

# Op-Ed/Editorials: Is There A Law Against Gambling On The Internet?

January 18, 2006

The views expressed in the Op-Ed/Editorials page are solely the views of the author(s) and do not necessarily reflect the views of the BASIS, its sponsors, or affiliated organizations.

I. Nelson Rose, J. D. Professor, Whittier Law School Costa Mesa, CA  
BASIS, editorial board member

The question I get far more than any other is, "Is gambling on the Internet legal?" Often it comes from regular players. It is interesting how many gamblers are concerned about making sure they are not breaking the law. Advocates of legalization often say that people are going to gamble anyway, and that when an activity is illegal there is the temptation of "forbidden fruit." Both are undoubtedly true. But there are also millions of people who won't break the law, even if there are no adverse consequences, just because it is the law. This is also a good indicator of how much growth there would be if Internet gambling were made clearly legal. Of course, many players are worried about getting into trouble. My favorite emails are from gamblers who have won big and now want to know if they will get arrested.

I have a standard answer: There is no federal law against being merely a player. About half the states do have ancient laws on the books that sometimes make it a crime to make a bet. But you have a better chance of winning the World Poker Tour than of being arrested. After all, there are WPT winners every year. Yet only one person has ever been convicted of the crime of betting online. In 2003, Jeffrey Trauman was charged with "placing a wager over \$500," which is a misdemeanor under North Dakota state law. Jeff was a car salesman during the day, but made most of his money betting on sports.

The State Gaming Division got a tip from an outside source and started an investigation. Jeff told me that he thinks he was turned over to the state by the I.R.S., because he put "professional gambler" as his occupation on his federal tax

return. I told him the I.R.S. is not allowed to do that, and I thought it was his bank, since large sums of money were going in and out of his account. They probably thought he was a drug dealer. And once the government starts investigating, they have to charge someone with something. The latest theory from Jeff's friends is that his family turned him in, because their strict religious beliefs forbade gambling. Jeff pleaded guilty, paid a \$500 fine and left North Dakota, for a state where there is no prohibition on betting. Although it is extremely rare to get into trouble for merely placing bets online, gamblers can be prosecuted for related offenses. Helping the operators, such as collecting debts from other gamblers, puts the player into the business of gambling. And the state and federal tax authorities may not care where you get your income, but you still have to report it. For gaming operators, there are both federal and state laws that can kick in. The major federal statute is the Wire Act. This makes it a crime for anyone in the business of gambling to use a wire to send bets or information useful in the placing of bets across state or national boundaries.

The federal Department of Justice believes this statute covers all forms of Internet gambling. But the three federal courts that looked at this issue all agreed that the prohibition is limited to bets on racing and sports events. Online casinos, lotteries and poker do not fall under this law.

The cases involved players suing credit card companies to get their losses back. The D.O.J. feels it is not bound by these decisions, I guess because it was not a party to the lawsuits. But that is not the way the law works.

The D.O.J. might be able to find a federal judge somewhere who would disagree with this interpretation of the Wire Act, but it is doubtful. First, one of the courts was the Fifth Circuit Court of Appeals, so all federal courts in that circuit are bound by the decision. Second, one of the cases involved consolidated class actions that had been filed all over the country and, although not legally binding, would be very strong precedent for every other court. In fact, it is safe to say that the only way the D.O.J. could prevail is to get the U.S. Supreme Court to hear a case involving the Wire Act and for the justices to disagree with every other judge who has interpreted this law, which is not going to happen.

Even though the Wire Act does cover bets on horse and dog races and sports events, this does not mean that overseas operators are going to be prosecuted. Besides the practical problems of going after operators in foreign countries, there

are legal barriers. Only a few recent extradition treaties, like the one the U.S. entered into with Hong Kong in 2000, include gambling. And there are other sovereignty issues. For example, the U. S. and U.K. have a treaty, a Mutual Lateral Assistance Treaty or MLAT, which requires that before the U.S. can take criminal action against a British citizen who is physically in England, there must first be top government to government discussions. The President and Prime Minister have more important things to talk about at the moment.

Licensed bookies still have to be careful. I worked with a British bookmaker who made the mistake of having \$734,578.82 in a bank account in New Jersey. Although I raised the MLAT issue, the court decided that it did not apply, because this was a civil forfeiture and no criminal action was being taken in England.

Besides the Wire Act, there are few other federal crimes that might apply. RICO, short for Racketeer Influenced and Corrupt Organizations, does include gambling, but it is expressly limited to state felonies. Most state gambling crimes are misdemeanors.

There is one federal law that could apply. The Organized Crime Control Act of 1970 created a new federal crime, "illegal gambling business." Because Congress has to find its power from a provision of the U.S. Constitution, it declared that large (5 people, \$2,000 a day for 30 days) illegal gambling businesses have an impact on interstate commerce. What makes this crime unique is that it does not say that the state illegal gambling has to be felonies.

So, it is possible that an Internet operator may be violating this federal law by committing gambling misdemeanors under state law. And every state has laws on the books against taking bets without a license.

Still, there are problems. Would a federal prosecutor today charge someone with a federal felony, merely for committing state misdemeanors? And exactly what state crimes are being committed?

There is a strong presumption that laws do not have extraterritorial reach. Unless they expressly say they are intended to cover activities outside their borders, state statutes cannot reach into other states or nations.

Also, all the sovereignty issues kick in. Nevada does have a statute that clearly makes it a crime in Nevada for someone in a foreign country to take a bet online

from someone in Nevada. But can Nevada do that, when the operator is a citizen of a foreign nation, licensed by his own country? What if it is the foreign country itself, accepting bets on its state lottery?

And exactly how is the state of Nevada going to go about arresting someone in a foreign country, with gambling not covered by an extradition treaty?

Somehow I cannot see the governor sending the Nevada National Guard to make an arrest in England. Even if that were legal.

As the English would say, it's just not done.

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

#116 © Copyright 2006, all rights reserved worldwide. GAMBLING AND THE LAW® is a registered trademark of Professor I Nelson Rose, Whittier Law School, Costa Mesa, CA Copyright