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Will US sports betting go mobile?

Jessica A. Feil, Associate at Ifrah Law PLLC, explains why providing mobile wagering in the US will be critical to encouraging customers to make the switch to legal, regulated sports books after the US Supreme Court's ruling in *Murphy v. National Collegiate Athletic Association* ('NCAA') (formerly *Christie v. NCAA*) in May 2018.

When the Supreme Court of the US struck down the Professional Amateur and Sports Protection Act 1992 ('PASPA') in May 2018, it paved the way for legalisation of sports betting in all 50 states. Of course, this ruling only made it possible for states to begin the process of legalising sports betting within their borders. Now, lawmakers are entrenched in the hard work of passing state-by-state legislation to authorise sports betting. Gaming operators are facing the reality that they will have to contend with varied laws, regulations, and markets depending on the particular state in which they hope to operate.

As operators and lawmakers push forward with legislation, it is critical for gaming operators seeking to enter the newly opened US market to understand the nuances of different final and pending legislation and unique elements of the markets. Specifically, while mobile sports wagering is typical in most overseas jurisdictions, it faces significant barriers in many states. In fact, several states have already passed or are considering legislation that only provides for land-based sports betting, completely cutting out the online market - at least for now. The resistance to mobile wagering is symptomatic of the grip that land-based casinos hold over lawmakers in many states. However, with a concerted effort of advocacy and education on the benefits of mobile gaming, online operators can break into this lucrative market as more states legalise sports betting in the coming years.

The importance of mobile sports betting: revenue and consumer safety

As sports betting operators in other jurisdictions know, customers demand

mobile sports betting. Companies across all industries, from food delivery, to in-home entertainment, to other forms of gaming, are constantly seeking new opportunities to capitalise on the 'two-screen' experience. As most consumers in key markets have a smartphone (if not multiple smartphones), consumer attention is constantly divided between the world around them and their handheld devices. To reach customers directly, companies launch apps, promotions, games, and more targeted at smartphones to reach consumers.

Sports betting is no different. As sports books - and teams and leagues - have seen around the world, fans want to wager on their mobile devices. It gives customers the flexibility to place wagers when and where they want. Some operators have reported that more than 80% of their annual revenue comes from mobile wagering across Europe¹. And of course, reaching customers on mobile is critical to reaching the coveted younger demographics.

Beyond the increased revenue opportunities, legalising online and mobile sports betting is essential to moving consumers away from illegal online sports books. It is estimated that 80% of illegal sports betting occurs online. It would be foolish to think that legalising online sports betting only at land-based establishments would be sufficient to make a dent in the number of wagers placed illegally online. This is further exacerbated by the geography in many states, where the majority of customers are located a significant physical distance from a brick-and-mortar sports book, further making it more unlikely for them to give up online wagering.

However, by allowing for mobile wagering, states and online sports books will be able to target customers where they already are: their smartphones. Providing mobile wagering will be critical to encouraging customers to make the switch to legal, regulated sports books in the US.

The unique challenge in the US

As many sports book operators have learned in recent weeks - especially those newly considering entering the US market - the US, and its state and federal legislative framework, creates unique challenges for companies navigating regulatory hurdles. While *Murphy v. NCAA* struck down the federal ban on sports betting, the states are still tasked with explicitly legalising sports betting within their borders. Therefore, sports betting is not legal in any form until explicitly authorised by state law.

After a long anti-gambling history in the United States, land-based gambling has slowly been expanding across the United States. However, the anti-gambling sentiment experienced a resurgence in the new millennium, as Congress acted to prohibit various forms of online gambling at the federal level. Nonetheless, social attitudes have continued to progress, and the gaming industry has gained a foothold. Now, some form of online gambling has been legalised in four states and others continue to debate legalisation. On the heels of the PASPA ruling, five states have now legalised sports betting in some form, with many more certain to follow.

Beyond this patchwork system of legalisation and regulation, online sports books will have to contend with another unique challenge: partnering with

Mobile operators must monitor various legislative efforts to ensure they are not shut out of markets entirely.

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land-based casinos. In the states that have legalised online gambling, online operators must partner with land-based casinos to offer their products. This requirement is a natural result of the proliferation of land-based gaming prior to online gaming. And while it seems intuitively harmful to online gaming, such a partnership has been applied in New Jersey extremely successfully since 2013. New Jersey, which has the most expansive, active online gaming in the nation, demonstrates that not only do online and land-based gaming co-exist, they actually support and complement one another. In fact, since the introduction of online gaming in New Jersey, both online (including mobile) and land-based casinos have experienced year-over-year growth.

This same model is now being applied to mobile sports wagering. The practical effect is that mobile sports books cannot operate independently. Rather, they must be partnered with a land-based casino, operating their own online brand as one of the land-based casino's permitted skins.

As New Jersey has demonstrated with other forms of online gaming, an approach in which land-based and mobile operators work together can be extremely successful for online and mobile sports wagering. However, mobile sports books will need to start building their land-based casino relationships now to ensure land-based casinos understand the value of mobile wagering and to work together to encourage lawmakers to support mobile sports betting. In

educating both land-based casinos and lawmakers, mobile sports books should stress the various reasons mobile sports betting is critical to gaming.

Are US lawmakers serious about mobile wagering?

