



Terry McAuliffe
Governor of Virginia
Chair

Brian Sandoval
Governor of Nevada
Vice Chair

Scott D. Pattison
Executive Director/CEO

April 3, 2017

The Honorable Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Sessions:

The nation's governors are concerned with legislative or administrative actions that would ban online Internet gaming and Internet lottery sales.

The regulation of gaming has historically been addressed by the states. While individual governors have different views about offering gaming—in a variety of forms—within their own states, we agree that decisions at the federal level that affect state regulatory authority should not be made unilaterally without state input. A strong, cooperative relationship between the states and federal government is vital to best serve the interests of all citizens.

As you review this issue, we encourage you to take note of the current regulatory mechanisms put in place by the states to ensure that consumers and children are protected, and that licensees comply with strict standards of conduct. States are best equipped to regulate and enforce online gaming. A ban drives this activity offshore to unregulated jurisdictions, out of the reach of state and federal law enforcement and with risk to consumers.

The nation's governors stand ready to discuss this issue with you further.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry McAuliffe", written over a light blue circular stamp.

Terry McAuliffe
Governor of Virginia
Chair

A handwritten signature in blue ink, appearing to read "Brian Sandoval", written over a light blue circular stamp.

Brian Sandoval
Governor of Nevada
Vice Chair

cc:
House and Senate Judiciary Committees

444 N. Capitol Street NW, Suite 267, Washington, D.C. 20001



NGA.ORG



STATE OF GEORGIA

OFFICE OF THE GOVERNOR

ATLANTA 30334-0090

Nathan Deal
GOVERNOR

April 3, 2017

The Honorable Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Sessions:

Please accept my warm congratulations on your recent confirmation as United States Attorney General. Your breadth of experience and depth of legal knowledge will serve our country well during these challenging times.

I write to you regarding an issue that was raised during your confirmation hearing. United States Senator Lindsey Graham from South Carolina asked about your view of the Department of Justice Office of Legal Counsel's interpretation of the Wire Act to allow online wagering. You responded: "Apparently, there is some justification or argument that can be made to support the Department of Justice's position, but I did oppose it when it happened. I would revisit it and make a decision about it based on careful study." It is my view that any effort by the Department of Justice to reverse the 2011 Office of Legal Counsel opinion allowing the sale of traditional lottery products through this channel is not legally justified and would have an immediate and significant negative effect on my state's lottery revenue. In the last fiscal year, the Georgia Lottery Corporation raised more than \$1 billion for the state's pre-kindergarten program and HOPE scholarships for college students. A portion of this money was raised through our iLottery program.

As you give this matter more study and contemplation, I respectfully request you do not take any steps to remove or limit a state's authority to control gaming within its own borders. With today's clarity under U.S. federal law in the regulation of intrastate wagering via the Internet and other interactive channels, states are now in a better position to determine if these high-tech products and distribution options are an appropriate way to raise additional revenue in their respective jurisdictions.

Over the last five years, there have been consistent, yet unsuccessful, efforts in Congress to ban Internet wagering outright – including the sale of lottery tickets. It is unfair to limit sales options for state lotteries and their players. State lotteries are managed by state governments, and state operations are fully transparent and highly regulated. I hope, as



the top law enforcement official in our country, you will preserve our state's right to offer lottery ticket sales over the Internet and protect the existing sales channels used by the Georgia Lottery.

We are all troubled by illegal gambling – especially illegal Internet gambling that has been linked to criminal activities. These sites lack government oversight, responsible gaming controls, security, and mechanisms to guard against underage play and fraud. If the Department of Justice reverses course and eliminates state-based regulation of Internet gaming, that will result in players moving to unregulated, offshore, illegal gaming websites, because there will be no legally authorized alternatives.

Those sites stand in stark contrast to the legal offerings operating around the United States, including here in Georgia. Today, there are 21 state-regulated Internet wagering sites in the United States operating in 13 states. Those states offering wagering over the Internet have effective technical solutions to prevent underage play and other illegal activities. These regulated sites protect players and generate tax revenue, while offering player age verification, geo-location, and financial moderators to guard against irresponsible play. State Internet wagering programs are regulated by federal and state law, operated as a part of state government, and those operations are fully transparent and subject to multiple layers of government oversight.

Thank you for your attention to this issue, and I trust you will give this matter the thoughtful contemplation it deserves. Please do not hesitate to call or write regarding this or any other issue.

Sincerely,

A handwritten signature in black ink that reads "Nathan Deal".

Nathan Deal
Governor

cc:

White House Counsel, Donald McGahn
White House Deputy Chief of Staff for Policy, Rick Dearborn
Director of the Office of Management and Budget, John "Mick" Mulvaney



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
BUREAU OF STATE LOTTERY
LANSING



LOTTERY
ARIC NESBITT
LOTTERY COMMISSIONER

May 15, 2017

The Honorable Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Sessions:

Congratulations on your confirmation as United States Attorney General. Your breadth of experience and depth of legal knowledge will serve our country well.

We write to you regarding an issue that was raised during your confirmation hearing; specifically, the 2011 Department of Justice, Office of Legal Counsel Opinion that the Wire Act does not prohibit online lottery sales. A change in federal law or interpretation of existing federal law would have an immediate and significant negative impact on state lotteries that offer wagering over the internet, including the Michigan Lottery.

Since 2011, the Michigan Lottery has invested significant resources into the development and implementation of an online-sales platform. We project that online sales will generate an additional \$480 million for Michigan schools over eight years. We have been offering lottery games online for three years and are on track to meet that projection. We ask that you, as the top law enforcement official in our country, preserve the states' ability to raise much-needed revenue for public services through online lottery sales.

Recognizing that online gambling presents unique issues, there are compelling reasons to allow state lotteries to continue participating in the marketplace. Michigan, like other states that offer online sales, has implemented safeguards to block access by minors and persons located outside the state, as well as industry-leading responsible gaming controls. Gambling websites that are not subject to state or federal jurisdiction, on the other hand, are not required to implement any safeguards. Absent oversight, the games on these sites have an increased risk of underage play, identify theft, collusion, and organized criminal activity. In the absence of legitimate and regulated online wagering, such as that offered by state lotteries, players may be driven to these websites in even greater numbers.

We thank you for your consideration of this matter and would be happy to provide any additional information that may be helpful.

Sincerely,

Aric Nesbitt
Commissioner
Michigan Bureau of State Lottery

All Lottery profits support K-12 public education in Michigan.

REFERRED
MAIL REFERRAL UNIT
11

2017 JUN 14 AM 11: 47

United States Senate

WASHINGTON, DC 20510

May 16, 2017

The Honorable Jeff Sessions
Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Sessions:

We are writing to inquire about the status of the September 20, 2011, Office of Legal Counsel opinion entitled "Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act." That opinion reversed longstanding Department precedent by interpreting the Wire Act to prohibit sports betting only, instead of prohibiting all forms of gambling online.

At your confirmation hearing, Senator Graham asked, and you responded:

Senator Graham: About the Wire Act, what is your view of the Obama administration's interpretation of the Wire Act to allow online video poker, or poker gambling?

Senator Sessions: Senator Graham, I was shocked at the memorandum, I guess the enforcement memorandum that the Department of Justice issued with regard to the Wire Act and criticized it. Apparently there is some justification or argument that can be made to support the Department of Justice's position, but I did oppose it when it happened and it seemed to me to be an unusual -

Senator Graham: Would you revisit it?

Senator Sessions: I would revisit it, or -- and I would make a decision about it based on careful study, rather than--and I have not reached--gone that far, to give you an opinion today.

It is our hope that your careful study of the opinion has exposed the flaws of the opinion, and that you will restore the Department's longstanding practice of enforcing the Wire Act against online gambling by revoking the opinion.

We look forward to your reply.

Sincerely,



Lindsey O. Graham
United States Senator



Dianne Feinstein
United States Senator



Pete Ricketts
Governor

STATE OF NEBRASKA

OFFICE OF THE GOVERNOR
P.O. Box 94848 • Lincoln, Nebraska 68509-4848
Phone: (402) 471-2244 • pete.ricketts@nebraska.gov

May 17, 2017

The Honorable Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Sessions:

I write this letter to express my disagreement with the letter sent to you on National Governors Association (NGA) letterhead on April 3, 2017 in support of online Internet gambling including Internet lottery sales. The letter was signed by Governors McAuliffe and Sandoval, but is not the universal position of the member governors of the NGA. As Governor of Nebraska, I want to clarify that I am opposed to online gambling and urge you to reconsider the Obama Administration's online gambling policy, which ignored federal law.

Just before Christmas 2011, the Obama Administration reinterpreted the Wire Act to reverse decades of precedent governing internet gambling. This unilateral decision sought no state or local input, circumvented Congress, and applied legal reasoning to obtain an outcome that allowed the Department of Justice to ignore Congressional intent.

As Nebraska's Governor and as a father, I am fully aware of the dangers of turning every cell phone into a hand-held casino. The anonymity of the Internet prohibits players from knowing who they are playing against, who is running the site, whether the game is fair or whether the players will actually be paid. Our children and most vulnerable adults will be exposed and no doubt fall victim to the predatory actions of these online casinos. While some states may think they can control online casinos via regulation, I believe law enforcement at every level should be fighting the evils associated with online gambling.

I was pleased to hear you share at your confirmation hearing that you would revisit the Obama Justice Department's unilateral decision to reverse the longstanding interpretation of the Wire Act. It is my sincere hope that you will restore the original interpretation of the Wire Act to prohibit all forms of Internet gambling.

Sincerely,

A handwritten signature in blue ink that reads "Pete Ricketts".
Pete Ricketts
Governor

Congress of the United States
Washington, DC 20515

May 25, 2017

The Honorable Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

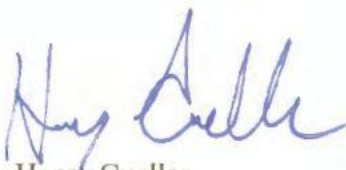
Dear Attorney General Sessions:

We are writing to ask you to consider withdrawing a December 2011 Opinion issued by the Department of Justice (DOJ) Office of Legal Counsel (OLC) which has opened the doors for the legalization of online gambling in a handful of States across the country. We believe there are strong legal and policy arguments for the Department to consider withdrawing this Opinion and allow Congress to more closely examine the public policy implications of making gambling so accessible in our society.

