

NEWSLETTER

STATE BAR OF NEVADA

GAMING LAW SECTION

MAY 2006

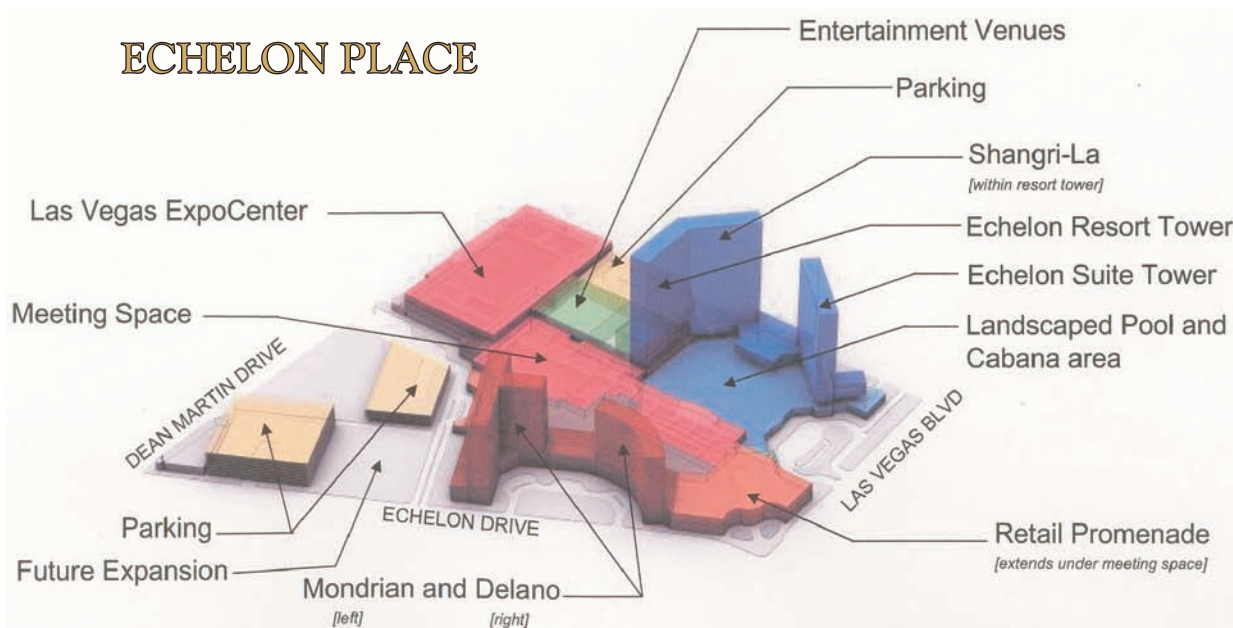
DEVELOPMENT AND COMPLIANCE: ECHELON PLACE

By: William S. Boyd, Chairman & CEO, Boyd Gaming Corporation

From the rise of the mega resort hotel casinos along the Las Vegas Strip, to the proliferation of gaming and tribal gaming across the country, to the emergence of new gambling jurisdictions throughout the world to the recent mergers and acquisitions, the gaming industry has seen dramatic growth and transformation over the past

in the heart of the Las Vegas Strip.

As set forth in the January 4, 2006, press release, Boyd Gaming Corporation (NYSE: BYD) will develop a multi-faceted, world-class resort on our 63-acre parcel. Echelon Place comprises the wholly-owned \$2.9 billion Echelon Resort with hotel and retail joint ventures to create a truly unique



two decades. Nowhere is this change more evident than in Las Vegas, where the newly constructed \$600 million South Coast Hotel and Casino opened in December 2005, the nearly \$1 billion Red Rock Station will be opened this year by Station Casinos, MGM MIRAGE is moving forward with its development of the multi-billion dollar Project City Center, as well as our recent announcement of Echelon Place, a \$4 billion development

destination resort that will fuel Las Vegas' ongoing evolution.

Echelon Place will feature 5,300 guest rooms and suites in four distinctive hotels. Boyd Gaming Corporation will own and operate the 3,300-room Echelon Resort that will consist of two upscale hotels, including a 2,600-room resort tower and a 700-room suite tower. Each hotel, with its own spa, connects directly to the expansive public areas that will encompass a 140,000 square foot casino, 25 restaurants and bars, a pool and gardens, a 4,000-seat theater and a more intimate 1,500-seat theater. The three other hotels at Echelon Place will be: the 400-suite Shangri-La Hotel, Las Vegas, owned by Boyd Gaming

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CORNER

REGULATOR'S



The GCB's New Technology Division

By: Mark A. Clayton, Esq. Member, State Gaming Control Board

On February 3, 2006, the State Gaming Control Board announced the creation of the Technology Division (formerly known as the Electronic Services Division) as part of the Board's restructuring of its various technology components.

