



**Online
Gaming
&
Indian
Country**
*An Analysis
&
Business
Forecast*

Geiger Johns Associates, LLC

-A Native American Owned Company-

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Preface

Purpose of the Report

The purpose of this report is to provide Indian Country leadership with the necessary reference points to facilitate the decision making process on how Indian Country gaming can continue to thrive in the environment of the ongoing growth and development of worldwide online gaming. Considering what we know about the economic market related to Indian Country gaming and business of online ecommerce in the gaming and non-gaming world. This report shows data to help Indian Country gaming operators in their decision making process relative to participation in Internet gaming.

Executive Summary

For Indian Country gaming, the increasingly competitive business environment combined with the new products and platforms offered by Internet gambling enterprises lead us to the following salient points as areas of high concern for Indian Country leadership:

Gambling and Entertainment Customers are Moving Online

- A. Worldwide Internet gambling is projected to grow at a rate of 38% from 2009 to 2012, while overall gambling growth is projected to be 15%, or less than one-half of the rate of Internet gambling.
- B. 75% of American adults use the internet, 60% of American adults use some type of broadband access and over 55% of Americans connect to the internet via a wireless device.
- C. 42% of Americans participate in mobile casual gaming, 23% of American adults play online games.
- D. Despite US legislation in 2006 (UIGEA) attempting to stop financial transactions for putatively unlawful Internet gambling in the US when Internet gambling was near \$6 billion per year, for the year 2010, the US will again be near the \$6 billion dollar mark. In other words, UIGEA has not stopped Internet gambling but it has slowed its growth in the United States.
- E. Legal Internet gambling is growing rapidly in Europe and Asia. These offshore providers would establish businesses in the U.S. if Internet gambling were permitted

The Demographics and Customer Transactions Are Moving Online

- A. 56% of traditional casino gamblers are age 45 or older, while less than 5% are between the ages of 21 and 45.

B. US adults are making over 30 million annual visits to casinos. The number of gambling/gaming interactions online is in the billions.

Opportunities and Risks

Approx \$5 to \$20 Billion - Opportunity for revenues gained by Indian Country gaming businesses over the next 5 years assuming a legal regime, technology acquisition and the competitive environment

Approx. \$6,700,000,000 (or more) - Potential loss of traditional gambling revenues to Indian Country gaming over the next 5 years assuming a legal regime and Indian Country non-participation.

The Competitive Environment

The competitive environment in 2010 is very different than it was in 1988 - when the Indian Gaming Regulatory Act (IGRA) was passed by the US Congress. Inherent tribal sovereignty and IGRA (along with some well know US Supreme Court decisions) made it possible for Indian Nations in the United States to build and operate casino gaming businesses throughout Indian Country. This included recognition of tribal government jurisdiction, legalization of gaming devices and the tax exempt status of tribal government, derived from the history of the treaty relations between the US and Indian Country.

In 1988, Las Vegas and Atlantic City were the primary venues in the casino business. The economy in the US was in good shape having come out of the deep recession and economic traumas from the late 1970's and the early 1980's. State lotteries were mainly paper tickets; the racino business had not been invented, and the political agendas in most states did not include legalizing state authorized commercial casinos. In addition and very importantly for this study, the internet was not the huge commercial enterprise that it is now. The internet has allowed for the creation of whole new regime of interstate and international commerce. This new regime very much includes gaming.

In 1999, Indian gaming generated gross revenue of \$9.8 billion. In 2006, gross revenues generated by Indian gaming totaled \$24.9 billion. Indian gaming is a remarkable success story. Yet during the recession growth has declined and in 2009, when revenues were reported at \$26.5 billion, there was a slight reduction in revenues. Relative to commercial gaming in the US (e.g. Nevada declined 10.4% in 2009) Indian Gaming in general has been reasonably robust under the difficult economic conditions and the changing competitive environment. And from 1988, Indian Country has developed a tremendously successful gaming industry that has helped to revitalize Indian communities, fund essential government services, and promote Native American health care, education and culture. In the year 2009, through Indian gaming, tribal governments made the following contributions towards economic development in Indian Country:

Gross Gaming Revenues: Over \$26,300,000,000

Direct Gaming Related Jobs: Over 280,000

Total Jobs Related to Tribal Gaming:	Over 600,000
Fed/State Taxes Paid & Payouts Avoided:	Approx. \$13,000,000,000

Source: National Indian Gaming Association (NIGA) Economic Impact Report (research by Geiger Johns Associates)

As for the competitive situation in the US, we there are over 10 states with commercial casinos and proposals for more. Commercial gaming in the US in 2009 generated \$30.7 billion in revenue. The racino business, combining race tracks with state sponsored electronic video lottery terminals (VLT's), is also growing and developing.

Previous to the passage of the Unlawful Internet Gambling Enforcement Act (UIGEA)¹ in 2006 it was estimated the US internet gambling market was approximately \$6 billion. After a steep decline, it is now estimated that the US market is once again approaching \$6 billion. Large casino and gaming companies like Harrah's and IGT have purchased international businesses and made agreements to position themselves in anticipation of the coming competitive situation in international and online gaming.

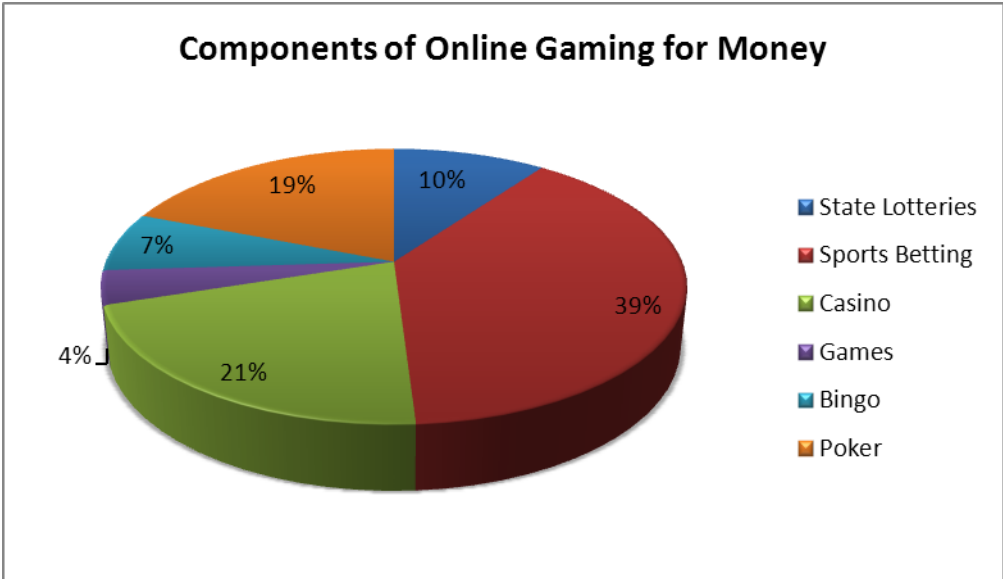
Comparing capital requirements, productivity measurements, and gross revenue we note that US commercial casinos have gross gaming revenues of about \$96k per FTE, Indian casino are about \$125k per FTE and online gaming is closer to a range of \$400k to \$500k per FTE.

In Europe where various types of online gambling are legal in several jurisdictions, online gambling has grown into a vigorous and substantive enterprise. Europe generates approximately 45% of the global gambling revenue, Asia approximately 25% and the US approximately 25%. In China, where Macau has become the Asian Las Vegas, and some say better, gaming is growing strongly. In fact, for the nine months ending in September 2010, Macau's year to year gross gaming revenues grew over 60% to \$16.5 billion, more than in all of 2009.²

Worldwide, including all types of gambling, the situation looks like this(next page):

¹ UIGEA was passed basically as a rider on other legislation with the intent stopping online gambling in the US.

² Macau News, October 6, 2010



Source: *H2 Gambling Capital*

Note: Worldwide Internet gambling revenues are projected to grow at over 38% from 2009 to 2012.

Another part of the competitive landscape relevant to Internet gaming is the non-gambling type of Internet gaming. The reason for considering non-gambling, “for fun” Internet gaming is simple:

First, as everyone is aware, technology, specifically online technology, has an ever increasing influence on all types of commerce, and the entertainment business is no exception. Gaming is part of the entertainment sector. Second, with the increasing competitive threats for brick and mortar Indian casinos from commercial gaming, racinos and lottery systems, opportunities for growth in other areas of gaming entertainment cannot be overlooked. As most

people in the business are aware, the demographic for traditional casino gaming skews older, with the average age of the customer at 45 years old. Third, new prospective customers for gaming operations by definition will come from the younger demographic. And where do younger people spend their time? The answer increasingly is online.

For example, the average teenager in the US now sends an average of 50 texts per day. Gaming companies like Zynga, that operate the Facebook games, Farmville and Mafia Wars, and other games like Zynga Poker, reports that in 2009 they had more than 9 million online interactions every day, and as of today, that number is over 20 million, with just one game, Farmville, generating over 18 million daily interactions. And that is merely one company. Online gaming not associated directly with gambling consists of thousands of sites and games that are pervasive in our commerce and culture. Revenue from online gaming not associated with gambling was approximately \$12 billion in 2009 and it is now forecast to grow to over \$25 billion by 2015.³

The Entertainment Software Association (ESA) reports that 67% of American households play computer and video games; that the average game player is age 34, that 25% are under 18 years, that 49% are 18-49 years and that 26% are 50+ years. ESA also reports that 42% of heads of households play in wireless devices such as cell phones and PDA's.

Casual promotional gaming on sites like Pogo and Yahoo and scores of others offer board games, card games, multiplayer games, skill games and many others are ubiquitous. **Particularly important in this mix are the Internet poker sites that do not support financial transactions and are basically promotional marketing sites in the US, waiting for legalization for Internet poker. They draw millions of users, some of whom even in the US who have not chosen to wait until all legal issues have been resolved.** Many of the promotional game play sites have e-commerce programs that generate substantive revenue through subscriptions.

Millions of people now spend substantial time every day on the Internet and the Internet entertainment business is thriving. Facebook has 500 million friends. The Internet social and gaming entertainment world is massive and presents opportunities as well as challenges for casino gaming enterprises looking to grow - and protect - their businesses.

Sovereignty/Legal Issues/Legislation

For Indian Country Nations, sovereignty is a pre-eminent and enduring issue. IGRA, Federal and state court decisions, and tribal state compacts have set up a legal regime that combines the Federal government, the National Indian Gaming Commission (NIGC), and the states in a multi-faceted and complex structure that has fostered the growth of Indian Gaming in many states. But the Internet world of gaming and gambling is more complex when it comes to jurisdictional issues because Internet transactions typically cross jurisdictional boundaries.

As an example, we note here what the Mohawk Council of the Kahnawake has done. The Kahnawake are located in Canada near Montreal. They have been a leader in establishing business licensing and technology support operations for online gaming, specifically, online poker, which has over 2000 sites worldwide but which is dominated by two players, Poker Stars and Full Tilt Poker. The Kahnawake identify themselves as a "Licensing Authority for Gaming

³ DFC Intelligence

Activity within and from the Mohawk Territory of Kahnawake.” In June of 2010, Kahnawake Gaming Commission (KGC) signed a second memorandum of understanding with the Financial Services Regulatory Commission of Antigua and Barbuda to establish what they call “an innovative regulatory relationship between Federal and state laws are currently more restrictive than Canadian law but the opportunity for Indian nations in the U.S. to establish Internet gaming in foreign jurisdiction should be examined.the two commissions.”

