

Employing popular emerging technologies in the regulation of commercial gaming is not always a winning strategy.

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Author: Ma, Di

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I. BACKGROUND ON NEW YORK COMMERCIAL GAMING (1)

On July 30, 2013, Governor Andrew M. Cuomo signed the Upstate New York Gaming Economic Development Act ("Act"), which authorized commercial gaming in the Hudson Valley/Catskill, Capital District-Saratoga, and Central-Southern Tier regions of the state. (2) The legislative intent was to "boost economic development, create thousands of well-paying jobs and provide added revenue to the state" (3) and gaming revenues were to be used to "increase support for education beyond that of the state's education formulae and to provide real property tax relief to localities[.]" (4) Initially, up to four commercial gaming facilities were authorized in these approved regions (5) and a Gaming Facility Location Board, appointed by the Gaming Commission, (6) was tasked with sifting through the Request for Application ("RFA") process and ultimately making a recommendation on which gaming facility license applicants should be selected. (7)

[FIGURE 1 OMITTED]

Sixteen applicants met the June 30, 2014, RFA deadline. (9) An extensive evaluation period, which included applicants presenting to the Gaming Facility Location Board (10) and the Board traveling to each region to solicit comments from the public, followed. (11) This was also a costly process. Due to the magnitude of technical knowledge required, New York State contracted with Taft, Stettinius & Hollister LLP, a law firm that features lobbyists for big gaming companies, to assist the board members with analysis of the gaming industry and individual applications. (12) It was reported that the total bill from Taft for its consulting services during this selection process came close to \$5 million. (13) After a long and drawn out process, a final decision was made near the year's end. (14)

On December 17, 2014, the Gaming Facility Location Board held a press conference at the Empire State Plaza and announced its recommendation for three casinos--Montreign Resort Casino (15) from the Hudson Valley/Catskill region, Rivers Casino & Resort at Mohawk Harbor (16) from the Capital region, and Lago Resort & Casino (17) from the Central-Southern Tier region. (18) Not unexpectedly, there were uproars over the announcement as people felt that Orange County and the "true" Southern Tier were shut out. (19) After much political pressure, Governor Cuomo wrote a December 26, 2014, letter to the Gaming Commission, asking for a new bid exclusive to the Southern Tier region. (20) During a January 13, 2015, meeting, the Gaming Facility Location Board decided unanimously to open a new round of bids for the fourth possible license. (21) For purposes of this article, subsequent RFAs do not impact the immediate next step for the Gaming Commission--drafting regulations. The Act gave each gaming facility licensee a strict two year deadline for project completion from the date of licensure, threatening to impose a fine upwards of \$50 million. (22) This means that the Gaming Commission must prescribe a complete set of commercial gaming regulations by late 2016 or early 2017, as the licensing process started as soon as the Gaming Facility Location Board announced its first round of RFA winners.

Part II of this article will explain why effective regulation is crucial to achieve the legislative intent behind promoting commercial gaming. Part III will offer a brief overview into the current models of commercial gaming regulation. Part IV will describe three emerging technologies available in the casino industry--facial recognition, play management tools, and the "lock up" feature--in greater depth and detail how jurisdictions like Massachusetts and Ohio have tried to incorporate those mechanisms into their regulatory schemes. Part IV will argue why New York should not jump the gun to imitate the other states. Part V will address special concerns unique to the New York State Gaming Commission, namely unification of all gaming regulations between commercial, Native American, and video lottery gaming. Part VI will conclude that although emerging technologies are attractive to regulators, the proposed benefits are not outweighed by the costs to the casino companies.

II. IMPORTANCE OF COMMERCIAL GAMING REGULATION

Why care at all about how casinos are regulated in New York? As cliché as it sounds, it's for the common good. According to the New York State Gaming Commission, new casinos are estimated to bring in:

- * Nearly \$1 billion in construction spending;
- * 6,700 construction jobs;
- * 2,900 permanent jobs;
- * \$238.2 million in new education aid and property tax relief; and
- * \$192 million in aid to local governments. (23)

The revenue distribution across the state to school aid or property tax relief and local government aid is about \$430 million. (24) Through the enactment of the Act, Governor Cuomo also negotiated with Native American nations to share 10% revenue with all counties in their region. (25) Looking to the neighboring jurisdictions, these numbers are far from wishful thinking as Pennsylvania gained \$1.5 billion in revenue and 16,000 in jobs and Connecticut gained \$300 million in revenue and 14,000 in jobs thanks to commercial gaming. (26) With these large sums of money at stake, protecting the integrity of the gaming industry should be everyone's concern.

Additionally, it is relevant to point out the downside of the casino industry. New York is entering into this industry during a time when six casinos in Atlantic City have closed since 2014 (27) and the revenues took a dip in Pennsylvania from 2012 to 2014, the second largest gambling market in the United States. (28) Northeast Native American favorites-Foxwoods Resort Casino and Mohegan Sun-are both fighting to cut costs to mitigate the decline in gaming revenue. (29) Within the New York state borders, there are already six upstate Native American casinos and nine video lottery terminals known as "racinos." (30) Citing market saturation, many criticize the legalization of commercial gaming in New York as fifteen years too late. (31) Careful regulation would strike a delicate balance between facilitating the growth of the New York gambling industry and protecting the interests of various stakeholders.

III. INTRODUCTION TO THE REGULATORY SCHEMES

The Act mandated that commercial casinos will be regulated "tightly" and "strictly" to ensure public confidence in the integrity of all commercial gaming within the State. (32) However, the Gaming Commission does not want to violate New York's interest in being a business-friendly state, rationalizing that tight and effective regulatory control does not have to be "overly burdensome." (33) In commercial gaming, there are two classic approaches to regulation--the Nevada model and the New Jersey model. (34) The Nevada model simply treats casinos as any other business with the ultimate goal of maximizing economic benefits for the state. (35) This approach has been credited as the reason why Las Vegas has achieved a longstanding prominence as the gambling mecca in the United States. (36) The New Jersey model sees casinos as a unique line of business that is vulnerable to malfeasance and emphasizes a broader and more meticulous role for government oversight and intervention. (37) As a result, this regulatory framework has been blamed for why gambling never reached its economic potential in New Jersey. (38) As more states move to legalize commercial gaming, (39) many are moving toward a hybrid approach. (40)

What makes casino regulation even more interesting today is the added component of emerging technologies like facial recognition, play management tools, and the "lock-up" feature. Facial recognition technology pinpoints a face after detecting a human body on a video feed, and then compares that image against a pre-existing database of faces for a match. (41) According to the FBI, it uses geometric or photometric data to identify someone or verify someone's identity. (42) Play management tools enable a player to voluntarily set limits such as how much he or she wants to spend at a slot machine. (43) The "lock up" feature stops a gambling transaction once a player wins \$600 or more, meaning a player cannot resume play until a slot attendee or table game dealer takes down the necessary information for the appropriate state withholding tax. (44) Although this technology has been on the market, most games are set to a threshold of \$1,200 according to federal regulations despite some state regulators' attempts at a lower threshold level. (45) The next section will discuss how ambitious states like Massachusetts and Ohio have incorporated these darling technologies into their regulations and what New York can learn from their experiences.

IV. EMERGING TECHNOLOGIES IN COMMERCIAL GAMING

A. Facial Recognition

Twenty-four hour surveillance is mandatory for commercial casinos but no jurisdiction mandates facial recognition yet. (46) Video surveillance, in absence of facial recognition, is already sophisticated at certain casinos. (47) It is estimated that a typical Las Vegas-style casino resort would employ more than 3,000 to 5,000 cameras around the property, and each camera is "powerful enough to 'read serial numbers on bills.'" (48) Yet casinos, like the now-defunct Trump properties in Atlantic City and many more in Las Vegas, voluntarily employ facial recognition to catch cheats. (49) The big casinos use facial recognition software for various reasons. For example, Venetian Las Vegas

started to use facial recognition for advertising purposes. (50) The camera system analyzes the patrons' demographics and displays custom suggestions for restaurants and entertainment on digital screens. (51) However, most casinos use high-tech video equipment for their intended purposes: protecting property or money, complying with gaming regulations, and ensuring safety of employees and guests. (52) Facial recognition technology can be very advanced. For example, some cameras scan for irises instead of faces. (53) The Barona Resort & Casino in California rolled out a system called TableEye21 to identify "advantage" Blackjack players by using video analysis and chip tracking through radio frequency transmitters. (54) Casino monitoring can also be extended beyond facial recognition. There is a product called MindPlay, which alerts dealers in real time if the undealt deck(s) is favorable to the players and presumptuously encourages re-shuffling so players never get advantageous play. (55)

It is this type of high-tech sophistication that draws regulators. In June 2013, Ohio State Senator Bill Coley added an eleventh-hour amendment to the budget that allowed the Casino Control Commission to require facial recognition at the state's four gaming facilities and other establishments. (56) This is the first time that a gaming regulatory body has attempted to make facial recognition mandatory and the industry did not respond well. (57) For example, one of Ohio's gaming companies is Rock Ohio Caesars, which operates Horseshoe Casino Cleveland and the Thistledown Racino. (58) Although Caesars is a big name in the gaming industry, none of its properties in the United States, including its flagship casino in Las Vegas, uses facial recognition. (59) It seemed unfair that such a corporate giant would need to change its surveillance structure because of a mandate from a jurisdiction that is not even placed in the top twenty domestic gambling markets. (60)

