

RE-INTERPRETING AND AMENDING THE WIRE ACT AND THE UNLAWFUL  
INTERNET GAMBLING ENFORCEMENT ACT TO ADDRESS MODERN FORMS OF  
ONLINE GAMBLING

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INTRODUCTION

Two current laws that address gambling activities are the Wire Act<sup>1</sup> and the Unlawful Internet Gambling Enforcement Act<sup>2</sup> (UIGEA). Both Acts are similar in that their history, application, and current overall strength are somewhat dim. For over a year now, the video streaming platform Twitch.com has developed a close relationship with online casino gambling sites. There is a large amount of business done between high earning Twitch streamers and online casino gambling sites.<sup>3</sup> Many of these online casino sites are located offshore because the types of gaming practices they are engaged in are illegal in the U.S. However, they are still managing to make money from U.S. residents. Because of technological advancements, such as cryptocurrencies and virtual private networks (VPNs), these online practices have not been heavily regulated as of this point. The need to address these practices to protect U.S. residents, especially young people, is evident. This note will first provide background on two current laws that regulate gambling. Next, it will provide background on gambling and how gambling works on Twitch. Then, it will explain re-interpreting the Wire Act, followed by an analysis of amending the Wire Act and the UIGEA.

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<sup>1</sup> Transmission of Wagering Information Act, 18 U.S.C. § 1084 (1961).

<sup>2</sup> 31 U.S.C. §§5361-5367 (2006).

<sup>3</sup> Nicolas Perez, *On Twitch, Online Casino Streamers Promote Gambling to Their Audience While Taking on Little Risk*, PASTE MAGAZINE (Dec. 21, 2020), <https://www.pastemagazine.com/games/twitch/twitch-online-casino-streamers/>.

## BACKGROUND

### I. The Wire Act

The Wire Act's<sup>4</sup> history began in 1961 when Robert F. Kennedy, the Attorney General at the time, proposed this bill along with others in order to get more control over organized crime, namely mafia organizations.<sup>5</sup> The Wire Act makes it a federal crime to pass gambling information and instructions across state lines using electronic wires.<sup>6</sup> Despite the Wire Act's early 1960s inception, the Act did not come into prominence until the late 1990s when online gambling really started to grab the attention of gambling fanatics.<sup>7</sup> The Wire Act faced two issues from proposal to enforcement: first, what is the scope of the Wire Act and second, does the Wire Act only cover sports gambling?<sup>8</sup> In 2001, Congress promulgated the first major declaration of the Wire Act's scope when it stretched the coverage of the Wire Act over all Internet gambling, whether sports related or not.<sup>9</sup> Governmental officials also felt the need to get ahead of online crimes.<sup>10</sup> But this interpretation fell short as some states began challenging the 2001 opinion with regard to the threat of their own state lotteries.<sup>11</sup> The popularity of online

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<sup>4</sup> 18 U.S.C. § 1084 (1961).

<sup>5</sup> Michelle Minton, *The Original Intent of the Wire Act and Its Implications for State-based Legalization of Internet Gambling*, Occasional Paper Series, 29. UNLV: CENTER FOR GAMING RESEARCH (Sept. 2014), [https://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=1035&context=occ\\_papers](https://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=1035&context=occ_papers).

<sup>6</sup> Bart Shirley, *A Guide to Understanding the Wire Act*, PLAY USA (last updated Aug. 23, 2022), <https://www.playusa.com/us/wire-act/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *What is the Federal Wire Act?*, LEGAL SPORTS BETTING (Oct. 5, 2022), <https://www.legalsportsbetting.com/what-is-the-wire-act/>.

<sup>10</sup> Minton, *supra* note 5. (Sen. Lindsey Graham and Rep. Jason Chaffetz introduced the Restoration of America's Wire Act (RAWA) as an effort to stop the progression of legalized online gambling. This proposal would create a *de facto* federal prohibition and prevent states' attempts to legalize internet gambling. RAWA would create a federal prohibition on all forms of internet gambling, even if it was done within the same state that permits the activity. One change that RAWA included was replacing the Wire Act's wording from "sports gambling" to "internet").

<sup>11</sup> Virginia A. Seitz, Office of Legal Counsel, U.S. Dep't of Justice, *Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act* (Sept. 20, 2011) (New York and Illinois had plans to use the Internet and out-of-state transaction processors to sell lottery tickets to adults within their state. The Criminal Division's view was that both state proposals may violate the Wire Act as at this time the DOJ stands on the position that the Wire Act is not limited to sports activity and can be applied to other forms of gambling, even if conducted entirely within one state).

gambling prompted the Office of Legal Counsel (OLC) in the Department of Justice to state their opinion on the matter.<sup>12</sup> In 2011, the OLC announced its opinion, stating that the intention of the Wire Act from its inception was to target organized crime from taking bets on sports and not as a broad federal prohibition that would prevent states from legalizing online gambling.<sup>13</sup>

The Fifth Circuit Court was the first of the circuit courts to issue a ruling related to this matter in the 2002 case *In re Mastercard Int'l Internet Gambling Litig.*<sup>14</sup> In this case, the Court aligned itself with the 2011 OLC opinion and affirmed the district court's interpretation that the language of the Act expresses an intention to require the gambling activity to be a sporting event or contest in order for it to fall under the scope of the Wire Act.<sup>15</sup> In 2014, the First Circuit Court followed by issuing an opinion in *United States v. Lyons*<sup>16</sup> agreeing with the Fifth Circuit and the 2011 OLC opinion.<sup>17</sup> At this point, courts adopted a cohesive stance on the application of the Wire Act. The 2011 Justice Department slip opinion, which courts are not required to follow when issuing opinions, reflects the consensus of the Wire Act's applicability.<sup>18</sup>

Then in 2018, the Justice Department reinterpreted the Wire Act and issued a new opinion in which it determined that the Wire Act applies to online gambling activities, even those unrelated

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* (The DOJ opinion makes note that some members of Congress have propositions that would rewrite and reinterpret the 1961 Wire Act in order to be used against all forms of online gambling, whether the activity is sports related or not).

<sup>14</sup> *In re Mastercard Int'l Internet Gambling Litig., Inc.*, 313 F.3d 257 (5th Cir. 2002).

<sup>15</sup> *Id.* at 262 (“The district court concluded that the Wire Act concerns gambling on sporting events or contests and that the Plaintiffs had failed to allege that they had engaged in internet sports gambling”).

<sup>16</sup> *United States v. Lyons*, 740 F.3d 702 (1st Cir. 2014).

<sup>17</sup> *Id.* At 718 (citing 18 U.S.C. § 1084(a)) (“The Wire Act applies only to ‘wagers on any sporting event or contest,’ that is, sports betting.”)