KGC was established in 1996 and they have been licensing and regulating online gaming since 1999. Canada is, from a legal perspective, much different than from the United States.

Overview of Legislation and Legal Issues

The purpose of this report is not to identify and review all the pertinent legal issues that may arise for Indian Country vis-à-vis the current legal regime. And having some experience in that area we do not underestimate the complexity or the resources that will be required to move through the legal landscape and legislative process. Our purpose in the main body of the report is to review the current legislative proposals as they would affect Indian Country gaming if they were approved and codified.

The most prominent current US legislation in process is the following:

The Barney Frank Legislation - H.R.2267

Title: Internet Gambling Regulation, Consumer Protection, and Enforcement Act

Treasury regulation of Internet Gambling Licensing Program

- Assesses fees against licensee institutions to cover the cost of administering this Act
- Tax collection related to Internet gambling; safeguards
- Shields a financial transaction provider from liability under certain circumstances
- Permits states and Indian tribal authorities to opt-out of Internet gambling activities within their respective jurisdictions.

7/29/2010: Ordered to be Reported (Amended) by the Yeas and Nays: 41 - 22.

The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) recently released an estimate of \$971 million as the revenue to the government for the years 2011 through 2020, if H.R. 2267, as passed out of committee this past July, was enacted. But they also noted that costs to the government would be increased by about \$670 million, primarily for regulatory and enforcement costs, with net revenue of \$238 million to the Federal government over 10 years – mostly from licensing fees.

The companion McDermott Bill is expected to generate far more revenue through state taxation. In 2009, Price Waterhouse Coopers did an analysis of gaming H.R. 2267 with H.R. 2268 (McDermott bill) if they were enacted and estimated that from 2010 through 2019 with sport betting allowed that government revenues would be over \$13 billion with a high state opt out rate and over \$25 billion with a low state opt our rate. And the October 2009 JCT study estimated that the combination of H.R.2267 and H.R. 2268 would generate \$10 billion up to \$42 billion in government revenue if there were no state opt out.

Representative James McDermott introduced H.R. 4976 in March 2010. “The most significant change from earlier versions of the legislation [H.R. 2268] is a provision that allows each State and Tribal Government to be paid six percent of all deposits placed by residents of their jurisdiction with online gambling operators.” Representative McDermott claims yet that this would add \$30 billion for the ten year total of \$72 billion to governments. HR 2268 has not yet been reported out of House ways and Means Committee.

Senator Robert Menendez, Internet Poker and Games of Skill Regulation, Consumer Protection and Enforcement Act of 2009 (S. 1597) allows poker and other “skill” games to be played online in a regulated environment.

Included in the Menendez legislation are provisions that require licensed operators to collect taxes on all deposits, which would be split between federal and state governments; it would not allow for casino games and other types of wagering activity online. Not reported out of Committee.

The current general view from many experts is that the current legislative proposals will likely not be voted on this year. **And the fact is that for any financial analysis of what the implications would be for US federal legislation as it affects Indian Country gaming, what would matter most are the final details of the legislation as passed.**

Estimating Revenues and Economic Impact to Indian Country

The principals at Geiger Johns Associates, LLC, the authors of this report, have done national economic impact analyses for Indian Gaming for the past seven years. Using our experience with Indian Country gaming, and using our over 12 years of experience with online e-commerce and Internet gaming businesses and operations, for this project we have developed independent projections as to revenues and economic impact variables. Naturally, forecasts of future events are, in some degree, inherently uncertain.

A few *very important* notes about the numbers identified below:

First, these numbers presume that all substantive legal prohibitions have been resolved and that online gambling operations, acting within a legal regime that sanctions betting and payments for gambling over the internet do not put gaming operators in legal jeopardy. As anyone who follows the current legal and political discussion pertaining to online gambling in the US knows, this is a very important presumption. But the purpose of this forecast is to establish a baseline for planning for the possibility of future legality of Internet gambling in the U.S.

Second, these NON-optimal numbers immediately below also presume that Indian Country gaming operators, as a group commensurate with the current Indian Country casino operations, are NOT fully committed to achieving competitive success in the online gaming/gambling business. And obviously that means that many Indian Country gaming operators would not have established *at least one year in advance* the necessary online gaming platforms, technology experience, financial transactions infrastructure, would not have received the appropriate licensing for operations, would not have received the appropriate approvals for specific online gambling games, would not have established all of the necessary backend support services required for any online e-commerce business.

Indian Country Gaming: Five Year Projection Assuming “Legalization” Excluding Sports Book- NON-Optimal Growth Case

	Y1	Y2	Y3	Y4	Y5
Revenue (B)	\$0.79	\$1.17	\$1.88	\$3.0	\$4.40
Direct Jobs	5,348	6,854	9,037	12,437	14,861
Indirect Jobs	2,032	2,605	3,434	4,726	5,647
Special Tax**	?	?	?	?	?
Empl Taxes* \$	0.108	\$0.139	\$0.184	\$0.253	\$0.301

**Depends on Legislation & Sovereignty Assertions.

Source: *Geiger Johns Associates, LLC*

Of course, until there is substantive movement in Indian Country gaming relative to Internet gaming initiatives and projects, any business projections are uncertain as to which regions or specific gaming enterprises will be affected specifically. There could be alternative scenarios. First it could be that Indian Country based Internet gaming initiatives are limited by final legislation allowing for states and tribes to opt out. Second, Internet gaming could develop regionally, or on a state-by-state basis. Third, there could be a consolidated effort in Indian Country to enter Internet gaming as joint ventures, some of which that may include developing the back end infrastructure (financial transactions, customer relationship management, network and server facilities, software development, etc.) that are required to compete online and where there are great opportunities for vertical integration that could deliver a competitive advantage to Indian Country Internet gaming operations. ***The strong growth case is below in the report***, page 23.

Key Elements for Decision Making

I. Technology and Skills Development

As we noted above, the assumptions for online gaming and business revenue growth include a presumption that a substantial number of Indian Country gaming operations have proactively decided to invest the capital and other necessary resources well ***before*** full legalization has been achieved. This is necessary for several reasons, the most significant of which is that building and operating an online e-commerce business requires a separate and distinct set of skills. While there are many similarities between the casino gaming business and the online gaming business, there are just as many or more differences.

For example, the technological infrastructure for operating an online business with complicated software, millions of interactions, online financial transactions, internet related data base, server and network issues, technical support, in-game support, customer support, software upgrades and changes, as well as managing things like Terms of Service (TOS), age verifications and online privacy and data management issues, require a well-trained and highly skilled group

of managers, technology experts, customer service specialists and operators. Developing that kind of infrastructure is costly and time consuming.

But the fact is that many Indian Country casinos that are reasonably large are already very technology savvy and have smart and sophisticated technology personnel, so building a new tier of technology support services is not entirely new. And there is no reason to believe that highly successful and intelligent management and staffs that operate Indian Country gaming have any less of an opportunity to be successful in online game that would the commercial operators.

II. Implementation via State Legalization

While much of the discussion about online gambling legalization has centered upon the Federal government and/or assertions of Indian Country sovereignty, there have been several efforts at achieving intrastate approvals for online poker and other online gaming within individual states. And certainly there are groups both in favor of and opposed to online gaming whether it be approved federally, intrastate or via some other legal regime. It is not in the purview of this report to take a position one way or the other about “legalization” of online gaming, but only to identify what the consequences of prospective decisions would be. However, either way, intrastate online gaming is an option where the political will and funding is supportive. As we previously mentioned, the sports gambling via cell phone in Nevada that was recently approved demonstrated the technological capability to implement such a business model.

III. Internet Casino Gaming – ex financial transactions - as a Marketing and Business Development Tool

As we noted above, if Indian Gaming enterprises do decide that they want to participate in Internet gaming, they will need to develop, preferably previous legalization, a considerable new infrastructure to support Internet gaming. The capital investment and requirements for management time and resources make this a very substantial and expensive process. To monetize that investment in both capital and management and other resources, it would be imperative for the business plan to include a very strong and sophisticated marketing and business development plan that would work to improve revenue and profits from the traditional casino operations.

Many Indian Country casinos are already heavily invested in using social networking tools like Facebook and Twitter as marketing tools. These efforts would be integrated with the new gaming sites to develop customer loyalty and increase customer retention, as well as identifying and marketing to new segments of the population that are potential customers, either online, traditional or a combination of both. Indian Country casinos have excellent personnel managing their affinity programs, marketing and advertising. And giving these excellent personnel new products and services to sell would be accretive to the current marketing and advertising programs as they work to build the traditional business as well as bringing in new customers.

Another way of monetizing the investment is by the use of powerful and aggressive e-commerce tools. Virtual goods, virtual real estate and gaming properties get denominated in a

virtual currency or points that, in the end, can only be used when exchanged and actualized by real currency. This is not new. There are numerous sites that currently do this.

IV. The Prospect Traditional Casinos Losing Business to Online Gaming

Being aware of the enthusiastic discussions that have taken place in Indian Country pertaining to online gaming, we cannot dismiss the concern that traditional Indian Country casino business may be at risk from online gaming. **Will online gaming will affect traditional casino gaming? The answer is yes.**

Whether or not Indian County gaming operations pursue online gaming, there are hundreds if not thousands of other enterprises that will. As we have noted above, and note in more detail in the body of the report, there is new competition for the customers of traditional casinos. Some of that competition is from non-Indian commercial enterprises, some from enterprises sponsored by states like racinos or improved and more technologically sophisticated lotteries, and some is in the form of Internet gaming. In addition, other entertainment and computer companies may transition from social Internet gaming to full blown Internet gambling.

Gaming and casinos are entertainment. Competition for a share of the entertainment customers' dollar has demonstrably increased with the growth of gaming technology, both Internet and "brick and mortar." As we noted above, 67% of American households play computer and video games and 26% of those households are gamers over the age of 50. The Pew Center reports that 23% of adults play games online. More than 50% of both Internet and casino gamblers are between the ages of 30 and 59, so clearly there is an intersection of these two groups.

We have noted that the traditional casino patron skews towards the older demographic and that the younger demographic spends more of its entertainment time and socialization time online. Online gaming is a technical development that, along with the internet will forever alter the entertainment options that gaming patrons have.

V. Frequency of Play and Elasticity of Demand

Traditional casino customers make an average of 6 trips to the casino each year and there are a total of approximately 320 million total trips to the casino's in the US each year. In the body of the report we note a study done that reports, among others, the following key attributes of online gamers/gamblers: a.) they play more frequently and for higher durations of time; b.) they engage in casino table games significantly more times per month than traditional casino customers; c.) online gambling customer research has shown that virtual cash (money paid online) has a lower psychological value than real cash, and d) there is a perception of a higher chance of winning when playing online.

