

A proposal for regulation of peer-to-peer contests of skill played online for real-money prizes in Nevada

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OBSERVATION ONE: Peer-to-peer skill-based contests played for real money prizes represent a new product class that is growing and evolving rapidly.

1. Peer-to-peer (P2P) skill-based contests played online for real money are not a new phenomenon. But the prevalence and size of such contests in the U.S. are accelerating dramatically thanks to a variety of market forces, including: smartphone penetration, platforms such as Facebook and the App Store that facilitate widespread game distribution and easy acceptance of micropayments, and the burgeoning casual games (e.g., Candy Crush) industry.
2. Skill-based contests that allow players to pay an entry fee to compete against one another for cash prizes come in various forms and flavors, ranging from chess to Wheel Of Fortune to daily fantasy sports (DFS) to Bejeweled.
3. Such contests:
 - a. Are mass market products in that they are exposed for real-money play in the vast majority of U.S. both by number of states (36 to 45, depending on the nature of the game, the legal opinion, and risk tolerance for a given operator) and percentage of the population.
 - b. Are generally subject to either no regulatory oversight or, in the case of DFS, "light-touch" regulatory oversight in a handful of states.
 - c. Have a relatively low barrier to entry from an operator standpoint:
 - i. There is low-to-no regulatory cost involved.
 - ii. Third-party services allow a real-money contest feature to be "bolted-on" to nearly any type of P2P game.
 - iii. The cost of bringing a P2P game to market has dropped significantly in recent years as game development, payment processing, marketing, and other core launch and operational costs have all diminished.
 - d. Will collectively generate in excess of \$4bn in handle in 2016 (including DFS), or roughly the equivalent of total legal sports betting handle in Nevada.
4. Considering the above, it is likely that we will see new and varied formats of P2P skill-based contests played for real money emerge consistently and disseminate rapidly in the years ahead. Evidence of this trend in the present can be found in the rapid rise of formats such as daily fantasy sports, esports platforms that allow players to compete in popular video games for money, and casual games such as those offered by GSN.
5. While not considered gambling in most states, P2P skill-based contests played online for real money:
 - a. Share many characteristics with gambling.
 - b. Raise similar consumer protection issues.
 - c. Likely compete with traditional gambling games for consumer wallet share and mindshare.

OBSERVATION TWO: The growth of peer-to-peer skill-based contests played for real money prizes creates a number of issues for Nevada.

1. There appears to be a lack of clarity regarding what type of online P2P skill-based real-money contests are permissible under Nevada law:
 - a. While DFS operators were instructed to exit Nevada, high-profile operators such as GSN Games that offer casual skill-based contests (Solitaire, Match 3, etc) for real-money play continue to accept customers from Nevada.
 - b. Even platforms offering essentially the same types of contests take different approaches to Nevada. GamerSaloon and Esports Hero both allow players to pay an entry fee to compete head-to-head across major video game titles for cash prizes; the former accepts players from Nevada while the latter does not.
2. Nevada is becoming a regulatory island as more states assert (primarily via DFS legislation) that P2P skill-based contests can be regulated in a manner similar to gambling products without being legally classified as gambling (most DFS bills passed in 2016 explicitly define the permitted activity as not gambling). This includes states with established commercial gambling industries and regulatory bodies (e.g., Indiana and Mississippi).
3. Operators of P2P skill-based contests are disincentivized from participating in Nevada's regulatory structure:
 - a. Many operators appear to believe they are not required to submit to oversight / licensure in the status quo.
 - b. If an operator does conclude that they are required to submit to oversight / licensure, it is likely (given current regulatory conditions) that they would exit the market instead:
 - i. Nevada is a small market within the context of a product available in 36+ states.
 - ii. P2P contest operators are unwilling to allow their contests to be characterized as gambling.
 - iii. P2P contest operators are largely unwilling to submit for comprehensive licensure given the perception of cost and the potential that investors or other key partners may be required to submit for licensure as part of the process.

OBSERVATION 3: Current Nevada regulations don't appear to support comprehensive oversight of P2P skill-based contests.

1. Fee-based contests are permitted within the casino environment under some conditions, but there appears to be a meaningful level of regulatory ambiguity regarding the conduct

of such contests.

2. Some statute (NRS 463.01463) and precedent appears to create a conceptual space for "contests" outside of the definition of "gaming" / "gambling," but the nature and scope of that space is a matter of debate.
3. Regulation 5A (Operation of Interactive Gaming) and the accompanying technical standards provide much of the relevant conceptual framework for regulating P2P skill-based contests, but are:
 - a. Limited to "gambling games."
 - b. Constructed primarily to address online poker.
 - c. Designed primarily for operators with a locus in Nevada.
4. Regulation 14 (as amended in accordance with SB 9) addresses skill-based games but appears to primarily consider house-banked, as opposed to P2P, games. Regulation 14 also reads as primarily concerned with games that appear on the casino floor, as opposed to mass-market games conducted online across multiple jurisdictions.

