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Catania Gaming Consultants

Vol. 4 Number 8 (2011)



Merry Christmas, Happy Hanukah and a Happy, Healthy and Prosperous New Year!

Billionaires Bet on Online Gaming; Legislation Could Be Close

Many of the richest people in America now view Internet gaming as a sure bet, and have begun investing huge amounts of capital with confidence.

When Richard Bronson, a former Mirage Resorts executive, decided to co-found U.S. Digital Gaming two years ago, he had no trouble raising money for his venture. His company, which will provide software and advertising services to gaming operators and government agencies if and when regulated online gambling comes to the US, attracted investors like real estate mogul Steven Roth, chairman of Vornado Realty Trust; shopping mall magnate Herbert Simon, owner of the Indiana Pacers; and Robert and William Taubman, sons of billionaire Alfred Taubman.

In 2008, private equity firm Apollo Global Management also joined with billionaire David Bonderman's TPG to purchase Harrah's Entertainment in a massive \$30 billion leveraged buyout. The company, now called Caesars Entertainment, has been investing heavily in its online operations and backing a new Washington D.C. lobbying effort.

To no one's surprise, Donald Trump has also thrown his hat in the ring, partnering with billionaire hedge fund manager Marc Lasry, who controls Avenue Capital Group. Despite Trump and Lasry's differing politics-Trump is

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**Frank Catania, Esq.,
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a Republican while Lasry is a Democrat-both believe that legalizing online poker is a necessary step for the country. "This has to happen because many other countries are doing it and like usual the US is just missing out," Trump said.

Earlier joint ventures, such as the partnership between Steve Wynn and PokerStars, backfired when PokerStars was indicted last April. Fertitta Interactive was also burned by their partnership agreement with Full Tilt when that company became the target of a US Department of Justice investigation.

However, both Wynn and the Fertitta brothers have said they are not discouraged, and plan to stay in the game for the long run. In fact, Fertitta Interactive just purchased CyberArts, a company that produces online gambling software.

The vote of confidence given to online poker could soon pay off big. Sources say that a new bill legalizing online poker could be proposed before the end of the current session. "There is a 50 percent chance it will be approved by next year," said a source from Caesars Entertainment, which in late November filed papers to go public in anticipation of the new legislation. Senator Jon Kyl, who was once a gambling opponent, may co-sponsor the bill, several sources indicate. Kyl himself has not confirmed.

Time is definitely of the essence, since Congress might be less inclined to pass such a controversial bill during an election year, and the following year might still be tough if poker advocate Harry Reid is no longer the Senate Majority Leader.

But if the federal government does not act, states may take matters into their own hands. California, Iowa, New Jersey, and Nevada are all considering such action, and are unlikely to wait another three years for the federal government to make up its mind.

"This has to happen because many other countries are doing it and like usual the US is just missing out" - Donald Trump on prospects of legalized online gaming in the U.S.

Barney Frank To Retire from Congress

After serving more than 30 years in office, Congressman Barney Frank (MA) has announced that he will not seek reelection. One of the most powerful Democrats in Congress, Frank is the Ranking Member of the House Financial Services Committee, where he served as Chairman until Republicans took control of the House last year.

During his time in office, Frank has been one of online poker's most vocal supporters. He has introduced multiple bills calling for the legalization and regulation of Internet gambling in the United States. His last attempt, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act (HR 1174), was introduced in March, and has attracted 29 co-sponsors on both sides of the aisle.

"This is allowing adult Americans to spend their own money as they wish on a form of recreation that they enjoy," Frank said of legalizing online poker. "I

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The Catania Consulting Group, Inc., doing business as Catania Gaming Consultants (CGC), offers a full service international gaming consultancy. CGC provides a variety of services to all sectors of the gaming industry, including governments, casino operators, game manufacturers, software providers, lotteries, payment processors and

cannot understand why it's the role of the Federal Government to prohibit them from doing so."

Though Frank will be missed, there will still be a number of strong proponents of online poker left on Capitol Hill, including Congressman John Campbell (R-CA), who co-sponsored HR 1174 with Frank, and Congressman Joe Barton (R-TX), who introduced his own bill, HR 2366, which would also legalize online poker.

"This is allowing adult Americans to spend their own money as they wish on a form of recreation that they enjoy" - Congressman Barney Frank, a strong supporter of efforts to license and regulate online poker in the U.S.

Massachusetts To Allow Casinos

A new bill passed by Massachusetts will establish a commission to regulate casino gambling in the Commonwealth and allow up to three new resort-style casinos and one slot parlor in the state. The bill was signed into law by Governor Deval Patrick.