Although a poll has shown that a majority of Americans do not object to the use of facial recognition technology in public places, (61) New York should stay away from following Ohio for a number of reasons. First and foremost, the technology is easily avoidable. As obvious as it may be, a player intending to evade facial recognition can simply wear sunglasses or a hat, especially in a dim-lit casino. (62) Most facial experts agree that the technology is far from perfect, or even practicable. (63) Facial recognition installed at Boston's Logan Airport after 9/11 showed only a 61.4% accuracy rate. (64) The second reason why facial recognition is impracticable is cost. In 2011, Ontario casinos implemented groundbreaking facial recognition technology that boasted a 91% accuracy rate. (65) However, it costs \$3 to \$5 million per gaming facility. (66) Most casinos already spend a large sum of money on video surveillance to comply with regulations, an added burden is not seen as a necessary priority. (67)

In reviewing the three winnings bids in New York, none of the projects included a budget for facial recognition in its application. (68) It would not be business-friendly to ask for an additional \$3 to \$5 million investment after each applicant already paid \$1 million in application fee, between \$20 to \$70 million in licensing fees required by the statute, and hundreds of millions of dollars in minimum required capital investment. (69) The \$3 to \$5 million is also a low estimate because it does not take into account the cost of staff training and development. (70) When the industry experts agree that the most important countermeasure that a casino can implement against dishonest patrons is simply installing cameras, regulators should not impose a technology mandate that yields high costs and relatively low benefits. (71) Indeed, the current gold standard in surveillance is the Aria Resort and Casino in Las Vegas, where 1,100 security cameras--a mixture of high-definition digital cameras, analog pan/tilt/zoom cameras, and "50 cameras that take 360-degree images"--cover 98% of the casino floor. (72) According to Ted Whiting, Aria's Director of Surveillance, "facial recognition software hasn't been of much use to [me]." (73)

B. Play Management Tools

Elsewhere in Massachusetts, regulators have been pushing different types of technology. On December 8, 2014, the Massachusetts Gaming Commission adopted a first-of-its-kind play management system that players may voluntarily use. The best way to understand this concept is to examine its features. Some of the features are as follows:

- * "[A]llow patrons to pre-commit to a dollar amount spent per gaming session/day, and/or per month[;]"
- * "[P]rovide pop-up reminders on the screen of the electronic gaming machine at 60%, 90% and 100% of the limit[;]"
- * "[I]ntegrated as a feature of the licensees' player reward or loyalty card system[;]"
- * "[P]rovide a periodic invitation to patrons who decline to use the play management tool to set limits[;]"
- * "When a player reaches the pre-set limits,... [t]he session is interrupted and the player... must actively acknowledge a message to continue gambling[;]" and
- * "If the player continues to play in excess of the limit, the session is interrupted with an informative message at limit intervals of 150%, 200%, 250%, etc. The player would have to actively acknowledge the message to continue gambling." (74)

This pilot program, marketed as a "budgetary tool," (75) landed at the Plainridge Park Casino in Plainville in June 2015. (76) Though this is the first mandate in the United States, similar play management systems have been tested in New Zealand, Australia, Canada, Norway, Singapore, and Sweden. (77) Opponents of this technology, consisting of casino operators, argue that it has been proven ineffective in the other jurisdictions. (78) There are also concerns that the implementation process will be burdensome to the casinos and their patrons. (79) The American Gaming Association, a national trade group representing the casino industry, blamed these limit-setting programs for declines in gambling revenue in Nova Scotia, Canada. (80)

The main reason why New York should steer away from mandatory play management tools, despite merits on both sides of the issue, is cost. Just like facial recognition, there are significant costs associated with play management systems. (81) For example, to introduce a new card system that tracks and limits a patron's play, there would need to be a need for either new machines or conversion of existing machines. (82) In Nova Scotia, it was estimated that the overall cost was \$25 million over a five-year span. (83) In Norway, the cost was \$207 million--\$144 million for new machines and \$63 for new games development. (84)

Proponents of this technology could argue that these costs would offset the financial and social costs (85) of problem gambling. However, repeated studies have shown that problem gambling is only prevalent in 2-3% of the adult population in the United States. (86) The New York State Office of Alcoholism and Substance Abuse Services has budgeted \$2.2 million a year for problem gambling prevention and treatment services, which accounts for eleven cents per capita. (87) This may be below the national average of thirty-two cents per capita (88) but the Act also sets aside a \$500 per slot machine or table game annual assessment fee dedicated to problem gambling education and treatment. (89) Additionally, section 1362 requires each gaming facility to establish extensive problem gambling prevention and outreach programs. (90) Understandably, organizations like the National Council on Problem Gambling want to exponentially increase the budget for problem gambling to as much as \$110 million annually, (91) but the reality is that state governments often do not have this kind of cash and asking gaming operators to spend \$5.50 or 1618% over the national average per capita would be a gross aberration in the industry. (92)

A more cost-effective way to target problem gambling is further research. (93) Not many states have studied this area in depth before passing regulations. (94) A focused study should be conducted to find out the most addictive form of gambling, the locations where gambling is most prevalent, in order to develop a plan to prevent gambling problems. (95) Targeted spending on problem gambling will lessen the recommended \$110 million per year budget. However, problem gambling prevention should not be imposed upon the 97% to 98% recreational gamblers by mandatory play management tools, or those patrons may visit a gaming facility in a different jurisdiction where they are not shamed or inconvenienced for gambling. (96)

C. "Lock up"Feature

Massachusetts made gambling news again in January 2014. Under the Massachusetts Expanded Gaming Act, (97) gambling winnings over \$600 are treated as personal income and are subject to the following tax law:

Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of lottery or wagering winnings which are subject to tax under chapter 62 and which are subject to withholding under section 3402 of the Internal Revenue Code, without the exception for slot machines, keno and bingo played at licensed casinos in subsections (q)(5) and (r) of said section 3402 of the Internal Revenue Code, shall deduct and withhold from such payment an amount equal to 5 percent of such payment, except that such withholding for purposes of this chapter shall apply to payments of winnings of \$600 or greater notwithstanding any contrary provision of the Internal Revenue Code. For the purposes of this chapter and chapter 62C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee. (98)

This means that every time a patron wins a payout of \$600 or higher, the game would be stopped for about ten minutes so the patron can fill out paperwork, including state tax filings and withholdings of 5%. (99) The \$600 threshold is significantly lower than the federal requirement, which only requires tax withholdings if the payout is equal to or greater than \$1,200. (100) In most jurisdictions, the states enable the "lock up" feature on games only when the federal threshold of \$1,200 is hit. (101) Many estimate that Massachusetts' low lock up level of \$600 would cost the state millions. (102) Even the state's own regulators believe changing the law has "the most urgency," (103) but legislators may be reluctant to re-examine the enacting statute after its controversial passage. (104)

An important group of casino patrons, the high-rollers, will be most affected by this odd glitch in the state law. (105) Practically every hand in a casino's VIP room yields a payout of \$600 or greater. (106) A gaming insider called the threshold "artificially low" and estimated that the amount of paperwork would be increased by ten times because "[y]ou have exponentially more jackpots at \$600 than at \$1,200." (107) Beyond the paperwork, lost revenue is at issue. While the patrons are filling out tax forms, machines and table games are halted. In the gaming industry, plays-per-hour is a key metric when analyzing casino revenue. (108) This new rule also frustrates other forms of gambling. The New England Horsemen's Benevolent and Protective Associate wrote a letter to the Massachusetts Gaming Commission, stating the new requirement "made no sense." (109) The chief operating officer for Suffolk Downs, Chip Tuttle, said: "Based on the comparisons from 2012 to 2013, there seems to have been a negative effect.... Our customers were clearly upset by it, and it may have very well be encouraging them to go to simulcast facilities in New Hampshire and Rhode Island." (110) There is no New York counterpart to the Massachusetts rule. (111) New York should avoid imposing its own limit and follow the federal threshold of \$1,200, like most other states. Arbitrarily lowering it would bring on the same concerns as those facing Massachusetts gaming operators. To be a business-friendly state, New York should eliminate unnecessary burdens in commercial gaming regulation. While accurate reporting of wagering winnings is important, it is unduly cumbersome for both the patrons and gaming operators to report all winnings less than the \$1,200 federal requirement, and it will cause millions in lost gaming revenue.

V. SPECIAL CONSIDERATIONS FOR NEW YORK

As stated before, New York already features six Native American casinos--Akwesasne Mohawk Casino, Seneca Niagara Casino, Seneca Allegany Casino, Seneca Buffalo Casino, Turning Stone Casino, and Yellow Brick Road Casino--operated by the St. Regis Mohawks, Seneca Nation of Indians, and the Oneida Indian Nation of New York respectively. (112) Since 2004, the state also operates nine video lottery terminals ("VLT"), meaning it maintains the centralized system that links together all of the terminals or racinos within its borders. (113) This means four different sets of gaming regulation already exist in New York. There is a compact with each of the three Native American nations (114) and a separate set of Video Lottery Gaming regulations. (115) A top priority for the New York Gaming Commission is to unify all types of gaming and one way to do so is to promulgate a set of commercial gaming rules that can be adopted by the Native American tribes and video lottery gaming.