Customer retention and loyalty may be significantly higher for online gaming than for traditional gaming. Accordingly, promotional Internet gaming may be a key customer loyalty and marketing tool for brick and mortar casinos.

In the body of the study we show a simulated conjoint analysis based on demand attributes for gaming, differentiated by online and traditional gaming customers. From that analysis we project that in the near term nearly one third of the current traditional casino gaming

customer base is immediately vulnerable to online gaming becoming a rapid and immediate substitute for traditional gaming. Naturally, among these crossover brick and mortar online gamblers, some may still spend as much on brick and mortar gambling, some may spend less and a few may fully transition to online. To be sure, a large empirical research study is necessary to get customer preference data, but we are confident that the simulated data is a strong hypothesis. On the other hand, the right marketing technology that fosters a positive introduction to casino gaming, Internet gamblers are potentially a new source of brick and mortar gamblers.

VI. Recommendations

Internet gaming, whether it gets legalized near term by federal legislation or in 5 years, has and will continue to be a viable alternative, substitute and complimentary product to traditional casino gaming and entertainment. Certainly, delay in the establishment of a validated and safe legal regime being established by the US government, by some combination of states, and/or by assertions of sovereignty by Indian nations, will slow the progression of the movement of some traditional gaming customers to more online gaming and online entertainment. But because new and younger current and prospective customers for gaming increasingly live and socialize extensively online, and because gaming is entertainment most of which does require gambling, the younger demographic will continue to grow its space in the online world. Also, the international acceptance of online gaming and the continuing advancement of online technology are strong market drivers that will likely influence legalization efforts. **As Internet gambling continues to develop, it will continue to present market challenges to Indian Country gaming.**

To compete effectively and successfully in developing Internet platforms, Indian Country operators need a strategy for promotional Internet gaming, need to examine foreign marketing opportunities and need to build their access to a younger player base. Regional demographics and business climates will certainly continue to differentiate the operational results for Indian Country gaming, yet throughout the US, **Indian gaming operators need to engage in Internet strategies to maximize business opportunities whether as promotional gaming or as full blown Internet gambling where legalized.**

Introduction

Geiger Johns Associates, LLC, is a Business Research and Consulting Business with special emphasis on Native American Gaming, Online Gaming, Business Turn-Around Analysis, Business Development Research and Econometric Studies and Analysis.

Our approach to this topic was to use our proven successful proprietary modeling for predicting Indian Country gaming revenues and other economic impact combined with our over 10 years of experience in modeling online gaming revenues. More specifically, our focus has been twofold:

1. We have combined both the public and private available materials with our years of experience in predictive modeling - specifically associated with Indian Country - and our years of experience in building and managing online e-commerce and online gaming platforms. Using this *combined* knowledge we are able to deliver Indian Country leadership customized gaming data not available anywhere else. This data will provide insight and resources to the process of decision-making about gaming

policies that will support the continued advance of Indian Country gaming and its record of strong success.

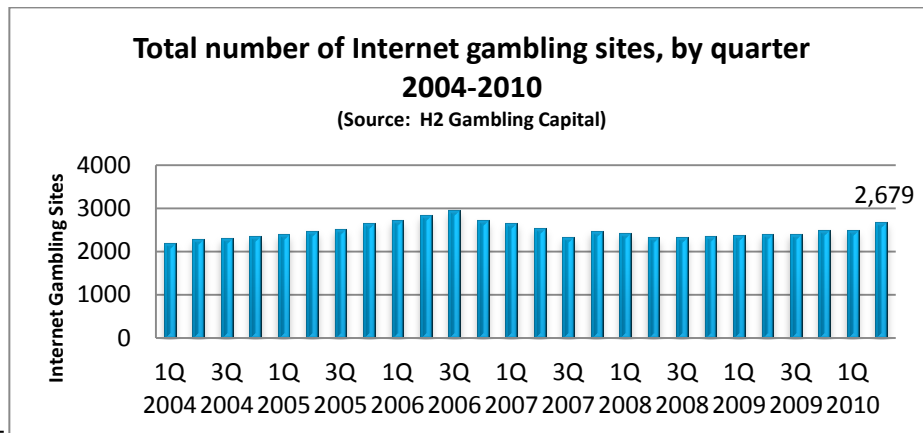
2. Our firm has an experienced-based belief that Internet gambling is a part of the overall online gaming and entertainment media system, and that business pursuits online must be viewed in an integrated manner and not just as moving a traditional casino online.

Internet Poker in the United States

The Internet has the capability of connecting people from different physical locations into the same virtual environment at the same time. As far back as 1988 people were connecting with people all over the world via Internet Relay Chat (IRC). This form of real-time group communication was the beginning of the Internet culture of participation. Even in these text-only formats people were playing online poker. In the 1990's as the Internet developed with more graphics and an easier to use interface online poker continued to be played on IRC. In 1998, Planet Poker became the first online poker room of its kind. It took almost six months before the site began attracting players. A year later other sites like PartyPoker.com arrived on the scene. It was not until 2001 that the two most dominant online poker sites entered the industry: Poker Stars and Party Poker

Just as the Internet began to move into more and more homes, poker popularity spread rapidly thanks to the launch of televised poker in 2001. Televised events such as the World Series of Poker proved extremely popular almost right away. A new camera technology – the hole camera – helped spur on the popularity. The hole camera allowed viewers to see player's cards without compromising the game. This allowed viewers to learn the nuances and rules of the game from experts. In addition to the camera were advertisements and sponsorship by online poker sites. Viewers wanted to develop their skills and the online sites provided the venue.

Online poker sites took advantage of the ability to connect people, real-time from around the world. Novices could learn from experts and experienced players could challenge themselves by playing the best. Learning new skills and knowledge is always enhanced by a social environment. These online poker rooms cultivated excellent learning environments for new and skilled players alike to build confidence and hone their skills. As online poker sites boomed, the people behind these sites were showing how lucrative this business could be. At one point, even before the official boom of online poker, it was reported that PartyPoker.com was netting more than \$1 million a day. Reports of these massive profits led to a massive influx of new sites. **The competitive environment allowed only the better sites to remain and flourish.**



Competitive Environment

The establishment of the Indian Gaming Regulatory Act in 1988 - Public Law 100-497- Oct. 17, 1988 100th Congress Sec. 2701- was an opportunity for Indian Nations in the United States to get a special competitive advantage in a market place for casino type gaming. The IGRA set up the beginning a legal regime and business infrastructure that would allow revenues from Indian Country gaming to grow to over \$26,000,000,000 per year.

The findings by Congress that supported IGRA were as follows:

Sec. 2701 Findings

The Congress finds that –

- (1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;*
- (2) Federal courts have held that section 81 of this title requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;*
- (3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian land;*
- (4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and*
- (5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.*

The findings identified several important policies that have been important drivers in the strong success of gaming in Indian Country. The first finding showed that Indian Country leadership had taken the initiative to creatively engage in activities that pushed the envelope as to what was legal under federal US and state law. This was done by clearly recognizing that Indian

Country leadership was not waiting for all issues to be resolved before driving programs and businesses that were sorely needed to increase revenues going into Indian Country.

The second and third findings made clear that the United States government was asserting a certain level of decision rights over Indian Gaming rules and regulations. The fourth finding identified the United States federal government as encouraging tribal economic development and the ability to support tribal governments with the resources necessary to improve Indian Nations in the United States. And the fifth finding, while recognizing an original exclusive right to regulate Indian Country gaming to Indian Country leadership, it also establishes regulatory authority to both Federal and state laws.

As a result of these findings and including the work of Indian Country leaders and workers a tremendously successful gaming industry has developed. This has contributed to Indian Country from the last measurement, in the year 2009, the following contributions towards economic development in Indian Country:

Gross Gaming Revenues:	Over \$26,000,000,000
Direct Gaming Related Jobs:	Over 280,000
Total Jobs Related to Tribal Gaming:	Over 600,000
Fed/State Taxes Paid & Payouts Avoided:	Approx. \$13,000,000,000

Source: Geiger Johns Associates, LLC- Independent Study done for NIGA, 2009

By any standard and any metrics of success, Indian Country gaming has achieved more than almost everyone estimated it would when IGRA was passed. But when we review these same findings, we also find the seeds of determinative issues now facing the leadership of Indian Country gaming.

In 1988, the US economy was strong and growing. One of the best indicators of this was that from 1983 to 1988 the US unemployment rate fell from 9.6% to approximately 5.5% - that is an approximately a 43% reduction in unemployment. Generally, people have a more positive outlook on the prospects for their economic well-being. And the same holds true when the trend goes the other way. In 2007, the US unemployment rate was 4.6% and it has now risen to over 9.6%, basically doubling in less than 3 years.

The topic of unemployment trends important to Indian Country and Indian gaming? Because in 1988, with a strong and growing economy the public was looking positively on our prospects for continuing growth and economic prosperity. The economy is an important political issue. In the fall of 2010 (although the recession technically ended in June 2009) functionally the economy is still in recession. Therefore, in the current economic and political climate, getting legislation from federal government that would be in anyway analogous to what was achieved in 1988 is more problematic.

Sovereignty and Indian Country Policies

Online gaming – just like online business – is already an international system.

A good example of this is the dispute between the US and Antigua. To quote Simon Lester, a former Legal Affairs Officer at the Appellate Body Secretariat of the World Trade Organization (WTO):

“The WTO Gambling dispute between Antigua and the United States has evolved from what some considered to be an obscure, long-shot complaint by one of the smallest countries in the world into a primer on some of the most important and controversial substantive and procedural issues in WTO law....Antigua filed a WTO complaint against U.S. restrictions on cross-border trade in gambling services, in particular on "remote" gambling (such as that taking place over the internet). The Panel found that a number of the U.S. federal and state laws at issue violated the "market access" rules in Article XVI of the General Agreement on Trade in Services (GATS). It also found that these laws were not justified under the GATS Article XIV(a) defense for measures "necessary to protect public morals or to maintain public order," on the grounds that the U.S. failed to negotiate with Antigua in relation to the gambling restrictions.

