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Oversight Hearing on the Regulation of Tribal Gaming:
From Brick and Mortar to the Internet

Before the Senate Committee on Indian Affairs
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Good afternoon Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee. My name is Bruce “Two Dogs” Bozsum, and I am the Chairman of the Mohegan Tribe and also a Pipe Carrier. It is a great honor to once again be with you here today to present testimony on the important subject of Internet gaming and its regulation by the federal and tribal governments.

Mr. Chairman, as you know, the Mohegan Tribe has been closely monitoring developments on Internet gaming for the past several years. We have testified in both the Senate and the House, engaged lawmakers developing Internet gaming policy and participated with our fellow Tribes in the National Indian Gaming Association and the National Congress of American Indians to develop a position for Indian Country.

Back home, our Tribe has a tradition of requiring world-class regulation of our brick-and-mortar gaming facilities. We have invested a great deal of time to develop regulations for Internet gaming should they be necessary. These regulations now stand ready to be implemented, and will meet or exceed the toughest regulations found anywhere in the world, including the new standards recently established in Nevada.

Internet gaming is a reality in today’s digital world. Our Tribe is doing everything in our power to prepare for it, and to look out for the best interests of Tribal governments and the commerce our Tribal nations depend upon. We will never forget that our sovereignty is not negotiable.

As a Tribal Chairman confronting the situations we face today, I am guided, by the ways of our Mohegan people, to first look to our past and traditions in order to see what lessons can be learned and applied to the present.

Applying this Mohegan approach to Internet gaming, it is clear that the current situation closely resembles the aftermath of the 1987 decision by the U.S. Supreme Court in the *Cabazon* case, which affirmed our rights as sovereign Tribal governments to authorize and regulate gaming. I believe we can learn much from studying this history and using it to guide our decisions today.

Just as the *Cabazon* case stopped tribal opponents from claiming our gaming operations operated in a "gray area" of the law, so has the December 23rd DOJ opinion now removed the "gray area" of uncertainty about whether the Wire Act prohibits Internet gaming. It doesn't.

However, the DOJ opinion does not settle all the details of the issue, just as the *Cabazon* case did not specifically address all of the details or significant questions of how Indian gaming would actually operate. As in the aftermath of *Cabazon*, it now falls upon Tribal leaders and federal policymakers to decide how to move forward and fill in those details.

After *Cabazon*, Congress in its wisdom believed that simply allowing the framework for Tribal gaming to evolve over time might result in a patchwork of different systems throughout the country. Key issues would have been unsettled for years, and Tribes would have been left vulnerable to ongoing litigation and the changing whims of political leadership.

Rather than settle for this haphazard patchwork of systems, federal legislators and some Tribal leaders chose instead to establish a single, coherent federal policy for Tribal gaming in the wake of the *Cabazon* decision. This policy is well-known to all of us now as the Indian Gaming Regulatory Act (IGRA). While certainly not perfect and initially opposed by several Tribal leaders as an attack on sovereignty, there is widespread agreement today that IGRA as enacted has provided a predictable and stable framework for Tribal gaming, which has become the biggest Tribal economic success story in our history.

I believe that in the wake of the game-changing DOJ opinion on Internet gaming, Tribal leaders and federal legislators should follow the same approach many did after *Cabazon*, and work together to establish a single, coherent federal policy to govern, with stability and predictability, what kinds of Internet gaming might be permitted and how Internet gaming should best be regulated. This would be far better than allowing a patchwork system to develop over the next two decades, state-by-state, lawsuit-by-lawsuit, and with no guarantees that Tribal sovereignty and our hard-won gains would be protected. Tribes should be extremely hesitant to entrust their economic futures to the tender mercies of the 50 states, many of whom are still in financial crises and looking for new sources of revenue. Already, everyone from commercial gaming interests to state lotteries is quickly maneuvering to establish Internet gaming systems in their state in order to make them work for their own advantage. Most of them are certain to give little, if any consideration for the existing gaming compacts or the sovereign rights of Tribes in their

calculations. Not to mention the tens of thousands of American workers who depend on Tribes for employment.

This chaotic approach is not good for protecting consumers, or for preventing problem or underage gambling. I am proud that the Mohegan Tribe is a global leader in regulation to protect our customers and to prevent problem and underage gaming at our facilities. We believe that the same high standard of consumer protections we have for our land based gaming must control Internet gaming. While the intentions of those who advocate a state-by-state approach to regulation are good, I simply believe a patchwork system without national standards would let too many minors, problem gamblers, and others fall through the cracks.

The Internet is national in its very nature, and policy questions for gaming on the Internet are best addressed on a national level. A federal system, developed with consultation and significant input from Tribes, will be the most effective way to safeguard Tribal sovereignty and ensure that exclusive Tribal gaming rights are not violated by states and commercial gaming operators anxious to cash in on an Internet gaming boom. A federal system would provide the best protection for consumers, the best safeguards against underage and problem gambling, and the strongest law enforcement protections against potential criminal activities by those who choose to try to operate outside of the system that is lawfully established.

The creation of any federal system must be done in a fair and evenhanded way. From a Tribal perspective, a good start would be to adhere to the principles unanimously adopted by NIGA regarding Internet gaming. In addition, the Mohegan Tribe believes that any federal legislation must:

- Guarantee to Tribes the ability to accept, on Tribal lands, otherwise legal wagers from persons who are not themselves located on Tribal lands.
- Respect existing Tribal-state gaming compacts, including any rights of exclusivity.
- Recognize the difference between revenue sharing agreements and taxation, and ensure that Tribal sovereigns are not subject to taxation.
- Utilize existing Tribal government regulatory structures, which are working well and have an outstanding 25-plus year track record.
- Strictly enforce against unlicensed sites in order to protect players and the investment of Tribal and commercial gaming entities in legal, regulated sites.
- Be limited to poker-only.
- Facilitate the formation of Tribal Internet gaming coalitions across the country to better enable us to compete against large corporate commercial gaming concerns.

Mr. Chairman, you have been a leader among the many Members of the House and Senate who are working diligently to explore the many complex issues surrounding Internet gaming. Numerous hearings have been held, legislation has been proposed, and tribal input has been sought. This good work has created a solid foundation for understanding the key issues, and an environment where I believe a serious and well-informed effort to enact legislation this year in Washington can now take place. Given the new environment created by the DOJ opinion, I believe it is important that this federal action takes place soon. Tribes cannot risk the hazards of a

patchwork system defined by the best interests of the states, lotteries, and commercial gaming. With a federal system, we will have friends such as yourself and the Members of this Committee to fight to protect our Tribal rights throughout the process.

We greatly appreciate your interest on this issue, and look forward to working with you closely now and in the future.