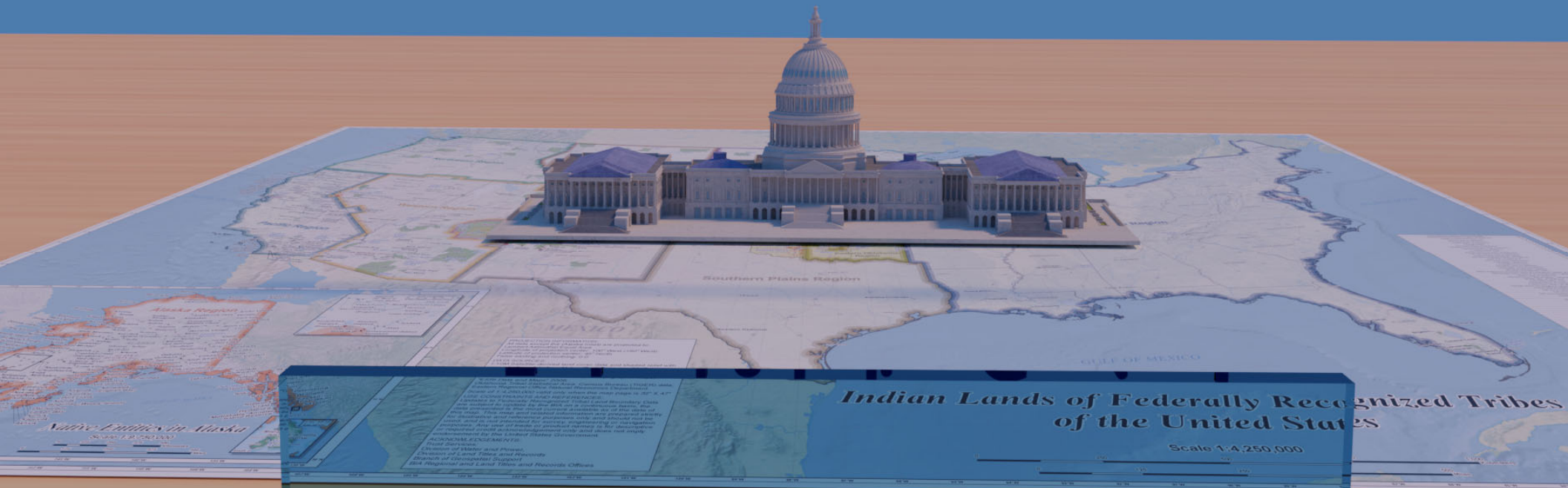


Federal & Indian Gaming Law



Federal Wire Act Part 3

with Greg Gemignani

Federal Wire Act

- 18 USC §1084
 - (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.

Federal Wire Act

- 18 USC §1084
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Federal Wire Act

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Federal Wire Act

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Federal Wire Act

- Business of Betting or Wagering
 - *“...requires the sale of a product or service for a fee involving third parties, i.e., customers and clients, or the performance of “a function which is an integral part of such business –”* Barborian

Federal Wire Act

- Information Assisting
 - Point Spreads
 - Account Information
 - Odds
 - ... *Information a bookmaker uses to operate their business*

Federal Wire Act

- “sporting event or contest”
 - *In re: MasterCard*
 - The Federal Wire Act applies to sports wagering only

Federal Wire Act

- “sporting event or contest”
 - *In re: MasterCard*
 - The Federal Wire Act applies to sports wagering only

Federal Wire Act

- DOJ View Post In Re: MasterCard

- The...Wire Act, which is codified at Section 1084 of Title 18 of the United States Code. This statute makes it a crime, punishable up to two years in prison, to knowingly transmit in interstate or foreign commerce bets on any sporting event or contest. It is the Department of Justice's position that this prohibition applies to both sporting events and other forms of gambling, and that it also applies to those who send or receive bets in interstate or foreign commerce even if it is legal to place or receive such a bet in both the sending jurisdiction and the receiving jurisdiction.

Federal Wire Act

18 USC §1084

- (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.

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Federal Wire Act

DOJ View – Sporting Event | Contest

18 USC §1084

- (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.

5th Cir View– Sporting modifies both Event or Contests

18 USC §1084

- (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.

Federal Wire Act

- US v. Lombardo
 - Facts

Federal Wire Act

- US v. Lombardo

- Facts

- Lombardo, with others, operate a payment “Gateway”(website) through various businesses to fund bettor accounts on various online sites
 - Bettors could add funds to betting accounts through “Gateway” and Gateway would mis-code the transactions to avoid detection by banks
 - Lombardo and others are charged with several violations including Wire Act violations and RICO statutes
 - Lombardo fights the Wire Act charge claiming services were provided for online poker sites & casinos not sports betting sites

Federal Wire Act

- US v. Lombardo
 - Issue
 - Whether the Federal Wire Act applies to sports wagering activities only

Federal Wire Act

- US v. Lombardo
 - Analysis
 - Assumes the 5th Circuit is correct in its analysis of the first prohibition in 1084(a)
 - Notes that the 5th Circuit did not analyze the second two prohibitions under 1084(a)