On appeal, the Appellate Body narrowed this finding of violation to the federal laws only. With regard to Article XIV(a), the Appellate Body reversed the finding, concluding that the three federal laws were, in fact, necessary. Having found that the measures fell within Article XIV(a), the Appellate Body then considered whether they met the terms of the Article XIV chapeau, which requires that measures not be "applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services." On this point, the Appellate Body found that based on the existence of the Interstate Horseracing Act -- which Antigua alleged "permits the remote supply of gambling and betting services for horse races" -- the United States had not demonstrated that the three federal laws are applied consistently with the chapeau. On this basis, the Appellate Body rejected the Article XIV defense, and thus the violation of Article XVI could not be justified.”⁴

And from a statement issued by the office of the United States Trade Representative (USTR) in December of 2007:

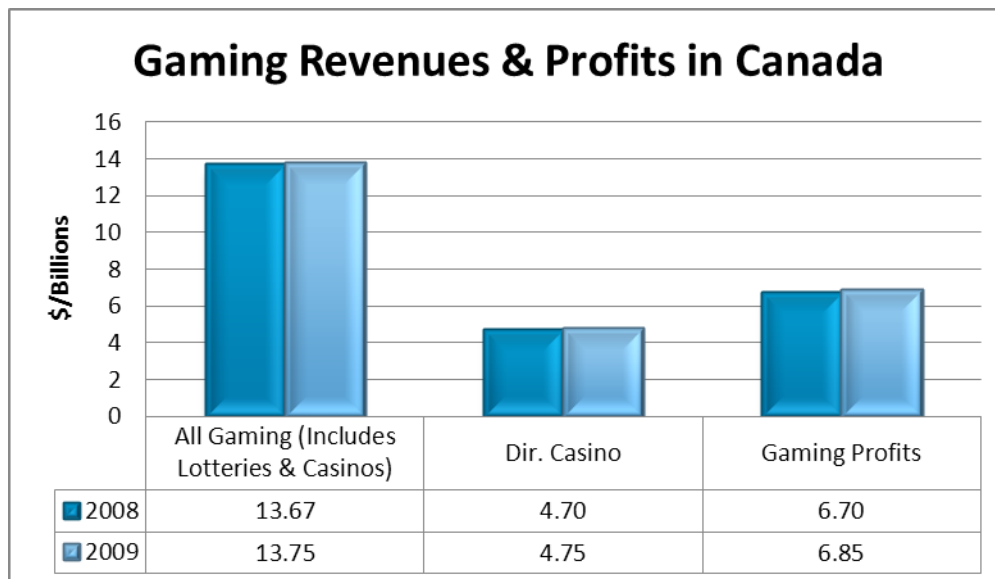
“The WTO Dispute Settlement Body had previously found that the United States had not brought certain federal gambling laws involving Internet gambling on horse racing into compliance with obligations under the General Agreement on Trade in Services (GATS). As a result of the Arbitrator’s award, Antigua – upon a subsequent request to the WTO Dispute Settlement Body – would be entitled to suspend Antigua’s WTO obligations to the United States so as to affect trade between the United States and Antigua in an amount up to \$21 million per year. The Arbitrator also found that Antigua

⁴ Simon Lester, International Economic Law Edition, “The WTO Gambling Dispute: Antigua Mulls Retaliation as the US Negotiates Withdrawal of its GATS Commitments,” April 8, 2008.

is entitled to suspend WTO benefits not only with respect to services, but also with respect to intellectual property rights. Contrary to some reports, the WTO does not impose fines or monetary penalties.”⁵

Another example is the Mohawk Territory of Kahnawake. In Canada, the K-G-S was established in 1996. K-G-S has been licensing and regulating online gaming since 1999. As for the source of their authority to operate and regulate online gaming they state the following: *“The Mohawks of Kahnawake have consistently and historically asserted sovereignty and jurisdiction over their territory. They have never been defeated in battle and have never entered into a treaty with any government that waives or diminishes their sovereignty. The Commission’s authority to license and regulate gaming is a facet of the sovereign rights Kahnawake has as a community of indigenous peoples to govern its own affairs. In 2007, the Commission’s authority was favourably considered in a **decision** rendered by the Superior Court of Québec.”*⁶

Canada has a different Internet gambling legal regime is from the United States. Canada is strong and growing gambling market as identified by the following numbers:⁷ So it may not be possible to replicate the Kahnawake experience in the US



Income Demographic of Canadian Gamer:

78% of households with income of \$80k or more gambled an average of \$555 per year;

51% of households with incomes of \$20k or less gambled an average of \$395 per year

Throughout this report the international nature of the online gaming business has been highlighted because of its importance and direct relationship to Indian Country leadership’s

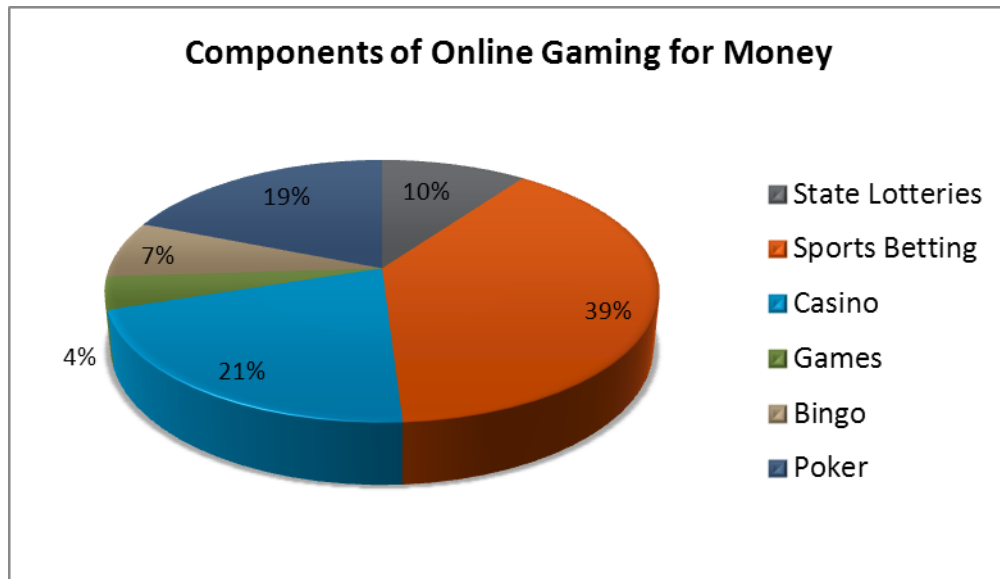
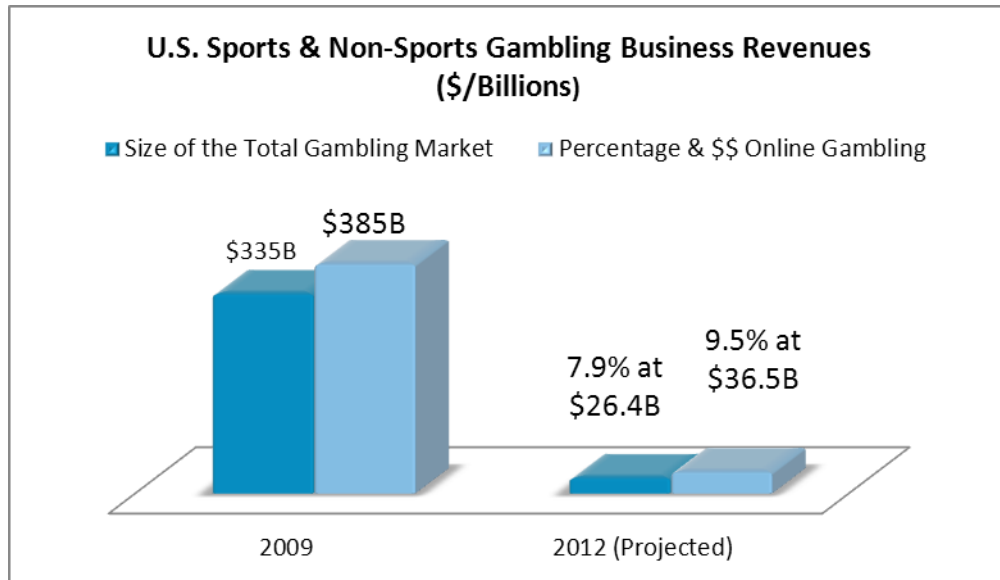
⁵http://ustraderep.gov/Document_Library/Press_Releases/2007/December/Statement_on_Internet_Gambling.html

⁶ <http://www.gamingcommission.ca/faq.asp>

⁷ The Canadian Press, August 2010

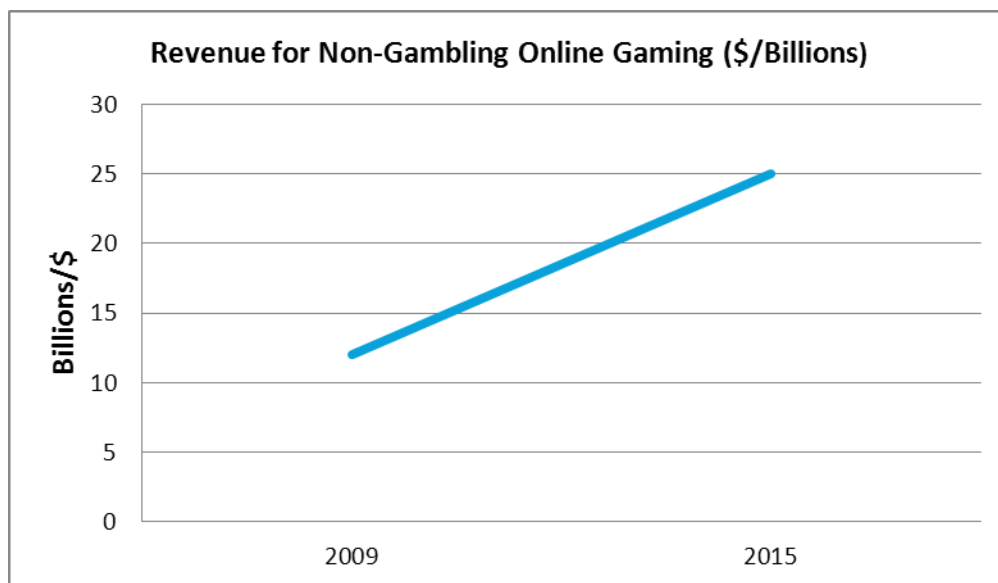
strategic decision making. It is a strategic decision because this issue combines one of the primary missions in Indian Country - the issue of sovereignty - with the international nature of the online gaming business, and because the economic and legal landscape that has been the platform for the current \$26,000,000,000 industry of Indian Country gaming, may be irrevocably altered.

Basic Numbers and Issues



Source: *H2 Gambling Capital*

From the perspective of the number of customers, the online gaming business associated with non-gambling game play is large and growing rapidly. Some basic numbers of the non-gambling online gaming business are as follows:



Revenues for Non-Gambling Online Gaming⁸

Looking at these numbers it can be noted, while overall gambling is expected to grow by about 15% during that period, Internet gambling, from 2009 to 2012, is projected to grow at 38% - more than twice the rate of traditional gambling operations, or approximately 12.5% per year. And revenue from gaming online that is not associated with gambling is expected to grow, from 2009 to 2015, by over 108%, or approximately 18% per year.

Prospective Opportunities for Indian Country Gaming

In 2006, Congress passed the Unlawful Internet Gambling Enforcement Act (UIGEA)⁹. The primary focus of the law was to prohibit the use of financial transactions to facilitate unlawful Internet gambling. In the opinion of many experts in gaming and the laws of online financial transactions, the UIGEA was very poorly crafted, as well as having many other substantive issues, but the intent was to inhibit Internet gambling except as permitted by the Federal or state law. The passage of the law put great pressure on online gambling operators in the US to discontinue their operations.

