INSIDE:
• UNDERSTANDING THE WIRE ACT REVERSAL
• ONLINE POKER'S STRUGGLE
• AVOIDING RETAIL'S MISTAKES

Jason Robins exclusive
DRAFTKINGS CEO ON THE RECORD FOR OUR VERY FIRST ISSUE
If you're reading this, then feel privileged to be part of history, as you're delving into the very first Gaming America. With the US market being so important to the industry, and especially generating so much interest in the last year, it makes perfect sense for us to assess all fundamental US gaming issues in a completely new publication.

It's a fitting start that we feature DraftKings CEO Jason Robins, who Tim Poole managed to sit down with at this year's ICE London. Robins was happy to discuss the operator's start to life in regulated US sports betting markets, its expansion into live casino and even the possibility of some M&A activity. It is clear to see whatever happens to the US market, be it future regulation, consolidation or development of products, DraftKings has given itself a headstart and is sure to be at the heart of it.

On the topic of online gaming, we've got the key points of the Department of Justice’s recent Wire Act opinion covered, and question what this means for the future of the online market.

Sean Chaffin’s assessment of whether online poker can make its way back up the gaming debate pecking order is also an article not to be missed, including comment from one of the game’s all-time greats, while Oliver Lovat ponders how US land-based casinos can avoid the same decline as some iconic retail brands.

Keep an eye out for our next issue of Gaming America, which will be our first print edition of the magazine and will be distributed at this year’s NIGA Indian Gaming Tradeshow & Convention at the San Diego Convention Center in April. Make sure you pick up a copy!
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Plenty was said about the Federal Wire Act in January. Since the US Department of Justice (DoJ) reversed its opinion on the law, there’s been an array of analysis, some overreaction and some sheer misreporting.

**WHAT IS THE WIRE ACT?**
The Wire Act was formed in 1961 and outlawed all interstate wagers placed – or information passed on pertaining to wagers – via telephone or wired communication facility. It was designed, first and foremost, to prevent match-fixing and collusion. John F. Kennedy was US President at the time and aimed to help the DoJ tackle organised crime and trafficking. Match-fixing, of course, is an issue North America’s major sports leagues are still nervous about, in light of the repeal of the Professional and Amateur Sports Protection Act (PASPA).

In September 2011, the DoJ revisited the Wire Act and interpreted it as legislation which only applies to sports betting. But in its new opinion, issued on 2 November 2018 and made public last month, the DoJ revised that outlook, judging the law as applicable to all forms of gambling – including online casino, poker and lottery.
An excerpt from the original law shows why there is still lingering doubt as to what its language actually conveys:

“Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.”

In other words, it's not exactly bedtime reading material.

HOW DOES THIS IMPACT THE PASPA REPEAL?
While the announcement has triggered a variety of different responses, the first note to emphasise is that the Wire Act focuses on interstate communications. That means gaming conducted within individual states, in theory, remains unaffected – as does sports betting within individual states.

The fact sports wagering was already covered by the Wire Act is the best example of this: states are free to legalise sports betting and will continue to be. As the DoJ deliberates over the Wire Act, the American Gaming Association (AGA) estimates as many as 15 states are getting closer to legalising sports betting. AGA-commissioned research also suggested $6bn would be wagered on this year’s Super Bowl.

WHAT IS AFFECTED?
Where the DoJ’s new interpretation of the Wire Act may take effect is when there are interstate compacts in place. In Nevada, one such agreement exists.

In the wake of the DoJ’s new opinion going public, Becky Harris, outgoing Chair of the Nevada Gaming Control Board, said: “There is an interstate compact between Nevada, Delaware and New Jersey, where Nevada participates with regard to poker only, and that’s [now] in question.”

However, former Senator Ray Lesniak, a long-time advocate of legalised sports betting, believes there could be even further-reaching implications in New Jersey. He is quoted as saying: “If I go online to gamble on my phone [and] my internet connection goes through a transmitter out of the state, that can be considered a violation of the Wire Act. Same thing with payment processes.”

HOW CAN IT BE IMPLEMENTED?
Initially, the DoJ said it will wait 90 days to implement its new opinion. However, it is unclear whether it will eventually have any direct bearing on existing legislation. How exactly can and will it be implemented?

Legal experts say casino operators and online lotteries will contest the issue in court. Some analysts, meanwhile, claim there is nothing more to the DoJ’s new view, except a moral victory for casino owner Sheldon Adelson and the Coalition to Stop Internet Gambling. Adelson has long been a campaigner against online gaming within the US market. As a major player within the land-based sector, what he stands to gain from limiting the success of digital gaming is clear to see.

HOW HAS THE INDUSTRY REACTED?
Plenty within gaming are continuing to go about their business as they would have done previously; a stance best embodied by the AGA. Sara Slane, AGA Senior Vice President of Public Affairs, said: “It is unfortunate the DoJ departed from well-established practice in reversing its previous opinion without a compelling reason to do so.

“However, the 2018 OLC opinion does not impact the ability for states and tribes to legalise and regulate gaming on a state-by-state and tribal basis, or for companies to provide the exciting products and entertainment experiences our customers want.”

