



Online Poker in New York: Its Regulation and Importance for the State

**New York Senate Committee on Racing,
Wagering and Gaming**

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Policy Environment



The reality of U.S. online gambling today

- ▶ **Millions of Americans in all 50 states** gamble on the Internet, notwithstanding laws that prohibit/regulate such activity.
 - Other than in the regulated jurisdictions of Nevada, Delaware and New Jersey, **online poker occurs with no consumer protections**
 - no protections against underage gambling;
 - no protections for problem gamblers;
 - no protections against fraud and other criminal activity; and
 - no tax revenues for states
- ▶ **Growth of Internet gambling consistent with growth of eCommerce** - period of growth beginning in the 1990s - Market was \$300 million in 1997
 - Market grew to \$4 - \$6 billion by 2010 with some shrinkage post 2011 indictments
- ▶ **Illegal Operators** - Market dominated by rogue offshore operators in defiance of U.S. and state laws **See www.Pokerscout.com**
- **Lock Poker** – Several recent articles have reported that Lock Poker, an unlicensed US-facing online gaming site, has not paid out any player funds in more than a year, with a reported \$1 million in unpaid withdrawals for over 400 players



Milestones in the recent history of U.S. online gambling - the law

- ▶ **Wire Act** - Since 1960's, the federal Wire Act had been applied to gambling that occurs across state lines via telephone with an original focus on sports betting. The Act had been broadly interpreted by DOJ to apply to and prohibit all forms of Internet gambling based on concepts like the “intermediate routing” of signals in different states over the Internet.
- ▶ **UIGEA** - Unlawful Internet Gambling Enforcement Act (UIGEA) of 2006
 - UIGEA focus is on financial institutions -- establishes penalties for banks and financial firms that process illegal Internet gambling payments
 - In UIGEA, Congress expressly created an exception for (i) authorized intrastate gambling subject to technology protections; (ii) bets and wagers under the Interstate Horseracing Act; and (iii) fantasy sports
 - Defines a bet as taking place where the bet or wager is initiated and received (removing argument of offshore operators)
- ▶ **DOJ Memo** - In December 2011, the DOJ clarified its interpretation of the Wire Act:
 - “Interstate transmissions of wire communications that do not relate to a ‘sporting event or contest’ fall outside the reach of the Wire Act.”
 - Consistent with Congress’ will in UIGEA, the DOJ ruling unambiguously allows states to pursue intra-state online gambling (non-sports).

Where is the law today? The states jump into the action post-2011

State Activity - State legalization has followed UIGEA and the DOJ opinion with differing models:

- Illinois and Georgia began selling lottery tickets online in 2012, and Michigan and Minnesota in 2014. Kentucky intends to launch in 2015.
- Nevada launched Internet poker in April 2013
- Delaware launched all forms of casino gambling in September 2013
- New Jersey followed shortly thereafter in November 2013 with all forms of casino gambling
- Many other states are examining or have examined online gambling, including California, New York, and Pennsylvania
- Nevada and Delaware entered into a multi-state Internet gaming agreement in February 2014. Pooled liquidity between Nevada and Delaware since April 2015.

KEY TAKEAWAY: The online gambling experience in the states has been successful from a regulatory perspective – minors can not gamble, the vulnerable are protected and consumer protections against fraud are in place.



Where is the law today? Most recent congressional activity

- ▶ **Efforts by a single casino operator to seek a prohibition – Similar bills filed in the House (Rep. Chaffetz) and Senate (Sen. Graham)**
 - Both bills known as the “Restoration of America’s Wire Act” (RAWA)
 - Hearing related to RAWA was held on March 25 in the House Judiciary Subcommittee on Crime, Terrorism, Homeland Security and Investigations; No Senate hearing as of yet.
- ▶ **The threat of an online gambling ban from the Federal government is very real - The impacts of a federal ban if enacted:**
 - States will have no ability to enact legislation that would authorize online poker
 - Federal government would be dictating to the states policy on what has historically been a 10th amendment state police powers issue (gambling within a state’s borders)
 - The illegal environment operated by offshore parties targeting Americans will stay in place, with no competing legal market, no protections for consumers, and no tax revenue for states