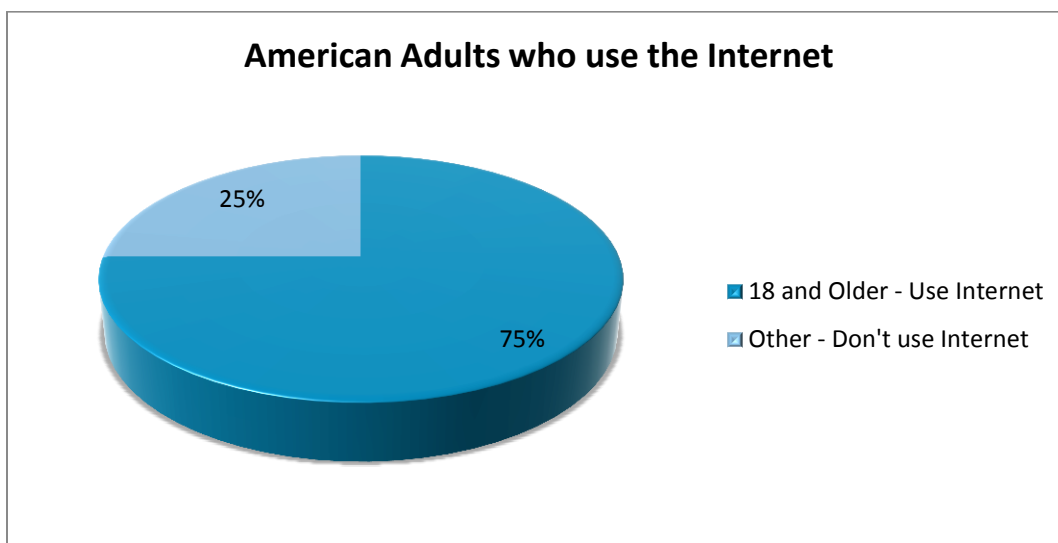
H2 Gambling Capital estimated that in 2006, when the UIGEA was passed, the US offshore internet gambling market was valued at approximately \$6,000,000,000 and that in 2007,

⁸ DFC Intelligence

⁹ http://www.law.cornell.edu/uscode/31/usc_sec_31_00005361----000-.html

that number dropped by one third to \$4,000,000,000. However, for 2010, that number is now estimated to be approximately \$5,700,000,000, or nearly back to the \$6 billion it was at the time of the passage of the UIGEA.¹⁰ The value of global market is approximately \$30 billion.

A few notes about the numbers identified below. First, these numbers presume that all substantive legal prohibitions have been resolved and that online gambling operations, acting within a legal regime that sanctions betting and payments for gambling over the internet, do not put gaming operators in legal jeopardy. As current legal and political discussion pertaining to online gambling in the US this is a very big presumption. But the purpose of this forecast is to establish a baseline for whatever happens affecting the legality of online gambling. Second, these numbers also presume that Indian Country gaming operators, as a group commensurate with the current Indian Country casino operations, are fully committed to achieving competitive success in the online gaming/gambling business. This means that Indian Country gaming operators have established at least one year in advance the necessary online gaming platforms, technology experience, financial transactions infrastructure, have received the appropriate licensing for operations, have received the appropriate approvals for specific online gambling games¹¹, and have established all of the necessary backend support services required for any online e-commerce business.



¹⁰ H2 Gambling Capital, May 2010

¹¹ It is important to note here that the US, as opposed to Europe, has operated by licensing casino gaming operators that do not produce games or content, and also licensing producers of games through a gaming control board; because we do not now know what the legal protocol will be for approved online gambling, the delay caused by either casino licensing or game approval are key variables to any timeline for being ready to “hit the ground running” for any online gambling operator.

Indian Country Gaming Operations Five Year Projection Assuming “Legalization” Excluding Sports Book

Non-Optimum Growth Case Scenario

Indian Country Some Participation vs. Non-Participation

Post Legalization– -Gaming Approved Year 0

Losses Case Excluding Other Changes – Base Revenue \$26 Billion

NOTE: Growth Case Assumes Some of IC Fully Ready at Year 0

Revenue	\$26.79	\$27.96	\$29.84	\$32.84
Gained	\$0.79	\$1.17	\$1.88	\$3.0
Y0	Y1	Y2	Y3	Y4
Lost	\$1.2	\$1.5	\$2.0	\$1.1
Revenue	\$24.8	\$23.5	\$21.5	\$20.4
<i>Net Diff:</i>	<i>\$1.99</i>	<i>4.46</i>	<i>\$8.34</i>	<i>\$12.44</i>

Indian Country Gaming Operations Five Year Projection Assuming “Legalization” Excluding Sports Book

Strong Growth Case Scenario – All In

Indian Country Participation vs. Non-Participation

Post Legalization– Gaming Approved Year 0

Loses Case Excluding Other Changes – Base Revenue \$26 Billion

NOTE: Growth Case Assumes IC Fully Ready at Year 0

Revenue	\$28.3	\$32	\$36.9	\$43.6
Gained	\$2.9	\$3.7	\$4.9	\$6.8
Y0	Y1	Y2	Y3	Y4
Lost	\$1.2	\$1.5	\$2.0	\$1.1
Revenue	\$24.8	\$23.5	\$21.5	\$20.4
<i>Net Diff:</i>	<i>\$3.5</i>	<i>8.5</i>	<i>\$15.4</i>	<i>\$23.2</i>

A Note on Modeling

Predictive modeling is usually based on mathematical and/or statistical methods. This is done with computer software and algorithms (and by other means) so the numbers that result can sometimes present a false sense of detail. The numbers above are the result of proprietary modeling and the best way to read these numbers as with most mathematical and statistical modeling numbers is to round out the numbers to represent a range. For our purposes here, the reader should also assume that assumptions, even ones based on strong empirical data, can still be imperfect so the resulting numbers could be marginally lower or higher, and that we use a range of +/- 5% that is supported by our statistical process, but in this case the bias may be downward.

Other Study Numbers as References

There have been several studies over the past few years pertaining to the potential effects and economic impacts of the online gaming/gambling business. Some of these studies have been made public and a few are following below.

Safe and Secure Internet Gambling Initiative, www.safeandsecureig.org, is a useful website for the consolidation of some of the studies that have been done and information that has been made public. Some of the results they have noted are as follows:

- A. Joint Committee On Taxation (www.jct.gov) published a study in October 2009, stating that the legislation sponsored by Representative Barney Frank (H.R. 2267) combined with the Representative McDermott bill (H.R. 2268) would generate \$42 billion in government revenue over the first ten years of implementation.
- B. Online gambling operations would be by federal license and sports gambling would continue to be prohibited.¹²
- C. The Safe and Secure website also published an executive summary of a study done by Price Waterhouse Coopers that assumed the passage of H.R. 2267 and H.R. 2268 with an effective date of January 1, 2010, and with those assumptions they published the following numbers:

Total Increase in Government Revenues with & without Sports Betting

	2010-2014	2010-2019
H.R. 2267 --Sports Betting Excluded		
High State Opt Out Rate	\$4,637	\$13,049
Low State Opt Out Rate	\$9,186	\$25,852
No States Opt Out	\$17,266	\$48,592
H.R. 2267 with Sports Betting Allowed		
High State Opt-Out Rate	\$5,459	\$15,487
Low State Opt-Out Rate	\$11,238	\$31,941
No States Opt Out	\$22,025	\$62,715

What is very important to note from these numbers is that approximately 60% of the revenue comes from individual income taxes, applicable to employees in Indian Country, 20% is due to the wagering tax, 15% is from the licensing fee, and 5% is due to corporate income tax. So from the perspective of representing Indian Country economic impacts, more than half of the government gain would still accrue to the government even if Indian Country operations gained exemptions from other related taxes.

Source: *Price Waterhouse Coopers* <http://www.safeandsecureig.org/media/pwc09.pdf>

- D. In March 2010, Representative McDermott introduced H.R. 4976. Quoting from the website: “The most significant change from earlier versions of the legislation is a provision that allows each State and Tribal Government to be paid six percent of all deposits placed by residents of their jurisdiction with online gambling operators.”

¹² <http://www.safeandsecureig.org/media/InternetGamblingScore.pdf>

Representative McDermott claims that this would add \$30 billion for the ten year total of \$72 billion to governments.¹³

The Competitive Landscape, Online Gaming/Gambling

This report focuses on the online gaming, its opportunities and challenges specifically as they are being considered by the leadership of Indian Country gaming. But in looking at the opportunities and challenges presented by online gambling, it is important to compare some of the basic data for online gaming and online gambling, and traditional wagering and casino gambling.

Overview of US Gambling

70%	- of US adults did some type of wager (2009)
\$900 billion	- total dollars wagered (2009)
\$80.5 billion	- retained by gambling organization ¹⁴ (2009)
25%	- of US population visited a casino at least once per year ¹⁵
56%	- of gamblers were 45 years or older
3%	- of gamblers were between ages 21 and 45

As for frequency of visitation, the Harrah's study states that there is an average of 6 visits to a casino per year and that there were approximately 322 million total visits for the year. For people to be potential customers for any online business, those people must first be people that are not averse to going online and who have the means to go online. 75% of American adults (18 or over) use the internet. 60% of Americans use broadband connections at home. 55% of Americans connect to the internet via wireless connections, e.g. WiFi, WiMax, data enabled cell phones, PDA's, wireless laptops and netbooks, etc.¹⁶

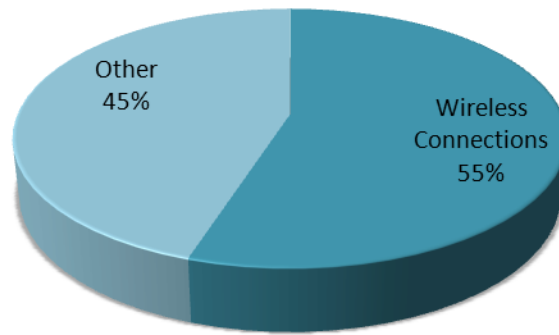
¹³ http://www.safeandsecureig.org/news/press_releases/10-03-25_McDermott.html

¹⁴ Richard K. Miller & Associates – Casino Report 2010

¹⁵ http://www.harrahs.com/images/PDFs/Profile_Survey_2006.pdf

¹⁶ Pew Internet and American Life Project, January 2010

How Americans are Connecting to the Internet Today



Some General Numbers for US Non-Gambling Online Gaming¹⁷

- 42% - of households participate in mobile gaming
- 58% - of online gamers are male
- 17% - of most frequent gamers pay to play online
- >18 million - daily active users of Farmville on Facebook¹⁸
- 25% - are under 18 years of age
- 49% - are 18 to 49 years of age
- 26% - are age 50 or older
- 23% - of adults play games online

¹⁷ Entertainment Software Association, Essential Facts 2010
http://www.theesa.com/facts/pdfs/ESA_Essential_Facts_2010.PDF

¹⁸ TechCrunch, June 2010 <http://techcrunch.com/2010/06/22/zynga-frontierville/>

The 2009 US Census Survey showed there were approximately 117 million households.¹⁹ Therefore it can be estimated that the number of people playing games on wireless devices in the United States as somewhere in the range of 45 million or more. When we compare that 45 million with the number of people going to a casino at least once per year (25% of the approximately 200 million people 21 years or older) it can be concluded that just for mobile gaming there is a number similar to the number of people going to a casino once per year.

The Harrah's study states that the average number of casino visits is about six per year. Online gaming is far more frequent. As another check on the data and the numbers, Pew also reports that 23% of adults in the US play games online; so if we cross check that number with the more than 200 million people 21 or older in the US, we get a number that is also in the 45 million range.