The law calls for the establishment of a five-member Massachusetts Gaming Commission, that will have the power to choose which casino proposals get the state's few available licenses. The bipartisan commission will also have the power and authority to regulate and investigate the new gambling facilities.

Governor Patrick, Attorney General Martha Coakley, and state Treasurer Steven Grossman will each have the power to appoint one member to the commission, with Patrick naming the chair. The remaining two members will be jointly chosen by Patrick, Coakley, and Grossman.

The new law will split the state into three regions-Greater Boston, Western Massachusetts, and the South Coast-and each region may have only one "resort" casino, which can offer both slot machines and table games. However, if the commission does not find a suitable applicant, they are not obligated to grant a license for a given region.

Supporters hope that the law will bring jobs and revenue into the state in a large initial burst and for years to come. In addition to requiring anyone granted a license to make a capital investment of at least \$500 million, the law also requires casinos to set aside at least 3.5% of gross gaming revenues toward capital reinvestment. That may be an important factor in keeping Massachusetts casinos competitive with those in neighboring states like Connecticut and, possibly soon, New York.

the horseracing industry.

Our goal is to provide clients with the information, experience, and contacts necessary to develop, regulate and operate both casinos and ancillary companies. The governments for which CGC has previously provided assistance in drafting gaming regulations and establishing gaming regulatory structures include the following: The Mohawk Territory of Kahnawake, located just outside Montreal; the United States Virgin Islands; Antigua and Barbuda; the Philippines; and the Canadian Provinces of Prince Edward Island and Nova Scotia.

Combined, the partners and associates of CGC listed below have over 75 years of gaming experience.

While the law outlines the general regions for casinos, it does not dictate the exact site where each should be located. That's left up to the licensees and local communities, and without public support through local referendums a site will not be approved. That's good news for the Mohegan Sun Casino, which has been working for years to build community support in Western Massachusetts. The town of Palmer has already passed several non-binding referenda supporting a casino.

Despite this provision, many locals worry about what casinos might take away from the Massachusetts economy. Some opponents have worried that it would cause Bay State bars to lose business, especially since the law will allow casinos to offer free drinks from 8 a.m. to 2 a.m.

"Any casino project that would suck the life out of the existing restaurants, performing arts centers or thriving arts communities would be bad for the region," said a *Cape Cod Times* editorial.

Given the current economy, though, it's hard to argue with a proposal that has resort casinos paying a 25% tax on gross gaming revenues and the slot parlor paying 40%. Casinos will also pay a \$600 licensing fee for each slot machine in use. That adds up to a significant revenue stream for the Bay State.

The law also includes additional funding for the horse racing industry. It does not contain any online component that would authorize licensees to offer gambling products online, and an original provision requiring the commission to study the effects of online gambling was removed in conference with the Senate.

However, if other states began to offer intrastate online gambling, the current law would not preclude Massachusetts from following suit.

"Any casino project that would suck the life out of the existing restaurants, performing arts centers or thriving arts communities would be bad for the region"- *Cape Cod Times* editorial.

Big Changes for Atlantic City; Sports Betting in the Works?

After taking hit after hit over the past few years thanks to a deep economic recession and increased competition, Atlantic City may finally have cause to be optimistic. Several recent changes could inject the city with new life and lure back lost tourism dollars.

One hopeful prospect is a new Hard Rock Casino for the city, along with a musical history museum. Hard Rock announced its plans for a boutique casino and museum. The casino will start at 208 hotel rooms, eventually expanding to 850, with a 3,000-seat entertainment center. The company plans to begin construction in July 2012.

The museum will display items from the Hard Rock's rock n' roll memorabilia collection, one of the largest in the world. "When you look at the history of Atlantic City and its contribution to music, we felt this could be another reason for people to come to Atlantic City," said company CEO James Allen.

In addition, Atlantic City will soon see the opening of the \$2.4 billion Revel casino project, located on the city's South Inlet. The casino, a mega-project that includes three entertainment venues, two nightclubs, six pools, twelve restaurants, and 1,900 hotel rooms, is set for a May 2012 opening.

The ACH (formerly the Atlantic City Hilton) also announced plans to invest up to \$24.3 million in new funds to keep its ailing casino open. Unfortunately, the cost of those plans was 150 worker layoffs and required the casino's owner, Colony Capital, to close two other casinos in Mississippi to wipe out ACH's mortgage debt.

One major positive development for the city is the passage of a referendum to allow sports betting at Atlantic City casinos and state horse-racing tracks. The referendum passed on Election Day by a 2-1 margin.

State Senators Raymond Lesniak and Jeff Van Drew subsequently introduced a bill in the Senate that would allow casinos and racetracks to conduct betting on professional and collegiate sports. The bill would exclude college sporting events taking place in New Jersey or involving a New Jersey college team.

