



# OLR RESEARCH REPORT

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## **LEGALITY OF ONLINE POKER**

By: Veronica Rose, Chief Analyst

You asked if online poker is legal under federal law.

This office is not authorized to give legal advice and this report should not be construed as such.

### **SUMMARY**

We do not have a definitive answer to your question. This is a complicated issue because the statutes are not clear and the U.S. Supreme Court has not interpreted the specific question. Thus, the issue is unresolved.

The U.S. Department of Justice (DOJ) has consistently claimed that, with minor exceptions not at issue here, all forms of online gambling are illegal. It bases its conclusion primarily on the 1961 federal Wire Act, which prohibits gambling businesses from using interstate or international telecommunication wires to knowingly transmit or receive bets. DOJ also relies on the 2006 Unlawful Internet Gambling Enforcement Act (UIGEA), which prohibits financial institutions from conducting financial transactions in connection with unlawful online gambling. UIGEA explicitly excludes from its application online gambling within a state or tribal jurisdiction.

In *In re MasterCard International*, the U.S. Fifth Circuit Court of Appeals held that the Wire Act applies only to sports betting. But the U.S. Supreme Court has not considered this application of the act.

Online gambling proponents cite the *MasterCard* decision as evidence that the Wire Act and by extension UIGEA, does not apply to poker. But at least one lower federal court has rejected the *MasterCard* interpretation and ruled that the Wire Act applies to all forms of online betting.

## **ONLINE GAMBLING**

Whether online gambling, including online poker, is illegal under federal law is a matter of extensive debate. Online gambling proponents argue that it is not explicitly prohibited. “There is currently no federal law that prohibits anyone from playing poker online,” according to the Poker Players Alliance (FAQ #4, <http://pokerplayersalliance.org/about/faq/#faq7>, last visited June 10, 2011). But for years, DOJ has contended that all forms of online gambling are illegal under federal law, as well as the marketing, promotion, and advertising of such gambling. Although the department has not targeted individual gamblers for prosecution, it has targeted online gambling operators, service providers, payment processors, hosts, and website developers, and others, including the following.

1. On Friday April 15, 2011, DOJ indicted 11 individuals associated with the three largest companies offering online poker games to U.S. residents—Absolute Poker, Full Tilt Poker, and PokerStars. The indictment charged the defendants with conspiracy to commit bank and wire fraud, money laundering, and illegal gambling offenses. DOJ also filed a civil complaint, alleging the poker companies collectively obtained approximately \$3 billion from their illegal activities.
2. In 2008, the former owner of PartyGaming pleaded guilty to violating the Wire Act and forfeited \$300 million. He also agreed not to provide Internet gambling to customers in the United States.
3. In 2007, NETeller and two of its founders were indicted on federal charges for providing payment processing services to Internet gambling businesses. They pleaded guilty and negotiated a settlement in the millions of dollars.

4. In 2006, the DOJ indicted two individuals and the corporations through which they operated their illegal gambling websites (WorldWide Telesports Inc.). Those individuals and entities were also charged with laundering over \$250 million worth of illegal Internet gambling wagers.
5. In a 2005 settlement, the parent company of The Sporting News agreed to pay a \$4.2 million fine and spend \$3 million on public service announcements stating that online gambling is illegal.
6. In 2003, DOJ advised the National Association of Broadcasters that media businesses likely were “aiding and abetting” violations of federal law when they circulated advertising on gambling sites. The letter noted that with very few exceptions federal laws prohibit Internet gambling within the United States, “whether or not such operations are based offshore. . . . Notwithstanding their frequent claims of legitimacy, Internet gambling and offshore sportsbook operations that accept bets from customers in the United States violates [the Wire Act and other federal laws]” (DOJ letter to National Association of Broadcasters, June 11, 2003).

Some commentators cite the fact that DOJ has not targeted individual bettors for prosecution as evidence that the actual online gambling activity is not illegal. Others suggest that the government does not pursue individual bettors because it is a more effective strategy to disrupt the funding for illegal gambling activity. Still others suggest that trying to prosecute online bettors is a futile task given the difficulty in tracking people in cyberspace.

In response to the DOJ’s seizure of the poker domain names in April, Professor I. Nelson Rose, nationally recognized gambling law expert, commented that “the DOJ has been waging a war of intimidation against Internet gambling for years, successfully scaring players, operators, payment processors and affiliates into abandoning the American market” (Gambling and the Law, Federal Poker Indictments: Revisiting Prohibition <http://wizardofvegas.com/forum/gambling/online/5102-i-nelson-rose-article-about-legalities-and-the-indictments/>).

