

## A Brief Overview of Federal Law and Internet Gaming

### A. The Wire Act of 1961

- The Wire Act was enacted in 1961 with the backing of then U.S. Attorney General Robert F. Kennedy. The Wire Act was intended to assist law enforcement in the fight against organized crime's most profitable enterprise – bookkeeping on horseracing and sports gambling – by prohibiting the use of the nation's communications system (at the time telephone and telegraph) to facilitate such illegal activity.
- The Wire Act was clearly never intended to regulate Internet gaming inasmuch as the Internet did not even exist at the time of the Wire Act's enactment. To state it another way, the Wire Act was originally intended and long understood as a narrow and targeted weapon to assist states in preventing organized crime from taking bets on sports. It was never intended to be a broad federal prohibition that would prevent states from legalizing online gaming *within their borders*.
- In 2009, the states of New York and Illinois wrote to the U.S. Department of Justice Criminal Division seeking an opinion on the legality of online lottery sales. In particular, they wanted to know whether using out-of-state payment processors for such online purchase would violate the Wire Act.
- In 2011, the DOJ's Office of Legal Counsel (OLC) issued a memorandum stating that because online lotteries did not involve sports, they fell outside the scope of the Wire Act. The OLC's limited application of the Wire Act to sports betting only was considered a "game changer." While the OLC opinion was focused on online lotteries, it was interpreted to clear the way for states to legalize and regulate other forms of non-sports intrastate gambling, such as intrastate Internet gaming.
- In the wake of the 2011 OLC memo, three states – New Jersey, Nevada and Delaware – legalized and regulated online gaming within their borders.
- To halt the progression of online gaming Sen. Lindsey Graham (R-SC) and Rep. Jason Chaffetz (R-UT) introduced the Restoration of America's Wire Act (RAWA) (H.R. 707), which would create a de facto federal prohibition on Internet gaming and halt states' attempts to legalize and regulate the activity.
- RAWA would create for the first time a prohibition on all forms of Internet gaming – even if the transactions occur entirely within a state that permits the activity.
- Supporters of RAWA argue that their goal is merely to stop the Department of Justice from unilaterally reinterpreting laws and that they want only to "restore the Wire Act to its interpretation [prior the issuance of the OLC memorandum.]" (quote from Rep. Chaffetz.).

- Pennsylvania Opponents of RAWA make the following points:
  - (i) A Federal prohibition against Internet gaming would directly and negatively impact Pennsylvania by foreclosing the future potential of Internet gaming to: generate state tax revenue, create economic and employment opportunities, and foster valuable business initiatives that will keep Pennsylvania casinos competitive.
  - (ii) H.R. 707 represents an impermissible infringement on the rights of states – pursuant to the 10<sup>th</sup> Amendment to the United States Constitution – to prohibit or regulate gaming as each state sees fit.
  - (iii) H.R. 707 tramples on the rights of states, such as Pennsylvania, who currently have or are considering the implementation of safe and regulated online gaming programs, and will have the negative effect of pushing consumers to dangerous, unregulated black-market Internet sites.

**B. The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)**

- While UIGEA prohibits payment processors from processing transactions related to unlawful Internet gaming, it specifically excludes intrastate online gambling from its proscriptions.
- UIGEA also excludes fantasy sports that meet certain requirements and legal inter-tribal gaming. UIGEA does not specifically mention state lotteries; nor does it clarify whether inter-state wagering on horse racing is legal.
- Notably, UIGEA does not consider the "intermediate routing" of electronic data, which might temporarily cross state lines, when determining the location of transactions or whether they are interstate or intrastate.
- For example, if an online purchase of a lottery ticket is initiated and finalized within a state where such gambling is legal, it is not a violation of UIGEA. The transaction is considered to be intrastate.
- Interpretation of the Wire Act as prohibiting all online gambling, even if the betting begins and ends within one state, puts the Wire Act at odds with this exception contained in UIGEA.
- Thus the OLC opinion can be seen as an effort to harmonize UIGEA with the Wire Act.

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