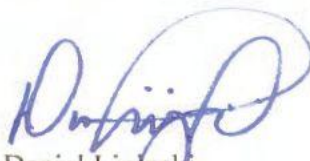
We appreciate your pledge to take a second look at this opinion, which was issued without consideration of policy concerns expressed by former Senate Democratic Leader Harry Reid and others on both sides of the political landscape. As you settle into your new position in the Administration, we know you will be addressing a number of polarizing and partisan issues in the coming months. Internet gambling is not a partisan issue, and its one we believe should be more closely examined by policy-makers in Congress before being allowed to expand any further.

Thank you very much for your serious consideration of these concerns.

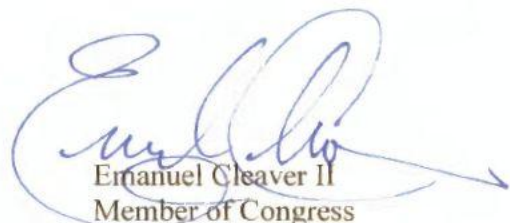
Sincerely,



Henry Cuellar
Member of Congress



Daniel Lipinski
Member of Congress



Emanuel Cleaver II
Member of Congress

REFERRED
MAIL REFERRAL UNIT
11

2017 JUN 13 AM 9:04

United States Senate

WASHINGTON, DC 20510-4606

July 5, 2017

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Sessions:

I write today to ask for clarification on your position concerning a December 2011 Opinion issued by the Department of Justice (DOJ) Office of Legal Counsel (OLC) which has opened the doors for the legalization of online gambling in a handful of States across the country. As you may be aware, Virginia is one of a relatively small number of states which does not permit casino gambling. As a former Governor and now U.S. Senator for Virginia, I believe that states have a right to control gaming within their borders. I also have concerns about the potential implications of the OLC opinion as described below, and would appreciate further clarification of your views on the matter and any actions you plan to take on the issue.

During your confirmation testimony before the Senate Judiciary Committee, you referenced your personal "shock" that the OLC issued an opinion, which reversed a decades-long belief by Congress and DOJ that the Federal Wire Act effectively prohibited online gambling in the United States. I appreciate your pledge to take a second look at this opinion, which was issued without consideration of policy concerns expressed by policymakers on both sides of the political aisle.

I have concerns about Internet gambling in general, concerns that I believe we share. First, the FBI has warned that online gambling sites are especially fertile platforms for the facilitation of money laundering, collusion and other illegal activities. I also believe that the potentially predatory nature of online gambling represents a heightened threat to economically vulnerable populations.

In addition, I have concerns about the manner in which the OLC interpretation was issued. Despite its broad implications, the OLC opinion appears to be based on legal interpretation alone and does not provide background on the extent to which consideration was given to social, economic and law enforcement implications. It is also unclear to me as to whether or not the opinion involved consultation with Congress; input from state and local law enforcement and governments; or opportunity for public comment.

Given my concerns about its potential impact on Virginians, and the need for Congress to play a role in shaping the laws governing interstate commerce and communications, I ask that you provide a response on how the new Administration plans to address this issue and what DOJ's official position on this matter is.

Thank you very much for your serious consideration of these concerns.

Sincerely,



MARK R. WARNER
United States Senator

COMMITTEE ON APPROPRIATIONS

CHAIRMAN,
SUBCOMMITTEE ON COMMERCE,
JUSTICE, SCIENCE AND NASA

SUBCOMMITTEE ON
HOMELAND SECURITY

SUBCOMMITTEE ON
TRANSPORTATION, HOUSING
AND URBAN DEVELOPMENT,
AND RELATED AGENCIES

ASSISTANT REPUBLICAN WHIP



JOHN CULBERSON

7TH DISTRICT, TEXAS

July 28, 2017

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The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Deputy Attorney General Rosenstein:

House Appropriations Committee Subcommittee Chairmen Robert Aderholt and Charles Dent have expressed their concerns with me on the validity of the September 20, 2011 Memorandum Opinion for the Assistant Attorney General, Criminal Division, entitled "Whether Use of the Internet and Out-of-State Processors to Sell Lottery Tickets Violates the Wire Act." I request that you brief the three of us in September on the decision-making process that went into the 2011 Memorandum Opinion and provide us with an update on the status of this Administration's review, if any, of the opinion.

I appreciate your consideration of this request and look forward to discussing this important issue with you.

Sincerely,

John Culberson
Member of Congress

RECEIVED
OFFICE
OF THE CLERK
U.S. HOUSE OF REPRESENTATIVES
2017 AUG 14 AM 7:24



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 12 2017

The Honorable Lindsey O. Graham
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
United States Senate
Washington, DC 20510

Dear Senator Graham and Senator Feinstein:

This responds to your letter to the Attorney General, dated May 16, 2017, regarding the 2011 opinion of the Office of Legal Counsel (OLC) with respect to the Wire Act, 18 U.S.C. § 1084. We apologize for our delay in responding to your letter.

We know this issue is very important to you. As you know, the OLC opinion concluded that the Wire Act applies to interstate transmissions that relate to a sporting event or contest and that other forms of gambling fall outside the Wire Act's prohibitions. While we cannot comment on whether OLC will reconsider its opinion, please be assured that we would work with the authorizing committees on any legislative response that may be considered. Please also be assured that it continues to be the policy of the Department of Justice to prosecute Internet gambling companies that operate in violation of federal law, including laws that protect our financial systems, such as bank fraud and money laundering. We continue to prioritize the most egregious conduct, including conduct tied to organized crime or where gambling activity is part of a larger criminal scheme.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Stephen E. Boyd".

Stephen E. Boyd
Assistant Attorney General



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 06 2017

The Honorable Henry Cuellar
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Cuellar:

This responds to your letter to the Attorney General dated May 25, 2017, regarding the 2011 opinion of the Office of Legal Counsel (OLC) with respect to the Wire Act, 18 U.S.C. § 1084. We are sending identical responses to the other Members who joined in your letter. We apologize for our delay in responding to your letter.

We know this issue is important to you. As you know, the OLC opinion concluded that the Wire Act applies to interstate transmissions that relate to a sporting event or contest and that other forms of gambling fall outside the Wire Act's prohibitions. While we cannot comment on whether OLC will reconsider its opinion, please be assured that we would work with the authorizing committees on any legislative response that may be considered. Please also be assured that it continues to be the policy of the Department of Justice to prosecute Internet gambling companies that operate in violation of federal law, including laws that protect our financial systems, such as bank fraud and money laundering. We continue to prioritize the most egregious conduct, including conduct tied to organized crime or where gambling activity is part of a larger criminal scheme.

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Very Truly Yours,

A handwritten signature in blue ink, appearing to read "S. Boyd", written over the typed name.

Stephen E. Boyd
Assistant Attorney General



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 06 2017

The Honorable Daniel Lipinski
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Lipinski:

This responds to your letter to the Attorney General dated May 25, 2017, regarding the 2011 opinion of the Office of Legal Counsel (OLC) with respect to the Wire Act, 18 U.S.C. § 1084. We are sending identical responses to the other Members who joined in your letter. We apologize for our delay in responding to your letter.

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Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Stephen E. Boyd".

Stephen E. Boyd
Assistant Attorney General



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 06 2017

The Honorable Emanuel Cleaver II
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Cleaver:

This responds to your letter to the Attorney General dated May 25, 2017, regarding the 2011 opinion of the Office of Legal Counsel (OLC) with respect to the Wire Act, 18 U.S.C. § 1084. We are sending identical responses to the other Members who joined in your letter. We apologize for our delay in responding to your letter.

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We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Very Truly Yours

A handwritten signature in blue ink, appearing to read "S. Boyd", with a large, stylized flourish.

Stephen E. Boyd
Assistant Attorney General



UNITED STATES SENATE

January 17, 2018

Steven A. Engel
Assistant Attorney General
Office of Legal Counsel
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Assistant Attorney General Engel:

Congratulations on your confirmation to be Assistant Attorney General of the United States.

As you know, I am concerned about the rise of internet gambling, and in particular, the 2011 opinion of the Office of Legal Counsel reinterpreting the Wire Act. The manner in which that opinion came about is therefore of great interest to me. With that in mind, I note a New York Times expose published on October 28, 2014, which referenced a confidential memorandum prepared by Dickstein Shapiro, a now-defunct Washington, D.C. law firm for a prospective client.

In that memorandum, the law firm states that it “successfully represented the Illinois Lottery before the DOJ, which led to the DOJ Office of Legal Counsel Wire Act opinion.” The firm further states that “[t]he OLC opinion borrows heavily from the White Paper we submitted on behalf of Illinois.” The “White Paper” was referred to in two emails produced by the Department pursuant to a FOIA request from Judicial Watch.

The memorandum also states that “it is true that the Bush Justice Department took the position in 2005 that the Wire Act outlawed Internet lottery ticket sales,” citing a letter from Laura H. Parsky, Deputy Assistant Attorney General, Criminal Division, to Carolyn Adams, Illinois Lottery Superintendent, dated May 13, 2005.

Please provide me with copies of the “White Paper” submitted on behalf of the Illinois Lottery and of the May, 13, 2005, Parsky letter.

Thank you for your attention to this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lindsey O. Graham".

Lindsey O. Graham
United States Senator



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 04 2018

The Honorable Lindsey O. Graham
United States Senate
Washington, DC 20510

Dear Senator Graham:

This responds to your letter to Assistant Attorney General Steven A. Engel dated January 17, 2018, requesting two documents reflecting the Department of Justice's (Department) correspondence with the Illinois State Lottery concerning the Wire Act, 18 U.S.C. § 1084.

The Criminal Division of the Department previously produced the two requested documents in response to the FOIA request referenced in your letter. In its 2011 public opinion, the Office of Legal Counsel also identified the Illinois State Lottery's white paper as one of the documents it had reviewed in connection with providing its opinion to the Criminal Division. Enclosed herewith are the two requested documents.

We know that this issue is very important to you. While we cannot comment on whether the Office of Legal Counsel will reconsider its opinion, please be assured that the Department takes very seriously its obligations to prosecute Internet gambling companies that operate in violation of federal law, including laws that protect our financial systems.

Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen E. Boyd".

