



Massachusetts Gaming Commission Meeting Minutes

Date/Time: September 19, 2023, 10:00 a.m.
Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 934 9336

The Commission conducted this public meeting remotely utilizing collaboration technology. The use of this technology was intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public.

Commissioners Present:

Chair Cathy Judd-Stein
Commissioner Eileen O'Brien
Commissioner Bradford Hill
Commissioner Nakisha Skinner
Commissioner Jordan Maynard

1. [Call to Order](#) (00:00)

Chair Judd-Stein called to order the 479th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Data Privacy Roundtable and Discussion of 205 CMR 257](#) (00:44)

a. Opening remarks

Chair Judd-Stein stated that several stakeholders expressed an interest in a discussion related to 205 CMR 257, the Commission's regulation governing data privacy. She stated that the Commission was interested in hearing more comments from the operators and other stakeholders on this regulation.

b. [Legal Framework](#) (02:20)

Attorney Mina Makarios, outside counsel from the law firm Anderson & Krieger stated that many comments were received from the Attorney General's Office, the operators, and other

interested parties. He noted that the regulation began based upon a set of comments from the Attorney General's Office. He explained that the regulation had six sections: definitions, data use and retention, data sharing, patron access, data program requirements, and data breaches.

c. [Introduction of Roundtable Participants](#) (11:57)

The participants of the roundtable introduced themselves. The participants included: BetMGM's Associate General Counsel handling Privacy and Product Alexis Cocco; Encore Boston Harbor's Senior Vice President and General Counsel Jacqui Krum; FanDuel's Vice President for Product and New Market Compliance Corey Fox; Betr's Head of Gaming Alex Ursa, DraftKings' Government Affairs Manager David Prestwood, DraftKings' Vice President of Engineering Dan Kesack; Penn Entertainment's Vice President of Legal IP and Privacy Leo Wan; MGM Springfield's Compliance Director Daniel Miller; WynnBET's Vice President and General Counsel Jennifer Roberts; Wynn Resorts' Chief Technology and Privacy Counsel Sara Partida; Caesars Entertainment's Vice President and Chief Corporate Counsel for Marketing and Privacy Chris Willard; Fanatics' Associate General Counsel Chris Tarbell; Chief of the Data Privacy and Security Division of the Attorney General's Office Jared Rinehimer; Gaming Laboratory International's ("GLI") Vice President of Regulatory Affairs Joe Bunevith; GLI's Senior Gaming Technical Advisor Mark Robertson; and Responsible Gaming Expert from Carlson University, Dr. Michael Wohl.

d. [Discussion](#) (21:49)

I. Please Detail The Specific Requirements of The Commission's Regulation Not Currently Imposed In Other Jurisdictions that Present Challenges.

Mr. Prestwood explained that California's consumer privacy act ("CCCA") was the first comprehensive data law and became effective in 2020. He stated that the CCCA allowed consumers to opt out of having their data shared with third parties for non-required purposes.

Mr. Prestwood explained that 205 CMR 257 had unique requirements different from traditional data privacy laws. He stated that typical data privacy laws allowed the patrons to opt-out of data sharing rather than opt-in. He stated that no other jurisdiction requires patrons to opt-in. He stated that typically certain criteria, such as period of dormancy, were used for marketing. He stated that there are vendors that help organizations to comply with CCCA because it applies to all industries, but because 205 CMR 257 only applies to a singular industry it would be difficult to get vendors to help with compliance. He stated that the CCCA was a multi-year approach with a clear timeline for implementation.

Mr. Prestwood stated that 205 CMR 257 was challenging to implement and that there should have been a more thorough discussion of the public comments prior to voting. He expressed that he wanted the operators to collaborate with the Commission to clarify some of the provisions and make the regulation more implementable.

Mr. Ursa stated that he agreed with Mr. Prestwood's statements. He stated that there was an issue with how quickly the regulation was promulgated, because it was impossible to comply with the technical regulations before they went into effect.

