Transmitting Sports Betting 'Information' and Data: A Response to Edelman, Holden, and Wandt

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I. INTRODUCTION

In *U.S. Fantasy Sports Law: Fifteen Years after UIGEA*,[1] Marc Edelman, John T. Holden, and Adam Scott Wandt comprehensively recount the eventful decade-and-a-half overlap between fantasy sports and the Unlawful Internet Gambling Enforcement Act ("UIGEA").[2] But the authors do not stop there. Edelman, Holden, and Wandt also include a detailed examination of several forward-looking cybersecurity concerns—consumer security, anti-money laundering, and automated bots—that emanate from fantasy sports.[3] Further, the authors pinpoint recent Internal Revenue Service ("IRS") scrutiny of the industry and the potentially "deleterious effect" on smaller companies if the IRS treats certain fantasy sports companies like traditional sports betting operators.[4]

There is one recent development Edelman, Holden, and Wandt do not discuss, however. The authors do not delve into the just-decided First Circuit case between the New Hampshire Lottery Commission ("NHLC") and the Department of Justice ("DOJ") that included briefing on the overlap between UIGEA and the Transmission of Wagering Information Act of 1961 ("Wire Act"), another sports betting-focused federal law.[5] The First Circuit concluded

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[1] Marc Edelman, John T. Holden & Adam Scott Wandt, *U.S. Fantasy Sports Law: Fifteen Years After UIGEA*, 83 OHIO ST. L.J. 117,117 (2022).

[2] 31 U.S.C. § 5361–67.

[3] Edelman, Holden & Wandt, *supra* note 1, at 134–56.

[4] *Id.* at 133.

[5] *See generally* N.H. Lottery Comm'n v. Rosen, 986 F.3d 38 (1st Cir. 2021).

that "the Wire Act's prohibitions are limited to bets or wagers on sporting events or contests" as opposed to other types of gambling, such as state-operated internet lotteries or online poker.[6] In the lead-up to the First Circuit's ruling on January 20, 2021, both DOJ and certain amici took contrasting positions on whether UIGEA's subsequent enactment in 2006 limited certain portions of the Wire Act.[7] While the court did not directly rule on the potential interaction between UIGEA and the Wire Act, the issue foreshadowed future friction between the statutes.

Such friction is the focus of this response to Edelman, Holden, and Wandt. Specifically, this response will explore the legality of transmitting sports betting information and data across state lines, a topic directly addressed in the Wire Act and pivotal in fantasy sports and traditional sports betting alike. As such, this response to Edelman, Holden, and Wandt is more akin to an extension of the authors' article rather than a targeted response. This piece pinpoints the tricky issue of whether the Wire Act prohibits interstate transmissions of sports betting information and data when at least one state involved has not legalized the activity. With just over half of all U.S. states now explicitly legalizing sports wagering and fantasy sports in the wake of the Supreme Court's 2018 ruling that opened up legal sports betting on a state-by-state basis,[8] this "transmission" issue promises to be at the forefront of the expanded sports gaming market for the next 15 years.[9]

II. BACKGROUND ON *NEW HAMPSHIRE LOTTERY COMMISSION V. ROSEN*

On February 15, 2019, the NHLC sued William Barr in his official capacity as U.S. Attorney General seeking declaratory and injunctive relief stemming from a DOJ Office of Legal Counsel ("OLC") memo entitled *Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*.[10] Dated November 2, 2018, the OLC's memo concluded that the "prohibitions of [the Wire Act] are

[6] *Id.* at 45.

[7] Defendants' Memorandum in Support of Motion to Dismiss and Objections to Plaintiffs' Motions for Summary Judgment at 35–36, N.H. Lottery Comm'n v. Barr, 386 F. Supp. 3d 132 (D.N.H. 2019) ("UIGEA does not override or conflict with the Wire Act.").

[8] *See* Murphy v. Nat'l Collegiate Athletic Ass'n, 138 S. Ct. 1461, 1461 (2018). For an overview of state-level sports betting legislation, see Ryan Rodenberg, *United States of Sports Betting: An Updated Map of Where Every State Stands*, ESPN (Apr. 7, 2021), https://www.espn.com/chalk/story/_/id/19740480/gambling-sports-betting-bill-tracker-all-50-states [https://perma.cc/2VRW-VV9U]. For a textured discussion about various facets of the Wire Act beyond the scope of this response, see generally Keith C. Miller, *Sports Betting Integrity at Risk: The Role of the Wire Act*, 61 SANTA CLARA L. REV. 247 (2020).

