
Internet Gambling And The Interstate Wire Act of 1961: What Has And Has Not Changed

A Special Report Prepared By GamblingCompliance Americas

1. Overview

What: On Dec. 23, 2011, the Office of Legal Counsel within the federal Department of Justice issued a Memorandum Opinion (hereinafter, “the Opinion”) addressing whether the Wire Act, a 1961 law prohibiting interstate transmissions of communications relating to wagering on a sporting event or contest, applies to interstate transmissions of communications not relating to a sporting event or contest. The Opinion concluded that the Wire Act applies exclusively to interstate transmissions of communications relating to wagering on a sporting event or contest. Significantly, that conclusion reverses the Justice Department’s long-held position that the Wire Act prohibits interstate transmissions of communications relating to all forms of wagering, including those concerning wagering on a sporting event or contest.

When: The Opinion, originally drafted on Sept. 20, 2011, but not released publicly until Dec. 23, is now in effect.

Why: The Opinion was issued in response to inquiries from the New York Lottery (2009) and the Illinois Lottery (2009 and 2010), respectively. In sum, those inquiries sought clarification on whether sales of lottery tickets via the Internet fell afoul of the Wire Act, given the Justice Department’s erstwhile position that the Wire Act prohibited interstate transmissions of communications relating to all forms of wagering, including those concerning wagering on a sporting event or contest.

Summary Of Implications: Broadly, the Opinion has not legalized or otherwise authorized Internet gambling at any level of U.S. government. Rather, the Opinion appears only to have removed a key compliance conflict between states wishing to offer intrastate, Internet-based non-sports wagering and the Wire Act’s prohibition on interstate transmissions of communications relating to wagering on sporting events or contests. Significantly, the Opinion has not resolved conflicts between the Wire Act and other federal laws pertaining to Internet gambling. Moreover, the Opinion is not binding and is therefore subject to subsequent revision by the Justice Department.

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2. Implications

What Has Changed?

- The Opinion appears to have imparted that the Justice Department no longer intends to argue that the Wire Act prohibits interstate transmissions of communications relating to all forms of wagering. Notably, however, the Opinion is not binding and is therefore subject to subsequent revision.
- The Opinion appears to have removed a key compliance barrier for U.S. lotteries mulling whether to commence sale of lottery products, via the Internet or other electronic means, to residents of their respective jurisdictions. According to GamblingCompliance research, in 2011, there were at least eight such lotteries.
- The Opinion appears to have removed a key compliance barrier for U.S. jurisdictions — those being states, territories and federal districts — mulling whether to legalize forms of Internet gambling other than sports wagering within their respective borders. According to GamblingCompliance research, in 2011, there were eight such jurisdictions.
- The Opinion appears to have removed a key compliance barrier for U.S. jurisdictions mulling whether to enter into reciprocal compacts for purposes of offering forms of Internet gambling other than sports wagering across their respective borders. According to GamblingCompliance research, in 2011, there were two such jurisdictions.

What Has Not Changed?

- The Opinion has not effectively legalized or otherwise authorized Internet gambling at any level of U.S. government. Rather, the Opinion appears only to have removed a key compliance conflict between states wishing to offer intrastate, Internet-based non-sports wagering and the Wire Act's prohibition on interstate transmissions of communications relating to wagering on sporting events or contests.
- The Opinion has not resolved conflicts between the Wire Act and other federal laws pertaining to Internet gambling, including, inter alia, the Unlawful Internet Gambling Enforcement Act (hereinafter, "UIGEA"). For instance, under UIGEA, data transmissions that begin and end in the same state — but that, during the course of transmission, incidentally cross state lines — are not considered interstate in nature; by contrast, under the Wire Act, such transmissions are considered interstate in nature. The Justice Department, therefore, could still interpret data transmissions that are compliant with UIGEA as being non-compliant with the Wire Act. For now, the Justice Department has chosen to remain silent on that conflict and on others.
- The Opinion has not changed the trajectory of the pending "Black Friday" case in the United States District Court for the Southern District of New York. That case, which is predicated not on violations of the Wire Act but on violations of other federal statutes concerning Internet gambling, involves, inter alia, the founders of PokerStars, Full Tilt Poker, and Absolute Poker/Ultimate Bet.