Stephen E. Boyd
Assistant Attorney General

Enclosures



U.S. Department of Justice

*Director
Namer*

Criminal Division

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

May 13, 2005

Carolyn Adams
Illinois Lottery Superintendent
101 West Jefferson Street
Springfield, Illinois 62702



Dear Ms. Adams:

It has come to our attention that there is currently pending in the Illinois Senate a legislative proposal to establish an Internet web site over which persons may place wagers involving the purchase of lottery tickets with the Illinois Lottery. In that connection, we wish to inform you that the Department of Justice believes that federal law prohibits Internet gambling, including the purchase of lottery tickets over the Internet.

While several federal statutes are applicable to Internet gambling, the principal statutes are Sections 1084 and 1952, Title 18, United States Code. Section 1084 of Title 18, United States Code, prohibits one in the business of betting or wagering from knowingly using 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.

A second federal statute is Section 1952, Title 18, United States Code, which prohibits traveling in interstate or foreign commerce, or using the mails or other facility in interstate or foreign commerce, with the intent to distribute the proceeds of an unlawful activity or otherwise promoting, managing, establishing, carrying on, or facilitating the promotion, management, establishment, or carrying on, of any unlawful activity and thereafter performing or attempting to perform such act. The term "unlawful activity" is defined in Section 1952(b) to mean "any business enterprise involving gambling . . . in violation of the laws of the State in which they are committed or of the United States." In the case of the acceptance of wagers across state lines, it is our belief that the gambling crime, if any, would be committed both in the state from which the wager was placed and the state in which the wager was accepted.

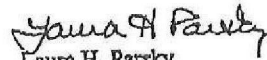
Although the activity might be considered to be lawful in the State of Illinois, we believe that the acceptance of wagers through the use of a wire communication facility by a gambling business, including that operated by a component of the government of a state, from individuals located either outside a state or within the borders of the state (but where transmission is routed outside of the state) would violate federal law.

In addition to the actual gambling business' being subject to prosecution under federal law, those persons or entities which knowingly assist the gambling business to operate would likewise be subject to prosecution. Section 2 of Title 18, United States Code, imposes criminal liability on those individuals or entities that aid, abet, counsel, command, induce, or procure the commission of an offense against the United States.

At this time we have no knowledge that the Illinois lottery is actually selling lottery tickets, and thereby accepting wagers, over the Internet or otherwise by wire communication across state lines; nor do we have any information that such activity is currently authorized by Illinois law. However, we wanted to alert you to the potential violations of federal law if the acceptance of Internet wagers by the Illinois Lottery is actually implemented. If such activity actually takes place, we will be under a duty to investigate it as warranted.

Please do not hesitate to contact me if you wish to discuss this issue further.

Sincerely,



Laura H. Parsky

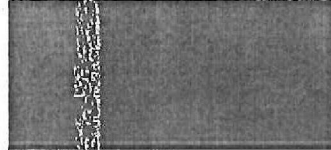
Deputy Assistant Attorney General

STATE OF ILLINOIS
INTERNET LOTTERY PILOT PROGRAM

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
JOHN W. McCAFFREY,
GENERAL COUNSEL

ILLINOIS LOTTERY
MELISSA M. RIAHEI
GENERAL COUNSEL

(b)(6), (7)(C)
per CRM



COUNSEL TO ILLINOIS
DEPARTMENT OF REVENUE AND
ILLINOIS LOTTERY

DSMDB-2759514v08

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INTRODUCTION

In July 2009, Governor Pat Quinn signed into law Illinois' first comprehensive capital projects bill in over a decade. With the State facing an unprecedented economic crisis, the capital bill sought to create what was needed most to stimulate the ailing economy — jobs. The estimated 439,000 jobs to be created by the capital bill will help rebuild Illinois' deteriorating infrastructure and provide for the long-awaited construction of roads, bridges, and new schools.¹

To fund the capital bill, the Illinois General Assembly passed several revenue generating measures, one of which directs the implementation of an Internet Lottery Pilot Program (the "Pilot Program"). The Pilot Program is intended to increase state revenues by providing an additional channel for the sale of state lottery tickets on the Internet. To ensure the protection of Illinois citizens from the possible risks of underage gaming and compulsive gambling, the legislation mandates the adoption of strict technological measures to restrict the sale of lottery tickets to individuals 18 years of age and older and procedures to exclude problem gamblers from establishing Internet lottery accounts. In addition, to respect state jurisdictional boundaries and each state's right to regulate gaming within its own borders, the legislation prohibits the sale of lottery tickets to individuals located outside of the State of Illinois. The Pilot Program is explicitly limited to "transactions initiated and received or otherwise made exclusively within the State of Illinois."

With the implementation of the appropriate geo-location technologies, Illinois is confident that its sale of lottery tickets on the Internet will be limited to *intrastate* transactions, with both the purchaser and the lottery physically present in Illinois at the time of the transaction. While Illinois does not believe that such intrastate transactions implicate federal law, to ensure that the Pilot Program is implemented legally and in the most socially responsible manner, Illinois wishes to present its plan for implementation of the Pilot Program to the Department of Justice for its review. This White Paper provides a detailed presentation of Illinois' plan for implementation of the Pilot Program.

Part I of this White Paper provides background regarding the Illinois Lottery. Part II discusses the Pilot Program and the safeguards that will be employed to ensure that only those over 18 years of age who are physically present in Illinois are allowed to purchase lottery tickets through the Pilot Program. It also describes the measures that will be used by Illinois to protect compulsive gamblers, as well as the computer security and privacy safeguards that will be implemented. Part III discusses the relevant federal statutes to demonstrate that the Pilot Program will not violate federal law. Part IV examines the historical deference that the federal government has shown to state lotteries and the dire economic consequences to states if it should fail to do so here. Finally, Part V describes how Illinois is seeking to implement its Pilot

¹ Indeed, the National Conference of State Legislatures reported in February that of the \$39 billion states will spend on capital projects, Illinois' capital bill represents \$31 billion — the largest capital plan in the nation.

Program in a responsible manner, and welcomes the Department of Justice's suggestions to that end.

I. BACKGROUND

The Illinois Lottery ("the Lottery") was established in 1974 as an executive agency operating under the umbrella of the Illinois Department of Revenue (the "Department"). 20 ILCS 1605/2. It is a lottery conducted by the State, acting under the authority of State law. With sales of approximately \$2.2 billion annually, the Lottery is the fifth largest revenue generator for the State, contributing approximately \$650 million annually. Prior to the enactment of recent legislation, the Lottery's proceeds were transferred to the Illinois Common School Fund, which helps finance K-12 public schools throughout Illinois. To date, the Lottery has contributed over \$15 billion to public education in Illinois. With the enactment of the capital bill, Lottery proceeds equal to the amount transferred in 2009 will continue to be transferred to the Common School Fund, and any proceeds exceeding that amount will be transferred to the Capital Projects Funds to fund job creation and the repair of Illinois' deteriorating infrastructure. 20 ILCS 1605/9.1(o)(3) - (4).

As a state governmental entity, the Lottery is accountable to the General Assembly and the people of the State through a comprehensive system of regulation, audits, reports, and enduring operational oversight. Its sole mission is to benefit the State of Illinois and its citizens by generating revenue for the public good, and it is dedicated to operating in a manner that is responsible and protective of the health and welfare of Illinois citizens.

II. THE INTERNET LOTTERY PILOT PROGRAM

Illinois Public Acts 096-34 and 096-037, as amended by Public Act 096-0840 (the "Legislation"), direct the Department to create and implement a Pilot Program for the sale of lottery tickets on the Internet. The creation of the Pilot Program is premised on legislative findings that the consumer market in Illinois has significantly changed since the Lottery's inception in 1974. With the Internet now an integral part of everyday life for a significant number of Illinoisans, the current practices of selling lottery tickets do not appeal to those market participants who prefer to make purchases on the Internet at their own convenience. 20 ILCS 1605/7.12(1)-(3). Consequently, the Legislation directs the Department to implement a program that provides for the sale of lottery tickets on the Internet to individuals 18 years and older and physically present within the State of Illinois.² *Id.*

As a pre-condition to implementation, the Department is directed to submit its plan for the Pilot Program to the United States Department of Justice for review of the Pilot Program's propriety under federal law. 20 ILCS 1605/7.12. The Pilot Program will be

² The Pilot Program is to last between 36 and 48 months and is currently limited to the sale of two draw games, Lotto, and Mega Millions. *Id.*

implemented only if the Department of Justice does not object to the Pilot Program within a reasonable period of time after its review. *Id.*

A. Age Verification

Illinois is sensitive to the risk of underage gaming associated with the sale of lottery tickets on the Internet. To prevent the purchase of Internet lottery tickets by minors, the Legislation requires implementation of effective age verification procedures. “[A]n individual must satisfy the verification procedure before he or she may establish [an] Internet lottery account and purchase lottery tickets or shares through the Internet pilot program.” 20 ILCS 1605/7.15. Moreover, “[b]y rule, the Department is to establish funding procedures for Internet lottery accounts and provide a mechanism to prevent the unauthorized use of Internet lottery accounts.” *Id.*

A number of technologies routinely and successfully used to verify age in other industries, such as Internet purchases from wineries, can be applied to the online gaming environment. The Department intends to use such technologies, including government and third-party databases that are of high quality and reliability, to verify the ages of lottery purchasers. To establish an Internet lottery account, a registrant will be required to provide key pieces of identifying information, which will then be compared against existing comprehensive databases, such as registered voter information and driver’s license data, to authenticate the identification and verify the registrant’s age. An Internet lottery account will be activated only when the registrant’s identification and age have been verified. Moreover, access to the account will not be immediate. Withdrawal of funds from the account to purchase a lottery ticket will require the entry of a Personal Identification Number (“PIN”), which will be mailed to the user’s postal address after registration and verification. The posting of the PIN number will further limit the possibility of unauthorized access by a minor who may have used a parent’s credentials to register for an account.

Significantly, the Pilot Program weakens any financial incentive minors may have to purchase lottery tickets on the Internet. If a minor uses an adult’s Internet lottery account to purchase a lottery ticket, any winnings will be directed to the adult – they will be deposited directly to the adult’s lottery account, paid by check issued to the adult, or, in the instance of significant winnings, paid in person at a State Lottery office after presentation of valid identification. If it is discovered that an underage individual has purchased a lottery ticket, that individual’s winnings will be forfeited and deposited in the Common School Fund. 20 ILCS 1605/7.15.

