Bulletin

2009-3 March 9, 2009

The Effect of the Unlawful Internet Gambling Enforcement Act of 2006 on Wide-Area Progressive Systems and Networked, Multi-Site Bingo Games.

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA), 31 U.S.C. §§ 5361- 5367; Pub. L. 109-347, Title VIII, § 802(a), does not itself prohibit Internet gaming. Rather, it prohibits gaming businesses from accepting payments in any form from a bettor's participation in unlawful Internet gaming, and it requires financial institutions to identify and block such payments.

UIGEA places most regulatory responsibility on agencies other than the National Indian Gaming Commission. The Department of the Treasury and the Board of Governors of the Federal Reserve were obligated, in consultation with the Attorney General, to adopt regulations, policies, and procedures reasonably designed to block or prevent prohibited payments. 31 U.S.C. § 5364(a). Those joint regulations, 12 C.F.R. part 233 and 31 C.F.R. part 132, became effective on January 19, 2009, with compliance required by December 1, 2009. 73 F.R. 69382 (November 18, 2008). Oversight of financial institutions' compliance with these blocking regulations falls to those various federal regulators with jurisdiction over existing financial payment systems, or to the Federal Trade Commission. 31 U.S.C. § 5364(e)(1)-(2). Nevertheless, UIGEA does implicate Indian gaming, and to that extent the Commission has a regulatory role to play within the federal family.

Indian gaming operators, regulators, and equipment manufacturers have asked the Commission for guidance on the effect that UIGEA has, if any, on multi-site bingo games and on wide-area progressive (WAP) systems. The Commission believes that UIGEA has no effect on multi-site bingo and WAPs as these systems are implemented today. They do not fall within UIGEA's definition of *unlawful Internet gaming*, and thus UIGEA does not prohibit Indian gaming operations from offering them or accepting wagers on them.

As the Commission reads and understands it, UIGEA does not change the status quo for legal and illegal gaming in the United States:

> No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.

31 U.S.C. § 5361(b). Thus, Indian gaming that is legal under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701-2721, remains legal; commercial gaming that is legal under

the various federal, state, and local statutory schemes remains legal; and any gaming, including Internet gaming, that is illegal under federal, state, or local law remains illegal. This suggests that UIGEA has no effect on existing WAPs or multi-site bingo games properly authorized under IGRA. A closer reading of UIGEA's terms bear this out.

UIGEA prohibits anyone in the business of taking wagers from accepting money in any form from anyone engaged in "unlawful Internet gambling." 31 U.S.C. § 5363. UIGEA defines the term *unlawful Internet gambling*, generally, to mean:

> to place, receive or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received or otherwise made.

31 U.S.C. § 5362(10)(A). UIGEA defines *wager* (or *bet*) as:

> the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.

31 U.S.C. § 5362(1)(A). *Wager* includes purchasing a chance in a lottery, 31 U.S.C. § 5362(1)(B), and instructions or information concerning the establishment of, or moving money into or out of, a wagering account established with the "business of betting or wagering." 31 U.S.C. § 5362(1)(D). Thus, UIGEA directly addresses what is commonly called "Internet gaming."

In a typical arrangement, a virtual casino is set up on a computer server outside of the jurisdiction of the United States. Patrons wishing to gamble first set up and finance an account with the casino, whether by money order, credit card, or some other means. Patrons "enter" the casino by logging on through an Internet connection and selecting from a menu of available games, though physically, of course, the patrons may be anywhere in the world an Internet connection is available. Wagers are debited from, and winnings credited to, the account previously established with the operator.

Under UIGEA, payments may not be accepted from such an operation. Patrons are knowingly transmitting wagers (and instructions for debiting and crediting wagering accounts) on the casino games offered, and gambling over the Internet is prohibited by the Wire Act. 18 U.S.C. § 1084. By contrast, today's WAPs and multi-site bingo systems do not fall within the definition of *unlawful Internet gaming*.

