

Op-Ed/Editorials - Playing Internet Poker

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Is it legal to play poker on the Internet?

There are an estimated 1,840,100 active real money online poker players, according to PokerPulse.com. So, you would think that someone could tell you whether you were committing a crime when you bet, raise or fold online.

It actually is possible to know whether you are breaking the law. In fact, it has to be, or you are not guilty. The U.S. Constitution requires that people must have a way of knowing in advance that their actions are illegal or they cannot be convicted of committing a crime.

The Constitution does not require that you actually know whether your activities constitute a crime. Just that you could know, if you researched the question through the tens of thousands of criminal statutes and cases that have been published.

If you did take the time, or hired a lawyer to do the research for you, you would find that the question of whether playing poker online is a crime is complicated.

The most important factor is where you are. That will determine which state's laws apply.

We don't care about federal law, in this case. The federal government is mostly interested in organized crime. So, there are no federal laws against being a mere player, even if the operator is running a blatantly illegal game.

But state laws are different. Naturally, every state makes it a crime to conduct some forms of unauthorized gambling. But about half the states also have ancient

laws on the books, prohibiting even making a bet under some circumstances.

California, for example, makes it a crime to “carry on” 11 named games, including “21.” Anyone, outside an Indian casino, who deals blackjack for money is committing a misdemeanor. But the law was amended in 1885 to include anyone who merely bets at one of these illegal games as well. So all the blackjack players are also guilty.

The list of prohibited games includes the words “percentage game.” In the rest of the world, a “percentage game” means the house participates and has a percentage advantage. Due to bad case law, in California the term means a game, including a poker game, where the operator takes a percentage of the amounts bet or won, even if the operator does not play a hand.

California card clubs wanted the right to rake the pot. So they convinced the California Legislature to change the law. Now, by statute, licensed card clubs may take up to three levels from a pot, four, if the house takes nothing if the pot is too small. For example, an operator can take nothing from pots less than \$10, 50¢ from pots between \$10 and \$20, \$1 from \$20 to \$30 pots, and \$2 from a pot over \$30. This is defined, by law, as not being a percentage game.

So, playing a poker game online where the players pay a flat fee is not illegal under California state law. But if the operator rakes the pot, watch out. As soon as the operator rakes the pot a fourth time, you, the player, are committing a misdemeanor.

Of course, law enforcement does not know this. Or care.

The reality is that you are more likely to win the no-limit Texas Hold ‘Em tournament at the World Series of Poker than you are to be arrested for playing poker online from California.

After all, every year someone does win the WSOP. Nobody has ever been charged with the crime of playing poker on the Internet.

What do you think? Comments on this article can be addressed to Prof. I. Nelson Rose.

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