

## Social gaming will be regulated



By Stephen Ketteley

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**THE CONTINUED COLLISION** of social gaming and interactive gambling prompts the participants in both sectors to view one another as an opportunity, a threat or a combination of the two. While technologists and marketers work hard to spot lessons they can learn from one another, those with an understanding of the two legal environments predict that regulation may well eventually catch up with the social gaming pioneers as it did with those who created and now operate the interactive gambling space.

The concepts of player protection and technological integrity are nothing new to the gambling sector. However, social gaming currently operates relatively regulation-free. In the last few months, we have seen Japan's consumer agencies take action against businesses using in-app purchasing models and courts in California give a green light to parents' instigating actions against Apple for supporting similar activity. Maybe these are isolated, maybe not.

There is an undeniable swell of opinion that has begun to question the ability for social game developers to interact (and transact) with children without any real overlay of player protection that is so familiar to the interactive gambling operator. Inevitably, any mention of minors in a commercial context leads to debate.

Social gaming is not about money (as you can't usually win anything tangible in social, although a growing secondary market for certain virtual currencies suggests otherwise). In social gaming, players may be driven by aspiration and achievement; they also like the distraction.

The need for player protection in this new cultural environment has only recently become an area of focus for psychologists trying to understand the consequences of such interaction. One thing is clear, though; some of the criteria used to identify addictive tendencies in the gambling environment also apply in social.

These issues are not new, as some jurisdictions regulate 'skill games', accepting that even though the 'gambling' definitions may not apply to a product, there may still be a need to protect the vulnerable and to ensure the mechanisms used within a game are truly fair. It may not be that fanciful to suggest similar issues arise in social. It seems to me that many of the old definitions of gambling could well be defunct.

Of course, it may not be surprising to hear a lawyer suggest a need for more regulation but it is clear we are witnessing another example of technological innovation accelerating ahead of regulation and that might well leave a corresponding gap in consumer protection. ■

## New Jersey should hold off federal challenge



By David Deitch

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**WHEN NEW JERSEY** governor Chris Christie announced plans to legislate sports betting at Atlantic City casinos and the state's four horse tracks, he issued a direct challenge to anyone who wished to challenge his right to do so.

There is little doubt federal authorities will be considering that very course of action because New Jersey's plans place it in direct contravention of the 1992 Professional and Amateur Sports Protection Act (PASPA).

The federal statute prohibited states from authorising sports betting unless they had sports betting schemes in place between 1976 and 1990. But if it is challenged, New Jersey should prevail by challenging the constitutionality of the act.

New Jersey's strongest defence is the claim that PASPA violates the Tenth Amendment to the US Constitution, which reserves to the states and the people all powers "not delegated to the United States by the Constitution, nor prohibited by it to the states".

A state's decision about raising revenue is consistently viewed as one such reserved power. Indeed, when PASPA was considered by Congress, the US Department of Justice opposed it, and expressed the concern, among others, that PASPA intruded impermissibly on the right of

states to set their own gambling policy and to raise revenues.

PASPA may also be vulnerable to a challenge based on its unequal treatment of different states. Nevada, Oregon, Montana and Delaware each are permitted some form of sports betting that was grandfathered under the statute, but the other 46 states are prohibited entirely. New Jersey had a one-year window to secure exemption but did not act at the time.

Opponents of New Jersey's new legislation are quick to point out that past challenges to PASPA have failed. New Jersey State Senator Raymond Lesniak and a number of trade groups filed an unsuccessful federal lawsuit in the United States District Court for the District of New Jersey in 2009, and Delaware's attempt to expand its sports betting beyond the programs grandfathered under PASPA was rejected by the United States Court of Appeals for the Third Circuit.

But in neither case did the courts consider the merits of a direct Constitutional challenge to the enforcement of PASPA. The New Jersey sports betting legislation is likely to pose that issue directly, and a successful challenge to PASPA may encourage other states to pass similar legislation expanding sports betting. ■