

Basic Information Regarding Online Gambling

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The law surrounding Internet gambling in the United States has been murky, to say the least. For years, the Department of Justice has contended that all forms of Internet gambling are illegal under United States federal law, as is the marketing, promotion, or advertising thereof.¹ However, the statutory language and judicial precedent pertaining to online gambling does not necessarily support the government's broad pronouncements of illegality.

Primarily, the Department of Justice relies upon the Wire Wager Act² as its basis for claiming that Internet gambling is illegal. This law does appear to criminalize some forms of online gambling, however its scope has been limited by the courts to apply only to sports betting operations, and not to other forms of casino gambling or poker.³ Various other federal laws may apply to certain online gambling activities, such as the Illegal Gambling Business Act, the Wagering Paraphernalia Act, and the Travel Act, however, their applicability has not been conclusively established by the federal courts, to date. Accordingly, at least as far as federal law is concerned, the operation of online sports betting websites is clearly illegal, while the legality of websites focusing on other forms of gambling is, to date, unresolved.

¹ See Correspondence from John G. Malcolm, Deputy Asst. Attorney General, Criminal Division, United States Department of Justice (06.11.03). A copy of the letter written to the National Association of Broadcasters ("NAB") can be viewed at http://www.igamingnews.com/articles/files/NAB_letter-030611.pdf

² Title 18 U.S.C. § 1084

³ See *U.S. v. Cohen*, 260 F.3d 68 (2d Cir. 2001), *cert den.* 536 U.S. 922, 122 S.Ct. 2587, 153 L.Ed.2d 777 (2002); See also *In Re MasterCard International, Inc., Internet Gambling Litigation*, 132 F.Supp.2d 468 (E.D. La. 2001), *aff'd* 313 F.3d 257 (5th Cir. 2002).

On October 13, 2006, President Bush signed the Unlawful Internet Gambling Enforcement Act (UIGEA), which restricts the acceptance of certain financial transactions pertaining to illegal online gambling, and imposes requirements on banks and other financial service providers to identify and block illegal financial transactions. The full meaning and scope of UIGEA is uncertain, at this point, since no court has interpreted the law, and the Administrative Regulations to be promulgated by the Treasury Department has not yet been issued. Based on the plain language of the Act, only financial transactions relating to wagers that are illegal where they are made are prohibited by the Act. That requires one to evaluate the current state of gambling law in the location where the betting transaction is initiated. Accordingly, some financial transactions may be illegal under UIGEA, while others may not. This will certainly be challenged and interpreted by the courts in the years to come, but the initial response to its passage was a pull-out from the industry by most of the larger, publicly listed online gambling entities. Many in the industry presumed that an all-out prohibition law had passed, when UIGEA was first adopted, and immediately decided to withdraw from the U.S. player market. Other smaller and/or independent gambling companies have continued accepting bets from U.S. players, under a variety of legal theories and justifications. The withdrawal of the large, publicly-listed entities has created significant opportunity for other companies willing to take on some degree of legal risk and service U.S. players looking for a site to accept their bets.

To further complicate matters, some individual states have passed their own online gambling laws, addressing a variety of gambling activities. Most statutes focus on prohibiting the operation of an online gambling business, while a few also prohibit the act of placing a bet online, in the particular state. Very few prosecutions have occurred under state law, and thus the validity and constitutionality of these statutes has not been tested in the courts. A viable

argument can be made that all Internet gambling prohibitions at the state level are unconstitutional under the Commerce Clause of the United States Constitution, since they seek to regulate activity at the state level, which should only be addressed by the federal government, on a nationwide level.⁴ Regardless of the ultimate viability of these statutes, more and more states are adopting these laws, resulting in an increasingly complex state of affairs relating to online gambling legality. Internet gambling may, therefore, be legal in some states while completely prohibited or criminalized in others. Since some federal laws like the Illegal Gambling Business Act and UIGEA rely on the legality of gambling at the state level, any attempt to determine the legality of a particular online gambling operation in the United States can result in endless circular evaluation and analysis, often resulting in little actual clarity. However, it should be stressed that very few – if any – online gambling businesses actually operate in the United States, given the Department of Justice’s unequivocal position that all forms of online gambling are illegal in the United States. Instead, these operations locate in a handful of offshore locations, whose governments have decided to legalize and license Internet gambling businesses as a method of tax revenue generation and economic stimulus. Often, Internet gambling businesses will locate in nations like Malta, Guernsey, Alderney, Isle of Man, Gibraltar, or Curacao. The United Kingdom recently passed legislation authorizing the issuance of “remote gaming licenses.” Although no licenses have yet issued, this decision represents the first of its kind for a large, industrialized nation to embrace the online gambling industry.

United States law enforcement authorities, at both the state and federal levels, have recently stepped up enforcement of criminal law against those openly violating this country’s online gambling laws. Both U.S. citizens and foreigners – passing through the United States

⁴ For further discussion of this issue, see “[Will the Commerce Clause Save Online Gambling?](#)” by Lawrence G. Walters, Esquire.

while traveling – have been arrested in this recent crackdown. For example, individuals associated with BetOnSports.com, a major sports betting website, were arrested and currently facing trial on serious racketeering charges. Similar prosecutions have occurred in Florida, New York and Louisiana. The prosecutions have not been limited to actual website operators, but have also included hosts, website designers, advertisers, and billing processors such as Neteller. While the outcome of these prosecutions is uncertain, it appears that the United States remains entrenched in its prohibitionist stance with regard to online gambling. Several attempts to regulate and/or license Internet gambling, and its territories, have failed due to the heavy-handed approach of the Department of Justice, who claims that any such effort would violate existing federal law. While legalization/regulation of Internet gambling seems inevitable at some time in the future, the United States will likely maintain its anti-Internet gambling stance for years to come.

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