Specifically, the Division is now comprised of three units: the Device and Systems Labs, headed by Travis Foley; the Information Technology Audit Group (aka ITAG), which handles associate equipment matters, headed by Ted Townsend; and the Board's internal Information Technology functions headed by Andrew Tucker. The new chief of the division is Joe Bertolone, the former Chief of the Board's Administration Division.

The development and deployment of new technologies within the industry, as well as the developments of server-based gaming ("SBG") and wireless or mobile gaming devices, have recently reinforced the importance of technology. These new technologies are primarily computer and network-based systems. At some point these systems will eclipse the traditional "stand-alone" gaming device that is being deployed today on the casino floor. Moreover, while today's new technologies are SBG and wireless, future innovation will undoubtedly continue to push the regulatory testing, verification methodologies and ultimately gaming regulatory policy.

The industry's increased use of computer-based technologies occurs in all aspects of the casino entertainment space. From a regulatory perspective, as far as the casino floor, technological improvements are occurring in gaming devices, associated equipment and other accounting and financial planning functions. The failure to allow the deployment of new and appropriate technologies would eventually impact the deployment of leading-edge products that a gaming customer could experience in Nevada and leading edge technologies that a Nevada casino operator could utilize.

Against this backdrop, the Board restructured its various technology matters to centralize such efforts under one mantle. The Board's strategy is to stay (to the extent it can as a state agency) in lockstep with the industry's use of gaming-related technology. The Technology

Division will not be riding on the "bleeding edge" of technology; rather the Board, through the Technology Division, will take an "early adopter" approach to developing technology, policy and standards, and the approval of appropriate technology and the licensing of manufacturers. All of these efforts are made with the goals of keeping Nevada at the regulatory forefront regarding technology and for the Board to continue to be responsive to the technology needs of the regulated companies.

After establishing the strategic approach, on a tactical level, it is incumbent on the Board to improve the Technology Division's infrastructure. These improvements are designed to allow the Technology Division to understand, test and regulate the new technologies in a timely and efficient manner. Ideally, such infrastructure would include personnel with experience including system-based games, database administration and computer networking. Additional testing and deployment equipment, and appropriate facilities to have a fully integrated testing laboratory would be desirable. With such additional infrastructure, the Technology Division will be able to continue to evaluate and test new technology as it is presented to the Board. This, in turn, will allow the industry and the gaming patron to benefit from new and appropriate technological developments.

Internally, the Board continues to update its own technology. The division has been tasked with the responsibility to expand areas in which technology can be deployed within the agency to create efficiencies and modify the Board's business practices and processes. These efforts will look to deploy existing and proven technologies within the agency to streamline our internal processes as well as streamline the processes for those we regulate.

The Board's focus on technology will continue. The Board understands the technology needs of the operators and the manufacturers and is positioning itself to be ready to address the regulatory needs of the industry as the industry continues to deploy new and diverse technology within the gaming field.



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Internet Skill Gaming: Is It Legal?

By: Louis V. Csoka

Online skill gaming is a multi-billion dollar industry. Indeed, if one considers the low-level of operating investment required in that industry with the real possibility of making millions, skill gaming is probably one of the more lucrative segments of the “broader gaming and entertainment industry.”

In the past, we have only thought of the “gaming industry” as brick-and-mortar palaces with thousands of hourly employees and rows of expensive electric slot machines. Today, as more and more of the 20 to 40 year olds look primarily to the Internet as their first choice of entertainment, Internet skill games are becoming a noteworthy and relatively-inexpensive competitor to the traditional gaming venue.

By way of background, the online skill gaming world itself can be divided into six basic market segments: (1) fantasy sports; (2) poker tournaments; (3) simulated pool tournaments; (4) puzzle, trivia, and word contests and other intellectual contests and tournaments; (5) tournaments based on variations of classic board games and skill-enhanced versions of casino games; and (6) multi-user domain tournaments based on popular console games. Recently, each of these segments has generated significant revenues for their operators, with online poker games and poker tournaments “still leading the pack” at approximately \$60 billion wagered last year.