B. Geo-Location

Under the Pilot Program, “the sale of lottery tickets on the Internet is limited to transactions that are initiated and received or otherwise made exclusively within the State of Illinois, unless the federal Department of Justice indicates that it is legal for the transactions to originate in states other than Illinois.” 20 ILCS 1605/7.15.

Less than a decade ago, it was extremely difficult to delineate jurisdictional borders on a borderless Internet. Today, with the emergence of sophisticated geo-location technologies, it is possible to quickly, cheaply, and accurately identify an end user's location by country, state, and city.³ A range of geo-location technologies are now available, mostly tied to identification of the user location by reference to their Internet Protocol (IP) address. Generally, as geo-location technology providers explain, when an Internet user types a website address into a web browser, the browser sends an access request to the server of the requested website. This request reveals the IP address of the user, which the requested website forwards to the geo-location technology provider. The geo-location provider then assesses the characteristics of the IP address, using comprehensive registries of IP addresses and other external factors, to determine the location of the end user. If the end user's location cannot be accurately verified based on the available information, the geo-location provider will indicate that an accurate verification cannot be made, in which case the requester can deny access to the end user.

For example, one of the leading geo-location providers, Quova, operates a data collection network comprised of comprehensive data pertaining to over 2.6 billion IP addresses, which are updated on a weekly basis. Within these databases are blocks of IP addresses known to be associated with special, risky characteristics such as anonymizers. Anonymizers are applications designed to mask the end user's true location by acting as a buffer between the end user and the websites visited. When an end user deploys an anonymizer, the user's IP address is only transmitted to the provider of the anonymizer. The user is then assigned a new IP address by the anonymizer in relation to any websites she or he visits. Quova has developed the ability to detect the use of known anonymizers, thus allowing it to determine when an end user is attempting to mask his or her true location.

Moreover, certain Virtual Private Network programs ("VPN") or "mobile gateways," which people may use to access work networks from home or while traveling, can circumvent the ability to accurately pinpoint the end user's actual location. An analysis of the Internet connection type associated with the IP address (e.g., cable, DSL, dial-up ISP, mobile gateway), coupled with the routing characteristics of the IP address, can indicate when it is too risky to accurately verify the end user's location. In such circumstances, a user's account can be blocked

³ There recently has been judicial recognition of the effectiveness of geo-location technologies in delineating state barriers on the Internet. For example, in its Order of Seizure of Domain Names, *Commonwealth of Kentucky v. 141 Internet Domain Names*, No. 08-CJ-1409, at *24-*25, *40 (Franklin Cir. Ct. Oct. 16, 2008), a Kentucky court expressly recognized that the use of software restricting website access based on geographic location could be a factor in determining whether the owner of the site was engaged in illegal gambling in the state. The court further held that, if an Internet site could demonstrate that its website included software that blocked access by Kentucky residents, that site would not be subject to seizure by the Kentucky government for violation of state gambling laws. *Id.* at *40.

completely from using the service until his or her location can be determined with greater certainty.⁴

Recent geo-location technologies have been proven to yield high levels of accuracy at the state level. An October 2009 independent audit by PricewaterhouseCoopers found Quova's geo-location technology to be more than 96% accurate in determining from which U.S. state an IP address originated. See PricewaterhouseCoopers Report of Independent Accountants to the Management and Board of Directors of Quova, Inc., Oct. 15, 2009.

A number of industries rely heavily upon the accuracy and reliability of geo-location technology to ensure their compliance with legal obligations. For example, Major League Baseball was the first professional sports league to broadcast its full schedule live over the Internet, but all baseball clubs have local TV broadcast rights holders whose contracts specify that fans inside a defined geographical radius who can view their broadcasts must be blacked out from live online viewing. Since 2008, the clubs have relied on geo-location technology to honor those contracts by blacking-out Internet coverage in the rights holder's territory while allowing everyone outside of that radius to see that club's games live online. See Riva Richmond, *We Know Where You Are*, Wall Street Journal, Sept. 29, 2008, at R8.⁵

In implementing the Pilot Program, the Department is committed to using state-of-the-art geo-location technologies, as well as measures designed to prevent end user circumvention of those technologies. The geo-location technology provider selected for the Pilot Program will be held to the strictest standards. The Pilot Program will use IP geo-location, together with address verification at registration and other controls, to detect and verify user location. The Department also will impose specific requirements on the reliability of any geo-location information, and establish thresholds for acceptance, rejection, and further verification. The Illinois Lottery will refuse any transaction under the Pilot Program if it is unable to verify to its satisfaction that the purchaser is within Illinois at the time of purchase.

C. Self-Exclusion Program

To protect Illinois citizens from the potential harms of compulsive gaming on the Internet, the Legislation specifically requires the Department to adopt a self-exclusion program whereby individuals may prohibit themselves from establishing an Internet lottery account and purchasing lottery tickets on the Internet. 20 ILCS 1605/7.16.

⁴ It is possible for some VPN connections to go undetected if the network is not known to carry traffic outside its geographic location.

⁵ Geo-location technologies also are currently successfully used for a number of other commercial purposes, such as detecting fraud at online retailers by comparing the user's location with the credit card address, and by law enforcement agencies to help track Internet criminals.

The Illinois Lottery currently operates a voluntary self-exclusion program and maintains a confidential database of persons who have chosen to be excluded from playing the lottery. The current voluntary self-exclusion program, however, is not as effective as it would be with Internet sales. Due to the existing channels for lottery ticket sales through small retailers and instant ticket dispensing machines, it is difficult to prevent individuals on the self-exclusion list from purchasing tickets. Instead, those individuals are prohibited from receiving payment of substantial prizes through the Lottery's regional prize payment facilities or central office. However, the current system still allows payments of prizes \$600 or less to be made by retailers.

With Internet sales, it will be much easier to identify and assist problem players. The Internet offers a simple and effective means of refusing sales to individuals listed on a self-exclusion database. Moreover, individuals will be more easily able to track their spending on lottery tickets in order to determine whether they wish to be placed on a self-exclusion list. Thus, it is anticipated that Illinois' Internet lottery self-exclusion program will be far more effective than the current program in addressing problem gaming.

D. Computer Security and Privacy

The Department intends to institute appropriate security practices, procedures, technologies, and data protection controls to protect the privacy of information submitted by players and to ensure the integrity of the site and the games offered. The Department will use state-of-the-art technology to prevent the infiltration of game operations and intrusions into the systems that could compromise the game play and the security and privacy of users. These procedures and practices will be subject to regular audits.

III. LEGAL ANALYSIS

The primary federal statutes addressing gaming in the United States are the Wire Act (18 U.S.C. § 1084 (1961)), Travel Act (18 U.S.C. § 1952 (1961)), Interstate Paraphernalia Act (18 U.S.C. § 1953 (1961)), Illegal Gambling Business Act (18 U.S.C. § 1955 (1970)), Exceptions Relating to State-Conducted Lotteries Act (18 U.S.C. § 1307 (1975)), and Unlawful Internet Gambling Enforcement Act ("UIGEA") (31 U.S.C. § 5361 (2006)).

These statutes are important federal law enforcement tools to combat *illegal* gaming in *interstate* commerce. They were not intended to address *intrastate* gaming, *legally* authorized by state law. Read collectively, they reflect the clear Congressional intent that, consistent with the Tenth Amendment to the United States Constitution, establishment and regulation of gaming should be left to the discretion of the states. *See Thomas v. Bible*, 694 F. Supp. 750, 760 (D. Nev. 1988) ("Licensed gaming is a matter reserved to the states within the meaning of the Tenth Amendment to the United States Constitution."), *aff'd*, 896 F.2d 555 (9th Cir. 1990); *State v. Rosenthal*, 559 P.2d 830, 836 (Nev. 1977) ("We view gaming as a matter reserved to the states within the meaning of the Tenth Amendment to the United States Constitution."). When interpreting these statutes, the courts and the Department of Justice have consistently recognized that the legislative goal is to assist the states in fighting criminal gambling activity, yet defer to

the states that have determined that a state-run lottery would support the public welfare and state economy.

A. UIGEA

UIGEA, enacted in 2006, is the only one of the six relevant statutes enacted *after* the rise of the Internet and which directly addresses the issue of Internet gaming. UIGEA was enacted in response to illegal Internet gambling schemes – particularly offshore operations – circumventing federal and state gambling and criminal laws. H.R. Rep. No. 109-412(II) (2006), 2006 WL 1524422 at *10 (May 26, 2006). Congress found that this illegal gambling was funded primarily through bank instruments. *Id.* at *1. Therefore, UIGEA bans the acceptance of any bank instrument, whether a credit card, bank account, or PayPal account, for “unlawful Internet gambling.” 31 U.S.C. § 5363.

In conjunction with this prohibition, UIGEA expressly provides that a “bet or wager . . . initiated and received or otherwise made exclusively within a single State,” which is in accord with state law, including “age and location verification requirements,” will not constitute “unlawful Internet gambling.” *Id.* § 5362(10)(B).⁶ UIGEA therefore reflects Congressional intent that the establishment and regulation of a state lottery – even an Internet-based lottery – is not an area for federal intervention. *See* 31 U.S.C. § 5361(a)(4) & (b) (finding that “[n]ew mechanisms for enforcing gambling laws on the Internet are necessary,” yet clarifying that “[n]o provision of this subchapter shall be construed as altering, limiting, or extending any . . . State law . . . prohibiting, permitting, or regulating gambling”).⁷ UIGEA “[c]larifies that purely intrastate transactions conducted in accordance with State laws with appropriate security controls will not be considered unlawful Internet gambling.” H.R. Rep. No. 109-412(II) (2006), 2006 WL

⁶ 31 U.S.C. § 5362(10)(B) states:

(B) Intrastate transactions. -- The term “unlawful Internet gambling” does not include placing, receiving, or otherwise transmitting a bet or wager where --

- (i) the bet or wager is initiated and received or otherwise made exclusively within a single State;
- (ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include --
 - (I) age and location verification requirements reasonably designed to block access to minors and persons located out of such State; and
 - (II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State’s law or regulations; . . .

⁷ Section 5361(b) provides that “[n]o provision of [UIGEA] shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting or regulating gambling within the United States.”