A provision to allow New Jersey residents to make sports bets on the Internet is likely to be removed from the bill. "I caved," said state Senator Lesniak, of nudging from the governor's office. "We don't need any delays on this."

Lesniak's bill had already cleared Senate and Assembly committees. Lesniak said he hopes to have the bill reach Governor Christie's desk in the Legislature's lame duck session next month. Christie said earlier that he had "concerns about the bill the way it's currently configured" but that he was hopeful of reaching a quick resolution.

While the bill is expected to be signed by Christie, the federal Professional and Amateur Sports Protection Act (PASPA) still forbids betting on almost all professional and amateur sports in all but four states-Nevada, Oregon,

Montana, and Delaware. Lesniak, who seeks to have the state's casinos and tracks offer a Las Vegas-level of sports betting options, plans to re-file a lawsuit against PASPA after consulting with the state Attorney General's office.

Lesniak said he expects a "year-long" court battle, but he contends that a variety of U.S. Constitutional issues are being violated by the law that, ironically, was sponsored by former New Jersey Senator Bill Bradley.

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Nevada Already Reviewing Applications for Internet Poker

Jumping ahead of several other states in the online poker race, Nevada has begun accepting applications to license companies to operate Internet poker sites. Mark Lipparelli, chairman of the Nevada Control Board, made the announcement at the US Online Gaming Law conference.

Although regulations for online gaming have not yet been adopted in Nevada, Lipparelli said he expected them to be finalized by the end of January. In that case, companies might be able to operate Internet poker sites in Nevada as early as February 2012.

While some companies have chosen to wait until the January hearings to submit their applications, Lipparelli said that he had already received at least five or six applications. For companies already holding other licenses in Nevada the process should be quicker, while companies new to Nevada must be vetted with full licensing investigations, which often take several months.

Either way, to obtain a license companies will need to prove that their technology will be able to limit play to state residents of legal age. "This process will probably take longer than some of the underlying licensing events themselves," he said of the technology approval process.

Some questioned whether cheat-proof technology could be developed, and while Lipparelli conceded that the chance of getting away with cheating does exist, it is no greater with Internet gaming than with any other system such as the lottery or betting at the track. In addition, online gambling software has controls and analytical tools in place to detect cheating immediately and to prevent it from recurring.

One question is what Nevada will do if the US passes Internet poker legislation. Lipparelli said that if federal legislation were passed, the state would need to modify its laws. But Nevada would rather modify its laws later than wait and do nothing.

Online Poker Finally Goes to Trial

For years, the US Department of Justice has asserted that facilitating for-money online poker violates US law, while online poker companies have argued that it does not. After years of debate in Congress and the media, the opposing sides will finally go head-to-head in a US court of law.

The case was brought by John Campos and Chad Elie, two of the eleven men indicted in April as part of the federal government's "Black Friday" crackdown on PokerStars and Full Tilt. Both men had been involved in processing payments for the online poker industry; Campos is a former vice-chairman of the Utah bank SunFirst and Elie ran a payment processing business.

The men brought motions to dismiss the original indictment filed against them, but presiding Judge Lewis Kaplan did not seem especially sympathetic to their arguments. "I think it's extraordinarily unlikely that the entire indictment will be dismissed," he said.

Campos' lawyer Fred Hafetz argued that his client had not violated the Unlawful Internet Gambling Enforcement Act (UIGEA) because it exempts financial transaction providers from criminal liability, but Judge Kaplan did not agree with the "premise of exemption of financial service providers," and further noted that even if SunFirst were to be exempt on those grounds, that exemption did not necessarily extend to Campos himself.

Elie's lawyer, former US Solicitor General Paul Clement, also, argued against the government's claim that the online poker companies in this case had violated the Illegal Gambling Business Act (IGBA). IGBA does not provide for extraterritorial application, he argued, and both PokerStars and Full Tilt Poker were based offshore.

"You really do need some clear intent from Congress to apply extraterritorially," Clement said, but this argument was also rejected by Kaplan, who noted that old laws often evolve in new ways.

The trial of Campos and Elie is now scheduled for March, and Kaplan will have to decide whether or not a jury will be asked to determine if poker constitutes illegal gambling.

Ira Rubin, another American payment processor indicted and arrested in the same case, will not be part of any trial. Rubin's lawyer said he has reached an agreement with the government.

Happy New Year! We look forward to seeing friends and colleagues at the ICE Totally Gaming Conference in London (January 24-26)

Please feel free to contact us with any licensing and gaming compliance needs. Our law firm, Catania & Ehrlich, is also available for any of your gaming law needs.

Sincerely,

Frank Catania, Gary Ehrlich and Keith Furlong
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