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CRS Report for Congress

# Internet Firearm Sales

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## Summary

With the increasing utilization of the internet to facilitate commercial transactions, concerns have arisen regarding the use of this medium to transfer firearms. This report discusses the sale of firearms over the internet, with a focus on the extent to which federal law regulates such activity. A review of the relevant factors indicates that while firearms transferred in an illegal manner via the internet may pose special investigatory problems for law enforcement, internet firearm sales are subject to the same regulatory scheme as traditional firearm transactions.

The rapid growth of the internet as a venue for commercial transactions has raised concerns regarding the sale of firearms over the internet. These concerns have been magnified by reports that there are approximately 4,000 firearm sales-related websites, as well as 80 sites where guns may be purchased via auction.[1] In particular, it has been asserted that current firearm laws either do not regulate internet-based sales, or are insufficient to combat illegal firearm sales in the internet context.[2] A review of applicable federal law, discussed below, establishes that internet-based firearm sales are not imbued with a special character by virtue of their medium of transfer, and are in fact subject to the same degree of regulation as any other type of firearm transaction. It should be noted however, that while current federal laws regulating the transfer of firearms are fully applicable in the internet context, the unique qualities of internet transactions may pose significant obstacles to their enforcement.[3]

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[1] *See* U.S. Dept. of Justice, "Gun Violence Reduction: National Integrated Firearms Violence Reduction Strategy," at 28, located at [http://www.usdoj.gov/opd/gunviolence.htm].

[2] *See* n. 21-26 and accompanying text, *infra*.

[3] *See* n. 24 and accompanying text, *infra*. This report addresses the specific issue of whether current federal firearm laws apply to internet-based firearm sales and whether such laws are effective in the internet context. It does not purport to broach the related policy issue of whether additional firearm laws, either generally or specifically applicable to internet transactions, are warranted. For a thorough analysis of current policy issues and legislative activity regarding firearms, See CRS Issue Brief IB10071, *Gun Control Legislation in the 107th Congress*, by William Krouse.

## The Gun Control Act of 1968

Congress enacted the Gun Control Act of 1968 (GCA) to "keep firearms out of the hands of those not legally entitled to possess them because of age, criminal background or incompetency, and to assist law enforcement authorities in the states and their subdivisions in combating the increasing prevalence of crime in the United States."[4] To this end, the GCA prohibits certain classes of individuals from possessing firearms, and establishes a comprehensive regulatory scheme designed to prevent the transfer of firearms to such individuals.[5]

In particular, the GCA delineates nine classes of individuals who are prohibited from shipping, transporting, possessing, or receiving firearms or ammunition in interstate commerce.[6] The individuals targeted by this provision include: (1) persons convicted of a crime punishable by a term of imprisonment exceeding one year; (2) fugitives from justice; (3) individuals who are unlawful users or addicts of any controlled substance; (4) persons legally determined to be mentally defective, or who have been committed to a mental institution; (5) aliens illegally or unlawfully in the United States, as well as those who have been admitted pursuant to a nonimmigrant visa; (6) individuals who have been discharged dishonorably from the Armed Forces; (7) persons who have renounced United States citizenship; (8) individuals subject to a pertinent court order; and, finally, (9) persons who have been convicted of a misdemeanor domestic violence offense.[7]

### A. Restrictions on Sales.

In order to effectuate the general prohibitions outlined above, the GCA also imposes significant requirements on the transfer of firearms. Pursuant to the Act, any person who is engaged in the business of importing, manufacturing, or dealing in firearms must possess a Federal Firearms License (FFL) issued by the Secretary of the Treasury.[8] The possession of a FFL grants an individual the ability to ship, transport, and receive firearms in interstate and foreign commerce, while also imposing several requirements on the licensee designed to ensure that a firearm is not transferred to an individual disqualified from possession under the Act. For example, a licensee must verify the identity of a transferee by examining a government issued identification document bearing a photograph of the transferee, such

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[4] S.Rep. No. 90-1097 (1968).

[5] 18 U.S.C. §921 *et seq.*

[6] 18 U.S.C. §922(g)(1)-(9).

[7] The GCA also prohibits the receipt, transport, or shipment of firearms by individuals under felony indictment. 18 U.S.C. §922(n). Furthermore, the GCA places significant restrictions on the transfer to, and possession of, firearms by persons under 18. *See* 18 U.S.C. §922(x).