Under the current scheme, a gaming supplier like Bally Technologies would need to be licensed at least three different times if it wants to do business with Native American casinos, video lottery terminals, and commercial casinos. (116) This is true even if the company is providing the exact same product or service to every gaming facility. The company would need to pay for three different background investigations because each division of gaming uses a different agency for its licensing process. (117) This is neither efficient nor business friendly. Unification of all three classifications of gaming would make it easier for everyone involved in the industry, as well as for the patrons who may not know the legal distinctions to understand why his or her experience varies from Turning Stone to Vernon Downs. With the goal of unification in mind, the New York Gaming Commission needs to keep the existing regulations in mind when promulgating commercial gaming rules. Currently, neither the Native American compacts nor the VLT regulations mandate facial recognition. Introducing it would not only be burdensome to the commercial gaming licensees, as stated in Part IV(A), but it would also receive great pushback from the Native Americans who already feel threatened by the new casinos and VLTs that are already walking a fine rope with the private sector in a sometimes confusing revenue sharing system. This same line of argument could also be applied to the play management tools and lock up features. New York should focus on improving existing issues and concerns before venturing into new, untested territories with its commercial gaming regulations.

VI. CONCLUSION

The New York Gaming Commission is trying to set the next gold standard in commercial gaming. In order to achieve this goal, the Commission needs to establish a robust regulatory regime that is strict enough to protect the integrity of gaming but also not overly burdensome at the expense of the gaming industry or its patrons. Flashy, new technology like facial recognition and other computer software are highly attractive to regulators. This is especially true when the high-tech gadgets are marketed to combat a disproportionately over-politicized social disorder that has always plagued the industry. But special consideration should be paid to each of these proposals because each new restriction takes away from the overall gaming revenue. The legislative intent behind the Act is to revive certain stagnant local economies and provide educational aid and property tax relief. The new regulations should provide a roadmap to maximize the economic potentials of commercial gaming. On a broader scale, the new regulations should provide a framework for Native American and video lottery gaming. New York is in the perfect position to achieve the ethereal balance between strict regulation and profitability.

Di Ma (*)

(*) J.D. 2014, Albany Law School; M.S. 2009, University of Nevada Las Vegas. B.S. 2003, University of Maryland College Park. The author would like to thank Robert Schwab, Nicole Nance, Linda Honey, Laurie Saltzman Kovatch, Douglas Gerhardt, Christine Sgarlata Chung, Bryan Gottlieb, Daniel Hubbell, the Smith family, the Ma family, and the Lei family for their unwavering faith and support and Gregory D. Kaufmann for his sagacious wit. This article is dedicated to the late Judy Wan Ying and Elle Kylei Smith. The views and opinions expressed in this article are those of the author and do not necessarily reflect the official policy or position of the New York State Gaming Commission.

(1) For a brief history and overview of commercial gaming, see Facts at Your Fingertips: U.S. Commercial Casino Industry, AM. GAMING Ass'N 4-5 (2009), <http://efti.hhp.ufl.edu/wp-content%5Cuploads/Casino-Industry-Facts-2008.pdf>. Throughout the article, the terms "gaming" and "gambling" will be used interchangeably. For an interesting explanation on the evolution of these two terms, see Ashlee McGandy, How You Name it Matters: 'Gambling' vs. 'Gaming', CORNELL CHRON. (Oct. 15, 2013), <http://www.news.cornell.edu/stories/2013/10/how-you-name-it-matters-gambling-vs-gaming>.

(2) N.Y. RAC. PARI-MUT. WAG. & BREED. LAW [section] 1300 (McKinney 2016). Section 1310 created two development zones. Id. [section] 1310(1). Zone one included New York City and Nassau, Putnam, Rockland, Suffolk and Westchester counties. Id. Zone two included all other counties within the state. Id. Both were further broken down into development regions. Id. [section] 1310(2). For a seven-year period, zone two is protected by exclusivity so that no destination gaming resorts will be licensed by the State downstate. Id. [section] 1311(1). Section 1311 authorized up to four gaming facility licenses in development regions one (Columbia Delaware, Dutchess, Greene, Orange, Sullivan, and Ulster counties), two (Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington counties), and five of zone two (Broome, Chemung (east of State Route 14), Schuyler (east of State Route 14), Seneca, Tioga, Tompkins, and Wayne (east of State Route 14) counties). Id.

(3) Id. [section] 1300(5). See also Jesse McKinley and Charles V. Bagli, Board Backs Casinos in the Catskills, Near Albany and in Central New York, N.Y. TIMES (Dec. 17, 2014), http://www.nytimes.com/2014/12/18/nyregion/new-york-casino-resort-proposals.html?_r=0 ("Under state law, the new operators will have to pay a one-time licensing fee of \$20 million to \$70 million, depending on the location. Location will also determine the tax rate on gambling revenues, from 37 percent to 45 percent for slot machines to 10 percent for table games.").

(4) RAC. PARI-MUT. WAG. & BREED. LAW [section] 1300(9). See also McKinley and Bagli, *supra* note 3 ("The bulk of the revenue, 80 percent, is earmarked for elementary and secondary education or property tax relief, with the remaining money split between municipal and county governments.").

(5) RAC. PARI-MUT. WAG. & BREED. LAW [section] 1311(1).

(6) Gaming Facility Location Board, NEW YORK STATE GAMING COMM'N, <http://www.gaming.ny.gov/gaming/casinos.php> (last visited Mar. 26, 2016). The board consisted of independent, non-official volunteers who are residents of New York State who possessed more than ten years of experience in fiscal matters, plus other "strict series of requirements." Id. The board members were Paul Francis, Dennis E. Glazer, Stuart Rabinowitz, William C. Thompson, Jr., and the chairperson was Kevin Law. January 13, 2015 Gaming Facility Location Board Meeting Transcript, NEW YORK STATE GAMING COMM'N 1 (Jan. 13, 2015), https://www.gaming.ny.gov/pdf/nysgc_01-13-15.pdf.

(7) RAC. PARI-MUT. WAG. & BREED. LAW [section] 1320. The board had to base its decision according to the following weights: 70% consideration was giving to economic activity and business development factors, 20% to local impact and siting factors, and 10% to workforce enhancement factors. Id. [section] 1320(1)-(3). More information on the RFA process can be found at RFA for Gaming Facilities, NEW YORK STATE GAMING COMM'N, <http://gaming.ny.gov/gaming/casinos.php?ID=1> (last visited Mar. 26, 2016).

(8) Casinos in New York State, NEW YORK STATE GAMING COMM'N, <http://www.gaming.ny.gov/gaming/casinos.php?ID=1> (last visited Apr. 4, 2016).

(9) The applicants are Caesars New York in Woodbury, Mohegan Sun at the Concord in Thompson, Montreign Resort Casino in Thompson, The Grand Hudson Resort & Casino in New Windsor, Hudson Valley Casino & Resort in Newburgh, Nevele Resort, Casino & Spa in Ellenville, The Live! Hotel and Casino New York in South Blooming Grove, Sterling Forest Resort in Tuxedo, Resorts World Hudson Valley in Montgomery, Rivers Casino & Resort at Mohawk Harbor in Schenectady, Howe Caverns Resort & Casino in Howes Cave, Hard Rock in Rensselaer, Capital View Casino & Resort in East Greenbush, Tioga Downs Casino Racing & Entertainment in Nichols, Traditions Resort & Casino in Johnson City, and Lago Resort & Casino in Tyre. June 30, 2014 Applicant Materials & Presentations, NEW YORK STATE GAMING COMM'N, <http://gaming.ny.gov/gaming/casinos.php?ID=1> (last visited Apr. 4, 2016).

(10) Transcripts and videos from the September 8-9, 2014, presentations can be found at the Gaming Commission website. Id.

(11) Those events occurred on September 22, 2014, for the Capital Region, September 23, 2014, for the Hudson Valley/Catskill region, and September 24, 2014, for the Eastern-Southern Tier region. NY Gaming Facility Location Board Hears from 405 Individuals over 3 Days of Public Comment Events Regarding Casino Proposals, NEW YORK STATE GAMING COMM'N (Sept. 26, 2014), <http://gammg.ny.gov/pdf/09%2026%2014%20GFLBPublicCommentEventResults2.pdf>.

(12) New York Gaming Facility Location Board Selects Taft, Stettinius & Hollister LLP as Gaming Advisory Services Consultant, NEW YORK STATE GAMING COMM'N (Mar. 24, 2014), <http://www.gaming.ny.gov/pdf/03.24.14.FLBGamingAdvisoryServices.pdf>; see James M. Odato, Consultant Hired by State to Help Casino Siting Board, TIMES UNION (Mar. 24, 2014), <http://www.timesunion.com/local/article/Consultant-hired-by-state-to-help-casino-siting-5345657.php>.

(13) David Robinson, Law Firm Paid Nearly \$4.9M to Assist with Picking New York Casino Winners, ALBANY BUS. REV. (Dec. 17, 2014), <http://www.bizjournals.com/albany/news/2014/12/17/law-firm-paid-nearly-4-9-million-for-casino-pick.html> (stating that the Gaming Commission can pay another \$100 for the remainder of the consulting contract).

(14) See Public Notice and Media Advisory, GAMING FACILITY LOCATION BD. (Dec. 17, 2014), <http://www.gaming.ny.gov/pdf/12.12.14.GFLBMeetingNotice.pdf>; Glenn Blain, New York Casino Selection Panel Expected to Announce its Decisions on Dec. 17th, NY. DAILY NEWS: DAILY POLITICS BLOG (NOV. 24, 2014), <http://www.nydailynews.com/blogs/dailypolitics/nycasino-decision-expected-dec-17th-blog-entry-1.2022194>. The decision was originally anticipated for fall. The Siting Process, NEW YORK STATE GAMING COMM'N, <http://www.gaming.ny.gov/gaming/casinos.php?ID=1> (last visited Apr. 4, 2016).

