

DOJ Files Motion to Dismiss IGT's Lawsuit Over Federal Wire Act

IGT asked for more time after DOJ filed a motion to dismiss the company's lawsuit, arguing that IGT has not proven that it faces a credible threat of prosecution.

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- As first reported exclusively on US Gaming Review, the Department of Justice (DOJ) urged a district court judge to throw out the lawsuit filed in November by IGT over the department's position on the federal Wire Act.
- The company argues that its non-lottery gaming business is vulnerable to prosecution under the Wire Act and has demanded clarity on the matter.
- The DOJ said that IGT has not alleged that the Wire Act limited its business activities or that the company has either been prosecuted or been threatened with prosecution.

By Charlie Passut
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As first reported exclusively on [US Gaming Review](#) last week, the [Department of Justice \(DOJ\) urged a district court judge to throw out the lawsuit](#) filed in November by IGT over the department's position on the federal [Wire Act](#). The department argues that the company — the largest provider of iGaming and lottery services in the US — failed to prove that it faces a credible threat of prosecution under the controversial law.

In a new development last Friday, IGT responded by asking Rhode Island District Court Judge William Smith to give it until mid-March to file its objection to the DOJ's motion to dismiss the case. Court records show the DOJ did not object to giving the company more time to respond.

If Smith grants IGT's request, the company will have until March 16 to file its opposition to the DOJ's motion to dismiss. As of Sunday evening, Smith, a 2002 appointee of President George W. Bush, had yet to rule on the week-long extension.

[In November 2021, IGT filed a lawsuit against the DOJ](#) over conflicting opinions issued by its Office of Legal Counsel (OLC) during the Obama and Trump administrations. While the [Obama DOJ said in 2011](#) that the Wire Act applied only to sports betting, the [Trump DOJ reversed](#) the department's thinking on the issue in 2018.

The company argues that its non-lottery gaming business is vulnerable to prosecution under the Wire Act and has demanded clarity on the matter.

But in a motion to dismiss filed on February 23, the government said that, since IGT "does not allege that it engages in sports gambling," it is not at risk for prosecution. The DOJ added that IGT has not alleged that the Wire Act limited its business activities or that the company has either been prosecuted or been threatened with prosecution.

"The message is that a declaratory judgment is not necessary because DOJ concedes the Wire Act does not apply to lottery and casino"

DOJ argues that IGT "implicitly seeks to extend the benefit of favorable First Circuit precedent to other jurisdictions where it engages in non-sports gambling — jurisdictions where courts have not yet decided whether the Wire Act reaches any non-sports gambling."

The “First Circuit” reference pertains to a [January 2021 ruling](#) by the First Circuit Court of Appeals. The appellate court ruled that the Wire Act applies only to online sports betting — not online poker or iGaming. The case in question is *New Hampshire Lottery Commission v. Barr*.

“IGT fails to establish a credible threat of prosecution even in those jurisdictions. Under these circumstances, the perceived threat that IGT may be prosecuted in some other jurisdiction for its non-sports gambling activities is merely speculative and certainly not imminent or substantial,” the DOJ wrote in its motion to dismiss.

Attorneys who specialize in US gaming law had a wide range of reactions to the DOJ’s motion to dismiss.

While Saiber LLC’s Jeremy Kleiman called the DOJ’s move “a standard litigation step” that was “nothing unusual,” he also said the government’s decision to move to dismiss the case is telling.

“The message is that a declaratory judgment is not necessary because DOJ concedes the Wire Act does not apply to lottery and casino, at least in the First Circuit, so there is no disagreement or ‘controversy’ between the parties,” Kleiman told *Poker Industry PRO*. “Moreover, DOJ admits they’ve not attempted to prosecute any such case outside the First Circuit, so there is no threat of prosecution anywhere in the country.

“I read the motion as an acknowledgment that IGT will not be prosecuted unless the First Circuit decision in the *New Hampshire Lottery* case is overturned,” Kleiman added.

Behnam Dayanim, a partner in the Washington, DC office of Paul Hastings LLP, called the DOJ’s filing “an unmistakable ‘wink and nod’” to the gaming industry.

“The DOJ evidently does not want to go on record disavowing the prior administration’s position but is telegraphing that it has no intention of pursuing prosecutions against lawful internet gambling under the Wire Act,” Dayanim [said to US Gaming Review](#). “Of course, by leaving the OLC opinion in place, the DOJ leaves open the possibility that a future AG might take a different view.

“But, for now, at least, the Administration’s position seems clear: lawful iGaming, online lotteries, and sports betting will not be subject to federal prosecution,” Dayanim continued.

Jeff Ifrah, of Ifrah Law PLLC, said the question now is whether the First Circuit’s ruling impacts the likelihood of future prosecution under the Wire Act.

“Has the analysis of the facts necessary to resolve the question of future prosecution changed?” Ifrah asked [in a statement issued to US Gaming Review](#). “It is possible the IGT court could answer ‘yes’ and agree with DOJ on this issue.”

Gregory Gemignani, an attorney with Dickinson Wright PLLC, cautioned against reading too much into the DOJ’s motion to dismiss.

“My gut tells me it is an effort by the DOJ to get one more thing off its plate without spending significant time on the matter,” Gemignani told *US Gaming Review*. “It has nothing to do with the interpretation of the Wire Act or this administration’s willingness to support the Trump DOJ interpretation of the Wire Act.”

Anthony Cabot, Distinguished Fellow in Gaming Law at the Boyd School of Law, University of Nevada-Las Vegas (UNLV), called the DOJ’s response “disappointing.”

“Effectively, the DOJ is saying, ‘we haven’t prosecuted anyone for some time, and we do not have plans on doing so, so IGT should just go away.’ However, this hardly settles the issue and would leave standing the erroneous 2018 opinion despite its weakened state from the *New Hampshire Lottery* case.

“I am disappointed that DOJ effectively concedes that the 2018 opinion is legally incorrect yet is willing to let it stand. A change of administration, a couple of key donors, an ineffective Congress, and a hyper-partisan US Supreme Court could bring this full circle in a couple of years.”

The case is *IGT et al v. Garland et al.* (No. 1:21-cv-00463).

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