[9] For the avoidance of doubt, this response treats sports wagering and fantasy sports the same and uses the terms gaming, gambling, betting, and wagering interchangeably.

[10] *See* Complaint at 1, New Hampshire Lottery Comm'n v. Barr, 386 F. Supp. 3d 132 (D.N.H. 2019).

not uniformly limited to gambling on sporting events or contests."[11] The NHLC—and numerous other state-run lotteries—viewed the OLC opinion as creating a credible threat of prosecution under the Wire Act.[12] Of particular importance to this response, the OLC's opinion also found that Section 1084(a) of the Wire Act "is not modified by UIGEA."[13] The OLC concluded that this "opinion supersedes and replaces our 2011 Opinion on the subject."[14]

This reversal of position was the motivation for the NHLC to sue the DOJ.[15] According to the NHLC's initial complaint, the DOJ OLC's "2018 Opinion reverses a 2011 opinion by the [DOJ OLC] finding that [the Wire Act] applies only to betting or wagering on sporting events or contests and therefore did not apply to sales of lottery tickets over the Internet by States."[16] In support, the NHLC cited the Supreme Court's recent sports betting ruling and the Court's finding that the Wire Act "'outlaws the interstate transmission of information that assists in the placing of a bet on a sporting event' and applies 'only if the underlying gambling is illegal under state law.'"[17]

For the gaming industry—whether involved in sports-related wagering or otherwise—the reversal by the DOJ OLC served as a thunderclap for regulators and operators alike. Indeed, the key language of the superceded 2011 memo included the following:

> [I]nterstate transmissions of wire communications that do not relate to a "sporting event or contest" . . . fall outside of the reach of the Wire Act. Because the proposed New York and Illinois lottery proposals do not involve wagering on sporting events or contests, the Wire Act does not, in our view,

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[11] Steven A. Engel, *Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*, 42 Op. O.L.C. 1, 23 (2018).

[12] Complaint at 15, N.H. Lottery Comm'n v. Barr, 386 F. Supp. 3d 132 (D.N.H. 2019) ("The [DOJ's] reversal of the 2011 Opinion . . . now subject[s] the NHLC and its employees and agents to criminal liability and prosecution."). The First Circuit agreed with this assessment: "[NHLC] should not have to operate under a dangling sword of indictment [or] be forced to sit like Damocles." N.H. Lottery Comm'n v. Rosen, 986 F.3d 38, 53 (1st Cir. 2021).

[13] Engel, *supra* note 11, at 23.

[14] *Id.*

[15] The NHLC also argued that the DOJ OLC's construction of the Wire Act would "render the statute unconstitutionally vague, as well as unconstitutional under the First Amendment." Complaint at 3, N.H. Lottery Comm'n v. Barr, 386 F. Supp. 3d 132 (D.N.H. 2019) (citing Greater New Orleans Broadcasting Ass'n, Inc. v. United States, 527 U.S. 173 (1999)). Further, NHLC claimed that the DOJ OLC's new interpretation of the Wire Act "intrudes upon the sovereign interests of the State of New Hampshire." *Id.* (citing Gregory v. Ashcroft, 501 U.S. 452, 460 (1991)).

[16] *Id.* at 1.

[17] *Id.* at 2 (citing Murphy v. Nat'l Collegiate Athletic Ass'n, 138 S. Ct. 1461, 1483 (2018)). In its complaint, NHLC also posited that two appellate decisions—United States v. Lyons, 740 F.3d 702, 718 (1st Cir. 2014) and In re MasterCard Int'l Inc., 313 F.3d 257, 263 (5th Cir. 2002)—supported a finding of the Wire Act applying only to sports betting. Complaint at 3–4, N.H. Lottery Comm'n v. Barr, 386 F. Supp. 3d 132 (D.N.H. 2019).