But in New Jersey, Lesniak believes the ramifications of the DoJ’s new opinion could be “disastrous,” as multiple online sportsbooks depend on payment methods which involve out-of-state transactions. Some commentators have also questioned the AGA’s response, suggesting the trade body could have been far more vocal in its Wire Act statement. When contacted by Gaming America on the matter, the AGA said it is carefully reviewing the new opinion’s implications before adding further comment.

WHERE DO WE GO FROM HERE?
In that sense, the AGA is not alone. As is so often the case with a contentious issue that sparks such polarising views, we can only wait and see which side of the argument takes centre stage in practice.

If a player in New Jersey wagering through a New Jersey online operator still counts as a breach of the Wire Act, the implications may be far wider reaching than many originally feared. Therein lies a key distinction.

Does the Wire Act encompass the internet, rather than the Unlawful Internet Gambling Enforcement Act of 2006? Is the DoJ’s new opinion simply an attempt to stay relevant without the authority to genuinely act? Will this new ruling prove a game-changer, or merely be lost to history as a meaningless footnote?

At the heart of the issue, these are the questions gaming companies need to be asking.
We’ve looked at the fundamentals of the Wire Act reversal, but where exactly does it apply? Natic Locke and Jennifer Roberts of UNLV International Center for Gaming Regulation tell us more.

On 14 January, the Office of Legal Counsel to the US Department of Justice (DoJ) issued an advisory opinion (actually dated 2 November 2018) concerning the federal Wire Act that reversed its prior interpretation issued in 2011. This new opinion confirmed the DoJ now has the interpretation that the Wire Act prohibits interstate gambling activities - not just sports wagering. However, the opinion has provided more questions than answers.

The Wire Act is a federal criminal law enacted in 1961, together with other federal laws, for the purpose of targeting organized criminal activities that crossed state lines. The law was supplemented by the Racketeer Influenced and Corrupt Organizations (RICO) Act and others passed in 1970. During this time, the only state with legal sports wagering and casino gambling was Nevada.

The Wire Act has four core elements: First, a betting or wagering business; second, activity that crosses state or international boundaries; third, the use of wire communications; fourth, activity that involves bets, wagers, or information assisting the placement of bets or wagers. What this means is the Wire Act does not target bettors, but operators of gambling.

Prior to 2011, the DoJ held the opinion the Wire Act made it illegal for sports wagers, lotteries and casino gambling to cross state lines with use of wire communications, such as telephones, internet, or mobile technology. Most enforcement continued to be against sports betting operations and even the famous Black Friday poker indictments in 2011 did not allege violations of the Wire Act. However, states including Nevada did not feel comfortable issuing internet gambling licenses, even on an intrastate basis, because of the DoJ’s position.

In 2009, New York and Illinois asked the DoJ to confirm whether intrastate online lottery sales would be prohibited under the Wire Act. After two years of waiting, on 23 December 2011, the DoJ responded with an advisory opinion that the Wire Act only applied to sports betting and that intrastate online gambling activities were not prohibited.

This led to four states ultimately approving internet casino gambling and about nine states offering online lottery products. After the Murphy decision from the US Supreme Court last May,
a handful of states authorized intrastate mobile sports wagering, like what had already been possible in Nevada.

The new DoJ opinion says the Wire Act prohibits four activities by gambling businesses: First, transmitting bets or wagers across state lines on any type of gambling; second, using wire communications to provide “information assisting in the placing of bets or wagers” on sports; third, using wire communications for money or credit from betting or wagering; fourth, using wire communications to provide “information assisting in placing of bets or wagers” on any gambling activity, except for sports betting between two jurisdictions where it is legal.

With this current opinion, the DoJ reversed its 2011 opinion and created a lot of uncertainty within states that offer technology-based wagering. The DoJ first and foremost declared the Wire Act as applying to all forms of gambling. This means any interstate online gambling activity is considered a crime. This position takes a direct hit to interstate compacting between New Jersey, Delaware and Nevada for online poker games.

The three biggest uncertainties created by this new opinion will ultimately come down to how strictly the DoJ will enforce its new opinion. The DoJ apparently is expected to issue enforcement guidelines that may offer some help in understanding who and what is targeted by this new opinion. Meanwhile, states and gaming operators are left to wonder whether intrastate activities are impacted, whether financial companies and institutions will prevent transactions, and whether a prohibition on “information assisting the placement of bets or wagers” will be broadly extended.

One significant uncertainty is whether the DoJ will enforce action against intrastate gambling activities. In the 2011 opinion, the DoJ put to rest concerns about the routing of gambling information that may have crossed outside the boundaries of a state during the process of a bet being made and a bet being accepted within a state, which is also referred to as intermediate routing. For example, if I use my Verizon phone to place a wager on a mobile casino game in New Jersey with a New Jersey internet casino site, even if Verizon technology transmitted the data through communication routes that crossed into New York (where internet gambling is not legal), so long as I was located in New Jersey and the site accepted the bet in New Jersey, that routing of information was not a concern.