Federal Wire Act

- US v. Lombardo

- Analysis

- “The absence of the “sporting event or contest” qualifier in the second and third prohibitions is conspicuous, especially as the first prohibition, which includes the qualifier, is directly before the second and third prohibitions in the statute. This is particularly weighty in light of the legislative history of the **WireAct**, which indicates the intent of Congress to facilitate enforcement of state gambling laws related to “gambling, bookmaking, and like offenses.” Moreover, the exact phrase “information assisting in the placing of bets or wagers” is used twice in § 1084(a)-first, as part of the first prohibited use, and second, as the entirety of the third prohibited use. It is simply unpalatable to the Court to attribute no meaning to Congress’s use of the same phrase in two different parts of the statute where the first use is modified by the phrase “sporting event or contest” and the second use is [pg-1282] not. Accordingly, the Court concludes that the second and third prohibited uses of a wire communication facility under § 1084(a) do not require that the bets or wagers to which those uses relate be limited to bets or wagers placed on sporting events or contests alone.”

Federal Wire Act

WHAT DO YOU THINK?

18 USC §1084

(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.

Federal Wire Act

- 1084 (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.

Federal Wire Act

- 1084 (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.

Federal Wire Act

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18 U.S.C. § 1084

(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

no (b) exemption for the transmission of bets

bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest,

or

no (b) exemption for the transmission communications re: credit or money from a wager

for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers,

or

questionable whether there is a (b) exemption for info assisting w/o reference to sporting event or contest

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.

Federal Wire Act

- Timing...
 - 2001 Nevada enacts “Interactive Gaming” statute to regulate and license online gaming
 - 2002 DOJ warns Nevada that all such wagering violates the Federal Wire Act
 - 2005 Online poker is popular in the USA with some providers going public on foreign exchanges and having multi-billion dollar valuations
 - 2006 Congress enacts the UIGEA
 - 2009 Online poker lobbying in full force
 - 2009 Illinois and New York send letter to DOJ
 - 2009 Illinois and New York offer online lottery subscriptions
 - 2009 New Jersey enacts online gaming legislation
 - 2010 Federal compromise reached
 - 2011 Nevada enacts interactive gaming revision to compel the Commission to draft regulations to license online poker
 - 2011 Reid and Kyl issue letter to DOJ

Federal Wire Act

- 2011 DOJ Opinion

Federal Wire Act

- 2011 DOJ Opinion
 - What does it address?

Federal Wire Act

- 2011 DOJ Opinion
 - You have asked for our opinion regarding the lawfulness of proposals by Illinois and New York to use the Internet and out-of-state transaction processors to sell lottery tickets to instate adults.

Federal Wire Act

- 2011 DOJ Opinion
 - Does it find tension between the UIGEA and the Federal Wire Act

Federal Wire Act

- 2011 DOJ Opinion
 - Does it find tension between the UIGEA and the Federal Wire Act
 - Taken together, these interpretations of the Wire Act “lead[] to the conclusion that the [Act] prohibits” states from “utiliz[ing] the Internet to transact bets or wagers,” even if those bets or wagers originate and terminate within the state.
 - The Criminal Division further notes, however, that reading the Wire Act in this manner creates tension with UIGEA, which appears to permit out-of-state routing of data associated with in-state lottery transactions.
 - The Criminal Division is thus concerned that the Wire Act may criminalize conduct that UIGEA suggests is lawful.

Federal Wire Act

- 2011 DOJ Opinion
 - How does it address the sporting events or contest phrase and its impact?

