Driving force

Can self-regulation realistically become the main governing mechanism for operators' conduct in the egaming sector, or will regulators always need to be behind the wheel as the industry changes and evolves? *EGR Compliance* investigates

In the egaming world, regulation is as much about the operators as it is about the regulators themselves. Operators cannot function effectively without regulation, while a regulator would be pointless without an industry to regulate. The interplay between regulator and operator forms a vital part of the development of a successful and sustainable gambling industry.

But as important as this interplay is, a significant impact on the industry has been made over recent years by operators choosing to self-regulate. Self-regulation shows external observers that an industry is committed to pursuing the highest standards and in applying these standards to itself, the business ultimately wins the trust of the public.

The most recent example of a firm committing to a self-regulatory regime, despite a perceived detrimental cost to its business model, occurred last month when Sky took the decision to limit gambling advertising to one advert per commercial break from August 2019. These self-imposed restrictions, when introduced, are likely to cost the broadcaster tens of millions of pounds in annual advertising revenues.

According to recent figures, gambling advertising accounts for approximately £200m per year of UK ad sales, and with Sky reportedly controlling almost half of the UK advertising market, the motivations can seem a little hard to find. For Warwick Bartlett, CEO of Global Betting and Gaming Consultants, if you reduce advertising, "you reduce game promotion and that will feed down into all parts of the sports economic model", potentially causing damage to the wider sporting world.

But when you look a little wider, the reasoning becomes clearer. Over the past 12-18 months, the issue of gambling advertising and its perceived 'normalisation' of gambling for the public has sprung to the fore in the UK. Normalisation, and by virtue the perceived issue of making something socially acceptable, has been linked to increases in problem gambling rates.

Comments by the CEOs of Paddy Power Betfair, GVC Holdings and GambleAware, together with the recent regulatory shifts by the Advertising Standards Authority and the Gambling Commission towards a more aggressive approach, are symptoms of a trend toward restrictions in this area. By addressing this issue in a very public way, Sky has stolen a march on its competitors, winning the headlines and the plaudits from both the gambling industry and the stakeholders calling for change.

Even more importantly, these changes have been mirrored by the Remote Gambling Association (RGA), which has said that it will commit to a whistle-to-whistle gambling advertising ban from 2019. As the largest association of UK online operators, the RGA is uniquely positioned to necessitate industry and indeed regulatory change, but more importantly, acts on behalf of the operators rather than externally and potentially against them.

So, will it work? Operators acting in concert with each other presents more certainty that the proposed advertising ban will lead to a fall in advertising rates. However, Bartlett believes that there will be at least one company "tempted to break the rule to take advantage".

Regardless of the possible future of the ban, David Clifton, director of Clifton Davies Consultants, believes "it remains to be seen if this is sufficient to assuage those concerns to remove the threat of greater regulatory restrictions on advertising being compulsorily imposed on the industry".

The chicken or the egg

Given this example, should operators necessitate regulatory change, or should regulators merely implement regulatory changes and expect operators to conform or leave? For Richard Williams, head of the betting and gaming group at law firm Joelson, "operators should voluntarily prompt regulatory change before regulators are forced to act".

Operators can either wait for legislation to restrict their activities, such as by banning television advertising outright or pre-empt any proposed legislation by self-imposing restrictions which negate it. As Williams adds: "If operators do not take the lead on this, the outcome could be far worse."

Given this example of self-regulation improving the gambling industry's public persona, the case for self-regulation seems clear, but to what extent can a gambling operator self-regulate? Williams believes there is a role for operators in self-regulation, "particularly in areas which would impact negatively on turnover". But beyond this, there is little incentive for the industry to self-regulate as regulations are "only relevant if enforced as this acts as a deterrent to others".

Where has self-regulation failed?

An argument can be made that self-regulation fails every time an operator finds itself on the receiving end of a regulatory ruling, be it a regulatory fine or even the nuclear option of having its licence revoked. Using this rationale, the increasing number of fines being awarded to operators over the last 12-18 months would seem to suggest that self-regulation, at an individual operator level, is failing.

These sentiments are echoed by Clifton, who believes that the actions of a few bad apples have spoilt the entire barrel in respect of self-regulation. "I am not talking here about genuine human mistake or accidental technology failures. I mean systemic failings that are so serious they have given the impression of a complete disregard of regulation" Clifton adds.

So, what can the industry do to remove this blot on its copybook? Clifton believes that, rather than trying again with self-regulation, it is essential for the industry to show "that it can – and will – comply with existing regulations". However, he asserts that the industry has a mountain to climb restoring sufficient public trust to enable it to mount a credible argument that it should be allowed more self-regulation in the future.

Where has it worked?

