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From the Chair

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Hi everyone,

What a spectacle! After waiting two long years since the last Olympics in Vancouver, the participants in London did not disappoint the fans; their preparation, discipline and perseverance truly shone through. In sum, the ambush marketers that descended upon the London Olympics proved every bit as entertaining as the athletes. For an advertising lawyer, 'ambush marketing' typically refers to advertising that includes an unlicensed, indirect reference to an event that is funded, in part, by official exclusive sponsors. 'Ambush marketing' is not necessarily a pejorative term, although I'm sure that the International Olympic Committee (IOC) and the official sponsors of the London Games would disagree. In fact, ambush marketing, if well executed, is a bit of an art form – creativity and innovation is key to promoting a brand successfully while hurdling regulatory impasses. As a Canadian, the Vancouver Games represented an unprecedented level of Olympic brand enforcement and it was exciting to see whether or not this would have a cooling effect on ambush marketing in London. The results are in, and this year's Olympics crop of ambush marketers certainly rose to the occasion. Before I go any further, I must remark that as an intellectual property lawyer, I don't typically endorse ambush marketing due to the inherent risk of infringement. However, in the spirit of competition invoked by the Games, I'd like to highlight certain of the well-executed, and not so well-executed, examples of ambush marketing.

Amateur

Not all participants in London were elite, international-calibre competitors. Many local businesses and residents were swept up in the Olympics spirit and, understandably, wanted to put their enthusiasm on display. However, faced with over 280 Olympic Brand Enforcement Officers (Enforcers) scouring the streets in search of Olympic brand offences, these amateurs did not stand a chance. Among the offenders caught in the sweep was a London café that had used bagels to recreate the shape of the Olympic rings and an 81 year-old grandmother who made a miniature sweater with the Olympic rings on it for a doll that was to be sold for charity. Although cracking down on these offenders may seem a bit heavy-handed, these amateurs learnt a valuable lesson – when it comes to Olympic ambush marketing, you better bring your 'A' game.

Qualifiers

An honourable mention goes out to all the news networks that were not official Olympic sponsors yet strove to great lengths to bring entertaining coverage of Olympic events and activities without the benefit of actual footage. For example, did you the see the Guardian's recreation of the USA v France basketball game using what appeared to be Lego pieces? Or CNN's innovative idea to set up a studio in a local Londoner's apartment overlooking Olympic Park? Desperate times call for desperate measures and these notable qualifiers pulled it off with aplomb without, well, looking too desperate.

Bronze

Polo (the mint, not the brand of apparel) put in an impressive showing by leveraging social media to highlight the great distances to which Enforcers will go to put a stop to ambush marketing. Polo had devised a contraption using a snorkel that was designed to provide 'tube' riders with minty air while travelling to the Games in overcrowded trains. Polo then filmed its representatives pitching the device to people at Olympic venues. It didn't take long for the Enforcers to show up and try to shut down the publicity stunt. In the result, the video went viral and is particularly notable due to the palpable irony inherent in the fact that the Enforcers actions increased the entertainment value of the video and, consequently, its effectiveness.

Silver

Volkswagen is not an official Olympic sponsor, but they do sponsor the Dutch Olympic team. In its video advertisement, a Volkswagen car has been altered so that it is powered by the cheers of Dutch Olympic team fans sitting inside the car. The louder the fans cheer, the faster the car goes and the greater the association between cheering for the Dutch Olympic team and enjoying Volkswagen cars. Subtle, elegant and effective. Volkswagen's an impressive Olympic ambush marketer and certainly a brand to watch for during the upcoming winter Games in Sochi.

Gold

Nike's 'Find Your Greatness' campaign highlighted the extraordinary athletic achievements that occur every day in lower profile London locations, such as London, France and London, Canada. Nike's campaign reminded us that everyone who is pushing themselves beyond their perceived limits are worthy of recognition, no matter where they are. Ultimately, the campaign is a self-fulfilling prophecy in that Nike has once again pushed the limits of ambush marketing and, for that, deserves to be recognised as the Olympic ambush marketing gold medal winner.

