

# Predictions for 2014: the UK, the EU, Australia and the US

## The UK

Subject to any last minute parliamentary hiccup, from 2014, all remote gambling operators targeting the UK will be required to hold a licence from the Gambling Commission. It will become a requirement to pay UK remote gambling duty, currently at 15% of gross gambling profits, on all transactions with customers in the UK. The Commission intends to introduce a new licence condition to the effect that all companies providing gambling software to a UK licensee will themselves require a software operating licence. We have asked the Commission to clarify how far down the supply chain that requirement will apply. As this is a proposed licence condition, rather than a legislative requirement, it will not take effect until the proposed changes to the Licence Conditions and Codes of Practice ('LCCP') come into force, which we anticipate will be in the second half of 2014.

All new licensees will become subject to the Gambling Act 2005, its regulation and the Gambling Commission's social responsibility and technical standards requirements. Operators should note that the Commission is currently consulting on significant changes to the LCCP, which will come into effect during 2014. They will have to implement new operating policies and procedures, and have software and equipment retested against UK standards. Dependent upon the demands of an operator's current regulatory regime, the cost of compliance may be high. There will also be a requirement to contribute towards British problem gambling and regulatory costs. With the cost of application, and with the additional cost occasioned by having to pay UK gambling duty, it is possible that some operators will

be forced out of the market.

One crumb of comfort for operators licensed in the EEA and white-listed jurisdictions is that they will be entitled to continue operating as they do now, pending a decision on their application. Furthermore, those from white-listed jurisdictions are likely to be subject to a lesser degree of scrutiny, as the Commission accepts that they are already subject to a high standard of regulation, and may be permitted to retain their remote gambling equipment in its current location.

The licence requirement is currently limited to operators with remote gambling equipment in the UK. The Bill will extend the scope if gambling facilities are used in Great Britain, whether or not equipment is located here.

Our strong recommendation is that all operators targeting the UK begin preparing the necessary policies and procedures to accompany their application now, and determine what changes they will need to make to their software and equipment to bring it in line with UK requirements. In addition, as it will become a requirement that UK licensees obtain their software from a UK licensed software supplier, they should also begin exploring this with their existing suppliers.

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## The EU

In November 2013 the European Commission ('EC') re-launched infringement cases for breaches of EU law in the (online) gambling sector against seven Member States. It can be expected that more infringement cases will follow in 2014.

Sweden was given two months to

prove that its existing online gambling regulation, i.e. Svenska Spel's monopoly, is compatible with EU law. Although it is difficult to predict which way Sweden will go, it cannot be excluded that over the course of next year the Swedes will try to shore up Svenska Spel's monopoly before they finally decide to open up the market a few years further down the line. However to do that will not be easy because CJEU case law requires that national monopolies be placed under very strict government control and that they limit their gambling-related advertising to a strict minimum to be compliant with EU law. It would seem a less time and money consuming solution to start working on the opening of the market right now.

Both the Czech Republic and Romania are already in the process of amending their regulations with a view to opening up the market to EU-based online gambling operators. The new Romanian legislation is expected to come out in early 2014 whereas the Czech regulation is slated for later in the year. The intentions of the other recipients of the infringement letters are not yet clear.

Besides the Czech Republic and Romania, the Netherlands is also expected to go through the regulatory motions next year. Once again the idea behind the Dutch draft law issued in summer 2013 is to set out clear regulatory lines towards a new, more liberal market.

Finally, the General Court, which is the junior partner of the Court of Justice, will hear the Danish State Aid case, i.e. the appeal of the Danish offline operators against the EC's decision on the differences in taxation of the online and offline operators in Denmark. Although potentially subject to appeal before the Court of Justice, the definition of the General Court

may shape the industry for the years to come.

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### Australia

In the latter part of 2013, the Liberal Party defeated the incumbent Labor Party to become the new Australian government. The new government has already made it clear that there will be no liberalisation of the existing federal restrictions on mobile/online gaming under the Interactive Gambling Act 2001 (Cth) ('IGA'), as some had hoped. Indeed I believe the government will seek to enforce these restrictions in a more active manner. In this regard, to date there have been no prosecutions under the IGA and I certainly expect that will change next year.

2013 was a year of much talk but little action in the online/mobile gambling sphere. Although a number of parliamentary inquiries and reports were conducted and issued, no changes resulted. However, 2014 could be quite different - here are my predictions for the year ahead:

- A number of prosecutions may be conducted under the IGA resulting in some clarity from courts as to the exact scope of activities caught by the existing IGA prohibitions. This could have a significant effect on the booming online/mobile 'social' gaming and hybrid gambling market in Australia.

- Further regulation of sports betting on a number of fronts may occur. Firstly, in terms of acceptable marketing practices, particularly those targeted at children and younger adults. Secondly, ensuring the prohibition on online/mobile 'in play' sports betting remains in place and is enforced. Finally, in terms of

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integrity, particularly in relation to match-fixing and the relationships between players, coaches and officials on the one hand and wagering operators, both here and abroad, on the other.

- Traditional land-based gaming venues may increasingly look to expand into the online/mobile arena to attract a wider and/or younger demographic to their existing operations and/or in an effort to diversify their revenue streams in response to a rapidly changing market.

- The large UK wagering operators who have established themselves in Australia over the last few years may rationalise existing local brands and look for opportunities to springboard into the wider Asia-Pacific region, particularly targeting the lucrative Chinese middle class market.

- A greater global commingling of race totalisator pools may occur as operators strive to provide customers with a more stable and diverse offering and gain access to emerging markets.

- The voluntary pre-commitment program currently being implemented for land-based slot machines may be extended to the online/mobile gambling sphere as well, in a further attempt to address the perceived issues with problem gambling in Australia.

- However, I expect significantly less coverage by the popular media of the Australian gambling industry as a whole than occurred in 2013.

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### The US

As opportunities to pass federal online gaming legislation continue to wane, there have been increased efforts by individual state governments to offer licensed and regulated online gaming. Nevada,

Delaware and New Jersey have already begun offering intrastate regulated online gaming. New Jersey will be the most profitable of the state online licensing jurisdictions for the short term.

### Massachusetts

In 2013, there were three bills pending before the legislature. S.B. 101, introduced on 16 January 2013 by Senator Jennifer Flanagan (D), would allow the Massachusetts Lottery Commission to offer online lottery games to those 18 and over who could gamble on their computers with credit cards. S.B. 101 would also authorise online 'multi-jurisdictional lottery games' where legal. S.B. 101 is considered to have the best chance of being enacted into law largely because of the political influence of the Lottery Commission.

### California

California, with its almost 38 million residents, is the most lucrative state market for potential online gambling. With the increasing improbability of federal online regulatory legislation, powerful lobby groups, such as the Poker Players Alliance ('PPA'), are shifting efforts to California. The PPA's main focus will move from Capitol Hill to Sacramento, as California is the most populous state with the most potential online poker players.

California clearly has enough liquidity on its own for a thriving market, something Nevada and Delaware lack. Past online California legislation attempts have gone nowhere due to fighting among factions, including Native Americans.

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