(15) MONTREIGN, <https://montreign.com/about-montreign> (last visited Apr. 4, 2016).

(16) RIVERS CASINO & RESORT SCHENECTADY, <https://riverscasinoandresort.com/community/> (last visited Apr. 4, 2016).

(17) DEL LAGO RESORT & CASINO, <https://dellagoresort.com/about-us/> (last visited Apr. 4, 2016).

(18) Press Release, Gaming Facility Location Bd., Selection of the New York Gaming Facility Location Board (Dec. 17, 2014).

(19) See, e.g., Carl Campanile, NAACP Claims Gaming Commission Denies Jobs to Minorities, NY. POST (Jan. 14, 2015), <http://nypost.com/2015/01/14/naacp-claims-gaming-commission-denies-jobs-to-minorities/> ("The debate over casino expansion in New York took an ugly turn Tuesday as a civil rights leader accused the state of denying job opportunities to minorities."); Disappointment Among Those Areas That Were Not Selected for a Casino, MID-HUDSON NEWS (Dec. 18, 2014), http://www.midhudsonnews.com/News/2014/December/18/casino_rejections-18Dec14.html (discussing the disappointment expressed by Ulster County and Orange County officials); Dan Guzewich, Local Officials Blast State Casino Plan, ROME SENTINEL (Dec. 18, 2014), <http://romesentinel.com/county/local-officials-blast-state-casino-plan/QBqnlq!zKS6rXssm6u7KeiN6bPSmw/> (citing expressions of disappointment from Oneida County officials); Marty Kasper, Rensselaer Mayor Demands Answers on Casino Location Selection, NEWS10.COM (Dec. 30, 2014), <http://fox23news.com/2014/12/30/casino-location-selection-questioned-by-rensselaer-mayor/> (reporting Mayor Dan Dwyer is puzzled why the Rivers Casino in Schenectady was selected over Hard Rock); Laura Nahmias, Gural: Southern Tier 'Screwed' by Casino Decision, POLITICO (Dec. 17, 2014), <http://www.capitalnewyork.com/article/albany/2014/12/8558783/gural-southern-tier-screwed-casino-decision> (reporting that the owner of losing bid Tioga Downs complained that he spent \$800,000 of his personal money to help the Governor pass the proposition that enabled the Upstate New York Gaming Economic Development Act and the winning bid went to a project that is not a part of the Southern Tier); Mike Randall, Orange Officials Lick Wounds After Casino Snub, TIMES HERALD-RECORD (Dec. 17, 2014), <http://www.recordonline.com/article/20141217/NEWS/141219437> (pointing out how some Orange County officials felt the RFA process was a waste of time); Joseph Spector, Rejected Casino Interest Demands Bidding Reopened, DEMOCRAT & CHRONICLE (Jan. 16, 2015), <http://www.democratandchronicle.com/story/news/local/2015/01/16/rejected-casino-interest-demands-bidding-reopened/21891671/> ("Greenetrack Inc., one of the rejected bidders for a casino in Orange County, has filed a complaint with the state Comptroller's Office alleging that the state casino board broke state laws when it approved three instead of four casino projects last month."). Side note: there is also criticism that Taft, Stettinius & Hollister LLP was not truly independent as it had prior dealings with five of the sixteen applicants, including all three winners. See Jon Harris, Casino Siting Ripe with Potential Conflict, DEMOCRAT & CHRONICLE (Jan. 25, 2015),

<http://www.democratandchronicle.com/story/news/2015/01/25/casino-bidders-potential-conflict/22314237/>. It is important to note that these potential conflicts were disclosed by the Gaming Facility Location Board and "[t]he board contends that the past associations between the selected bidders and Taft had no bearing on its recommendations." Id.

(20) Letter from Andrew M. Cuomo, Governor, N.Y., to Mark D. Gearan, Chairperson, N.Y.S. Gaming Comm'n, and Kevin S. Law, Chairperson, Gaming Facility Location Bd. (Dec. 26, 2014) (on file with author).

(21) See Charles V. Bagli, *New York Gambling Board to Reconsider a Casino for the Southern Tier*, NY. TIMES (Jan. 13, 2015), http://www.nytimes.com/2015/01/14/nyregion/new-york-gambling-board-to-reconsider-a-casino-for-the-southern-tier.html?_r=1. Tioga Downs' second bid was accepted by the Gaming Facility Location Board in October 2015 and is expected to be licensed in 2016. See Selection of the New York Gaming Facility Location Board, NEW YORK STATE GAMING COMM'N (Oct. 14, 2015), <https://www.gaming.ny.gov/pdf/10.14.15.GFLBSelection.pdf>; Proposed Tioga Downs Casino Milepost Set for Today, ONEIDA DAILY DISPATCH (Jan. 26, 2016), <http://www.oneidadispatch.com/article/OD/20160126/NEWS/160129822>. 22 NY. RAC. PARI-MUT. WAG. & BREED. LAW [section] 1315(3) (McKinney 2014).

(23) Upstate NY Gaming & Economic Development Act, NEW YORK STATE GAMING COMM'N 7, http://www.gaming.ny.gov/pdf/UpstateNYGamingDevelopmentAct_FINAL.pdf (citing the Division of Budget and basing these estimates on certain conditions).

(24) Id. at 17. 80% of the State's tax revenue will be applied for school aid and/or property tax relief. Id. at 18. For an in-depth break down of the revenue distribution, by region, see generally id. See also Thomas P. DiNapoli, *Trends in New York State Lottery Revenues and Gaming Expansions*, OFFICE OF THE STATE COMPTROLLER (May 2014), http://www.osc.state.ny.us/reports/economic/trends_nys_lottery_gaming.pdf ("The Division of the Budget projects that newly authorized casinos, along with the enactment of legislation last year to expand VLT operations and the settlement of disputes with Native American nations, will generate hundreds of millions of dollars in additional revenues annually in the years ahead.").

(25) Upstate NY Gaming & Economic Development Act, supra note 23.

(26) Id.

(27) Yuki Noguchi, *As Casinos Fold, Stakes are High for Atlantic City Transformation*, NPR (Nov. 13, 2014), <http://www.npr.org/2014/11/13/363829101/as-casinos-fold-stakes-are-high-for-atlantic-city-transformation> (noting that the future of Trump Taj Mahal is uncertain).

(28) Denise Allabaugh, *Pa. Casinos See Loss in 2014 Revenue; But Little Concern for Growing Competition*, TIMES TRIBUNE.COM (Jan. 25, 2015), <http://thetimes-tribune.com/news/business/pa-casinos-see-loss-in-2014-revenue-but-little-concern-for-growing-competition-1.1822291>; Associated Press, *Pennsylvania Beats Out Atlantic City, Becomes No. 2 Gambling Market*, NJ.COM (Jan. 17, 2013), http://www.nj.com/news/index.ssf/2013/01/total_gaming_revenue_up_44_per.html. In 2015, Pennsylvania casinos trended upward again, especially in the eastern region. Whether this trend is sustainable remains to be seen as eight new casinos are scheduled to be opened in New York, Massachusetts, Maryland, and Pennsylvania by the end of 2018. See Rick Karlin, *New Casinos Will be Entering an Oversaturated Regional Market*, TIMES UNION (Dec. 7, 2015), <http://www.timesunion.com/local/article/Report-New-casinos-will-be-entering-an-6682562.php>.

(29) Stephen Singer, *Mohegan Sun, Foxwoods Owners Set Sights On New Casinos in Massachusetts*, PRESSOFATLANTICCITY.COM (Feb. 16, 2014), http://www.pressofatlanticcity.com/business/mohegan-sun-foxwoods-owners-set-sights-on-new-casinos-in/article_2e850e9c-9770-11e3-b0dc-0019bb2963f4.html (reporting that the two casino companies are joining forces to compete in the Massachusetts market as the state newly approved three resort casinos and a slot parlor).

(30) Gaming, NEW YORK STATE GAMING COMM'N, <http://www.gaming.ny.gov/gaming/> (last visited Apr. 4, 2016); Upstate NY Gaming & Economic Development Act, supra note 23.

(31) Jesse McKinley & Charles V. Bagli, *Albany Doubling Down as Casino Boom Fades*, N.Y. TIMES (Aug. 10, 2014), http://www.nytimes.com/2014/08/11/nyregion/arbany-doubling-down-as-casino-boom-fades.html?_r=2 ("Four of the state's nine racetrack casinos, which have collectively poured billions into the state's educational system, could be undercut and endangered by the new casinos. The jobs created, experience elsewhere suggests, could offer low wages instead of providing a pathway to the middle class. Localities could face new expenses for public safety services, not to mention the indirect costs of problem gambling. And while large casinos like Maryland Live, outside

Baltimore, have capitalized on unmet demand for gambling, such promising markets are becoming harder to find as casinos proliferate."); see also Thomas Kaplan, Expansion of Gambling in New York Is Approved, N.Y. TIMES (Nov. 5, 2013), http://www.nytimes.com/2013/11/06/nyregion/referendum-to-expand-casino-gambling-in-new-york-is-approved.html?_r=0 (noting that 43% of New Yorker voters opposed the referendum that approved commercial gaming).