Mr. Rinehimer stated that opt-in consent is being used broadly in Europe. He stated that there are challenges to implementing this regulation, but that changing the consent mechanism to opt-out would not be an appropriate way to address that issue. He stated that data security was largely to prevent financial based harm to the citizens of the Commonwealth from identity theft.

Mr. Rinehimer stated that data security was regarding the consumers' right to know how their information was being used. He stated that the sports wagering industry was very data dependent. He stated that there are existing data privacy laws in place, such as the CCCA in California and General Data Protection Regulation ("GDPR") in Europe, and that implementing 205 CMR 257 would not require that much of a head start.

Mr. Rinehimer noted that one comment raised the issue of not being able to share information with third-party service providers even with the consent of patrons. He stated that operators had permission to use information for the operation of their sports wagering platform.

Mr. Ursa stated that he implemented GDPR for multiple brands, and that there was 25 months between promulgation and that law going into effect. He stated that it took months just to audit the data before work on the implementation of the law could begin. Mr. Fox stated that the GDPR also spent several years being revised so there was more notice in addition to the 25 months.

Mr. Makarious noted that the first public comment received from several operators requested that this regulation be struck in its entirety. He stated that changes were made based on more detailed comments and that he respectfully disagreed with the implication that the Commission did not sufficiently review comments. He stated that if clarifications of language were needed in the regulations, he would appreciate the operator input. Chair Judd-Stein sought clarification as to what third-parties were being considered in the issue mentioned by Mr. Rinehimer.

Mr. Makarious stated that not all requirements of the regulation required setting up new measures, and that some were checking what was already in place to ensure data breaches are prevented and data is not misused.

Ms. Cocco requested clarification regarding the term "necessary" in relation to running the operators' businesses. She stated that the operators would likely consider advertising and marketing to be required for successful operations, but questioned whether the Commission would share that view. She expressed an interest in further clarification so that guidance could be provided to product teams.

Mr. Prestwood stated that he was sure the legal team reviewed each public comment. He noted that this was a highly technical issue, and it was difficult to present all relevant information to the Commission in a succinct manner. He stated that the operators tend to use third-party vendors for

a lot of services for which patrons would have to opt-in. He expressed concerns that the operators would not be able to do so under the data sharing provisions of this regulation.

Commissioner Skinner asked what vendors the data would be shared with that were not considered necessary to the business operations. Chair Judd-Stein stated examples would be helpful. Commissioner Maynard asked if vendors could be put into categories, such as ones that easily fit into the definition of necessary to operate the business and ones that do not fit into that category as easily.

Mr. Prestwood stated that if a patron opted in to receive physical mail, the regulation would not allow the operator to share the patron's name and address with a third-party vendor that prints address labels. Ms. Cocco stated that rewards programs often allow patrons to use their reward points with businesses partnered with the operator and required that data be shared. She stated that it was necessary for the business model, but unclear if it was considered necessary for operating the platform.

Commissioner Maynard asked the legal team if Mr. Prestwood's example would be contemplated as a necessary for operations. Mr. Makarious stated that it would be allowed, and that the language of the regulation could be tweaked to be clearer. He expressed concern that some vendors in other industries routinely sell and transfer data.

Mr. Fox stated that a lot of marketing is driven by third-party software from service vendors. He stated that based upon Mr. Makarious' description it seemed like this would be an allowed use. He stated that this was one of FanDuel's concerns.

Commissioner O'Brien asked for a reminder regarding the timeline of this regulation. Mr. Makarious stated that a draft was discussed in June with a public comment period running through July. He stated that there was a public meeting on August 8, 2023, where the regulation was approved with contemplation that this roundtable would occur. Deputy General Counsel Caitlin Monahan stated that the regulation would go into effect on September 1, and that the current waiver was through November 17. Commissioner O'Brien stated that most of the issues seemed to revolve around the clarity of the regulation and stated that the regulation could be edited to ensure all operators understand what the regulation allows.