<sup>18</sup> John Holden, *Does the New Wire Act Memo on Online Gambling Have a Legal Leg to Stand On?*, LEGAL SPORTS REPORT (Jan. 15, 2019), <https://www.legalsportsreport.com/27631/holden-new-wire-act-memo/>.

to sports.<sup>19</sup> This new opinion noted that the plain language of the statute disallows adherence to the 2011 opinion because it is inconsistent with the plain meaning of the Wire Act.<sup>20</sup> As a response to this new opinion, the state of New Hampshire sued the United States, Department of Justice, and U.S. Attorney General, arguing that the Wire Act only applies to bets and wagers that are placed on sporting events.<sup>21</sup> The First Circuit ruled in favor of New Hampshire, doubling down on their 2014 decision and again with the Fifth Circuit.<sup>22</sup> Despite the reinterpretation memos and circuit court rulings, polarizing opinions remain as to what the scope of the Wire Act should be.<sup>23</sup> Presently, New Hampshire is at the forefront of legalizing sports betting and potentially working to remove the Wire Act completely.<sup>24</sup>

## II. The Unlawful Internet Gambling Enforcement Act of 2006

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<sup>19</sup> Steven A. Engel, *Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*, 42 Op. O.L.C. \_\_, at \*1, 2018 WL 7080165, at \*1 (Nov. 2, 2018) (“...[W]e conclude that the words of the statute are sufficiently clear and that all but one of its prohibitions sweep beyond sports gambling”). The opinion states that the “prohibitions of 18 U.S.C. § 1084(a) are not uniformly limited to gambling on sporting events...the second prohibition of the first clause of section 1084(a) is so limited [to sports]...the other prohibitions apply to non-sports-related betting or wagering...”

<sup>20</sup> *Id.* Engel states that the 2011 Opinion incorrectly interpreted the limitation “on any sporting event or contest” (the “sports-gambling modifier”) to apply beyond the second prohibition that it directly follows: the prohibition on transmitting “information assisting in the placing of bets or wagers.” *Id.* Engel reasoned that the text of section 1084(a)’s first clause could be read either way [to apply to sports betting or non-sports betting] because section 1084(a) lacks “a comma after the first reference to ‘bets or wagers.’” *Id.* at 7 (citation omitted). Engel states that if a comma was put in that section of the statute that such comma would have made it plausible that the first prohibition in section 1084(a) was not limited to sports gambling only. *Id.*

<sup>21</sup> *New Hampshire Lottery Comm’n v. Rosen*, 986 F.3d 38 (1st Cir. 2021). *See also* Anthony R. Holtzman, *Sports and Only Sports: 1<sup>st</sup> Circuit Addresses Scope of the Wire Act*, XII THE NATIONAL LAW REVIEW (Jan. 27, 2021), <https://www.natlawreview.com/article/sports-and-only-sports-1st-circuit-addresses-scope-wire-act> (New Hampshire “authorized an online lottery regime in reliance on the OLC’s 2011 opinion...”).

<sup>22</sup> *Id.* (The U.S. District Court for the District of New Hampshire issued a declaratory judgment that agreed with New Hampshire’s argument that the Wire Act only applies to bets and wagers that are placed on sporting events). *See, e.g.*, *In re Mastercard Int’l Internet Gambling Litig., Inc.*, 313 F.3d 257, 262 n.20 (5th Cir. 2002).

<sup>23</sup> Anthony R. Holtzman, *Sports and Only Sports: 1<sup>st</sup> Circuit Addresses Scope of the Wire Act*, XII THE NATIONAL LAW REVIEW (Jan. 27, 2021), <https://www.natlawreview.com/article/sports-and-only-sports-1st-circuit-addresses-scope-wire-act> (New Hampshire “authorized an online lottery regime in reliance on the OLC’s 2011 opinion...”).

<sup>24</sup> *What is the Federal Wire Act?*, LEGAL SPORTS BETTING, <https://www.legalsportsbetting.com/what-is-the-wire-act/>.

The Unlawful Internet Gambling Enforcement Act of 2006<sup>25</sup> (UIGEA) is a federal anti-gambling piece of legislation that prohibits financial institutions from knowingly accepting or processing illegal payments as determined by federal or state law.<sup>26</sup> The UIGEA prohibits persons who are “engaged in the business of betting or wagering” from knowingly accepting checks, credit card charges, electronic transfers, and similar payments in connection with unlawful internet gambling.<sup>27</sup> The UIGEA is essentially a repeat of already existing anti-gambling legislation.<sup>28</sup> The passage of the UIGEA sparked controversy due in part to the fact that it was proposed with another act, called the Security and Accountability for Every Port Act of 2006 (SAFE Port Act).<sup>29</sup> The SAFE Port Act involves codifying anti-terrorism initiatives that affect the security of U.S. ports.<sup>30</sup> This Act was favored by almost the entirety of Congress and thus passed in the House and Senate with no issues.<sup>31</sup> However, the UIGEA, attached as a rider to the SAFE Port Act, was also approved, with many lawmakers completely unaware of its presence in the language.<sup>32</sup>

The law targets Internet gambling operations as opposed to individual users who are gambling on their computers at home.<sup>33</sup> Unlike the Wire Act, the utilization of the UIGEA began

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<sup>25</sup> 31 U.S.C. §§ 5361-5367 (2006).

<sup>26</sup> *What is the Federal Wire Act?*, *supra* note 24.

<sup>27</sup> 31 U.S.C. § 5363. *See also* Legislative Attorney & Senior Specialist in American Public Law, *Unlawful Internet Gambling Enforcement Act (UIGEA) and Its Implementing Regulations*, CONGRESSIONAL RESEARCH SERVICE, CRS REPORT, (Apr. 10, 2012) (“The Unlawful Internet Gambling Act (UIGEA) seeks to cut off the flow of revenue to unlawful Internet gambling businesses”).

<sup>28</sup> *What is the Federal Wire Act?*, LEGAL SPORTS BETTING, <https://www.legalsportsbetting.com/what-is-the-wire-act/> (According to NJ Senator at the time, Frank Lautenberg, who was in opposition of the Act, “no one in the Senate-House Conference Committee, which approved tacking the UIGEA onto the SAFE Port Act, had ever even seen the final language of the bill before the vote was called”).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *UIGEA: Unlawful Internet Gambling Enforcement Act*, GAMBLINGSITES.ORG, <https://www.gamblingsites.org/laws/united-states/uigea/>.

almost immediately.<sup>34</sup> Once the UIGEA became official law, almost all foreign-based online gaming companies that offered services to the U.S. market started to reject American bettors.<sup>35</sup> Again to emphasize the initial power of the UIGEA, foreign online gaming companies were unaffected from the passage of the Wire Act, which was an Act itself and not a rider to a larger act, as the UIGEA was.<sup>36</sup> The UIGEA requires credit unions with any of the five designated payment systems to adhere to due diligence steps outlined in the UIGEA.<sup>37</sup> Credit unions create methods internally to comply with the UIGEA and create a process that allows them to continue their operations while conforming to the laws that they must follow.<sup>38</sup>

The UIGEA also brought a wave of financial difficulties for gambling websites.<sup>39</sup> Several gambling websites that chose to remain present in the U.S. market experienced a decrease in users, either by way of their own new restrictions in order to adhere to the UIGEA rules, or by user disengagement.<sup>40</sup> Gambling sites that managed to survive through the restrictions of the UIGEA did so by continuing to serve U.S. bettors and reducing the payment processing options and channeling gambling funds into markets that the U.S. government cannot control.<sup>41</sup> The

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<sup>34</sup> *What is the Federal Wire Act?*, LEGAL SPORTS BETTING, <https://www.legalsportsbetting.com/what-is-the-wire-act/>.