With that massive success, however, comes legal scrutiny. And, in some cases, with that scrutiny comes the risk of illegality. Similarly to the old adage “Beauty is in the eye of the beholder,” when it comes to skill gaming, “Legality is also sometimes in the eye of the beholder.” For example, some commentators have argued that the so-called “Red States,” in particular, the “Bible Belt,” tend to have a very negative view of any form of gaming, including skill gaming. Similarly, others have argued that the legal result in a particular case more often depends on whether the particular jurist, and his or her friends, enjoyed wagering on such skill game.

Limiting our review to the United States, however, we find that reality often has many more layers and, as a result, any skill game requires significant analysis. As a preliminary matter, the vast majority of states do not prohibit contestants from wagering on their own performance in a skill contest, so long as skill predominates in that contest and a number of other appropriate contest-management factors are also present.

The reason for exempting skill games from state anti-gambling laws is that prohibited gambling, under state common law, is thought to include three basic elements: (1) the possible award of a prize; (2) determined on the basis of chance; (3) to those who have paid consideration for the opportunity to obtain the same. In sharp contrast, with skill games, the award of a prize is based primarily on “player skill” and not on “uncontrollable chance.” As such, under the common law analysis, one of the key elements (i.e., the chance element) to a gambling violation is missing.

More specifically, to determine whether a particular contest falls

under state anti-gambling prohibitions, most states employ a common law test alternatively called the “American Test,” the “Dominant Factor Test,” or the “Predominance Test” (the “Dominant Factor Test”). In applying the Dominant Factor Test, a court will ask whether “player skill” or “uncontrollable chance” is the most likely factor that will influence the outcome of a contest. For example, in applying the Dominant Factor Test, the Nevada Supreme Court found that, because player skill was the dominant factor in influencing the outcome of a hole-in-one golf contest, such contest was a game of skill and players could pay an entrance fee and compete for a prize in that contest.

While the Dominant Factor Test is fairly easy to apply when it comes to roulette (clearly a game of chance) and chess (clearly a game of skill), there is a large “grey middle ground” populated by hundreds of games that contain both an element of chance and an element of skill. Not surprisingly, in evaluating these games with such hybrid characteristics, two different courts in two different states using the identical Dominant Factor Test have sometimes reached opposite conclusions. For example, poker has been described both as a game of chance and as a game of skill, depending on the “philosophy” of a particular jurisdiction.

Complicating matters further is that a small minority of states still utilize a common law test alternatively called the “Any Chance Test” or the “Gambling Instinct Test” (the “Any Chance Test”). Under the Any Chance Test, if the contest contains any element of chance, however small, wagering on such contest is always prohibited as gambling.

For example, because chess players draw lots for the opportunity to play with the white pieces and playing with the white pieces could present a slight strategic advantage to such players, even wagering on chess, at least as a theoretical matter, may be prohibited in these minority jurisdictions. And, because these jurisdictions have avowed to quell the gambling instinct, they do not appear to care much that wagering on self-performance in a game of skill is permissible elsewhere.

Similarly, even a strongly skill-based multi-user domain tournament based on a popular console game, such as an online DOOM or UNREAL tournament, could present concerns in these states. For example, some may, as a theoretical matter, consider the location of the player’s “avatar” on the “game map” to be arbitrary and presenting some advantage to some players at the outset of such tournaments.

With that basic legal landscape in mind, there are three additional significant concerns that every skill game operator must consider. First, some states that otherwise utilize the Dominant Factor Test also have flat prohibitions on wagering on games played with “dice, balls or cards,” for example. While this prohibition is understandable,

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There has been a lot of talk recently about server or systems based gaming (SBG). This article briefly explores how SBG is different from what we see today, why an operator would go down this path,

some regulatory considerations and some risks. Below is a table representing fundamental differences between the traditional gaming machine floor and an SBG floor:

