within the regulatory remit of the Gaming Commission in Belgium, and as such become legalised and regulated. Following a number of proceedings brought against the Minister of Justice from online gambling operators having been placed on the black-list of operators prohibited from the Belgian market, Peter Naessens, the Head of Unit Regulatory Advice, Research & Development at the Belgian Gaming Commission, discusses the background and the intentions of the Belgian regulation and Europe's future prospects.

From illegal to regulated

A thread through the Belgian history of gambling regulation is the repeated transformation from illegality to regulation. The first Gambling Law of 1902 banned benefiting from gambling on principle. It would take a whole century, during which the judicial authorities decided no longer to prosecute casinos for operating, before a law brought in clear regulation in the Belgian gaming market, in this case the Law of 7 May 1999 on gambling, gaming establishments and the protection of players, hereafter referred to as the Gambling Law. Belgian lotteries were placed within the scope of separate laws, and remain outside the scope of the Gambling Law. All forms of gambling other than lotteries were, however, placed under the regime of the free market, although in order to protect society, public order and its citizens, a series of special measures were introduced (setting up of the Gaming Commission, granting of licences, possibility of imposing sanctions on licence-holders, creation of a database of

excluded players, etc).

The Gambling Law appeared to hit the mark. The Belgian government gained a better insight into how gambling operates and can intervene at the appropriate time. Operators can operate on a profitable basis, but must take into account regulatory, restrictive measures. The Belgian market has a European flavour about it, with the presence of a French operator (*Partouche*), an Austrian (Austria Casino), British operators (Rank, Ladbrokes and Stanley Bet) as well as Belgian operators (Circus, Napoleon Games, GAA, etc).

For a long time the main obstacle remained the problem of gambling via tools of the information society (websites, mobile phones, tablets, etc), hereafter abbreviated to internet gambling. The legislator had maintained a ban on those games in the Gambling Law, but the regulator found that the ban was not working, and eventually compromised channelling policy.

After years of preparatory work, the Gambling Law was finally amended. From 1 January 2011 internet gambling, betting and media games fall within the regulatory scope of the Gaming Commission. In this article I will focus on the present regulation of internet gambling.

The legislator wisely decided to build on the key elements relating to regulation in the real world. Internet gambling can be operated on a profitable basis within the legal framework and with respect for the Gaming Commission's policy. A Gaming Commission that is in a position to control the sector, flexibly where it can be, firmly where it has to be.

Regulation with content

Channelling to regulate

The crucial task of the Gaming Commission is to ensure that citizens only experience gambling

within the designated establishments and locations, from the conviction that the best protection for the player is playing in a regulated market. Because the legislator insists that the most problematic people are excluded from the regulated market, this exclusion can only be effective if at the same time the wind is knocked out of the illegal markets' sails by an attractive legal offer.

For internet gambling, the challenge was essentially transnational. Where gambling was concerned, a tool such as the internet, which can be used worldwide, had to be embedded in a national framework in an acceptable manner. For this, the success factors of the real world had to be used, subject to adjustments to specific online characteristics. In essence, there has to be sufficient control in the market (via licences, the server and the games), and free market principles must provide the necessary oxygen and appeal (competition between domestic and foreign operators, innovation, etc). For some of these controlling elements, secondary legislation has yet to be issued. This takes a certain amount of time, because the Belgian regulator was not willing to take up the offer of operators who proposed drafting the legislation themselves.

Besides the control aspects, society must be informed of gambling's sharp edges, and last but not least the competent authority must have a stick with which to beat if need be.

Controlling the operator, or the system of supplementary licences

Anyone with any knowledge of (the history of) gambling knows that gambling that is not strictly regulated quickly becomes a target for (organised) crime. It is

therefore important for regulators to know with whom they are dealing and for them to be able to trust these operators, both in terms of professionalism and reliability, for example as regards paying out to players. Because Belgian legislation contains sufficient guarantees regarding the open nature of the market for foreign gambling operators, it was decided not to house online operations in new online gambling facilities, but to give current Belgian and foreign operators the chance to extend their activities to internet gambling.

Controlling the website, or the server location principle

The Belgian parliament required every operator wishing to operate in Belgium to locate the server on which the data and the website set-up are managed in a permanent establishment on Belgian territory. Connections to servers in other countries are accepted if the necessary reasons can be put forward and provided every Belgian player continues to connect via the server in Belgium and the .be website. This measure proved no barrier to foreign operators such as Pokerstars and Unibet entering the Belgian market.

Controlling the games, or the system of approvals and metrology

It is important that the fairness of the games can be checked, without necessarily hindering the strong desire for a certain innovation. Certainly where online gambling is concerned, which can sometimes be extremely difficult to control, even with the presence of servers on Belgian territory. In Belgium, only games of the same kind as those in the real world may be offered, but the legislator has decided that decrees must be

Misleading information from Malta, Alderney and Gibraltar and from dubious interest groups tolerated in Europe such as EGBA, which imply that European gambling licences exist, and that it is not necessary for a national government to approach the operation of gambling from a restrictive angle, also misled the Belgian public.

issued to indicate precisely what type of games are involved, taking into account specific online characteristics.