<sup>35</sup> *Id.* (This eventually ended as many of the restrictions for American bettors went away).

<sup>36</sup> *Id.*

<sup>37</sup> Debbie Matz, Chairman, *Unlawful Internet Gambling Enforcement Act of 2006*, NATIONAL CREDIT UNION ADMINISTRATION (Jun. 2010), <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/unlawful-internet-gambling-enforcement-act-2006> (The five payment systems are: automated clearing house (ACH), card systems, check collection systems, money transmitting businesses, and wire transfer systems).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *WHAT IS THE FEDERAL WIRE ACT?*, <https://www.legalsportsbetting.com/what-is-the-wire-act/> (For example, publicly traded companies with online poker gaming who were subsequently banned in the U.S. started banning American players, which drove down site traffic. Many companies sought to pull out of the industry immediately and take with them any money still sitting in player accounts).

<sup>41</sup> *Id.* (A decrease in payment process methods led to the existence of e-wallet services. However, these were eventually turned off due to the federal government filing suit against such services, reasoning that this violated the UIGEA).

complications of the wire transferring process seemed to diminish due in part by those online gambling sites sending gambling player's money through wire transfer services like Western Union, who use money orders and cryptocurrencies, such as Bitcoin and Ethereum.<sup>42</sup>

Despite the complicated and controversial history of the UIGEA, as of today, the law has little to no effect on new online casino gaming.<sup>43</sup> The UIGEA is not applicable today as the funding from offshore sportsbook accounts has moved on to credit cards, cashier's checks, and cryptocurrencies.<sup>44</sup> The UIGEA cannot stop cryptocurrencies as no government, state or federal, can claim jurisdiction over digital coins.<sup>45</sup> The abrupt introduction of the UIGEA allowed it to spike in interest and applicability, but eventually fell due to losing traction as financial technologies progressed.<sup>46</sup> Nevertheless, the UIGEA still exists today but has no close interaction with online gambling as of this time.<sup>47</sup>

### III. Gambling

Gambling is defined as “the practice or activity of betting: the practice of risking money or other stakes in a game or bet.”<sup>48</sup> The history of gambling in the U.S begins with Native Americans during the Precolonial America Era, who played games of chance as a part of their

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.* (This source emphasizes the relationship between the UIGEA and Bitcoin that in order to understand how the UIGEA will be applied in the future, understanding Bitcoin and other cryptocurrencies will assist in that application. Some argue that the UIGEA led to the creation of cryptocurrencies in order to circumvent the restrictions brought on by the UIGEA. Bitcoin, as of right now, has become the currency exchange of choice for sports bettors in the U.S.).

<sup>44</sup> *Id.*

<sup>45</sup> UIGEA: UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT, <https://www.gamblingsites.org/laws/united-states/uigea/>. (Cryptocurrencies, such as Bitcoin, have gained so much popularity that some gambling sites have the digital coins as the only method of payment).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Gambling*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/gambling>.

tribal ceremonies and celebrations.<sup>49</sup> Then, betting on horse racing, cockfighting, and bull baiting was introduced, tracing back to areas in New England brought over from European colonists during the Colonial Era.<sup>50</sup> Continuing into the mid to late 1700s, a surge of evangelical Christianity swept through parts of Europe and North American colonies that brought about more conservative moral values, establishing gambling as a sin and something that is dangerous to society.<sup>51</sup> The momentum of advocating against gambling continued, and in 1774 the Continental Congress of North American colonies issues the Articles of Association.<sup>52</sup> The Articles of Association stated in part that it would discourage “species of extravagance and dissipation, especially all horse racing, and all kinds of games...”<sup>53</sup>

Into the 1800s, lotteries began facing bans in many southern states based on immorality and susceptibility of fraud and scandal.<sup>54</sup> But shortly after the Civil War, lotteries gained presence due to the need to raise funds, but shortly fell in popularity as fraud and new laws changed restricting the practice once again.<sup>55</sup> The beginning of the 1900s brought another spike of instilling moral values and conservative practices, attempting to push gambling away from society altogether.<sup>56</sup> The 1930s was a reawakening for gambling with Nevada opening up gambling halls and eventually landing the first gambling license in Las Vegas.<sup>57</sup> During the early 1970s, the U.S. Commission on the Review of the National Policy toward Gambling found that

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<sup>49</sup> Elena Ivanovska, *History of US Gambling*, TIME2PLAY (Jun. 20, 2022).

<sup>50</sup> *Id.* (For example, bettors would gamble on how many dogs it would take to kill a bull). *See also*, Steven Riess, *The Cyclical History of Horse Racing: The USA’s Oldest and (Sometimes) Most Popular Spectator Sport*, INTERNATIONAL JOURNAL OF THE HISTORY OF SPORT (Mar. 2014).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* *See also*, *1774 Articles of Association*, NATIONAL ARCHIVES FOUNDATION.

<sup>53</sup> Ivanovska, *supra* note 49.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* (Federal law shut down all state lotteries by 1900).

<sup>57</sup> *Id.*



80% of Americans approved of gambling, with 67% engaging in gambling activity.<sup>58</sup> This unsettled attitude on gambling is not a foreign one; historically and into modern day, gambling has always remained a complicated function in society. The gambling timeline continues into one of the most prominent forms of gambling today: online gambling.<sup>59</sup>

The negative impacts are one reason for the messy and controversial history of gambling and gambling laws which starts from the beginning of its existence. When entering a physical casino, whether in a hotel lobby or casino strip, one of the first things young patrons will encounter is an ID check.<sup>60</sup> Gambling is only legal for those aged 21 years and older or 18 years and older, depending on which state the casino is located.<sup>61</sup> Age restrictions are put in place to prevent the youth from engaging in financially compromising situations.<sup>62</sup> One bad gaming decision may potentially take out savings, if not done with proper knowledge and skill for the game.<sup>63</sup> Another significant reason is the emotional and intellectual maturity needed to make decisions related to financial risk.<sup>64</sup> Based on one study, people do not fully mature until they reach the age of about 25.<sup>65</sup> It is clear that the nature of financial betting comes with severe consequences, ones that young people are simply not equipped to deal with, whether emotionally or financially.

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<sup>58</sup> Ivanovska, *supra* note 49.

<sup>59</sup> *Id.* (Internet gambling began mostly in the Caribbean which led to Great Britain participating in the activity and started implementing regulations which the U.S. subsequently did as well. The Unlawful Internet Gambling Enforcement Act of 2006 is one of the first major pieces of law during modern time that attempts to restrict certain gambling practices).

<sup>60</sup> Jeremiah Booker, *No, You Don't Have to Show Your ID to Casinos*, BEST US CASINOS (Aug. 1, 2020), <https://www.bestuscasinos.org/blog/no-you-dont-have-to-show-your-id-to-casinos/>.