For 2009, the popular online gaming company Zynga, reported that there were approximately 9 million *daily* active players just for its games. That number for 2010 is now over well 21 million daily active players, which is more than 100% growth in one year. Again, referring back to the casino number from the Harrah's report - there were 322 million total visits for the year. Of course, online gamers playing very casual games online will not all become gamblers, but some will become Internet gamblers and perhaps brick and mortar gamblers. There are billions of visits to online non-gambling game plays sites every year and it is merely a matter of access by gaming companies to customers where any form of online entertainment will in many cases have first call at the entertainment dollar. And using the data it is reasonable to infer that if 25% of the current US population can be described as casino patrons (as the Harrah's study does) and assuming a standard distribution of the population, it would not be unreasonable to assume that 25% of casual gamers could become gamblers online. Combine that number with the ease of online and mobile online access and the massive frequency of game play online relative to casino visitations, it is also not unreasonable to assume that there is a strong potential for high frequency online gambling. In any cases we are talking in terms of tens of billions of visits online compared to approximately a third of a billion visits offline.

The Journal of Academy of Business and Economics published a study comparing the behavioral and psychographic of land based vs. online gamblers with the following conclusions²⁰:

- A. Online gamblers engaging in casino table games significantly more times per month than traditional casino gamblers.
- B. Virtual cash (money paid online) has a lower psychological value than real cash.
- C. Gamblers on the internet play more frequently and for longer periods of time.
- D. Motivations for online gambling were identified as ease of access, flexibility of use, 24 hours availability, large gambling choices, demonstration games, social acceptance, response to advertising and anonymity.
- E. Online gamblers were identified as younger, with above average income.

¹⁹ http://www.census.gov/hhes/www/cpstables/032010/hhinc/new06_000.htm

²⁰ Goeffrey Lee & Robyn McGuiggan, Journal of Academy of Business Economics, January 2008.

- F. Traditional gamblers have a higher value for social activity and atmosphere than do online gamblers.
- G. Online gamblers have the perception that online gambling has a higher chance of winning, is more exciting, is less dangerous and more in their control.
- H. The conclusion was also reached that much more study in this area with larger sample groups should be done.

So two attributes that online gamers and online gamblers have in common are greater frequency of play and ease of access. It is also known that online gamers are demographically younger than the average casino customer. Therefore, it is not unreasonable to suggest that new customers for gambling will be predominantly younger and be more willing to spend high frequency time online.

An interesting example of the frequency comes from Elliot Jacobson who runs a California based company called Certified Fair Gambling. “The number of rounds online as compared to land-based casinos would knock your socks off,” said Mr. Jacobson. “I have seen casinos that will get 10 million or more spins in a month on one of their online slot machines because you can essentially have an unlimited number of people playing the games. So the volume is extraordinary, and you want to drive player loyalty a lot more.”²¹

Trends towards mobile gaming also support high frequency and longer lengths of time in game play – both being attributes online gamblers and online gamers. Mobile gambling is now a very real issue. American Wagering Inc. now has approval for the Nevada use of a Blackberry application that will facilitate sport betting via Blackberry. The company states that applications for Droids, iPhones and Windows based phones will also be launched soon.²²

For Indian Country gaming operators, studying the model that American Wagering has established may prove beneficial. American Wagering operates the Leroy’s Sportsbook brick and mortar facilities in over 50 outlets in Nevada. To sign up for the mobile sports betting service the customer goes into one of land based sites. From an Indian Country perspective, mobile gambling on Indian reservations or, in some cases, Indian owned property, would be similar to Leroy’s operating in the state of Nevada. And if the state of Nevada can authorize gambling in cell phones within their state jurisdiction, why couldn’t Indian nations do the same?

From 1999 to 2006, the growth in revenues in Indian Gaming was a remarkable success story. From 2006 through 2009, the growth rate declined and in 2009 there was a slight reduction in revenues. These are the official numbers, rounded, from the National Indian Gaming Commission. (*See Chart Below*)

²¹ <http://www.theglobeandmail.com/news/national/british-columbia/british-columbias-high-stakes-bet-on-online-gambling/article1696107/>

²² http://www.responsiblegambling.org/staffsearch/library_news_results_details.cfm?intID=12798

Indian Gaming Revenues with Percent Changes

Year	Revenue	Percent Change
1999	\$9,800,000,000	
2000	\$11,000,000,000	12%
2001	\$12,800,000,000	16%
2002	\$14,700,000,000	15%
2003	\$16,800,000,000	14%
2004	\$19,500,000,000	16%
2005	\$22,600,000,000	16%
2006	\$24,900,000,000	10%
2007	\$26,100,000,000	5%
2008	\$26,700,000,000	2%
2009	\$26,500,000,000	(-1%)

As the chart above shows, gaming revenues for Indian Country fell slightly in 2009, but relative to commercial casinos in Nevada (where revenues declined 10.4% in 2009²³ - the largest percent decline in the history of Nevada) Indian Country gaming fared reasonably well. Just this month the New York Times headlined an article stating: “Las Vegas Faces its Deepest Slide Since the 1940’s”²⁴ Comparative July monthly wins for Nevada in 2010 (\$10.392 billion) are in the range of what it was in 2004 (\$10.562 billion).²⁵

There are indications that traditional casino gaming revenues will not make a substantive improvement in the US for the calendar year 2010. But what about gaming revenues in the rest of the world? In Macau, it is reported that gross gaming receipts are up 60% for the first nine months (ending September 2010) to total of \$16.5 billion.²⁶ Chinese investors appear to have also calculated that the North American region still has gamblers willing to travel and bet. This was confirmed when the Chinese Export Import Bank investing \$2.5 billion to build a new

²³ <http://www.lvrj.com/news/gaming-revenues-fall-by-biggest-percentage-ever-84117117.html>

²⁴ <http://www.nytimes.com/2010/10/03/us/03vegas.html>

²⁵ http://gaming.unlv.edu/media/longterm_nv gaming.pdf

²⁶ http://www.macaunews.com.mo/index.php?option=com_content&task=view&id=1047&Itemid=45

casino in the Bahamas.²⁷ H2 Capital projects that gambling in Europe will grow from approximately \$110 billion in 2009 - to approximately \$121 billion in 2010 (estimated based in 1.35 conversion rate of Euros to Dollars). H2 also projects that as a share of the total worldwide gambling market, online gambling will grow from 7.9% in 2009 to 9.5% in 2012.

Examining the competitive landscape that Indian Country gaming is facing, it is important not only look at traditional commercial gambling and the emerging online gambling enterprises, but also the fact that online gambling has at least two variants: computer based online gaming and mobile gaming. Mobile gaming defined as gaming done on portable devices such as data enabled cell phones. Changes in technology cell phones now allow for multi-media interactions. It was likely gaming would follow – and in fact it did. There are a great deal of non-gambling based video gaming that have been placed on portable devices for several years, but in the past few years lotteries and mobile enabled casino type betting has move swiftly to the portable platforms. Juniper Research now reports that mobile gaming wagering will surpass \$48 billion by 2015.²⁸

Year 2009 to 2012 Gaming Revenues – US Dollars

	2009	2012
Indian Casinos	\$26.3 B	???
Com. (US) Casino	\$30.7 B	???
Global Online Gaming	\$26.6 B	\$36.5 B
Global Gaming	\$335 B	\$385 B

Note: Indian Gaming Revenues Highest Point in 2008 at \$26.7* Billion
 Commercial Casinos Revenues Highest Point in 2007 at \$34.13 Billion

State Based Commercial & Other Casino Type Competition

Nevada and New Jersey are clearly the states with the most significant commercial casino businesses, but it has been a long time since they were the only ones. Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Missouri, Pennsylvania and South Dakota all now have some type of legalized commercial casino. It seems likely that these types of legalized commercial casinos will continue to grow as political environments change where state governments are more and more willing to change laws to generate revenue.

In addition to the increasing state based commercial casinos, there is also the racino business that has grown significantly in the past several years. New York, Florida, Minnesota, Delaware, Iowa, Oklahoma, New Mexico, Indiana, Maine, Rhode Island and West Virginia all have racinos. Racinos can have video lottery terminals (VLT's), variants of poker, and some table games. Racinos combine the casino type gaming with horse-racing, simulcasting and traditional casino-type amenities in an attempt to deliver a casino experience to customers without being a traditionally licensed commercial casino.

²⁷ <http://ggbmagazine.com/issue/vol-9-no-9-september-2010/article/china-backs-bahamas-casino>

²⁸ http://www.juniperresearch.com/reports/mobile_gambling_markets

While much of the discussion about online gambling legalization has centered upon the Federal government and/or assertions of Indian Country sovereignty, there have been several efforts at achieving intrastate approvals for online poker and other online gaming within individual states. And certainly there are groups both in favor of and opposed to online gaming whether it be approved federally, intrastate or via some other legal regime. Intrastate online gaming is an option where the political will and funding is supportive.

The Barney Frank Legislation

H.R.2267

Title: Internet Gambling Regulation, Consumer Protection, and Enforcement Act

Grants the Secretary of the Treasury regulatory and enforcement jurisdiction over the Internet Gambling Licensing Program established by this Act.²⁹

- Prescribes administrative and licensing requirements for Internet betting. Prohibits any person from operating an Internet gambling facility that knowingly accepts bets or wagers from persons located in the United States without a license issued by the Secretary.
- Requires the Secretary to assess: (1) fees against licensee institutions to cover the cost of administering this Act; and (2) specified civil money penalties upon licensees or other persons for willful violation of this Act or related regulations.
- Cites safeguards required of licensees, including: (1) tax collection related to Internet gambling; (2) safeguards against fraud, money laundering, and terrorist finance; and (3) safeguards to combat compulsive Internet gambling.
- Requires the Secretary and any qualified state or tribal regulatory body to prescribe regulations for: (1) development of a Problem Gambling, Responsible Gambling, and
- Self-Exclusion Program; (2) a list of persons self-excluded from gambling activities at licensee sites; and (3) a program to alert the public to the existence, consequences, and availability of the self -exclusion list.
- Prohibits a person who is prohibited from gambling with a licensee from collecting any winnings, or recovering any losses that arise as a result of prohibited gambling activity.
- Shields a financial transaction provider from liability for engaging in financial activities and transactions on behalf of a licensee, or involving a licensee, if such activities are in compliance with federal and state laws.
- Permits states and Indian tribal authorities to opt-out of Internet gambling activities within their respective jurisdictions.

²⁹ Thomas.gov

- Prohibits electronic cheating devices.
- Subjects violators of this Act to civil and criminal penalties.

Current Status of Legislation:

7/29/2010: Ordered to be Reported (Amended) by the Yeas and Nays: 41 - 22.