Informing society

A society does not want to become a gambling society. One does not want citizens to attach more credence to profit and fortune via poker or the lottery rather than working harder and better within society. The public should also be aware of the dangers of gambling and the illegal nature of certain gambling. An illegal market is by definition a threat to society.

The public is informed via folders, campaigns, educational files, etc. But that was not enough. Misleading information from Malta, Alderney and Gibraltar and from dubious interest groups tolerated in Europe such as EGBA, which imply that European gambling licences exist, and that it is not necessary for a national government to approach the operation of gambling from a restrictive angle, also misled the Belgian public. There was an urgent need for clear information to make it clear to the Belgian population what is legal and what is illegal. The legislator foresaw the possibility for the Gaming Commission to develop white-lists (licensed websites in Belgium) and black-lists (illegal websites in Belgium that have been reported and which can be prosecuted). The practice of the black-list has not only been approved by the Belgian parliament, but also enjoys broad support among the European population (see no. 18/19 of the Creutzmann report on online gambling in the Internal Market, European Parliament, 14 October 2011).

The big stick

Other markets, which in the past were viewed as less vulnerable,

such as the financial markets, show what happens with an ineffectively regulated free market. The European gambling market, with its inherent risk of fraud and crime, has tried to profit online from European principles, but increasing regulation in various Member States, and now also in America, makes it clear that total freedom of operation cannot be tolerated. Illegal operations and the large sums of money accumulated in suspicious fashion and with which various parties are now trying to acquire legitimacy through lobby organisations created a definite competitive disadvantage for operators active in Belgium that were not allowed to offer internet gambling, on pain of losing their licence. A Member State must be able to take firm action against gambling operators wanting to place themselves above communities purely to protect their private interests. It is perfectly acceptable for a company to decide that it is not profitable for them to operate in Belgium. It is, however, unacceptable for the same gambling company to decide to operate without respecting the statutory regulations. The gambling market must not be used as an example of free market principles without control. By definition, a gambling market must be restricted in its operation.

The criminalisation of players, operators, facilitators and people who organise advertising can count on support among the Belgian public, politicians and also the judicial authorities. Evidence of this is the decision of the Constitutional court that the new Belgian Gambling Law is compatible with the Constitution and European law (see later in this article).

Two EGBA members, Bwin and Bet-at-home, have brought proceedings against the Minister

for Justice because their websites were placed on the black-list and access to these pages blocked via a stop-page.

The aforementioned gambling operators availed themselves of interlocutory proceedings. In the interlocutory proceedings against Bwin, the judge was very clear. The Belgian Gaming Commission is entitled to draw up a black-list of illegal websites and block access to these websites. The judge found that the Bwin's petition to have the site unblocked was directed purely and simply at restoring and maintaining an illegal situation, and that a party such as Bwin did not appear to have interests worthy of protection. Bet-at-Home expects a ruling in the next few months. Entirely in line with the aggressive mentality of a gambling operator that wants to elevate the operation of its activities above Belgian law, Bwin is now also trying to intimidate supporting parties (such as ISPs, the police, etc) by waving subpoenas and claims for compensation. This confirms the image of the type of gambling operator towards which one does not wish to channel one's population.

Operators that hope to continue their illegal activities in Belgium via legal proceedings are in the minority. A greater number of gambling operators that saw their website placed on the black-list asked the Gaming Commission to be removed from the black-list after taking specific measures to end the illegal situation. The Gaming Commission will therefore present them with an agreement containing specific conditions to

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prevent future illegal operations.

Europe's prospects for the future

The operation of internet gambling remains in essence a trans-national activity. In the absence of a European regulatory environment, Member States are obliged to exercise control over this internet gambling to protect the public order and their populations. The Belgian regulator is convinced that European solutions will be developed. This explains why Belgium was there at the birth of the European Regulatory Platform (ERP). The diversity of the Belgian model guaranteed sufficient control of the online gambling sector with domestic and foreign operators that can operate on a profitable basis.

Paradoxically enough, regulation for each Member State will ensure that there is a growing awareness that trans-national solutions support qualitative regulation. There are also international challenges (Facebook, Google, tablets, etc) from American and Asian markets or markets situated outside Europe, which can ensure that European authorities lose control of online gambling.

Hubs such as Alderney and Gibraltar only have a future if they sign up to the obligation the Member States have towards their populations to regulate. They can put their expertise at the service of gambling with respect for the legislation of the Member State where the service is provided. They cannot act as if they can draft the operating rules for online gambling.

A comparison can be made with the Highway Code. Cars can be built in many countries, and cars can even be imported that can travel faster than the maximum speed limit of a particular Member State. But it is the Member State that decides how fast cars are allowed to travel and what rules of the road must be observed, if necessary with tough penalties. A Member State can decide to bring its policy into line with other Member States, but it is not up to car manufacturers to determine the speed limit on public roads.

Every man to his trade.

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Judgment of the Constitutional court no. 128/2011 of 14 July 2011 on the actions to annul Chapter 2, or various provisions thereof, and Article 53 of the Law of 10 January 2010 amending the legislation on gambling, brought by the public limited company "Telebet" and by the company under Maltese law "Betfair International" and the association under English law "Remote Gambling Association", <http://www.const-court.be/>.

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