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## Redeeming Qualities? A Look at “Credit Redemption” in Connection with Internet Gambling

The New Hampshire State Lottery planned to launch new lottery games, under the name “PlayNowNH,” in which players would purchase tickets, *i.e.*, credits, from licensed lottery retailers and then use the credits to play online lottery games with poker, bingo, or slots themes.<sup>1</sup> A manufacturer of electronic games has developed a product that enables land-based casinos to sell tickets, *i.e.*, credits, that can be used to play online casino games with prizes.<sup>2</sup> Query whether this “credit redemption” model of Internet gaming avoids anti-gambling laws. This Alert looks at that question in connection with the federal Wire Act, 18 U.S.C. §1084(a), which provides that “[w]hoever 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...shall be fined under this title or imprisoned not more than two years, or both.”<sup>3</sup>

An argument for why the credit redemption model avoids the Wire Act is derived from the nature of the wagering process. If the credits are purchased in person from legal gambling outlets, the theory is that the wagering transaction (exchange of money or other thing of value for the chance to win a prize) is complete when the purchase is made – in other words, the wagering “contract” is formed entirely within the state where the credits are purchased, at the time when the purchase is made. As a result, when the gaming operator (*e.g.*, State Lottery or licensed land-based casino) allows U.S.-based players to redeem, (*i.e.*, use) their credits online, it does not transmit (*i.e.*, send or receive) “bets or wagers” in interstate or foreign commerce, in violation of the Wire Act. Instead, the operator, at most, transmits only the results of the game, which is permissible under the Wire Act’s “safe harbor” provision, 18 U.S.C. §1084(b).<sup>4</sup>

<sup>1</sup> On August 17, 2010, the New Hampshire State Lottery decided not to go forward with the plan. See Associated Press, “New Hampshire Cancels Proposed Online Lottery Game,” *Bloomberg Businessweek* (Aug. 17, 2010), available at <http://www.businessweek.com/ap/financialnews/D9HLD0C01.htm> (last visited Aug. 19, 2010).

<sup>2</sup> See <http://www.gamelogic.com/GamingSolutionsForCasinos.php>.

<sup>3</sup> For purposes of this Alert, we assume the U.S. Department of Justice is correct in its position that acceptance of *any* type of online wager placed by a U.S.-based person by an entity engaged in the business of betting or wagering violates the Wire Act. The reach of the Wire Act, however, has not been settled. Even if the DOJ is correct, there are other unsettled issues related to the applicability of the Wire Act, especially with respect to State Lotteries.

<sup>4</sup> Section 1084(b) states:

Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

Under this theory, because the credits can be used only to play the online games to which they relate, purchasing the credits is the same as purchasing lottery tickets from a lottery retailer, particularly if the purchase is non-refundable. When the credits are redeemed online, it is the equivalent of “scratching off” a lottery ticket. By that point, the wagering transaction has already been completed, nothing new is being staked, and the only thing left to do is determine the outcome of the game. Accordingly, no “betting or wagering” takes place, and the only thing that is transmitted over the Internet is information that determines what, if anything, has been won.

This position finds some support in cases like *Sokaitis v. Bakaysa*, 975 A.2d 17 (Conn. 2009). In this decision, the Connecticut Supreme Court pointed out that wagering on the Powerball lottery in Connecticut is legal and the “purchase of a lottery ticket” is “a contract between the purchaser and the state lottery corporation, pursuant to which the purchaser wagers the purchase price of the ticket in exchange for a promise that, should a particular set of numbers be chosen, he will win a specified prize.” *Id.* at 56.

An argument that the gaming operator does transmit “bets or wagers” in violation of the Wire Act is that nothing of value is actually staked (*i.e.*, no “wagers” are actually placed) until the ticket or credits are used to play games on the Internet. Under this theory, purchasing the credits is a necessary precondition to forming the wagering transaction but is not the wagering transaction itself.

This position finds some support in *United States v. Ross*, 1999 WL 782749 (S.D.N.Y. 1999). There, the court differentiated between a “bet or wager” and “information assisting in the placing of a bet or wager” for purposes of the Wire Act:

[T]he more reasonable interpretation of Congress’ distinction between “bets” under §1084(a) and “information” potentially

exempt under §1084(b) is the distinction between transmissions constituting an individual gambling transaction – those necessary to effect a particular “bet or wager” – and transmissions of “information” that merely “assists” a potential bettor or bookmaker. Such “information” would include knowledge that may influence whether, with whom, and on what terms to make a bet. Thus, transmissions reporting the results of sporting events, odds placed on particular contests by odds-makers, or the identities of persons seeking to place bets would be examples of “information,” similar to §1084(b)’s other exemption for “information for use in news reporting of sporting events.”

*Id.* at \*5.

Arguably, the online redemption of credits is “necessary to effect a[ny] particular ‘bet or wager,’” because the gaming operator does not know when, how much, how often, or on what game a player is wagering until the credits are redeemed. The online redemption of credits, in other words, is inextricably linked to the placement of “bets or wagers,” and, using the reasoning in *Ross*, “bets or wagers” are being transmitted.

The above pro and con arguments are both reasonable. However, they are arguments that concern only one issue among many that need to be considered in connection with the question of whether the Wire Act or other anti-gambling laws are implicated by the credit redemption model. Possible answers to the question will likely vary depending on the type of activity and other variables. State Lotteries, casinos, and other lawful U.S. gambling businesses contemplating the use of this model, as well as the developers of the games, should carefully evaluate all the relevant issues when contemplating new gaming offerings or products.

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