## **WIRE ACT**

The Wire Act is the federal statute DOJ primarily relies on to substantiate its claim that online gambling is a federal offense (18 USC § 1084). The 1961 act predates the Internet and was enacted to deal with telephone betting. It prohibits gambling businesses from knowingly using

interstate or international wires to transmit, or provide information to assist in the placement of, sports bets or wagers. The operation of sports betting websites is clearly illegal under this statute. But the statute does not expressly discuss its possible application to other forms of gambling. As a result, the question of whether the act prohibits other forms of online gambling remains unsettled.

The pertinent section of the act reads as follows:

. . .whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisonment not more than two years, or both (18 USC § 1084(a); <http://uscode.house.gov/download/pls/18C50.txt>).

The act includes two exceptions to the prohibition. It states:

[N]othing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a state or foreign country where betting on that sporting event or contest is legal into a state or foreign country in which such betting is legal (18 USC § (1084(b)).

In a 2002 civil lawsuit, the U.S. Court of Appeals for the Fifth Circuit, the highest court to interpret the Wire Act, affirmed a lower court ruling that the act applies only to sports betting, a conclusion the lower court determined was supported by a plain reading of the statutory language and reinforced by the legislative history of Internet gambling legislation (*In re MasterCard International Int'l, Inc., Internet Gambling Litig.* 313 F. 3d 257 (5<sup>th</sup> Cir. 2002)). The Appellate Court “agree[d] with the district court’s statutory interpretation, its reading of the relevant case law, its summary of the relevant legislative history and its conclusion” (*Id* at 262).

At least one lower federal court has rejected the *MasterCard* interpretation in a criminal prosecution, holding that the Wire Act “is not confined entirely to wire communications related to sports betting or wagering” (*United States v. Lombardo*, 639 F. Supp. 2d 1271 (D. Utah 2007)).

## **UIGEA**

A second law that the federal government relies on to address the Internet gambling issue is UIGEA, which is the first piece of federal legislation to deal with online gambling. From all accounts, the proliferation of online poker was a factor influencing its passage.

UIGEA prohibits gambling-related businesses from accepting checks, credit card charges, electronic transfers, and similar payments in connection with unlawful Internet gambling (31 USC § 5363).

Under the act, “unlawful Internet gambling” means “to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable federal or state law in the state or tribal lands in which the bet or wager is initiated, received, or otherwise made” (31 USC § 5362(10)). A “bet or wager” means “the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome” (31 USC § 5362(1)(A)).

The law explicitly excludes from the definition of unlawful Internet gambling, online gambling constructed solely within the boundaries of a state or tribe (31 USC 5362(10) & (B)(C)). (To date, eight states have enacted legislation barring online gambling: Illinois, Indiana, Louisiana, Montana, Nevada, Oregon, South Dakota, and Washington. In a handful of states, including Florida and Kansas, the attorney general has issued advisory opinions that online gambling violates state law.)

Of the nine counts with which the defendants were charged in the April 15, 2011 indictment of Absolute Poker, Full Tilt Poker, and PokerStars, four were for UIGEA violations. [Professor I. Nelson Rose](#) argues that UIGEA was used because “it covers money transfers, and to reinforce the false message that it made Internet gambling illegal. The UIGEA is actually only an enforcement act. It requires there be a violation of some other federal or state anti-gambling law.”

Many commentators have suggested that key terms in UIGEA, including unlawful Internet gambling, are not clearly defined. At least one court disagreed. In 2009, the Interactive Media Entertainment and Gaming Association filed a lawsuit alleging that the act was unconstitutionally vague. The federal appeals court disagreed.

The Supreme Court has explained that a statute is unconstitutionally vague if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement (citations omitted). . . . We reject Interactive’s vagueness claim. The Act prohibits a gambling business from knowingly accepting certain financial instruments from an individual who places a bet over the Internet if such gambling is illegal at the location in which the business is located or from which the individual initiates the bet. . . . Thus the Act clearly provides a person of ordinary intelligence with adequate notice of the conduct that it prohibits (*Interactive Media Entm’t & Gaming Ass’n v. AG of the United States* (580 F. 3d 113, 116 (3d Cir. 2009)).

The Appellate court noted that “UIGEA does not make any gambling activity illegal,” but rather, the definition of “unlawful Internet gambling” references federal and state laws related to gambling. Therefore “to the extent that [there is] a vagueness problem, it is not with the Act, but rather with the underlying state law” (*Id* at 117).

## **HYPERLINKS**

- **FAQ #4,**  
<http://pokerplayersalliance.org/about/faq/#faq7>
- **Gambling and the Law, Federal Poker Indictments: Revisiting Prohibition**  
<http://wizardofvegas.com/forum/gambling/online/5102-i-nelson-rose-article-about-legalities-and-the-indictments/>
- **18 USC Chapter 50 – Gambling, 02/01/2010**  
(<http://uscode.house.gov/download/pls/18C50.txt>).
- **Professor I. Nelson Rose**  
<http://www.gamblingandthelaw.com/blog/303-a-law-professor-looks-at-pokers-black-friday.html>

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