Commissioner Maynard thanked Mr. Makarious for agreeing to make edits to make the regulation clearer. He stated that all patrons should be aware of when their information is sold for non-necessary processes. Ms. Cocco suggested the language "reasonably anticipated usage" and stated that language is used in other jurisdictions. Mr. Prestwood stated that the CCCA allows consumers to opt out of data sold or shared with third parties for non-required reasons.

Mr. Ursa thanked Mr. Makarious for clarification. Mr. Ursa raised concern that some information sharing was used for responsible gaming. The Commission reached a consensus that opt-in would not be required for information sharing related to responsible gaming. Mr. Ursa asked if advertising was considered necessary for operation. Commissioner O'Brien stated that a broader discussion might be required on that topic. She stated that advertising was not as clear-

cut as the examples of printing labels and responsible gaming. Chair Judd-Stein stated she would like more information regarding how businesses would be affected if marketing was not approved as necessary.

Ms. Cocco stated that every marketing team she had worked with referred to targeted advertisements as being necessary to run a business. She stated that it would be difficult to run a business effectively without those marketing methods.

Dr. Wohl expressed concern with the use of data aggregation. He stated that while aggregation has advantages for privacy protection, it could make it challenging to identify at-risk players and provide interventions. He stated that responsible gaming programs rely on the ability to monitor individual gambling behavior. He stated that aggregating the data could hinder scientific progress in the area of responsible gaming.

Mr. Rinehimer noted that the term aggregate only appears in 205 CMR 257.02(5). He stated that the only issue seemed to be the term aggregate in this provision. Mr. Wohl stated that was correct and asked if the aggregation would preclude the ability to look at individual level play.

Chair Judd-Stein asked if the requirement of opt-in consent to share information may cause issues with gathering responsible gaming data. Dr. Wohl stated that most players who play problematically know they do so, and that those individuals would be less likely to opt in. He stated that this could cause data bias.

Mr. Rinehimer stated that later provisions in the regulation allow information to be used for responsible gaming purposes. He stated that the opt-in consent was not required for responsible gaming purposes. Dr. Wohl asked that the Commission make it clearer that research and responsible gaming information does not need patron consent and suggested removing the word aggregate.

Chair Judd-Stein asked whether the data would be available if the patron did not opt in. Dr. Wohl stated that for responsible gaming purposes he would prefer that data be collected regardless of the patron's consent. Mr. Makarios stated that the operators would collect the information regardless, and the opt-in language was related to what is done with the data after it is collected. He stated that the data would still exist even if the patron did not opt in. Dr. Wohl reiterated his request that the term aggregate be removed from the regulation.

II. [How Do You Currently Utilize Customer Data?](#) (1:33:23)

Ms. Cocco stated that staff was already working on cybersecurity upgrades, regulatory requirements, improving the customer experience, and incident management response and trouble shooting. She stated that implementing this regulation requires pulling team members from those other projects. She stated that there were already protections in place for patrons and that some of the requirements of the regulation were being met. She stated that once the

Commission clarifies what is necessary, a project roadmap can be developed, and resources assigned.

Ms. Cocco stated that one challenge was the requirement to change contracts with vendors to comply with the regulation. She stated that similar data privacy laws allowed for 18-24 months for implementation to occur. She stated that contractual concerns were typically addressed when renewing contracts during that period.

Ms. Cocco stated that the operators might need to engage with third-party software developers to expand technical capabilities. She stated that categories of personally identifiable information would need to be mapped to comply with the regulation. She stated that another concern was identifying what was considered necessary for information sharing. She stated that it would take time to figure out how to implement all requirements in the most efficient manner.

Mr. Fox stated that it may be impossible to allow each user to design their individualized privacy regime.

Commissioner O'Brien noted that opt-in is used in Europe and asked if any of the licensees who operate internationally can speak to their experience with opt-in. Mr. Willard stated that Caesars had no European operations, but that designing opt-in consent for data sharing would be exceedingly challenging. He stated that the operator was concerned about certain opt-in rights that might affect the national loyalty program. He expressed an interest in further clarification so that Caesars could ensure they were meeting all requirements.