However, the current opinion seems to suggest, but does not directly address it, that even routing of information that crosses outside of a state’s borders could trigger a violation of the Wire Act. If they took this position through enforcement,

This means any intrastate mobile or online gambling activities – sports betting, lottery, or casino – could be prohibited.

The next major concern is whether DoJ enforcement will result in banks, credit card companies, payment processors and other financial institutions restricting patrons from using services to legally gamble. With the interpretation that the Wire Act prevents the transmission of a wire communication entitling a recipient to money or credit from a bet or wager made, companies that provide services to gambling operators and patrons may be reluctant, in order to avoid an allegation of “aiding and abetting.”

Finally, the last concern is how broadly the DoJ will enforce against “information assisting in the placement of bets or wagers.” Technically, under this new opinion, if I am a casino operator in Las Vegas and send a text message to a high-roller customer in California with an offer to arrange for transport and accommodations in exchange for a certain amount of play, I could be sending information that assists in the placement of bets or wagers. It is highly unlikely the DoJ intended that level of reach from its opinion, but, without further guidance, how do legal and compliance professionals advise clients on what activities are captured by that language?

Shortly after the DoJ issued its new opinion, a memo was issued that enforcement would be held for 90 days to allow states and operators time to comply with the terms of the advisory opinion. Unfortunately, because this new opinion is confusing, states and operators are unsure of the extent of compliance required. Without knowing how broadly the DoJ will enforce its current position, states and operators are in a suspended state of uncertainty. Meanwhile, it is possible states may pursue declaratory action asking for a court to give legal clarity to how the Wire Act should apply.

There are a few Circuit Court of Appeals decisions that limited the scope of the Wire Act to sports wagering only that could be persuasive. Some assert Congress could always amend the Wire Act, but given the law has remained unchanged for 58 years, there isn’t a tremendous amount of hope there.
It was a rare case of bipartisanship in December. State legislators in Michigan approved a broad-based internet gambling bill that would not only legalise online poker, but other forms of online gambling and sports wagering. It appeared for the first time in years, the online poker industry might be showing some signs of catching up with the continuing growth of the live game, and seemed on a bit of a roll. Online sports betting went live in Pennsylvania in late 2018, and poker was expected to be live online in the early part of this year. Pennsylvania will bring the number of online poker states to four and also includes New Jersey, Delaware and Nevada. Michigan seemed like a nice addition to that slowly growing number. The legislation threaded some needles to become a reality – pleasing the state’s commercial casinos, tribal gaming and the horseracing industry. But it wasn’t to be. With a veto, outgoing Governor Rick Snyder shut down the hopes of players and those in the industry. The move delayed the possibility of a state with a population
of almost 10 million adding to a possible shared liquidity market among the other states, creating larger player pools and payouts. That legislation now has to wait for a new governor and legislature. It was a frustrating moment for those hoping to see the game expand.

“[I] look at it more as a minor setback,” says Dustin Gouker, an industry analyst and editor for OnlinePokerReport.com and LegalSportsReport.com. “There is clearly an appetite to legalise online gaming, and all the stakeholders in the state appear to be on the same page, so hopefully we’ll see a similar bill move this year.”

While sports betting states are falling like dominos, online poker’s progress has been slower. Those in the industry are hoping changes and sports wagering may bring an unexpected opportunity to keep the game growing.

The industry has faced some challenges. Small player pools are the biggest issue, which can only be solved by more states joining the fray. Payment processing also remains a problem.

Another major obstacle for adding more states may simply be the poor performance where online poker has already been legalised. The diminishing returns may not offer much upside for legislators, even considering the effort.

“I love online poker, but the lacklustre numbers in New Jersey have not been a great selling point for its expansion,” Gouker says. “We’re never going to see federal regulation, so it’s going to be up to more states to legalise it and join the compact before we see poker in the US take off in any kind of meaningful way.”

**TRENDS AND CHALLENGES**

There’s no doubt poker remains extremely popular in the US. But since Black Friday, which shut down online poker at a federal level on 15 April 2011, the industry has been in a bit of limbo. A state-by-state approach has been slow and those with legalised online poker have seen a diminishing number of players and financial returns. A look at New Jersey serves as a snapshot. For 2018, online poker revenue decreased 13% to $21.4m.

“It’s hard to be terribly optimistic about the US online poker industry based on early returns,” Gouker says. “Obviously the more states we add, the closer we get to a critical mass, but it’s clear online poker hasn’t really moved the needle in New Jersey, Nevada, and Delaware, despite liquidity sharing among the three. Of course, we are adding Pennsylvania to the mix this year, and it has a chance to change the dynamic. But in reality, to see real growth, we probably need to see multiple states legalise it and then join the interstate compact.”

**SPORTS BETTING COATTAILS**

PokerStars is among the companies that have moved back into the US market. The largest online poker company in the world offers poker, as well as sports betting in New Jersey, and is hoping both continue to grow. Poker legend and site ambassador Daniel Negreanu was at the PokerStars Caribbean Adventure in January and spoke with Gaming America about where he sees the progression of the American market.

