

## AFFILIATE MARKETING AND LEGALISED iGAMING IN THE USA

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### The shape of things to come

You have to hand it to the opponents of expanded Internet gambling in the United States. Like the Russians at Stalingrad, they held out longer than anybody thought was possible. Unlike the Red Army, however, they're not going to win this one. By the way, the correct word is *expand*: Internet gambling has been a fact of life in the USA for over a decade now. No less than 32 of the 50 states licence Internet services to help with their horserace betting. Therefore, it is not correct to speak of *legalising* Internet gambling as though this were a brand-new thing. The immediate question is how soon the states will move to expand an existing reality.

After years of false starts, the trend is underway at last. Illinois has just begun selling its state lottery tickets online, with Indiana soon to follow. Be sure that other states will soon join the queue. It is inevitable - online and mobile is the new 'normal' for marketing; if you want to sell a product, you have to go where the customers are. The same scenario will be played out again on the day that other online gambling, such as Internet poker, is also licensed and legalised.

### Affiliates in a new arena

Such a course of events, obviously, will bring many and varied issues in its train. What we concentrate on here is what opportunities and obstacles the new turn of events will present to affiliate marketers.

First, the good news. The principal legal problem for affiliates - that of illegality - automatically disappears. The biggest single worry of the affiliate marketing community is that if a given jurisdiction holds Internet gambling to be illegal, then it will also hold advertising that activity to be equally illegal. And so, the affiliates for such operations harbour a constant anxiety that they might get grabbed by the authorities. As a practical matter, the possibility is very remote, unless the affiliate in question goes out of his/her way to attract official attention. The decision to prosecute in relation to gambling activities is most often politically influenced. And as a practical matter, somebody who is simply advertising and providing a link to a site which may or may not be legally taboo (especially in the USA, gambling law is all over the road) is just not a worthwhile target. Nevertheless, the worry remains.

When it becomes legal, of course, then you're in the clear. It's no violation of the law to advertise a service which is perfectly legal, all else being equal. 'Wait a minute', I hear you say: 'suppose advertising for Internet gambling in a state where it's legal, reaches into a neighbouring state where it isn't?' As a general proposition (i.e. this is not direct legal advice) this is not a problem. As long ago as 1999, the Supreme Court, in the case of *Greater New Orleans Broadcasting Vs US* ruled that broadcasts advertising legal gambling in Louisiana did not violate federal laws against advertising gambling, even if the advertisement could be picked up by receivers in nearby states where gambling was against the law. If it works for broadcast TV, then obviously ads on the Internet, which is much more closely focused, are in no particular danger.

However, that leads to further issues. Especially with regards to lotteries, government control over legalised gambling tends to be quite tight. The state lottery authorities, in particular, are known for controlling every aspect, including advertising. Affiliates developed to service a need; many of the mainstream advertising and marketing companies would not touch Internet gambling. And that's where the news turns bad. Removal of the old taboos and caution against advertising iGaming means the pool of competitors increases exponentially. And not many affiliates have the resources to compete in an arena, say, the size of the state of Kansas.

But all is not lost. Law and regulation always lagged behind technology and innovation. After all, there could be no laws regarding airlines until there were aeroplanes. In many of the statehouses considering expansion of Internet gambling, particularly into games such as live poker and blackjack, there is little understanding of how online marketing actually works. Also, an important choice has been left blank; while the state lotteries have dedicated departments for advertising and marketing, the plan to legalise Internet poker, now being considered in about half a dozen US states, will leave the marketing up to the individual operators who become licensed. California, for example, is an especially abundant pool of opportunity for would-be advertisers. The legalisation bill now under consideration confines the possibility of the California Internet gambling licence to those parties who already hold a California land-based gambling licence, but this includes 91 licensed card rooms, 68 Indian tribes who have signed gambling compacts with Sacramento (and more applying all the time) about four racetracks and three ADW operations.

But none of these, or their opposite numbers in other states, have very much experience with what an affiliate actually does. Sure, many of them have their own web and Facebook pages, but actually using them to service paying customers online is something that, up to now, they haven't been permitted to undertake. Just as with the actual operating platforms, many of the prospective licensees would welcome somebody who has been there, done that, and actually knows how to keep the show running. This is particularly important because one of the primary grounds for the award of a state iGaming licence (again taking California as an example) is for the prospective licensee to demonstrate that they can in fact make a go of it, and the ability to bring in new customers is certainly a vital part of that.

Consequently, it might be no bad thing for an ambitious affiliate looking to expand business, to investigate the possibility of becoming a licensed vendor of gambling-associated services in the key states now considering Internet gambling. This could be a very big marketing advantage; even if a particular bill does not pass this year, or even next, it puts that affiliate on the state legislators' books as someone who has been vetted, and someone who is known and trusted.

## The social media - more than just showing up

Thus far the immediate question. There is a follow-on question, too: what will the current reality change into? The gaming world is no longer what it used to be.

The first big change is that gaming and gambling are no longer interchangeable. Up to now, they were nuanced descriptions of the same thing - gambling when we wish to describe something illegal or attractively nifty, like Vegas. We use gaming when we wanted to give the same thing an aura of respectability, as in applying for a licence someplace. There were other games but they didn't really count. Today, however, video interactive gaming online (VIGO) is on track to become an \$80 billion a year industry, as compared to a global online gambling market of \$30 billion. Hosted in servers, and clouds, as well as within individual computers and consoles, video online games cover the spectrum from first person online shooters right through to completely interactive persistent artificial worlds (Massive Multiplayer Online Role Playing Games, MMORPGs for short) such as World of Warcraft and Star Wars: the Old Republic. And none of them are gambling.

From the other side of the spectrum, we see the ongoing phenomenon of gamification - that is, the use of game attributes to drive game-like behaviour in a non-gaming context. Turning mundane functions into contests with rankings and prizes is a venerable institution. The supermarkets are full of such contests, and any sales organisation uses some variant to spur the efforts of the troops.

But gamification really found its legs with Smartphones. Apple just sold its 25 billionth app for its iPhone array, and something like 850,000 Android devices are activated every day, and at need to be quick, simple, and effectively engage the attention of the person using it. So in many marketing applications, the closer the app process resembles a casual game, the more popular and usable it will be.

Right, I hear you ask, how does this affect an affiliate and affiliate marketing?

It means, simply put, that the sky is now the limit. In addition to the good old- fashioned click throughs and headcounts, an affiliate in the coming American market will be able to use such apps and games to generate an independent following, which can then be marketed, or monetised in other suitable ways. It's not out of the question, in fact, that a given Internet gambling operator may reach out to gamblify an app-style casual game. (The terms of gambling and gaming are not so interchangeable anymore but, on the other hand, the formats and components - the ones and zeroes - increasingly are.)

Or, it may simply be grafted onto an existing website as an amusement to keep the customers hanging around.

State lottery authorities, perennially in need of a new angle, may become a promising field for such experiments.

Mobile, they say, is the new normal'. So is the flexibility and creativity that feeds and runs it. It will be interesting to see who are the first and fastest to adapt.