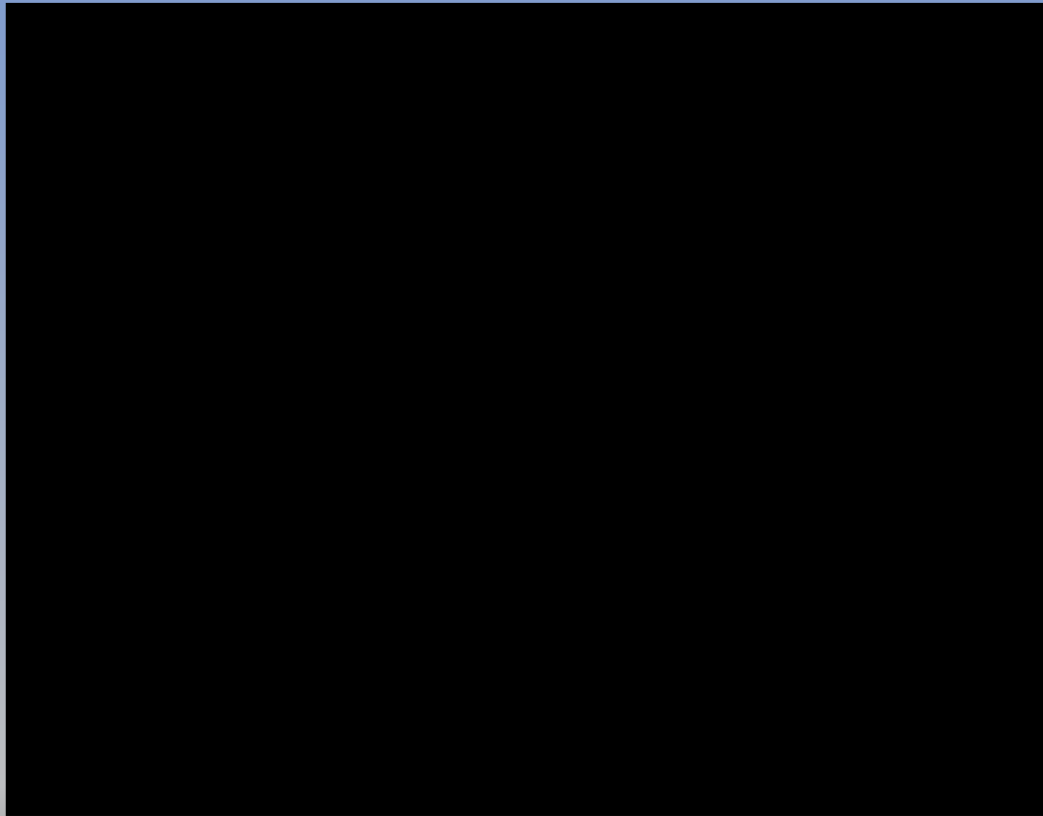
Federal Wire Act

- 2011 DOJ Opinion
 - How does it address the sporting events or contest phrase and its impact?
 - The more reasonable inference is that Congress intended the Wire Act's prohibitions to be parallel in scope, prohibiting the use of wire communication facilities to transmit both bets or wagers and betting or wagering information on sporting events or contests.
 - We likewise conclude that the phrase "on any sporting event or contest" modifies subsection 1084(a)'s second clause, which prohibits "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." 18 U.S.C. § 1084(a). The qualifying phrase "on any sporting event or contest" does not appear in this clause. But in our view, the references to "bets or wagers" in the second clause are best read as shorthand references to the "bets or wagers on any sporting event or contest" described in the first clause.
 - **In sum, the text of the Wire Act and the relevant legislative materials support our conclusion that the Act's prohibitions relate solely to sports-related gambling activities in interstate and foreign commerce.**

Federal Wire Act

- 2011 DOJ Opinion
 - In sum, the text of the Wire Act and the relevant legislative materials support our conclusion that the Act's prohibitions relate solely to sports-related gambling activities in interstate and foreign commerce.
- SPORTS WAGERING ONLY
- INTERSTATE AND FOREIGN COMMERCE ONLY - not where bets are transmitted from and received by persons in the same state