Negreanu believes the growth of sports betting should have a positive impact on online poker and points to past events he believes may be mirrored in the current climate.

“There was a period of time, and this was pretty common, where there were a lot of sports betting sites that added poker and the poker games became very good,” he says. “The more sports betting is legalized, the more states will have less and less of an argument against poker. If you have sports, how could you possibly not allow poker? It’s kind of silly, right? I think we can piggyback in a lot of ways.”
However, poker seemed to have gained some momentum after New Jersey launched regulated online gambling in 2013, only to see efforts in other states, including possible major players like California and New York come to a halt.

Negreanu doesn’t see any movement federally, but predicts more developing in the next five years. The Michigan attempt seemed to be another stepping stone after Pennsylvania, but leaves the industry hoping for another positive move. Larger states like California and New York coming on board would be a boon to the industry in the US, Negreanu says, adding the possibilities of shared liquidity, and player pools and payouts not seen by US players since Black Friday.

“Obviously in New Jersey, poker went in there and it was good, it was ok,” he says. “Sports betting is a lot more accessible. It’s bigger. There’s just a lot more people that do sports gambling, but I still don’t think that hurts poker overall, because while people are tracking their bets, they might just want to play a little poker. But the barrier for entry to bet on sports is as simple as picking or flipping a coin. For poker, you’ve got to know a little bit more. You have to be educated a little or you’d get crushed.”

POSITIVE DEVELOPMENTS

What’s next for the industry? Is there hope that what was once a thriving online poker market can be revived? One sign of the continued popularity of poker in the US is the World Series of Poker, which attracted a record number of players in 2018 and has even seen a rise in interest each summer in its own online offerings at WSOP.com. The series even awarded four bracelets in online events in 2018, up from three in 2017 and a single event in 2016 and 2015. Those events have continued to see increases in the number of entries.

Other tours continue to prosper. The World Poker Tour’s signature event, the $10,000 Five Diamond World Poker Classic, attracted 1,001 entries in December. PokerStars also garnered plenty of attention for the game last year with its Platinum Pass promotion and PokerStars’ No Limit Hold’em Players Championship.

The passes were awarded throughout the year in $86 tournaments, celebrating Chris Moneymaker’s historic 2003 WSOP Main Event victory, after qualifying online at the site for that amount. Winners took home a $30,000 package that included entry into the $25,000 buy-in event and an all-expenses paid trip to the Bahamas as part of the site’s signature live event - the PokerStars Caribbean Adventure.

Along with those positive events, more states are seriously considering online poker and gambling. Beyond Michigan and Pennsylvania, others considering legislation include New York and Illinois – populous states that could be seen as harbingers of continued growth.

Sports betting is now legal in eight states, with Arkansas and Washington DC also already approving the activity and others considering legislation. It may seem like online poker would be a logical fit for states with legal sports betting, but logic doesn’t always make a good fit with government and politics.

Some states, such as California, also have several interested parties to appease, including Native American tribes and the horseracing industry. Threading the needle can be tough. Other states have strong anti-gambling forces and poker can still carry a negative vibe to many – with memories of Black Friday’s Full Tilt Poker fiasco still in many minds.

Enticing more states on to the card-playing bandwagon won’t be easy. Will more states be allowing betting and bluffing online two years from now? It’s not a great bet, but the odds seem to be improving.

Sean Chaffin is a freelance writer in Crandall, Texas. His work appears in numerous websites and publications. Follow him on Twitter @PokerTraditions.

“THE MORE SPORTS BETTING IS LEGALIZED, THE MORE STATES WILL HAVE LESS AND LESS OF AN ARGUMENT AGAINST POKER. IF YOU HAVE SPORTS, HOW COULD YOU POSSIBLY NOT ALLOW POKER? IT’S KIND OF SILLY, RIGHT?”

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JASON ROBINS: CONTROLLING OUR OWN DESTINY

DraftKings CEO Jason Robins sat down with Tim Poole at ICE London 2019, discussing the operator’s journey so far and outlining a growth path that has “never been clearer”
It’s been a long road from where Jason Robins started out to the conference lobby we share at the Excel London. The DraftKings CEO has just finished a half-hour presentation on the company’s outlook: it wasn’t originally scheduled within the ICE London agenda, but timetables were shuffled to make room for the US exec.

That’s how big of a draw Robins and his firm have become within the gaming sector. The scenario is a far cry from when he worked 100-hour weeks balancing his full-time job at Vistaprint with his new, little-known side project. We ask if he ever foresaw DraftKings evolving into what it is today.

“I don’t really think we ever imagined, at least this quickly, we could become as relevant as we have been and as large as we are,” Robins exclusively tells Gaming America. “I didn’t really think about it that way, more as a long grind. I thought maybe somebody will come and buy us out for $40-50m. But we didn’t think it was going to explode like this. It’s been an interesting and fun ride.”

Now, the CEO admits it’s not quite 100-hour working weeks, but still a rather busy 70-80 plus. The workload is a sign of success, of course, as well as the growth DraftKings has enjoyed thanks to its huge share of the daily fantasy sports (DFS) market. But, once upon a time, DFS was a vertical under threat.