(32) N.Y. RAC. PARI-MUT. WAG. & BREED. LAW [section] 1300(10) (McKinney 2016); see also NEW YORK STATE GAMING COMM'N, REGULATORY PRACTICE WHITE PAPER 1 (2014), <http://www.gaming.ny.gov/pdf/Regulatory%20White%20Paper,%20June%202016,%202014.pdf> ("The Legislature commanded that commercial casino gaming be tightly and strictly regulated to guarantee public confidence and trust in the credibility and integrity of all commercial casino gaming in the state and to prevent organized crime from any involvement in the casino industry. The Legislature also identified the need for strict regulatory controls of all persons, locations, practices and associations related to the operation of gaming licensees, gaming vendors and related service providers."). The Commission staff shares these legislative goals. REGULATORY PRACTICE WHITE PAPER, supra, at 1 ("Tight, effective regulatory control is a foundation of the commercial gaming industry.").

(33) REGULATORY PRACTICE WHITE PAPER, supra note 32, at 1 ("Regulations should not be promulgated simply for the sake of promulgating regulations. Each regulation needs to be appropriately and prudently examined to ensure it serves an important and necessary function, and then regularly reexamined to determine whether its proper purpose is being served."). This is in line with many of Governor Andrew Cuomo's business-friendly initiatives including New York is Open for Business. "His plan sends a strong message that New York is prepared not only to control the cost of government but to invest in the state's economic future." Press Release, Governor Cuomo Launches "New York Open for Business" Marketing Initiative (Aug. 24, 2011), <https://www.governor.ny.gov/news/governor-cuomo-launches-new-york-open-business-marketing-initiative>.

(34) NAT'L GAMBLING IMPACT STUDY COMM'N, NATIONAL GAMBLING IMPACT STUDY COMMISSION REPORT 3-5 to 3-6 (1999), <http://govinfo.library.unt.edu/ngisc/reports/3.pdf>.

(35) Id.

(36) Id.

(37) Id. ("[T]he legalization of casino gambling in 1976... accepted for the narrow purpose of helping to revive the declining resort community of Atlantic City... [W]as accompanied by the establishment of a strict and comprehensive regulatory structure, with few areas free from government oversight and approval.").

(38) Id. (citing the moratorium on expanding casinos beyond Atlantic City as the reason why gambling never reached its peak in the state).

(39) Twenty years ago, only six states offered commercial gaming. Matt Villano, All In: Gambling Options Proliferate across USA, U.S.A. TODAY (Jan. 26, 2015), <http://www.usatoday.com/story/travel/destinations/2013/01/24/gambling-options-casinos-proliferate-across-usa/1861835/>. It should be noted that this number varies by definition of commercial gaming. According to a June 20, 2013, U.S.A. Today article, there are twenty-three commercial gaming jurisdictions. Wade Malcolm, Casino Competition Hits Delaware in the Wallet, U.S.A. TODAY (June 20, 2013), <http://www.usatoday.com/story/money/business/2013/06/20/delaware-gambling-competition/2441541/>. The 2013 State of the States also puts the number to twenty-three. AM. GAMING ASS'N, 2013 STATE OF THE STATES: THE AGA SURVEY OF CASINO ENTERTAINMENT 2, 5-6, 11 (2013), https://www.americangaming.org/sites/default/files/research_files/aga_sos2013_rev042014.pdf. Whatever the exact number is, gambling in general is a growing trend as only Hawaii and Utah do not allow any type of gambling at all. Villano, supra note 39.

(40) Some have coined this as the "Mississippi" approach. NAT'L GAMBLING IMPACT STUDY COMM'N, supra note 34, at 3-6 ("There are limits on where casinos may be located (in counties along the Mississippi River or on the Gulf Coast), but there is no limit on the number of permitted casinos either within a particular county or statewide. This regulatory climate has proved favorable: Mississippi's casino industry now ranks among the state's major industries in terms of revenues, taxes, and employment."). For a more in-depth examination of commercial gaming regulation in different states, see NEW YORK STATE GAMING COMM'N, SECTION V. REGULATION OF CASINO GAMBLING 225-30, http://www.gaming.ny.gov/pdf/Task_Force/Section5.pdf (last visited Apr. 4, 2015).

(41) See, e.g., David McCormack, Note, Can Corporate America Secure Our Nation? An Analysis of the Identix Framework for the Regulation and Use of Facial Recognition Technology, 9 B.U. J. SCI. & TECH. L. 128, 131 (2003) (describing how facial recognition software functions). This article focuses on the use of these technologies in casino

regulation rather than the technologies themselves. For more technical information on facial recognition, see LUCAS D. INTKONA & HELEN NISSENBAUM, N.Y. UNIV. CTR. FOR CATASTROPHE PREPAREDNESS AND RESPONSE, FACIAL RECOGNITION TECHNOLOGY: A SURVEY OF POLICY AND IMPLEMENTATION ISSUES 11-16, figs. 1-7 (2009), http://www.nyu.edu/projects/nissenbaum/papers/facial_recognition_report.pdf.

(42) Biometric Ctr. for Excellence, Facial Recognition, FBI, http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/biometric-center-of-excellence/modalities/facial-recognition (last visited Apr. 3, 2016).

(43) MGC Commc'ns, MassGaming Adopts First-of-its-Kind Pilot Program to Offer Limit-Setting Tools to Casino Patrons, Initiative Developed to Enhance State's Responsible Gaming Strategy, MGC COMM'N: BLOG (Dec. 8, 2014), <http://massgaming.com/blog-post/massgaming-adopts-first-kind-pilot-program-offer-limit-setting-tool-casino-patrons-initiative-developed-enhance-states-responsible-gaming-strategy/>.

(44) Gintautas Dumcius, Slots "Lock-Up" Law Could Cost Millions, LOWELL SUN, http://www.lowellsun.com/breakingnews/ci_27378469/slot-lock-up-law-could-cost-millions#ixzz3PfiAJN2h (last updated Jan. 23, 2015).

(45) See Instructions for Forms: W-2G and 5754, IRS, <https://www.irs.gov/instructions/iw2g/ar02.html> (last visited Apr. 3, 2016) (requiring reporting on form W-2G of gambling winnings over \$1,200 on slot machines); see also Dumcius, supra note 44 (describing Massachusetts proposed \$600 lock-up provision).

(46) See, e.g., NEV. GAMING COMM'N [section] 2.010 (2005) (requiring twenty-four hour surveillance for certain Nevada casinos). See also Nevada Casino Surveillance Regulations, URGENT COMMC'NS (Aug. 1, 2011), http://urgentcomm.com/networks_and_systems/mag/nevada-casino-surveillance-regulations-201108 ("A digital video recording (DVR) system used by a Nevada casino has to: Record at 30 frames per second, full screen, in real time. Store video for not less than 7 days. Provide audio and visual notification of failures concerning the surveillance system or DVR media storage. Have a media storage system configured so that failure of a single component does not result in the loss of any data from the media storage system. Record video with date and time stamp, plus inclusion of a "watermark" video verification encryption code on file with the Gaming Control Board. Repair or replace any failure of DVR media storage within 8 hours. Locate all DVR equipment in the surveillance room.").

(47) See, e.g., Doug Mohny, Don't Bet Against the House: Inside the (not-so) Flashy World of Casino Video Surveillance, Where Cameras Methodically Capture Everyone's Every Move, URGENT COMMC'NS (Aug. 1, 2011), <http://urgentcomm.com/networks-amp-systems-mag/dont-bet-against-house> (describing sophisticated casino video surveillance, which does not use facial recognition software).

(48) Id.

(49) See, e.g., Associated Press, Smile! You're on Casino Camera, CBS NEWS (Feb. 26, 2001), <http://www.cbsnews.com/news/smile-youre-on-casino-camera/> ("When used in conjunction with casino surveillance cameras and databases on cheaters, the system can quickly recognize a known cheater, list his modus operandi and call up photographs of associates or co-conspirators all in a matter of seconds."); Griffin, Post: Bellagio & Venetian Use Facial Recognition, BJRN.COM (Mar. 14, 2000), <http://www.bjrn.com/member/member/index.cgi?read=480>;

MGM Las Vegas Signs onto Facelt[R] Enabled Griffin G.O.L.D. Casino Security Database System, GAMING FLOOR (Oct. 18, 2000), http://www.gamingfloor.com/pressrel/Press_griffin_MGM.htm; Ellen Nakashima, From Casinos to Counterterrorism, WASH. POST (Oct. 22, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/21/AR2007102101522.html>.

(50) Shan Li & David Sarno, Advertisers Start Using Facial Recognition to Tailor Pitches, L.A. TIMES (Aug. 21, 2011), <http://articles.latimes.com/2011/aug/21/business/la-fi-facial-recognition-20110821>.

(51) id.

(52) See Mohny, supra note 47.

(53) See, e.g., M2SYS, M2-Autotilt[TM] Iris Scanner-Iris Recognition Camera, M2SYS.COM, <http://www.m2sys.com/m2-auto-tilt-iris-recognition-camera/> (last visited Apr. 2, 2016) (depicting how an iris scanning camera functions).

(54) Michael Kaplan, How Vegas Security Drives Surveillance Tech Everywhere, POPULAR MECHANICS (Jan. 1, 2010), <http://www.popularmechanics.com/technology/how-to/computer-security/4341499>.

(55) *Id.* (noting that the players found out about this technology and complained to the Gaming Control Board).

