

**Casino Gaming Operations and Intellectual Property: Casino Encounters of the Intellectual Kind
(1238 words)**

**By D. Michael McBride III and Margaret S. Millikin¹
(mike.mcbride@crowedunlevy.com and margaret.millikin@crowedunlevy.com)**

When walking into a place of public accommodation such as a grand hotel, mega-cinema or gaming casino, guests rarely appreciate the behind-the-scenes contracts, technologies, and psychological associations that meld to create the perfect guest entertainment experience. Rather, we feel the climate-controlled air, hear the pleasing music, see the art and physical surroundings and, then, relax and play. Yet, those in the entertainment industry know that an army of dedicated contributors stands behind every great entertainment experience.

Minds standing ready to be entertained find equally remote the intricacies of gaming technology through which players' movements are translated or the marketing research that identified the trademarks to make the right psychological connections. Yet, industry professionals know that layers of intellectual property rights overlap to create the perfect gaming encounter. So, to help you create casino experiences of the intellectual kind, here is a primer on the types of intellectual properties relevant to gaming operations and how you can exploit them to enhance customers' gaming encounters.

¹ D. Michael McBride III is a director at Crowe & Dunlevy, PC and chairs the firm's Indian Law and Gaming Practice Group. He may be contacted at mike.mcbride@crowedunlevy.com. Margaret Millikin is an advisory director at the firm and practices in the Intellectual Property and Technology Group and the Corporate and Securities Group. She may be reached at margaret.millikin@crowedunlevy.com. Grateful acknowledgement is given to Michael Gamble, a summer associate from the University of Texas, for assistance in preparing this article.

Patents, Trade Secrets and Proprietary Know-How

Technology is everywhere, in the software which run the games, the polymers forming the game cabinets and in the game designs. The casino may employ Internet methods to track customer participation in programs or create new slot machines and card games. Take, for example, Aristocrat Technologies' hybrid slot machine and pinball game, or Station Casino's "Boarding Pass Rewards"² card tracking system which tracks game usage and tallies rewards points and, finally, Boyd Gaming Corporation's patent on a gaming device that offers primary and secondary games with hidden rewards. Patents and other forms of intellectual property protect systems such as these that a developer or casino owns or licenses in its operations. A noncomprehensive list of potentially protectible technologies follows:

- Internet methods, business methods and casino game methods
- Slot machines
- Card games
- Improved gaming device technology
- Casino player tracking systems
- Designs for game consoles and stands

Casino operators and gaming developers should secure rights to technology through contractual agreements. If employees create the technology used in your operation, legal counsel will help select the appropriate venue for protecting and exploiting that technology via patent or trade secret and by maintaining the confidentiality of unpatentable, proprietary know-how. Put employee assignment and confidentiality agreements in place at the time of hiring to ensure rights in the

² "Boarding Pass Rewards" for incentive programs is a registered trademark of Station Casinos Inc.

technology flow to the employer. Alternatively, if technology is created by a specialist, delineate ownership, licensing and distribution rights through appropriate agreements prior to development and use of the technology. And, secure rights to technology owned by another under written license with terms proportionate to the requisite operations and locales.

Copyrights

Copyrights protect visual works displayed on gaming equipment or in casinos, as well as those used in operations such as gaming periodicals and newsletters. A copyright is a form of intellectual property protection provided to the authors of "original works of authorship" including literary, dramatic, musical and artistic works. The owner of the copyright owns the exclusive right to reproduce the copyrighted work, to prepare derivative works, to distribute copies and display the copyrighted work publicly.

In the casino setting, copyright protection applies to images on the web site³, advertising materials, gaming periodicals⁴ and newsletters, and artwork on the premises or on t-shirts and other souvenir items. Original artwork displayed on gaming equipment⁵ and drawings⁶ displayed in operations are also protectible. Software programs used in operation of casino games are capable of both copyright and patent protection, and employing both provides an extra layer of intellectual property protection for sensitive gaming codes. Copyright Clearance Center Inc. specializes in licensing and managing the licensed content of its rightsholders.

³ See e.g., *Screen displays of Station Casinos Sports Connection Website* ©2008 Station Casinos Inc.

