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Continental Drift: U.S., Europe On Different Tracks For Online Gambling Enforcement

DraftKings proxy fine the largest of post-PASPA era

\$1.4m in U.S. fines since 2020 versus \$78.7m in UK

U.S. regulators taking incremental enforcement approach

Advertising, anti-money laundering among future risks

One day before New Jersey published the joint largest fine of the post-PASPA era of U.S. sports betting earlier this month, the UK Gambling Commission issued a penalty almost 100 times that amount, underlining different approaches to enforcement actions on the two sides of the Atlantic.

The New Jersey Division of Gaming Enforcement (DGE) on February 18 **imposed** a \$150,000 civil penalty on DraftKings for “negligently allowing a patron to engage in proxy wagering”, after a VIP player from Florida was encouraged to wager via another person accessing his New Jersey account within the state.

According to VIXIO GamblingCompliance’s **Enforcement Tracker**, the \$150,000 amount ties with a May 2021 settlement agreement between the Virginia Lottery and WynnBET for self-reported geolocation breaches as the largest sum levied against a sports-betting operator or supplier outside Nevada since expansion of the U.S. market began in 2018.

Since the start of 2020, regulators across at least eight states have taken more than 90 enforcement actions and collected almost \$1.37m in penalties against companies involved in sports wagering or online gaming.

In the same period, however, the UK Gambling Commission has issued penalties amounting to \$78.7m against online operators or suppliers, including more than a dozen fines of a million dollars or more. A £9.4m fine announced against 888 on March 1 was the UK regulator's second largest enforcement action against an online operator, behind a regulatory settlement of £11.6m collected two years ago from Betway.

National gambling, consumer protection and financial regulators in Sweden have imposed fines amounting to \$48.5m through some 19 actions taken since the beginning of 2020, according to VIXIO Gambling Compliance research.

Six-figure penalties have also become common in the Netherlands, albeit generally imposed against unregulated operators.

Different States, Different Approaches

The relatively small penalties imposed by U.S. authorities when compared with at least some European jurisdictions reflect both regulators' traditional approaches to the land-based casino industry, as well as the immaturity of the U.S. sports-betting market, say legal experts.

Whereas the UK Gambling Commission is closely focused on issues related to social responsibility, the goal of most U.S. regulators is to ensure compliance with very detailed state regulations or operator internal controls, said Frank DiGiacomo, partner and head of the gaming practice of law firm Duane Morris in Philadelphia.

"That doesn't mean U.S. regulators don't view fines as a significant act, because they are," DiGiacomo said.

The differing enforcement environments also reflect a more business-friendly approach to regulation in the U.S. and the fact that regulators generally take an "incremental approach", added Jeremy Kleiman, partner at law firm Saiber in New Jersey who advises various European companies active in the U.S. market.

Warnings or smaller penalties might be imposed in the case of a minor infraction, while fines of \$50,000 or more would typically indicate either a repeated offense, or a regulatory violation that touches upon a more serious issue, such as out-of-state betting or self-exclusion failings.

"The primary purpose is to obtain compliance," Kleiman said, with regulators generally willing to "crank up the level of pain" in terms of financial penalties until that is achieved.

That fine amounts post-PASPA have been relatively modest to date, "what it shows is that the regulators have not used heavy, heavy financial penalties, because I guess they haven't had to", Kleiman said.

It is important to note that U.S. states are not at all the same when it comes to gaming enforcement, said DiGiacomo, who advises clients in various jurisdictions.

Compared with neighboring New Jersey, Pennsylvania has historically imposed higher fines against its casinos and typically publicizes them, DiGiacomo said.

New York regulators impose fines according to a set schedule of amounts for specific offenses, granting them less flexibility to either elevate penalties or apply a more lenient approach depending on the circumstances of each case.

Certain states are also restricted to a maximum fine amount by their statutes, for example of no more than \$25,000 per violation in Tennessee or \$5,000 per violation, per day in the case of Maryland.

