

# GAMING LEGAL NEWS



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## GAMING LEGAL NEWS EDITORIAL BOARD

**Robert W. Stocker II**, Gaming Law  
517.487.4715 • rstocker@dickinsonwright.com

**Dennis J. Whittlesey**, Gaming Law/Indian Law  
202.659.6928 • dwhittlesey@dickinsonwright.com

**Michael D. Lipton, Q.C.**, Gaming Law  
416.866.2929 • mdliptonqc@dickinsonwright.com

**Peter H. Ellsworth**, Gaming Law/Indian Law  
517.487.4710 • pellsworth@dickinsonwright.com

**Peter J. Kulick**, Gaming Law/Taxation  
517.487.4729 • pkulick@dickinsonwright.com

**Kevin J. Weber**, Gaming Law  
416.367.0899 • kweber@dickinsonwright.com

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## THE AFTERMATH OF THE U.S. 2012 ELECTION: IS FEDERAL I-POKER LEGISLATION LOOMING?

by Peter J. Kulick and Robert W. Stocker II

The final verse has been written for the 2012 U.S. Presidential Election. That verse reads simply as a surprising status quo from the last two years: Barack Obama retains his job in the White House and Congress remains divided. Until the 113th Congress is sworn in on January 3, 2013, Congress will move into the period colloquially known as the "lame duck session." It is during this lame duck session that many commentators anticipate that Senator Harry Reid (D-NV) and Senator Jon Kyl (R-AZ) will introduce federal legislation to authorize i-poker.

Rumors have circulated for several weeks that Senators Reid and Kyl would soon offer i-poker legislation. In mid-October, draft legislation was publicly leaked and has now been widely circulated through the Internet. This is not the first time Senator Reid has floated the concept of federal i-poker legislation during a lame duck session. Following the 2010 mid-term elections, rumors ran rampant that Senator Reid would move quickly to introduce and secure the passage of legislation authorizing i-poker in the U.S. Ultimately, the rumors of 2010 never materialized to fact.

Will the 2012 congressional lame duck session be any different? The answer is anybody's guess. Conventional wisdom would suggest that i-poker legislation may face resistance in the Republican-controlled House of Representatives. However, as popular attitudes have evolved and more Republicans have voiced support for federal i-poker, coupled with the knowledge that Mr. Obama will remain in office for four additional years, the outlook for the enactment of i-poker legislation may improve. The fact that Mr. Obama was reelected on Tuesday should not be lost in the procrastination equation. This effectively means that it is unlikely that the U.S. Department of Justice ("DOJ") will modify its 2011 interpretation of the federal Wire Act. While only informal agency action – and not binding agency action – the DOJ, through the auspices of a memorandum opinion released in December 2011, concluded that the Wire Act only extends to prohibit wagering on sporting events. The DOJ's December 2011 interpretation of the Wire Act represents a complete reversal of its previous long-standing interpretation that the Wire Act applied to criminally prohibit all forms of gambling.

If i-poker legislation is ultimately introduced, the draft leaked to the public may very well serve as the template. The highlights of Senator Reid's and Senator Kyl's draft i-poker legislation include:

- All forms of i-gaming would be prohibited, except for "on-line poker facilities" that are operated pursuant to a federally issued license.
- Persons eligible to receive a federal i-poker license would be limited to entities that control or are controlled by a casino gaming facility, a qualified race track, or a qualified card room.
- Persons that knowingly accept or accepted bets on sporting events from U.S. persons or are affiliated with any person that knowingly accepts or accepted bets on sporting events from U.S. persons would be ineligible to hold a federal i-poker license.
- Significant vendors would also be subject to qualification and licensing.
- An opt-in approach, which would require states to affirmatively elect to allow wagers to be placed by individuals located within the state.
- States and federally recognized Indian tribes, meeting certain criteria, would be eligible to be a delegated regulatory authority with respect to the authorized i-poker industry. To be eligible to serve as a qualified regulatory body, a state or Indian tribe would need to establish, among other criteria, a reputation as a regulatory and enforcement leader in the gaming industry and a strict regulatory regime.

The push to authorize i-gaming in the U.S. continues to gain momentum with each passing year. The theme that can be extracted from the 2012 election is the preservation of the status quo. Whether Congress maintains the status quo by not acting on i-gaming legislation remains to be seen.