1524422 at *14-*15 (May 26, 2006). Significantly, UIGEA states that the "intermediate routing of data packets does not determine the location in which bets or wagers are made." *Id.*; 31 U.S.C. § 5362(10)(E). Thus, even if lottery transaction data is intermediately routed outside the state, the bet or wager is still considered to be "made exclusively within a single State." Thus, the transaction remains an intrastate transaction.

As discussed earlier, the Legislation authorizing the Pilot Program expressly includes age and location verification requirements, and the Pilot Program will use state-of-the-art Internet technology to ensure that lottery purchases comply with these requirements and are secure. Lottery purchases, therefore, will be restricted to adults who are physically present in Illinois. This is the type of intrastate, state-authorized lottery program that is expressly exempt from UIGEA's prohibitions.

B. Exceptions Relating to State-Conducted Lotteries

The Exceptions Relating to State-Conducted Lotteries Act, enacted in 1975 to exempt state-run lotteries from federal anti-lottery prohibitions, also demonstrates Congress' respect for state-run lotteries.⁸ *See* 18 U.S.C. § 1307. Through this law, Congress expressly allows states to engage in conduct that it does not permit of non-state lotteries. In testimony in support of an exception for state lotteries, then-Attorney General William B. Saxbe said: "The Department recommends legislation which would exempt State-operated lotteries from the provisions of federal criminal law that may now be applicable to them under Title 18, while at the same time preserving and protecting the rights of those citizens who reside in states which continue to outlaw the operations of lotteries." *See* H.R. Rep. No. 93-1517 (1974), *reprinted in* 1974 U.S.C.C.A.N. 7007, 7015, 1974 WL 11676 (Dec. 4, 1974).

Since the passage of the Exceptions Relating to State-Conducted Lotteries Act, the Department of Justice consistently has supported the rights of the states to regulate gaming. In 1976, when opining on a bill to permit advertising of state-sanctioned lotteries in newspapers published in states adjacent to the lottery-permitting state when those states also permitted lotteries, the Department of Justice stated that the "Department's position relating to State-conducted lotteries has always been to object to any erosion of Federal protection to those States which have determined that lotteries are not in the best interests of their citizens. This proposed legislation applies only to States which conduct lotteries and does not upset the balance created by the present law." *See* S. Rep. No. 94-618 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5513, 5514, 1976 WL 14029 at *2-*3 (Feb. 2, 1976).

⁸ The federal anti-lottery statutes prohibit the importation or transportation of lottery tickets in interstate or foreign commerce (18 U.S.C. § 1301), mailing of lottery tickets or related matter (18 U.S.C. §§ 1302-1303), and broadcasting of lottery information on any radio or television station licensed by the United States (18 U.S.C. § 1304).

In 1988, the Department of Justice again testified in support of a bill regarding the advertising of state lotteries:

In our federal system, it is the States, rather than the federal government, that are responsible for "regulat[ing] the relative rights and duties of all within its jurisdiction so as to guard the public morals." . . . [E]ach State should decide for itself how to restrict the advertising of lotteries. . . . It is the State to which the Constitution reserves the power to protect the health, safety and morals of the community.

See H.R. Rep. No. 100-557 (1988), *reprinted in* 1988 U.S.C.C.A.N. 4343, 4350, 4354, 1988 WL 169857 at *8-*13 (Mar. 31, 1988) (citations omitted). Thus, even in advertising, a state's self-determined stance on lotteries is to be respected.

Finally, on October 16, 2008, the Department of Justice issued an opinion that concluded that a state may contract with a private firm to provide goods and services necessary to enable the state to conduct its lottery. *See* Office of Legal Counsel, U.S. Department of Justice, *Scope of Exemption Under Federal Lottery Statutes for Lotteries Conducted by a State Acting Under the Authority of State Law*, 2008 WL 4671395 (O.L.C.) (Oct. 16, 2008) ("2008 Opinion"). As the 2008 Opinion explained, "the [Exceptions Relating to State-Conducted Lotteries] Act that created the exemption for State-conducted lotteries [18 U.S.C. § 1307] sought to accommodate the States' renewed interest in using lotteries to generate state revenue for the benefit of the public interest while avoiding the risk of corruption and commercialization driven by private interests that Congress believed to be presented by privately operated lotteries." *Id.* at *6 (footnote omitted). As support for its conclusion, the 2008 Opinion relied upon the legislative history of the Exceptions Relating to State-Conducted Lotteries Act:

See S. Rep. No. 93-1404, at 8 ("It is the recommendation of the Committee that the Federal Government should not allow its laws to impede or prevent the lawfully authorized efforts of States to raise revenues and benefit its own citizens"); 120 Cong. Rec. 22,145 (1974) (statement of Sen. Kennedy) ("State lotteries . . . are not operating for private gain, but to supplement revenue in order to support essential public services."); 120 Cong. Rec. 12,599 (1974) (statement of Rep. Rodino) ("I would like to point out that the revenue being derived from State authorized lotteries is being used for the purposes of education in many States. In some States it is being used to fund programs designed to serve the interests of the elderly."); *id.* at 12,600 (statement of Rep. Cohen) ("Since there is no overriding Federal interest in prohibiting State controlled lotteries, the Federal Government should not interfere with the sovereignty of the individual States or in their selection of revenue-raising measures."); *id.* at 12,604 (statement of Rep. Daniels) ("The lottery. . . is a painless means of raising much needed revenue").

Id. n.6. The 2008 Opinion is a reaffirmation of the historical deference of the federal government to the right of a state to authorize a lottery within its borders.

C. The Wire Act

The Wire Act was enacted in 1961, at a time when there were no operational state-run lotteries in the United States. See *History of the New Hampshire Lottery*, New Hampshire Lottery Commission, available at <http://www.nhlottery.org/AboutUs/History.aspx> (“On April 30, 1963, [New Hampshire] Governor John King signed the Sweepstakes bill [creating the first state lottery in the nation]”). Gambling ventures were privately run, for private gain, and too often linked to organized crime. 107 Cong. Rec. 15,448 (daily ed. Aug. 21, 1961) (statement of Rep. Cahill) (“organized crime depends in large measure on the financing it receives through gambling activities”). Congress’ goal was to help state law enforcement deal with illegal bookmaking. See H.R. Rep. No. 87-967 (1961), reprinted in 1961 U.S.C.C.A.N. 2631, 2631, 1961 WL 4794 at *1 (Aug. 17, 1961) (The Wire Act was enacted to “assist the various States . . . in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses and to aid in the suppression of organized gambling activities.”). The statute was one element of a major initiative against organized crime spearheaded by then-Attorney General Robert F. Kennedy, and was “directly aimed at bigtime bookies and gamblers.” 107 Cong. Rec. 15,448 (daily ed. Aug. 21, 1961) (statement of Rep. McCulloch).

Congress’ “hook” was the professional bookmaker’s use of interstate wire communication. The Act prohibits those “engaged in the business of betting or wagering” from “knowingly us[ing] 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 . . .” 18 U.S.C. § 1084(a).⁹

The Wire Act clearly aimed to strengthen state regulation of gambling by criminalizing certain interstate transmissions inconsistent with state law. There is no indication in either the statutory language or the legislative history that this legislation was meant to be used *against* states in the establishment or regulation of their *own* state-run lotteries. No available case law has ever applied the Wire Act to a state lottery. This is logical in light of the Act’s purpose. If a lottery is authorized by state law and within the province of state law, then there is no illegal activity for the federal government to be concerned about. Neither the plain language

⁹ 18 U.S.C. § 1084(a) & (b) states:

(a) 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 imprisoned not more than two years, or both.

(b) Nothing 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.

nor the purpose of the Wire Act applies to Illinois' legally authorized Internet Lottery Pilot Program.

1. The Pilot Program Does Not Involve Betting on a Sporting Event

The Wire Act does not apply to the Pilot Program because the Pilot Program does not involve betting or wagering on a "sporting event or contest." While this term is not defined in the Wire Act, 18 U.S.C. § 1081 (definitional section), legislative history and court opinions reflect that the plain meaning of those words was intended. *See, e.g.*, H.R. Rep. No. 87-967 (1961), *reprinted in* 1961 U.S.C.C.A.N. 2631, 2631-32, 1961 WL 4794 at *1 (Aug. 17, 1961) ("bookmakers are dependent upon telephone service for the placing of bets and for layoff betting on all sporting events.").¹⁰

In *Thompson v. MasterCard International Inc. (In re MasterCard International Inc.)*, 313 F.3d 257, 262-63 & n.20 (5th Cir. 2002), the Fifth Circuit held that the Wire Act only applies to Internet sports gambling. In *MasterCard*, credit card holders filed class action complaints against credit card companies and issuing banks, alleging that they violated the Racketeer Influenced and Corrupt Organizations Act ("RICO") by aiding and abetting illegal Internet "casino" gambling. The Fifth Circuit agreed with the district court that "[a] plain reading of the statutory language [of the Wire Act] clearly requires that the object of the gambling be a sporting event or contest" and the Wire Act could not therefore serve as a predicate offense for a RICO violation. *Id.* (alterations in original).¹¹

Other cases that involve convictions for violation of the Wire Act and that discuss the specific nature of the gambling activities at issue also have arisen in the context of sports gambling. *E.g.*, *United States v. Segal*, 867 F.2d 1173 (8th Cir. 1989) (football games); *United States v. Campagnuolo*, 556 F.2d 1209 (5th Cir. 1977) (sporting events); *United States v. Stonehouse*, 452 F.2d 455 (7th Cir. 1971) (sporting events); *Tel. News Sys., Inc. v. Ill. Bell Tel.*

¹⁰ "This particular bill involves the transmission of wagers or bets and lay-offs on horseracing and other sporting events." 107 Cong. Rec. 15,446 (daily ed. Aug. 21, 1961) (statement of Rep. Celler).

"[W]e have provided certain safeguards in the bill; for example, the transmission of betting information from a State where gambling on a race or contest is legal into a State where gambling on that particular race or sporting contest is also legal is exempted from the operation of the statute." *Id.*

"Illegal bookmaking depends upon races at about 20 major racetracks throughout the country. . . . Bettors will bet on successive races only if they know quickly the results of the prior race and the bookmaker cannot accept bets without the knowledge of the results of each race. Your committee has limited the bill to those in the business of betting who use the wire communication facility -- in other words -- the professional gambler." 107 Cong. Rec. 12,897, 12,898 (daily ed. July 28, 1961) (statement of Sen. Eastland).

