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DOJ Sued Over its Reinterpretation of the Wire Act

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It didn't take long. The New Hampshire Lottery has sued the Department of Justice (DOJ) to prevent enforcement of the DOJ's opinion (issued last month) reinterpreting the Wire Act. [As we reported last month](#), the DOJ reversed the position it took in 2011 that the entirety of the Wire Act is limited to sports betting. It newly concludes that only one of four parts of the Wire Act apply to sports betting, while the other three apply to any online betting.

The NH Lottery complaint raised concerns about its new "iLottery" gaming platform that gives players located in New Hampshire the ability to purchase and play select lottery games on their personal computers, mobile and electronic devices. Despite requiring that any players purchasing lottery tickets through its iLottery platform be located in New Hampshire and using age verification software and geolocation technology, the NH Lottery is concerned the new interpretation could render its activity illegal. The reason, as acknowledged in the complaint, is that transmissions through New Hampshire Lottery's iLottery may sometimes travel across interstate lines.

The suit seeks a declaration that "the Wire Act does not prohibit the use of a wire communication facility to transmit in interstate commerce bets, wagers, receipts, money, credits, or any other information related to any type of gaming other than gambling on sporting events and contests."

Prior to 2011, the only federal court of appeals to address the issue held that the phrase "on any sporting event or contest" applies to all prohibitions set forth in Section 1084(a). See *In re Mastercard Int'l, Inc.*, 313 F.3d 257, 262-63 (5th Cir. 2002) ("[T]he Wire Act does not prohibit non-sports internet gambling . . ."). Since 2011, no court has held in a published opinion that the Wire Act applies to any type of gaming other than gambling on sporting events. In 2014, the First Circuit agreed with the conclusions of the 2011 Opinion, concluding that the Wire Act is limited to betting and wagering on "any sporting event or contest." *United States v. Lyons*, 740 F.3d 702, 718 (1st Cir. 2014). Given that the suit was filed in New Hampshire, if it goes to appeal, that appeal will be decided by the First Circuit Court of Appeals.

This is the first, but not likely the last, suit to be filed against the DOJ for its recent opinion. Check back for updates.

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