

ROBERT W. STOCKER II PRESENTATION TO CALIFORNIA SENATE COMMITTEE STUDYING THE LEGALIZATION, REGULATION, AND TAXATION OF INTRASTATE INTERNET POKER

Mr. Chairman, committee members, good morning.

My name is Robert W. Stocker II. I am a member of the Dickinson Wright PLLC law firm, where I serve as Chair of the Gaming Practice Group. I am a founding member of the International Masters of Gaming Law and just completed a two-year term as its President. I am the Chair-Elect of the Gaming Law Committee of the American Bar Association and am an adjunct professor at the Thomas M. Cooley Law School, where I teach gaming law and business planning, as well as occasionally teaching business organizations.

I have extensive experience representing casino developers, casino operators, and casino equipment manufacturers. I have experience drafting gaming legislation and gaming regulations in both the United States and overseas, as well as drafting constitutional amendments.

That being said, I am not appearing before this committee on behalf of any of my clients or as the official spokesperson for the International Masters of Gaming Law. Rather, I am speaking as a professional who has extensive regulatory experience in the gaming industry.

During the course of today's hearings, you have been and will continue to be inundated with statistics, pro-internet poker opinions, anti-internet poker opinions, problem gaming studies, and other relevant and irrelevant anecdotal information regarding gaming in general, as well as internet gaming. Every position presented to you during this hearing will have studies and statistical data that are used to support the speaker's positions or conclusions. This comes as no surprise.

I come before you with a different overall focus.

Last spring I had an opportunity to be the luncheon speaker at the North American Gaming Regulators Association annual conference in Washington, D.C. What I said then is equally relevant to this committee today -

**The internet poker gaming train left the station a long time ago,
and it is gaining speed every day.**

While estimates vary widely, it appears that the global internet poker market is currently around 15 billion dollars, give or take a few billion. More than half of the over 15 million persons who are internet poker players are United States citizens who are playing internet poker from their homes in the United States, with the remaining poker players spread primarily throughout Canada and Western Europe. As I speak to you, many thousands of American citizens, including California residents, are playing internet poker. They will continue to play internet poker today,

tomorrow, next month and next year notwithstanding UIGEA and periodic anti-internet gaming pronouncements by the law enforcement community.

The question facing this committee and the California legislature is not should intrastate internet poker legislation be drafted and put into law. The real question is -

Does this committee and, ultimately, does the California legislature want to harness intrastate internet poker by licensing and regulating it for the protection of its citizens and, as part of the process, establish a substantial additional revenue source to help address the massive fiscal crises California faces?

Regardless of the decision that you make as a result of this hearing, the truth is that the California citizens who are playing internet poker will continue to play internet poker.

The primary concerns of every internet poker player are simple and straightforward:

1. Honest operators
2. Honest games
3. Ease of access to play
4. No bots (i.e., no computer robot play)
5. Prompt access to winnings

I have been asked to address the international aspects of internet poker.

First, it is important to understand that internet poker is currently primarily a North American and European phenomenon.

Second, the European countries have been the first to seek to license, regulate, and tax internet poker. This has been through two separate and distinct approaches – the state monopoly and private sector licensed competitive sites. As a result of the European Union's focus on cross border commonality of treatment, there has been great pressure to eliminate state monopolies and broaden access to internet gaming by cross border licensed internet gaming operators.

Jurisdictions such as Malta, Alderney, Isle of Man, Gibraltar, Antigua and the Kahnawá:ke Tribe's First Nation online gambling services in the Province of Quebec are the leaders in licensing online internet gaming in general and online internet poker.

In my opinion, the licensing, regulation, and taxing of private sector internet poker sites is the wave of the future. It is the clear focus of the European Union in its pronouncements and the European Court of Justice based upon opinions in the taxation area that have been issued. State monopolies are gradually disappearing from the gaming landscape. The excitement surrounding the opening of the Italian market to competitive internet gaming sites is an example of what is possible when competition prevails over monopoly.

This makes eminent practical sense. Monopolies create bureaucracies and stifle competition, regardless of whether they are state monopolies or private monopolies. Competition breeds creative services and marketing which, in turn, generate more business and hence more revenues for the state coffers in the form of regulatory fees and taxes.

Moreover, licensing of private internet operators places the state in a strong competitive position as additional states open their doors to licensed and regulated internet poker sites and, most importantly, as the United States Congress finally addresses reality and adopts internet gaming legislation. In this regard, both the Frank Bill in the House of Representatives (HR 2267), which covers all forms of internet gaming, and the Menendez Bill in the Senate (S 1597), which focuses on internet poker, provide for internet gaming company licensing and permit the licensing function to be assumed by the states. A California intrastate internet poker act that focuses on licensing private internet poker companies that is up and running when federal legislation is adopted will provide a significant economic advantage to California in the race for internet poker dollars.

Recent statutory and regulatory developments in Italy and France are instructive in connection with development of a comprehensive statutory and regulatory framework for intrastate internet poker in California.

Italy

Internet poker in Italy is restricted to residents of Italy. Oversight of internet poker is performed by the AAMS (Amministrazione Autonoma dei Monopoli di Stato), a government regulatory agency. Operators are licensed by AAMS. Operators are initially restricted to holders of Italian remote licenses (approximately 60 licensees). Licenses lapse on June 30, 2016. All operators are required to pay a license fee (360,000 Euros). All operators are linked to a centralized system. All operators are required to be certified by an independent auditing firm regarding compliance with required technological infrastructural and management resources. All operators are required to post an appropriate bank guaranty bond in the amount of 1,500,000 Euros. All operators are required to utilize certified software. No foreign-based ".com" platforms are permitted.

France

The French internet poker system provides for a five-year license. All sites are required to maintain a French bank account. All sites are also required to have comprehensive corporate social responsibility systems that prevent underage gambling and identify and address problem gamblers. The French model blocks out unlicensed internet gambling. Finally, after considering other unrealistic tax regimes, it appears that the French model is focusing on a tax based upon poker pots, which parallels the rake system customarily used by Indian tribes engaged in Class II gaming in the United States.

United States Unlawful Internet Gambling Enforcement Act

Turning back to the United States, no discussion of intrastate internet poker would be complete without discussion of the Unlawful Internet Gambling Enforcement Act (UIGEA) attached to the Safe Port Act.

There are many misconceptions regarding UIGEA. This is not the time or place to engage in an intellectual analysis of the provisions of UIGEA. Instead, let me cut to the chase.

1. UIGEA does not alter, limit, or extend any federal, state, or tribal-state compact prohibiting, permitting, or regulating gambling within the United States.
2. UIGEA specifically provides that "unlawful internet gambling" does not include placing, receiving, or otherwise transmitting a bet or wager where the bet or wager occurs in a single state whose state law authorizes the bet or wager so long as the state law (1) includes age and location verification requirements designed to block access to minors and persons located outside the state, (2) includes appropriate security standards to prevent unauthorized access by any person whose age or location has not been verified, and (3) does not violate the Interstate Horseracing Act, the Professional and Amateur Sports Protection Act (which prohibits sports bets subject to certain specified exceptions), the Gambling Devices Transportation Act and/or the Indian Gaming Regulatory Act.

Conclusion

Federal legislative, including UIGEA, does not prohibit the state of California from adopting and implementing an intrastate internet poker statute. The real issue is which state will recognize the reality of the existence of unregulated internet poker and take the first step forward to assert its inherent right to initiate a comprehensive intrastate internet poker act that protects its citizens while generating a significant new source of revenue.