In 2015, DraftKings faced scrutiny over false advertising and insider trading, before New York’s Attorney General ordered the operator and its main rival, FanDuel, to stop accepting bets in the state. The whole DFS industry felt the focus of the regulatory microscope and DraftKings’ attempted merger with FanDuel in 2017 was called off due to concerns over a DFS monopoly.

“It was definitely a tough time,” Robins recalls. “We were very fortunate to have an incredible employee base and investor base, as well as a board and advisors helping everybody pull through it. At the time, it seemed quite stressful and scary.”

The CEO, however, also looks back fondly on some unexpected positives: “Looking back, those issues were actually the best things to happen to us. First, it strengthened us; we can now say no matter how crazy things get, we’ve proven we know how to navigate complex, challenging situations. Second, a lot of that experience and the fallout from it is why we ended up getting regulated in so many different states for fantasy.

“That then entailed us building state-of-the-art KYC, anti-money laundering protections and geo-location capabilities; having that in place while moving towards regulated gaming and sports betting is very useful. It’s a big chunk of work we’ve already done that other new entrants will have to spend time on.”

No matter how much of an advantage DraftKings’ DFS database provides in its transition to becoming a multi-vertical operator, Robins is aware there is still an awful lot to learn in the world of gaming. The firm was the first entrant into the New Jersey sports wagering space and has generated impressive early results within the Garden State. The operator’s recent National Sports Betting Championship still courted controversy though, as the result of some teething problems.

As players fought for their share of a $2.5m jackpot, one NFL play-off game overran on the final day, meaning several bettors could not wager on the afternoon’s second contest, as their entire bankroll remained in play. The incident attracted headlines of the wrong kind during a tournament which had otherwise run smoothly.

Robins explains: “This is early, early days. To use a baseball analogy, someone said to me it feels like we’re only in the second inning. I said it feels more like spring training.

“As typical Americans do, rather than look at Europe or the UK that have been through this, we like to figure it all out on our own sometimes. So people are not totally educated when it comes to sports betting. As an operator, while we’ve certainly done a lot to study how companies operate, we’re still learning too.

“I think even a lot of people who have been operating for years in the UK will take for granted how it works in the US. US players are different and so is the American market; partly because it’s new and because of the level of education.”

At the same time, the DraftKings CEO does not shy away from defending the Championship, emphasising the event’s overall success. The episode is not the first anomaly to be seen from a DFS giant in the fledgling US sports betting market. FanDuel recently reached a settlement with William Hill for copying its “how to bet” guide, while it agreed to pay a customer $82,000 in winnings following a technical glitch back in September.

For Robins, these early outliers do not represent the whole picture. He tells Gaming America: “We got overwhelmingly positive feedback on the Championship. A few outlets chose to write about one or two customers who didn’t have the best experience. We feel badly about that; regardless of the reason, we never want anyone not to have the best experience. We try when that’s the case to make things right, even if it’s paying money out of our own pocket.

“In this case, it was one of those tricky ones where there was really no win. To adjust the results for one person meant to
adjust it in a negative way for another. We followed the rules and it wouldn’t have been fair to start adjusting.”

In a broader sense, “adjusting” is something Robins is more than prepared to do. In fact, there is clear evidence of DraftKings already adapting considerably to customer demand. Less than half a year ago, Robins was quoted as saying: “We’re not positioned too well in casinos.” The clear suggestion was the operator would not enter the casino vertical.

Not only has DraftKings now joined the world of land-based sportsbooks, it has indeed incorporated DraftKings Casino into its New Jersey sportsbook app. It’s a fairly significant change in approach – one symbolising the operator’s “nimble” nature, according to Robins.

He states: “A lot of customers had been asking us for casino. When I spoke about casino initially, it would have been right after the launch of sports betting. We’re very nimble as a company. As we got more information and data, it became very clear very quickly our customers wanted us to launch that product. Ultimately, they wanted the loyalty points that come from playing across DraftKings products. We thought it was important to retain customers and give them the best experience.”

Domestic expansion is one thing, but what of DraftKings’ global aims? With so much promise being shown in the US gaming sector, the operator finds itself in an intriguing position. While companies can often be accused of lacking foresight by focusing purely on their domestic market, Robins believes looking outward may not be the “wisest” move right now.

Sports betting regulation has recently been approved in New York – a state in which DraftKings has already partnered with Del Lago Resort & Casino – and a number of states are expected to follow suit in the coming months. As such, the CEO acknowledges international expansion is low on the priority list. In this case though, that’s not due to a lack of ambition.

“Right now, the priority for us will be investment in new US states opening up,” Robins says. “However, depending on the pace at which that goes, international expansion is something we could focus on more heavily in the near term. It will 100% be something we focus on more in the medium to long term.