	Traditional Machine Floor	Server Based Gaming Floor
Innovation	Vendor driven.	Vendor or Operator driven and controlled.
Content (e.g. Games)	Fixed. Need to manually change the software at each device. Can damage the device (sensitive pins and static) in the process. High maintenance and re-fit costs.	Dynamic. Can change the software at a central location and distribute that change automatically to all devices.
Availability	1:1. The game(s) that is in the embedded software is what you get.	Scaleable, 1: Many. Play a slot game, purchase a keno ticket, watch the fight, order a pizza...all from the same device.
Cash Handling	Labor intensive. Subject to fraud or theft. Workers compensation exposure (lifting coin buckets). Ties up cash flow. Capital and maintenance cost associated with cash-handling equipment.	Cashless. Account based. Minimal labor operations and moving parts. Only requires a central cage for manual deposits to account. Possible to also perform EFT transfers.
Service and Maintenance	High (e.g., hopper and coin comparator jams and part wear). High cost of mechanical or software upgrades or retrofits.	Comparatively low service and maintenance requirement. Software is all downloadable from a central point. The end-player device is basically a “dumb” terminal.
Money Laundering	Limited ability to track financial transactions.	Complete audit trails.
Responsible Gambling	No ability for the player to control their environment (other than running out of cash).	Increased ability to control the environment such as bet limits.
Portability	Fixed. The player must go to the game to play. It can be an expensive exercise to move the device.	Mobile. The game can come to the player. e.g. Fixed terminal, wireless, PDA, mobile phone, Computer terminal. A server-based game is largely independent of the delivery device.
Systems Integration	Most slot machines and systems today use proprietary protocols (how devices “talk to each other”). The industry is working on more open protocols, but this will probably still require proprietary devices and does not guarantee interoperability with other systems (e.g. cage and marker, ticketing).	Inherent in the technology using international standards in communications protocols.
Player Loyalty	Requires - customized hardware and software. Interface in every machine and proprietary network devices.	Inherent in the technology.
Regulatory Monitoring	Requires - customized hardware and software. Interface in every machine and proprietary network devices.	Inherent in the technology.
Future Applications	None.	Distributed and platform independent. May link across multiple countries and media.

SYSTEMS BASED GAMING

CONTINUED FROM PAGE 4

Why an operator would go down the SBG path?

From the above table it is evident that moving from a traditional gaming floor to a distributed networked gaming floor has the potential to:

1. Free up cash flow.
2. Reduce operating costs.
3. Reduce capital costs.
4. Provide the customer a better experience, both in the casino and external to it.

Why a vendor would go down this path?

In transitioning the business from one that makes "boxes" to one that makes "software" the vendor has the potential to increase profit margins by:

1. Reducing the costs of retrofits.
2. Reducing inventory-carrying costs.
3. Reducing factory overhead,

generally and concentrating on software.

For the regulator, the greatest challenges are probably in managing the shift from "box-centric" metering and security to "system-centric," increased reliance on control objectives rather than specific standards, and an acceptance that a few very technical and capable individuals wield the "power and control" over a technology dependent gaming floor. Moreover, that same technology will be responsible for a significant portion of the gaming floor revenue and hence taxation.

As with the current slot systems, the server-based gaming floor will be a material financial reporting system in terms of Sarbanes-Oxley compliance. If there are integrated account and

loyalty marketing functions, payment card industry and privacy requirements may also apply.

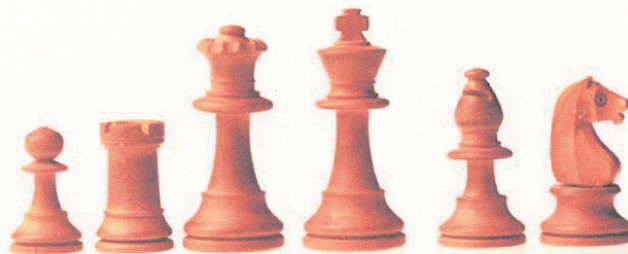
About the Author:

Steve Toneguzzo (B.E.Eng, G.D.Comp.Sc., M.Eng.Sc. CPEng, MIEE)

Steve is the CEO and Chief Scientist of GGS. Since 2001, GGS-US has assisted Nevada's gaming companies with: I.T. SOX compliance, systems and network testing, development and operational documentation and procedures, and more recently PCI and NGCB Associated Equipment compliance. GGS-US Ltd is a Charter member of the NTA.



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ECHELON PLACE

CONTINUED FROM PAGE 1

Corporation and operated by Shangri-La Hotels; and the 600 room Delano Hotel and 1,000-room Mondrian Hotel operated under a 50/50 joint venture agreement with Morgans Hotel Group. The 350,000 square foot retail promenade at Echelon Place will be developed with strategic partners pursuant to joint venture agreements. To complete this project, Boyd Gaming Corporation will also develop, own and operate the Las Vegas ExpoCenter at Echelon Place, consisting of 650,000 square feet of exhibition area and 350,000 square feet of meeting space.