Historically, the UK had a gambling regulatory regime that operated with a certain degree of regulation and self-regulation for almost half a century, beginning with the Betting, Gaming & Lotteries Act (1963). The Act deferred the regulation of the nascent gambling industry to local magistrates, with the enforcement element being undertaken by the UK police.

At the self-regulation level, bookmakers dealt with individual issues on a case-by-case basis. Explaining why this environ-

The RGA recently committed to a 'whistle-to-whistle' advertising ban from 2019 ment worked, Bartlett adds: "All of the operators were British, lived within the locality and were part of the community. They did not encourage addictive play, there were no slots, and if a bookmaker broke the law a competitor would call him up and say, 'come off it, stop or I will call the police'."

However, the legislation at the time was far more stringent than that being used today, imposing heavy restrictions on advertising and barring access to licences for foreign firms, with native firms operating as mini-monopolies within metropolitan areas. But the liberalisation of gambling laws that has occurred during the last 20 years has widened the pool of operators from just a few UK businesses to an international field of operators from jurisdictions from around the globe.

In concert with this has been a technological explosion in the gambling industry, widening the scope of gambling options available but at the same time magnifying the need for regulation over self-regulation. That is not to say there isn't a case for self-regulation in the online age, but arguably the best form of self-regulation comes in the form of trade associations such as the RGA, GambleAware, ESSA and the Industry Group for Responsible Gambling. These associations, operating primarily as points of authority, impose conditions on members that adhere them to the highest regulatory standards.

In addition to this, self-regulatory associations serve as a vital sounding board for the industry in its dealings with regulators, enabling the sector to speak with one voice. As Clive Hawkswood, CEO of the RGA, told sister title *EGR Intel*: "One of the weaknesses across the whole gambling industry in the UK is that politicians and regulators have found it far too easy to play us off one against the other."

One area of self-regulation currently under attack by public, regulatory and parliamentary forces is the Industry Code for Socially Responsible Gambling, which has provided effective self-regulation around social responsibility for many years. However, recent criticism, together with high-profile instances such as the recent advertising furore have led to many saying that it should have been tightened up far sooner than it eventually was.

Another area of self-regulation under threat is the level of voluntary donations towards research, education and treatment of problem gamblers, as evidenced by the new Sports Minister Mims Davies warning that a mandatory levy will be imposed if the present voluntary system doesn't work, and by the Labour Party's call for a compulsory 1% levy on operators' gross gambling yield.

Self-regulation vs regulation

As has been pointed out, regulation provides a necessary deterrent to operator inaction or infraction, but too much regulation can ultimately be a bad thing, making markets unattractive to operators. In fact, too much regulation may be hampering the UK market, with some operators choosing not to enter the UK while others choose to leave it.

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> ■ *Richard Williams, Joelson*
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Williams says: "While the intention behind regulation is often positive – for the consumer at least – it adds extra expense and burden to operators and some may decide that the highly competitive UK market is simply not worth being involved in." This trend toward increased regulation in the UK may be a portent of what is to come for other regulated markets across the globe, as regulators everywhere tighten standards in areas like AML, social responsibility and consumer protection.

To some extent, online gaming firms already self-regulate their operations by ensuring their business practices do not contravene existing regulations and incur a regulatory penalty. This extends into all spheres of what a gambling business does on a day-to-day basis, from the second the individual accesses its site, to the time that individual chooses to self-exclude.

The crucial thing here is the presence of a regulator to wield the stick over operators because as regulatory investigations have revealed, the operators don't always get regulated activities right. The escalation of regulatory fines in the UK is proof that we still have far to go in achieving the goal of a market that regulates itself.

For Williams, the presence of a regulator and the threat of high financial penalties "is focusing minds and compliance is becoming a far more important issue", causing many operators to up their game in key areas of compliance, including AML/social responsibility and, most recently, advertising.

So, if this trend towards increased compliance results in the complete elimination of regulatory issues should operators be left to their own devices? For the bigger operators, this would not be an issue as they already have the resources and the skills to continue to remain compliant, barring infrequent infractions that can be dealt with in-house.

The issue comes when smaller operators, which do not have the breadth of knowledge and resources of their larger counterparts, try to remain compliant. There will undoubtedly be many that will succeed in being compliant despite their disadvantages, but there will always be others that sacrifice compliance to seize profits, no matter the consequences. In this environment, firms cannot self-regulate; there must be a regulator as a 'big brother' entity watching over all gambling firms.

The best of both worlds

An argument can be made that the ideal median for the gambling industry is a world where the self-regulation of operators by operators and trade associations reduces the need for regulator interaction in the gambling industry to the more traditional practices of licensing and legislation. But as we have shown in this feature, that world is an unsustainable one because of the ever-increasing pantheon of operators in this space.

The key thing for the industry to show now is that it has developed the acumen to self-regulate, which can only be achieved by maintaining a flawless regulatory record. Only then will governments and regulators let the industry take the reins of regulation.