Perkins Coie | Legal Counsel to Great Companies

Payments and Loyalty Program Issues for the Game Industry

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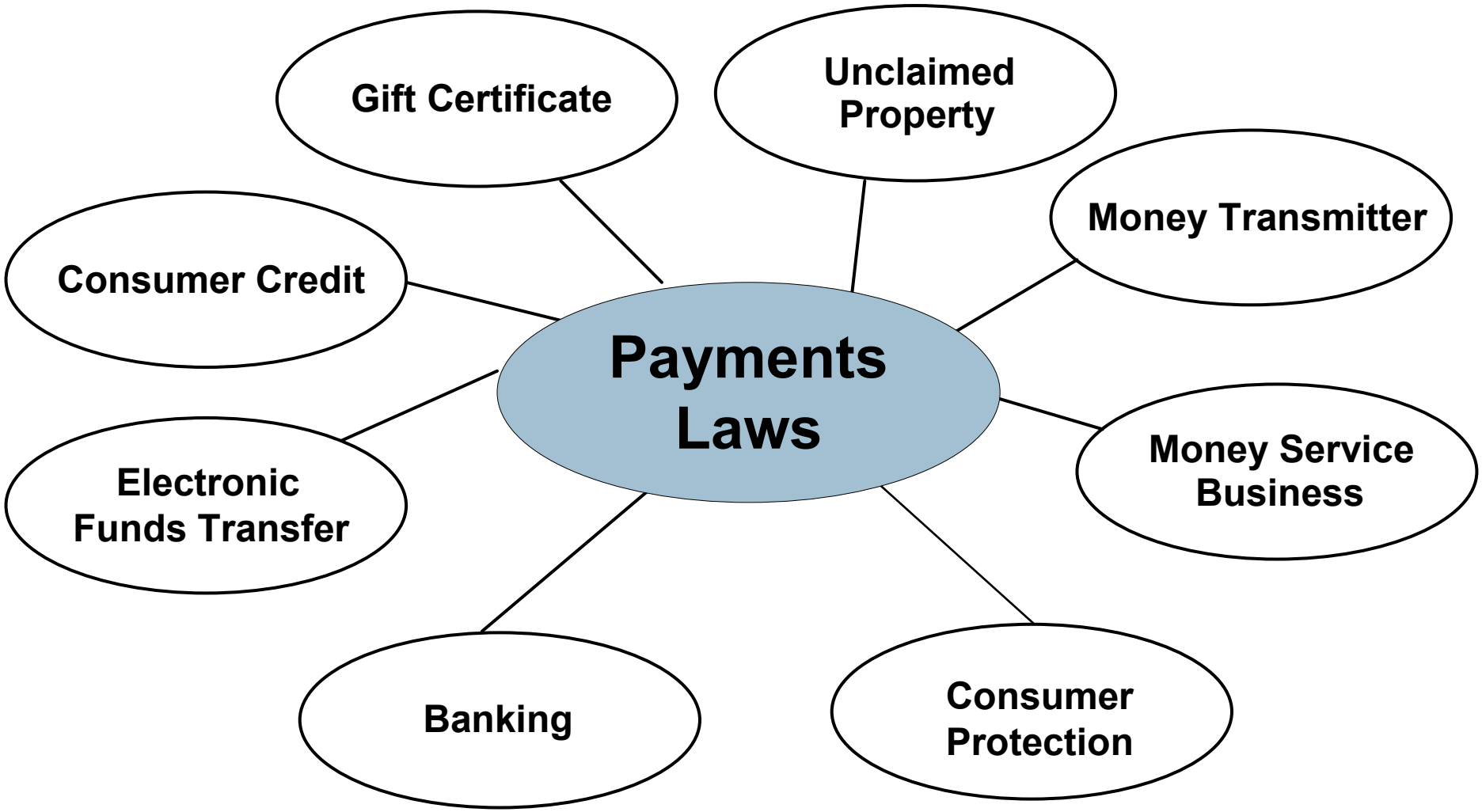
November 2008

Agenda

- How payments issues affect game development
- Where payments issues arise
- Crimes and fraud


Payments Laws
Gift Certificate
Unclaimed Property
Money Transmitter
Consumer Credit
Money Service Business
Electronic Funds Transfer
Banking
Consumer Protection

Legal Issues with "Points" Programs

- "Gift certificate" laws
- Unfair and deceptive trade practices
- Unclaimed property
- Money transmission and stored value

Legal and Regulatory Obligations in Game "Points" Programs

- Nature of the points
- Nature of the game
- Nature of the web site

Nature of the Points

- How does one obtain Points?
  - Bought – inherently more valuable
  - Earned – value dependent on time invested
  - Free – least valuable, most easily forfeited

Nature of the Points

- Do Points have any cash value?
  - Can they be redeemed for actual real money or just virtual currency?
  - Can the player get real goods or just virtual ones?
- Can the Points be used outside the game?
  - If so, how big is the universe in which the Points can be used?

Nature of the Points

- What happens to the Points if they are not used?
  - Under certain state laws, unused Points may be subject to unclaimed property laws, which require reporting and remitting to the appropriate state
- Can the Points expire?
- Will there be any fee associated with use or non-use of the Points?
- Will there be an actual plastic card or just an electronic version of the Points?

Gift Certificate Issues

- Open loop vs. closed loop
- Expiration dates
- Fees
- Unclaimed property laws

Nature of the Game

- In what states will the game be available to players?
- Will players have "accounts" associated with the game?
- Will players be able to transfer "Points" to other players?
- Will company have the user's name and address?
- State of incorporation of the company?

Nature of the Web Site

- Where are disclosures?
- Is everything clear and conspicuous?
  - Are fees adequately disclosed and easy to understand?
- Is there a dispute resolution process?

Money Transmitter Issues

- State money transmitter laws
  - Receiving money for the purpose of transmitting to someone else
- Check seller laws
  - Selling payment instruments or issuing stored value (i.e. travelers checks or gift cards)

Banking Issues

- Where do you keep the money you collect?
- If open-loop system, do you have a bank partner?
- If you operate a virtual world, do you allow banks in that world?

Money Laundering

- Money laundering is a very real threat to gaming
  - New threats likely mean new regulation
- If component of game is deemed to be a "money services business:"
  - It could be subject to the Patriot Act which requires detailed customer identification programs
  - If MSB would have registration and reporting obligations
- If opening accounts or transacting with people from other countries may have to run OFAC screen

Crime and Fraud

- User fraud
- Data security breach laws

Developments and Trends

- In 2007 new GC and UP laws enacted in: AR, CA, FL, IL, MN, MT, NV, NM, NC, OR, UT
- Mobile payments and gaming converge when downloading a game to a handheld device (i.e. phone or handheld game device)
- Rebate cards and *Faigman v. AT&T Mobility LLC*