

REGULATING ONLINE AND OFFLINE GAMING: IS THERE A DIFFERENCE?

In the early days of regulating online gaming, Alderney was often criticized for being too onerous, by applying an “offline approach” towards regulating the online industry. **Andre Wilsenach**, Executive Director of the Alderney Gambling Control Commission, argues that although there are unique differences between the offline and online gambling industries, the basic principles and objectives for their regulation are essentially the same.

The criticism leveled against Alderney in the early days was, by and large, related to Alderney Gambling Control Commission’s (AGCC) strict requirements in respect of the testing and certification of gaming equipment (i.e. the gaming platform, the network, the random number generator and, most importantly, the games). AGCC’s approach has always been that a gambling game should not be released to the public for play before it has been thoroughly tested and certified according to AGCC’s technical standards, so as to ensure it behaves in practice as promised in theory.

It was evident early on that the already well regulated offline industry was looking for an online regulatory regime with similarly high standards to what it was used to in terrestrial jurisdictions. It was also hard to see why the principles which have been developed over many years in regulating the offline industry should not apply online, obviously, appreciating that the online sector is technologically much more dynamic than its land-based component.

Today, it is well known that regulators around the world, whether from offline

or online jurisdictions, share the same objectives; namely, to keep crime out of the industry (i.e. to ensure that the funding, management and operation of the business remains free from criminal influence), that the games offered to the public are honest, fair, secure and auditable, and that the interests of the public, specifically, the young and vulnerable, are protected.

The first objective

Keeping crime out of the industry is always the first step on any regulator’s list of statutory obligations and, from a reputational point of view, probably the most important. This can only be achieved by embarking on thorough due diligence of the funding, management, ownership, beneficiaries and business associates. There are still regulators who argue that due diligence has little to no value in an environment where only so-called “blue chip” companies are licensed. This approach is tantamount to self-regulation with concomitant high risks for the reputation of the jurisdiction and the industry as a whole. It is like arguing that the big, well known banks should not be monitored.

The second objective

Ensuring that the day-to-day operation of the business is honest is of vital importance to both online and land-based industries. Here, there are normally two basic questions that any responsible regulator would seek to answer. Firstly, does the operator have a sufficiently thorough understanding of the risks associated with his operation and, therefore, does he have the necessary internal controls and operating procedures in place to mitigate those risks? These controls normally consist of a combination of financial, technical and administrative processes and procedures which depend largely on the nature of the risk but may differ depending on the nature of the product (i.e. casino games, poker, bingo, sportsbetting). Secondly, are the games which the operator will be making available to the public fair, secure and auditable? This normally requires, in the first instance, the regulator to set standards against which gaming equipment can be tested and approved. Although the testing might be conducted by a third-party testing house, the responsibility to approve the system and games before their release is essentially that of the regulator.

The third objective

Protecting the interests of the young and vulnerable is equally important to both industries and impacts the day-to-day running of the business; in this case, in accordance with normally well prescribed

legal and technical requirements produced by the regulator either in the form of regulations and/or guidelines.

A point worth making in respect of both the second and third objectives is that, irrespective of it being online or offline, the regulatory responsibility does not end with the granting of the approvals allowing the licensee to commence operations. There remains a need to monitor the operations on an on-going basis to ensure compliance with the requirements in law and the agreed internal controls. Most importantly, the regulator should at all times be aware of significant changes. Therefore, change

the use of payment intermediaries; the prevalence of player accounts where the player's funds are held by the operator on his behalf, are commonplace in the online industry and introduce various risks and issues that are not prevalent offline.

In another area, namely, game play, there are some differences requiring different regulatory approaches. Collusion and cheating during game play can potentially occur in both industries, but manifests itself in different ways. For example, in the online poker industry, a player could make use of so-called "bots" to play the game on his behalf, which is unlikely to occur in the

online industry is generally easier to regulate, especially as all transactions – from where the player is registered, right through to depositing his funds and playing up to the point of withdrawal – are electronically recorded and, therefore, easily monitored. When a regulator in the online industry reviews a player complaint, he is not only able to rely on the record of transactions but also on the written communication (chat) between the player and operator.

The opening up of the online industry in traditionally offline jurisdictions, such as the USA and Canada, is bound to introduce significant challenges for existing online operators. Those operators who have in the past preferred to establish themselves in jurisdictions which have not set high standards in respect of due diligence, operational controls, testing and certification of games and player protection measures, will find it difficult and costly to enter those jurisdictions. It is well known that traditionally offline regulators in the USA regard affiliates in a similar light as their terrestrial junket operators and will want to satisfy themselves that the reputation of those such associates does not impact negatively on the suitability of their licensed operator. In many online jurisdictions today, affiliates are not regulated.

The AGCC's regulatory framework is by no means perfect. It is a work in progress and I can't imagine that in a dynamic industry such as this we will ever be able to say "this is our final set of regulations". What is of critical importance for any regulator of the online industry is to have in place robust processes, systems and structures that enable him to achieve the aforementioned objectives. AGCC is keen to work with other jurisdictions in sharing and developing such systems.

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control reports of a financial, technical and administrative nature are essential, and although the methods of gathering such information may differ from regulator to regulator, this should be a universal requirement.

Specific demands

Although the regulatory objectives in both industries are very similar, there are certain specific differences that require a unique regulatory approach and requirements. The most important of these relates to the so-called "faceless" nature of the online industry compared to the face-to-face offline sector.

This faceless concept introduces some interesting challenges as well as benefits to regulators depending on which industry they regulate. For example, the electronic verification of the player; electronic fund transfers between the player and operator;

offline industry. This requires a different focus for online regulatory regimes. In the offline industry, it is possible for players to collude with the croupier, which is impossible in the electronic online world.

Similarly, there are unique differences in the area of player protection. For example, the risks associated with underage gambling are higher in the online industry due to its non-face-to-face nature and require specific technological safeguards that aren't used in the offline world. On the other hand, the detection of problem gambling online is easier due to the availability of the player's transaction history. Also, iGaming lends itself far better to providing problem gamblers with easily accessible preventative tools such as self-exclusion and self-limitation options.

Although both industries have their peculiarities posing unique regulatory challenges, from my own experience, the