⁴ See, e.g., *Harrah's Survey of Casino Entertainment* ©1996 Harrah's Casinos

⁵ See, e.g., *Double Diamond top glass* ©1990 International Game Technology

⁶ See.e.g, *Blue chip AI E. Gator* ©2004 Boyd Gaming Corporation

In addition to visual and literary works, copyright laws protect sound recordings. Several performance rights organizations enforce their members' copyrights in commercial settings. When played as background music in a place of public accommodation, these organizations monitor usage and charge a compulsory license fee. Their reputations as zealous advocates for their members precede them, and one such PRO purportedly threatened suit against the Girl Scouts of America for allowing scouts to sing unlicensed songs at camp. Consequently, wise casino operators secure licenses authorizing the use of ambient music in gaming halls and songs played on gaming machines. In the United States, three major PRO's are the American Society of Composers, Authors and Publishers, Broadcast Music Incorporated, and the Society of European Stage Authors & Composers. These organizations primarily license and enforce copyrights in musical performances.

While no specific action is necessary to create a copyright (it arises at the moment of creation of the work by the author), register the work in anticipation of enjoyment of the benefits of registration, such as entitlement to statutory damages in the event of infringement and to place others on notice of the claim of copyright. Announce your claim of copyright by conspicuously placing the statutory notice with the year of first publication and the name of the copyright owner on the work.

Trademarks

Trademarks are words, names, symbols, or devices used to indicate the source of goods and services and distinguish them from the goods and services of others. The valuable trademark, or brand, positively impacts your target customers and motivates them to learn more about your products and services. Successful branding efforts benefit gaming operations by delivering the intended message and increasing market share. Through strategic branding, players and customers make the desired connections with your brand.

Casino operations are ripe with opportunities for reaching customers through branding. Prime examples of gaming services or products promoted through branding include restaurant and night club operations on casino premises, player incentive programs, gift shops, logos on t-shirts and souvenir items, slogans on packaging, game names, and images of cartoon characters on gaming equipment. One casino has even registered its trademark for salad dressing.⁷ Specific examples of trademark usage in casino settings include:

- "Club Insomnia" for night club services⁸
- "Relax ... It's Just Gaming" for providing casino facilities⁹
- "Bingoport" and design for services in the nature of live bingo games¹⁰
- "Miss Casino Queen" for gaming software that displays wager outcomes of gaming machines¹¹

⁷ "Verdant Hills" is a registered trademark of Harrah's License Company, LLC

⁸ "Club Insomnia" is a registered service mark of Kalispel Tribe of Indians DBA Northern Quest A Kalispel Casino

⁹ "Relax ... It's Just Gaming" is a registered service mark of LFP CASINO IP

¹⁰ "Bingoport" and design is a registered trademark of Trix Online Media Pty Ltd

¹¹ "Miss Casino Queen" is a registered trademark of Let's Talk Entertainment Agency Pty Ltd

The appeal of famous television shows (Jeopardy¹²), fictional characters (James Bond¹³) or celebrity images (John Wayne¹⁴) entices many casino operators to choose famous marks for their games or premises, in which event licenses authorizing such use are in order.

After creating the trademark portfolio to advance your business and marketing plans, establish a usage policy that guides employees and licensees in appropriate usage and that preserves the value of the brands while enhancing the image of the casino.

While all this "geeky" intellectual stuff may make you want to run for the hills, intellectual property is essential to the gaming experience. Develop it organically from within or in conjunction with hired specialists, or license it for immediate use without the associated development costs as part of your business and marketing plans. But, be grateful to that geeky software engineer, the visor-wearing patent attorney, and the hippie graphic design artist who created the artwork on the slot machines. But most of all, be grateful for the cha-ching your intellectual property rakes in.

For assistance in procuring, protecting and exploiting your intellectual property assets in the gaming industry, contact qualified gaming and intellectual property attorneys.

¹² "Jeopardy" for slot machines is a registered trademark of Jeopardy Productions, Inc.

¹³ "James Bond 007" for computerized games is a registered trademark of Danjaq S.A. Corporation

¹⁴ "John Wayne" stylized for gaming machines is a registered trademark of Wayne Enterprises, LP