

# Op-Ed/Editorials: Operators Risk Arrest For Online Poker

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As I explained in my last column, you have a better chance of winning a World Poker Tour event than of being arrested for playing poker online. The same is not true for operators of Internet gambling websites - if they make the mistake of visiting the United States. Everyone associated with a site that takes real-money bets from Americans faces some risk of being charged with a federal crime. But the range is enormous: from so close to zero that the activity could almost be considered legal, to a near certainty of spending at least a year in prison. The spectrum of risk is created by the ambiguous nature of federal anti-gambling laws and the difficulties the federal government faces in bringing criminal charges against anyone who is in a foreign country. It is much more dangerous to take sports bets online, which clearly falls under the language of the Wire Act, than online poker, which probably does not. There are other statutes that might be used, such as the Organized Crime Control Act and "RICO," Racketeered Influenced Corrupt Organizations. But these also have weaknesses, such as requiring proof that a specific state anti-gambling statute has been violated. Very few states have laws on the books that explicitly mention the Internet, or that expressly reach activity taking place outside their borders. A bigger problem for the feds, as well as the states, and the reason you don't see dozens of sports bet operators being arrested, is that the United States does not allow trials in absentia. The U.S. Constitution's Sixth Amendment guarantees everyone charged with a crime the right to confront witnesses. This means governments cannot have a trial, let alone a conviction, without the defendant being physically present.

So how does a prosecutor get defendants to come to the U.S. to face trial? The

easiest way is if they do so voluntarily. Jay Cohen, who believed, incorrectly, that taking sports bets in Antigua from New Yorkers was legal, made a conscious decision to come back to stand trial. He went to prison for a year. David Carruthers, now-fired chief executive of BetOnSports, decided, foolishly, to change planes in Dallas on a trip from England to Costa Rica. He is now under house arrest, awaiting trial. Two weeks before Carruthers was nabbed, I gave a written legal opinion to an operator warning him not to set foot in the U.S., and that no judge would ever let a foreign operator leave the country again before trial. Prosecutors have few means of forcing defendants to stand trial. The U.S. does have extradition treaties with most countries. But very few specifically mention gambling. The 1996 treaty between the U.S. and Antigua is typical. It provides that an extraditable offense is one that is “punishable under the laws in both Contracting States by deprivation of liberty for a period of more than one year...” On its face, this means that all felony charges would be covered. However, the government of Antigua is licensing the very people the U.S. would like to extradite. Taking bets from Americans is not a felony in Antigua. The only other way to get a criminal defendant back to the U.S. to stand trial is to go in and grab him. Arresting Manuel Noriega for violating federal drug laws was the ostensible reason for the U.S. invasion of Panama. Somehow, I can’t see even George Bush ordering an invasion of a member of the British Commonwealth or any other friendly nation to arrest a licensed operator of Internet poker.

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

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