

Behind State Lines: Is It Time to Cash in on Legalized Sports Betting?

6th Edition: Trends in Marketing Communications Law

The Supreme Court's 2018 decision in *Murphy v. National Collegiate Athletic Association* (*Murphy*) to overturn the Professional and Amateur Sports Protection Act (PASPA) seemingly opened the door for states to legalize sports betting. The ruling promised to transform the sports and media industries and create new opportunities to monetize sporting events.

Since the *Murphy* decision, several states have begun offering legal sports betting (including mobile app-based sports books), and many others are seeking to do the same. While this decision is a big win for daily fantasy sports and sports books, the potential for growth in legalized sports betting lies in online transactions. However, the operation and advertising of online sports betting platforms raise new legal questions that need to be considered.

In particular, the Interstate Wire Act of 1961 (Wire Act) prohibits the interstate transmission of sports wagers, the winnings of such wagers, or information assisting the placing of wagers. While the Wire Act is not triggered by communications that occur entirely within state lines, intermediate transmissions that cross state lines are subject to federal jurisdiction. Given the decentralized transmission of information over the Internet, online gambling and sports book operators may find themselves in violation of federal law, even if legally operating under state law.

The Court did offer a glimmer of hope in the *Murphy* decision, suggesting that the Wire Act would not be implicated so long as wagering was legal in the states where the interstate transmissions occurred. This contradicted the long-held view that the Wire Act was independent of a state's gambling laws. As more states legalize sports betting, this novel interpretation could be game-changing.

In contrast, the U.S. Department of Justice (DOJ) has consistently interpreted the Wire Act to aggressively prohibit gambling-related activity. In 2003, the DOJ took the position that media outlets running ads for illegal offshore online sports books were aiding and abetting those operations and were punishable as principal violators of the Wire Act. More recently, the DOJ issued a reinterpretation of the Wire Act that more broadly applies the Wire Act to non-sports, including online poker, lotteries and other gambling.

At the center of these opposing forces seeking to loosen and restrict sports betting are individual states. For example, some states have taken measures to protect participants in the sports betting market by restricting where computers and other equipment used for wagering can be located. Others have attempted to define their way around the Wire Act by providing that the intermediate routing of electronic data will not determine the location of a wager.

Until federal restrictions such as the Wire Act are aligned with the overturning of PASPA, businesses seeking to capitalize on sports betting must wait for federal clarity or move forward behind the shield of state legislation. At a minimum, marketers looking to advertise their wagering platforms and online publishers contemplating whether to open their ad inventory to these marketers, will need to implement geolocation and other technologies to ensure that wagering is only available and ads are only served to individuals who are physically located in the relevant jurisdiction and meet gambling eligibility requirements. With the

explosive potential of this industry, both federal and state lobbying is sure to be intense to create certainty in this shifting landscape.

Key Takeaways

- Despite state-by-state control over state-based sports betting, federal law still applies to interstate online sports betting operations and those who publish their ads.
 - Sponsors, publishers, data processors, marketers and their agencies should consider all available technologies, including geo-fencing techniques, in creating campaigns for lawful online sports books.
 - Businesses in the sports betting industry should monitor developments at both the federal and state level when developing legal compliance strategies.
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