



Tribal Internet Gaming

Santa Ysabel Interactive: A Case Study in Changing Paradigms

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Legal Internet Poker is at stake in a watershed case as the State of California steps outside of their legal dominion in an attempt to curtail the Santa Ysabel Tribe's interactive gaming plans.

Summary:

In July 2014, the Iipay Nation of Santa Ysabel, a federally-recognized California Tribe, launched Santa Ysabel Interactive (SYI), its online gaming enterprise under the management of the Santa Ysabel Tribal Development Corporation. After more than two years of extensive research, planning, and preparation, SYI launched its I-poker website Private Table, and a few months later, its I-bingo website Desert Rose Bingo (DRB). From the beginning of these launches, SYI has been the target of legal attack by the State of California, concerned scrutiny by the United States Attorney's Office, and studious review by the National Indian Gaming Commission.

Due to the legal attack by the state, the U.S. District Court has enjoined SYI from offering its gaming enterprises to the public while the case winds its way through the federal court system. In the meantime, the Iipay Nation is being denied sorely needed potential revenue from these enterprises which could be used to improve the Tribe's infrastructure and provide economic opportunity for the general membership.

The crux of Santa Ysabel's legal argument in introducing this form of interactive gaming to California adult citizens, is the position that all of the interactive gaming and related

processes occur on digital servers located on tribal lands and regulated by the Tribal Gaming Commission. The games offered by SYI are Class II games as defined by the Indian Gaming Regulatory Act (IGRA), and tribes have the exclusive right to regulate and conduct Class II gaming conducted on tribal lands, with oversight by the NIGC.

The State of California is now poised to consider enacting legislation to authorize state-licensed interactive gaming to the state's citizens, but the construct of the proposed legislation contradicts the state's position that it has used in its legal attack against the small southern California Tribe. The state's proposal is fraught with exclusionary language, the result of which has been to pit competing gaming interests against one another, including tribes against tribes, virtually guaranteeing gridlock and no state legislative action on this issue.

Details Regarding Santa Ysabel Interactive.

In offering online gaming through Santa Ysabel Interactive, the Lipay Nation of Santa Ysabel is exerting its sovereign right under the Indian Gaming Regulatory Act (IGRA) to regulate and conduct Class II gaming from the tribe's reservation. Class II gaming, as defined by IGRA, includes poker and bingo, but does not include slot-based games or house-banked games, such as blackjack. House-banked games and slot machines are defined as Class III games, and can only be offered in a tribal casino upon agreement with the state through a Tribal-State Gaming Compact. Santa Ysabel has had such a compact in good standing with the state since 2005, but has no plans to offer Class III gaming through its interactive website.

The state's contention in its legal action against Santa Ysabel Interactive is that the gaming activity offered through DRB is Class III gaming in violation of the Tribe's gaming compact with the state. The basis for the state's opinion was a very cursory, external evaluation of the games offered through DRB. No effort was made by the state, in spite of the Tribe's offer to facilitate an examination of the game system, to understand the full construct of the system, the extensive regulations developed by the Tribe's gaming commission to ensure the integrity of the system and the protection of the public, or to coordinate their compilation of information regarding DRB by coordinating with their federal counterparts in the NIGC, who spend several days on the Tribe's reservation analyzing every component of the Tribe's interactive gaming systems.

The servers for the gaming offered through SY Interactive are located on a tribal reservation, and it is Santa Ysabel's position that the determination of the game, including wagers, game outcome determination and actual play of the games, Know Your Customer (KYC) protocols including age and location verification, responsible gaming provisions, and all other characteristics of game play occur within the websites' servers, on tribal reservations.

The Santa Ysabel Gaming Commission has enacted comprehensive regulations to facilitate regulatory oversight of the operations of Santa Ysabel Interactive. The basic foundation of these regulations is GLI v19, the same basic regulations approved by the State of Delaware to regulate that state's legal interactive gaming activity. The Santa Ysabel Gaming Commission developed a robust set of gaming regulations for ensuring the integrity of the gaming activity and to prevent unauthorized access of the website or corruption of the website. Most of the regulations developed by the Gaming Commission are publicly available on the Commission's website at sycommission.net. The Gaming Commission collaborated with the California Council on Problem Gambling to develop a model set of responsible gaming regulations for interactive gaming.