Mr. Fox stated that he would reach out to the European partners to see how they implemented these provisions. He stated that the systems implemented for FanDuel were built for the United States and they were not ready to implement the European system.

Mr. Bunevith stated that the implementation challenges seemed reasonable. He stated that managing consent was not just a simple user interface change, but a change to the architecture of the data and how it is tracked. Mr. Robertson stated that segregating data between different markets whether they are opt-in or opt-out could present a technical challenge. Mr. Bunevith stated that the regulation was a massive technical demand that would require far more than the two months waiver.

Commissioner Maynard asked how long it would take to implement the regulation. Ms. Cocco stated that it would take up to two years to meet all of the requirements. She noted that some of the regulation's provisions could be implemented earlier. She stated that she was unsure whether it was all technically feasible. Mr. Fox noted that other privacy laws allowed for two to three years for implementation.

Commissioner Maynard asked how long it would take to implement with the maximum resources and staffing. Ms. Cocco stated she could not give an answer without input from her team. Mr. Prestwood stated that there would still be time required to scope. He stated that even if they hired vendors there would be time interviewing, hiring, training, and performing

background checks. He stated that other states typically allowed 20 or more months to implement newly adopted data privacy laws. He stated that he could not give a reasonable estimate on the timeline.

Mr. Rinehimer stated that implementation could take some time. He expressed concern about what measures were being taken in the interim to ensure information is being used properly. He requested that any potential waiver not be for the whole regulation so that the operators could implement easier requirements of the regulation. He expressed an interest in having data protections while the regulation is being implemented.

Chair Judd-Stein questioned whether the industry would be able to abide by the usage and sharing details while the more technical provisions of the regulation were being implemented. Mr. Rinehimer stated that things like that would take a much shorter period to implement in comparison to the opt-in mechanism.

Deputy General Counsel Monahan stated that components that require comprehensive implementation in the regulation were different from the requirements related to the way in which the algorithm is used. She stated that when granting the waiver, the Commission requested that each operator submit a plan for implementation. She noted that the plan for implementation was to be submitted in advance of the expiration of the existing waiver on November 17, 2023.

Mr. Fox noted that the CCCA already had broad language regarding the sale of information. He stated that most operators were already in compliance with the CCCA. He stated that if the language mirrored the CCCA it could allow for a quicker implementation process. Commissioner O'Brien asked if an opt-in consent system would make the operators non-compliant with other jurisdictions. Mr. Fox stated that he did not believe so, and that the challenge was with implementation.

Chair Judd-Stein asked Mr. Rinehimer what his opinion was on mirroring the language from the CCCA. Mr. Rinehimer stated that there were valid portions of the CCCA, but that 205 CMR 257's consent mechanism differed from the CCCA's implementation scheme. He stated that the Commission had the opportunity to take a leading role in data privacy. Commissioner O'Brien noted that California had yet to launch online sports wagering. She stated that the CCCA did not focus on the unique issues of this industry.

Mr. Rinehimer stated that the CCCA was a general privacy law. He stated that mobile sports wagering was different from most other industries and that the Attorney General's Office had concerns regarding the way in which data could be used. He stated that an opt-in consent mechanism was appropriate to implement. Commissioner Maynard stated he wanted to ensure consumers are protected while implementation occurs.

Ms. Cocco stated that BetMGM has public facing privacy policies that consumers acknowledge at the time of sign-on. She stated that consumers are presented with any changes to the privacy policy. She stated that many jurisdictions require the review of privacy policies before they are posted.

Mr. Prestwood stated that concerns about data use were a separate issue from consent management. He stated that managing the restrictions on data use was more technically feasible than implementing a consent management scheme. He stated that further clarification would be required on certain terms, phrasing, and allowed usage of data.

Mr. Makarios stated that he would be happy to answer any questions about the language of the regulation, and asked for any suggestions that would help clarify the regulation. Chair Judd-Stein stated that clarification would be helpful for implementation. Mr. Makarios stated that edits could be made to the regulation to help clarify. He stated that whether information could be shared with third-party vendors was dependent upon the type of vendor and whether they are necessary for operations.