(56) H.B. 59, 130th Gen. Assemb. (Ohio 2013). ("Under the bill, the Ohio Casino Control Commission can adopt rules that include security and surveillance standards and requirements that require a casino operator, holding company, or management company to install security and surveillance equipment where any chips, tokens, tickets, electronic cards, or similar objects can be redeemed for cash, whether by a casino gaming employee or by electronic means, that must capture, for law enforcement purposes, facial feature pattern characteristics, including a computerized facial image, and that must require such records to be retained for at least five years."); see, e.g., Brandon Blackwell, Ohio Budget Could Bring Facial-Recognition to State's Casinos, CLEVELAND.COM (June 11, 2013), http://www.cleveland.com/open/index.ssf/2013/06/ohio_budget_amendment_could_br.html (citing money laundering concerns).

(57) Blackwell, *supra* note 56 (noting that Senator Coley admitted that he did not consult any industry experts).

(58) *Id.*

(59) *Id.*

(60) AM. GAMING ASS'N, 2013 STATE OF THE STATES: THE AGA SURVEY OF CASINO ENTERTAINMENT 8 (2013), https://www.americangaming.org/sites/default/files/research_files/aga_sos2013_rev042014.pdf.

(61) Adam Vrankulj, Budget Amendment Could See Ohio Casinos Equipped with Facial Recognition, BIOMETRICUPDATE.COM (June 18, 2013), <http://www.biometricupdate.com/201306/budget-amendment-could-see-ohio-casinos-equipped-with-facial-recognition> ("Based on a recent CNN/Time/Orc poll, 79% of Americans are in favor of using facial recognition at various locations and public events, and 81% support expanded camera surveillance on streets and in public places.").

(62) Nakashima, *supra* note 49.

(63) See, e.g., Rachel Crosby, Aria Security is the Old-Fashioned Way--Watching People, L.V. REV. J. (Aug. 23, 2014), <http://www.reviewjournal.com/business/easinos-gaming/aria-security-old-fashioned-way-watching-people> ("[F]acial recognition is imprecise."); Grant Hatchimonji, Why Facial Recognition isn't the Way of the Future... Yet, CSO (Apr. 29, 2014), <http://www.csoonline.com/article/2148491/physical-security/why-facial-recognition-isnt-the-way-of-the-future-yet.html> ("Facial recognition technology is still very much in its infancy."); Jesse Hicks, Not in My House: How Vegas Casinos Wage a War on Cheating, THE VERGE (Jan. 14, 2013), <http://www.theverge.com/2013/1/14/3857842/las-vegas-casino-security-versus-cheating-technology> (stating that facial recognition doesn't work reliably enough to replace human operators in crowds under variable lighting).

(64) Tana Ganeva, 5 Unexpected Places You Can Be Tracked with Facial Recognition Technology, ALTERNET (Aug. 30, 2011), http://www.alternet.org/story/152231/5_unexpected_places_you_can_be_tracked_with_facial_recognition_technology.

(65) Ontario Casinos Implement Ground Breaking Facial Recognition Technology, HOMELAND SEC. NEWS WIRE (Jan. 17, 2011), <http://www.homelandsecuritynewswire.com/ontario-casinos-implement-ground-breaking-facial-recognition-technology>.

(66) *Id.*

(67) See Mohney, *supra* note 47 ("Casinos tend to be very cost-constrained on budgets for surveillance--they don't tend to view surveillance as a strategic asset or strategic investment like an IT implementation.").

(68) Lago Resort & Casino/Wilmot Casino & Resort by Wilmorite, Inc., N.Y. STATE GAMING COMM'N, <http://www.gaming.ny.gov/gaming/lago.php> (last visited Apr. 2, 2016); Montreign Resort Casino/Empire Resorts, N.Y. STATE GAMING COMM'N, <http://www.gaming.ny.gov/gaming/montreign.php> (last visited Apr. 2, 2016); Rivers Casino & Resort at Mohawk Harbor/Capital Region Gaming, LLC, N.Y. STATE GAMING COMM'N, <http://www.gaming.ny.gov/gaming/rivers.php> (last visited Apr. 2, 2016).

(69) N.Y. RAC. PARI-MUT. WAG. & BREED. LAW [section] 1315(1) (McKinney 2016); N.Y. RAC. PARI-MUT. WAG. & BREED. LAW [section] 1316(8) (McKinney 2016); Request For Applications to Develop and Operate a Gaming Facility in New York State, N.Y. GAMING FACILITY LOCATION BD. 66-67 (Mar. 31, 2014), <http://www.gaming.ny.gov/pdf/RFA%203.31.14.pdf>; see Charles V. Bagli, Rivals for New York Casino Licenses Must Pay Millions to Play, N.Y. TIMES (Mar. 31, 2014), <http://www.nytimes.com/2014/04/01/nyregion/rivals-for-new-york-casino-licenses-must-pay-millions-to-play.html>.

(70) See Jim Provance, Ohio Legislation to Allow Facial-Recognition Cameras, Targets Money Laundering at Casinos, TOLEDO BLADE (June 13, 2013), <http://www.toledoblade.com/State/2013/06/13/Ohio-legislation-to-allow-facial-recognition-cameras-targets-money-laundering-at-casinos.html> (noting management of facial recognition is difficult because the turnover rate and cost of training are high in the casino industry).

(71) Hicks, *supra* note 63 (describing the low cost and effective use of cameras in casinos).

(72) *Id.*

(73) *Id.* (stating Whiting relies on pictures shared from other casinos, databases like Biometrica and Griffin, and looks for patterns of behavior instead).

(74) MGC Commc'ns, MassGaming Adopts First-of-Its-Kind Pilot Program to Offer Limit-Setting Tools to Casino Patrons, Initiative Developed to Enhance State's Responsible Gaming Strategy, MASS. GAMING COMM'N: BLOG (Dec. 8, 2014), <http://massgaming.com/blog-post/massgaming-adopts-first-kind-pilot-program-offer-limit-setting-tool-casino-patrons-initiative-developed-enhance-states-responsible-gaming-strategy/>. Massachusetts adopted the Responsible Gaming Framework on September 25, 2014, which acts as an umbrella for measures like this play management tool that provides for "responsible gaming strategies, with a particular focus on problem gambling prevention and customer protection practices." *Id.*

(75) Sean P. Murphy, State Panel Adopts Plan to Let Gamblers Limit Slot Losses, BOS. GLOBE (Dec. 5, 2014), <http://www.bostonglobe.com/metro/2014/12/05/state-casinos-have-first-its-kind-tools-limit-slot-losses/CUmDuj68ZZVuvCtGp4FWoM/story.html>.

(76) *Id.*; see also State's First Casino in Plainville An Electronic Feast of Gaming, TAUNTON DAILY GAZETTE (June 11, 2015), <http://www.tauntongazette.com/article/20150611/NEWS/150619309> (describing how the Plainville facility that opened in June 2015 will be the first use of Bally's play management system for responsible gaming by a casino in the United States).

(77) Centre for the Advancement of Best Practices, Insight 2009: Play Information & Management System, RESPONSIBLE GAMBLING COUNCIL 15 (2009), <http://www.responsiblegambling.org/docs/research-reports/play-information-and-management-systems.pdf?sfvrsn=10>; Philip Marcelo, Casinos Push Back on Massachusetts Gambling Limits, L.V. SUN (Nov. 20, 2014), <http://www.lasvegassun.com/news/2014/nov/20/casinos-push-back-massachusetts-gambling-limits/>.

(78) See Marcelo, *supra* note 77. This point has been disputed by Massachusetts regulators. *Id.*; see also Michael Auer & Mark D. Griffiths, Voluntary Limit Setting and Player Choice in Most Intense Online Gamblers: An Empirical Study of Gambling Behaviour, 29 J. GAMBLING STUD. 647, 658 (2013) ("It would appear from reviewing the small empirical literature base that there is evidence to suggest that most gamblers (irrespective of pathology) try to regulate their spending. Furthermore, it would appear from the data presented here that voluntary spend limits have the capacity to helpfully assist in that process. The evidence base suggests that the most appropriate responsible gambling strategy to be implemented by gaming companies would be for voluntary (rather than mandatory) pre-determined spending limits by players."); see *id.* at 659 ("Based on the findings of this study, it would appear that government policy makers, gaming regulators, and/or legislators should seriously consider making it mandatory for online gaming operators to introduce voluntary limit setting options for their players. This should include both time and money limit setting, particularly as time limit setting might be particularly good for some types of gamblers (i.e., poker players) whereas spending limits might be particularly helpful for other types (e.g., casino gamblers).").

(79) Marcelo, *supra* note 77 ("Jay Snowden, chief operating officer for Penn National Gaming, which is building a \$225 million slots parlor at the harness racing track in Plainville, said his company is concerned there isn't enough time to roll out the system before its planned June opening."); see *id.* ("Tf we make the experience difficult, cumbersome or embarrassing for our slot customers, I do worry that they will make another choice and go somewhere else," said Robert DeSalvio, who is overseeing Wynn's \$1.6 billion casino project in Everett."). Steve Wynn himself has not shied away from criticizing the Massachusetts gaming regulators. See Kate O'Keeffe, Casinos Push Back against Regulatory Critics, WALL ST. J. (Oct. 29, 2013), <http://www.wsj.com/articles/SBI0001424052702304682504579157271694358020>. He described the state's Gaming Commission as "young," "new and inexperienced," and was quoted in the Wall Street Journal saying: "My nightmare scenario exists when irresponsible investigators start to apply standards that they invent that run afoul of common sense." *Id.*

(80) Marcelo, *supra* note 77.