“If you’d asked me a year ago, before the PASPA [Professional and Amateur Sports Protection Act] case was taken up, international expansion would have been really high on the roadmap. The main point is we absolutely believe, long term, we want to be a global company. It’s just a matter of prioritizing the US, as a rapidly evolving and growing market. We have such a strong position there, it would probably not be the wisest move to divert our focus, unless that slowed down.”

Much of our discussion with Robins so far has centred on traditional sports betting. But the fact remains DFS is still DraftKings’ forte. The CEO explains it forms the “bulk” of the operator’s revenue, with a “very heavy” focus being placed on the 41 states in which it can accept DFS wagers. Robins describes the vertical as “pretty important” and sees no signs of that changing.

In terms of resources, the DraftKings exec tells Gaming America his organisation is trying where it can to use one team for both DFS and sportsbook. Marketing is an example Robins gives, providing the department with a “blank canvas” to try and onboard customers and create as much lifetime value as it can – within both verticals.

Interestingly, that kind of strategy is not too dissimilar to the cost savings undertaken during a merger. Given FanDuel almost merged with DraftKings and was then acquired by Paddy Power Betfair in May 2018, we ask Robins if there is any M & A on the horizon.

“After all, in his own words, he envisaged being bought out early on. Could that be a viable exit strategy for the tech firm?”

“I never say anything’s off the table, especially in this industry, which seems to change by the day,” Robins speculates. “But it’s definitely not something I expect in the near term. Right now, we have a really exciting and clear growth path ahead of us. It’s actually never been clearer in the company’s history.

“We should be looking at several years of sustained high growth. To me, it feels like the best way to approach a situation like that, given where we are, is to continue to stay as an independent company. Things do change – you could talk to me in three weeks and I could tell you something different. We’re always keeping an open mind but, right now, we feel pretty good about where we’re going and we like the idea of controlling our own destiny.

“We also are potentially interested in looking at doing some M & A of our own. That’s where my head’s at now, with the caveat that it’s a very fluid industry.”

As far as growth and market share are concerned, DraftKings’ control of its own destiny is indisputable – especially if it utilises its early-mover advantage in New Jersey and huge DFS database.

Robins knows that will only happen if the operator avoids complacency following its strong start to life in gaming, which means the right noises are being made.

The challenge now however, will be monetising that growth path and market share, turning DraftKings’ early promise into revenue and profit figures capable of challenging the biggest players in the industry.
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LET THE EMERALD PRINCESS ENTERTAIN YOUR PLAYERS AND WATCH YOUR REVENUES SOAR!
IS THE FUTURE OF US GAMING IN THE RETAIL PAST?

Oliver Lovat asks where the next evolution of US casinos will come from to avoid replicating the country’s retail giants’ demise.


These were department store behemoths and household names in many of the US’ leading cities, with tens, if not hundreds of thousands of customers per year. Today, all are gone, either consumed by competitors or doors closed forever.

However, retail has not disappeared. Barneys has 27 units, Boscov’s has 47, Neiman Marcus has 42. Going larger, Dillard’s has 292, Nordstrom has 363 and Macy’s, which acquired many of the defunct businesses, operates over 650. Outside the department-store model, Westfield USA (now Unibail-Rodamco-Westfield) has 35 malls in the US, Brookfield has 161 malls and Simon Property Group has nearly 400.
The story is the story. It was never about the games: The resorts are communities, targeted at distinct customers with brands, experiences and amenities specifically tailored to those customers.

As we know, post-war casino gaming was focused on Las Vegas and Atlantic City until the 1988 passing of the Indian Gaming Regulatory Act (IGRA), categorizing casino gaming to:

- **Class I**: low-level social games, offering prizes of minimal value, and played only by tribal members.
- **Class II**: bingo, pull tabs, lotto, punch boards, certain card games, video display card games, controlled by the tribe and National Indian Gaming Commission.
- **Class III**: all forms of gaming that are not Class I or II, including parimutuel horse and dog racing, jai alai, casinos, lotteries, banking card games and slot machines. But they must have an agreement or compact with the state and gambling must be legal in the state.

Some Las Vegas games, such as roulette (with ball) and craps (with dice) were not permissible in certain jurisdictions, such as California.

Today, there are 420 tribal casinos producing c.$27bn of revenue, taking the Native American communities from marginalized and in some cases maligned communities, to important business operators and key regional employers.

In 1989, South Dakota permitted legal casinos, followed by Iowa and Illinois, with dozens to follow; many on riverboats before moving to dry land.

The timeline is important, as just as gaming was proliferating across the US, offering a fresh supply to meet demand, The Mirage opened and changed the shape of the casino. As tribal expansion continued at generation two and in some cases generation three properties, Las Vegas is dominated by third-generation properties, with 3,000+ rooms, even vaster buildings and bigger floors, but different from their predecessors as a result of their huge range of amenities.

The fourth generation of casinos is an advance in the resorts for the 1990s and early 2000s. As Wynn himself said at his G2E address in 2014: “The non-casino story is the story. It was never about the games.” The resorts are communities, targeted at distinct customers with brands, experiences and amenities specifically tailored to those customers.