The Santa Ysabel Gaming Commission has years of experience regulating gaming conducted at the tribe's casino located on the Santa Ysabel tribal reservation. In order to adequately regulate live game play, commission personnel must either oversee actual game play at the tables or rely on a review of video surveillance of the play of the games. In the interactive gaming environment, commission staff can monitor all aspects of game play, from player registration, to age and location verifications, to the actual play of the games, in real time, or they can review every aspect of the interactive gaming processes recorded in archived digital files stored on servers located on tribal lands, established from the first day of business. Regulation of all aspects of the interactive gaming, from player registration, to the placement of wagers, to play of the game, all the way to cash-out can be monitored by commission personnel much easier than in real-world gaming.

Santa Ysabel Interactive has taken great care to address public agency and consumer concerns in the enterprise's I-gaming platform by integrating substantial consumer protection strategies related to: age and location verification, safe and secure payment processing, protection of confidential player information, and responsible gambling resources, just to name a few.

A Few Important Questions.

How can it be legal for Santa Ysabel to offer online gaming when no state law currently exists for such activity?

Tribes are considered sovereign nations in the United States and inter-tribal gaming employing the Internet has been legal for several years. Class II gaming, such as poker and bingo, have been exclusively regulated by tribes in California since 1999. Absent a specific state prohibition on this type of gambling activity, which does not currently exist in California, tribes are free to engage in this activity as long as the activity is regulated by the tribe as described in the federal Indian Gaming Regulatory Act. Santa Ysabel's online gambling, as designed, is in compliance with both state and federal law.

If this activity is legal, why haven't other tribes in California entered the online gaming market?

Several tribes in California have been working toward entering the online gaming market or are very close to doing so, employing a similar legal construct as Santa



Ysabel's enterprise. Many other gaming tribes that are generating sufficient revenue through their land-based casinos and do not feel it is necessary from a business perspective to enter the online gaming market at this time. Rather than invest the time and energy required to create a reliable and comprehensive regulatory structure necessary to conduct adequate oversight of online gaming, as Santa Ysabel has done, many tribes have decided to leave this task to state gaming agencies through the legislative process.

Is Santa Ysabel Interactive's I-gaming website vulnerable to corruption by criminals and organized criminal groups?

Like any enterprise conducted over the Internet, from Internet-based shopping networks to online banking, there are those seeking to take advantage of the business, as well as the consumers patronizing the business. Recognizing this as a modern reality, the Santa Ysabel Gaming Commission has worked alongside online gaming platform designers, payment processors, and other technology experts to minimize system vulnerability and build in business and consumer safeguards which are consistent with industry standards in highly regulated, successful online gaming enterprises around the world.

Similar to the Gaming Commission's commitment in the tribe's land-based casino, the emphasis is on maximum integrity and transparency regarding game play, barriers to infiltration by nefarious persons and criminal groups, and unwavering protection of the consumer. Gaming Commission staff members constantly monitor all facets of the Interactive gaming enterprise, from the patron registration process, to play of the games, to payment processing and distribution of winnings, in order to prevent or detect potential abuse as early as possible. Unlike in a land-based casino, nearly every facet of Interactive gaming is electronically archived and available for subsequent review for dispute resolution, to identify potential system vulnerabilities, and to verify regulatory compliance.

California-Licensed Interactive Gaming:

As currently proposed, the emphasis in the pending legislation is on offering Internet poker, whether the bills are AB 9 and AB 167, or the newest entrants into the fray, AB 431 and SB 278. The bills either define or allude to the activity as being Class II gaming. Now this distinction means nothing outside of a tribal reservation, but it is important when the State considers allowing cardrooms and other non-tribal entities to participate in the activity. Tribal-State gaming compacts provide that in exchange for revenue-sharing payments, tribes in California will have exclusivity in California with regard to offering Class III gaming, in the form of traditional slot machines, to California consumers. No one else in California can offer these types of games for profit.