(81) Centre for the Advancement of Best Practices, *supra* note 77, at 41.

(82) *Id.*

(83) *Id.*

(84) See *id.*

(85) Roger Hannigan Gilson, *Is NY Prepared for Problem Gambling?*, LEG. GAZETTE, Sept. 23, 2014, at 5 ("Any attempts to quantify the monetary effects of problem gambling runs into even deeper problems. [Dr. Kahlil Philander, the Director of Research at the University of Las Vegas International Gaming Institute] explained there are 'philosophical issues'--disagreements by different disciplines as to what types of costs should be included in the monetary impacts of problem gambling--and 'accounting issues'--how these costs should be measured.").

(86) FAQ, NAT'L COUNCIL ON PROBLEM GAMBLING, <http://www.ncpgambling.org/help-treatment/faq/> (last visited Apr. 2, 2015) ("2 million (1%) of U.S. adults are estimated to meet criteria for pathological gambling in a given year. Another 4-6 million (2-3%) would be considered problem gamblers; that is, they do not meet the full diagnostic criteria for pathological gambling, but meet one o[r] more of the criteria and are experiencing problems due to their gambling behavior. Research also indicates that most adults who choose to gamble are able to do [so] responsibly."). See also Phil Satre, *Help for Problem Gambling: The Casino Industry is Funding Research on Why Some Bettors Go Too Far*, PHILADELPHIA INQUIRER (Aug. 27, 2007), http://articles.philly.com/2007-08-27/news/25231429_1_problem-gambling-responsible-gaming-american-gaming-association ("One of the first projects funded by the [National Center for Responsible Gaming] was research by Harvard University to determine the actual percentage of adults with gambling problems. That study, published in 1997, determined that the percentage of people with the most serious form of gambling problem was between 1.14 percent and 1.60, a percentage that has been confirmed repeatedly over the years by additional research. A June 2007 Harvard study of 40,499 participants in online sports gambling in Europe found that only 0.4 percent of the total sample could be classified as distinctively heavy bettors with large losses, suggesting that only a limited number of players might have serious financial problems."). See generally AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 585-89 (5th ed. 2013) (explaining gambling disorder in detail).

(87) PROBLEM GAMBLING SOLUTIONS, INC., 2013 NATIONAL SURVEY OF PROBLEM GAMBLING SERVICES 91 (2014).

(88) *Id.* at ix. "In 2013, New York ranked 27th out of the 50 U.S. states in terms of per-capita public funds plus unduplicated [National Council on Problem Gambling] affiliate funds invested in problem gambling services." *Id.* at 91. For an in-depth comparison of different states' spending on problem gambling, see *id.* ("The average cost of problem gambling treatment, per client treatment episode, was \$1,174....").

(89) N.Y. RAC PARI-MUT. WAG. & BREED. LAW [section] 1348 (McKinney 2016).

(90) *Id.* at [section] 1362.

1. Each gaming facility licensee, management company, and holding company involved in the application and ownership or management of a gaming facility shall provide to the commission, as applicable, an applicant's problem gambling plan. An applicant's problem gambling plan shall be approved by the commission before the commission issues or renews a license. Each plan shall at minimum include the following:

- (a) The goals of the plan and procedures and timetables to implement the plan;
- (b) The identification of the individual who will be responsible for the implementation and maintenance of the plan;
- (c) Policies and procedures including the following: (1) The commitment of the applicant and the gaming facility licensee to train appropriate employees; (2) The duties and responsibilities of the employees designated to implement or participate in the plan; (3) The responsibility of patrons with respect to responsible gambling; (4) Procedures for compliance with the voluntary exclusion program; (5) Procedures to identify patrons and employees with suspected or known problem gambling behavior, including procedures specific to loyalty and other rewards and marketing programs; (6) Procedures for providing information to individuals regarding the voluntary exclusion program and community, public and private treatment services, gamblers anonymous programs and similar treatment or addition therapy programs designed to prevent, treat, or monitor problem gamblers and to counsel

family members;(7) Procedures for responding to patron and employee requests for information regarding the voluntary exclusion program and community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat, or monitor compulsive and problem gamblers and to counsel family members;(8) The provision of printed material to educate patrons and employees about problem gambling and to inform them about the voluntary exclusion program and treatment services available to problem gamblers and their families. The applicant shall provide examples of the materials to be used as part of its plan, including, brochures and other printed material and a description of how the material will be disseminated;(9) Advertising and other marketing and outreach to educate the general public about the voluntary exclusion program and problem gambling;(10) An employee training program, including training materials to be utilized and a plan for periodic reinforcement training and a certification process established by the applicant to verify that each employee has completed the training required by the plan;(11) Procedures to prevent underage gambling;(12) Procedures to prevent patrons impaired by drugs or alcohol, or both, from gambling; and(13) The plan for posting signs within the gaming facility, containing information on gambling treatment and on the voluntary exclusion program. The applicant shall provide examples of the language and graphics to be used on the signs as part of its plan;

(d) A list of community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat, or monitor problem gamblers and to counsel family members; and(e) Any other information, documents, and policies and procedures that the commission requires.

2. Each applicant or gaming facility licensee shall submit any amendments to the problem gambling plan to the commission for review and approval before implementing the amendments.

3. Each gaming facility licensee shall submit an annual summary of its problem gambling plan to the commission.

4. Each gaming facility licensee shall submit quarterly updates and an annual report to the commission of its adherence to the plans and goals submitted under this section.

Id.

(91) Letter from Keith Whyte, Executive Director, National Council on Problem Gambling, to Mark Gearan, Chairperson, New York State Gaming Commission, and Robert Williams, Executive Director, New York State Gaming Commission (Apr. 9, 2014) (on file with the National Council on Problem Gambling) ("[New York Council on Problem Gambling] estimates \$20 million per year is the bare minimum needed to fill the gaps in state services and establish a rudimentary safety net. The funding needed to meaningfully address problem gambling is likely several times greater. In fact, [National Council on Problem Gambling] recommends that 1% of total gaming revenue be dedicated to minimize harm--at current levels in New York would be \$110 million annually.").

(92) See NEW YORK STATE GAMING COMM'N, *supra* note 32, at 3 ("Commission staff anticipates that Gaming Facility licensees will, collectively, bear the cost of industry regulation and, individually, bear the cost for background investigations and fingerprint history reviews for all employees and casino service providers doing business with or at their facility."). See also Tami Luhby, Nevada Gambling Addiction Programs Face Cuts, CNN MONEY (May 24, 2011), http://money.cnn.com/2011/05/24/news/economy/nevada_gambling/index.htm (reporting that other jurisdictions are cutting funding as well).

(93) PROBLEM GAMBLING SOLUTIONS, INC., *supra* note 87, at 21 (noting that out of (1) treatment costs; (2) prevention costs; (3) awareness projects; (4) training or workforce development; (5) helpline services; (6) costs of administering the programs; and (7) evaluation and research, the least amount of state money, on average, is spent on evaluation and research).

(94) See James Maney & Mariangela Milea, Problem Gambling in New York: The Need for Greater Commitment to Compulsive Gambling Programs, 6 GOV'T, L. & POL'Y J. 60, 62, 63 (2004).

(95) See *id.* at 61, 62, 63. For example, the national problem gambling average of 2-3% increases where the gamblers live within close proximity to casinos. Tailored program could target the local population near casinos. See Pamela Kulbarsh, Gambling Addiction and Problem Gambling, OFFICER (Nov. 11, 2015), <http://www.officer.com/article/12154823/gambling-addiction-and-problem-gambling>; Mitchell J. Pawluk, Gaming Commission Holds Forum on Problem Gambling, HARRIS BEACH: NEW YORK RACING AND GAMING BLOG (April

10, 2010), <http://blog.harrisbeach.com/racingandgaming/gaming-commission-holds-forum-on-problem-gambling/>; Kathleen Weaver, Study Ties Risk of Problem Gambling with Proximity to Casinos and Other Gambling Opportunities, U. AT BUFF. (June 28, 2005), <http://www.buffalo.edu/news/releases/2005/06/7369.html>.

(96) See Marcelo. *supra* note 77.

(97) MASS. GEN. LAWS ch. 62B, [section] 2 (2011).

(98) *Id.* (emphasis added).

(99) April Bergman, More Hoops for Massachusetts Casino Hopefuls to Jump Through, BESTONLINECASINOS.COM (Jan. 21, 2014), <http://www.bestonlinecasinos.com/news/more-hoops-for-massachusetts-casino-hopefuls-to-jump-through/596/>.