The Senator Robert Menendez Legislation

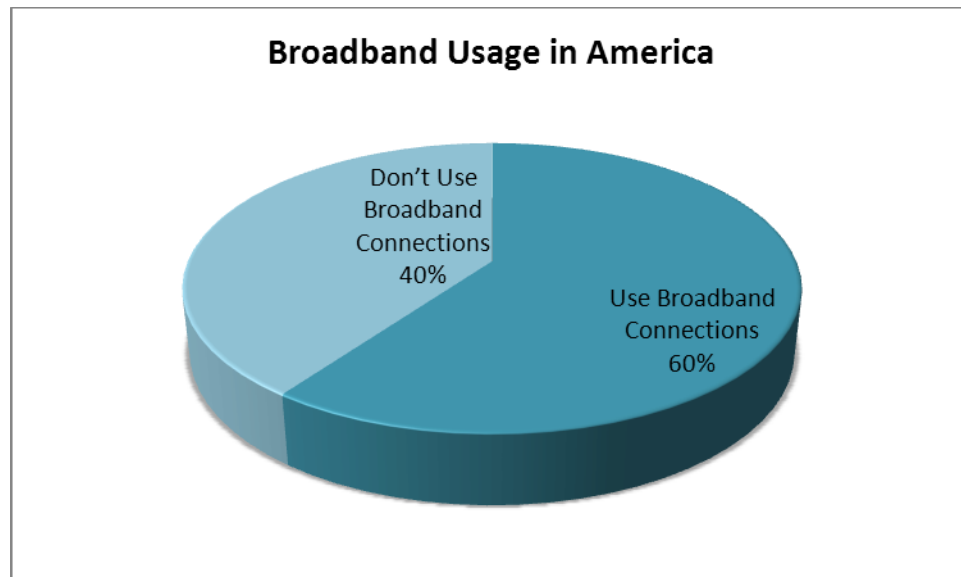
S.1597

Title: Internet Poker and Game of Skill Regulation, Consumer Protection, and Enforcement Act of 2009³⁰ (Never reported to the floor)

- Prescribes federal administrative and licensing requirements governing Internet game-of-skill facilities. Vests the Secretary of the Treasury with regulatory and enforcement jurisdiction over such facilities. Prohibits any person from operating an Internet game-of-skill facility that knowingly accepts bets or wagers from persons located in the United States without a license issued by the Secretary.
- Requires the Secretary to impose: (1) fees upon licensees to cover the cost of administering this Act; and (2) specified civil money penalties for willful violation of this Act or related regulations.
- Cites safeguards required of licensees, including: (1) collection of customer and licensee taxes related to Internet games of skill or game-of-skill facilities; (2) safeguards against fraud, money laundering, and terrorist finance; and (3) safeguards to prevent compulsive Internet betting or wagering.
- Requires the Secretary to prescribe regulations for: (1) development of a Problem Gaming, Responsible Gaming, and Self-Exclusion Program; (2) establishment of a list of persons self-excluded from gaming activities at licensee sites; and (3) a public awareness program about the availability of the self-exclusion list.
- Prohibits a person who is prohibited from gaming with a licensee from collecting any winnings or recovering any losses that arise as a result of prohibited gaming activity.
- Shields a financial transaction provider from liability for engaging in financial activities or transactions in connection with bets permitted under this Act and the Interstate Horseracing Act of 1978
- Permits states and Indian tribal authorities to opt-out of Internet gaming activities.
- Prohibits wagers on games of chance and sporting events.

³⁰ Thomas.gov

- Requires the Director of the Financial Crimes Enforcement Network to give the Secretary a list of unlawful Internet gambling enterprises.
- Amends the Internal Revenue Code to impose upon licensees: (1) a federal Internet gaming license fee; (2) a state or Indian tribal government gaming license fee; and (3) specified tax return and recordkeeping requirements.
- Establishes the State and Indian Tribal Government Gaming License Fee Trust Fund.
- Subjects to tax withholding pari-mutuel pool winnings and net Internet gaming winnings (including those of nonresident aliens).
- Exempts certain gaming proceeds from taxation by either a state or Indian Tribal Government receiving appropriations from the Trust Fund.
- Amends the Public Health Service Act to authorize: (1) treatment programs for pathological gambling; and (2) grants for comprehensive education, prevention and treatment services for problem and pathological gaming.
- Directs the Secretary to carry out a national campaign to increase public awareness of problem gambling.



Key Elements for Decision Making

I. Technology and Skills Development

The assumptions for online gaming and business revenue growth include a presumption that a substantial number of Indian Country gaming operations have proactively decided to

invest the capital and other necessary resources well before full legalization has been achieved. This is necessary for several reasons, the most significant of which is that building and operating an online e-commerce business requires a separate and distinct set of skills. While there are many similarities between the casino gaming business and the online gaming business, there are just as many - or more – differences.

For example, the technological infrastructure for operating an online business with complicated software, millions of interactions, online financial transactions, internet related data base, server and network issues, technical support, in-game support, customer support, software upgrades and changes, as well as, managing things like Terms of Service (TOS), age verifications and online privacy and data management issues, require a well-trained and highly skilled group of managers, technology experts, customer service specialists and operators. Developing that kind of infrastructure is costly and time consuming and is not for the faint of heart.

The fact is that many Indian Country casinos that are reasonably large are already very technology savvy and have smart and sophisticated technology personnel, so building a new tier of technology support services is not entirely new. There is no reason to believe that highly successful and intelligent management and staffs that operate Indian Country gaming have any less of an opportunity to be successful in online game that would the commercial operators.

Technology and Process Platforms – Back End Services

Some of the most critical work that can be done at this time by leadership of Indian Country gaming is to be certain that they and their organization are fully knowledgeable about building and managing an online business. Certainly this is important to know if a decision is made to move forward with Internet gaming, but even if that decision is not clear, a thorough understanding of the technology and processes involved with online business are critically important to establishing a valid decision making process.

In brief, the basic components of an online e-commerce business supporting millions of transactions are as follows:

1. Hardware and Network Architecture
2. Network operating systems and engineering
3. Financial Transactions Processing
4. The make-buy decision making process for game development and upgrades
5. Customer Relationship Management(CRM)
6. In-Game support operations – this is basically enforcement technologies and mechanisms for enforcing Terms-of-Service and in-game security management.
7. Technical support operations

The back end services for online gaming are an integral part of evaluating and building any online business. And for Indian Country gaming specifically, with its mission to support and

enhance economic development in all of Indian Country, these back end services operations can provide not only a solid supporting infrastructure for the business of Internet gambling and promotional online gaming. They also provide opportunities build key competencies in Indian Country that can provide jobs and further, highly profitable economic development in Indian Country.

While there are numerous currently existing companies with which Indian Country businesses can partner to support online financial transactions, Indian Country leadership may want to do make - vs. - buy analysis for this very important part of the online business. The first reason for this is that the financial transactions operations business has sold operating margins, generally in the 20% range. The second reason is that security and financial management systems are not typically part of what traditional casinos have outsourced. The third reason is that building good financial transactions systems is something that a well-funded group from Indian Country gaming business could do in a consolidated manner to support multiple Indian gaming businesses, further adding to the economic development in Indian County.

Customer Relationship Management (CRM) is in some way a function that most large Indian Country gaming businesses already have some proficiency within their affinity program. Doing CRM interactively online is an added segment to the business, but much of the current software being used in CRM functions is readily subject to integration with purchased CRM software packages from Oracle, SAP, Microsoft or other providers. Further, strong and highly competent CRM is key business driver for customer acquisition, customer loyalty and customer retention.

Technical support and in-game support can be labor intensive businesses, but not nearly as labor intensive as a traditional casino floor. But once again, these back end services business present Indian Country leadership with an outstanding opportunity to build highly profitable Internet gambling and online gaming businesses while concurrently supporting economic development in Indian Country. Online and telecommunications call centers can be built strategically throughout the US on Indian land and can be strong contributors to job development in Indian Country.

II. Internet Casino Gaming – ex Financial Transactions - as a Marketing and Business Development Tool

As we noted above, if Indian Country enterprises do decide that they want to participate in Internet gaming, they will need to develop, preferably previous to legalization, a considerable new infrastructure to support Internet gaming. The capital investment and requirements for management time and resources make this a very substantial and expensive process. To monetize that investment in both capital and management and other resources, it would be imperative for the business plan to include a very strong and sophisticated marketing and business development plan that would work to improve revenue and profits from the traditional casino operations.

Many Indian Country casinos are already heavily invested in using social networking tools like Facebook and Twitter as marketing tools. These efforts would be integrated with the new gaming sites to develop customer loyalty and increase customer retention, as well as identifying

and marketing to new segments of the population that are potential customers, either online, traditional or a combination of both. Indian Country casinos have excellent personnel managing their affinity programs, marketing and advertising. And given these excellent personnel new products and services to sell would be accretive to the current marketing and advertising programs as they work to build the traditional business as well as bringing in new customers.

Another way of monetizing the investment is by the use of powerful and aggressive e-commerce tools. Virtual goods, virtual real estate and gaming properties get denominated in a virtual currency or points that, in the end, can only be used when exchanged and actualized by real currency. This is not new. There are numerous sites that currently do this. An example of this is called the Free 2 Play or F2P market. The basic system used is that the user downloads a game for free and then they have options to buy virtual goods or upgrade their subscriptions. These games are different from browser based games, but they are still predicted to have near 130 million users by the end of 2010 and to produce over \$2 billion in revenue.³¹

Online interactions with customers, whether they are Internet gamblers, casual online gamers or just folks clicking on an ad or seeing a marketing site, are all excellent sources of collecting business and customer intelligence. Both behavioral and attitudinal measures can be used via online measuring and data collections systems that can be used to improve not only online interactions but also to improve the business for the traditional gaming in the casino.³²

III. The Prospect of Traditional Casinos Losing Business to Online Gaming

Being aware of the enthusiastic discussions that have taken place in Indian Country pertaining to online gaming, we cannot dismiss the concern that traditional Indian Country casino business may be at risk from online gaming. Will online gaming affect traditional casino gaming? The answer is yes.

Whether or not Indian County gaming operations pursue online gaming, there are hundreds if not thousands of other enterprises that will. There is significant new competition for the customers of traditional casinos. Some of that competition is from non-Indian commercial enterprises, some from enterprises sponsored by states like racinos or improved and more technologically sophisticated lotteries, and some is in the form of Internet gaming. In addition, other entertainment and computer companies may transition from social Internet gaming to full blown Internet gambling.

Gaming and casinos are entertainment. Competition for a share of the entertainment customers' wallet has demonstrably increased with the growth of gaming technology, both Internet and "brick and mortar." **More than 50% of both Internet and casino gamblers are between the ages of 30 and 59, so clearly there is an intersection of these two groups.**

That the traditional casino patron skews towards the older demographic and that the younger demographic spends more of its entertainment time and socialization time online. Online gaming is a technical development that, along with the internet will forever alter the entertainment options that gaming patrons have.

³¹ DFC Intelligence

³² The Value of Relationship Strength in Segmenting Casino Operations, Journal of Interactive Advertising, 2004

There are two business analogies that are instructive on this issue. The first is the technology changes that forever altered the silver historical film business. For over 80 years Eastman Kodak Company was a dominant player in the film/imaging business. When electronic imaging technology was developing rapidly in the mid to late 1980's, the R&D people at Kodak were the world leaders in understanding exactly what was happening in the technology and what would eventually happen to the much more costly and materially intensive silver halide film business. For whatever reasons, the senior management at Kodak did not fully embrace the new technology. Much of the discussion was focused on holding on to the current customers with the old technology. The result has been that Kodak is a mere shadow of what it used to be in the photography business. Its revenues have diminished substantially and its eventual destiny is uncertain.

