

Op-Ed/Editorials - Why Disney Won't Take Bets From Vermont

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The Los Angeles Times broke the story at the end of May, 2001: The Walt Disney Co. is backing a pay-to-play online gaming venture.

Disney's partner, Skillgames, was supposed to officially launch its website, Skillgames.com, in 2001 "amid a multimillion-dollar promotional blitz." This particular project may have evaporated into the vaporweb. www.skillgames.com no longer exists.

But the question remains, is Disney gambling on gambling?

Disney executives say, "No." A visit to the website in May 2001 showed they are probably right.

I was able to register as a Skillgames.com user, by paying \$25 with my credit card. For a few days I was able to sample the games. (Play was suspended when the site went into its "Beta Launch" and never returned.)

Each game cost \$1 to play. The prizes ranged from \$1 to \$500, although it was promised that once in full operation, players might be able to win as much as \$1 million.

The details are bound to change. Disney does not have experience with gambling and will learn that players who pay \$1 to enter a game do not consider a prize of \$1 as "winning."

But the interesting question is how can Disney be thinking about operating games for money at all?

The answer is they plan to offer only games of skill, not of chance. If a game is predominantly skill it is, by definition, not gambling.

The trick is to create a game that is both playable, with an outcome that depends more on skill than luck. The law requires that it must be possible for a skillful player to win under normal playing conditions.

Of course, with a true game of skill, the first skillful player could break the bank. So, Skillgames.com had a maximum win limit. A player who had won an amount equal to a game's top prize could never play that game again.

To prevent compulsive gamblers, or gamers, players were limited to charging no more than \$300 per month to their credit card accounts.

Disney did tip a toe into the legal gambling waters a few years ago, when it announced it would start a lottery TV show. Viewers in states with State Lotteries could play over the air; a no-purchase-necessary sweepstakes would be available for non-gamblers.

The reaction of the press and public was so immediate, negative and intense that Disney canceled its plans the next day. Having learned its lesson, that people do not want to see their children gambling, Skillgames.com, made it very clear that minors could not play and if they played they could not collect.

Disney is still taking a risk, but you don't make billions of dollars by playing it safe. Its major problem is designing an interesting game site that meets the standards of the law, when the law is decades or even centuries out of date.

What happens when you mix a law passed in 1850 with Internet technology developed in the 21st century?

Disney has to worry not only about being accused of gambling, but meeting the standards some states have imposed on games of skill. The company's lawyers put in a lot of time, and came up with the following limitations:

- Players must reside in one of the 50 states or the District of Columbia and be at least 18 years old, except in Nebraska and Alabama, where they must be at least 19, and Mississippi, where the minimum age is 21.
- Players may not be residents of Arizona, Connecticut or Vermont.

Why these states? Arizona has a very low limit on prizes. Connecticut has a higher limit, but until recently made it difficult to advertise games of skill.

As for Vermont, in 1850 the state legislature passed a law, which is still on the books: "A person who pays money or other valuable thing lost at a game or sport

or horse race may recover the value thereof of the person to whom it was paid in a civil action, if commenced within one month from the time of payment." In the only two reported cases involving this ancient law, in 1854 and 1856, the Supreme Court of Vermont said the law does not apply to gambling wagers, but anyone who loses money at a game of skill can sue and get his or her money back.

A rival site, WorldWinner.com, has a different list of states: Arizona, Arkansas, Connecticut, Delaware, Florida, Iowa, Louisiana, Maryland, Tennessee, and Vermont.

Why the difference? In part, it is because the lawyers for the two companies came to different conclusions about the laws of the various states. But also WorldWinner runs tournaments only; with Skillgames, you had to beat the site's computer, not other players.

This column is not intended to offer legal advice, but I think both sites should take another look at the law. As one dramatic example, WorldWinner.com accepts players from Nevada.

In 1961 the Nevada Supreme Court held that a golf course had to pay the \$5,000 it offered to anyone paying 50 cents and getting a hole-in-one. The Court indicated tournaments cannot offer prizes created out of the entry fees of players, which is exactly what WorldWinner.com does.

And the Nevada Attorney General is one law enforcement official who would love to go after anything that smacks of illegal gambling on the Internet.

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