Overarching Policy Issues

- ▶ **Internet gaming is here to stay - simple prohibition has not and does not work**
- ▶ **Whether the solution is state or federal, states should maintain their ability to define gambling policy within their borders consistent with UIGEA and the 10th amendment - States should be able to determine whether to prohibit online poker or regulate it – a basic function of state police powers.**
- ▶ **We strongly advocate state and federal laws working in tandem in a manner that:**
 - (i) respects the right of states to either prohibit or authorize Internet gaming (poker in NY) including the right to compact (adding liquidity);
 - (ii) establishes strong consumer protection standards and strict regulatory controls; and
 - (iii) provides effective law enforcement tools to drive bad actors out of the marketplace



Specific Considerations for New York:

- Pursue a “poker-only” solution that conforms to the State Constitution \ul style="list-style-type: none;"> - Legislation that expressly authorizes Texas Hold em’ and Omaha Hold em’ and expressly excludes them from the legal definition of gambling
 - Defined in this manner, the legislation would be outside constitutional prohibition on gambling with a rational basis predicated on games being predominantly based on skill
- Offer the state a new source of revenue and capture state revenues that currently are evaded – need a reasonable tax and upfront fee
- At the outset, activate pooled liquidity with other states offering legal online poker to jumpstart and maximize the business and the tax revenues it will generate
- Determine the model – authorize licenses independent of existing casinos/racinos in return for an upfront fee or tie to existing licensed gaming operators in NY... but recognize that there is no evidence of cannibalization of brick/mortar casinos
 - It is well known that it was actually the rise of the illegal internet poker sites in the late’90’s – early 2000’s that led to US casinos putting poker rooms back in to their casinos based on the popularity of the games from the internet
 - Since legalization in I-gaming in New Jersey, the overwhelming majority of our online players are either new customers who had never played in our brick/mortar casinos, or inactive brick/mortar casino players who re-visited our casinos *after* playing with us online.
 - Online poker will create cross marketing opportunities for gaming operators if they choose to participate, opening up new distribution channels for operators to all customer segments



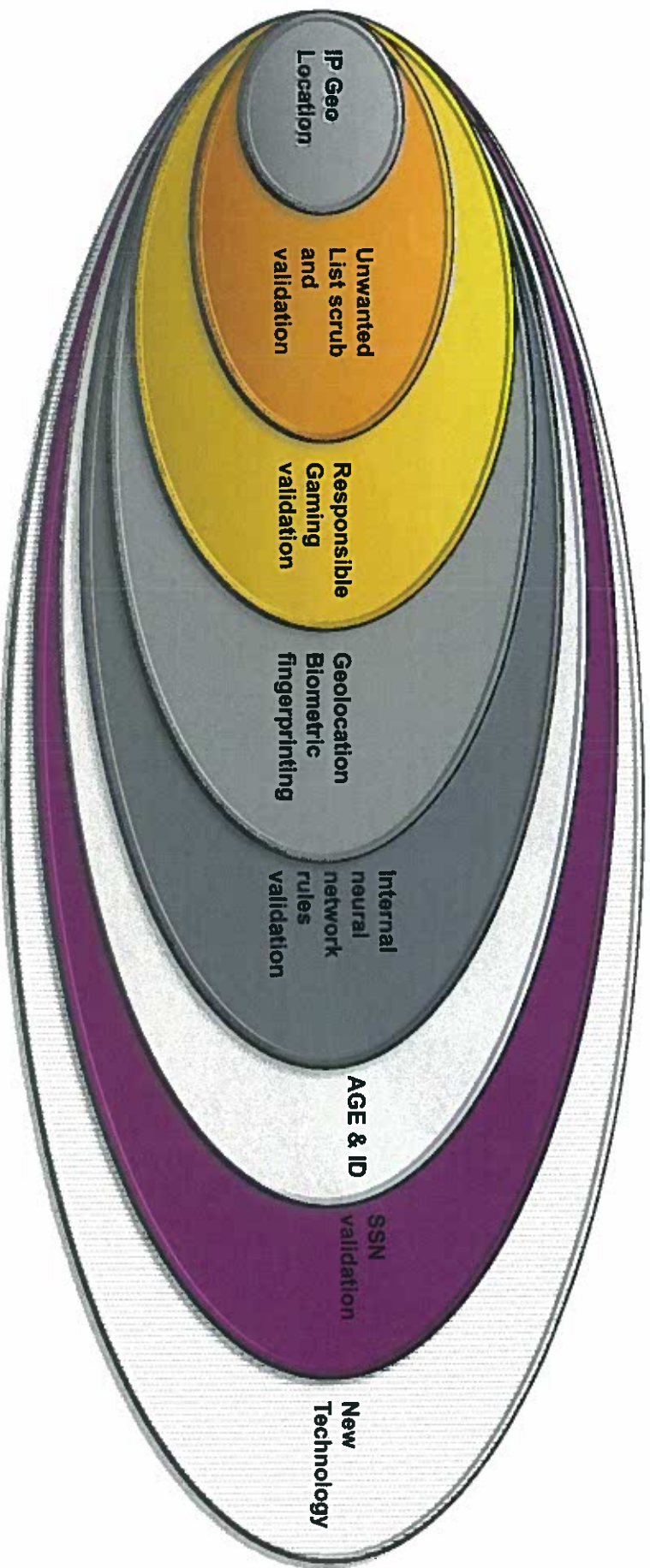
Specific Considerations for New York:

