# Obama DOJ Helping to Facilitate Expansion of Online Gambling


The Obama administration gave states and the gambling industry an early Christmas present December 23 in the form of a controversial Department of Justice (DOJ) opinion that reversed years of federal policy covering online gambling. As reported by Reuters News Service, previously the DOJ had held that "online gambling in all forms was illegal under the Wire Act of 1961, which bars wagers via telecommunications that cross state lines or international borders." The recent DOJ opinion, dated in September but released only in late December, makes the qualification that "[i]nterstate transmissions of wire communications that do not relate to a 'sporting event or contest' fall outside the reach of the Wire Act."

The *[New York Times](#)* reported that the opinion, in the form of a memorandum, came in response to "requests by New York and Illinois to clarify whether the Wire Act of 1961 … prevented those states from using the Internet to sell lottery tickets to adults within their own borders." The *Times* added that while the memorandum "dealt specifically with lottery tickets, it opened the door for states to allow Internet poker and other forms of online betting that do not involve sports. Many states are interested in online gambling as a way to raise tax revenue."

Steven Grossman, Massachusetts' state treasurer and the chairman of the state's Lottery Commission, fairly drooled over the potential as he told the *Times* that the opinion represented a "turbocharged opportunity to engage new markets." He predicted that the move "will put additional pressure on Congress and others to allow online poker and other Internet gambling." With estimates on the revenue from online gambling ranging as high as $100 billion, Grossman said that a lack of legalized gambling means there are "tens of billions of dollars that go offshore."

Last July U.S. Senators Harry Reid (D-Nev.) and Jon Kyl (R-Ariz.) had asked the Justice Department to clarify its position relative to online gambling, "seeking either to affirm that federal law prohibits gambling over the Internet or to make sure that Congress has a role in drafting any expansion of online betting," reported the *Times*. In response to the Senators, the DOJ explained that while the updated opinion "differs from the department's previous interpretation of the Wire Act, it reflects the department's position in congressional testimony at the time the Wire Act was passed in 1961."

Law professor and gaming industry consultant I. Nelson Rose told the *Times* that the DOJ's opinion represented "quite a Christmas present" for both the online gaming industry and states who see Internet gambling as a potential tax revenue gold mine. "Given the continuing budget crisis, and so many states looking for ways to raise money, it's really a major decision." Writing on his blog site

Gambling and the Law, Rose predicted that the DOJ opinion would mean the elimination of "almost every federal anti-gambling law that could apply to gaming that is legal under state laws."

Virginia Seitz, the Assistant Attorney General responsible for crafting the DOJ memorandum, explained that the Wire Act's prohibition of interstate communications in gambling endeavors applies only to sporting events or similar contests, meaning that as long as the gambling moderator and the online customer are in the same state, and the wager is not on a sporting event, a state's own laws apply to gaming.

In addition to the Wire Act, the 2006 Unlawful Internet Gambling Enforcement Act prohibited banks from processing financial transactions for online gambling. Used together, the two federal statutes gave the Justice Department effective control over all Internet gambling within U.S. borders.

The 2006 law facilitated the high-profile federal takedown of three popular online gambling sites — Full Tilt Poker, PokerStars, and Absolute Poker — with the operators facing charges of fraud and money laundering. Because the three websites are based in Antigua and the Isle of Man, they are beyond the arm of American law. But because the companies running the sites had to use American banks to process the transactions of the millions of Americans who used the sites, the DOJ was able to charge the companies with violating the 2006 law that restricts such payment transfers. However, because the restrictions do not to apply to financial transactions within a state, the latest DOJ opinion opens the door to allow states to set up poker and other non-sports-related online wagering.

Melissa Riahei, an attorney for U.S. Digital Gaming, applauded the opinion, saying that the DOJ "has finally confirmed what we believed in Illinois to be true all along — that intrastate gambling is an issue that is within the sole discretion of a state to regulate, as it deems appropriate." She said the opinion means that states could now "comfortably move toward the implementation of Internet gaming programs that can generate much-needed revenue to fund essential government services."

Not everyone in the industry was enthusiastic with the DOJ's change of heart, however. In a statement the American Gaming Association, which represents the casino industry, predicted that with the updated federal take on Internet gaming would come a "proliferation of domestic and foreign, unlicensed and unregulated gaming websites without consistent regulatory standards and safeguards against fraud, underage gambling, and money laundering." With the posture of a gravely concerned watchdog group, the casino operators declared the need for federal oversight that would supposedly "protect U.S. consumers, keep children from gambling on the Internet, and provide the tools law enforcement needs to shut down illegal Internet gambling operators."

Conspicuously missing in most of the reporting on the DOJ opinion was the negative impact the broadening of state-sanctioned gambling will have on individuals with gambling addictions, their families, and society in general. Pointing out that the DOJ memorandum was mainly focused on states that wanted to sell lottery tickets online, Les Bernal, executive director of the organization Stop Predatory Gambling, said that the opinion was essentially an invitation for "state governments to open a lottery retailer in every home, office, dorm room, and handheld phone with an internet connection, twenty-four hours a day, seven days a week."

Perhaps the most compelling argument against the DOJ move was provided by the editors of the *Christian Science Monitor*, who referred to the coming tidal wave of state-sanctioned online gambling sites as "Obama's new tax on the poor."

Of all the potential problems that come with an expansion of gambling, wrote the *Monitor*'s editors, "bringing Internet gambling to America would hurt the poor, who are most affected when people lose money in government-approved games of chance such as state lotteries or casinos — not to mention the way it would reinforce a belief that one's future depends on 'luck' instead of individual merit."

The *Monitor* editorial accused President Obama and the Justice Department of bowing "to political pressure from states that seek a new source of revenue in Internet gambling rather than taking the difficult decisions to raise taxes or cut spending."

The editorial noted that there is abundant research demonstrating the "effects of Internet gambling, whether on the poor, children, or the 1 to 2 percent of people prone to gambling addiction." In addition, regulations "to contain Internet gambling would require a vast and intrusive scheme to keep Web-based gambling from slipping over borders or being used by underage users."

And, the op-ed warned, "states seeking revenue from Internet gambling have yet to add up the millions of dollars in additional costs to prevent abuse or deal with the effects of such gambling on individuals, families, and communities." According to the National Council on Problem Gambling, society spends approximately $7 billion annually on gambling addictions, bankruptcy, and gambling-related crime, and an estimated half-million teens are addicted to gambling.

Concluded the *Monitor*: "When will states, and now this administration, drop the political and economic reasons for Internet gambling, and wake up to its harm on the poor and the young?"