

ROUND TABLE



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Tony is a senior partner in Jeffrey Green Russell's Gaming and Betting Department and is well-known in the leisure industry for his specialist knowledge of gaming and betting law. He has an international reputation for the strength of his practice with clients spanning a range of sizes and sectors and including a number of international household names.

He regularly lectures to an international audience on gaming issues and is a frequent contributor to gaming law periodicals and journals. Apart from being the President of the International Masters of Gaming Law he is also a member of the International Association of Gaming Advisors, The Society for the Study of Gambling and the European Association for the Study of Gambling.



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Robert W. Stocker II is the Chair of the Dickinson Wright PLLC Gaming Practice Group, the Chair of the American Bar Association Gaming Law Committee, the immediate past president of the IMGL, the Chair of the annual American Bar Association Gaming Law Minefield Conference and editor of his firm's Gaming Law Newsletter. He has been active in the gaming industry for over 18 years, representing casinos, gaming equipment manufacturers, casino service providers and casino developers and investors. He is a frequent speaker on gaming issues who has been recognised for his gaming law expertise by Chambers Global, Best Lawyers in America and Michigan Super Lawyers.



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Jeff Ifrah, founding partner of Ifrah Law PLLC in Washington, D.C., has been involved in nearly every civil and criminal case affecting or impacting the on-line gaming market of the United States. A former trial lawyer and federal prosecutor, he subsequently was of counsel to the global law firm Paul Hastings and then a shareholder of another global firm, Greenberg Traurig.

Jeff is co-author of Federal Sentencing for Business Crimes, the only comprehensive treatise on federal sentencing in the context of business and white-collar crimes. He has represented Full Tilt Poker, Poker Stars, Party Gaming, Microgaming, Golden Casino and Intertops.



DONNA B. MORE

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Donna has more than 20 years of experience in gaming law and compliance, beginning in 1990 as Chief Legal Counsel to the then new formed Illinois Gaming Board where she led the team that wrote the State's riverboat gambling regulations. She has been in private practice since 1994 and has counseled companies in all segments of the industry. She also sat on the Board of Directors of Mandalay Resort Group (until its sale to MGM) and was General Counsel at Tropicana Casinos and Resorts.



JOE KELLY

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For almost 20 years Joe has advised clients active in the Gaming, Leisure and Licensed Trade Sectors. The specialist Gaming Law Group headed up by Joe and John Cahir, advises land based casinos, suppliers to the sector, internet gaming operators and trade associations, many of whom were attracted to Ireland by a favourable tax and business regime.

A&L Goodbody is playing a leadership role in creating the conditions for regulating and legislating the land based and online sectors in Ireland. In particular, the firm has sponsored a report authored by economic consultants DKM making the economic and business case for regulating gaming in Ireland.



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Joerg Hofmann is a senior partner at Melchers law firm in Heidelberg and lecturer at the University of Heidelberg. He began to advise clients in gambling law in 1995. Mr. Hofmann has represented clients across the broad spectrum of gaming law matters including brick and mortar casinos as well as online operators and gaming equipment manufacturers and suppliers, testing labs and governments. He is very well connected to regulators and has handled domestic as well as complex cross-border transactions and application procedures. He is the current Secretary of the International Masters of Gaming Law (IMGL) and also a well requested speaker at international gambling law conferences. His articles are published frequently in gaming law magazines.



Gaming law is different in every jurisdiction around the world. Some countries are up-to-date with the newest developments on the market, but many are not. In many jurisdictions there are, or may be, plans for regulating development but again this is not universal.

Since gambling is regulated on a jurisdictional basis, operators are required to function in accordance with those regulations. Corporate International caught up with experts from the US, Ireland and Germany to find out how gaming is regulated in their jurisdictions.

The United States

Currently, the United States does not offer licensure or a regulatory scheme for online gaming. This fact, together with the existence of certain ambiguous laws, leads some to call into the question the legality plays in the country.

While European governments and Canadian provincial governments have adopted intelligent regulatory frameworks for internet gaming, the United States Congress has remained steadfast in refusing to address the fact that millions of United States citizens are spending billions of dollars gambling on the internet. As Jeff Ifrah, partner at Ifrah Law PLLC noted, legislation that would regulate and tax the online gaming industry was recently introduced in the US Congress but failed to get the support it needed to pass into law. At this point, US players are unable to play with the safety and security enjoyed by players in other countries.