¹¹ Coming at the issue from the opposite direction, in the Exceptions Relating to State-Conducted Lotteries Act, the term "lottery" is defined to exclude "the placing or accepting of bets or wagers on sporting events or contests." 18 U.S.C. § 1307(d).

Co., 220 F. Supp. 621 (N.D. Ill. 1963) (horseracing).¹² The Pilot Program does not involve sports betting, and is thus outside the purview of the Wire Act.

2. The Pilot Program Does Not Involve Interstate Commerce

The Wire Act also does not apply because the Pilot Program is an *intrastate* lottery, despite the fact that packets of data may intermediately be routed across state lines over the Internet. Under the Pilot Program, the geo-location technology used will verify that the purchaser of the lottery ticket is within Illinois borders. The Illinois Lottery offices are within Illinois borders. Thus, the transaction between seller and buyer will take place intrastate.

The fact that the buyer and seller “interact” through the Internet does not change the transaction into an interstate one. In 1961, when the Wire Act was passed, the Internet was not contemplated. However, in the context of the Internet-dominated world of 2006, Congress specifically stated in UIGEA that the intermediate routing of electronic data does not affect the determination of where a bet or wager is initiated or received: “The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made.” 31 U.S.C. § 5362(10)(E); H.R. Rep. No. 109-412(II) (2006), 2006 WL 1524422 at *14-*15 (the “intermediate routing of data packets does not determine the location in which bets or wagers are made”).

The Wire Act only applies to interstate commerce. No case law concludes that the Internet routing of electronic data or information relating to the purchase of state lottery tickets within that state, in compliance with that state’s law, would implicate the Wire Act. Indeed, Congress legislated the opposite result in UIGEA – that a state-run lottery purchase made

¹² A single federal district court in *United States v. Lombardo*, 639 F. Supp. 2d 1271 (D. Utah 2007), has ruled that portions of the Wire Act prohibiting the use of wire communication facilities are not limited to sports gambling. This court found that the prohibitions on the use of a wire communication facility “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” are not limited to sports betting due to the absence of the qualifying phrase “on any sporting event or contest.” *Id.* at 1281. The court recognized that the presence of the qualifying phrase “on any sporting event or contest” with respect to the transmission of bets or wagers does indeed “limit[] the prohibition on the transmission of actual bets or wagers to those on sporting events or contests.” *Id.* The court nonetheless concluded that the other prohibitions, which are incidental to the transmission of bets or wagers, are not limited to sporting events or contests. *Id.* at 1281-82. The court acknowledged that no other federal court had read the statute in such a manner. The only other court to conclude that the Wire Act is not limited to sporting events or contests was a state trial court in *New York in Vacco v. World Interactive Gaming Corp.*, 714 N.Y.S.2d 844 (Sup. Ct. 1999), a civil lawsuit brought by the New York Attorney General to enjoin the operation of an Internet gambling operation in which the trial judge summarily concluded, without analysis, that the Wire Act is not limited to sports gambling. Notably, there are no published federal court decisions that have concurred with the *Lombardo* court’s interpretation of the Wire Act. In an unreported federal case, *United States v. Kaplan*, Case No. SI4:06CR337CEJ(MLM) (E.D. Mo. March 20, 2008), the magistrate judge issued a Report and Recommendation on a motion to dismiss that concluded that the Wire Act was not limited to sports gambling, but there does not appear to be a published decision by the district court adopting that Report and Recommendation.

exclusively within a single state does not become an interstate transaction because of the intermediate routing of lottery data outside the state. The transactions that will occur under the Pilot Program will be *intrastate* and the Wire Act does not apply.¹³

D. The Travel Act

The Travel Act, 18 U.S.C. § 1952 (1961), was enacted at the same time as the Wire Act as part of the same organized crime initiative. The law prohibits “[i]nterstate and foreign travel or transportation in aid of racketeering enterprises,” specifically targeting individuals who “travel[] in interstate commerce or use[] the mail or any facility with the intent to distribute the proceeds of any unlawful activity.” 18 U.S.C. § 1952(a)(1). The Travel Act defines a number of “unlawful activities,” including “any *business enterprise* involving gambling . . . offenses in violation of the laws of the State in which they are committed or of the United States.” *Id.* § 1952(b)(1)(i) (emphasis added). “Business enterprise” has been interpreted in this context as “a continuous course of conduct for profit,” *United States v. Roselli*, 432 F.2d 879, 886 (9th Cir. 1970). Notably, the Travel Act does not criminalize otherwise lawful gambling, but instead it prohibits the use of interstate commerce in the conduct of gambling that is unlawful pursuant to another state or federal criminal law. *See, e.g., United States v. Truesdale*, 152 F.3d 443, 450 (5th Cir. 1998) (“Travel in aid of racketeering [under the Travel Act] requires an underlying criminal activity”).

The Pilot Program will not be operated for profit, and it is not the kind of criminal activity with which Congress was concerned. The Pilot Program will be conducted by the State Lottery in compliance with the laws of Illinois as a government revenue program to raise necessary funds for schools, job creation, and infrastructure projects throughout the State. As such, the Travel Act does not apply to the Pilot Program.

E. The Interstate Paraphernalia Act

The Interstate Paraphernalia Act, 18 U.S.C. § 1953 (1961), also enacted at the same time as the Wire Act, regulates interstate transportation of various gambling-related devices and was, along with the Wire Act and the Travel Act, designed to provide a way for the federal government to combat interstate crime and to assist the states in the enforcement of their

¹³ A determination that Illinois’ Pilot Program does not implicate the Wire Act would not undermine the federal government’s ability to prosecute the conduct of illegal activity that use channels of interstate commerce. As noted above, Congress expressly decided in UIGBA that the intermediate routing of electronic data does not make an otherwise intrastate lottery purchase into an interstate transaction. *See* 31 U.S.C. § 5362(10)(E); H.R. Rep. No. 109-412(II) (2006), 2006 WL 1524422 at *14-*15. In stark contrast, Congress has made no such finding or exception for conduct illegal under state and federal law which use channels of interstate commerce. *See, e.g.,* 18 U.S.C. §§ 1201-04 (kidnapping), 1958 (murder-for-hire), 2421-28 (sex trafficking), & 2261-66 (domestic violence). As such, statutes prohibiting such conduct clearly are not analogous to the statutes related to legally authorized state-run lotteries, and the Department of Justice’s ability to enforce those criminal laws will not be compromised.

criminal laws. The Interstate Paraphernalia Act expressly excludes the equipment, tickets, or materials used or designed for use within a state for a state-run lottery. 18 U.S.C. § 1953(b). Thus, even assuming that "equipment, tickets, or materials" will be transported under the Pilot Program, they will be used or designed for use within Illinois in a lottery conducted by that State acting under authority of State law. Thus, the Interstate Paraphernalia Act does not apply to the Pilot Program.

F. The Illegal Gambling Businesses Act

The Illegal Gambling Businesses Act, 18 U.S.C. § 1955 (1970), prohibits illegal gambling businesses, which are defined as gambling businesses operating in violation of the law of a state or political subdivision in which the gambling business is conducted. Again, the focus of this statute is gambling occurring in violation of state law. The Pilot Program will be operated by the Illinois Lottery in accordance with the Legislation. Thus, the Illegal Gambling Businesses Act does not apply to the Pilot Program.

G. Summary

All of the federal gaming statutes attempt a balancing act — to prohibit illegal gambling activities while, at the same time, preserving the rights of states to establish and regulate intrastate lotteries. The Department of Justice need not and respectfully should not read these statutes in a way that would prohibit state authorization of an intrastate Internet lottery. Such an interpretation would be inconsistent with Congressional intent, and would have grave policy implications, as outlined below.

IV. POLICY CONSIDERATIONS

A. The Department Of Justice Has Been Consistent In Its Respect of States' Rights To Authorize And Operate Lotteries

A conclusion that the federal gambling laws prohibit the operations of a legitimate state lottery, acting pursuant to state law, also would jeopardize the historical balance between federal and state authority and run contrary to the mandate of the Tenth Amendment to the United States Constitution. Stated plainly, the federal government would be interfering with the sovereignty of the individual states in their selection of revenue-raising measures and in their judgment as to whether to allow or prohibit gaming within their borders. And, this interference would not be serving the Congressional purpose of the federal gambling laws consistently stated since the Wire Act was enacted in 1961: to assist states in preventing money laundering, organized crime, and other illegal activity. Unlike Internet gaming on illegal offshore websites with no protections, state lotteries are in a unique position to offer a safe, secure, and regulated gaming alternative that directly benefits the players' community by contributing to education, job creation, and funding of essential services for the state.

Over three decades, the Department of Justice has taken positions as to pending legislation that support a state's right to authorize or prohibit gaming within its borders. *See*

H.R. Rep. No. 93-1517 (1974), *reprinted in* 1974 U.S.C.C.A.N. 7007, 7015, 1974 WL 11676 (Dec. 4, 1974); S. Rep. No. 94-618 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5513, 5514, 1976 WL 14029 (Feb. 2, 1976); H.R. Rep. No. 100-557 (1988), *reprinted in* 1988 U.S.C.C.A.N. 4343, 4350, 4354, 1988 WL 169857 (Mar. 31, 1988). The Department of Justice has recognized the states' needs for flexibility in revenue-raising measures. In the current economic climate, it is crucial that the Department of Justice "accommodate the States' renewed interest in using lotteries to generate state revenue for the benefit of the public interest." See Office of Legal Counsel, U.S. Department of Justice, *Scope of Exemption Under Federal Lottery Statutes for Lotteries Conducted by a State Acting Under the Authority of State Law*, 2008 WL 4671395 at *6 (O.L.C.) (Oct. 16, 2008).

B. A Departure From The Department of Justice's Historical Deference That Prevents The Operation Of State Lotteries Would Have Dire National Economic Consequences

The state lottery industry contributes over \$60 billion annually to the national economy. This is particularly significant as the current fiscal crisis facing states nationwide has escalated. Approaching fiscal year 2010, forty-eight states were experiencing budget short-falls due to record declines in state revenue brought on by the national recession. Forty-three states have been forced to cut services over the past two years, and 29 states have raised taxes. *The Fiscal Survey of States: December 2009*, pp. vii-viii, National Governors Association (2009), available at <http://www.nga.org/Files/pdf/FSS0912.PDF>. Currently, forty-three states rely on state lottery revenues to help fund essential services for their citizens.