> prohibit them. Given this conclusion, we have not found it necessary to address the Wire Act's interaction with UIGEA, or to analyze UIGEA in any other respect.[18]

The First Circuit took issue with the DOJ's new reading of the Wire Act and the "lack of coherence"[19] and "unharmonious oddities"[20] that resulted. The First Circuit found the DOJ:

> goes so far as to hazard that maybe information on how to place a bet or wager on a sporting event is more important to placing the bet or wager. How that is so (e.g., how one needs more assistance to bet on an NFL game than on the Oscars) the government does not say. Instead, it rather obscurely references "speech-related" concerns, implicitly suggesting that gambling on a basketball game raiser fewer "speech-related" issues than gambling on whether it will snow on Christmas. That the government posits such strained explanations in order to make sense out of its reading tells much.[21]

The First Circuit proceeded to rule in favor of NHLC, concluding that "the plaintiffs' claims . . . that the Wire Act applies only to interstate wire communications related to sporting events or contests."[22] In particular relevance to this response, the First Circuit also wrote: "You cannot use the wires to place a bet or wager on a sporting event, and you cannot use the wires to send information assisting in placing that bet or wager."[23]

III. BRIEFING ON UIGEA-WIRE ACT OVERLAP

The motivation to explore the issue of whether UIGEA's subsequent enactment modified the scope of the Wire Act was specifically addressed by the DOJ OLC in its 2018 memo: "In view of our conclusion that the Wire Act applies to non-sports gambling, the Criminal Division has asked us to revisit the question that our 2011 Opinion did not need to answer, namely whether the 2006 enactment of UIGEA modifies the scope of the Wire Act."[24] The memo continued: "Specifically, the Criminal Division has asked whether, in excluding certain activities from UIGEA's definition of 'unlawful Internet gambling,'

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[18] Virginia A. Seitz, *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*, 35 Op. O.L.C. 1, 1–2 (2011). The 2011 opinion also reiterated: "[W]e express no view about the proper interpretation or scope of UIGEA." *Id.* at 13.

[19] N.H. Lottery Comm'n v. Rosen, 986 F.3d 38, 59 (1st Cir. 2021).

[20] *Id.* at 58.

[21] *Id.*

[22] *Id.* at 62.

[23] *Id.* at 58.

[24] Engel, *supra* note 11, at 17–18 (citing Memorandum from David C. Rybicki, Deputy Assistant Att'y Gen, Crim. Div., to John P. Cronan, Principal Deputy Assistant Att'y Gen., Crim. Div. (Aug. 28, 2018)).

UIGEA excludes those same activities from the prohibitions under other federal gambling laws. We conclude that it does not."[25] The opinion explained:

> Our conclusion follows from the plain meaning of the statutory definition, and Congress has confirmed it with a reservation clause stating that "[n]o provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States." UIGEA therefore in no way "alter[s], limit[s], or extend[s]" the existing prohibitions under the Wire Act.[26]

In a district court brief, DOJ responded to arguments furthered by certain amici that UIGEA could be read to "override or conflict with the Wire Act."[27] For example, amicus Michigan Bureau of State Lottery wrote: "Both the Wire Act and the UIGEA regulate persons 'engaged in the business of betting or wagering' and should be read *in pari materia* to harmonize the two statutes. A contrary reading would create an inconsistent body of federal anti-gambling laws."[28] DOJ bluntly responded that "there is no conflict between the Wire Act and UIGEA"[29] and "[i]t follows that nothing in UIGEA modifies the reach of the Wire Act."[30]

For the avoidance of doubt, neither the First Circuit nor the underlying district court directly addressed UIGEA's impact on the Wire Act.[31] From 2011 to 2018, the DOJ did not waver in its position on the Wire Act's coverage extending to the transmission of sports betting information or data when at least one of the underlying states bans sports betting and the safe harbor for news reporting is not triggered. As such, despite the "UIGEA versus Wire Act" issue not having been litigated directly, it is plausible, if not probable, that sports

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[25] *Id.* at 18 (internal citations omitted).

[26] *Id.* (internal citations omitted).

[27] Defendants' Memorandum in Support of Motion to Dismiss and Objections to Plaintiffs' Motions for Summary Judgment at 35–36, N.H. Lottery Comm'n v. Barr, 386 F. Supp. 3d 132 (D.N.H. 2019).

[28] Brief for Michigan Bureau of State Lottery as Amici Curiae Supporting Plaintiffs at 7, N.H. Lottery Comm'n v. Barr, 386 F. Supp. 3d 132 (D.N.H. 2019) (internal citations omitted). In addition, amicus iDevelopment and Econ. Ass'n ("iDEA") argued that "UIGEA . . . must 'be regarded as a legislative interpretation of' the earlier-in-time Wire Act." Brief for iDevelopment and Econ. Ass'n as Amici Curiae Supporting Plaintiffs at 18, N.H. Lottery Comm'n v. Barr, 386 F. Supp. 3d 132 (D.N.H. 2019). iDEA's brief also referenced UIGEA's provision pertaining to the intermediate routing of electronic data, a sub-issue tangentially related to the transmission-related focus of this response. *Id.* at 13.