On the heels of the ruling in *Murphy v. NCAA*, five states (beyond Nevada) were poised to nearly immediately introduce sports betting in their borders: Delaware, New Jersey, Pennsylvania, Mississippi, and West Virginia. Each of these states either already had laws to allow sports betting in the wake of a positive Supreme Court ruling or otherwise acted quickly to pass the necessary enabling legislation. Since then, Rhode Island has followed suit. Several other states, such as New York, Michigan, Illinois, Massachusetts, and California continue to debate sports betting legislation.

However, the specifics of the legislation in each of these states varies widely, including on the issues of mobile wagering. New Jersey and Pennsylvania have allowed for mobile wagering, albeit with very different implementing regulations. Specifically, New Jersey has opted to allow each land-based casino to offer three sports book skins. That means, each casino offering a mobile sports book will likely offer its own branded sports book and then partner with up to two additional online sports books to offer their brands as well. Pennsylvania has taken a narrower approach, allowing only one skin per land-based sports book. In contrast, Delaware, Rhode Island, Mississippi, and West Virginia opted to

only authorise sports betting in their previously established land-based or river-based casinos. Legislation introduced and pending in other states varies from expressly including provisions for online and mobile wagering to expressly forbidding the same. For example, a recent draft of the legislation in New York - a major US market - only contemplates land-based wagering.

A significant portion of this legislation has stalled until 2019 due to abbreviated legislative calendars (the majority of state legislatures recess in the spring or early summer until the following calendar year). A handful of states continue to debate legalisation of sports betting, including mobile wagering. So, while some states have taken an overly conservative approach, there is still significant opportunity for the industry to help lawmakers craft and shape legislation that will benefit both consumers and the industry.

Preventing a lost opportunity

The states that have undertaken legalisation of sports betting that includes mobile betting will be leading by example. As gaming companies around the world know, providing online and mobile platforms are critical to building a robust and competitive consumer base, and in turn, revenue for the relevant state or country. Further, online and mobile wagering is essential in the effort to combat illegal sports books. Mobile sports book operators must follow the success of the early adopting states closely and use their example to advocate for the same



forward-looking policies in other states - and learn from their mistakes as well.

A key part of this process will be working with the necessary land-based casino partners to educate lawmakers about the importance of online and mobile wagering to state revenue. While many land-based casinos may be hesitant to support online and mobile wagering for fear of cannibalising their own products, they need to look only to the example in New Jersey. As that state has shown, rather than being in conflict, land-based and online gaming have supported one another for the past several years.

Sports books will be much the same. Allowing for both land-based and mobile sports books, casinos and online operators will enable a reach to a much broader consumer base. In particular, providing mobile sports books will allow casinos and online operators to target a younger demographic that is not a typical casino customer. Mobile wagering also allows casinos and operators to reach customers that are not conveniently located near brick-and-mortar establishments, and therefore might be less likely to visit. By providing land-based casinos with examples of previous experiences and successes in other jurisdictions of expanding the overall customer base, mobile operators will find key partners in the effort to persuade lawmakers to include mobile wagering in pending legislation.

In turn, mobile operators and land-based casinos can - and should - work together to advocate for mobile wagering with

lawmakers. Many lawmakers might be hesitant to authorise what they perceive to be a dramatic gaming expansion all at once. But presenting mobile sports betting as a key component to provide state revenue and combat illegal gambling that is also supported by land-based casinos, will hopefully persuade more legislatures to take a progressive stance on the issue.

On the outside looking in?

The question remains: how does a mobile sports book operator based outside the US get involved? Between the daunting federal-state system of laws and regulations for operators and the need to work with land-based casinos, mobile operators overseas could look at the US and conclude it is more trouble than its worth.

But this would be short sighted. It might have been easy to get caught up in the initial post-PASPA ruling frenzy. Yet, the staggered legislative calendars among the various states considering sports betting legislation means there is ongoing opportunity for mobile operators to get involved. In fact, as many states have already recessed, mobile operators now have the chance to reach out and begin working with land-based casinos and lawmakers that might have been previously in a rush and overlooked the importance of mobile sports betting.

Although land-based casinos have an initial foothold in many states, mobile operators should take advantage of this lull to start advocating for the importance of mobile wagering to both

casinos and lawmakers. Key to this will be advocating for multiple skins for online and mobile sports books, so that a variety of mobile operators will have the opportunity to work with land-based casinos. Further, mobile operators should pay close attention to the two states that will offer mobile sports wagering this year and use their successes as examples for other states.

And even the states that elect to push forward with only land-based wagering are not a lost hope. Efforts will continue to amend and update these laws to expand to mobile wagering, especially as lawmakers and regulators become more comfortable with sports betting in the US.

Much ink has been spilled about sports betting in the US in the weeks since the Supreme Court's ruling. But now, operators are starting to see the true contours of sports betting in the US take shape. While the initial frenzy has died down, the efforts to educate land-based casinos and lawmakers continues apace. Mobile operators must monitor various legislative efforts to ensure they are not shut out of markets entirely.

Further, they must do so while partnering with the land-based casinos in many states. In the end, the goals of land-based casinos, mobile sports books, and lawmakers can - and will - all coalesce around shared goals of a profitable industry and consumer protection, but only if mobile operators are willing to step to the forefront and lead the effort.