<sup>61</sup> *Your Guide to Gambling by U.S. State – Minimum Legal U.S. Gambling Age*, CASINO.ORG, <https://www.casino.org/local/guide/>.

<sup>62</sup> Bradley Retter, *Why Are There Age Requirements for Gambling (Online and Off)?*, BEST US CASINOS (Jul. 23, 2019), <https://www.bestuscasinos.org/blog/why-are-there-age-requirements-for-gambling-online-and-off/>.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

Another noteworthy impact of gambling is the addictive nature of the sport.<sup>66</sup> Gambling addiction is the number one reason as to why so many contest the legalization and spreading of gambling.<sup>67</sup> Also, recent findings in science show that adolescents are more prone to addiction when compared to adults.<sup>68</sup> Adolescents that develop gambling habits almost always bring that addiction into their adults lives.<sup>69</sup> The types of addiction that develop when an adolescent carries an already existing addiction into adulthood many times reverts to criminal behavior.<sup>70</sup> Twitch is an online community where 21% of the users are between the ages of 13 and 17.<sup>71</sup> Thus, there is also a strong public policy argument in keeping the youth away from addiction: fewer addicted teens helps sustain a healthy and safe environment.<sup>72</sup> Ultimately, age restricted laws are put in place to protect young people from falling victim to gambling schemes and life altering choices that may devastate a person's financial and emotional state.<sup>73</sup>

#### IV. Gambling on the Internet

Twitch.com (Twitch), launched in 2011, “is a live-streaming platform for gamers and other lifestyle casters that supports building communities around a shared and streamable interest.”<sup>74</sup>

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<sup>66</sup> *Id.*

<sup>67</sup> Retter, *supra* note 62.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Cecilia D'Anastasio, *Twitch Streamers Rake in Millions with a Shady Crypto Gambling Boom*, ARSTECHNICA (Jul. 18, 2021, 7:45 am), <https://arstechnica.com/gaming/2021/07/twitch-streamers-rake-in-millions-with-a-shady-crypto-gambling-boom/?comments=1>.

<sup>72</sup> Bradley Retter, *Why Are There Age Requirements for Gambling (Online and Off)?*, BEST US CASINOS, (Jul. 23, 2019), <https://www.bestuscasinos.org/blog/why-are-there-age-requirements-for-gambling-online-and-off/>.

<sup>73</sup> *Id.*

<sup>74</sup> Devon Delfino, ‘What is Twitch?’: Here’s What You Need to Know About the World’s Leading Live-Streaming Platform for Gamers, INSIDER INC. (Jun. 11, 2020), <https://www.businessinsider.com/what-is-twitch> (Along with the ability to cast live streams, Twitch also allows recorded broadcasts).

As of February 2020, the user count on Twitch has reached 3.8 million.<sup>75</sup> Twitch users who choose to broadcast their gameplay, known as “streamers,” do so by sharing their screen with users who subscribe to their Twitch channel.<sup>76</sup> The way the Twitch interface looks is as follows: When a user accesses a streamer’s live stream they are presented with a split-screen display. The majority of the display will show the monitor of the streamer’s display and an additional smaller window will pop-up in the corner which allows them to see and hear the streamer.<sup>77</sup> Viewers have the ability to comment in the chat box, which appears on the left-hand side of the screen, allowing one to communicate with other viewers and the streamer.<sup>78</sup> Users may then engage with the streamer, albeit in a limited manner as no verbal communication takes place.<sup>79</sup> This makes Twitch a unique social media site because it allows users to engage with their favorite streamer in real time.<sup>80</sup>

The top Twitch streamers who already have large existing audiences are often contacted by online gambling casino companies.<sup>81</sup> The streamer and online casino then agree to a contract which generally includes the following: the online casino will provide the streamer with a fixed amount of money for every live gambling session they do.<sup>82</sup> That is, the streamer will get money from the online casino to gamble with while live streaming to their viewers and by the end of a

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.* (There are different tiers on Twitch that start off as free and progress with paid subscriptions that allow users to remove ads and gain access to more streaming and storage features).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Delfino, *supra* note 74.

<sup>80</sup> *Id.*

<sup>81</sup> Brett Abarbanel, Dimitrios Avramidis, Luke Clark & Mark R. Johnson, *Gambling Live Streams on Twitch: What Are They and Why Do They Matter?*, THE CONVERSATION (Sept. 15, 2021), <https://theconversation.com/gambling-live-streams-on-twitch-what-are-they-and-why-do-they-matter-167005>.

<sup>82</sup> *Id.*

session, will get to keep around 20-25% of their winnings.<sup>83</sup> These terms are often negotiated through internet messaging apps. One popular messaging tool that Twitch streamers use with online casinos is Discord.<sup>84</sup> The communications generally involve contract length as well as negotiating how much the streamer will get paid every month and what percentage of that money they get to keep.<sup>85</sup>

The popularity of these types of Twitch contracts emerged in April and May of 2021. A review found that “64 of the top 1,000 most trafficked Twitch streamers have streamed crypto slots or advertised sponsorship deals from crypto gambling websites...”<sup>86</sup> The gambling trend on Twitch is definitely gaining popularity and the hundreds of thousands of views that the top streamers get is another measure of how prevalent this phenomenon is becoming.<sup>87</sup> Worth noting is the most popular casino site that does business with Twitch streamers: Stake.com.<sup>88</sup> Stake does not possess a license from any U.S. state and visiting the site from the U.S. prompts users to a pop-up message that states: “Sorry, Stake isn’t available in your region, but Stake.us is!. Due to our gaming license, we cannot accept players from United States. However you are welcome to

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<sup>83</sup> *Sponsorship Deals Usually Work the Same Way*, CASINOKING.COM (Apr. 17, 2021), <https://www.casino-king.com/casino-king-articles.php?article=186>.

<sup>84</sup> DISCORD, <https://www.discord.com> (Discord is a free voice, video, and text chat app that’s used by tens of millions of people ages 13+ to talk and hang out with their communities and friends. People use Discord daily to talk about many things, ranging from art projects and family trips to homework and mental health support). *See also* Cecilia D’Anastasio, *Twitch Streamers Rake in Millions with a Shady Crypto Gambling Boom*, ARS TECHNICA (Jul. 18, 2021), <https://arstechnica.com/gaming/2021/07/twitch-streamers-rake-in-millions-with-a-shady-crypto-gambling-boom/?comments=1> (Duelbits, one gambling website, apparently offered top gambling streamer Adin Ross between \$1.4 million and \$1.6 million a month to stream slots On Twitch according to a Discord direct message between Ross and Duelbits. Ross did not respond to WIRED’s requests for comment. Several other streamers, according to interviews or leaked chats, admitted to gambling with money that was not theirs).