In selling lottery tickets to individuals physically present at retail stores within their state, more than 40 state lotteries currently transmit electronic transaction data to data centers outside those states through private and common carrier networks controlled by Network Operations Centers that are also outside the states. See Letter from William J. Murray, Deputy Director and General Counsel, New York Lottery, to Portia Roberson, Director, U.S. Department of Justice Office of Intergovernmental Affairs (Dec. 4, 2009). These transmissions, which cross state lines, are an integral part of the in-state lottery system. To interpret federal law as criminalizing these legitimate lottery sales transactions, due to the intermediate routing of data across state lines in the course of a transaction, would essentially cripple the lottery industry. Under such an interpretation, more than 40 lotteries would have to cease operations because their conventional sales transactions conducted at retail stores within their state borders would be considered criminal activity. Legally, the same analysis applies to the Internet-based sale of lottery tickets to individuals located within the state in which the lottery is conducted.

CONCLUSION

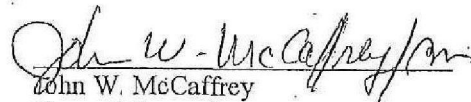
Illinois wishes to lead the way in establishing an Internet lottery sales program which, through comprehensive regulation, oversight, and utilization of state-of-the-art technology, would provide a safe and secure environment for adults located within the State to purchase lottery tickets on the Internet. The revenue generated by the Internet sale of lottery tickets will

be key in funding public education, creating jobs, and stimulating the State economy. Illinois believes its Pilot Program to be in the best interest of the State and consistent with federal law.

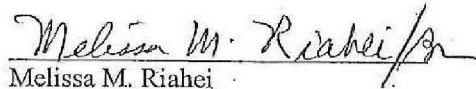
Illinois seeks the Department of Justice's review of its plan and welcomes any suggestions from the Department of Justice on how to best implement a socially responsible Internet Lottery Pilot Program.

Dated: March 10, 2010

Respectfully submitted,

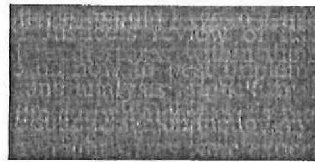


John W. McCaffrey
General Counsel
Illinois Department of Revenue



Melissa M. Riahei
General Counsel
Illinois Lottery

(b)(6), (7)(C)
per CRM



Counsel to Illinois Department of Revenue
and Illinois Lottery

Rosenstein, Rod (ODAG)

Subject: Meeting re Wire Act
Location: DAG's Conference Room, 4111

Start: Monday, July 2, 2018 4:00 PM
End: Monday, July 2, 2018 4:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Rosenstein, Rod (ODAG)
Required Attendees: Raman, Sujit (ODAG); Cronan, John (CRM); Engel, Steven A. (OLC); O'Callaghan, Edward C. (ODAG); Bolitho, Zachary (ODAG); Wong, Candice (CRM)

POC: Sujit Raman

Attendees: DAG Rosenstein, Ed O'Callaghan, Zac Bolitho, Sujit Raman, John Cronan, Steven Engel

Note: This meeting is limited to the invited attendees only. You are not authorized to forward this invitation. If you believe other individuals should be included, please contact the ODAG Front Office.

Rosenstein, Rod (ODAG)

Subject: Meeting re Wire Act
Location: DAG's Conference Room, 4111

Start: Monday, July 2, 2018 4:00 PM
End: Monday, July 2, 2018 4:30 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Rosenstein, Rod (ODAG)
Required Attendees: Whitaker, Henry C. (OLC); Raman, Sujit (ODAG); Cronan, John (CRM); Engel, Steven A. (OLC); O'Callaghan, Edward C. (ODAG); Zachary Bolitho (ODAG) (zbolitho@jmd.usdoj.gov); Wong, Candice (CRM)

POC: Sujit Raman
Attendees: DAG Rosenstein, Ed O'Callaghan, Zac Bolitho, Sujit Raman
CRM: John Cronan, Candice Wong
OLC: Steven Engel, Henry Whitaker

Gannon, Curtis E. (OLC)

Subject: mtg re Wire Act

Start: Monday, July 2, 2018 4:00 PM

End: Monday, July 2, 2018 4:30 PM

Recurrence: (none)

Meeting Status: No response required

Organizer: Gannon, Curtis E. (OLC)

Bolitho, Zachary (ODAG)

From: Bolitho, Zachary (ODAG)
Sent: Tuesday, July 31, 2018 1:26 PM
To: Engel, Steven A. (OLC); Raman, Sujit (ODAG)
Subject: FW: Meeting

FYI

From: Suero, Maya A. (ODAG)
Sent: Tuesday, July 31, 2018 11:00 AM
To: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>
Cc: Bolitho, Zachary (ODAG) <zbolitho@jmd.usdoj.gov>; Ellis, Corey F. (ODAG) <cfellis@jmd.usdoj.gov>
Subject: FW: Meeting

Good morning,

We received a meeting request for Senators Graham and Feinstein to meet with the DAG.

Maya Suero
Special Assistant
Office of the Deputy Attorney General
Phone: (b) (6)

From: James, Alice (L. Graham) <Alice_James@lgraham.senate.gov>
Sent: Tuesday, July 31, 2018 10:57 AM
To: Suero, Maya A. (ODAG) <masuero@jmd.usdoj.gov>
Subject: Meeting

Maya,

Hope you are doing well. Senator Graham has requested a meeting w/ the DAG and Senator Feinstein regarding the Wire Act—can you let me know some dates and times that might work for the DAG and then I can coordinate w/ Feinstein's office?

Thanks so much.

Best,
Alice

Alice James
U.S. Senator Lindsey Graham
[@alicejames](#)



The information contained in this communication is intended for the use of the designated recipients named above. If the reader of this communication is not the intended recipient, you are hereby notified

named above. If the reader of this communication is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Senator Graham's office by telephone at (202) 224-5972 and delete this email. Thank you.

Suero, Maya A. (ODAG)

Subject: Prep for WIRE Act Meeting
Location: DAG's Conference Room, 4111

Start: Tuesday, August 28, 2018 2:30 PM
End: Tuesday, August 28, 2018 3:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Suero, Maya A. (ODAG)
Required Attendees: Lasseter, David F. (OLA); Engel, Steven A. (OLC);
Benczkowski, Brian (CRM)

POC:
Attendees:
ODAG: DAG Rosenstein, Ed O'Callaghan, Corey Ellis
CRM: Brian Benczkowski
OLA: Prim Escalona, Stephen Boyd, David Lasseter
OLC: Steven Engel

Rosenstein, Rod (ODAG)

Subject: Prep for WIRE Act Meeting
Location: DAG's Conference Room, 4111

Start: Tuesday, August 28, 2018 2:30 PM
End: Tuesday, August 28, 2018 3:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Rosenstein, Rod (ODAG)
Required Attendees: Lasseter, David F. (OLA); Engel, Steven A. (OLC); Benczkowski, Brian (CRM); O'Callaghan, Edward C. (ODAG); Ellis, Corey F. (ODAG); Escalona, Prim F. (OLA); Boyd, Stephen E. (OLA)

POC:
Attendees:
ODAG: DAG Rosenstein, Ed O'Callaghan, Corey Ellis
CRM: Brian Benczkowski
OLA: Prim Escalona, Stephen Boyd, David Lasseter
OLC: Steven Engel

Engel, Steven A. (OLC)

Subject: Fwd: Prep for WIRE Act Meeting
Location: DAG's Conference Room, 4111

Start: Tuesday, August 28, 2018 2:30 PM
End: Tuesday, August 28, 2018 3:00 PM
Show Time As: Tentative

Recurrence: (none)

Organizer: Engel, Steven A. (OLC)
Required Attendees: Whitaker, Henry C. (OLC)

Rosenstein, Rod (ODAG)

Subject: Fwd: Prep for WIRE Act Meeting
Location: DAG's Conference Room, 4111

Start: Tuesday, August 28, 2018 2:30 PM
End: Tuesday, August 28, 2018 3:00 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Rosenstein, Rod (ODAG)
Required Attendees: O'Callaghan, Edward C. (ODAG); Ellis, Corey F. (ODAG); Escalona, Prim F. (OLA); Boyd, Stephen E. (OLA); Lasseter, David F. (OLA); Engel, Steven A. (OLC); Benczkowski, Brian (CRM)
Optional Attendees: Whitaker, Henry C. (OLC)

Just got this. 2:30 pm tomorrow. You around?

Sent from my iPhone

Begin forwarded message:

From: "Rosenstein, Rod (ODAG)" <rosenstein@jmd.usdoj.gov>
To: "Lasseter, David F. (OLA)" <dlasseter@jmd.usdoj.gov>, "Engel, Steven A. (OLC)" <saengel@jmd.usdoj.gov>, "Benczkowski, Brian (CRM)" <Brian.Benczkowski@CRM.USDOJ.GOV>
Subject: **Prep for WIRE Act Meeting**

POC:
Attendees:
ODAG: DAG Rosenstein, Ed O'Callaghan, Corey Ellis
CRM: Brian Benczkowski
OLA: Prim Escalona, Stephen Boyd, David Lasseter
OLC: Steven Engel

Rosenstein, Rod (ODAG)

Subject: Meeting re Wire Act
Location: DAG's Conference Room, 4111

Start: Wednesday, October 31, 2018 11:15 AM
End: Wednesday, October 31, 2018 11:30 AM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Rosenstein, Rod (ODAG)
Required Attendees: O'Callaghan, Edward C. (ODAG); Ellis, Corey F. (ODAG); Peterson, Andrew (ODAG); Raman, Sujit (ODAG); Lan, Iris (ODAG); Engel, Steven A. (OLC); Whitaker, Henry C. (OLC); Cronan, John (CRM); Wong, Candice (CRM); Boyd, Stephen E. (OLA); Escalona, Prim F. (OLA); Flores, Sarah Isgur (OPA); Crowell, James (USAEO)

POC: Sujit Raman
Attendees: DAG Rosenstein, Ed O'Callaghan, Corey Ellis, Andrew Peterson, Sujit Raman, Steven Engel, Henry Whitaker, John Cronan, Candice Wong

Rosenstein, Rod (ODAG)

