

THE FUTURE OF MOBILE GAMING IN THE US

While mobile development has slowed in the iGaming space due to slower-than-expected regulation, horse racing and iLotteries have seen continued momentum towards greater mobile usage, writes **Rachel Hirsch** of Ifrah Law.

With the advent of new technologies, such as smartphones and tablet devices, mobile gaming offers players a foray into uncharted territory – immediate access to their favorite gaming sites simply with a touch of their finger. For states considering regulating online gaming, the expanding popularity of mobile gaming may mean even more revenue for the states. But the development of mobile gaming apps has slowed in response to disappointing online gaming revenue in regulated states, and the failure of most states to enact online gaming at all. Many mobile developers are hesitant to invest when there is not a robust market in which to launch their products. What was once considered a race to become the first states to legalize iGaming within their borders has now slowed down to a more even-paced stroll, leaving the iGaming industry somewhat behind the times in moving toward mobile.

Legalized iGaming on Mobile Devices

In states where iGaming has been legalized, the laws recognize and allow for the generational shift toward use of mobile devices. For example, in New Jersey, the

laws and regulations do not distinguish the device on which an operator offers (or a patron accesses) online gaming. The definition of “Internet gaming” in New Jersey merely state that wagers are placed over the Internet, leaving the door open for operators to provide – and players to

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access – games in any format they choose. The words computer, cell/phone, and tablet do not appear in this definition. New Jersey’s definition of “mobile gaming” actually pre-dates iGaming in the state, and is a throwback to gaming devices which casinos issued to patrons for use on casino premises only. The definition does not encompass simply accessing mobile games through a tablet or cell phone. Since the regulations do not distinguish between the types of devices on which gaming is offered or accessed, there is nothing to prevent an operator from creating and offering a mobile-only platform.

In Nevada, the mobile gaming regulation allows licensed casinos to offer “gambling games” on casino-issued devices on casino premises. The definition of “gambling games” includes casino games but does not encompass sports betting, which is defined separately in the definitions section of the overall gambling laws. Mobile gaming was first approved in for public spaces of Nevada casinos in 2006, and it was then expanded to private areas (i.e. hotel rooms)

in 2011. And, although sports betting is seemingly not permitted on casino-issued mobile devices, sports-betting is allowed over the Internet through apps downloaded on bettors’ phones, as long as they are in the state of Nevada. Specifically, NRS 465.094 exempts licensed sports books from laws that make it a crime to relay sports bets through a medium of communication.

Challenges facing mobile device users

• App Availability

The biggest challenge facing mobile device users is, first and foremost, a lack of options for real-money gambling apps. The largest

US app stores, including Google Play and the iTunes App store, are afraid of liability and are therefore extremely cautious about allowing providers to offer real-money games. There has been some movement on this issue as changes in the law allow for Internet gaming, but for the most part app stores err on the side of caution by restricting real-money gambling apps.

• Processing Challenges

The current issues with US mobile wagering are well-documented, with major card-issuing banks unwilling to accept and process online gambling transactions, or at the very least process them with any regularity. Even though online gambling has been legalized in Delaware, Nevada, and New Jersey, there is a lingering perception within the banking community that there are still risks associated with processing these transactions. And, to the banking industry, the risk of processing still outweighs the reward. As a result, some companies, like Bank of America, will not process online gambling transactions.

This fear of processing online gambling transactions stems from the passage of the Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA"), which, among other things, prohibited gambling business from "knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the Internet and that is unlawful under any federal or state law." After its passage, gambling transactions were coded by banks with the 7995 transaction code, and were largely rejected for that purpose. Although UIGEA specifically excludes legal, intrastate wagering, banks are still reluctant

to process those transactions.

MasterCard, however, is one of the companies that actually altered its coding to allow for iGaming transactions in legalized

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states, by linking the same advanced deposit wagering codes that were used in legal online horse racing. This change has been a benefit for states like New Jersey, where consumers had difficulty transferring money in and out of their accounts. In New Jersey, specifically, the Division of Gaming Enforcement has made it a priority to negotiate with banks and the New Jersey banking community, along with working with the Banking Commissioner and the American Banking Association, to resolve these processing issues.

Although consumers in these states have alternative methods of payment available to them, such as ACH withdrawals, credit card transactions make for easier and instantaneous play, which is so critical for the success of mobile gaming.