<sup>85</sup> D’Anastasio, *supra* note 84.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

sign up for our social casino Stake.us”<sup>89</sup> Despite this denial message, several U.S. streamers and gamblers circumvent this by using a virtual private network.<sup>90</sup> A virtual private network (VPN) is an electronic privacy tool that allows internet users to create a tunnel through which a person can hide their online activity through the use of secure and encryption connections.<sup>91</sup> VPNs allow users to remain private while browsing the web, downloading files, and visit social media sites.<sup>92</sup> VPNs mask your internet protocol (IP) address which allow you to navigate on the internet with no trace.<sup>93</sup> One of the strongest uses of VPNs is its ability to circumvent geo-restrictions.<sup>94</sup> Once you physical location is hidden, you have the ability to use your computer from anywhere to access any site, restricted or not.<sup>95</sup>

The capabilities of a VPN are impressive – you could be sitting in your home in the U.S. and use a VPN to watch a foreign movie that is banned in the U.S. but available in other countries.<sup>96</sup> Even with its immense capabilities, installing a VPN on your computer is fairly simple.<sup>97</sup> It does not require expert coding knowledge or high level technological software to download.<sup>98</sup> Also, many reliable VPN providers are free.<sup>99</sup> Several of these articles outline the capacity of VPNs,

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<sup>89</sup> *Id.* See STAKE, <https://stake.com/>.

<sup>90</sup> D’Anastasio, *supra* note 84. (Tyler Niknam, a top Twitch streamer from Texas, was gambling on Stake while live streaming. Eventually Niknam moved to Canada to gamble on stream as he could be more transparent on live stream, showing the Stake site to his viewers, versus being in the U.S. and not being able to show the entirety of his screen since Stake is disallowed in the U.S).

<sup>91</sup> Steve Symanovich, *What is a VPN?*, NORTON.COM (Feb. 24, 2022), <https://us.norton.com/internetsecurity-privacy-what-is-a-vpn.html>.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *CyberWaters, Do Streamers Use a VPN (Do You Really Need it?)*, CYBERWATERS.COM (Mar. 14, 2022), <https://cyberwaters.com/do-streamers-use-vpn/>.

<sup>95</sup> Stacey Powers, *Twitch Streamers Win Millions in Online Cryptocurrency Casino*, VGR.COM (Aug. 18, 2021), <https://www.vgr.com/twitch-streamers-win-millions-in-online-cryptocurrency-casino/>.

<sup>96</sup> Aliza Vigderman & Gabe Turner, *How to Watch Netflix With a VPN*, SECURITY.ORG (Mar. 3, 2022), <https://www.security.org/vpn/netflix/>.

<sup>97</sup> Powers, *supra* note 95.

<sup>98</sup> *Id.*

<sup>99</sup> Sandra Gyles, *How to Download a VPN in 3 Easy Steps*, VPN OVERVIEW (Feb. 18, 2022), <https://vpnoverview.com/vpn-information/download-vpn/> (This source opines that ExpressVPN is the best VPN

but also advise that investing in a paid VPN provider may bode well for users as it comes with better features and protections.<sup>100</sup> The uptick in VPN articles may be in part due to the increase in user activity on Twitch with regard to gambling streams.<sup>101</sup>

Once the VPN is active, Twitch gamblers are freely able to access casino sites like Stake and play along with their favorite streamer.<sup>102</sup> Twitch subscribers then watch their favorite streamer play on the online slot machines much of the time with online casino company money, something that viewers may not necessarily know.<sup>103</sup> Streamers are often encouraging their audience to access the online casino links to play along.<sup>104</sup> When streamers do win on the slots, with money that likely is not their own, it creates an image of harmless and exciting play time.<sup>105</sup> This lures their young audience to these sites who then go and use their own money, or often times their parent's money, and fall victim to immense financial loss.<sup>106</sup> To reiterate, many of the viewers are young and impressionable, and are potentially subject to all of the negative consequences of gambling or addiction.<sup>107</sup>

Twitch community guidelines states in part: “You must respect all applicable local, national, and international laws while using our services. Any content or activity featuring,

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available right now, but it costs money to download. This source also provides information on free VPNs such as ProtonVPN).

<sup>100</sup> *Id.*

<sup>101</sup> Mo Harber-Lamond, *The Best Twitch VPN 2022*, TOM'S GUIDE – FUTURE US INC, (Jan 26, 2022). Cathie, *What VPN Do Popular Streamers Use?*, (Feb. 20, 2022). See also Stacey Powers, *Twitch Streamers Win Millions in Online Cryptocurrency Casino*, VGR (Aug. 19, 2021) (“Twitch is currently witnessing a huge surge in gambling related streaming and it is primarily being driven by the advent of crypto casinos like St

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Harber-Lamond, *supra* note 101.

<sup>107</sup> *Id.*

encouraging, offering, or soliciting illegal activity is prohibited.”<sup>108</sup> Twitch issued a Creator Update, effective August 17<sup>th</sup>, 2021, which announced that Twitch, in order to prevent “questionable gambling operators,” would ban sharing links and other referral codes linked to online casino gambling sites that offer slots, dice games, and roulette.<sup>109</sup> This push to update Twitch’s policy came at time when Twitch gambling streams were high and many top earning streamers spoke out against the practice due to its negative impacts on the platform and to viewers.<sup>110</sup> This may also be an effort for Twitch to get ahead of any illegal practices that may be happening on the platform as well. Nevertheless, the effects of the gambling streams and practices of online casino sites and Twitch streamers prompts a need to regulate this activity.

## RE-INTERPRETING EXISTING GAMBLING LAWS

### I. The Wire Act

Going back to the 2018 DOJ opinion, the textual analysis in reference to the placement of the phrase “sporting events or contests” was a fair reading.<sup>111</sup> Additionally, a district court in *United States v. Lombardo*<sup>112</sup> paralleled this analysis with a similar textual reading. Although neither of these are laws nor precedents that circuit courts need to follow, they provide persuasive analyses. Section 1084(a) can be broken into three sections.<sup>113</sup> The first section is the language up until the first comma after the word “contest.”<sup>114</sup> The string of restricted practices is

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<sup>108</sup> *Community Guidelines – Breaking the Law*, TWITCH.COM, [https://safety.twitch.tv/s/article/Community-Guidelines?language=en\\_US#14AdditionalGamingContentGuidelines](https://safety.twitch.tv/s/article/Community-Guidelines?language=en_US#14AdditionalGamingContentGuidelines).

<sup>109</sup> Eva Ivanova, *Twitch Bans Illegal Gambling Links and Referral Codes*, GAMBLING NEWS (Aug. 12, 2021), <https://www.gamblingnews.com/news/twitch-bans-illegal-gambling-links-and-referral-codes/> (This new policy came after numerous top earning streamers called for a ban on gambling on Twitch).

<sup>110</sup> *Id.*

<sup>111</sup> See Engel, *supra* note 19.

<sup>112</sup> *United States v. Lombardo*, 639 F. Supp. 2d 1271 (D. Utah 2007).

<sup>113</sup> 18 U.S.C. § 1084.

<sup>114</sup> 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 bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest...”)

followed by “on any sporting event or contest.”<sup>115</sup> This first section makes textually clear that anyone who engages in the preceding acts must do so in relation to sporting events or contests to fall within the parameters of this first section. There is likely little room to debate this and those events or contests that are not sports related may have a solid argument that they are entitled to not comply with the Wire Act as that is not an action that applies to them.