Subject: Meeting re Wire Act
Location: DAG's Conference Room, 4111

Start: Wednesday, October 31, 2018 11:15 AM
End: Wednesday, October 31, 2018 11:30 AM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Rosenstein, Rod (ODAG)
Required Attendees: O'Callaghan, Edward C. (ODAG); Ellis, Corey F. (ODAG); Peterson, Andrew (ODAG); Raman, Sujit (ODAG); Engel, Steven A. (OLC); Whitaker, Henry C. (OLC); Cronan, John (CRM); Wong, Candice (CRM); Boyd, Stephen E. (OLA); Escalona, Prim F. (OLA)
Optional Attendees: Lan, Iris (ODAG); Flores, Sarah Isgur (OPA)

Rosenstein, Rod (ODAG)

Subject: Meeting re Wire Act
Location: DAG's Conference Room, 4111

Start: Wednesday, October 31, 2018 11:15 AM
End: Wednesday, October 31, 2018 11:30 AM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Rosenstein, Rod (ODAG)
Required Attendees: O'Callaghan, Edward C. (ODAG); Ellis, Corey F. (ODAG); Peterson, Andrew (ODAG); Raman, Sujit (ODAG); Engel, Steven A. (OLC); Whitaker, Henry C. (OLC); Cronan, John (CRM); Wong, Candice (CRM)

POC: Sujit Raman
Attendees: DAG Rosenstein, Ed O'Callaghan, Corey Ellis, Andrew Peterson, Sujit Raman, Steven Engel, Henry Whitaker, John Cronan, Candice Wong

Raman, Sujit (ODAG)

Subject: Wire Act
Location: RFK 4133 (Margolis Conference Room)
Start: Thursday, October 25, 2018 5:00 PM
End: Thursday, October 25, 2018 5:30 PM
Recurrence: (none)
Meeting Status: Accepted
Organizer: Raman, Sujit (ODAG)
Required Attendees: Wong, Candice (CRM); Whitaker, Henry C. (OLC); Engel, Steven A. (OLC); Cronan, John (CRM); Escalona, Prim F. (OLA)

Raman, Sujit (ODAG)

Subject: Wire Act
Location: CRM to provide

Start: Monday, December 10, 2018 11:00 AM
End: Monday, December 10, 2018 11:30 AM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Raman, Sujit (ODAG)
Required Attendees: Barnett, Gary E. (OAG); Engel, Steven A. (OLC); Whitaker, Henry C. (OLC); Cronan, John (CRM); Wong, Candice (CRM); Kupec, Kerri (OPA); Escalona, Prim F. (OLA)

Colleagues: Gary was hoping to discuss and finalize the Wire Act roll-out. This time works for him, and hopefully it works for you.

John C.: could you please find a room for us? Unfortunately ODAG's Margolis Room is booked at this time.

Thanks.

Raman, Sujit (ODAG)

Subject: Wire Act
Location: RFK 2109

Start: Monday, December 10, 2018 11:00 AM
End: Monday, December 10, 2018 11:30 AM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Raman, Sujit (ODAG)
Required Attendees: Barnett, Gary E. (OAG); Engel, Steven A. (OLC); Whitaker, Henry C. (OLC); Cronan, John (CRM); Wong, Candice (CRM); Kupec, Kerri (OPA); Escalona, Prim F. (OLA); O'Callaghan, Edward C. (ODAG)

12/4/18 update: meeting will be held in RFK 2109.

Colleagues: Gary was hoping to discuss and finalize the Wire Act roll-out. This time works for him, and hopefully it works for you.

John C.: could you please find a room for us? Unfortunately ODAG's Margolis Room is booked at this time.

Thanks.

Escalona, Prim F. (OLA)

Subject: Wire Act Outreach call
Location: Call-in info in notes

Start: Wednesday, January 16, 2019 1:30 PM
End: Wednesday, January 16, 2019 2:00 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Escalona, Prim F. (OLA)
Required Attendees: Engel, Steven A. (OLC); Boyd, Stephen E. (OLA); Cronan, John (CRM); Raman, Sujit (ODAG); Whitaker, Henry C. (OLC); Hornbuckle, Wyn (OPA)

INFORMATION FOR PARTICIPANTS (Attendees) ONLY For Audio Connection Dial: (b) (6)
(b) (6) Attendee Access Code : (b) (6)

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Wednesday, January 16, 2019 12:25 PM
To: Raman, Sujit (ODAG); Engel, Steven A. (OLC)
Subject: Fwd: OLC opinion

?

Edward C. O'Callaghan

(b) (6)

Begin forwarded message:

From: "Rosenstein, Rod (ODAG)" <rosenstein@jmd.usdoj.gov>
Date: January 16, 2019 at 12:04:02 PM EST
To: "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>, "Ellis, Corey F. (ODAG)" <cfellis@jmd.usdoj.gov>, "Peterson, Andrew (ODAG)" <anpeterson@jmd.usdoj.gov>
Subject: FW: OLC opinion

We probably should release that memo.

From: Yang, Debra Wong <DWongYang@gibsondunn.com>
Sent: Wednesday, January 16, 2019 10:19 AM
To: Rosenstein, Rod (ODAG) <rosenstein@jmd.usdoj.gov>
Subject: Re: OLC opinion

For a guy on shut down, you've been busy!!
Any way to get a copy of the memo? People trying to get clarity and insight.

PS: congrats, hearing looks like it went well. Coverage on west coast was good.

Debra Wong Yang

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
[333 South Grand Avenue, Los Angeles, CA 90071-3197](https://www.gibsondunn.com)
Tel +1 213.229.7472 • Fax +1 213.229.6472
DWongYang@gibsondunn.com • www.gibsondunn.com

On Jan 16, 2019, at 3:55 AM, Rosenstein, Rod (ODAG) <Rod.Rosenstein5@usdoj.gov> wrote:

[External Email]

FYI:

<https://www.washingtonpost.com/national/us-gambling-operators-have-90-days-to-comply-with->

[new-rules/2019/01/15/a62d92b8-1923-11e9-b8e6-567190c2fd08_story.html?
utm_term=.d1495995356f](https://www.fedex.com/new-rules/2019/01/15/a62d92b8-1923-11e9-b8e6-567190c2fd08_story.html?utm_term=.d1495995356f)

On Jan 15, 2019, at 3:16 PM, Yang, Debra Wong <DWongYang@gibsondunn.com> wrote:

Do you have a few minutes to speak? Havoc in the biz world.

Debra Wong Yang

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

[333 South Grand Avenue, Los Angeles, CA 90071-3197](https://www.gibsondunn.com/333-South-Grand-Avenue-Los-Angeles-CA-90071-3197)

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This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

Raman, Sujit (ODAG)

From: Raman, Sujit (ODAG)
Sent: Wednesday, January 16, 2019 12:27 PM
To: O'Callaghan, Edward C. (ODAG); Engel, Steven A. (OLC)
Subject: RE: quick question
Attachments: 2019.01.15.Wire.Act.DAG.Memo.pdf

I assume he means the attached. We haven't formally released it yet (as it is addressed to US Attorneys and AAGs) but OPA has it and will distribute to the press shortly. OLA is also making it available to the Hill and to the White House today. I think you can probably send it to Trusty directly, or alternatively tell him that OPA is expected to make it available to the press presently.

From: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Sent: Wednesday, January 16, 2019 12:24 PM
To: Raman, Sujit (ODAG) <sraman@jmd.usdoj.gov>; Engel, Steven A. (OLC) <saengel@jmd.usdoj.gov>
Subject: Fwd: quick question

?

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

From: James Trusty <jtrusty@ifrahlaw.com>
Date: January 16, 2019 at 9:59:05 AM EST
To: "O'Callaghan, Edward C. (ODAG)" <Edward.C.O'Callaghan@usdoj.gov>
Subject: quick question

Ed –

I can't seem to get my hands on Rod's statement from yesterday – maybe due to the furlough it's not showing up on websites or anywhere else. Any chance you can send my way?

Best,
Jim



James M. Trusty Member

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U. S. Department of Justice


Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

January 15, 2019

TO: UNITED STATES ATTORNEYS
ASSISTANT ATTORNEYS GENERAL
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

FROM: THE DEPUTY ATTORNEY GENERAL 

SUBJECT: Applicability of the Wire Act, 18 U.S.C. § 1084, to Non-Sports Gambling

The Office of Legal Counsel (OLC) has published an opinion finding that all but one of the prohibitions of the Wire Act, 18 U.S.C. § 1084, apply to non-sports gambling. OLC reconsidered a 2011 opinion that reached a different conclusion.¹

Department of Justice attorneys should adhere to OLC's interpretation, which represents the Department's position on the meaning of the Wire Act. *See* 28 C.F.R. § 0.25.

As an exercise of discretion, Department of Justice attorneys should refrain from applying Section 1084(a) in criminal or civil actions to persons who engaged in conduct violating the Wire Act in reliance on the 2011 OLC opinion prior to the date of this memorandum, and for 90 days thereafter. A 90-day window will give businesses that relied on the 2011 OLC opinion time to bring their operations into compliance with federal law. This is an internal exercise of prosecutorial discretion; it is not a safe harbor for violations of the Wire Act.

I am designating the Criminal Division's Organized Crime and Gang Section (OCGS) to review and approve proposed Wire Act charges. The Justice Manual will include a new review and approval process for prosecutions pursuant to the Wire Act.

Any Department attorney who has questions regarding implementation of the Wire Act should contact OCGS Deputy Chief Douglas Crow for further guidance.

¹ OLC's new opinion, *Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*, concludes that only the second prohibition of the first clause of Section 1084(a), which criminalizes "the transmission . . . of . . . information assisting in the placing of bets or wagers *on any sporting event or contest*" (emphasis added), is limited to sports betting or wagering. www.justice.gov/olc/opinions-main. OLC explains that the limitation "on any sporting event or contest" in that second prohibition does not sweep backwards or forwards to reach the other prohibitions in Section 1084(a). Thus, the first prohibition (barring persons in the gambling business from knowingly using a wire communication facility to transmit "bets or wagers"), the third prohibition (barring any such persons from transmitting wire communications that entitle the recipient to "receive money or credit as a result of bets or wagers"), and the fourth prohibition (barring any such persons from transmitting wire communications "for information assisting in the placing of bets or wagers") extend to non-sports-related betting or wagering. The OLC opinion also concludes that the Unlawful Internet Gambling Enforcement Act (UIGEA), 31 U.S.C. §§ 5361-5367, does not modify Section 1084(a).