Conclusion

The London Games were played both on and off athletic surfaces. Competitors clashed and, in most events, there can be only one winner. But in the marketing arena, I would say there was a tie. London delivered a thrilling rendition of the summer Olympic Games. Consequently, the London Games' official sponsors were provided with excep-

tional brand exposure and the IOC can rest assured that the Olympics brand will remain one of the most valuable brands in the world. At the same time, ambush marketers have stepped up once again and delivered an exciting and deft display of riding the Olympic wave, apparently without falling inside stringent regulatory impasses. All participants deserve to hold their heads high. However as we pause to reflect on these great feats, we must not stagnate. I look forward to the next important international event – a new issue of the *Travel Law Quarterly*. Without further ado, I will pass the torch on to the rest of our team.

I would like to pay tribute to my 'ambush marketing coach', Rene Bissonnette, who did a lot of the running around and heavy lifting for this article!

Brenda Pritchard

Divers get into legal hot water on historic shipwrecks in Australia

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Among the many tourist draws associated with Australia's Great Barrier Reef is scuba diving on the wreck of the *SS Yongala*. The 3,664-ton screw steamer went down off the city of Townsville in northern Queensland during a cyclone in 1911, taking with it the lives of all 122 passengers and crew.

One of the world's most popular wreck sites for divers, the *Yongala* wreck site lies within the Great Barrier Reef Marine Park. Along with the reef itself, the wreck site has become a major source of income for the local dive tourism industry.

The remains of the ship are recognised and protected under Australia's federal Historic Shipwrecks Act 1976 (Cth) as well as the state's Queensland Heritage Act 1992 (QLD). Dive operators are expected to inform their clients about the protections afforded the wreck under these acts, such as prohibitions against taking souvenirs, etc.

Because the *Yongala* site in particular is so popular, with over 10,000 divers per year visiting the wreck, underwater archaeologists have concluded that the volume of exhaust bubbles pose a threat to the ironworks of the ship that could accelerate the corrosion process, hastening the disintegration of the ship's remains. To prevent this, divers are now forbidden to enter the ship (known as a 'penetration dive') and may only visit the ship's exterior.

Although Australian divers for the most part are aware of the protected status of historic shipwrecks lying in Australian waters, foreign tourists are sometimes caught unawares. The Historic Shipwrecks Act 1976 provides blanket protection of shipwrecks as cultural relics, and extends to all shipwrecks more than 75 years old lying in waters under the Commonwealth's jurisdiction, whether or not such wrecks have been assessed or gazetted. Complementary state and territory legislation provides similar protection to shipwrecks lying in waters under state and territory jurisdiction. This legislative regime is somewhat unusual, particularly to visitors from North America or other jurisdictions where shipwrecks lying outside of protected reserves are often seen as fair game for salvage and souvenir hunting.

In July 2003 a diver from the US was fined AU$2,000 by a magistrate after pleading guilty to a penetration dive on the wreck while on a dive tour. Edward Antonovich from Tarrytown NY thus became the first person ever prosecuted under the Historic Shipwreck Act 1976. In his defence, Antonovich argued that,

because of the seasickness medication he was taking, he had been unable to understand the dive briefing by the tour operator and therefore was unaware that a penetration dive was not allowed.

The court heard testimony that Antonovich swam away from the main group and entered the hull twice, even after having been warned not to by the dive guide. The court noted that Antonovich was an experienced diver and should have had a greater awareness and understanding of restrictions imposed on dive sites. Antonovich could have been given a prison sentence of up to two years as well. The Court chose not to imprison him because of his guilty plea and because he did not attempt to remove souvenir items from the wreck.

More recently, a South Korean couple were fined AU$1,750 for a penetration dive on the *Yongala* in January of this year. Hyerim Jeon, 25, and Seonjin Park, 27, told the Queensland Magistrates Court they did not understand that no penetration dives were allowed on the wreck, claiming that they did not understand the dive briefing. Although both 'nodded their heads' when asked if they understood the prohibition on penetration dives, they told the Court that in their culture it would have been 'rude' to interrupt the briefing and have the matter fully explained.

Magistrate Laurie Verra said the couple were 'reckless and mistaken in not ensuring they fully understood the pre-dive briefing'. Because of their language difficulties, however, he did lower the fine, to AU$1,000 for Park and AU$750 for Jeon, with no prison term.