Moving to the second section of the Act, which begins with “or” following the first comma and ends at the second comma after the word “wagers.”<sup>116</sup> The first string of text from this point reads as follows: “...to receive money or credit as a result of bets or wagers...”<sup>117</sup> There is no indication of sporting events described in this part. There is room to interpret this plain language as applicable to any type of activity that engages in communication involving the transferring of money or credit for bets or wagers. The phrase “sporting event or contest” is not tagged along after that string of text. In fact, that phrase does not find itself at the end of section 1084(a) at all. Plainly read, there is room to interpret the beginning of the second section as applying to those who engage in wire communications that involve receiving money or credit as a result of bets or wagers. There is not necessarily an implication that those acts apply to sports events or contests only.<sup>118</sup> Compare this to the first section that ends with placing specific activities “on any sporting event or contest...”<sup>119</sup>

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<sup>115</sup> *Id.*

<sup>116</sup> 18 U.S.C. § 1084(a) (“...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”).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*



The last section, which begins with “or” following the second comma and ends at the third comma after the word “wagers.”<sup>120</sup> Again, this section does not state the phrase or implicate that it is applicable to events that are sports related. It simply states “...information assisting in the placing of bets or wagers...”<sup>121</sup> No direct attachment to sporting events is present in that restriction. Also, there is not necessarily an implication here that this Act relates to activity that is about sporting events or contests. Comparing this to the first section that explicitly states it applies to bets or wagers on any sporting event or contest, this language does not necessarily imply that based on the plain text of the statute.

The last part of the Act states “...shall be fined under this title or imprisoned not more than two years, or both.”<sup>122</sup> Grammatically, there is an indication that this penalty applies to the proceeding three sections of the acts outlined in section 1084(a) of the Wire Act.<sup>123</sup> For purposes of this note there need not be in depth analysis as to that penalty or the severity of the punishment, but is mentioned here to simply to illustrate that this portion of the Act applies to whatever is encompassed in section (a) prior to this string of text. Each “section” is a capsule of acts that need not draw inference from the phrase “sporting event or contest” from the first “section.”

Section 1084(b), which is an exception to the rule, reinforces the plain language interpretation.<sup>124</sup> By reading over section 1084(b), a reader will see the phrase “sporting events or

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<sup>120</sup> *Id.*

<sup>121</sup> *Supra*, note 116.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> 18 U.S.C. § 1084(b).

contest” three different times.<sup>125</sup> This phrase is meticulously put within the sentences to make clear that the transmission of information that is being discussed is only that transmission of information that is about sporting events or contests.<sup>126</sup> Anytime in section 1084(b) that transmission of information is mentioned, it is followed by “sporting event or contest” to conclude the thought and make certain of what is being regulated here: a specific type of communication.<sup>127</sup> Contrast this with section 1084(a) which only mentions this phrase one time, and not at the end to try to implicate that the entirety of the section is meant to apply to sporting events or contests.<sup>128</sup> The writers of this statute had the conscious to include “sporting events or contests” three times in section 1084(b), but did so sparingly within section 1084(a).<sup>129</sup>

The interpretation of the plain meaning of the Wire Act was brought up in *In re Mastercard Int’l Inc.*,<sup>130</sup> which was the first court that spoke upon the plain language of the Act. Plaintiffs in this case argued that the plain meaning of the language in the first clause of the statute specifically addressed “sporting event or contest” and contained the respective language explicitly.<sup>131</sup> The district court disagreed and stated that the argument plaintiffs are bringing forward is one to be brought in front of legislation and not the courts.<sup>132</sup> Although the First and Fifth Circuit Courts agree that the language of the Wire Act covers only activity involving sports, the remaining circuit courts may eventually challenge this. Cases in lower courts challenge the

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<sup>125</sup> *Id.* See also, Engel, *supra*, page 12 (“[w]hen Congress includes particular language in one section of a statute but omits it in another,” we presume “that Congress intended a difference in meaning”; Digital Realty Tr., Inc. v. Somers, 138 S. Ct. 767, 777 (2018) (quoting Loughrin v. United States, 134 S. Ct. 2384, 2390 (2014)).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *In re Mastercard Int’l Inc.*, 132 F. Supp. 2d 468 (E.D. La. 2001).

<sup>131</sup> *Id.* at 480.

<sup>132</sup> *Id.* at 481. (Plaintiffs appealed their dismissal to the 5th Circuit Court of Appeals who affirmed the lower court’s ruling and held that the language does not pertain to activity unrelated to sporting events or contests).

First and Fifth Circuit interpretations. In *People v. World Interactive Gaming Corp.*,<sup>133</sup> the Court does not limit the language of the Wire Act to just sporting events, and rather applied it to any online gambling that incorporated virtual slots. Although the Court in *World Interactive Gaming Corp.* interprets the language unlike the First and Fifth Circuit Courts, it does little to no in depth analysis as to why it ruled in such a way.<sup>134</sup> Another case that reflects a similar ruling is *United States v. Lombardo*.<sup>135</sup> In *Lombardo*, the Court references the Fifth Circuit ruling, the *World Interactive* ruling, as well as the Tenth Circuit’s Criminal Pattern Jury Instructions, and ultimately concludes that after examining those cases, “...that § 1084(a) is not confined entirely to wire communications related to sports betting or wagering.”<sup>136</sup> Similar to the analysis above, the *Lombardo* court highlights that the phrase “sporting event or contest” modifies only the first of the three uses of a wire communication.<sup>137</sup> By doing this, there is a presumption that it was intentional to exclude this phrasing from the second and third prohibited uses, and the indication that at least part of section 1084(a) applies to forms of gambling unrelated to sporting events is sound.<sup>138</sup>

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<sup>133</sup> *People ex rel. Vacco v. World Interactive Gaming Corp.*, 714 N.Y.S.2d 844 (Sup. Ct. 1999) (“The Wire Act bars citizens from engaging “in the business of betting or wagering knowingly us[ing] a wire communication for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers”) See also Joey Connor, *A Look Inside How Courts Have Applied the Wire Act to Gambling*, Legal Sports Report (Mar. 15, 2019). (...The lowest-level trial court in New York (confusingly named the “New York Supreme Court”) ruled that individuals could be prosecuted under 18 U.S.C. § 1084 for operating virtual slots, blackjack, and roulette. The court did not specifically discuss the sports wagering requirement”).

<sup>134</sup> *People ex rel. Vacco v. World Interactive Gaming Corp.*, 714 N.Y.S.2d at 468. This case was predominantly about personal jurisdiction in the state of New York and the explanations as to why respondents were subject to personal jurisdiction in New York.

<sup>135</sup> *United States v. Lombardo*, 639 F. Supp. 2d 1271 (D. Utah 2007).

<sup>136</sup> *Id.* at 1281. See also The United States Court of Appeals for the Tenth Circuit, *Criminal Pattern Jury Instructions*, UNITED STATE COURTS (Apr. 2, 2021), <https://www.ca10.uscourts.gov/form/criminal-pattern-jury-instructions>. (The *Lombardo* Court also supports its position by citing the Tenth Circuit Court of Appeals jury instructions for 18 U.S.C. § 1084).