[29] Defendants' Memorandum in Support of Motion to Dismiss and Objections to Plaintiffs' Motions for Summary Judgment at 35, N.H. Lottery Comm'n v. Barr, 386 F. Supp. 3d 132 (D.N.H. 2019).

[30] *Id.* at 36.

[31] In a footnote, the First Circuit merely restated the DOJ OLC's conclusion: "The 2018 Opinion also found that the UIGEA, which Congress enacted in 2006, did not modify or otherwise alter Section 1084(a) [of the Wire Act]." N.H. Lottery Comm'n v. Rosen, 986 F.3d 38, 46 n.3 (1st Cir. 2021).

gambling entities could be prosecuted under the Wire Act for transmitting sports betting information or data across certain state lines.[32] Indeed, both the Wire Act and UIGEA include that same operative language to describe their prosecutorial targets: persons "engaged in the business of betting or wagering."[33] This possibility—that entities engaged in the business of betting or wagering could face Wire Act scrutiny for transmitting sports betting information or data across certain state lines—is the remaining focus of this response.

IV. WIRE ACT VIS-À-VIS TRANSMITTING SPORTS BETTING INFORMATION AND DATA

In relevant part for this response, the Wire Act provides:

> 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, 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.[34]

The DOJ OLC's 2011 memo highlighted the Wire Act's legislative history and its focus on wire communications in sports betting. For example, the House Judiciary Committee's report explained: "Testimony before your Committee on the Judiciary revealed that modern bookmaking depends in large measure on the rapid transmission of gambling information by wire communication facilities."[35] Further, "[t]he availability of wire communication facilities affords opportunity for the making of bets or wagers and the exchange of related information almost to the very minute that a particular sporting event begins."[36]

An emphasis on the importance of information transmission persisted in the DOJ OLC's 2018 memo: "Congress may well have had reasons to target the transmission of information assisting in sports gambling. Unlike lotteries, numbers games, or other kinds of non-sports gambling, sports gambling has long depended on the real-time transmission of information like point spreads,

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[32] Such information and data would include, but not be limited to, real-time game scores, player-level performance statistics as the underlying sporting event progresses, and continuously-changing betting odds/lines/prices during the duration of the sports contest.

[33] 18 U.S.C. § 1084; 31 U.S.C. § 5363. Curiously, neither statute defines such phrase. Ben J. Hayes & Matthew J. Conigliaro, *"The Business of Betting or Wagering": A Unifying View of Federal Gaming Law*, 57 DRAKE L. REV. 445, 446 (2009).

[34] 18 U.S.C. § 1084(a).

[35] Seitz, *supra* note 18, at 9 (citing H.R. Rep. No. 87-967, at 2 (1961)).

[36] *Id.*

odds, or the results of horse races."[37] Further, "Congress might have been worried that an unfocused prohibition on transmitting any information that 'assisted' in any sort of gambling whatsoever would criminalize a range of speech-related conduct."[38]

Also relevant to this response, the Wire Act includes a safe harbor that exempts transmissions of information "for [the] use in news reporting of sporting events or contests."[39] This safe harbor extends to transmissions of information "assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal."[40] Finally, the Wire Act also "creates a notice-and-disconnect regime for common carriers, which must discontinue services to subscribers upon notice that the subscribers are using, or will use, their facilities 'for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law.'"[41]

V. CASE LAW ON TRANSMITTING SPORTS BETTING 'INFORMATION' AND DATA

A host of federal cases have served to define what constitutes "information" under the Wire Act and the scope of activities that are potentially subject to prosecution. In *United States v. Scavo*, the defendant was charged with transmitting "information assisting in the placing of bets or wagers."[42] A federal law enforcement agent testified that the defendant provided "much-needed 'line' information—i.e., the odds or point spread established to equalize or induce betting on sporting events."[43] On appeal, the defendant argued that "a person who merely provides line information is not 'engaged in the business of betting or wagering.'"[44] The Eighth Circuit rejected this "blanket assertion that suppliers of line information are outside the scope of § 1084(a),"[45] reasoning that "accurate and up-to-date line information is of critical importance to any bookmaking operation."[46]