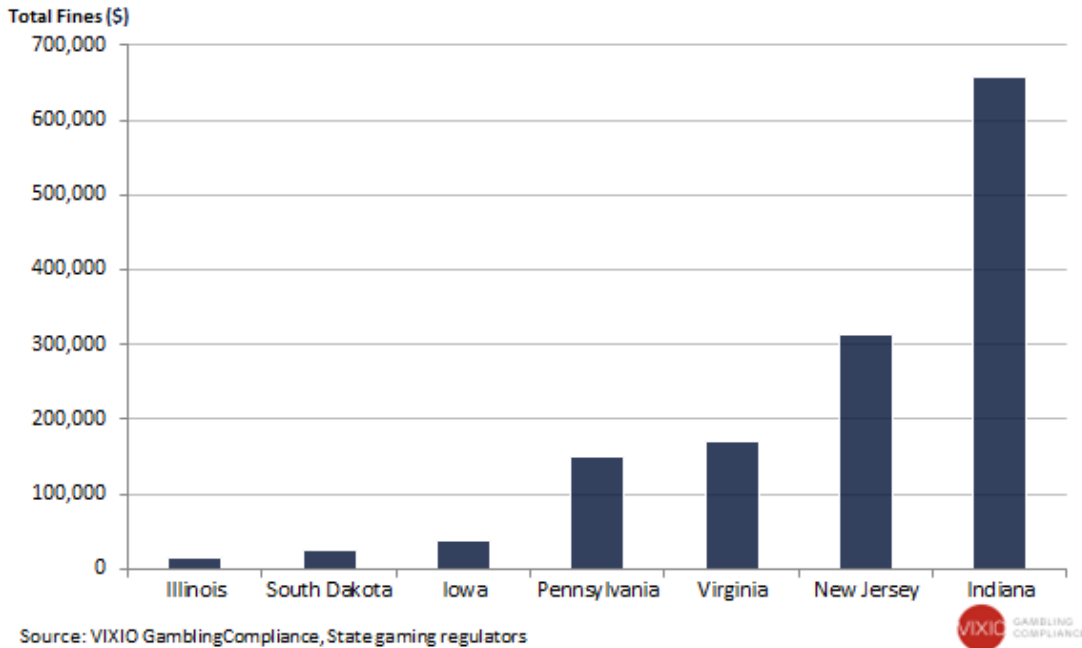
‘Progressive Discipline’

Since it won its 2018 challenge against the federal ban on sports betting before the U.S. Supreme Court, New Jersey has imposed penalties of more than \$603,000 against operators or suppliers of igaming or sports wagering.

The South Dakota Commission on Gaming has imposed a series of modest fines since casinos began offering sports betting last September, for violations that include offering wagers beyond a maximum bet limit and accepting bets on South Dakota college teams.

But experienced gaming agencies in Pennsylvania, Iowa and Illinois have imposed just a handful of fines between them, while Virginia has taken enforcement action against online sportsbook operators only twice, including in the Wynn case. In Tennessee, a prominent regulatory action last year to suspend the license of local operator Action 24/7 was **overturned** by a state court.

Cumulative Fines For Sports Betting/iGaming Violations (\$) - 20Q1 to 22Q1



The most active state on the sports wagering enforcement front appears to be Indiana.

Since the beginning of 2020, the Indiana Gaming Commission (IGC) has imposed more than 40 penalties amounting to some \$657,000, the largest being a \$63,498 **settlement agreement** with BetMGM earlier this month that included a \$53,938 penalty, after an audit showed a number of self-excluded gamblers would not be prevented from wagering on its platform.

For sports-betting enforcement, the IGC has looked to apply the same process it has established for land-based and riverboat casino gaming, said Jenny Reske, the commission's deputy director.

Regulators are still in the process of setting their schedule of penalties for specific types of offenses related to sports wagering, Reske said.

"It does take a while to really get a handle on what are the real compliance shortcomings and what are some of the more natural bumps in the road for a new industry in our state," Reske told VIXIO GamblingCompliance.

"It's something that continues to evolve; there are issues we still see as novel ... but I think we're getting there and we're certainly getting a good handle on that."

Reske described Indiana as a "progressive discipline state", meaning regulators are not minded to immediately take enforcement actions as soon as operations commence, but fines will escalate if companies continue to make the same mistakes.