Federal Wire Act



<https://youtu.be/EEGCa5v3KH4>



Federal Wire Act

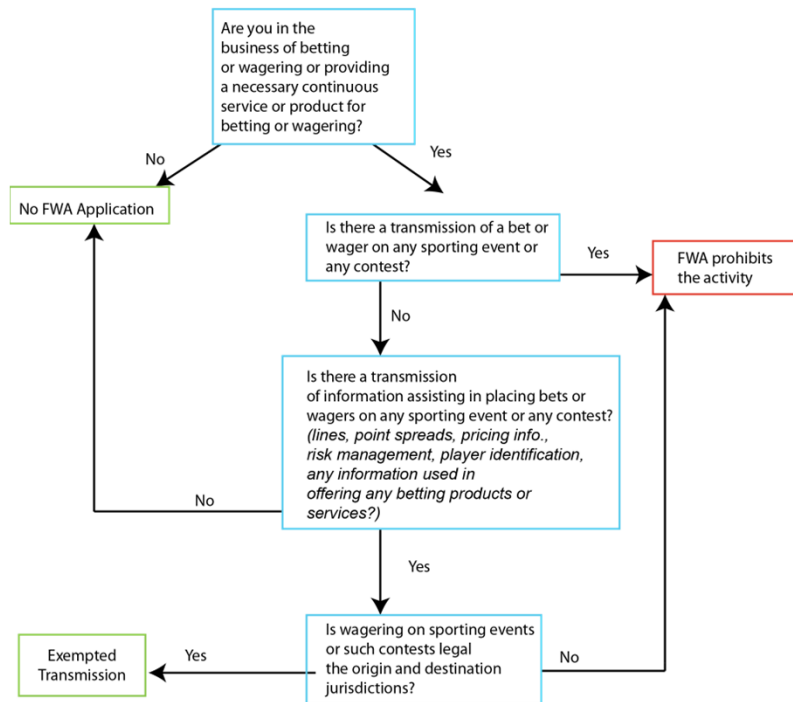


Federal Wire Act

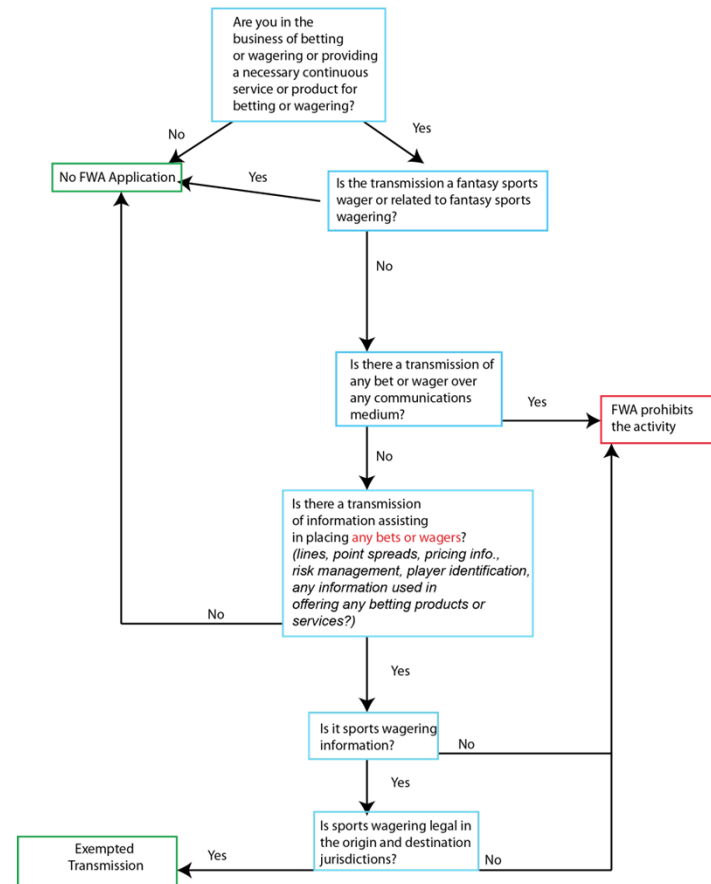
- Restoration of America's Wire Act
 - RAWA seeks to “restore” the federal wire act to pre-2011 interpretation and enhance illegal online gaming enforcement by doing the following:
 - Removing references to “sporting event or contest” in the prohibitions section.
 - Defining an interstate transmission to include any use of the internet where packets could incidentally cross state lines.
 - Excluding unlicensed fantasy sports wagering from the Federal Wire Act's prohibitions.

Federal Wire Act: Pre-2011 DOJ Opinion Flow Chart

(based on older DOJ interpretation)



Federal Wire Act: Flowchart if RAWA is Enacted



RAWA - Illegal Conduct

Mobile In Casino Gaming With Remote Server

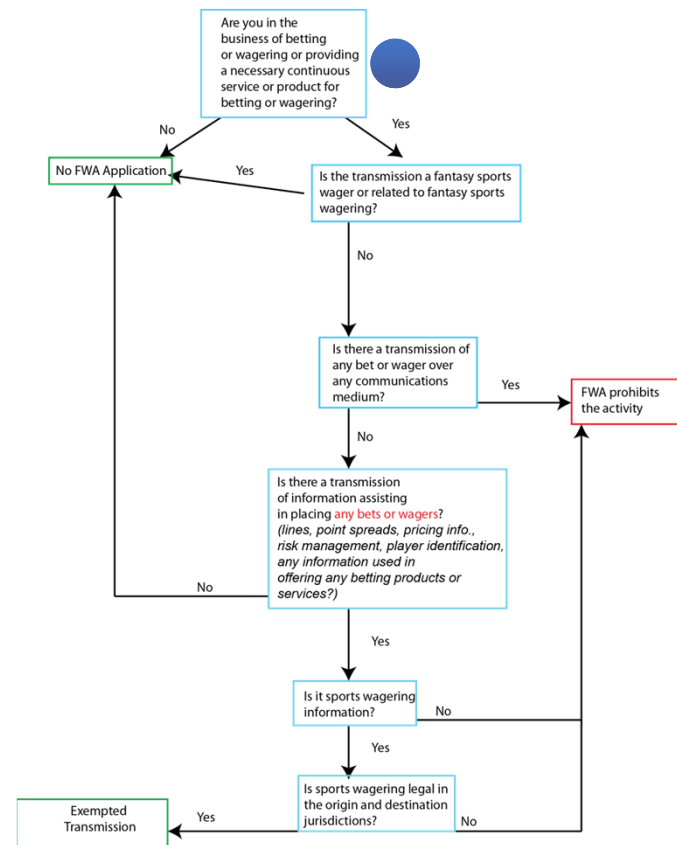
Are you in the business or wagering?
YES

Is it a fantasy sports transmission?
No (casino wager)

Is there a transmission of a bet?
YES

RAWA FWA prohibited

Federal Wire Act: Flowchart if RAWA is Enacted



RAWA - Illegal Conduct

System Supported
Slot Gaming
With Remote Server

Are you in the business or wagering?
YES

Is it a fantasy sports transmission?
No (casino gaming)

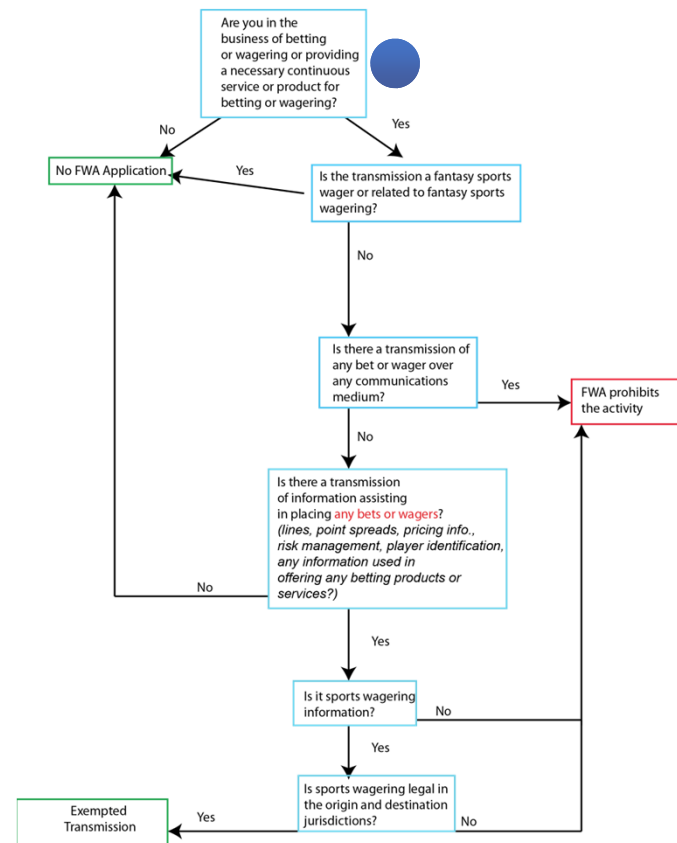
Is there a transmission of a bet?
No (just information)