- **Establish a strict regulatory framework and strong consumer protections to:**
 - Prevent minors from playing, with robust age and ID checks
 - Ensure players are within borders with strong geo-location technology
 - Implement tools to address problem gambling (e.g., responsible gaming policies, self-exclusion, allow self-imposed limits on deposits, losses, and time)
 - Ensure that games are fair and honest -- strict regulatory scrutiny and testing
- **Empower law enforcement officials with stronger tools to shut down the illegal sites (white lists, unambiguous crimes, seizure rights over domain names)**



Regulatory Overview

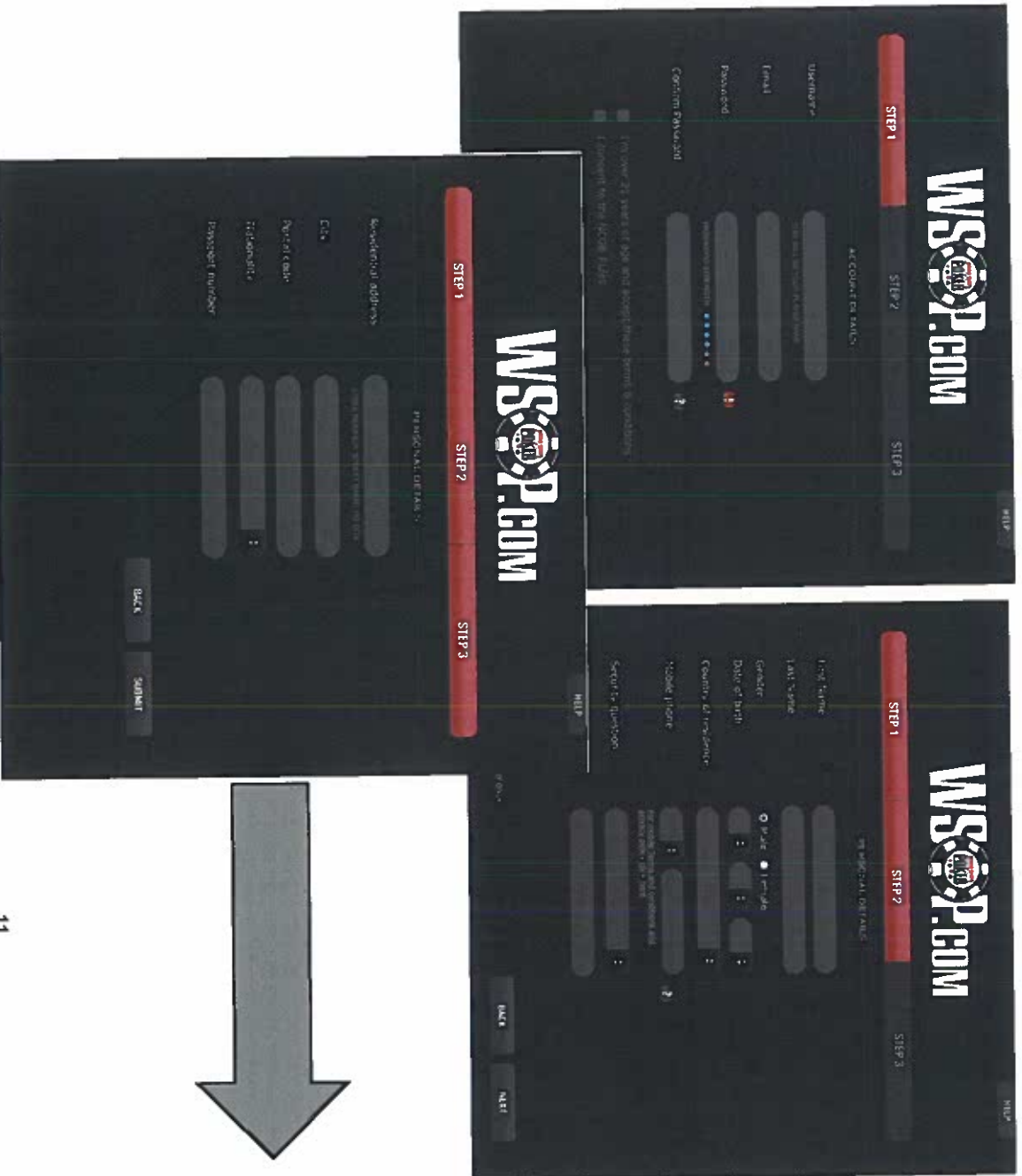
Registration Process





Registration Process

This is a core requirement prior to any real money gaming taking place
Should any of these checks fail the account will be placed into suspension



Match Code	First/Last/Home Address/Home City/Home State/Home Zip/Phone/DOB(mm/dd/yyyy)/ID
Description:	

Personal Details		
Field	Submitted	Verified
First Name	Nick	✓
Middle Name		✓
Last Name	Sample	✓
Address	200 Golden Gate Ave.	✓
City	San Francisco	✓
State	CA	✓
Postal Code	94101	✓
Country	United States	✓
Date of Birth	09/18/1982	✓ (DD/MM/YYYY)
Phone	4157812099	✓

X - Further investigation required

Registration Process



Geo Location

- ▶ Geo-location is defined as the identification of the real-world geographic location of a party
 - Used to determine State and Country
 - Connection Type (eg: broadband or dial up connection)
 - whether a proxy server or anonymizer is being used and more
- ▶ Both Cellular triangulation and WIFI triangulation are the core mechanisms for location control and player location

Sanctions check

- ▶ *PEP: Worldwide Politically Exposed Persons*
- ▶ *DPL: Denied Persons List –US Dept. of Commerce.*
- ▶ *OFAC watch list – Office of Foreign Assets Control, US Department of Treasury*
- ▶ *Mortality check and more*

Responsible Gaming

- ▶ Validation against “Self excluded list”
 - *Proprietary Operator List*
 - *Operator brick and mortar self excluded list*

Age & ID

- ▶ By using leading third party providers we are able to determine the age and ID of a player in **real time**
- ▶ Player matching is done on SSN, full name, address, zip code and DOB to validate age and residency

Anti spoofing technology

- ▶ We leverage state-of-the-art anti spoofing technology to assure the player cannot mask their location by using or leveraging 3rd party software

