

The State of Online Gambling

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Justice Department Decision

- The Department of Justice ruling (Dec. 23, 2011) regarding the scope of the Wire Act passed in 1961 creates more confusion than clarity in the Internet gambling debate.

How significant is the decision?

- It is only the opinion of the Obama Justice Department and does NOT carry the weight or finality of a Supreme Court ruling.
- The next Justice Department could reverse the ruling as this Justice Department did to previous ones.

What the decision makes clear

- The Wire Act *only* prohibits the transmission of communications relative to bets or wagers on sporting events or contests.
- Intrastate sales of lottery tickets are legal so long as the lottery games do not involve “sports wagering,” even if the transmission crosses state lines.

What the decision does NOT make clear

- Whether lotteries and states can authorize intrastate online poker, slots and other casino games?
 - UIGEA provides an exemption for intrastate activity.
 - Probably “yes” if a specific state law authorizes it or one is passed.
 - All states have broad bans on gambling except when it is specifically authorized.
 - Operators would still need to be licensed by the state.
- Whether different states that have legalized the gaming activity can link their lottery and/or other state-approved online gaming to increase “liquidity”?
 - States can negotiate interstate compacts, however, Congress does have the power to disapprove (Art. I, Sec. 10, Cl. 3 of the Constitution).
 - In 1994, Congress adopted amendments to the federal anti-lottery statute that did expressly authorize the Powerball interstate compacts.
 - Commerce Clause application?

What the decision does NOT make clear

- Whether a state can enter into a compact with an offshore jurisdiction, e.g. Alderney, for purposes of “pooling”?
 - It is likely that Congressional approval would be needed.
- Whether and how this ruling impacts the pari-mutuel industry?
 - The pari-mutuel industry believes that the Interstate Horseracing Act exempts it from the Wire Act.
 - The Justice Department has consistently averred that the Interstate Horseracing Act does not exempt the industry from the Wire Act.
 - This recent opinion does not address the issue.

What the decision does NOT make clear

- Whether and how this ruling impacts Native American gaming?
 - Does IGRA apply? Must compacts be renegotiated?
 - Must tribes establish commercial operations and pay taxes?
 - Are tribes limited to bets from reservations?
 - *Native American tribes are badly split on this issue.*
- Whether and how this ruling impacts offshore operators?
 - It is clear that UIGEA would still apply if sports betting is involved.
 - It also is clear that UIGEA would apply if the operator was not licensed in the state.
 - If the state law is silent and/or the offshore company gets licensed, UIGEA does not apply.
 - The Unlawful Gambling Business Act of 1970 also would apply.
 - Applied with UIGEA and bank fraud charges in April 15 (Black Friday) indictments

Current State Actions

- A number of states are discussing this issue and each has come up with a different approach and reached a different point in their legislative approval process. Some include:
 - California
 - Iowa
 - New Jersey
 - Delaware
 - Maine
- Some have discussed “poker only” bills, while others are focusing on legalizing all casino games.

State Lotteries

- Illinois was the first state to launch Internet sales of its lottery games.
 - Other states – Maine, New Jersey, Maryland and New York – have considered it.
- Illinois Online Gambling Statute
 - Would license all casino-type games, but they would be run only by state lotteries
 - If Native American tribes want to be licensed, the bettors would have to be on the reservation

Social Gaming

- Free casino games have become increasingly popular in the social media space.
 - Zynga, Facebook, Playtika, Double Down
- Already has a large, built-in market of users
- If legalized, it could have more players and greater liquidity than any U.S. state market.

Need for Federal Legislation

- Scope of the Wire Act must be clarified.
- UIGEA must still be strengthened and clarified to assist law enforcement in shutting down unlicensed offshore operators. Illegal websites will still exist.
- To avoid a patchwork quilt of regulations, minimum federal standards must be created to protect consumers, underage gamblers and those who cannot gamble responsibly.
- The possibility of interstate gambling activities requires more experienced regulators and law enforcement personnel.
- States would still retain the right to legalize, license and regulate intrastate Internet gambling in their jurisdiction.

Outlook for Federal Legislation

- Campbell bill (H.R. 1174) and Barton bill (H.R. 2366) are still pending in House.
- Hopeful another bill will be introduced
 - Online poker only
 - Federal Commerce Department would license, regulate and tax Native American Internet gambling activity.
 - Federal Commerce Department would delegate to states the power to license, regulate and tax other Internet gambling activity.
 - States would have the right to determine if their citizens could participate.
 - Legislation would set minimum standards for consumer protection, underage gambling and assistance to those who can't gamble responsibly.
 - Legislation would strengthen and clarify the Wire Act and UIGEA to give law enforcement more tools to close down illegal offshore websites.

Outlook for Federal Legislation

Chance of passage this Congress:

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Nevada – Regulatory Gold Standard

- Nevada has a leg up on other states because it moved quickly to pass online gambling regulations and begin licensing companies.
- Nevada has a long history of gaming regulation with law enforcement oversight.
- The state's regulatory system is respected across the country and around the world
 - Just as states and other nations legalizing land-based casinos have copied Nevada's regulatory system, so will states that legalize online gambling.

Code of Conduct for U.S. Licensed Online Poker Operators

- Minimum standards to be met by all companies providing online poker services to U.S. customers in order to ensure the games are safe, secure and free of illegal activity
 1. Submit to extensive background investigations of the company and key personnel
 2. Ensure proper identification of every U.S. online poker player
 3. Submit to regular testing and auditing of online poker software
 4. Implement effective player exclusion processes to restrict underage players, those who have self-excluded and residents of U.S. jurisdictions that have not legalized online poker
 5. Incorporate effective responsible gaming protections
 6. Implement effective anti-money laundering procedures