Is the transmission
of information used to place bets?
Yes (terms of wagering)

Is it sports wagering
information?
No (casino gaming)

RAWA FWA prohibited

Federal Wire Act: Flowchart if RAWA is Enacted



RAWA - Illegal Conduct

System Based
Slot Gaming
With Remote Server

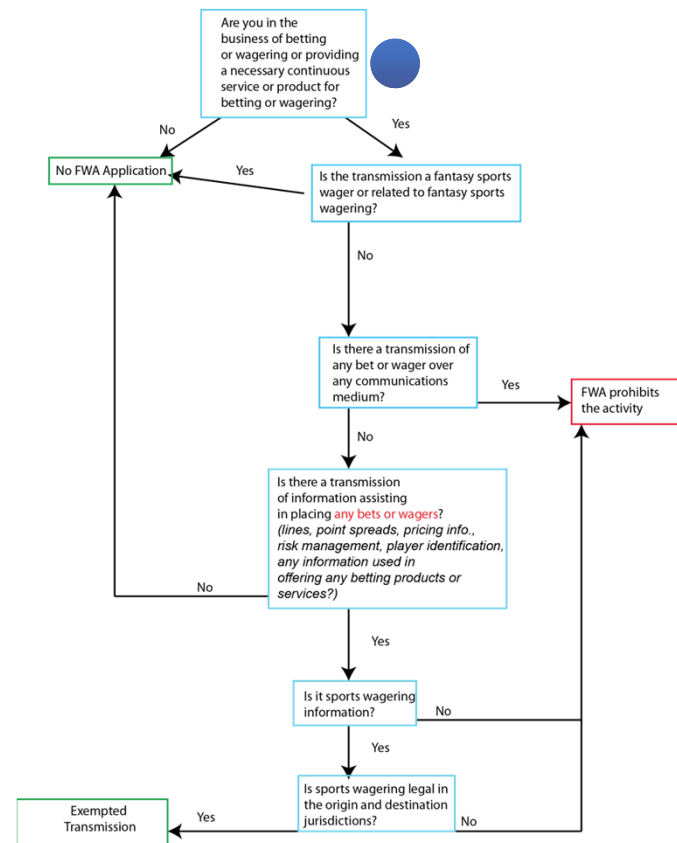
Are you in the business or wagering?
YES

Is it a fantasy sports transmission?
No (casino/slot wager)

Is there a transmission of a bet?
YES

RAWA FWA prohibited

Federal Wire Act: Flowchart if RAWA is Enacted



RAWA - Illegal Conduct

Remote Sports Bets In Nevada

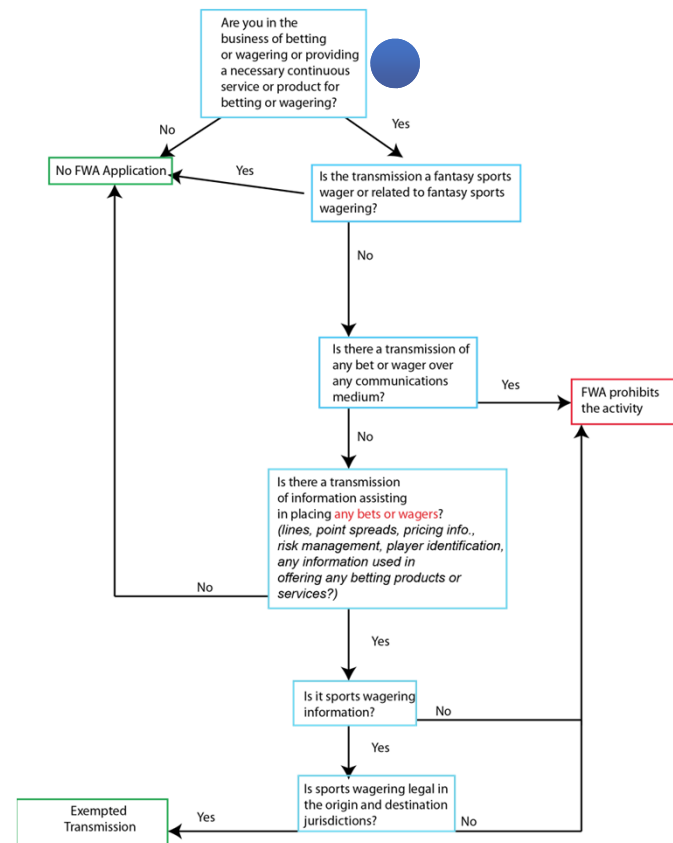
Are you in the business or wagering?
YES