[8] 18 U.S.C. §922(a); §923. An individual is "engaged in the business" of dealing in firearms if he or she "devotes time, attention and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms." 18 U.S.C. §922(a)(21)(C).

as a driver's license;[9] conduct a background check on the transferee using the National Instant Criminal Background Check System (NICS);[10] maintain records of the acquisition and disposition of firearms;[11] report multiple sales to the Secretary;[12] respond to an official request for information contained in the licensee's records within 24 hours of receipt;[13] and comply with all other relevant state and local regulations.[14]

Federal law does not impose licensing requirements on all sellers of firearms, however. The GCA contains a specific exemption for any person who makes "occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms."[15] Such private sellers are prohibited from knowingly transferring a firearm to a disqualified individual, but are not required to conduct Brady background checks or maintain official records of transactions.[16]

### B. Restrictions on Interstate Transfers.

In addition to the aforementioned requirements imposed upon the sale of firearms by licensed and unlicensed individuals generally, federal law also places significant limitations on the actual interstate transfer of weapons.[17] These provisions are of particular interest in analyzing internet-based firearm sales, given the inherently interstate quality of such activity and the perceived potential for abuse in the internet sale context.

While the possession of a FFL grants a dealer the ability to sell and ship firearms in interstate or foreign commerce, the GCA places several restrictions on the manner in which a transfer may occur. Specifically, while a licensee may make an over-the-counter sale of a shotgun or rifle to any qualified individual, the licensee may not make such a sale of a handgun to a resident of a state other than that in which the dealer's licensed premises is located.[18] Relatedly, a licensee is prohibited from shipping firearms directly to consumers in other states. Instead, a licensee making a firearm sale to a non-resident must transfer the

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[9] 18 U.S.C. §922(t)(1)(c).

[10] 18 U.S.C. §922(t).

[11] §923(g)(D)(2).

[12] §923(g)(D)(3)(A).

[13] §923(g)(D)(7).

[14] §923(d).

[15] 18 U.S.C. §921(a)(21)(C).

[16] 18 U.S.C. §922(d); §922(t).

[17] Regarding the mailing of firearms, 18 U.S.C. §1715 prohibits the shipment of any firearm other than a shotgun or rifle via the United States Postal Service, except for firearms shipped for official law enforcement purposes. Firearms, including handguns, may be shipped by common carrier upon disclosure and subject to the restrictions discussed above. *See* 18 U.S.C. §922(a)(2)(A); §922(3); 27 C.F.R. §178.31.

[18] 18 U.S.C. §922(b)(3).

weapon to a licensee in the destination state, from whom the transferee may obtain the firearm after passing the required NICS check.[19]

Substantial restrictions are also placed on firearm transfers between non-licensees. Specifically, whereas a licensee may transfer a rifle or shotgun to a non-resident non-licensee in an over-the-counter sale, the GCA specifically bars a non-licensee from directly selling a firearm to any person who does not reside in the transferring non-licensee's state.[20] Instead, a non-licensee wishing to transfer a firearm to a non-licensee in another state must ship the firearm to a licensed dealer in the transferee's state.

## The GCA and the Internet

The aforementioned provisions control the present inquiry, given that much of the concern surrounding internet-based firearm transactions centers on the notion that such sales are effectively beyond the purview of existing restrictions.[21] Specifically, the panoply of laws discussed above establish a federal scheme that regulates every firearm sale, irrespective of the medium of transaction. Given that these laws address the transfer of any firearm in interstate or foreign commerce, the mere fact that a firearm transaction is negotiated over the internet does not except it from requirements adhering to traditional "brick and mortar" sales or those facilitated through classified advertisements in newspapers.[22] Accordingly, it would appear that the proper analytical focus should center on whether there are fundamental differences between internet transactions and traditional sales methods that render the existing regulatory framework insufficient or obsolete.

The Department of Justice has identified several factors it finds unsettling regarding firearm sales over the internet.[23] In addition to the possibility that prohibited persons may be successful in acquiring firearms over the internet, the DOJ is troubled that the internet "provides convenient fora" for the advertisement and sale of firearms by unlicensed individuals who are not required to conduct background checks or retain records of sales, and may encourage these individuals to illegally engage in the business of dealing in forearms without a license. Additionally, the DOJ asserts that the prospect of quick profits from internet sales may "create a temptation on the part of FFL's to circumvent" existing federal laws.[24]

Relatedly, the President's Working Group on Unlawful Conduct on the Internet ("Working Group"), created by Executive Order 13,133, has stated that the sale of

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[19] 18 U.S.C. §922(b)(3); §922(t).

[20] 18 U.S.C. §922(a)(3); §922(a)(5); §922(b)(3).

