

New DOJ Wire Act Opinion Paves Way to Legal Online Poker

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On December 23, 2011, the U.S. Department of Justice revealed that it has reversed a long-held position by stating that the Wire Act applies only to sports betting. This marks a major change in policy for DOJ, which has long contended that the Wire Act prohibits all forms of Internet gambling, including poker.

Late that day, the DOJ released a 13-page legal opinion dated September 20, 2011, written by Assistant Attorney General Virginia Seitz in response to a 2009 request by New York's lottery division and the Illinois governor's office to analyze the application of the Wire Act to their plans to use the Internet and out-of-state processors to sell lottery tickets. The opinion noted that "nothing in the materials supplied by the Criminal Division suggests that the New York or Illinois lottery plans involve sports wagering, rather than garden variety lotteries. Accordingly, we conclude that the proposed lotteries are not within the prohibitions of the Wire Act."

The opinion states, "[W]e conclude that interstate transmissions of wire communication that do not relate to a 'sporting event or contest,' 18 U.S.C. § 1084(a), fall outside of the reach of the Wire Act."

For years the DOJ's Criminal Division has held that the scope of the Wire Act went beyond sports betting. This had a significant impact on state lotteries and online poker companies that operated offshore. DOJ has now rejected that view, writing, "We conclude that the Criminal Division's premise is incorrect and that the Wire Act prohibits only the transmission of communications related to bets or wagers on sporting events or contests."

DOJ's position in the past that online poker violated the Wire Act led to guilty pleas by several defendants to Wire Act violations in connection with their involvement with online poker. In 2008, Anurag Dikshit, a co-founder of Party Gaming, an online poker company, pled guilty to violating the Wire Act and agreed to forfeit \$300 million. He was sentenced to one year of probation.

The opinion could allow for states to cooperate with each other on online gambling that is legal in the individual states. The Nevada Gaming Commission recently approved regulations that would allow for implementation of online intrastate gaming, but critics have stated that there may not be a large enough population within the state to sustain the games. However, after this opinion it becomes possible for states that have legalized intrastate online gambling to cooperate to allow for larger pools of players.

Intrastate online gambling is now legal in just Nevada and Washington, D.C., though it has not yet begun to be implemented in D.C. This ruling may serve as an impetus for many states to follow.

This opinion could increase legislative momentum at the federal level to legalize online poker. One primary concern in Congress has been the uncertainty of the application of the Wire Act to online poker. At a House subcommittee hearing in October, some testimony focused on whether the Wire Act applied to online poker, which was a primary concern of the subcommittee. Now that it is clear that the Wire Act does not apply to online poker, one of the major hurdles has been removed.

Federal legislation was introduced this summer by Rep. Joe Barton (R-Tex.), but thus far the bill has not made it out of subcommittee. After the second subcommittee hearing on the issue of online poker, House Energy and Commerce Committee Subcommittee on Commerce Manufacturing and Trade Chairman Mary Bono Mack (R-Calif.) has said previously that no action on the bill would likely occur before the new year.

There is also a possibility that states that could work together to bring interstate online gambling without federal legislation. There does not seem to be any compelling economic reason for federal legislation. However, from a regulatory perspective it may make sense for the federal government to enact legislation to set bars on the regulatory efforts of the states to ensure some level of competency and consumer protection.

This is big news for all online poker players. Many legislators at both the state and the federal level feared that the Wire Act may apply to online poker, but now that it is clear that it does not, a major hurdle to the legalization of online gambling has been removed. We hope that the legislative momentum from the opinion continues to move forward toward legalization.

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