The magistrate also admonished local dive operators that they had a responsibility to make sure their clients fully understood the briefing.

'Any dive company who have foreign people engaged in dive activities must ensure these people understand what is required of them when instructions are given,' he said. About 70 per cent of the dive tourists who visit the reef and the *Yongala* are foreign.

The *Yongala* is probably more widely known as the site of the tragic death in October 2003 of newlywed Tina Watson while diving on the wreck with her husband, Gabe. The couple were on their honeymoon. Gabe was later tried for his wife's murder. After a month long inquest, Gabe pleaded guilty to manslaughter in 2009 and served 18 months in a Queensland prison. Upon his release, he was deported to the US to stand trial in Alabama for his wife's murder. Earlier this year the judge in that trial dismissed the case at the close of the prosecution's presentation of evidence, saying the defendant had no case to answer.

It only hurts when I tweet

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Social media isn't just the 800 lb gorilla in the room for the hospitality industry; some days it seems as if it is fast becoming the entire room. The pitfalls hospitality industry players confront in dealing with this burgeoning reality will be the subject of a session at the annual IBA Annual Conference in Dublin on the afternoon of Thursday 4 October, with a particular emphasis on BRIC nations.

The programme will be divided into four 200 lb segments: general business issues; site content and posts; promotions and contests; and privacy and security, with speakers and moderators from four continents. Taking a page from the lively discussion format of the 'Desert to Dessert' session in Dubai, the Dublin programme will include interactive discussions, break-out tables and a distinguished and entertaining master of ceremonies, Mark Stephens. The fact pattern for the programme will be available ahead of time and it features a deep bow to the distinguished literary tradition of our host city. Attendees can expect a few surprises, too.

As a teaser for the programme that will give you a sense of the number and variety of problems which can arise, here is a summary of some recent social media legal developments in the United States which may figure in October's discussion.

Labour relations

The National Labor Relations Board has taken the position in enforcement proceedings that Hyatt Corporation's social media rules for employees run foul of requirements that employees be free to discuss their working conditions, whether or not unionised or targets of an organising campaign. One of the challenged Hyatt rules barred releasing confidential guest information, among other things. In another case, a manager at a restaurant chain cajoled a waitress into turning over the password to a MySpace site where employees had made negative posts about him. After the two employees running the site were fired, they won a US$17,000 judgment for actual and punitive damages against the chain.[1] The States of Illinois and Maryland recently barred employers from asking candidates for their social media passwords at job interviews.

'Pay for praise' and phony reviews

The Federal Trade Commission revised its endorsement rules in 2009, requiring disclosure of 'material connections' between bloggers and endorsers, on one hand, and companies, on the other.[2] Hotels and restaurants which 'reward' frequent guests for writing reviews need to follow the rule. Equally, posting phoney positive reviews for your place ('astroturf-

ing') or phoney negative reviews of a competitor can land you in grief for committing unfair or deceptive practices under federal or state laws. Finally, while the federal Communications Decency Act's Section 230 immunity protects user-generated content, don't think it will protect you if you wrote or directed the content.[3]

Infringement issues

One of the most effective magnets for attracting eyeballs to hotel websites is to post photos of the property or its locality. If your social media director is lazy and merely uses postcard images, you may be infringing copyrights and risking liability. In the US, it's important to file a copyright agent designation so you can take advantage of the Digital Millennium Copyright Act safe harbour which requires that you be given a 'takedown' notice before you can be held liable.[4]

Behavioural advertising and m-commerce

These two areas are the subject of intensive regulatory scrutiny at the federal level. Both the FTC and the Commerce Department have issued detailed proposals for legislation and regulation, too detailed to summarise here. Be aware that what your technical wizards figure makes sense may upset your customers' (possibly erroneous) assumptions and expectations. Orbitz found out that what must have seemed like sensible market segmentation to it – after data that it gathered about what devices people used to access Orbitz and information about whether they had children showed Mac users seemed to book costlier rooms than PC users, and that guests with and without children chose different hotels – could backfire when The Wall Street Journal ran a front page article reporting that Orbitz displayed search results differently based on the differing preferences.[5] Similarly, consider the short-lived success of 'Girls Around Me', an app developed in Russia. It gathered women's check-in information from local bars and then correlated it to their Facebook profiles, including their names, as well as their photos and dating status, if available, and shared it with app users. *All this information was publicly available*. But its potential stalking applications led FourSquare to block the app, leading its developer to pull it from the Apple Store – after it had been downloaded 70,000 times.