[21] For example, a publication by the Violence Policy Center states that "[t]he secondary gun market - i.e., the selling of guns at gun show or over the internet - is in reality totally unregulated." *See* Violence Policy Center, "Unsafe in Any Hands: Why America Needs to Ban Handguns," located at [http://www.vpc.org/studies/unsafe.htm].

[22] *See*, 18 U.S.C. §922.

[23] *Supra*, n. 1.

[24] *Id.*

firearms over the internet poses "unique problems" for law enforcement.[25] First, the Working Group maintains that illegal sales conducted via the internet will be more difficult to detect than sales facilitated through traditional venues such as print advertisements, since "the internet provides people with the means to advertise guns for sale on message boards, through e-mail, in chat rooms, or other websites that will be difficult to find and may even be inaccessible to law enforcement."[26] Additionally, the Working Group asserts that the lack of a fixed physical location for the execution of internet-based sales may hinder enforcement efforts. In particular, the Working Group stresses that, as opposed to sales made at gun stores or shows where the Bureau of Alcohol, Tobacco and Firearms may conduct inspections and review records of transactions, internet-based transactions are much more difficult to monitor.[27]

Given the facilitative qualities of the internet, the observations by the DOJ and the President's Working Group appear logically sound and have an intuitive appeal. It should be noted, however, that there is currently little substantive evidence to support these assumptions.

As noted above, the DOJ is particularly concerned that the ease with which firearm transactions may be advertised and, to some degree, consummated over the internet will lead to increased violations of federal law.[28] However, there is currently no official data indicating that individuals advertising firearms for sale over the internet are any more likely to ignore firearm laws than those employing traditional venues. Furthermore, a recent investigation by the General Accounting Office monitoring individuals advertising firearms for sale on the internet detected no illegal activity.[29] Specifically, an undercover agent responded to ten of twenty-one advertisements offering firearms for sale on an unidentified website.[30] Eight of the ten advertisers were federally licensed dealers, all of whom refused to ship the firearms offered for sale to anyone except another federally licensed dealer in compliance with the GCA.[31] Of the two advertisers selling firearms in an individual capacity, the GAO report states that one refused to ship the firearm to anyone other than a licensee and states that the other individual "refused to send the firearm through the mail."[32] While the GAO investigation was limited in scope, the fact

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[25] *See*, President's Working Group on Unlawful Conduct on the Internet, "The Electronic Frontier: The Challenge of Unlawful Conduct Involving the Use of the Internet," Appendix E, at 3. Report Located at [http://www.usdoj.gov:80/criminal/cybercrime/unlawful.pdf], with appendix located at [http://www.usdoj.gov:80/criminal/cybercrime/append.pdf].

[26] *Id.*

[27] *Id.*

[28] *Supra*, n. 1.

[29] United States General Accounting Office, "Firearms Purchased From Federal Licensees Using Bogus Identification," GAO-01-427, March, 2001.

[30] *Id.* at 13.

[31] *Id.* at 13.

[32] *Id.* at 13. According to the GAO report, the two private sellers did agree to sell the firearms to the undercover agent in an in-person transaction, which was not pursued. The report does not provide sufficient information to determine whether such a transaction would have violated the

(continued...)

that none of the individuals solicited by the undercover investigator agreed to engage in any illegal activity could be interpreted as undermining the contention that the use of the internet in facilitating firearm transactions will necessarily result in increased illegal activity.

Likewise, it is important to note that concerns regarding the internet's effect on law enforcement efforts appear to be based on assumptions that have yet to be substantiated. In particular, while the President's Working Group identified several factors that may pose barriers to effective enforcement in the internet context, it remains to be seen whether perceived difficulties in enforcement are related to technological barriers, or are simply the result of insufficient investigative resources and experience in the internet context. Furthermore, it is possible that advances in investigative technology may obviate such concerns. For example, the ATF has implemented the "eZ Check" federal firearm license verification system, which allows licensed dealers to verify, via an ATF website, that licenses presented for the purchase or shipment of guns are valid.[33] Additionally, the ATF is reportedly developing a "Cybercrime Branch" to ascertain the scope of illegal firearm transactions over the internet and develop appropriate mechanisms to respond to such activity.[34] The results of these initiatives should serve to illuminate the validity of the concerns identified above.

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[32] (...continued)
GCA. *Id.* at 13.

[33] *See* Department of the Treasury, Office of Public Affairs, "ATF Web Page to Prevent use of Fraudulent Firearm Licenses," September 23, 2000. Located at [http://ww.ustreas.gov/press/releases/ps903.htm].

[34] *Supra*, n. 1.