**THE STRATEGIC CHALLENGE**

There are key strategic challenges facing the casino industry, not just the established corporations, but particularly with the Native Americans that have established their rights to...
Incredible Technologies’ latest game family, Clinko™ debuts a brand new title, Winning Wall™ and marks the Blinged-out return of King of Bling®. The larger-than-life Clinko feature is randomly triggered to award symbol upgrades and added wilds. After a successful nationwide test period, properties are reporting performance of both themes as well over house average – in some instances, over 3X1 – making Clinko titles a must-have for any floor.

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own and operate casinos. Much like the second-generation department-store owners, operating businesses built out of opportunity, these decisions will have generational impacts.

Those familiar with my consultancy, lectures and writing on strategic competitive advantage will be aware of my fundamental thesis; there are only two drivers of sustainable competitive advantage within the land-based gaming industry - those of location and loyalty. Once location is established, the only form of sustainable competitive advantage is loyalty – and there are different customers that demand different loyalty drivers.

Retail faces many of the same characteristics as gaming, and history shows what happens when an effective strategy is downplayed in pursuit of short-term thinking. Now is not forever.

So, in this inaugural edition of Gaming America, I invite the industry to pause with me for a moment, as this is a time of fundamental change in our industry.

Our biggest companies have seen values diminish, despite reinvestment and a strong economy. Some have sought international diversification with great success, for now. Some have repurposed from gaming and hospitality companies to entertainment companies; Caesars Entertainment is the third-largest seller of tickets in the US, while MGM Resorts is fourth. Las Vegas expansion plans are centered around non-gaming amenities, in particular convention space. The Pechanga Resort in Temecula, California, recently invested $280m in expanding the non-gaming amenities, including rooms, spa and pool. Additional casino space was nominal.

Some have diversified into other businesses; real-estate investment, F&B operations and to other technologies in gaming and non-gaming.

**LOOKING FORWARD**

This year is the final year of the way things were. There will be winners and losers, but there will be change.

Gaming is now ubiquitous; it is highly undifferentiated. Once there was unmet demand, but today there is unmet supply. Further deregulation in the online space will add additional consideration to land-based operators, who, along with the manufacturers, have yet to find an alternative to slot machines that have had such resonance with an established, but aging customer base.

For decades, the truth was: “If you build it, they will come.” That is no longer a certainty. The fundamental questions today are now strategic. What business are you in? Who are your customers? Who are your competitors and what are they doing? What are your strategic assets and competencies and how are you best placed to compete in the increasingly competitive environment?

Casinos are complex operating businesses, with capital intensive real estate and in many cases, management focusing on operations. By nature, they are inward looking. Where once marketing and operational efficiency were the simple answers to many problems, sustainability is not achieved in one quarter, or the following quarter, or even the quarter after that. Our industry needs some strategic thinking, or it will face the fate of the US’ department stores.

Oliver Lovat leads the Denstone Group, which offers strategic advice and development consultancy on casino resorts. He is a Fellow of the Royal Institution of Chartered Surveyors and visiting faculty at Cass Business School in London. He lives in Las Vegas.
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LEGAL ROUND-UP:
A YEAR TO REMEMBER

With sports betting dominating headlines in 2018, Tim Poole provides a state-by-state legal round-up of the latest developments in regional US gaming law

ARIZONA – The Grand Canyon State is certainly far from the first to make its move on sports betting, with its first bill only appearing in February 2019. A timeline is currently unclear, but bill S 1158 would allow Arizona’s tribes to offer land-based sports wagering, as well as allowing kiosks to be installed elsewhere.

ARKANSAS – Sports betting regulations are yet to be drawn up in the Natural State but, in November 2018, voters approved Issue 4. This has allowed Arkansas to issue four new casino licenses, with these casinos allowed to offer sports wagering. Issue 4 also permits the expansion of operations at Oaklawn Racing and Gaming and Southland Gaming and Racing.

CONNECTICUT – Another state not to move quickly on sports wagering, Connecticut saw a new sports betting bill introduced by nine Democratic senators in January 2019. Interestingly, a sports betting law was enacted in 2017, but tribal concerns have impeded any progress since.

DELAWARE – Full-scale sports wagering arrived in the Diamond State on 5 May across three different venues: Delaware Park, Dover Downs and Harrington Raceway. Between May and December, Delaware accepted $86.9m in sports betting handle, generating $8.9m in revenue, the majority of it coming from bets placed at Delaware Park.

FLORIDA – While casino, online poker, lottery and bingo are already legal in the Sunshine State, regulated sports wagering took a big step in the wrong direction last year. In November, Amendment 3 was passed, which means at least 60% of Florida’s population must vote to legalise sports betting if it is to cross the legislative line.

HAWAII – One of just two states (Utah being the other) not to have any legalised gaming at all, Hawaii recently saw bill H 1107 filed. This would create the Hawaii Sports Wagering Corporation, which would act as a regulator for all sports betting activities within the state. If the bill passes, regulators will have 180 days to seek a sole vendor.

ILLINOIS – In January 2018, five different Illinois sports betting bills came to light within six weeks of each other, suggesting legal sports wagering was well on its way to the Prairie State. However, progress stalled and Illinois now looks to be a long way down the list of states likely to legalise sportsbook activities.