<sup>137</sup> *United States v. Lombardo*, 639 F. Supp. 2d at 1271.

<sup>138</sup> *Id.*

Another leading argument as to why the Wire Act needs to be reinterpreted is because of the advancement of technology and the increase of several forms of online gambling. The Wire Act should apply to not just sports gambling, but also to other forms of gambling, contrary to the most recent opinion issued by Congress and the recent First Circuit Court ruling in favor of New Hampshire.<sup>139</sup> Slot machine streams emerging on Twitch is just one example for this push to reinterpret. The Wire Act already covers communication done via Internet, but the limitation of sports gambling activities is not enough.<sup>140</sup> Young people are becoming more engaged and addicted to the type of gambling that facilitates on Twitch. The push to reinterpret the Wire Act and update its applicability is one of good timing. The Wire Act has been applied sparingly throughout its history and instilling a new, strong, and plain meaning of the Act would promote its effectivity as well as instill public confidence towards the strict treatment and general negative outlook on gambling.<sup>141</sup> A new interpretation, including other forms of online gambling, would bring the severity of the issue to the forefront and signal to U.S. residents that perpetuating online gambling to large audiences is detrimental and a serious offense from the perspective of the federal government.

Currently, the Wire Act applies to situations where the communicators of gambling information need not know that the nature of their communication is illegal; the communication only needs to be about the transmission of a bet or gambling related information to be subject to punishment by the Wire Act.<sup>142</sup> This application parallels the very nature of streamers

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<sup>139</sup> N.H. Lottery Comm'n v. Rosen, 986 F.3d 38 (1st Cir. 2021).

<sup>140</sup> United States v. Cohen, 260 F.3d 68 (2d Cir. 2001).

<sup>141</sup> See also Senior Specialist in American Public Law, *Internet Gambling: An Overview of Federal Criminal Law*, Congressional Research Service (Jan. 24, 2012).

<sup>142</sup> United States v. Blair, 54 F.3d 639, 641 (10th Cir. 1995) ("The court affirmed the district court's acceptance of defendant's guilty plea and sentence on one count of willingly using a wire communication facility for the transmission of bets or wagers and knowingly and willfully conspiring to commit the offense of illegal gambling,

communicating with online casinos through Discord direct messenger for example.<sup>143</sup> The messages themselves are about the amount of money that the online casinos are going to pay the streamer, as well as discussion on how often they will stream playing the slot machines.<sup>144</sup> Additionally, gambling specifics are often times discussed such as what percentage of winnings the streamer will get to keep and how much the streamer will have to pay back to the online casinos.<sup>145</sup> The money used to gamble is often times a cryptocurrency and not U.S. dollars, more details that are also discussed in the chat messages.<sup>146</sup>

Twitch streamers are generally on the younger side.<sup>147</sup> It is not hard to believe that when these Twitch streamers are presented with million dollar deals from online casino sites that it is something they can easily reject.<sup>148</sup> They too are taken advantage of in a way because they are lured with large amounts of money from a supposed establish online business – they feel important and mature and thus take these deals to secure millions of dollars.<sup>149</sup> It is likely not uncommon for streamers to trust online casino sites to do their business legally and in accordance to business practice. Chances are that inexperienced streamers do not realize they are

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because ignorance or mistake was not a defense available to both charges...”). See also Cohen 260 F.3d at 77. (“Section 2(b) [of the Wire Act], unlike § 2(a), does not require proof that someone else committed a crime”).

<sup>143</sup> See also D’Anastasio, *supra* note 71.

<sup>144</sup> *Id.*

<sup>145</sup> See Cecilia D’Anastasio, *Twitch Streamers Rake in Millions with a Shady Crypto Gambling Boom*, WIRED (Jul. 13, 2021).

<sup>146</sup> *Id.*

<sup>147</sup> TWITCH ADVERTISING, <https://twitchadvertising.tv/audience/> (“Nearly 75% of Twitch viewers are between the ages of 16 and 34). See also *Twitch Demographic & Growth Statistics 2022*, STREAM SCHEME, <https://www.streamscheme.com/twitch-statistics/> (16 to 24 year-olds make up 41% of Twitch users, 25 to 34 year-olds make up 32% of Twitch users, 35 to 44 year-olds make up 17% of Twitch users, 45 to 54 year-olds make up 7% of Twitch users, and 55 to 64 year-olds make up 3% of Twitch users).

<sup>148</sup> Samyarup Chowdhury, *Twitch Streamer TrainWreck Reveals the Absurd Amount of Money He is Paid Monthly to Promote Gambling*, SPORTSKEEDA (Jul. 22, 2021) <https://www.sportskeeda.com/esports/news-twitch-streamer-trainwreck-reveals-absurd-amount-money-paid-monthly-promote-gambling>.

<sup>149</sup> *Id.*

agreeing to potential illegal activity. Even more so, if they see their peers taking deals from the online casinos, chances are they believe they are following the norms of the platform.

The Wire Act has been interpreted to apply to both or all parties who are in communication regarding the gambling talk and not just the party who sends the communication relating to gambling, but also the party or parties who receive the communication.<sup>150</sup> This application will also compliment the argument for reinterpretation regarding the current Twitch casino gambling streams. If the Wire Act encompasses all types of gambling in combination with subjecting all parties of the communication chain, then all parties who engage in the gambling activity will be held accountable for behavior that would potentially affect young victims. This reapplication promotes the practice of strictly enforcing a reinterpretation for casino sites, that already are not allowed to do business in the U.S., to understand that their methods of seeking streamers in order to increase their revenue is not an option and is simply illegal. On the side of the streamer, it makes clear to them that if they take deals from casino sites like Stake, who again are banned in the U.S., then they are open to face repercussions as that practice will be illegal as well.

## AMENDING EXISTING GAMBLING LAWS

### I. The Wire Act

The Wire Act covers those involved 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...”<sup>151</sup>

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<sup>150</sup> United States v. Pezzino, 535 F.2d 483, 484 (9th Cir. 1976) (Court rejects Pezzino’s argument that the evidence was insufficient to support his conviction for violating section 1084(a) because he was merely a receiver and not a transmitter of wagering information).

<sup>151</sup> 18 U.S.C. § 1084(a).

Currently, the Wire Act has federal jurisdiction to prosecute fraud occurring outside of the U.S. if U.S. wires are used.<sup>152</sup> The existence of VPNs easily allow users to circumvent the Act's interstate or foreign requirement by creating the illusion that a user in the U.S. or more importantly here, not in the U.S. is within the borders of a country that they are not physically located. Technology is the underlying argument as to why the Wire Act needs updated language that addresses the existence of private networks.<sup>153</sup> Without any regulation against the availability of VPNs, computer users will have no trouble accessing sites like Stake while being in the United States.

