

Just wireless or really mobile?

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The fact that M-Commerce has a large potential for development has in the meantime become common knowledge (we reported on this subject in BLN 09/2005); Mobile Gaming in particular is attributed with considerable growth opportunities. Looking closer at all the things that are now called „Mobile Gaming“, one cannot help but think that the term has become just as dazzling, colourful and contourless as the slogan „Multimedia“ was in the 90s.

Telephone? Not that new, really

The business of accepting bets via telephone (see also article on p. 10 in this newsletter) is really not that new. However, to talk about Mobile Gaming, just because customers can now simply reach out for their cell phones, would be missing the point. It is true that the legal framework within which the telephone gaming providers are acting, corresponds in large parts to the regulations valid for applications for cell phones, PDAs and Smartphones. However, the telephone concept does not make any distinction between fixed line and mobile telephones. There is no difference whatsoever between the player placing a bet on his team's match at home in front of his TV set or from the West stand in the stadium – except maybe that acoustic understanding is somewhat easier in a quiet living room.

Mobile Gaming with a different meaning...

However, even if the usual high tech components such as PDA or pocket PC are being used, the result does not necessarily have to be the concept understood by the term of Mobile Gaming. In

the US State of Nevada, Assembly Bill No. 471 was passed last year, which has also become known as the „Mobile Gaming Bill“ (see also article „Nevada Takes on Mobile Gaming“ by Anthony Cabot in Casino Lawyer, Winter 2005). The legislator there hints at his idea of Mobile Gaming in Section 2 of the Bill:

„Mobile gaming“ means the conduct of gambling games through communications devices operated solely in public areas of an establishment which holds a nonrestricted gaming license and which operates at least 100 slot machines (...).

It is obvious that the described concept of Mobile Gaming has little in common with real mobility. Through the restriction of the location to public areas of casinos which offer a sufficient number of slot machines anyway (hotel rooms in such casinos, for instance, are already excluded from the regulation), the concept that can be implemented is neither very innovative nor does it open up new markets. A – welcome – addition is that effective age verifications must be carried out in order to refuse access to minors. It remains to be seen how the restriction of the location and the age verification can be implemented technically. Should the „hardware“ available to the player – for instance his mobile telephone – not be sufficient, special developments would become necessary. It may well be possible that in the end the only thing that can be realised is a pretty gadget which the casino can hand out to its guests and re-collect at the end of the visit. An appliance like that would be just as mobile as a wireless fixed line telephone and as universally applicable as a portable audio guide in a museum. It would be a far cry from Mobile Gaming, at least as far as its operating range is concerned.

The „progressive British“ approach

The situation will – soon – be different in Great Britain. Its Gambling Act 2005 defines Remote Gambling in Section 4.

Pursuant to subsection 2, the telecommunication means used in this context include the internet, telephone, television, radio and any other kind of electronic or other technology for facilitating communication.

According to the explanations by the British Department for Culture, Media and Sport, this regulation has deliberately been worded openly, not only in order to cover existing technologies such as mobile telephoning or interactive television, but also in order to be open for future developments. There are no restrictions with regard to location in the Gambling Act – only the licensee's facilities must be located in Great Britain (Section 70, subsection 2 of the Gambling Act).

And what about Germany?

The German gaming market currently is being subjected to radical changes – not such a brand-new piece of information. So far, no corresponding regulations exist in the area of mobile gaming offers. However, as already described in the last Betting Law Newsletter 09/2005, there are numerous regulations on E-Commerce, which are also valid for MCommerce and thus for Mobile Gaming – even if they have not been specifically tailored to this area (which by the way causes a multitude of problems in implementation).

In Germany, too, state-owned providers of gaming are up with the times with their gaming offers. For instance, the state-owned provider of sports bets, ODDSET, advertises the simplicity of handling the technology on the homepage of German football championship record holder FC Bayern Munich (official broker of ODDSET sports bets, compare www.fcbayern.t-com.de/de/partner/oddset/index.php):

„Whether you are crossing your fingers for the Bayern team at home in front of your television, watching the live ticker on the homepage, or are rooting for the team in the stadium:

With mobile ODDSET bets you can not only win real cash with a correct text message tip, you are, at the same time, supporting the FCB youth work. Betting and winning has never been as easy as this!"

However, looking at ODDSET's game instructions it becomes clear that a simple user interface just does not exist. If the player wishes to place a bet via a text message, he must compile a string of characters, which might remind computer scientists of a Ping of a certain IP address, however, does not mean anything to anybody else. One example of a combination bet:

xxxx_3aus4_110_202_221_381_20

(source:

www.oddset.de/anleitung/odd_top_frame_anleitung.html).

It must be doubted whether such offers do everything necessary to comply with the transparency requirements of distance contract law, let alone with the even more detailed obligations in electronic business relationships. This – obviously not that simple – possibility of betting is, for instance, probably not consistent with the obligation determined in § 312e section 1 No. 1 of the German Civil Code (BGB), to

„provide [the customer] with appropriate, effective and accessible technical means, which enable him to identify and correct typing errors before issuing his order.“

A twist in the figures can cost the player up to 50 Euros. Against this background it can hardly be assumed that it is enough to refer the customer to the possibilities of correction offered by his mobile telephone while he is typing his text message.

Austria: identical regulation, better implementation

Once more it is competition that shows that other solutions are possible: The private provider Betandwin also offers sports bets via text message (see also p. 10 in this newsletter). However, here the player is not asked to compile a 30-digit string of characters using playing instructions (which typically are not available anyway on the road), but the player is led to the intended bet through various text messages in a process of interactive questions and answers. In order to prevent typing errors, the player then again is sent a plain text message of the information he has given. Only after this text message has been confirmed is the bet regarded as having been placed. Betandwin so far only offers this service in Austria, Italy and Spain, however, the E-Commerce-Act (ECG) valid in Austria contains a provision which is identical to the German regulation (compare § 10 Section 1 ECG and § 312e Section 1 No. 1 BGB).

And the winner is...

The Nevada model has at best borrowed its name from Mobile Gaming. In contrast to this, Great Britain has a regulation with hardly any loopholes. Germany is different: here even state-owned providers take certain liberties with regard to the legal conformity of their offers; a look at Austria, on the other hand, shows that the problem can be solved differently. It would be highly desirable if the regulation of the gaming sector to be expected in Germany directed the market of Mobile Gaming into co-ordinated channels – for private as well as for state-owned providers. The result of not supervising state providers of gaming at all was able to be seen in the betting scandal surrounding football referee Robert Hoyzer:

„Ante Sapina, Hoyzer and their cronies were no betting Mafia, rather they acted a little like insurance fraudsters for whom the system made everything very easy. It was the state-run Sportwette Oddset, whose representatives only recently pleaded before the Federal Constitutional Court for a

continuation of „canalising“ the gaming impulse in the population with the help of a betting monopoly, who hardly set any limitations for the offenders.“ (Tagesspiegel – 18.11.2005)