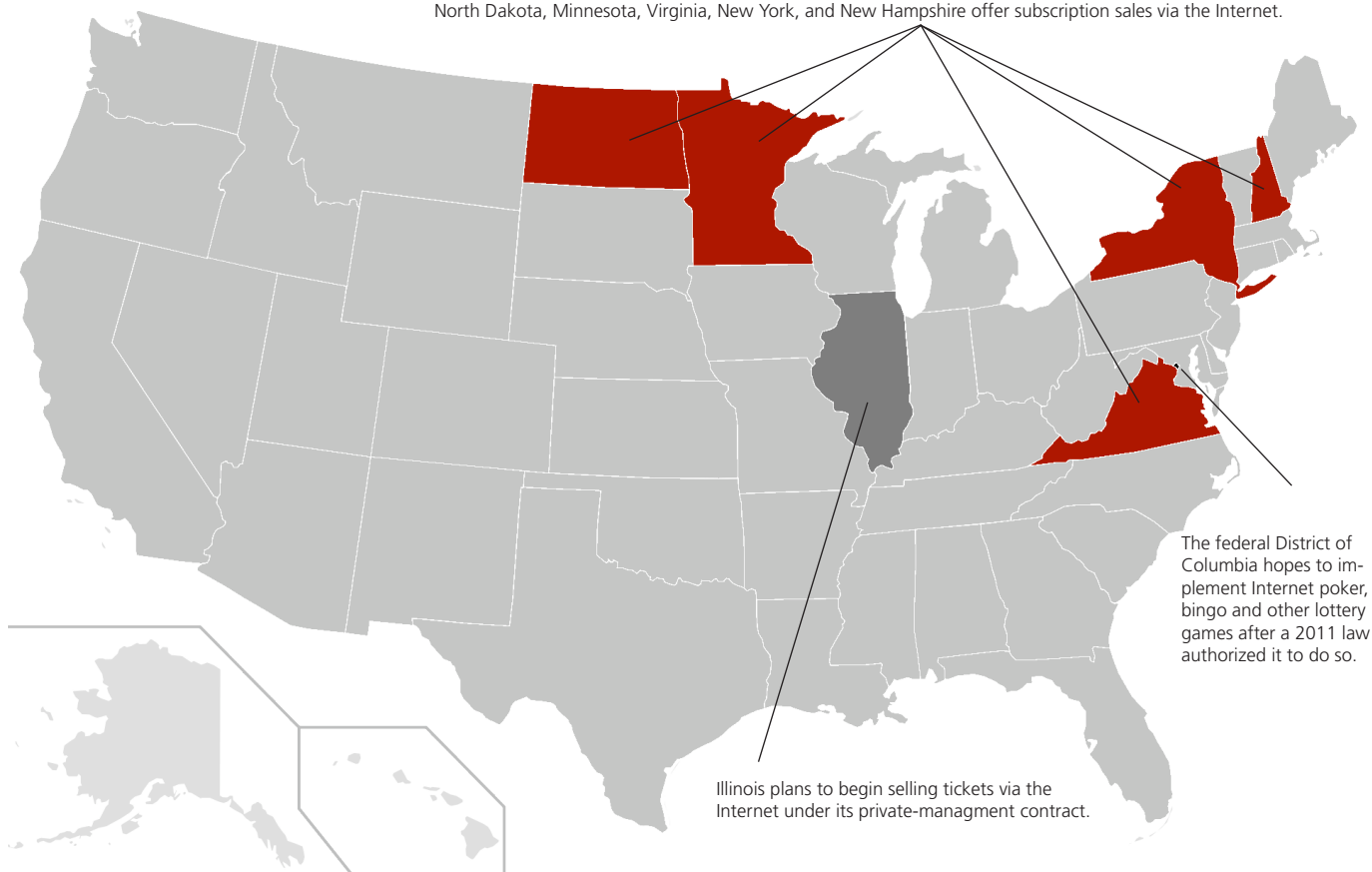
3. Near-Term Winners: The U.S. Lottery Industry

U.S. Lotteries: The Opinion appears to clear the way for the New York Lottery and the Illinois Lottery — which, having secured the requisite state-level approvals, were awaiting Justice Department consent before dabbling in web-based sales — to launch their respective Internet programs. The map below shows that lotteries in five other U.S. jurisdictions — Minnesota, New Hampshire, North Dakota, Virginia and the federal District of Columbia — are also utilizing the Internet to sell or otherwise distribute lottery products.

Lottery Vendors: The Opinion appears to provide a commercial boon for lottery vendors, including Lottomatica, Scientific Games and Intralot, that control products and technology that U.S. lotteries can leverage via the Internet or other electronic means.

How are U.S. Lotteries moving online?

North Dakota, Minnesota, Virginia, New York, and New Hampshire offer subscription sales via the Internet.



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