IOWA – The Hawkeye State is in similar limbo when it comes to legalising sports wagering, but politicians are doing their utmost to move it forward. State representative Jake Highfill was behind a bill aimed at legalising sports betting at casinos and racetracks; the conversation could take important steps forward in 2019.

KENTUCKY – The Bluegrass State has seen sizeable recent movement, with lawmakers considering a bill which would legalise sports betting, fantasy sports and online poker. An analysis of the proposed bill said Kentucky could generate about $20m per year in tax revenue.

LOUISIANA – The Pelican State enjoyed a unique 2018, in that its main legal progress came away from sports betting. Lawmakers in Louisiana voted to approve a bill that would legalise daily fantasy sports in May, while April saw senators vote in favour of moving 15 riverboat casinos ashore to increase state revenue. More recently, Governor John Bel Edwards threw his support behind legalising sports wagering.
MAINE – Lawmakers in Maine will debate whether to permit sports betting this year, with bills allowing wagering in Maine casinos or the state’s American tribes heading to the state legislature. As with many other states, exact details of the bill are not yet available, but Democratic Senate President Troy Jackson wants to uphold bans on collegiate, minor league and high school sports betting.

MARYLAND – Recent bills introduced in the Old Line State would authorise the Maryland Lottery to conduct sports betting, allowing state horseracing licensees and video lottery operators to apply for a license. In November, a Washington Post/University of Maryland poll found 53% of people would vote in favour of professional sports betting, with 37% against and 10% having no opinion.

MICHIGAN – In June, Michigan’s House of Representatives voted 68-40 in favour of online gambling bill HB 4926, which paved the way for the Lawful Internet Gaming Act. However, this was then vetoed by Governor Rick Snyder just days before he left office in December, leaving the Great Lake State in limbo.

MISSISSIPPI – The Mississippi House passed a bill in August which would allow the creation of a state lottery, despite this bill originally being defeated. In terms of sports betting, Mississippi legalised the vertical, also in August, yet attempts to add mobile wagering have so far failed.

MISSOURI – In December, Missouri took a different approach to all others before it, with a sports betting bill being pre-filed that included charging licensed sportsbooks a form of integrity fee. The fee would amount to 1% of total sports handle, although the slow progress in 2018 raises question marks over the chances of Missouri legalising sports wagering this year.

NEVADA – The Nevada Gaming Control Board must find all talk of new regulations a tad tedious, having been the home of regulated US gaming for some time. But even the Silver State may have to adapt to the Department of Justice’s (DoJ) new take on the Federal Wire Act, with outgoing Chair Becky Harris saying: “There is an interstate poker compact between Nevada, Delaware and New Jersey that’s [now] in question.”

NEW MEXICO – The Land of Enchantment saw plenty of sports betting developments without actually regulating the vertical in 2018. The Santa Ana Star Casino & Hotel began accepting sports wagers due to a tribal compact with the state. Meanwhile, the New Mexico Lottery Authority voted unanimously to authorise a new sports lottery game, although a bill has now been filed to challenge this.

NEW YORK – An eagerly anticipated state with regards to sports betting, New York recently took a major stride forward. The New York State Gaming Commission began slowly though, only approving the regulation of sports betting in the state’s four private casinos and its Indian-operated casinos. So far, there have been no breakthroughs for mobile betting.

OHIO – Senator John Eklund was recently quoted as saying the chances of Ohio legalising sports wagering in 2019 are better than 50-50. As for other verticals, gaming revenue in Ohio increased 3% year-on-year to $140.7m for January 2019, suggesting there is enough of a betting appetite within the state.

PENNSYLVANIA – The Keystone State enjoyed an eventful 2018, launching legal sports betting and planning the launch of its regulated online casino market. However, sports betting tax rates in Pennsylvania are set at 36%, with license fees setting companies back $10m. The DoJ’s Wire Act interpretation may delay the online casino market and it remains to be seen how prohibitive Pennsylvania’s rates become in practice.

RHODE ISLAND – The introduction of sports betting suffered several months’ worth of setbacks in 2018 but, in November, Rhode Island accepted its first wager. Millions were estimated to have been lost in revenue, but $13.1m was placed in sports betting handle in December, its first full month, generating $958,000 in revenue.

WASHINGTON – A group of eight representatives put forward a new bill that would legalise sports betting at Washington’s tribal facilities in February 2019. Online gaming (but not mobile) is also covered by the bill, which would mark a significant milestone in a state widely known for its tough anti-gambling laws.

WASHINGTON DC – Sports betting regulation was approved in December, although the launch of wagering has been delayed. This is due to the DC Council’s uncertainty about whether to award exclusive rights to offer mobile sports betting, which were then awarded to supplier Intralot in February.

WEST VIRGINIA – Sports wagering was legalised in the Mountain State back in March 2018 and attention has now turned towards legalising online casino and poker. A bill was recently filed which would allow the West Virginia Lottery Commission to regulate online casino if passed.
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