Data security

Finally, reports of data security breaches have become a commonplace in the news. Reported targets in 2012 to date have included hotels, restaurant chains and cruise lines. There have been costly settlement agreements with the FTC addressed to what steps companies take and what claims they make as to data security, sometimes imposing 20-year-long monitoring obligations. There have also been a number of class action litigations arising from data security breaches. The FTC aside, almost every state has its own data breach statute.

Not to mention alleged price-fixing through social media or drugs and prostitution. For a discussion of these and other hospitality industry social media legal issues – as well as some guidance about avoiding these pitfalls – join us in Dublin for 'BRICs and stones: social media pitfalls in the hospitality industry.'

Notes

1 *Pietrylo v Hillstone Restaurant Group*, 2:06cv-05754 (D.N.J.) (16 June 2009 verdict) and 2009 WL 3128420n (DNJ 25 September 2009) denying defendant's motion for judgment as a matter of law and, alternatively, for a new trial.

2 16 CFR Part 255.

3 *Doctor's Associates, Inc v QIP Holder LLC*, 2010 WL 669870 (D Conn 19 February 2010).

4 47 USC § 230. The registration form can be found at www.loc.gov/copyright/onlinesp/.

5 Dana Mattioli, 'On Orbitz, Mac Users Steered to Pricier Hotels', *The Wall Street Journal*, 25 June 2012 (Eastern ed), p. A1.

Why you need to get to know your IT Department now.

Six simple steps to improve emergency response planning and litigation readiness

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Whether or not you have a separate IT Department or one or two people responsible for IT matters, the chances are that you rarely have contact with them for much beyond fixing everyday computer problems. However one day you may have to explain your IT systems in fine detail in order to defend your company in court or before a regulator or access the systems to find evidence to help your company bring a claim against someone else.

With the majority of our communications today taking place in electronic form, preserving electronic evidence is vital and advance planning and preparation can make this task much easier and more effective. Taking time to familiarise yourself with your IT systems now will save you time, money and stress in the long run and should be an integral part of both your emergency response planning and overall litigation-readiness strategy.

Travel companies may face claims all around the globe before different legal systems that adopt vastly different differing approaches to evidence. It's really important for a travel company to know how to locate and conserve evidence appropriately in order to maximise its admissibility in international litigation taking into account those different systems where the evidence could need to be used.

In addition to liability claims, travel companies are also the potential targets for regulatory investigations, whether by competition or consumer regulatory authorities who generally have considerable powers to seize evidence and even conduct 'dawn raid' searches of your premises to search for evidence in support of their regulatory powers with little or no advance warning.

In some countries, it is up to the parties and their lawyers to collect their best evidence to support their cases and provide this to the court; this is the usual approach in civil law systems such as many European jurisdictions.

In other countries, parties and their lawyers are obliged to make a specific search for all documents which may relate to the issues in the case. This is the approach in the English courts and in the US and in many other Commonwealth 'common law' based jurisdictions such as Australia, New Zealand and Canada.

The English system requires a senior person within the company, often in practice, the General Counsel, to provide a full witness statement detailing the extent of the search made and explaining the rationale behind any limitation of the search and this statement must be verified by a Statement of Truth. The Statement will also need to explain if any documents

have been lost or destroyed, or if it is not possible to obtain some documents, giving a full explanation as to why the search cannot be made or if it would involve a disproportionate amount of expense and time weighed against the importance of the evidence likely to be contained in the document.

Disclosure can be a powerful tactical weapon in the hands of an opposing party because not only might it reveal key documents supporting their case, the sheer cost of the disclosure exercise and loss of management and personnel time may be such that a party is persuaded to settle before incurring those costs. Even in jurisdictions where the legal system includes a proportionality requirement, the costs of disclosure can be substantial, especially since disclosure is not limited to paper documents and so much information is recorded electronically.

