

# U.S. Processors Face Wire Act Dilemma After Online Gambling U-Turn

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**Payment providers serving the U.S. online gambling market face legal uncertainty after a decision by the Department of Justice to reverse a 2011 opinion on the application of the federal Wire Act.**

A [new opinion](#) published late on Monday means it is no longer legally clear that processing online gambling transactions across state lines is legal under the 1961 federal law.

Eight years ago the Department of Justice issued an opinion stating the Wire Act applied only to sports betting, opening up companies to offer non-sports gambling, including online casino, lottery and poker games, both intrastate and on an interstate basis.

"While the Wire Act is not a model of artful drafting, we conclude that the words of the statute are sufficiently clear and that all but one of its prohibitions sweep beyond sports gambling," wrote Steven Engel, an assistant U.S. attorney general who heads the department's Office of Legal Counsel.

"We further conclude that that the 2006 enactment of UIGEA (Unlawful Internet Gambling Enforcement Act) did not alter the scope of the Wire Act," Engel wrote of a separate federal law that prohibits the processing of deposits for illegal online gambling of any kind.

The 2011 opinion prompted gradual market entry by payment processors as states including New Jersey regulated different forms of internet gambling, and although pockets of the industry were initially wary it has since grown into a significant potential revenue stream.

Although it is important to note that the opinion is not legally binding, it nonetheless stands as an indicator of federal enforcement policy.

However, in the case of both interstate and online intrastate gambling services, including the processing of related payments, experts said it is not yet clear exactly what that policy is.

"Several states have authorized mobile and internet sports betting, notwithstanding the Wire Act," said Behnam Dayanim, a partner at Paul Hastings.

"The opinion does not state whether the Wire Act should be construed to prohibit transactions that occur wholly intrastate, even though they may involve internet or mobile transmissions that may cross state boundaries."

The Wire Act only applies to gambling which crosses state lines. The danger is that while the gambling itself may only occur within a single state, it is considerably harder to guarantee online payment processing adheres to the same boundaries.

There is also the risk that a gambling transaction would temporarily travel across state lines even when both player and gambling operator are located within the same state. UIGEA specifically protects so-called "intermediate routing" of lawful gambling transactions, but the Wire Act does not.

In addition, gambling operators and payment processors have relied upon legal opinions citing the Department of Justice's original 2011 legal determination – opinions which might need to be updated or revisited in the wake of the new guidance.

"The biggest financial risk out of the gate in our view is if banks and payment processors shy away from the gambling industry and temporarily halt payments for online gambling activities," said John DeCree, an analyst at Union Gaming.

"This would make it more difficult for customers to deposit cash into the system."

The scenario is complicated further by at least two federal court decisions supporting the 2011 opinion on the Wire Act, including a 2002 decision by a U.S. Court of Appeals in New Orleans in a case involving Mastercard.

PaymentsCompliance understands that the New Jersey Attorney General's Office is readying a policy statement opposing the new position ahead of possible legal action in defense of the 2011 reading, which would likely happen in concert with other state regulators.

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the Electronic Transactions Association (ETA). “ETA does not take a position on whether betting should be legal or not. However, once it is declared legal, the payments industry stands ready to process payments for it.”

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The result for payment firms is, until further clarity emerges, a great deal of uncertainty.

“The Department of Justice memo creates confusion ... which is not helpful for the payments industry,” a spokesperson for the Electronic Transactions Association (ETA) said.

“ETA does not take a position on whether betting should be legal or not. However, once it is declared legal, the payments industry stands ready to process payments for it. ETA members are evaluating the memo and deciding how best to proceed.”

C.J. Fisher, an associate at Fox Rothschild in Atlantic City, cast doubt on whether payment companies would have much to fear in the immediate present, but echoed Dayanim’s sentiment that uncertainty was now the order of the day.

“It’s unclear whether the Department of Justice would interpret the Wire Act to apply to transmissions related to internet gaming that happened to cross state lines, even if the user and the online casino are based in the same state,” he said.

“I think that would be an overly broad interpretation of the Wire Act, but the reversal and the new opinion could increase that risk.”

The Department of Justice has given a 90-day window before it will enforce the new interpretation.

The clearest line that could be drawn under the issue would be for federal lawmakers to revisit the original law, but that appears an unlikely prospect in the current political climate in Washington.

“Congress itself could conceivably address the Wire Act,” Fisher said. “I would put the likelihood of that occurring as low.”

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