Other Eighth Circuit case law provides additional context.[47] *United States v. Reeder* involved a service that provided "general sports news, game scores,

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[37] Engel, *supra* note 11, at 14.
[38] *Id.* at 14–15.
[39] 18 U.S.C. § 1084(b).
[40] *Id.*
[41] Engel, *supra* note 11, at 12 (citing 18 U.S.C. § 1084(d)).
[42] United States v. Scavo, 593 F.2d 837, 837 (8th Cir. 1979).
[43] *Id.* at 840.
[44] *Id.* (citing 18 U.S.C. § 1084(a)).
[45] *Id.* at 841.
[46] *Id.* at 842.
[47] *See* United States v. Sutera, 933 F.2d 641, 641 (8th Cir. 1991).

and fast breaking news on all general sports information."[48] The court found that such information "could assist the defendant in the placing and accepting of bets and wagers," thereby triggering Wire Act liability.[49] *Truchinski v. United States*—a case involving the transmission of weather-related news and betting odds—provided further nuance, finding that "there is no requirement under [the Wire Act] that the offender be exclusively engaged in the business of betting or wagering."[50] Further, the Eighth Circuit in *Truchinski* cited a sister circuit's conclusion that the Wire Act "makes no distinction between those engaged in the business of gambling on their own behalf and those engaged in that business on behalf of others."[51]

The Eleventh Circuit upheld a Wire Act count involving a defendant who used a third party to call "a source in Las Vegas to learn the point spread on various sporting events."[52] The court rationalized that the defendant, a sports betting bookmaker, "understood the importance of obtaining timely wagering information."[53] Further, in *United States v. Ross*, a district court case, such "information" was deemed to "include knowledge that may influence whether, with whom, and on what terms to make a bet. Thus transmissions reporting the results of sporting events, the odds placed on particular contests by odds-makers, or the identities of persons seeking to place bets would be examples of 'information.'"[54] The DOJ subsequently posited that *Ross* "correctly described" the parameters of the word "information" under the Wire Act.[55] *United States v. Alpirn*, another district court case, surveyed the Wire Act's legislative history and found that it "strongly suggests that Congress was concerned not only with bookmakers themselves but also with those persons who use wire communication facilities to transmit vital gambling information to bookmakers."[56] The *Alpirn* court also cited a prior district court case finding that the Wire Act "applied to persons other than bookmakers."[57]

VI. CRYSTAL BALL FORECAST FOR THE NEXT FIFTEEN YEARS

The plain language of the statute coupled with the relevant case law leads to a straightforward conclusion that the Wire Act's grasp includes transmissions of sports betting information and data that fall outside the Wire Act's two-

[48] United States v. Reeder, 614 F.2d 1179, 1184 (8th Cir. 1980).

[49] *Id.* at 1185.

[50] Truchinski v. United States, 393 F.2d 627, 630 (8th Cir. 1968).

[51] *Id.* (citing Cohen v. United States, 378 F.2d 751, 758 (9th Cir. 1967)).

[52] United States v. Miller, 22 F.3d 1075, 1077 (11th Cir. 1994).

[53] *Id.* at 1079.

[54] United States v. Ross, No. 98 CR 1174-1 (KMV), 1999 WL 782749, at *5 (S.D.N.Y. Sept. 16, 1999).

[55] Brief for the United States in Opposition at 13, Cohen v. United States, 536 U.S. 922 (2002) (No. 01-1234).

[56] United States v. Alpirn, 307 F.Supp. 452, 455 (S.D.N.Y. 1969).

[57] *Id.* (citing Kelly v. Ill. Bell Tel. Co., 210 F. Supp. 456, 466 (N.D. Ill. 1962), *aff'd*, 325 F.2d 148 (7th Cir. 1963)).

pronged safe harbor. As a result, every sports league, information/data dissemination firm, media entity, and wagering operator could face Wire Act liability if involved in the transmission of such information and data when sports betting is illegal in either the state of origin or the destination state. Indeed, as of February 2022, sports betting remains illegal in several highly-populated states such as Texas and California.

