

Federal Issues in Online Gambling in the Wake of DOJ's Illinois Decision

The Department of Justice has determined that the Wire Act does not apply to out of state payment processing for intrastate, online lotteries. This decision paves the way for states to offer other, non-sports related, online gambling activities. It opens up exciting new, and potentially lucrative, opportunities for gaming companies, software engineers, advertising networks, payment processors and other direct and secondary beneficiaries of a legal online gaming regime. While the private sector begins ramping up to take advantage of activities in the states, we must remain watchful of federal initiatives that might expand or roll back the DOJ's decision.

DOJ's interpretation of the Wire Act will most likely force Congress to act either to reign in the DOJ or establish clear federal rules for some forms of online gambling. In either event, Congressional action will be motivated by the difficulty of limiting online gambling to individuals residing within a state and the potential for the development of a patchwork of different state laws. As this becomes clear to federal policy makers, they will be pressured to act. In a January 6, [National Journal](#) article, Congressman Joe Barton (R-TX), the former Chairman of the House Energy and Commerce Committee said the DOJ decision makes necessary clarification by Congress. "If Congress doesn't act soon we could end up with fractured rules and regulations that vary state to state, leaving more opportunity for fraud and fewer safeguards for players," Barton said. "I plan to keep moving forward with my efforts to move H.R. 2366 through the committee process, and I am confident it will be passed by the House and Senate – hopefully in this session."

Congress will be lobbied both by groups who want to roll back DOJ's decision and those who want to expand it. Subsets of the pro-gaming groups are likely to develop, particularly a divide between foreign and domestic interests. The legislative draft put forth by Senate Majority Leader Harry Reid in the last Congress would seem the most likely framework for starting discussions on legalizing poker. In this one-sided proposal to favor Nevada gaming interests, early market entry was limited to existing gaming establishments and foreign operators were all but excluded. Indeed, there is nothing that would require the US Congress to allow access for foreign providers, other than the possibility of retaliation authorized by the World Trade Organization decision in favor of Antigua and Barbuda. Recognizing this as a possibility, the Reid proposal included language directing the U.S. Trade Representative to engage in binding negotiations with Antigua to end the dispute and withdraw the United States commitment to allow foreign access to provide these services. This outcome would allow the United States to adopt a law that allows only domestic companies to offer services.

The main opponents to expanding online gaming will include House Financial Services Chairman Spencer Bachus and groups such as [Stop Predatory Gambling](#) whose board members include a broad array of social conservatives and gambling addiction thought leaders. Already these groups are launching an advocacy effort to reverse the DOJ's decision.

Interested parties who wish to see a robust, legal, online gaming regime in the United States should engage with federal policy makers to build support for the DOJ's decision and combat efforts designed to reverse it. The partners at Jochum Shore & Trossevin, PC have extensive experience representing clients on internet gambling issues before the U.S. government. For more information please contact Andrew Shore (ashore@jstpc.com) or Jim Jochum (jjjochum@jstpc.com).

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