Any proposed Internet gaming in the State, if non-tribal entities are allowed to participate, must be defined as Class II gaming. Otherwise, Class III gaming exclusivity provisions in the sixty-plus



gaming compacts in the State are null and void, and tribes would be free to cease their revenue-sharing payments derived from their Class III gaming operations. As a result, the State would see a loss of millions of dollars from tribal gaming each year. Unilateral drastic changes by the State in the construct of current tribal-state gaming compacts also contradicts the federal requirement that the State negotiate with tribes in good faith. Failure to enter into good faith negotiations with tribes eventually means that tribes will be able to continue their gaming activity in California without the need for compacts with the State.

But regarding the Class II issue, there is another problem. Since the passage of the Indian Gaming Regulatory Act (IGRA) in 1988, tribes in the U.S. have had the exclusive right to conduct and regulate Class II gaming on their Indian lands. In fact, while California has extensive regulations guiding the state's oversight of poker offered in the state's non-tribal cardrooms, the State has no authority and has never had any involvement with games of poker offered in brick and mortar tribal casinos. Now, tribes are being asked to relinquish their rights and submit to the State's authority if they wish to conduct Internet poker games.

If a tribe chooses to exercise its delegated right under IGRA and conduct Class II Internet gaming from the tribe's own reservation, as the Lipay Nation of Santa Ysabel has done, the State is quick to pounce on them, haul them into federal court, and prosecute them for offering *Class III gaming* in violation of the Tribe's gaming compact with the State. This begs the question, how can the gaming activity be defined as one thing if the State regulates the activity, and be defined by the State as something completely different if a Tribe decides to regulate and conduct the activity?

When it comes to the proposed legislation, the devil is in the details. Those desiring to apply for a State license to engage in Internet gaming must pay the State between \$5 million and \$10 million, ostensibly to demonstrate to the State that the applicant is serious about their ability to conduct and manage their interactive gaming enterprise in a competent manner. In reality, this exorbitant price of admission is nothing more than an arbitrary figure designed to exclude the vast majority of tribes which have already proven themselves competent at conducting and regulating gaming in this State and to provide California with a quick and substantial fiscal shot in the arm.

The truth is that when a tribe goes through the arduous and tedious process of designing a tribal gaming ordinance satisfactory to the National Indian Gaming Commission, then negotiates a gaming compact with the California governor, then has to endure the State Legislature's scrutiny of the tribe's proposed gaming enterprise, these efforts are a pretty clear indication that the tribe is serious about their entry into the gaming market. For example, it's fairly certain that the Federated Indians of Graton Rancheria in investing \$800 million in their showcase casino located just north of San Francisco, after going through the process described above, were fairly committed to their gaming enterprise, yet as the proposed legislation is currently structured, they would not be eligible to apply for a State-issued interactive gaming license even if they wanted to. Nor would any number of smaller tribes in California who currently operate well-regulated gaming operations because of the prohibitive price of admission.

Many believe the language in the State's proposed I-gaming legislation arbitrarily discriminates against those tribes which have invested substantial funding and energy in regulatory framework design to establish premier gaming facilities in California, but because their entry into the brick-and-

mortar market was recent or may not have been as commercially successful as first estimated, cannot participate in this new business opportunity. The proposed legislation discriminates against those smaller tribes who have made the business decision to forgo or discontinue offering real-money poker games in response to the demands of their markets, and not because of any perceived or actual regulatory impropriety.

Internet Links for Additional Information Regarding Santa Ysabel Interactive:

<http://www.iipaynation-nsn.com/>

<http://sycommission.net/>

www.Privatetable.com

www.DesertRoseBongo.com

http://www.indiangaming.com/istore/BG15_Vialpando.pdf

http://www.indiangaming.com/istore/Oct14_Vialpando.pdf

http://www.indiangaming.com/istore/Aug14_Vialpando.pdf