Internet Gambling: US DoJ Rejects State Lottery Info Request by iMEGA

Contributed by Thomas Jensen
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Nicholas Bagley, attorney for the US Department of Justice, indicated he will not consent to a request by iMEGA’s legal team to inform the US 3rd Circuit Court of Appeals about blocked Internet sales of state lottery tickets by credit card companies. Visa and MasterCard changed the coding for online purchase of lottery tickets to the same code applied to other forms of Internet gambling , such as poker and sports wagering, despite lotteries being granted an exemption under the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA).

The change has led to potentially millions in lost sales for the New Hampshire and North Dakota state lotteries, which may lead to reductions in funding for state government programs, like public education. Internet subscriptions account for 24% of all sales for the New Hampshire state lottery.

“Credit card companies are finding out when their customers sign up for the online subscription service that it is a lottery and coding their transactions as betting,” said Donna Thronson, director of communications for the North Dakota Lottery, in an interview with iGaming News.

iMEGA, in its court challenge to UIGEA (iMEGA v. Keisler), had asked that information on the blocking of the Internet lottery purchases be submitted to the Federal appeals court, as evidence the law was leading to “overblocking” of transactions permitted by the new law. The Justice Department rejected the request, saying the supplemental information was “inappropriate absent unusual circumstances,” according to the letter received by iMEGA’s legal team.

“The Justice Department doesn’t think that there is anything ‘unusual’ about credit card companies blocking purchases that are clearly allowed by the very law they’re trying to defend?” asked Joe Brennan Jr., iMEGA’s chairman. “The New Hampshire lottery is losing a quarter of its sales even though they’re supposed to be protected by this law. I’m not a lawyer, but that seems like ‘unusual circumstances’ to me.”

“The fact is, we have a right to have this information added to the record,” said Brennan. “Since the last brief was submitted to the court (on November 14, 2008), the final regulations for UIGEA were published and have gone into effect, and as a result, state lotteries - which are exempt from the law - have been affected. The Court should, and would, want to consider this.”

Since US DoJ would not give consent, iMEGA’s legal team immediately prepared a formal motion to ask the Court’s permission to add the new information to the record. The motion is expected to be filed within 48 hours.

“I’m not surprised the DoJ does not want the Court to have this information,” Brennan said. “It’s proof of what iMEGA has said from the beginning: this law (UIGEA) is so vague the banks and credit card companies would wind up blocking every gaming transaction - even exempted ones - rather than risk violating the law. It’s no longer just a theory. It’s a fact.”