This conclusion is particularly timely in light of how high-level commercialized sports returned from the pandemic shutdown in 2020. Certain companies involved in the dissemination of sports betting information and data shifted to creating pop-up sporting events for the purpose of generating content for the wagering markets.[58] Relatedly, some sports leagues created "bubbles" in single locations for the purpose of holding sporting events while simultaneously transmitting information and data about such events to fuel the global betting market. Most notably, the National Basketball Association held a considerable portion of its 2020 season in Orlando, Florida.[59] Sports betting was illegal in the state of Florida in 2020.[60]

Likewise, the Supreme Court's 2018 ruling in *Murphy v. National Collegiate Athletic Ass'n*[61] that served as the lever for expanded legalized sports betting has given rise to a host of partnerships among numerous sports industry members: several sports leagues now have equity positions in prominent companies who transmit betting information and data to sportsbooks in the United States and abroad;[62] individual owners of professional sports teams own equity stakes in the same firms;[63] one umbrella organization owns both a sports league and a company who transmits sports betting information and data;[64] and some firms in the business of transmitting sports betting information and news

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[58] *See* David Purdum, *Betting Companies Help Get Tennis Players Back on the Court*, ESPN (June 17, 2020), https://www.espn.com/chalk/story/_/id/29315110/betting-companies-help-get-tennis-players-back-court [https://perma.cc/6XWY-H4UH].

[59] David Purdum, *NBA Day Games Are a Big Hit with Bettors*, ESPN (Aug. 13, 2020), https://www.espn.com/chalk/story/_/id/29654377/nba-day-games-big-hit-bettors [https://perma.cc/G33V-N7XJ].

[60] FLA STAT. ANN. § 849.14 (West 2021).

[61] *See* Murphy v. Nat'l Collegiate Athletic Ass'n, 138 S. Ct. 1461, 1461 (2018).

[62] *See, e.g.*, Brendan Coffey & Eben Novy-Williams, *Genius Sports Reveals NBA Owners Ballmer, Tsai Hold Stakes in Data Firm*, SPORTICO (Sept. 22, 2021), https://www.sportico.com/business/finance/2021/nfl-owns-genius-sports-stake-1234640538/ [https://perma.cc/BXB7-YK8C] ("The National Football League owns more than 5% of Genius Sports, according to a prospectus filed with the Securities & Exchange Commission . . . .").

[63] *See, e.g.*, Sara Germano, *Rise of Sports Betting Fuels Demand for Data Gatekeepers*, FIN. TIMES (Sept. 15, 2021), https://www.ft.com/content/c03980e6-c38f-419b-b8c5-b01496a282c2 [https://perma.cc/M4TC-JN55] ("Sportradar's minority investors include Dallas Mavericks owner Mark Cuban and basketall legend Michael Jordan . . . ").

[64] Matt Rybaltowski, *Ari Emanuel Pivots to Sports Betting with Endeavor's $1.2B Purchase of OpenBet*, SPORTS HANDLE (Sept. 28, 2021), https://sportshandle.com/ari-emanuel-endeavor-scigames-openbet-acquistion/ [https://perma.cc/GLL9-L7ZR].

have recently purchased sports gambling operators while simultaneously securing sports betting licenses in various states.[65]

All of this leads to a revealing dilemma. To escape potential Wire Act liability for transmitting sports betting information and data across state lines when at least one state involved deems sports wagering illegal, those in the business of betting or wagering could point towards the Wire Act's safe harbor for "news reporting." However, any appeal to this safe harbor would be an acknowledgement that First Amendment free speech protections would apply, and *anyone*—not just a favored monopoly-status firm providing sports betting information and data on a purported "exclusive" or "official" basis—would be entitled to disseminate such information and data on-site and in real-time at a sporting event.[66]

This "transmission" issue, in turn, promises to be front-and-center in the next fifteen years, especially given the DOJ's repeated insistence that UIGEA does not impact the Wire Act.

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[65] *See, e.g.*, Genius Sports Press, *Connecticut Awards Genius Sports Inaugural Sports Betting License*, GENIUS SPORTS (Sept. 30, 2021), https://news.geniussports.com/connecticut-awards-genius-sports-inaugural-sports-betting-license/ [https://perma.cc/JR6E-NTUM].

[66] Indeed, the Supreme Court has made clear that "the creation and dissemination of information are speech within the meaning of the First Amendment." Sorrell v. IMS Health, Inc., 564 U.S. 552, 570 (2011) ("Facts, after all, are the beginning point for much of the speech that is most essential to advance human knowledge and to conduct human affairs.").