

# Wanna Bet? Broadcasters Face a Murky Legal Landscape in Gaming Advertising

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In recent years, internet “peer-to-peer” poker has become increasingly popular, as evidenced by the number of “i-gaming” websites devoted exclusively to hosting virtual card tables. Players logging in to these websites are able to download software and “sit” at a virtual table with other users—whether located next door or halfway around the world—to play against one another. Seeking to advertise their websites, online gaming companies are approaching broadcasters more and more frequently to buy advertising time. Broadcasters, however, are wary of the tangle of state and federal regulations governing gambling and gambling advertisements, and question whether they can lawfully air ads for online poker and other forms of i-gaming. Two recent events do little to resolve broadcasters’ quandary, although they may have a significant impact on the legal landscape in the years to come.

On April 7, 2011, the District of Columbia became the first American jurisdiction to legalize internet gaming. The “Lottery Modernization Amendment Act of 2010,” part of the District’s fiscal year 2011 budget proposal submitted to Congress in December 2010, re-defines “lottery” to include both traditional “games of chance,” as well as “games of skill.” The law enables the DC Lottery to run not only random-number “chance” games, but also skill-based games, such as poker. The District plans to establish a private computer network run by the DC Lottery that would allow persons physically located within DC to play online poker. Because the act envisions an entirely intrastate online poker system, proponents argue that it does not run afoul of the Unlawful Internet Gambling Enforcement Act (UIGEA). Enacted in 2006, UIGEA “prohibits any person engaged in the business of betting or wagering from knowingly accepting payments

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in connection with the participation of another person in unlawful Internet gambling.” Although UIGEA does not define “unlawful Internet gambling,” leaving it instead to state law, it does specifically exempt “bet[s] or wager[s ] initiated and received or otherwise made exclusively within a single State.”

Just over a week after DC legalized Internet gaming, the Department of Justice (DOJ) dealt the online gaming industry a rather different hand. On April 15, 2011, the DOJ indicted 11 top executives at three of the largest pay-to-play online poker gaming websites, accusing them of illegal gambling, bank fraud and money laundering in violation of UIGEA.<sup>1</sup> After UIGEA's passage, a number of online poker companies ceased operating in the U.S.; others, like the companies indicted in April, continued to do so while maintaining offices physically located offshore. Because U.S. banks and credit card issuers were “largely unwilling to process the [] payments” of companies continuing to operate in the U.S., the DOJ alleges that the three indicted companies “used fraudulent methods,” such as disguising money received from U.S. gamblers as payments to non-existent online merchants, “to circumvent federal law and trick these institutions into processing payments on their behalf.”

The DOJ's recent enforcement efforts and moves by DC and other states to legalize online gaming have only added to the complex legal framework facing broadcasters considering whether or not to air advertisements for poker and other forms of gambling. Title 18, section 1304 of the U.S. Code bars U.S. radio and television stations from knowingly broadcasting “any advertisement of or information concerning any lottery . . . offering prizes dependent in whole or in part upon lot or chance . . . .” Congress amended this provision through the passage of Section 1307, which expressly exempts stations located in states with legally authorized lotteries from the Section 1304 ban on lottery-related broadcasts. Read together, these statutory provisions prohibit lottery-related broadcasts, but create an exception for those that both (1) pertain to a legally authorized state lottery and (2) air on broadcast stations located in a state which sponsors such a lottery. Arguably, these provisions would allow broadcasters located in DC to air advertisements for the DC Lottery's online poker gaming websites. The same would be true for broadcasters located in states with similar laws. The DOJ's recent enforcement actions, however, clearly signal the DOJ's aggressive stance towards enforcing anti-gambling laws and may counsel broadcasters against accepting advertisements for online gaming websites just yet.

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<sup>1</sup> The DOJ has previously employed a number of other federal statutes in its efforts to stamp out illegal online gambling. In 2006, for example, the DOJ charged BetonSports.com founder Gary Stephen Kaplan with 20 felony violations of various federal laws, including the Wire Act, Racketeer Influenced and Corrupt Organizations (RICO) Conspiracy, interstate transportation of gambling paraphernalia, interference with the administration of Internal Revenue laws and tax evasion. In August 2009, Mr. Kaplan pleaded guilty to racketeering and conspiracy charges and received a sentence of more than four years in prison as part of a plea agreement.