Anything that records information is disclosable including electronic information such as:

- Computer files
- Mobile phone records
- Smartphone data
- Tablet data
- Electronic booking system records
- Photographs
- Voicemail
- Data back-up tapes

In addition to the data which is 'visible', electronic documents also contain further information known as 'metadata' which can identify the author, date of creation and identify who has subsequently accessed it and when; this hidden data can be valuable in certain cases.

Since October 2010, the English Courts have introduced an electronic disclosure protocol and questionnaire which will need to be completed by a senior person in the organisation providing disclosure. This requires detailed information to be given regarding:

- IT systems in use;
- Where data is stored;
- Back-up procedures;
- Electronic document retention and archiving policies; and
- The number of documents likely to be located.

There are limited exceptions where documents are privileged from inspection and can be kept private from the other parties. The main exception is for documents which are subject to legal professional or litigation privilege.

Given that a travel company may need to defend or bring proceedings in differing jurisdictions worldwide, there are a number of practical steps that can be taken in advance to ensure that your company is ready to deal with any disclosure requests as necessary.

Evidence that may be required in the event of a claim

The first step is to consider what evidence may be required in the event of a claim or accident: for example:

- Passenger booking records;
- Your inspection reports and any audits;
- Tour representative reports and communications;
- Telephone recordings;
- Complaints received and responses;
- Crew training, personnel, flying hour records;
- Maintenance records: airframe, engine, major components;
- Operational records: flight manuals, standard operational procedures, despatch information, load sheets;

- Leasing/purchase records, including finance documents. (Note also that as part of the emergency planning process, maintaining a set of all the lease, finance and ownership documents and insurance policies can greatly assist the time taken to process a hull insurance claim);
- Receipts and invoices for expenses occasioned by the claim or accident. Consider setting up a separate account to record these.

Also consider evidence to support business loss claims, for example:

- Profit and loss accounts before and after the incident/accident/claim;
- Advance booking information for the accommodation in question where the claim relates to a property;
- Flight planning schedules for an accident aircraft;
- Cancelled flights;
- Costs of re-protecting passengers/customers on alternative flights;
- Lease costs for replacement aircraft;
- Costs of searching for replacement aircraft;
- Any additional expenses due to utilising replacement aircraft – maintenance, increased fuel consumption.

Courts may draw adverse inferences if the documents cannot be found: for example, if your company claims an expense but cannot produce an invoice and evidence of payment (electronic bank instruction or cheque) then the courts might not allow you to recover because your company has not provided sufficient evidence of their loss.

Identify who holds the evidence

After you have drawn up a list of the likely evidence required, you then need to identify who within your company would be likely to hold that evidence, and where it is likely to be stored.

Get to know your IT Department

It is essential to work with your IT Department or providers to understand your company's IT systems to ascertain what data may be available, where it is located (for example, to know if there are archival systems held by third party providers off-site) and where data is saved. Find out about the data archiving or retention policies. Consider whether individuals at the company can save documents to the hard disks of their personal computers, or whether the systems are set up in such a way that data can only be saved to the central system. Find out what happens when people move within the company or leave.

Often if IT systems are outsourced, in-house IT Departments may not be aware of how the outsourced providers retain data and it may be useful to ask these questions as part of the planning process to make sure that you have the information readily to hand.

Consider how data would be quarantined and retrieved

It is important to consider how data can be quarantined and preserved following an incident or claim and this is something to be discussed with the IT Department and with your Emergency or Crisis Management Team as part of the planning process.

The actual disclosure process will often involve the services of specialist forensic data collection specialists who have the specialist equipment to copy the data in

such a way that it is preserved appropriately. A practical point here is that the more the data is centralised, the easier this process becomes: if individual offices or individuals can save their documents to local systems, or individual PCs then collection of the data is much more difficult and time consuming. It is also important to be able to trace custody of individual PCs, laptops and PDAs when upgrades are issued or people change office or role. Does your company maintain an asset registry for all items of electronic equipment that could record information?

Because it may be necessary to take data from individual's laptops or personal computers, you may also need to consider whether any employment law or privacy issues arise: particularly in overseas stations where different employment laws may arise and ensure that staff contracts contain appropriate provisions to ensure that you can access data.