"However, a serious movement by several state legislatures (most notably New Jersey, California and Florida) to approve intrastate internet gaming is gaining momentum and will, in all likelihood, result in passage of intrastate online gaming legislation in 2011," noted Robert W. Stocker II, partner at Dickinson Wright PLLC.

Although Internet gaming is still prohibited in the US (except in horse racing), other forms of gambling can enjoy legality in some parts of the country. Donna B. More, partner at MORE LAW GROUP, P.C. pointed out that number of states which legalise gaming is increasing.

"The proliferation of legalised gaming in the US is continuing at the state level. More and more states are legalising gaming because they are cash strapped and need a new source of tax revenue and/or want to prevent neighboring jurisdictions from siphoning off potential tax revenue. Nearly half of the states now have some form of legalized gambling, not including lotteries and horse racing."

Efforts to legalize Internet gaming can be regarded as the main development in the American gaming law. As Ms More noted, it is because it is seen as an opportunity to capture additional revenue by the government and also due to enormous development of the media.

"The US Congress 'watch' is on as the industry looks to the possibility of legislative actions permitting Internet gaming and relaxation of Internet law governing state lotteries. The industry has a template of sorts in the exemption built into the Interstate Horse Racing Act which currently allows for advanced deposit wagering over simulcast and digital channels. The entire digital overlay will add new layers to gaming law practice in the USA as media-based wagering channels evolve."

When asked about the developments in gaming law in the US, Mr Ifrah emphasized the fact the authorities are trying to interrupt players. He explained: "Over the past year and a half, the Justice Department and several local jurisdictions have attempted to interfere with the players' ability to enjoy uninterrupted play. One Justice Department strategy has been to seize money that is being held in bank accounts in the US. The money seized is usually en route to the players; by seizing those funds, the Justice Department is attempting to make it unprofitable for those who offer the service. More importantly, they are trying to make the players feel as though this is a risky endeavor in which they should be wary of participating."

Ireland

Legislation reforming Ireland's gaming laws and establishing an up-to-date licensing system to regulate gaming is due to be published this year. This follows on from the pre-Christmas publication of a government policy paper recommending a licensing system be put in place as part of a revised regulatory framework for gaming and betting.

As Joe Kelly, partner with A&L Goodbody Solicitors noted, Irish law currently distinguishes between three forms of gambling activity: betting, gaming and lotteries. Betting is regulated by the Betting Act, 1931, and gaming and lotteries are dealt with by the Gaming and Lotteries Act, 1956.

Both Acts, neither of which has been substantially amended since their

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enactment, are reflective of the periods during which they were drafted. As a result, they are restrictive and largely incompatible with modern gambling practices. By way of example, the word “casino” does not appear in the text of the 1956 Act, which instead makes specific provision for gaming and circus, carnivals and travelling shows.

Mr Kelly emphasised the fact the Irish gaming law does not correspond to recent development in the industry. He said: “Perhaps the most obvious deficiency in Ireland’s current gambling laws is that they do not deal, in any shape or form, with online gambling activities. Therefore, pending legislative reform, the restrictive rules which apply to land based gaming, betting and lotteries must also be applied to online offerings of these gambling activities, to the extent that that is feasible or practical.”

Notwithstanding the restrictive nature of Ireland’s gambling laws, gambling operators have been able to develop sophisticated business operations in Ireland and to offer their services to Irish punters, especially in areas which have not been regulated.

A review of Irish gambling laws is currently underway. In December 2010, the Department of Justice and Law Reform published a paper on the options for the future regulation of gambling in Ireland, which proposes the 1931 and 1956 Acts to be repealed and replaced with a single statute regulating all forms of gambling, including casino gaming, betting, remote gambling, gaming machines, lotteries and bingo. The paper proposes that the only form of gambling which should be excluded from a single all-embracing statute, is the National Lottery.

Mr Kelly has contributed a number of position papers to those involved in writing the legislation. He pointed out that even if the new legislation will be approved soon, there is still some time needed to implement the new law into practice.

“Although the Department of Justice and Law Reform’s policy document is to be welcomed as a step in the right direction, it is clear that significant work remains to be done before the

all-embracing legislation which is proposed, can be introduced. It is suggested in the paper that a full scale regulatory impact analysis should be carried out before draft legislation is presented to the government, and if that analysis is carried out, it may impact on the intention to publish legislation this year.”