PROPOSAL: Create a new regulatory device class - "contest devices" - designed to alleviate the issues raised by the emergence of peer-to-peer skill-based contests played for real money.

1. SB 9 provides a legitimate mechanism for creating a regulatory device class to handle P2P skill-based contests played for real money:
 - a. SB 9 provides a broad mandate (arguably a command) for regulators to explore and engender "continued advances in the use of technology" to support both the gaming industry and the "domestic technology sector of the economy" of Nevada, with an emphasis on "innovative, alternative and advanced technology"
 - b. SB 9 appears to allow gaming regulators to consider regulatory changes beyond "gaming devices" through repeated references to "associated equipment" and "various gaming support systems."
 - i. "Associated equipment" is a term defined in statute (463.0136) but appears to have scope beyond "gaming device" and can encompass "any game."
 - ii. "Gaming support systems" does not appear to be a term defined in statute
 - c. SB 9 has already been deployed to make substantial changes to gaming regulation in Nevada, including the effective creation of a new class of gaming device through the amending of Regulation 14¹ to insert articulation of regulatory standards for skill-based and hybrid skill/chance devices.

¹ <http://gaming.nv.gov/modules/showdocument.aspx?documentid=10380>

2. Potential core regulatory components of a "contest device"
 - a. A contest device is a platform that facilitates P2P skill-based contests played for real money prizes.
 - b. Contest devices would be subject to extensive investigation and oversight by the Commission (similar to gaming devices, but adjusted in recognition that the risks associated with contest devices overlap with, but are ultimately distinct from, the risks associated with approving a house-banked gambling game).
 - c. Contest device operators would be subject to some level of registration and licensing as determined by the Commission via the authority extended to them in SB9.
 - d. The underlying activity conducted on the platform would be explicitly recognized as not gambling / gaming activity for the purposes of Nevada statute, provided the activity conformed with standards established by the Commission (with advice and assistance of the Board).
 - e. A contest device operator could charge a fee or otherwise collect revenue from players so long as the platform remains a neutral party in regard to contest outcome.
 - f. A contest operator could not act as a competitor in hosted contests directly or indirectly (i.e., all contests must be played P2P and not "against the house").
 - g. Contest devices and operators who did not comply with relevant regulations and exposed contests for real-money play in Nevada would be subject to civil and / or criminal penalty as determined by the Commission.
3. Much of the groundwork for defining and regulating a "contest device" already exists in current law / regulations.
 - a. Conceptual underpinning: The concept of "contests" as distinct from at least some definitions of "gambling" exists in NRS 463.01463. Practically, fee-based contests take place on a regular basis in the state of Nevada outside the auspices of regulators.
 - b. General regulatory standards: Much of Regulation 14 could be cross-applied to regulation of "contest devices."
 - c. Technical standards: Much of Regulation 14 Standard 6 could be cross-applied to contest devices. Numerous additions would be required to address some of the unique qualities of P2P skill-based contests.
 - d. Minimum standards: New minimum standards would be required.

BENEFITS: Solving the question of P2P skill-based contests would generate meaningful benefits for the state, for licensees, and for consumers.

1. How does Nevada benefit?
 - a. Nevada can take the lead in asking and answering the tough questions around P2P skill-based contests, including:
 - i. Cheating / fraud reduction.

- ii. Consumer protection issues such as data security and age verification.
 - iii. Ensuring fair, secure games at the platform level.
 - iv. Regulating technology designed to "balance skill" within the platform environment.
 - b. Nevada can reduce regulatory ambiguity around the question of skill-based contests where money (or another form of consideration) is at stake.
 - c. Nevada can bring a greater percentage of gambling-like activity (and operators) under the regulatory umbrella, increasing the state's regulatory reach in the status quo and positioning the state on the leading edge for gaming regulation in the years ahead.
 - d. Nevada's regulatory environment becomes harmonized with the emerging national legal consensus regarding skill-based contests.
2. How do Nevada licensees benefit?
- a. Licensees will be able to act as first-movers for emerging types of P2P skill-based contests once regulatory ambiguity is removed.
 - b. The creation of "contest device" regulations may spur additional game innovation that is deployed not only online, but also on the casino floor.
 - c. Licensees will have greater freedom to create, deploy, and market a variety of solutions for the P2P skill-based contest vertical (game content, supporting platforms, solutions for game integrity, solutions for identity verification, and so on).
3. How do consumers benefit?
- a. Most skill-based games are currently unregulated and lack the core protections (identity verification, game integrity, anti-fraud measures) that consumers deserve when putting money at stake to participate in a contest.
 - i. Nevada regulations would raise the bar for other states, perhaps motivating some to regulate P2P skill-based contests and providing a template for doing so.
 - ii. When contest device operators comply with Nevada regulations it would effectively increase the protections available to consumers in all states, even if other states do nothing on the regulatory front.
 - b. Nevada consumers would gain legal clarity regarding P2P skill-based contests and would no longer face a confusing menu of apparently arbitrarily-limited options.