Although all of this could appear time-consuming, there may be wider benefits to the travel company in considering these issues over and above disaster planning: day to day management of information and improved IT security.

Training

A vital part of the planning process is to make staff aware that documents which they create may be disclosed one day. The golden rule is that before you write something considers that a judge may read it one day.

Following an accident or claim, staff should be advised to avoid creating unnecessary documents, in particular they should avoid any discussion or speculation as to the possible cause of the accident or claim or implications.

If it is necessary to create documents, staff should be told that they should discuss this with legal department beforehand.

Including the legal department and external lawyers on emails is recommended because this will maximise the opportunity to claim privilege from disclosure. The rules on privilege are complex and can vary between jurisdictions: sometimes greater protection will be given if external lawyers are included on sensitive emails. It may be worth seeking specific advice on the general principles that would apply for the jurisdictions where you are likely to be exposed to claims.

If a claim should arise or an accident occur

The main steps are to:

- Activate the data quarantine and retention processes.
- Remind relevant staff of the need to avoid creating documents and the need to seek advice. Even if you have trained the staff already, you should always send a reminder by email as people have short memories.
- Be alert to the potential for claiming privilege and involve external lawyers because early advice may be necessary from lawyers in several jurisdictions how best to preserve privilege as far as possible.

Qatar's new Tourism law – restoring confidence

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Introduction

The tourism industry in Qatar is growing rapidly. According to a report published by the World Travel & Tourism Council,[1] the direct contribution of travel and tourism to Qatar's GDP in 2011 stood at 0.6 per cent of the country's GDP, totalling QAR 4.2bn. The same report forecasts this contribution to grow by 5.7 per cent each year to reach QAR 8.2bn in 2022. This is in line with the Qatar Tourism Authority's (QTA) plans to increase its tourism industry by 20 per cent over the next five years.

With this growth forecast and in light of the (Football) World Cup 2022 to be hosted in Qatar, the Qatari authorities are looking to put in place clearer laws to regulate the tourism industry and provide a more user-friendly set of requirements for licensing, tourism activities and complaints procedure that will further attract foreign investment.

Regulation

As a result of the relative surge in tourism across the Middle East, this growth and transition to a tourist-based economy has been affected by lack of regulation to govern the industry. Given some of the peculiarities involved in doing business in the Middle East, for instance 'nationalisation quotas' whereby employers are encouraged (and in some countries are under an obligation) to employ a certain number of 'local/national' employees, to continue to encourage foreign investment it is important that any regulation is transparent and governed by a body such as the QTA. Historically, all decisions regarding matters of licensing and leisure were handled by the relevant Ministries, for instance in Qatar the Ministry of Business & Trade and Ministry of Foreign Affairs which ultimately led to a very centralised and a chaotic red tape process.

A recent example to demonstrate the impact of unclear changes in policy within the leisure and tourism industry relates to the removal of alcohol from restaurants in the Pearl in Qatar. This has significantly affected the profitability of a number of restaurants with some reporting they have lost over half of their turnover since the alcohol ban was introduced in December 2011.[2] It is still unclear why the change occurred, however such lack of clarity in regulations, especially in terms of licensing requirements and other procedures, should be minimised with the anticipated introduction of a law to govern tourism activities. It is also expected that the introduction of this new law should help restore the confidence of international investors in the tourism industry in Qatar.

The new law

The draft Law for the Regulation of Touristic Activities (Tourism Law) is said to provide a clear division of power and a streamlined decision making process, which will mean a licensing and approval system that is easier for incumbents to understand. This, while putting pressure on the regulator, allows the investor or entity to know what to expect, to prepare themselves and their business plans accordingly, and help alleviate fears of the 'unknown'.

The regulator will also be granted the necessary power and flexibility to set up the required tourism infrastructure ahead of the World Cup and is arguably a crucial element in the success of hosting this tournament.

We understand the draft Tourism Law has already been presented to the Council of Ministers in the State of Qatar, and is expected to be officially issued towards the second part of this year.