Is it a fantasy sports transmission?
No (sports wager)

Is there a transmission of a bet?
YES

RAWA FWA prohibited

Federal Wire Act: Flowchart if RAWA is Enacted



RAWA - Illegal Conduct

MEGABUCKS

Are you in the business or wagering?
YES

Is it a fantasy sports transmission?
No (casino gaming)

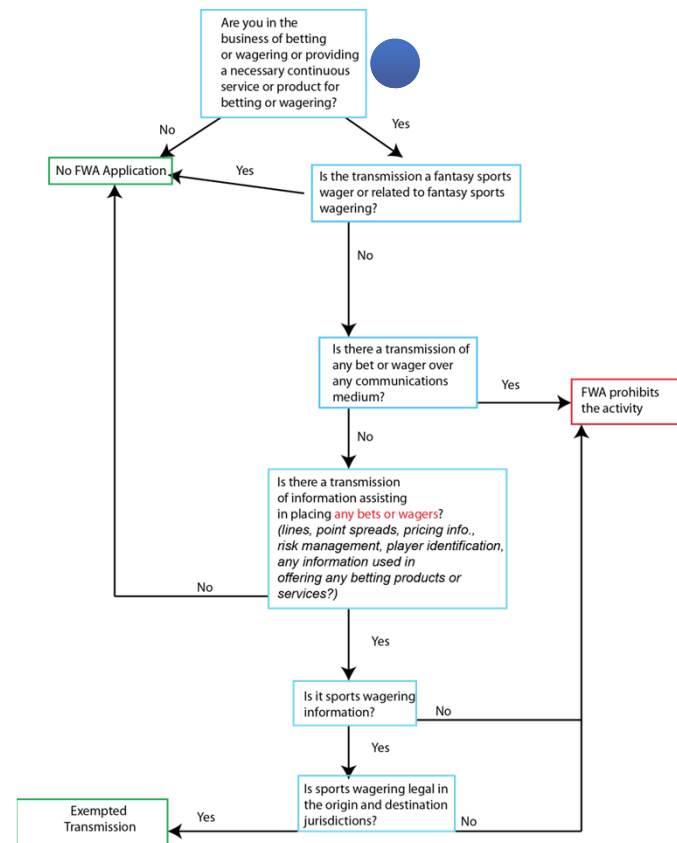
Is there a transmission of a bet?
No (just information)

Is the transmission of information used to place bets?
Yes (informs players of jackpot)

Is it sports wagering information?
No (casino gaming)

RAWA FWA prohibited

Federal Wire Act: Flowchart if RAWA is Enacted



RAWA - Illegal Conduct

POWERBALL

Are you in the business or wagering?
YES (MUSL and Lottery Outlets)

Is it a fantasy sports transmission?
No (lottery gaming)

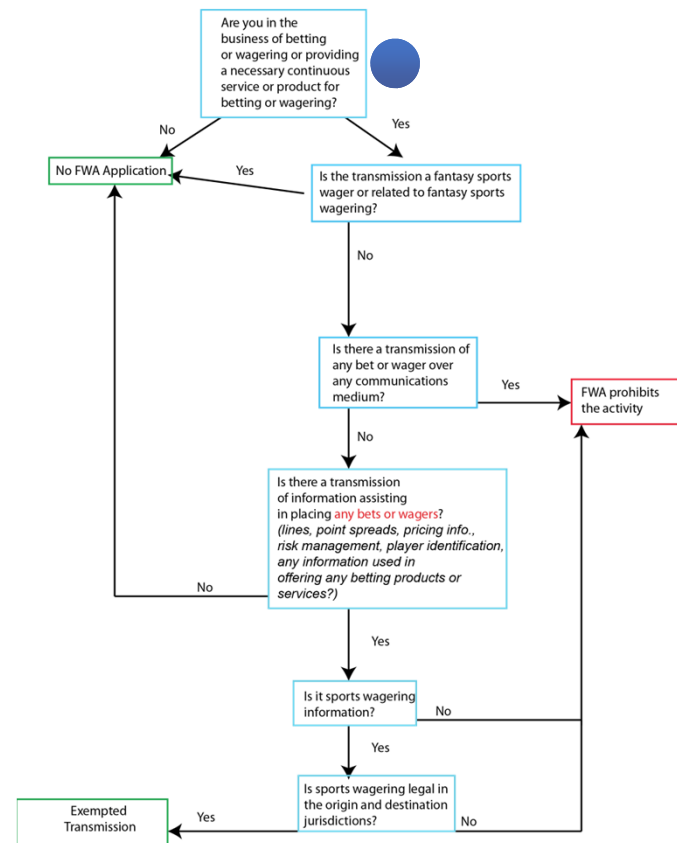
Is there a transmission of a bet?
No (just information)

Is the transmission of information used to place bets?
Yes (informs players of jackpot)

Is it sports wagering information?
No (casino gaming)

RAWA FWA prohibited

Federal Wire Act: Flowchart if RAWA is Enacted



RAWA - Illegal Conduct

Negotiating Significant Player Agreements via Phone or E-Mail

Are you in the business or wagering?
YES

Is it a fantasy sports transmission?
No (casino gaming)