The IGC's aim is to develop clear standards and expectations, including through the audit process, she said. It would be concerning if licensed operators or suppliers were not responsive or were unwilling to suggest corrective solutions to compliance errors, but regulators have not seen that to date in the case of sports wagering.

"The goal of our work is to create compliance," Reske said. "As a regulator you want to create an environment where it's really much easier to be compliant."

Evolving Enforcement Risks

It should be noted that not all European countries are as aggressive as the UK or Sweden when it comes to enforcement, nor has the environment always been as stringent in those two markets.

It was arguably an initial fine of £7.8m against 888 in 2017 that heralded a new enforcement era in the UK, an action which came after the Gambling Commission gained direct licensing authority over all operators in the market amid heightened media and political scrutiny of online gambling, in part due to aggressive advertising.

In an **annual report** on compliance and enforcement, the UK commission said the record £32.1m paid in fines by 15 companies in 2020/21 was reflective of weaknesses in two specific areas of social responsibility and anti-money laundering (AML), with sanctioned operators "either not making suitable resources available or ... simply putting commercial objectives ahead of regulatory ones."

Looking ahead, U.S. regulatory experts expect the enforcement environment to evolve, but it is too early to say whether it will come to mirror that of the more heavy-handed jurisdictions in Europe.

Unlike the UK, there currently does not appear to be much public or political pressure to castigate companies involved in sports betting, which has proven itself to be a massively popular activity in the U.S. and counts on influential support from major sports leagues, teams and media companies.

There is a degree of risk that could shift based on public displeasure related to advertising, the sheer volume of which is by far the main source of complaints received by the IGC related to sports wagering, according to Reske.

The IGC does review the terms and conditions of sports wagering promotional offers, but has no authority over the volume of ads, she said.

“I think it’s a larger public policy issue,” Reske told VIXIO GamblingCompliance.

Some regulatory officials have also expressed **concerns** related to potentially confusing terms and conditions applied to the bonuses touted in sports-betting ads, an area which could fall under the wider remit of state attorneys general or consumer protection agencies that have broader authority and an ability to impose higher penalties than state gaming commissions.

In a notable move on the eve of last month’s Super Bowl, New York attorney general Letitia James issued a “**consumer alert**” warning of deceptive bonus offers and adding that “sports betting companies that fumble their advertising to mislead New Yorkers can expect to hear from my office.”

It is possible such scrutiny could increase particularly in states where attorneys general are elected officials, say legal and regulatory experts, although that also depends on various factors, including whether such actions would be politically popular, how industry marketing strategies evolve and whether the relevant agencies actually receive a significant number of public complaints.

It does take a while to really get a handle on what are the real compliance shortcomings and what are some of the more natural bumps in the road for a new industry.

It is also possible that federal agencies will play a role in future enforcement, specifically in the area of anti-money laundering, where the U.S. Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) has primary authority, rather than state gaming regulators.

Of the largest fines imposed against U.S. land-based casinos over the past decade, all but a small handful have been **imposed** by FinCEN.

Still, although FinCEN is likely to scrutinize sports wagering as part of its general regulatory remit, the U.S. gaming industry overall has raised standards on AML in recent years and a case can be made that the extensive transaction data collected through online betting poses lower risks than the largely anonymous play on the traditional casino floor.

Regardless, enforcement activity is likely to ramp up at least to some extent as state regulators identify their priorities and expectations and operators establish clearer track records on their respective abilities to meet them.

It should be no surprise to see some fines, given how quickly sports betting has expanded and the challenges operators have faced in scaling up their compliance processes across multiple

states all with different requirements, said DiGiacomo of Duane Morris.

“It’s an operational challenge for these companies as the pace of growth is so significant,” he said.

Companies

DraftKings

Wynn Resorts

Jurisdictions

United States

Europe

New Jersey

Indiana

Pennsylvania

Iowa

Tennessee

Illinois

South Dakota

Sectors

Online Gambling

Sports Betting

Specialisms

Advertising Regulation

Anti-Money Laundering

Enforcement

KYC/Geolocation