Transition

Qatar has achieved prestigious status through what is sometimes referred to as MICE (Meetings, Incentives, Conferences and Exhibitions)[3] and in order to increase the size of its tourism industry, Qatar needs to expand beyond its current status as an international business hub and embrace its position as a multicultural international tourist destination.

Concluding thoughts

It is anticipated that the new Tourism Law will clarify procurement, licensing and permitting rules, and provide the requisite powers to the relevant authorities to approve and administer tourism related plans. The law will also provide a regulatory framework for the tourism industry as a whole, and further, act as impetus for the industry and Qatar generally to work towards the ultimate goal of improving the country's readiness for the influx of tourists over the next decade.

Qatar is progressing in its move from a business centre to become a bigger player in the tourism industry: the new law is a sign of this change.

Notes

1 www.wttc.org
2 The National: www.thenational.ae/business/retail/qatars-pearl-loses-its-lustre-for-celeb-chef-gordon-ramsay.
3 The World Travel Awards named Qatar the 'World's Leading Business Travel Destination' in 2012.

Mobile gaming devices – the choice of a new generation

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In an effort to enhance wagering options, and to seize on the ability of handheld mobile devices to perform tasks that have, to date, been done in person, casinos and racetracks have been enhancing their offerings to allow the use of mobile devices for wagering while patrons are on the property, but not necessarily in a gaming area. Not surprisingly, Nevada is at the forefront of this recent trend, already having implemented legislation to allow the use of mobile gaming devices that allow patrons to bet on virtual games or sporting events from anywhere in a casino hotel, including the pool, spa, hotel room, or restaurant. Recently enacted legislation, along with other pending legislation in New Jersey, would open up similar opportunities there. We can expect, in the not so distant future, that other states and provinces will follow suit.

The use of mobile gaming devices in Nevada took some time to phase in. Mobile gaming was first authorised under Nevada law in 2006. Cantor Gaming then began a field demonstration of mobile gaming for the Nevada State Gaming Control Board's review at only one casino property. Based on the results of that field demonstration, in November 2008 the Nevada Gaming Commission first approved Cantor to begin mobile gaming operations. At the time, however, Nevada's regulations only permitted a casino to allow the use of mobile gaming devices in public areas within the casino hotel and not within hotel rooms. The rationale for the public area limitation was to prohibit the use of mobile gaming devices by minors or by other persons who are not permitted to engage in gaming activities. In late 2011, however, Nevada amended its mobile gaming regulations to allow the use of mobile gaming devices in any approved area within a casino hotel, and delegated the authority to approve locations to the Chairman of the Nevada Gaming Commission. However, in deciding whether to approve a location (such as a hotel room or other non-public area) for the use of mobile gaming devices, a casino must prove to the Chairman that it can adequately monitor play of the system and reasonably assure that only persons who are permitted to game are able to use the devices. This approval will be granted on a casino-by-casino basis, with due consideration of the technology that is proposed for that casino. Among other things, biometric identification has been discussed as a means of assuring that only the person authorised to use the mobile gaming device is in fact the person using the device.

The logistics for use of a mobile gaming device are fairly simple. A customer must open and fund an account with the casino before being issued a mobile gaming device. The customer is

then free to use the mobile device for gaming as long as funds are available, and withdraw funds from the casino once the player no longer wishes to use the device. If a casino contracts with a provider to operate the mobile gaming system or provide devices, the manufacturer of the devices and provider of the system must be licensed by the Nevada Gaming Commission.

New Jersey has taken a number of steps toward the use of mobile devices at both casinos and racetracks. In a bill signed by Governor Chris Christie in August 2012, the New Jersey Division of Gaming Enforcement is authorised to allow, by regulation, the use of mobile gaming devices within a casino hotel. In order to engage in mobile gaming, a patron would be required to establish a wagering account with a casino, and place the wagers from within the premises of the casino hotel. A mobile gaming device must be inoperable from outside of the casino hotel. The definition of hotel premises includes any area within the property boundaries of the facility, including an outdoor pool and any outdoor recreation areas, but excluding parking lots. By regulation, the Division of Gaming Enforcement may impose stricter standards if it believes such standards are necessary. We can expect that, in the near future, the Division of Gaming Enforcement will issue draft regulations that stakeholders will then be able to comment on. While it is difficult to predict exactly what the final regulations will provide, one thing is clear – guests at New Jersey casino hotels will not need to be on the casino floor if they wish to continue wagering. And, if sports wagering is ultimately implemented in New Jersey, patrons may be able to bet on sporting events from any permitted location within the casino hotel.