• Marketing Challenges

Also critical to the success of mobile gaming is an operator's ability to market to the right segment of the population. It is no secret that consumers are using their tablets and mobile devices with more frequency every day. Take the retail market, for example. Last year, about 25% of Christmas shopping was completed using mobile technology. The move toward mobile technology use in the retail space is attributable to the younger

population. The same cannot be said for the gaming market, which is largely dominated by an older crowd. If states with legalized iGaming want to experience a forward shift

toward mobile technology use, then the focus needs to be on marketing to a broader range of the population.

Movement toward mobile device use

Outside the world of online casino and poker, there has been a forward movement toward use of mobile devices for horse racing and i-Lotteries.

In January 2013, New Jersey Governor Chris Christie signed into law a bill that allowed horse racing patrons to place bets on special mobile gaming devices, such as iPads and smartphones, at in-state racetracks. The legislation, which allowed for wagers on in-state and out-of-state races being transmitted via simulcasting and live races taking place at the racetrack, was aimed at attracting younger fans to the long-time, and often ailing, sport.

Earlier this year, the Illinois Lottery became the first state in the nation to unveil a mobile app. The new app allows consumers to play Mega Millions, Powerball, and Lotto from their smartphones. The Lottery's free app is available for both iOS and Android devices. Users of the new app can check winning numbers and jackpots and locate retailers where Lottery tickets may be purchased. The app also includes messaging about

responsible gaming and information on counseling and the self-exclusion hotline. The mobile app follows the Illinois Lottery's March 2012 decision to allow players to purchase Lottery tickets online – the first state in the country to offer this option. As a result of this move, Illinois Lottery management has noted an increase in visits to the website via mobile devices.

Following Illinois' lead, Minnesota and Georgia have implemented online lottery sales as well. Georgia began selling lottery tickets via the internet in November of 2012, and, according to the state lottery commission, has generated \$6.6 million in sales. Minnesota began offering subscriptions over the internet in November 2010 (pre-dating the DOJ's reversal of their Wire Act opinion on online gambling), but full expansion was not realized in Minnesota until after the DOJ's new opinion was issued. In February of this year, Minnesota also added online scratch-off cards, a decision that has been met with a backlash, given that the online scratch cards look and play similar to online slot machines.

This summer, the Kentucky Lottery Corporation presented state lawmakers with a timeline for launching online ticket sales by mid-2015. The plan is to launch multi-state drawing games, such as Powerball, first, and then launch other lottery products in the following months.

Just a few weeks ago, the State of West Virginia also announced plans to offer online lottery ticket sales in an effort to boost slumping revenue numbers from their state lottery and brick and mortar casino

industry. West Virginia's Lottery Directory John Musgrave informed the Lottery Commission that representatives had met with key casino personnel to discuss the

technologies continues to be due to the general opposition to online gaming in most states. Even in states where online gaming is legal, the increased need for

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state's online gaming options. Although the state is still exploring online gaming legislation, which is, for now, a future goal, Musgrave has stated that adding lottery sales would require a change to current laws, intimating that online lottery is not far off in West Virginia.

As new states begin to implement online lotteries, they may very well follow Illinois' lead in introducing mobile apps, making it even easier for players to purchase tickets and for the states to generate even bigger lottery pools. As in the online casino space, online lotteries face fierce opposition from brick-and-mortar companies – in this case, the retail stores. But as consumer demand increases for mobile technology, states will need to get on board or risk falling behind the times.

The future of mobile gaming

Mobile devices are now a standard part of our lives. Implementing mobile gaming is a common sense step forward for states that are eager for additional revenue to cover budget shortfalls. Of course, the slow movement toward mobile gaming

mobile technology has been overshadowed by continuing processing and marketing challenges. If the iGaming industry has any hope of catching up to the boom of mobile device use in the retail space, these challenges need to be addressed head on so that the focus can shift toward mobile technology development.



Rachel Hirsch is an attorney at the Washington, D.C.-based law firm of Iffrah PLLC. Ms. Hirsch focuses her practice on complex litigation and transactions, with a particular emphasis on iGaming and internet marketing and advertising. Her clients have included PokerStars, Full Tilt Poker, and Microgaming. Ms. Hirsch graduated with honors from the University of Maryland School of Law and practiced at Venable LLP prior to joining Iffrah Law. Email: rhirsch@iffrahlaw.com