For example, after the decision in *Murphy v. NCAA*<sup>154</sup> states are now freely able to legalize sports betting within their state borders. Although a landmark decision for the future of intrastate gambling, a user that has a VPN would have no problem with physically being in one state but masking their IP network and encrypting an IP for another state.<sup>155</sup> This would effectively defeat the purpose of differentiating between “interstate” and “intrastate” with respect to the scope of the Wire Act. Thus, updating the Wire Act with the advent of technologies is going to be vital for its ability to regulate online gambling as well as remain at the forefront of online gambling techniques.

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<sup>152</sup> Ayako Hobbs, *Government Presses Extraterritoriality of Wire Fraud Statute*, THE ANTICORRUPTION BLOG, (Feb. 20, 2020), <https://www.anticorruptionblog.com/us-department-of-justice/government-presses-extraterritoriality-of-wire-fraud-statute/>.

<sup>153</sup> Dan Price, *Are VPNs Legal or Illegal? Everything You Need to Know*, MAKE USE OF, (Mar. 3, 2020), <https://www.makeuseof.com/tag/are-vpns-legal-illegal/> (“VPNs are entirely legal in the United States. There are no laws that either forbid their use or restrict which VPNs are available”).

<sup>154</sup> *Murphy v. NCAA*, 138 S. Ct. 1461 (2018).

<sup>155</sup> *VPNs with Servers and IP Addresses for every State of USA*, DOLLAR TECH CLUB, <https://dtechclub.com/en/vpns-servers-us-states/>.

## II. The UIGEA

If the Wire Act falls flat on reinterpretation, then amending and applying the UIGEA could pose another solution. One differentiating characteristic of the UIGEA compared to the Wire Act, is that the UIGEA's history begins with Internet gambling. Thus, there is potential in having this Act apply to current gambling practices that occur over at Twitch. The UIGEA specifically regulates the payment systems that are used to facilitate gambling transactions that are prohibited.<sup>156</sup> As of now, cryptocurrencies have not made it to the language of the UIGEA, but the need to do this is apparent. The final rule as of today identifies five payment systems that could be subject to the UIGEA: automated clearing house (ACH) systems, card systems, check collection systems, money transmitting businesses, and wire transfer systems.<sup>157</sup> This Act does cover numerous methods of payments that are susceptible to money being transferred for the purpose of gambling. However, virtual money transfers have become more intelligent and subtle throughout the past decade. Stake for example is a cryptocurrency casino.<sup>158</sup> Many online casinos offer bitcoins as a deposit method to customers.<sup>159</sup> With the advancement of cryptocurrencies there is a staggering increase in Twitch streaming gambling.<sup>160</sup> Thus, there should be an amendment to this list of five payment systems to include cryptocurrencies.

In addition to the five prohibited methods of payment listed in the previous paragraph, the UIGEA also requires the Federal Reserve Board and the Treasury Department to issue

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<sup>156</sup> 31 U.S.C. § 5363. *See also* Legislative Attorney & Senior Specialist in American Public Law, *Unlawful Internet Gambling Enforcement Act (UIGEA) and Its Implementing Regulations*, CONGRESSIONAL RESEARCH SERVICE, CRS REPORT (Apr. 10, 2012).

<sup>157</sup> 31 U.S.C. § 5363.

<sup>158</sup> Stacey Powers, *Twitch Streamers Win Millions in Online Cryptocurrency Casino*, VGR (Aug. 18, 2021), <https://www.vgr.com/twitch-streamers-win-millions-in-online-cryptocurrency-casino/>.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*



regulations to be enacted. These regulations are to prevent the use of electronic payment systems from being used to facilitate monies tied to gambling activities.<sup>161</sup> This gives financial institutions the power to implement regulations as they see fit in order to prevent “illegal gambling activity.”<sup>162</sup> Along with the Federal Reserve Board and the Treasury Department implementing regulations, they must do so based on their understanding of the phrase “illegal gambling activity.”<sup>163</sup> This deciding power gives these financial institutions the ability to make their own judgment and decisions based on what they determine to be illegal activity, given that the Act does not guide the enforcers as to what this means.<sup>164</sup>

There is issue with a law requiring financial institutions to act as arbiters in determining what transactions are subject to the scope of the UIGEA and which are not.<sup>165</sup> There is a need to amend this practice of the UIGEA because the level of discretion these institutions have will likely not aid in the discontinuing of online gambling. Financial institutions are seldom going to understand the specific types of activity that goes on every day on Twitch for example. These institutions likely do not have the time and resources to track individual streams in order to flag instances of illegal gambling. Allocating this type of deciding power to financial institutions will only keep the UIGEA in the position that it is now with respect to online gambling – stagnant.

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<sup>161</sup> 31 U.S.C. § 5363. *See also Proposed UIGEA Regulations: Burden Without Benefit?: Hearing on H.R. 2046 Before the H. Comm. On Fin. Serv.*, 110th Cong. 1 (2008) (statement of Chairman Gutierrez), <https://www.govinfo.gov/content/pkg/CHRG-110hhr42714/html/CHRG-110hhr42714.htm>.

<sup>162</sup> *Id.* *See also* 31 U.S.C. 5362(10)(A). (“Unlawful Internet gambling” means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made”).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

Changes to this Act will allow its scope to better address online gambling activities and prevent an official body from perpetuating financially devastating situations.<sup>166</sup>

## CONCLUSION

Awareness of the potential illegality of Twitch gambling streaming is gaining traction as more articles examine this practice and more Twitch streamers speak out against it. Some Twitch streamers, after doing business with online casino sites, decided to withdraw and end the relationship due to the moral conflicts they were experiencing peddling gambling to young audiences.<sup>167</sup> With technology advancing and the availability of tools to circumvent website bans and restrictions increases, the issues with Twitch gambling streams are not going away on their own. Over a year has passed since Twitch gambling streams became popular on the platform, and now is an opportune time to utilize the existing laws that address gambling to prevent them from continuing.

First, the Wire Act should be reinterpreted to encompass all types of gambling and not just those activities that involve sporting events or contests. The Wire Act is a strong starting point in addressing the advent of online casino companies contracting with U.S. streamers because it has language that can be applied to communications between Twitch streamers and online casino gaming sites. Second, the Wire Act should be amended to include language that

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<sup>166</sup> *Id.* (“...it is inappropriate to have financial institutions essentially acting as final arbiter in determining which transactions are legal or illegal, especially when the result could be closing a consumer’s account”).

<sup>167</sup> Powers, *supra* note 158. (This source mentions a Twitch streamer who did a few paid streaming sessions but eventually stopped, stating that he did not feel good doing gambling sponsorships, especially when underage players are involved). *See also* Chadley Kemp, Mizkif: Twitch to Step In and Ban Sponsored Gamba Streams, GINX ESPORTS TV, (Jul. 12, 2021) (Another Twitch streamer stating that Twitch needs to do something about the gambling on Twitch and that the website needs to step in and remove sponsored gambling streams from the platform).

address the presence of virtual geo-restriction tools that allow individuals to mask their computer's physical location. Next, the UIGEA should include explicit language that includes currencies frequent to online casino sites such as cryptocurrencies. Finally, the portion of the UIGEA that gives financial institutions the power to define illegal gambling transactions must be removed.