Mr. Makarios stated that the intent of the inclusion of anticipated litigation was so that the operators could retain information to address legal concerns. He stated that there might be more room for clarification in that portion of the regulation.

Mr. Makarios noted that most law firms work behind encrypted cloud systems. He expressed confusion about the claims that it would be impossible to hash or encrypt certain types of information. He noted that even if the data is encrypted it would be accessible with specialized access. He noted that investigations are subject to the investigative exemption under the public records act, and that forensics reports would be in that category.

Mr. Makarios stated that the language of “reasonably expected to make the wagering platform more addictive” was subject to the Commission’s interpretation. He noted that it required an intent element. He stated that anonymization and aggregation of information in lieu of full deletion warranted additional discussion as it was a back-end issue.

Mr. Willard stated that anonymization of data would fulfill privacy goals and be easier to implement. Mr. Rinehimer stated that information would have to be sufficiently anonymized. He expressed concern that if anonymized data was aggregated with other information, it could be used to re-identify a patron. He noted that the CCCA required that information could not be reasonably connected to the individual.

Mr. Willard stated that Caesars deletes name, date of birth, email address, and gender when anonymizing data. He stated that the CCCA standard of anonymizing data was easier to implement.

Chair Judd-Stein stated that tweaks could be made to the regulation, but that she did not want to compromise issues central to sports wagering. Mr. Prestwood stated that the CCCA applies to all industries and has clear guidelines about how to be in compliance. He stated that guidelines could make implementation more feasible.

Ms. Partida stated that the Commission’s requirements of a plan for remediation and forensic examiners reports after a data breach were typically beyond what is considered a public report.

She noted that the Securities Exchange Commission had narrowed what would be collected and disclosed publicly after a breach as it could pose a security risk.

Mr. Makarious stated that the forensic examiner's report could be requested by the Commission under 205 CMR 257.06(3). He stated that it was not automatic and allowed for careful control of the information. He stated that the Commission could have their own internal security protocols where the information would only be seen by the investigations and enforcement bureau. He noted that all public records law exemptions still applied to this information. Deputy General Counsel Monahan stated that the report was not mandatory and that there was room for discussion so that no security concerns would occur.

Chair Judd-Stein thanked everyone for their time. She stated that the Commission would reflect on this information before their agenda setting meeting. She noted that the waiver from this regulation expired on November 17, and stated she was hopeful that more guidance could be provided to the operators. Commissioner O'Brien stated that the Commission had mechanisms to give further clarification. She requested that the operators submit their information about what is currently implemented and the possible implementation timeline for 205 CMR 257.

Chair Judd-Stein asked if the potential changes discussed in this meeting would be considered. Commissioner O'Brien expressed an interest in seeing the changes memorialized in writing to ensure the Commission understood the extent of the changes. She stated that the regulation might be required to come to the Commission for amendments to ensure that all necessary clarifications had been made.

Commissioner Hill agreed with Commissioner O'Brien and thanked the participants of this discussion. Commissioner Skinner stated that hopefully some points were clarified today. She stated that she looked forward to the operators' materials requested at the August 8, 2023, meeting regarding details for any potential additional waivers and the extension of the current waiver. She stated that she was hopeful the Commission and operators would make headway in addressing concerns related to 205 CMR 257.

Commissioner Maynard echoed the other commissioners' comments. He stated that he was trying to parse what was impossible versus what was inconvenient. He stated that he wanted to ensure that citizens knew how their data was being used. He stated that this regulation may be more comprehensive than existing privacy laws, but that he was okay with that. Chair Judd-Stein stated that this was a complicated topic and that there was a lot to consider from this discussion.

3. [Other Business](#) (2:49:35)

Hearing no other business, Chair Judd-Stein requested a motion to adjourn.

Commissioner O'Brien moved to adjourn. The motion was seconded by Commissioner Skinner.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.
Commissioner Skinner: Aye.
Commissioner Maynard: Aye.
Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

List of Documents and Other Items Used

1. [Notice of Meeting and Agenda](#) dated September 15, 2023