Germany

There are 16 states (“Laender”) within the Federal Republic of Germany. The states concluded an Interstate Treaty on Gambling, in force since 2008, which approves state monopoly on lotteries and sports betting as well as a total prohibition of internet gambling. However, as Dr. Jörg Hofmann, partner at MELCHERS noted, the treaty has not been approved by the European Union.

“In its decision of September 8th, 2010 the European Court of Justice ruled out, that the structure of German gambling law as set out under the Interstate Treaty is not compliant with European law. As a consequence many of the restricting provisions of the Interstate Treaty are no longer applicable,” he explained.

The gaming industry in Germany has experienced two significant developments in recent years. First of all, every sector of the legally licensed gaming market has lost enormous amounts of gross gaming revenues during the last three years. This is mainly caused by significant restrictions under the Interstate Treaty on Gambling.

At the same time the unregulated market has grown rapidly. Especially gaming offers on the Internet, such as casino games, sports betting and online poker have turned out to be a billion-Euro market outside a legal scene.

As a result, legalising online gaming is being considered by the government. “Politicians and law makers have started a discussion recently,” noted Dr Hofmann, “if they should at least partly open up the sports betting sector for private operators and legalise Internet gambling.”

According to Dr Hofmann, the current development in Germany is the most challenging for years. The Prime Ministers of all German Laenders are meeting regularly searching for appropriate follow-up with the Interstate Treaty.

Three drafts for a new legal environment are being discussed. The first draft proposes the continuation of the state monopoly in a more restricted way than ever. Therefore, this model is very unlikely to be approved. The other two options deal with a more or less wider opening of the gambling market for private operators.

Commenting on the drafts, Dr Hofmann said: “Politicians declared that they will not give up the state monopoly on lotteries but are open-minded for restructuring the other sectors of

the gambling market. This could include the Internet gaming market as well.”

First decisions on the new legislation are expected to be made in spring this year.

The technological revolution that has swept the world has brought Internet gaming to the forefront worldwide. Thousands of people around the world play online games on a regular basis even though the practice is not formally regulated in many countries. However, seeing its growing popularity, governments are beginning to understand that Internet gaming could be a great source of income. Therefore they are considering legalising online gaming in order to be able to draw financial benefits.

Crime in the Gaming Business

Internet gaming is gaining overwhelming popularity but it is not free from the dangers of the online world. The main problem is online “crime” which can take place in a massively multiplayer online game, i.e., a game which is capable of supporting hundreds or thousands of players simultaneously.

As Dave Weinstein, an engineer at Microsoft told the Reuters news agency, criminals are targeting the lucrative world of online games more frequently. He said that massively multiplayer online games, such as World of Warcraft, were especially vulnerable to attack. It is because, as he explained, hackers could use malicious programs to steal players account information and then sell virtual items, such as gold or weapons, for real world cash.

Although crime in Internet gaming can be a serious issue, it is not regarded as such in every jurisdiction.

As Ms More noted, there really is no empirical evidence to support the idea that crime rates escalate when the gaming business becomes part of a community’s commercial infrastructure. However, the facts do not stop anti-gamers from using the argument to rouse public opposition to gaming initiatives.

“The crime issue, from my perspective, is one of enforcement. Communities, regulators and gaming companies have been diligent about their approaches to compliance and community security. I do not foresee a time when this commitment will ease,” she said.

Other sub-industries of the gaming business (not just the online industry) are also seen as crime-free. Mr Stocker commented: “The commercial gaming industry in the United States is highly regulated at the state level. It is no longer the playground of organized criminal elements as portrayed in movies such as Casino. Tribal gaming is also regulated, albeit by individual tribes and the National Indian Gaming

Commission. As a result, crime in the gaming industry is not a serious structural problem in the United States.”

Making sure that crime is not present in the Irish gaming business is one of the three stated objectives of the proposed new gambling legislation. Mr Kelly pointed out: “Although the implementation of the EU Third Directive on money laundering on 15 July 2010, which resulted in the extension of Ireland’s anti-money laundering regime to land-based casino clubs, goes a certain way to achieving the objective to keep gambling crime-free, a modern regulatory system policed by an informed and resourced regulator is required to ensure that the gambling industry is not an easy vehicle for money launderers.”