A WAP system makes large jackpots available on slot machines and in bingo games. In essence, participating machines in multiple locations are networked together, and a fraction of each wager, usually around 4%, is allocated to the progressive jackpot. Each play on a participating machine thus increases the jackpot, which is displayed to players on signs that increment in dollars and cents just as automobile odometers increment in miles. Hitting a designated combination or pattern on a participating machine wins the progressive jackpot, at which point the jackpot resets to an amount from which it begins incrementing again.

Multi-site bingo games are more complicated. The technology used has changed over time, and it is beyond the scope of this bulletin to make a complete survey of it or to analyze and discuss in detail the engineering of current systems.

That said, it is sufficient for the purpose here to describe typical features of multi-site bingo systems. They are built around client-server architectures. Players play at client machines – cabinets with one or more video screens for the display of bingo cards, available prizes, numbers drawn, game play, and game results. The client machines allow players to cover numbers on their cards and can accept money and pay out prizes, usually in the form of redeemable tickets or vouchers. The client machines are linked to a server – a computer on which the bingo game software resides and that randomly draws the game numbers and transmits them to participating client machines. Through telecommunications links, the server places client machines in various locations into common games. Thus, players at client machines in Alaska, Oklahoma, and California, for example, can select their bingo cards and see the same numbers drawn, and the first among them to cover a game-winning bingo pattern wins the associated prize.

Neither WAPs nor multi-site bingo systems fall within UIGEA's scope. As the Commission understands how they are currently implemented, neither WAPs nor multi-site bingo systems make use of the Internet at all. Instead, they use closed, proprietary communications networks. Systems so constructed do not, by definition, "involve the use … of the Internet," even in part, and thus do not fall within the definition of *unlawful Internet gaming*.

Similarly, both WAPs and multi-site bingo games are permissible under IGRA. WAPs have long been a standard part of slot machine gaming, and multi-site bingo played between facilities on Indian lands was specifically contemplated by Congress when it passed IGRA:

> In this regard, the Committee recognizes that tribes may wish to join with other tribes to coordinate their Class II operations and thereby enhance the potential of increasing revenues. For example, linking participant players at various reservations whether the same or different States, by means of telephone, cable, television or satellite may be a reasonable approach for tribes to take.

S. Rep. No. 100-446, at A-9 (1988). Both are authorized under IGRA provided that they meet IGRA's requirements for conducting Class II or Class III gaming. When properly authorized, WAPs and multi-site bingo systems are not "unlawful under any applicable Federal or State law," 31 U.S.C. § 5362(10)(A). They again do not fall within UIGEA's definition of *unlawful Internet gaming*, and UIGEA does not apply to them.

The Commission does not here reach the question of UIGEA's applicability to WAPs and multi-site bingo systems that make use of the Internet, in whole or in part. That question implicates what appears to be a "safe harbor" provision within UIGEA permitting the gaming use of the Internet in narrow circumstances. Specifically, UIGEA excludes from the definition of *unlawful Internet gaming* the "placing, receiving or otherwise transmitting a bet or wager where …

(i) the bet or wager is initiated and received or otherwise made exclusively—

(I) within the Indian lands of a single Indian tribe (as such terms are defined under the Indian Gaming Regulatory Act); or

(II) between the Indian lands of 2 or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act;

(ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and complies with the requirements of—

(I) the applicable tribal ordinance or resolution approved by the Chairman of the National Indian Gaming Commission; and

(II) with respect to class III gaming, the applicable Tribal-State Compact;

(iii) the applicable tribal ordinance or resolution or Tribal-State Compact includes—

(I) age and location verification requirements reasonably designed to block access to minors and persons located out of the applicable Tribal lands; and

(II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with the applicable tribal ordinance or resolution or Tribal-State Compact; and

(iv) the bet or wager does not violate any provision of—

(I) the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.);

(II) chapter 178 of title 28 (commonly known as the "Professional and Amateur Sports Protection Act");

(III) the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq.); or

(IV) the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

31 U.S.C. § 5362(10)(C).

The Commission does not intend to offer an opinion on, or interpretation of, this section or the "safe harbor" provision until it consults with interested Indian tribes and confers with interested federal agencies, state agencies, and members of the industry. The Commission is particularly interested in understanding what constitutes adequate standards for age and location verification and data security.