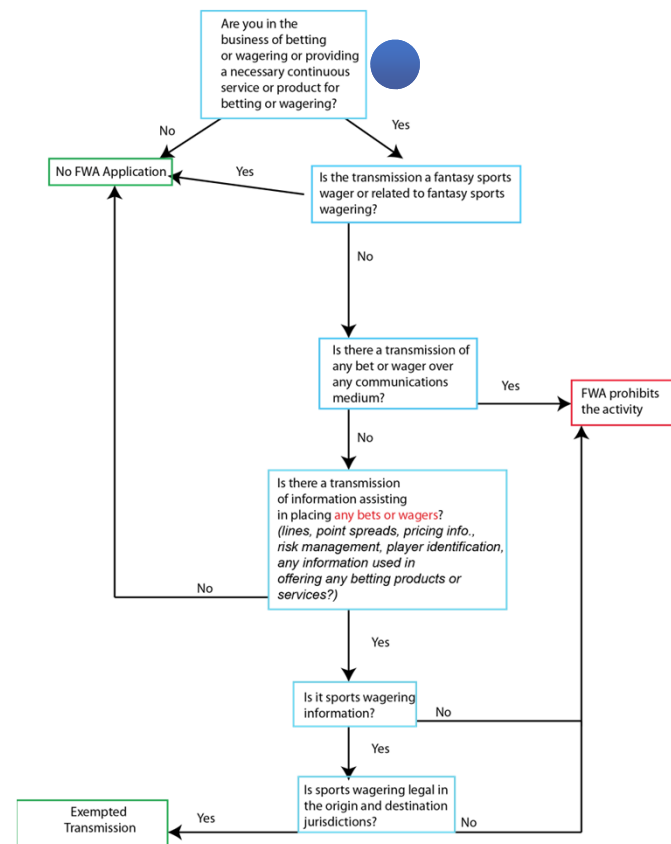
Is there a transmission of a bet?
No (just information)

Is the transmission of information used to place bets?
Yes (terms of wagering)

Is it sports wagering information?
No (casino gaming)

RAWA FWA prohibited

Federal Wire Act: Flowchart if RAWA is Enacted



Federal Wire Act

- Restoration of America's Wire Act

Federal Wire Act

- Restoration of America's Wire Act
 - Hearings are a disaster and the bill dies

Federal Wire Act

LIVE
8:26 am PT

SEN. JEFF SESSIONS (R-AL)
Attorney General Nominee

SEN. LINDSEY GRAHAM
R-South Carolina

ATTORNEY GENERAL CONFIRMATION

FOR MORE INFORMATION
judiciary.senate.gov

C-SPAN
c-span.org

AHEAD SENS. DURBIN (D-IL), CORNYN (R-TX)

9:02 / 1:01

Federal Wire Act

- January 2019 DOJ Opinion
 - Reinterprets the Federal Wire Act prohibitions again

Federal Wire Act

- Evolutionary Interpretation - 2019 Opinion
- States there is no tension between the UIGEA and Federal Wire Act
 - Removes basis for interpreting the Federal Wire Act to not be applicable to intrastate wagering
- Implies NY and IL lotteries must not rely on the 2011 opinion to continue intrastate online lottery product sales

Federal Wire Act

- **18 USC §1084**

- (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.**

interstate and foreign commerce only impact the first clause

no sporting event after bets or wagers

sporting event or contest only modifies information assisting

a second transmission without reference to interstate or foreign commerce is present in the second clause and no references to sporting event or contest

Federal Wire Act

- More fallout...

Federal Wire Act

- New Hampshire District Court Opinion
 - What are the issues?

Federal Wire Act

- New Hampshire District Court Opinion
 - What are the issues?
 - Whether the Federal Wire Act applies to state actors?
 - Whether the Federal Wire Act prohibitions are limited to sports wagering?

Federal Wire Act

- New Hampshire District Court Opinion
 - Will the court rely on the Lyon's opinion that issued a jury instruction stating the Federal Wire Act applies to sports wagering only?

Federal Wire Act

- New Hampshire District Court Opinion
 - Will the court rely on the Lyon's opinion that issued a jury instruction stating the Federal Wire Act applies to sports wagering only?
 - "I cannot defer to the circuit court's unconsidered dictum in Lyons"

Federal Wire Act

- New Hampshire District Court Opinion
 - In the 2019 Opinion, the DOJ argues the sporting events and contests language only limits the first “information assisting” prohibition to sports wagering and thus the Wire Act’s other prohibitions apply to all sports wagering, does the court agree?

Federal Wire Act

- New Hampshire District Court Opinion
 - In the 2019 Opinion, the DOJ argues the sporting events and contests language only limits the first “information assisting” prohibition to sports wagering and thus the Wire Act’s other prohibitions apply to all sports wagering, does the court agree?
 - As the OLC concluded in 2011, the omission of the interstate-commerce modifier from the second clause “suggests that Congress used shortened phrases in the second clause to refer back to terms spelled out more completely in the first clause.” 2011 OLC Opinion at 7. I agree with the 2011 OLC Opinion that this instance of borrowing by the drafters of § 1084(a) gives textual support for similarly importing the sports-gambling modifier into the second clause.