With the exception of betting on horses all Internet gambling offers in Germany are currently regarded as illegal. Since there is no regulated Internet gambling market, the scene is not controlled by any supervisory institutions.

Dr Hofmann commented: “In a global business such as Internet gambling there are operators being celebrated as successful entrepreneurs in one jurisdiction whereas the same people and their same operations are subject of criminal enforcement in another one.”

Expectations for the Future

With the expansion in technological progress, gaming industry, an especially online gaming is expected to keep growing. At the same time, with the better understanding of its financial potential, the need for regulating online gaming sector is increasing.

Regulating and legalising Internet gambling is a common prediction of experts from the United States, Ireland and Germany.

As Mr Stocker claimed the United States will eventually jump on the internet gaming bandwagon. Internet gaming will become legal in some (but not all) states and will be subjected to regulation and taxation structures on both the state and national level.

Mr Ifrah shares the opinion that when it comes to the online gaming industry, the future must involve licensing and regulation, both to ensure consumer protection and to generate federal tax revenue.

“There are millions of dollars of revenue being earned in online gaming. Certainly the government does not ignore that revenue when generated by brick and mortar casinos here in the US, so why take a different approach to online gaming? As Americans turn more and more to the Internet, it does not make sense for the government to ignore the opportunity to translate that activity into tax revenue,” he said.

Apart from the fact that more states will adopt forms of legalized gambling, also states where gaming is already legalized will permit expanded activity, according to Ms More. She also thinks that Internet gaming will become a reality; and the social media revolution - Twitter, Facebook -will spawn entirely new approaches to the consumer wagering interface.

“These developments may not change the way we work, but they will certainly bring enormous legal and public policy issues along with them ... and that should be good for the gaming law business,” she added.

Predictions for the future of the gaming industry in Ireland are similar to those expressed by the American experts. As Mr Kelly noted, it is clear that gambling operators who are currently established in, or are looking at establishing a base in Ireland, will need to subscribe to a rigorous licensing regime. The emphasis in the recent paper on the options for regulating gambling in Ireland is on “better regulation”, not “deregulation”. It is proposed that the underlying principle of any licensing regime which is to be introduced is that the grant of a licence should be seen as a privilege, and not a right.

According to expectations of Dr Hofmann, the gambling industry in Germany will get more and more important for the economy, the social benefit and welfare.

He explained: “People play games a lot and they do not accept total prohibitions. Learning this, the law should follow the reality and provide a legal basis for a regulated, controlled and protected gaming market, which can generate a lot of revenue. The experiences from other jurisdictions neighboring Germany will guideline the appropriate changes of the existing system.”

“I personally learned from my clients that serious operators can contribute a lot to the mutual benefit and are best prepared to approach this very top market on the highest level.”

The Network

The International Masters of Gaming Law (IMGL) is a non-profit association of gaming attorneys, regulators, educators, executives and consultants from around the world who are dedicated to education and the exchange of professional information concerning all aspects of gaming law.

IMGL membership consists of over 200 members and represents over 38 countries as well as members in 32 states and the District of Columbia in the United States.

As Mr Stocker said, the IMGL recognises the significance of the growing internationalisation of the gaming industry and aggressively facilitates interaction amongst the best gaming lawyers in the world, gaming regulators, gaming manufacturers and gaming service providers with a focus on creatively addressing the challenges faced by the industry and its regulators.

He continued: “The importance of the facilitation of this dialogue by the IMGL cannot be overstressed. It is critical to the development of a rational international gaming environment that preserves the industry in a manner that addresses legitimate regulatory concerns, assures honest, fair gaming and protects the gaming industry’s consumers.”

Primary benefit of IMGL membership is the access to other gaming professionals in the private and public sectors, noted Ms More. This is particularly valuable in the US as laws and compliance constructs tend to differ from jurisdiction to jurisdiction.

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Mr Kelly also appreciates the possibility of international exchange of knowledge and experience.

He said: “As a practitioner in an EU jurisdiction, I find that the IMGL Conferences provide an excellent opportunity to gauge the development of the industry in other EU countries and importantly, in the US, Asia and Australia. The growing body of jurisprudence on gambling laws being developed at Court of Justice level in the EU is of significance for Ireland. A regular interaction with colleagues/ business people and regulators from other states is enormously valuable.”

“Gaming is now a global industry with global clients in the mix. IMGL helps us cross-borders to serve such clients,” concluded Ms More.