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Breaking News Alert (U.S. - 2011)

Breaking News-- The U.S. Department of Justice have changed positions and agree now that the Wire Act only applies **ONLY** to sports betting. The new DoJ opinion was released publicly Friday, December 23rd just prior to a long holiday weekend.

DOJ DOES ABOUT-FACE; AGREES WIRE ACT ONLY PROHIBITS SPORTS BETTING

After contending for years that the Wire Act, 18 USC § 1084, prohibits *all* forms of gambling that use a wire communication facility to cross a state or international boundary - a position widely disputed by courts and commentators - the United States Department of Justice (DOJ) has reversed itself. In a ruling provided to Illinois and New York lottery officials in September, but only now made public, the DOJ has formally adopted the view that "interstate transmissions of wire communications that do not relate to a 'sporting event or contest' ... fall outside of the reach of the Wire Act," and that "the proposed New York and Illinois lottery proposals do not involve wagering on sporting events or contests." As the DOJ stated:

[T]he Wire Act's legislative history reveals that Congress's overriding goal in the Act was to stop the use of wire communications for sports gambling in particular. Congress was principally focused on off-track betting on horse

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[DoJ Does About-Face: Changes Long Held Position On Wire Act](#)



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races, but also expressed concern about other sports-related events or contests, such as baseball, basketball, football, and boxing.

This "better late than never" concession to reality by the DOJ could have significant effects with regard to online gaming authorized by individual states. The Unlawful Internet Gambling Enforcement Act (UIGEA), 31 USC §§ 5361 *et seq.*, permits the intermediate out-of-state routing of electronic data associated with lawful gambling transactions that otherwise occur in-state. But the public pronouncements by the DOJ that such routing would violate the Wire Act had a chilling effect on states' willingness to authorize and operate intra-state online gambling on things other than sports betting.

With this DOJ ruling, states should feel more secure authorizing and implementing online gambling in non-sports betting areas. Most important, such areas would likely include poker.

Of course, many other federal laws criminalize various aspects of gambling. Unlike the Wire Act, however, such laws uniformly require a predicate violation of *state* law in order to constitute a violation of the federal law. What this means is that if an individual state - or even a group of states - all agree that a certain form of non-sports gambling is legal, that state or group of states may legally be able to pool their customers and prizes, much like the existing multi-state lotteries.

Whether the DOJ's about-face will stimulate more online gaming authorizations at the state level, to the detriment of those seeking legalization and regulation at the federal level, remains to be seen. What is clear is that a huge (and arguably unjustifiable) obstacle to the legalization of many forms of online gambling in the United States has now been removed.

Happy New Year! We look forward to seeing friends and colleagues at the ICE Totally Gaming Conference in London (January 24-26)

Please feel free to contact us with any licensing and gaming compliance needs. Our law firm, Catania & Ehrlich, is also available for any of your gaming law needs.

Sincerely,

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Our goal is to provide clients with the information, experience, and contacts necessary to develop, regulate and operate both casinos and ancillary companies. The governments for which CGC has previously provided assistance in drafting gaming regulations and establishing gaming

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