Federal Wire Act

- New Hampshire District Court Opinion
 - New Hampshire District Court Opinion
 - Many states filed Amicus briefs. Did the court extend its holding beyond New Hampshire and its vendors?

Federal Wire Act

- New Hampshire District Court Opinion
 - New Hampshire District Court Opinion
 - Many states filed Amicus briefs. Did the court extend its holding beyond New Hampshire and its vendors?
 - The parties nevertheless disagree as to whether a declaratory judgment should be limited to the parties or have universal effect.¹⁵ The plaintiffs maintain that declaratory relief “necessarily extends beyond the [Commission] itself.” Doc. No. 58 at 21. The Government contends that any declaratory relief must apply only to the parties to the case. I agree with the Government.

Federal Wire Act

- New Hampshire District Court Opinion
 - New Hampshire District Court Opinion

The judgment provides the Lottery Commission and NeoPollard complete relief. No more is needed.

III. CONCLUSION

In summary, I deny the Government's motion to dismiss for lack of jurisdiction (Doc. No. 45) because the plaintiffs have established standing, and the Government has not met its burden to show that the case is moot. I grant the plaintiffs' motions for summary judgment (Doc. Nos. 2 & 10) and deny the Government's cross-motion for summary judgment (Doc. No. 45). I hereby declare that § 1084(a) of the Wire Act, 18 U.S.C. § 1084(a), applies only to transmissions related to bets or wagers on a sporting event or contest. The 2018 OLC Opinion is set aside. SO ORDERED

Federal Wire Act

- New Hampshire District Court Opinion
 - In August 2019 the DOJ Appeals

The screenshot shows the SBCAMERICAS website with a navigation bar at the top containing links for Home, North America, Latin America, News By Sector, Features, Events, and Featured. The main content area features a large image of the United States Court of Appeals Building with the headline "DoJ files notice of appeal against New Hampshire Wire Act ruling" by Chris Murphy, dated August 16, 2019. Below the headline are social media sharing buttons for Facebook, Twitter, Google+, and LinkedIn. The article text states that the US Department of Justice (DoJ) has filed a notice of appeal following a decision in June by the United States District Court for the District of New Hampshire. A sidebar on the right titled "EVENT NEWS" lists two items: "AGA Hall of Fame welcomes three new inductees at G2E ceremony" (October 1, 2019) and "NCLGS publishes robust three-day agenda for 2020 Winter Meeting" (September 30, 2019).

Federal Wire Act

- New Hampshire District Court Opinion
 - In August 2019 the DOJ Appeals

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SBCAMERICAS

Home North America Latin America News By Sector Features Events Featured

Home - Latest News - DoJ files notice of appeal against New Hampshire Wire Act ruling

JOHN MINOR WISDOM
UNITED STATES COURT OF APPEALS BUILDING
FIFTH CIRCUIT

Latest News North America Sportsbook USA

DoJ files notice of appeal against New Hampshire Wire Act ruling

By Chris Murphy - August 16, 2019

Facebook Twitter Google+ LinkedIn

The **US Department of Justice** (DoJ) has filed a notice of appeal following the decision in June by the **United States District Court for the District of New Hampshire** to find in favor of the New Hampshire Lottery Commission (NHLC) in the long-awaited ruling on last year's revised opinion of the **Wire Act** by the DoJ.

The notice of appeal reads: "Please take notice that all Defendants (the United States of America; the United States Department of Justice; and William Barr, in his official capacity as Attorney General) hereby appeal to the United States Court of Appeals for the First Circuit from the Court's June 20, 2019 Judgment, as well as the Court's June 3, 2019, Memorandum and Order and the Court's April 12, 2019 Order.

EVENT NEWS

AGA Hall of Fame welcomes three new inductees at G2E ceremony
Events October 1, 2019

NCLGS publishes robust three-day agenda for 2020 Winter Meeting
Casino September 30, 2019

Federal Wire Act

- Appeal, oral arguments heard in June, 2020.
- No opinion yet from the first circuit

The screenshot shows a news article on the SBC AMERICAS website. The article is titled "DoJ files notice of appeal against New Hampshire Wire Act ruling" and is dated August 16, 2019, by Chris Murphy. The main image is a photograph of the John Minor Wisdom United States Court of Appeals Building in the Fifth Circuit. The article text states that the US Department of Justice (DoJ) has filed a notice of appeal following a decision in June by the United States District Court for the District of New Hampshire. The article also includes a quote from the notice of appeal regarding the defendants' appeal to the United States Court of Appeals for the First Circuit.

SBC CORPORATE SBC NEWS SBC EVENTS SBC MEDIA CASINOBEATS NEWSLETTER ABOUT US

SBCAMERICAS

Home North America Latin America News By Sector Features Events Featured

Home Latest News DoJ files notice of appeal against New Hampshire Wire Act ruling

UNITED STATES COURT OF APPEALS BUILDING JOHN MINOR WISDOM FIFTH CIRCUIT

Latest News North America Sportsbook USA

DoJ files notice of appeal against New Hampshire Wire Act ruling

By Chris Murphy - August 16, 2019

Facebook Twitter Google+ LinkedIn

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Events October 1, 2019

NCLGS publishes robust three-day agenda for 2020 Winter Meeting
Casino September 30, 2019

QUESTIONS