Fraud & Collusion



- ▶ Fraud and Collusion rule sets function very similarly to payment processing authentication. They are independent rule sets that are triggered based on game play and player actions on the system. These rules out-sort and flag players:
 - Who regularly play at the same tables
 - Who frequently lose to the same members
 - Who is potentially using unfair software to gain an advantage over other players
 - Who has been playing for an amount of time that is deemed suspicious or “robotic”
 - Whose mouse clicks are in the same or nearly the same pixel area on the screen i.e. clicking an action button in the same area consistently
- ▶ Reviewing game-play of members whose play is reported by others as being suspicious
- ▶ Chip dumping
 - Players are flagged depending on the amounts they have deposited in relation to their current balance and level of games played
 - Players who lose large amounts of money over a short period of time are identified as this represents the typical pattern of behavior for intentional chip-dumpers
- ▶ Poker collusion
 - An automated process that runs on the poker platform, highlighting players who have certain predetermined ratios with regards to hands played, raise ratios and rounds they play with the same players

Anti Money Laundering



- ▶ Every transaction is recorded which allows the flow of money to be easily tracked
- ▶ There are a number of reports and checks which are designed to prevent or identify possible money laundering activity
 - Reviewing unusual deposit patterns
 - Reviewing unusual cash-out patterns
 - Identifying poker members who frequently play with the same members
 - Identifying poker members who frequently lose to the same members
- ▶ Should there be any evidence to support a suspicion of money laundering, the account is immediately suspended pending a full investigation
- ▶ Operators leverage the Know Your Customer (KYC) protocols that all banks must comply with in order to issue credit or debit cards and bank accounts to their customers
- ▶ Any suspicious findings will be submitted to the authorities through the STR (suspicious transaction reporting)
- ▶ All deposits have wagering restrictions (for example, minimum number of hand requirements) so depositing a large sum and trying to cash-out without meeting these restrictions will automatically suspend the cash-out and place the account under review



- ▶ As is the case with bricks and mortar gambling, as an online gambling provider, we only want customers who are playing for entertainment purposes, not those with gambling problems
- ▶ Online gambling technology provides players with the ability to manage their game play in real-time:
 - Setting *daily, weekly, monthly* deposit limits
 - Setting session limits to advise when a time threshold has been hit
 - Setting a cool-off period
 - Allowing players to self-exclude from the site for a defined period of time or forever
 - Fully auditable transaction history (deposits and withdrawals and hand history)
- ▶ Operators would leverage the expertise of the problem gambling services community and provide linkages for those who feel they need expert assistance



Online Poker's Importance for the State

What's all this mean for New York?



- A regulated online poker market will deliver **player protection and security**.
- **The market potential translates to an important new revenue stream for New York**
 - The scale of the benefits depends on the specifics of the enabling legislation.
- A May 2015 analysis by H2 Gambling Capitol estimated that with **no upfront fee** the New York iPoker market would **gross between \$1.71bn and \$2.83bn** over the first 10 years (gross win would be between \$1.31bn and \$2.17bn with a higher upfront fee).
- At a reasonable **15% tax rate** and were there **no upfront license fee**, the **total income to the State would be between \$256m and \$425m** over the first 10 years (total income would be **between \$266m and \$405m** over the first 10 years with a higher upfront fee)
 - But online poker tax rates and regulation must be aligned with business realities
 - For example, the global online gaming experience demonstrates that tax rates higher than 15% stifle growth and adversely affect business sustainability
 - The illegal market also limits the ability to extract high tax rates
- Based on evidence both from the U.S., and around the world, regulated online poker in New York **will not cannibalize** New York's existing gaming facilities, and will help significantly to **eradicate** the existing illegal market.



Conclusions



Conclusions:

- ▶ **New York residents illegally engage in Internet poker today with no consumer protections and no regulatory oversight**
- ▶ **The time to act on this is now to thwart the illegal and the threat of a Federal ban on state action to regulate and tax this activity**
- ▶ **The technological and operational controls for online poker are state of the art and have a proven track record**
- ▶ **The evidence from the U.S. and elsewhere supports the proposition that online poker will not cannibalize existing revenues**
- ▶ **There is significant upfront and recurring revenue potential for the State**