New Jersey has also taken steps toward the use of mobile devices (including the customer's own devices) at racetracks to place wagers on horse races. On 24 May 2012, the State Assembly passed, and sent to the State Senate, a bill known as A2610, authorising the placement of horse race wagers using a mobile device, including devices such as iPads and iPhones. The legislation would permit the use of a mobile device to wager on races either being run or simulcast at the racetrack the customer is present at. The bill would also permit the use of mobile devices for wagering in other designated areas of the Meadowlands Sports Complex, such as the under-construction, American Dream complex near the Meadowlands Racetrack.

In order to take advantage of mobile wagering, the customer must be physically present at the track (or permitted wagering location), and the device must be able to lock out wagering from outside of the permitted areas. New Jersey Assemblyman Ron Dancer, one of the bill's primary sponsors and a former Chairman of the New Jersey Racing Commission, has described this bill as an effort to allow racetracks 'to take advantage of the technology that people are so accustomed to using.' Under the bill, the New Jersey Racing Commission would have the authority to prescribe regulations governing the use of mobile devices for wagering.

One of the main concerns expressed about the horse racing industry recently is declining interest and the aging of the typical customer. The conventional wisdom is that allowing the use of mobile devices for wagering may make the wagering process more user-friendly and more accessible to younger patrons, who are used to doing more from mobile devices. In the same vein, with respect to

casinos, the advantages to the casino operator are twofold – one, potential new customers who will be more comfortable using mobile devices rather than traditional machines or games, and two, the fact that a patron can be doing other things in the facility and still wagering.

Time will tell what the ultimate revenue impact is on casino and racetrack operators, but if patrons embrace the use of mobile devices for wagering, that impact could be significant.

INTERNATIONAL BAR ASSOCIATION ANNUAL CONFERENCE

Monday 1430–1730

The global 'gamification' of online gaming

Joint session with the Leisure Industries Section and the Technology Law Committee.

Everyone is talking about gamification, regulation, hacking nation, virtualisation. All we are saying is give peace a chance. A half-day session will cover two interactive debates. The first debate will be chaired by Trevor Nagel and will consist of a European Commission regulator and a representative from the pro-online gaming industry.

The second debate will be chaired by Gabrielle Patrick and will consist of an online gaming hacker and a representative of an e-banking institution/gaming company. Topics to be discussed in both debates will be both the business and legal implications of:

- increased gamification and alternate-reality gaming;
- virtualisation of currency and regulation of virtual currencies;
- virtual property;
- the Bitcoin phenomenon;
- expectations and regulation in a digital existence;
- social media's increased footprint; and
- implications on 'real life', and cloud computing.

Wednesday 0930 – 1230

The criminalisation of sport and the fashion industry

Joint session with the Criminal Law Committee and the Leisure Industries Section.

Sports and fashion are two of the most widely participated in leisure activities worldwide. The popularity of these pastimes has led to the development of two highly profitable industries. As is often the case, however, where profit is to be made, criminal activity lurks in the shadows.

This panel discussion, led by the session co-chairs Saba Naqshbandi and Sabrina Fiorellino, will focus on the interplay between criminal activities and the sports and fashion industries. There will be a particular focus on anti-counterfeiting legislation in the international fashion industry and on the impact that crime has had on the sports and fashion industries generally as well as the reactions that have resulted at national and international level.

Thursday 1430 – 1730

BRICS and stones – social media pitfalls in hospitality

Joint session with the Leisure Industries Section and the Media Law Committee.

Social media can be a double-edged sword for the hospitality industry. A well-blogged plug can put your resort on the map while a disgruntled customer rating can destroy your dude ranch.

This interactive session co-chaired by Brenda Pritchard, Chair of the Leisure Industries Section and David Jacoby, Secretary of the Leisure Industries Section will explore legal issues such as marketplace confusion, false testimonials, damage to business reputation and defamation.

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