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IGT Lawsuit Adds New Chapter To Eternal Wire Act Saga

Lawsuit seeks to extend New Hampshire decision to Rhode Island

Justice Department pressed for clarification on Wire Act's scope

It has been 60 years since President Kennedy signed it into law, but instead of fading into irrelevance the Wire Act remains significant as the U.S. gaming industry transitions into a digital era.

The latest example of the Wire Act's lingering impact occurred on November 23 when International Game Technology (IGT) filed a lawsuit against the U.S. Department of Justice (DOJ) in a federal court in Providence, Rhode Island.

The lawsuit seeks a declaratory judgment from the Justice Department that the Wire Act does not ban interstate transmissions related to forms of internet gaming other than sports wagering.

"IGT's entire non-lottery gaming business is subject to prosecution and DOJ has offered only the promise of a 90-day heads up before it can subject IGT's lottery business to the Wire Act as well," lawyers for IGT led by Mark Hichar, attorney for Greenberg Traurig, wrote in the 18-page lawsuit.

The issue of the Wire Act's scope appeared to be settled in January when the First U.S. Circuit Court of Appeals in Boston **upheld** New Hampshire's challenge of a 2018 opinion by the Justice Department's Office of Legal Counsel (OLC).

The First Circuit categorically rejected the OLC's **conclusion** that the Wire Act prohibits internet gaming and online lotteries and ruled the federal ban applied only to sports betting across state lines.

But IGT noted that the First Circuit opinion applies only to New Hampshire and its online lottery vendor, NeoPollard Interactive, while other companies in other states are still subject to prosecution under the Wire Act.

“IGT is confident that the District Court of Rhode Island will rule in a manner that is consistent with the precedent established by the First Circuit Court of Appeals that the Wire Act applies only to sports betting,” Phil O’Shaughnessy, vice president of global communications for IGT, told VIXIO Gambling Compliance in an email on Tuesday.

The U.S. Justice Department did not immediately respond to a request for comment.

Although the gaming industry stands to benefit if IGT prevails in its lawsuit against the Justice Department, there is the potential for the lawsuit to backfire.

In February, shortly after the First Circuit issued its ruling, the executive director of the New Hampshire Lottery — **Charlie McIntyre** — urged other states to be cautious in pressing the Justice Department for an opinion to enable the expansion of online gambling operations.

“This is a solid A-,” McIntyre said of the First Circuit decision.

“If you get an A-, really, [do] you want to take the test again? Because it can get worse. That’s the downside risk.”

The First Circuit decision continues to fuel a debate within the gambling industry about whether to seek more guidance from the Justice Department on the Wire Act’s reach.

Meanwhile, there seems to be limited appetite within the industry to lobby Congress for Wire Act amendments to facilitate the sports-betting and online gambling market.

“God help us if we crack open that shell,” McIntyre said.

Jeff Ifrah, founder of the online gambling association iDEA Growth in Washington, D.C., downplayed any concerns about a counterproductive result from the Rhode Island court’s decision in the latest Wire Act case.

“Almost no chance because IGT filed it in Rhode Island and the district courts in Rhode Island must follow the precedent of the First Circuit where the New Hampshire case was decided and affirmed,” Ifrah said.

John Holden, an assistant business professor at Oklahoma State University who writes frequently about the gaming industry, agreed.

“Rhode Island joins New Hampshire in the First Circuit, so the NeoPollard case should serve as precedent,” Holden said.

More than two-dozen states sought to join New Hampshire in its lawsuit against the 2018 opinion by the Justice Department’s OLC, but Ifrah said that is not going to happen in the more limited Rhode Island case.

“This lawsuit is purely to allow IGT to ‘buy’ a judgment that protects IGT and not merely ride on the coattails of a case that involved NeoPollard,” Ifrah said.

The 2018 opinion by the Justice Department’s OLC was written and published during the administration of President Trump, and many gaming industry officials perceived it as a payoff to Las Vegas Sands boss Sheldon Adelson, who was Trump’s biggest financial donor and an aggressive opponent of internet gambling.

Adelson **died** in January and the Justice Department, under the administration of President Biden, did not meet the **June 21 deadline** for appealing the First Circuit’s decision in the New Hampshire case to the U.S. Supreme Court.

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