Obviously, an undertaking of this magnitude, requires a gaming operator to, among other things, maintain a vigilant eye on who it is entering into business relationships with...whether it is joint venture partners, consultants, contractors, vendors, etc. A gaming licensee cannot let such relationships jeopardize its privileged gaming licenses and approvals. The most effective management tool to monitor such business relationships and associations is a "Gaming Compliance and Reporting Plan." The Plan, which is generally required by the Nevada Gaming Commission and strongly encouraged in other jurisdictions, is administratively approved by the Chairman of the State Gaming Control Board. It is

essentially a written agreement setting forth a gaming licensee's commitment to legal and regulatory compliance. It shifts some of the regulatory responsibility to the licensee to take a proactive approach to its business relationships to avoid "unsuitable situations" and to ensure compliance with applicable laws.

The implementation of the Plan can only be accomplished through effective communication. It is important to have your compliance officer working closely with the project executives to ensure that the necessary due diligence is being performed either before entering into the relationship or once certain monetary thresholds are met as delineated by the Plan. In turn, the results of the due diligence need to be fully documented for the Compliance Committee's review. Any areas of concern must be thoroughly examined and discussed in order to ensure compliance with all regulations, not only at the start of the business relationship, but throughout the term of the agreement. The development of Echelon Place will bring excitement and a renewed commitment by our company to execute the Plan through effective communication with employees, strategic partners, consultants, contractors and suppliers.

INTERNET GAMING

CONTINUED FROM PAGE 3

given that dice, balls, and cards are the random number generator (i.e., the chance element) in most classic games, it is not clear how such prohibition would be squared with a general permission for games of skill when that game of skill just happens to utilize "dice, balls or cards."

For example, most authorities agree that billiards tournaments are games of skill. Given that billiards is played with balls, however, would wagering on self-performance in billiards be prohibited in these jurisdictions?

Second, federal laws add another layer of uncertainty and complexity. For example, some have argued that fantasy sports may conceivably be prohibited under federal law. Until there is a federal court decision that squarely addresses this issue, however, the current industry consensus, at least according to some, is that federal law does not prohibit fantasy sports, especially in those instances where the operator also offers a free alternative method of entry.

Lastly, there is also a long list of contest-management factors that should also be carefully considered in making certain that a contest meets all applicable requirements. For example, trivia-type contests have received some scrutiny in the past for failing to incorporate appropriate contest-management features. Nevertheless, every skill tournament or contest offered over the Internet should be carefully scrutinized in the context of its own unique set of circumstances to make certain that it meets all applicable contest-management requirements under both state and federal laws.

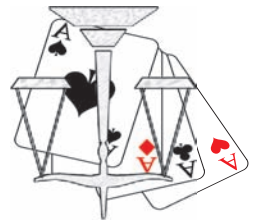
Finally, it should be noted that the vast majority of the gaming laws referenced above were adopted decades ago, long before the wide proliferation of gaming across the United States. This proliferation reflects a new and changing attitude towards all forms of gaming. At the same time, some commentators have persuasively argued that skill gaming is a traditional part of American social life and also has some intrinsic benefits for society. As a result, at least some courts have been willing to adopt a more sensible approach. As the Arizona Supreme Court noted:

[Since the legislature specifically authorized some forms of gaming] it is difficult . . . to find any moral imperative for a sweeping interpretation of a gambling statute in order to make the sponsor of a crossword puzzle contest a criminal[,] while his next door neighbor, betting a dollar with the state to win a million in the state lottery, is a virtuous citizen. *State v. Am. Holiday Ass'n.*, 727 P2d 807, 812 (Ariz. 1986).

It remains to be seen if more state courts will be willing to adopt such a progressive view....

Louis V. Csoka is an attorney with Gordon & Silver, Ltd. Mr. Csoka's practice areas include gaming law, administrative law, and municipal law.

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MARK YOUR CALENDARS...

2006 GAMING LAW SECTION GOLF TOURNAMENT



DATE: MAY 5, 2006

TIME:
1:30 p.m. Shotgun Start
(Sign-In at 12:30 p.m.)

LOCATION:
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2006 GAMING LAW CONFERENCE

FRIDAY, NOVEMBER 3, 2006

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