(100) 26 C.F.R. [section] 7.6041-1 (2016) ("On or after May 1, 1977, every person engaged in a trade or business and making a payment in the course of such trade or business of winnings (including winnings which are exempt from withholding under section 3402(1)(5)) of \$1,200 or more from a bingo game or slot machine play or of \$1,500 or more from a keno game shall make an information return with respect to such payment."). Technically, a patron does have to report bingo, keno, and slot winnings but no federal withholding is required. 26 U.S.C. [section] 3402(q)(5) (2012). Federal law also mandates tax reporting for table games winnings over \$600 if the winnings are more than 300 times the wager, but this is rarely applicable because table games odds are almost never 300-to-1 or greater. 2015 Instructions for Forms W-2G and 5754, INTERNAL REVENUE SERV. (Sept. 15, 2015), <http://www.irs.gov/pub/irs-pdf/iw2g.pdf>; Bergman, *supra* note 99. Massachusetts law does not include the 300-to-1 provision, see MASS. GEN. LAWS ch. 62B, [section] 2, so it is unclear whether the \$600 threshold applies to table games like blackjack. Mark Arsenault, Mass. Gambling Law Quirk May Repel High Rollers, BOSTON GLOBE (Jan. 19, 2014), <http://www.bostonglobe.com/metro/2014/01/19/casino-companies-raise-concerns-about-state-tax-reporting-law/4BmQUBS9fPahz4xyGDhkYI/story.html>. The \$1,200 threshold (\$1,500 for Keno) was set in 1977. Information Returns; Winnings from Bingo, Keno, and Slot Machines, FED. REG. (Mar. 4, 2015), <https://www.federalregister.gov/articles/2015/03/04/2015-04437/information-returns-winnings-from-bingo-keno-and-slot-machines>. This figure has never been increased for inflation. Howard Stutz, IRS Suggests Dropping Casino Winnings Threshold to \$600, L.V. REV. J. (Mar. 5, 2015), <http://www.reviewjournal.com/business/casinos-gaming/irs-suggests-dropping-casino-winnings-threshold-600>. Interestingly, the I.R.S. proposed a change to lower the threshold to \$600 in March 2015. Information Returns; Winnings from Bingo, Keno, and Slot Machines, *supra*. The industry, including the American Gaming Association, is researching the potential impacts this rule would have on the operators and their customers. Stutz, *supra*. The American Gaming Association actually believes that "some of the IRS suggestions could be helpful to casino operators, such a [sic] single-day reporting forms for a customer's play." *Id.* The consensus is the lower threshold will do more harm than good. See Press Release, Casinos Outline Serious Concerns with IRS Proposal to Track Players, Lower Winnings Threshold, AM. GAMING ASS'N. (June 3, 2015), <https://www.americangaming.org/newsroom/press-releases/casinos-outline-serious-concerns-irs-proposal-track-players-lower-winnings>.

(101) Dumcius, *supra* note 44.

(102) *Id.* ("[Massachusetts Gaming Commission chairperson Stephen Crosby] said based on numbers from Penn National, if 5 percent of slot players felt this was 'enough of an imposition' on their gambling and they head out of state, it could cost the state \$6 million in revenue.").

(103) *Id.*

(104) *Id.* After the Expanding Gaming Act was passed in 2011, the Repeal the Casino Deal movement emerged and during the November 14, 2014, election, voters decided about 60% "yes" to 40% "no" that the Act should stand. See, e.g., Expanding Prohibitions on Gaming, SECRETARY OF THE COMMONWEALTH OF MASS., <http://www.sec.state.ma.us/ele/e1e14/pip143.htm> (last visited Apr. 2, 2016); Mark Arsenault, Mass. Measure to Repeal Casino Bill Fails, BOSTON GLOBE (NOV. 4, 2014), <http://www.bostonglobe.com/metro/2014/11/04/casino-repeal-effort-before-mass-voters-tuesday/zZlqoPzFxtWE6SXJXuKRN/story.html>; Robert Rizzuto, Massachusetts Residents Vote to Keep State's Casino Law in Defeating Ballot Question 3, Paving the Way for MGM Springfield, MASSLIVE (Nov. 4, 2014), http://www.masslive.com/politics/index.ssf/2014/11/massachusetts_residents_vote_t.html. "ABC6 Chief Political Reporter Mark Curtis said, 'This is one of those weird ballot initiatives: If you vote yes, that means you want to get rid of casino gaming in Massachusetts. But if you vote no, you're voting for the status quo--keeping three casinos and one slot parlor.'" Mark Curtis, Massachusetts Will Vote on Question to Repeal Casino Gaming, ABC6 (Oct. 15, 2014), <http://www.abc6.com/story/26797512/massachusetts-will-vote-on-question-to-repeal-casino-gaming>. As a side note, Massachusetts gained some traction in changing this threshold to be more in line with federal

requirements. See, e.g., Memorandum from Massachusetts Gaming Commission on \$600 Withholding and Reporting Requirement 5 (Jan. 30, 2014), <http://massgaming.com/wp-content/uploads/5-20-14-MassGaming-Commission-Memo-Re-Changes-in-Legislation.pdf>; Shira Schoenberg, Massachusetts House Raises Reporting Threshold for Gambling Wins from \$600 to \$1,000, MASSLIVE (Mar. 11, 2015), http://www.masslive.com/politics/index.ssf/2015/03/massachusetts_house_raises_rep.html. But the Seriate rejected this proposal. Shira Schoenberg, \$400 Million Senate Budget Bill Add Includes UMass Tuition Provision, Does Not Touch Gambling Reporting Threshold, MASSLIVE (Mar. 19, 2015), http://www.masslive.com/politics/index.ssf/2015/03/senate_budget_bill_includes_um.html.

(105) Mark Arsenault, Casino Companies Raise Concerns about State Tax Reporting Law, BOSTON GLOBE (Jan. 19, 2014), <https://www.bostonglobe.com/metro/2014/01/19/casino-companies-raise-concerns-about-state-tax-reporting-law/4BmQUBS9fPahz4xyGDhkYI/story.html>.

(106) Id.

(107) Id. (quoting Joe Weinberg, a managing partner at Cordish Companies, a Massachusetts slot parlor applicant). Wynn Resorts and MGM Springfield, winning applicants in Massachusetts's RFA process, both protested this rule. Id.

(108) See Robert Hannum, Casino Mathematics, UNLV CTR. FOR GAMING RESEARCH, <http://gaming.unlv.edu/casinomath.html> ("Earning Potential = Average Bet [x] Hours Played [x] Decisions per Hour [x] House Advantage"); Andrew Cardno & Ralph Thomas, Theoretical Win and Other Traditional Outcome Metrics Miss the Boat when it Comes to Optimizing Slot Floor Performance, CASINO J. (Mar. 4, 2016), <http://www.casinjournal.com/articles/90384-theoretical-win-and-other-traditional-outcome-metrics-miss-the-boat-when-it-comes-to-optimizing-slot-floor-performance> (analyzing "Theo per Hour"); Josh Cantrell, Slot Performance Metrics, GAMING & LEISURE MAG., http://gamingandleisuremagazine.com/gl_articles/slot-performance-metrics/ (explaining the importance of win per unit and showing lower play would yield a lower win per unit for casino operators) (last visited Apr. 2, 2016).

(109) Arsenault, *supra* note 105.

(110) Id.

(111) See N.Y. RAC PARI-MUT. WAG. & BREED. LAW [section] 1300 (McKinney 2014).

(112) Gaming: Frequently Asked Questions, NEW YORK STATE GAMING COMM'N, <http://www.gaming.ny.gov/gaming/indianFAQ.php#FAQ6> (last visited Apr. 4, 2016). Yellow Brick Road, not reflected on the Commission's website, opened during the summer of 2015. Fact Sheet: Yellow Brick Road Casino, ONEIDA INDIAN NATION (Jun. 18, 2015), <http://www.oneidaindiannation.com/pressroom/factsheets/FACT-SHEET-Yellow-Brick-Road-Casino-308221751.html>.

(113) Gaming, NEW YORK STATE GAMING COMM'N, <http://www.gaming.ny.gov/gaming/> (last visited Apr. 4, 2016).

(114) See, e.g., AMENDMENT TO THE TRIBAL-STATE COMPACT BETWEEN THE ST. REGIS MOHAWK TRIBE AND THE STATE OF NEW YORK (May 27, 1999), <http://www.indianaffairs.gov/cs/groups/zoig/documents/text/idcl-025713.pdf>; NATION-STATE GAMING COMPACT BETWEEN THE ONEIDA INDIAN NATION OF NEW YORK AND THE STATE OF NEW YORK, https://www.tax.ny.gov/pdf/publications/oin_settlement_agreement.pdf (last visited Apr. 4, 2016); NATION-STATE GAMING COMPACT BETWEEN THE SENECA NATION OF INDIANS AND THE STATE OF NEW YORK (Apr. 12, 2002), <https://sni.org/media/2940/gaming.pdf>; see also N.Y. EXEC. LAW [section] 12 (McKinney 2014); N.Y. STATE FIN. LAW [section] 12 (McKinney 2014).

(115) N.Y. COMP. CODES R. & REGS. tit. 9, [section][section] 5100-5300 (McKinney 2014).

(116) See N.Y. COMP. CODES R. & REGS. tit. 9, [section] 5106 (McKinney 2014); N.Y. RAC. PARI-MUT. WAG. & BREED. LAW [section] 1326 (McKinney 2014).

(117) See Michael DeMasi, Schenectady Wins Upstate New York Casino Recommendation, ALB. BUS. REV. (Dec. 17, 2014), <http://www.bizjournals.com/albany/news/2014/12/17/new-york-panel-picks-upstate-casino-site.html> (using state police for commercial gaming background checks); Joseph Fisch, Investigation Regarding the Selection of Aqueduct Entertainment Group to Operate a Video Lottery Terminal Facility at Aqueduct Racetrack, STATE OF N.Y. OFF. OF THE INSPECTOR GEN. 76-77 (Oct. 2010), http://www.observertoday.com/pdf/news/551898_1.pdf (stating VLT uses Pinkerton, a private investigation firm).

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