Another business analogy is the retail stock brokerage business. This is a story an industry that did adapt to the technology. Years ago, retail buying and selling of stocks required a visit to your stockbroker or at least a phone call and a discussion. Internet enabled online technology, as well as some other legal changes, empowered individual investors to manage their own accounts. But what the successful brokerage companies did was to change the way they interact with their customer. Advice and services were available online via a menu. Customers can now use the old line traditional methods to trade, they can interact online with brokerage research specialist and information, or they can fly solo. But the fact is that the technology that empowered the customer has led to there being more trades than ever. And those brokerage companies that adapted or that were created to service the new market gained both customer and new revenues.

Above, in "Prospective Opportunities for Indian Gaming," we noted our proprietary economic impact analysis based on our proven models for Indian Country gaming. Here, using similar methodology, we note the economic impact analysis for non-participation in the Internet gaming market, with the following assumptions:

- A. Legislation substantively similar to the current Barney Frank proposal is passed;
- B. There are no existential threats or revenue affecting material changes to the current land-based Indian Gaming market, either negative or positive, except for the advance of Internet gaming;
- C. Substantively all of the current Indian Country gaming operations have not made the necessary management commitment and capital investment necessary to be competitive in the Internet gaming market;
- D. Substantively all of the current Indian Country gaming operations have not developed and actively implemented high-end, technology intensive online marketing, customer retention or customer acquisition campaigns

With the above assumptions, we predict the following vulnerabilities for Indian Country gaming operations:

Revenues and Jobs at Risk

	Yr. 1	Yr. 2	Yr. 3	Yr. 4	Yr. 5	5 Yr. Cumulative
Revenues at Risk (Billions \$\$)	\$1.2	\$1.5	\$2.0	\$1.1	.90	\$6.7
Direct Jobs at Risk	10.7k	14.6k	19k	12.1k	8.2k	64.6k

IV. Frequency of Play and Elasticity of Demand

Traditional casino customers make an average of 6 trips to the casino each year and there are a total of approximately 320 million total trips to the casino's in the US each year. The following are key attributes of online gamers/gamblers a.) they play more frequently and for higher durations of time; b.) they engage in casino table games significantly more times per month than traditional casino customers; c.) virtual cash has a lower psychological value than real cash, and d) there is a perception of a higher chance of winning when playing online.

In 2009, Morgan Stanley did a major report on e-commerce and that had several finding elasticity of demand, and they found that gambling was twice as vulnerable, i.e. more elastic, than was demand for an Internet connection, and much that demand for gambling was also much more vulnerable than demand for a mobile phone. Second, they found that consumers spend more, not less, time on the Internet during difficult economic times. Clearly, a reasonable conclusion from these, and other findings we note in the report, is that, generically, **customer retention and loyalty may be significantly higher for online gaming than for traditional gaming**. Accordingly, promotional Internet gaming may be a key customer loyalty and marketing tool for brick and mortar casinos.

Simulated Conjoint Analysis

We strongly recommend a substantial customer analysis to be undertaken to identify the value that current and prospective customers have on the primary satisfaction attributes for gambling, gaming, and entertainment. One of the best ways to get highly valuable and truthful information from customer is to do what is called conjoint analysis.

Typically, conjoint analysis is used to determine what attributes new products should have and how those products should be priced. The value of pricing information obtained from conjoint analysis is particularly important because data has shown that mere, straight forward customer surveys about pricing for products do not generally produce accurate results. Conjoint force customers to trade off values and attributes they intrinsically understand and thereby delivers more accurate results about value and pricing. We believe that in the gambling market, where perceived actual monetary value is a product attribute, conjoint is a very useful tool.

In no way do we believe that this simulated conjoint analysis has near the value of a costly, actual empirical study with a statistically significant population sample. But because we have over seven years of data pertaining to Indian gaming product attributes and characteristics related to revenue generation from our annual revenue forecasting and economic impact analysis, we believe there is material value to using that data to, in effect, simulate a conjoint study using our economic impact models modified to allow for changes in product attributes. Along with the

product attribute data from Indian Country gaming, we have added a few other attributes that have been reliably associated with online game play outside of the gambling business

From our experience, we know that there are several product attributes valued by the traditional Indian Country gaming customer, and they are, with weighting noted:

1. Casino environment expectations (12%)
2. Entertainment value (18%)
3. Perceived win probability (50%)
4. Accessibility (9%)
5. Fairness (11%)

We also added the following additive online gaming product attributes:

1. Reliability (50%)
2. Customer support (25%)
3. Speed of play i.e. response times (25%)

Note: While we know that “social experience” is highly valuable in both the traditional and online gaming markets, we were not able to simulate with any veracity value based trade-offs for it in our modeling because a lack of high quality data about the social experience not only inside traditional casino gaming but also for Internet gambling.

Using the above product attributes, we did the following:

Assuming I have some time and inclination for casino gambling, where is it more likely I will play today?

Our results are reported by age group, we did not differentiate between male and female.

	Traditional Casino	Online
Age 21 to 35	16%	74%
Age 35 to 45	37%	63%
Age over 45	81%	19%

VI. Regulatory Issues

Whatever legal regime that eventually becomes law for online gaming will have some type of regulatory requirements. The current regulatory regime for Indian Country gaming is primarily based on the National Indian Gaming Commission, as well as the state agencies involved with tribal casinos either through compacts or other relationships. As for self-regulation, in Europe they have a private organization, e-Commerce and Online Gaming Regulation and Assurance (e-COGRA) that work cooperatively as an industry regulation body.

Certainly, Indian Country in the US could create something similar to provide customers with an assurance of safety and ethical conduct. Currently Indian Country gaming spends over \$300 million on regulation. Online gaming will present new issues and new costs.

The process for state regulated gambling has been to license the casinos and then have a separate process to approve and authorize the actual games. Because reputational affect is critical on any online enterprise, it is especially important for any Internet gambling business to not only be honest and operating with integrity, but to also have a reputation that matches that honesty.

One of the key elements that is common to most online customer bases is the ability to change vendors quickly and with very little effort, hence strong regulation either internal or external or a combination of both are an important element for Indian Country gaming. Currently, with the combination of the National Indian Gaming Commission, the regulatory groups managed by the individual gaming operations and other state and federal agencies, Indian Country gaming has created a strong reputation for honesty and integrity. This is another area where Indian Country gaming leadership may want to consider early cooperation to develop and regulatory regime that is efficient and effective.

VII. Recommendations

Internet gaming, is a viable alternative, substitute and complimentary product to traditional casino gaming and entertainment. Certainly, delay in the establishment of a validated and safe legal regime being established by the US government, by some combination of states, and/or by assertions of sovereignty by Indian nations, will slow the progression of the movement of some traditional gaming customers to more online gaming and online entertainment. New and younger current and prospective customers for gaming increasingly socialize and play extensively online, and because gaming is entertainment most of which does require gambling, the younger demographic will continue to grow its space in the online world. Also, the international acceptance of online gaming and the continuing advancement of online technology are strong market drivers that will likely influence legalization efforts. As Internet gambling continues to develop, it will continue to present market challenges to traditional Indian County gaming.

To compete effectively and successfully in developing Internet platforms, Indian Country operators need a strategy for promotional Internet gaming, need to examine foreign marketing opportunities and need to build their access to a younger player base. Regional demographics and business climates will certainly continue to differentiate the operational results for Indian Country gaming, yet throughout the US, Indian gaming operators need to engage in Internet strategies to maximize business opportunities whether as promotional gaming or as full blown Internet gambling where legalized.

Marshall McLuhan was a Canadian educator and writer. In the 1960's he made popular the statements/terms: "The medium is the message" and "global village" and "electronic interdependence." If there is only one conclusion of this report, it is that the medium, in this case, online gaming and entertainment, is the message. The customer base for gambling and for nearly all forms of entertainment now has a new location, and that location is online. Being online means quick and low cost access, rapid response, and innumerable choices and options. And the fact is that much of the current customer base and nearly all of the future customer base for gambling does and will continue to live much of its life online. For Indian gaming, development of Internet marketing, outreach, and capability is essential.

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Glossary/Definitions

Guidance for the report as to definitions:

Gaming: - as a synonym for gambling – playing games of chance for money;
- playing games of skill, like Poker or other skill based games for money.

Promotional Gaming: is the playing of games of chance or skill for competitive fun or promotional prizes and others forms of value.

Gambling: Wagering of money or items of value either in games of chance or in skill-based games.

Indian Gaming: Casino and other gaming operations owned by Indian nations, including the classifications set forth by the National Indian Gaming Commission (NIGC) as Types I, II, III.

Online Gaming: Gaming taking place over the Internet or intranet, for an example in a specific location, or within a specific business enterprise, or even, as in mobile sports betting like in Nevada, within a state.

Mobile Gaming: Internet/Online gaming that is done via mobile platforms such as mobile phone, PDA's, hand held gaming consoles and other various mobile platforms.

Traditional Gaming: Land-based, or Brick and Mortar gaming environments i.e. Indian Casinos, the Las Vega Strip; or Atlantic City, etc.

Commercial Gaming: For our purposes, all gaming that is not part of Indian Country operations that is privately owned.

State Based Gaming: Gaming managed and controlled by the state, such as lotteries, or in the case of actual online casino gaming, as in Canada, British Columbia.

Racinos: Generally these are state authorized private entities that use state legal state lottery protocols to operate Video Lottery Terminals, (VLT's), and some types of table games. Usually they are part of horse-racing or dog racing facilities that also do simulcasts from other racetracks.

Note: In the report, for the sake of simplicity the term *gaming* will be used as the primary terminology for describing casino gambling, Internet gaming for money and Internet gaming not directly for money. Where appropriate, gambling for money will be differentiated from non-money based gaming.

Appendix: Methodology

Economic impact assessments are meant to measure the effects of businesses or industries or other economic events within the bounds of geographies or other entities with identifiable boundaries. Economic impacts can be positive, negative or they can mitigate other impacts be they positive or negative.

Economic impact analysis is an important tool that is used by both business and government to make decisions about new projects, capital investments, the historical effects of past development and the potential effects of a new line of business or government project. For this project, we used traditional economic impact multipliers and our proprietary revenue forecasting models specifically develop and revised for Indian Country gaming over the past seven years.

As briefly noted above, economic impacts can be direct, indirect or induced. Direct impacts are generally the most obvious such as direct payroll or purchases or taxes paid. Indirect impacts are those generally associated with new business to suppliers of products or services; this new demand is in effect a multiplier on the original capital investment and the ongoing operations of the business being analyzed. Where direct and indirect positive economic impacts, there are positive wealth effects in those communities and industries that are in economic sphere of the growing enterprise and these are the induced effects. The total economic impact aggregates the direct, indirect and induced impacts into one analysis.

For this study we used multipliers from the Regional Input/Output Modeling System (RIMS II) maintained by the U.S. Department of Commerce's Bureau of Economic Research as well as a software package called IMPLAN. Multipliers are derived from mathematically from empirical data pertaining to specific geographies, industries and other attributes of economic systems.