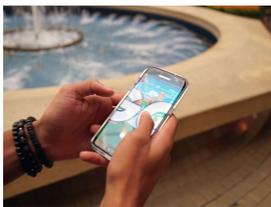


# Pokémon Go isn't a defense, lawyers say

Allana Akhtar, USA TODAY 1:58 p.m. EDT July 26, 2016



(Photo: Trevor Hughes, USA TODAY)

SAN FRANCISCO — "The Pikachu made me do it," isn't going to cut it in court, say lawyers.

Pokémon Go — the augmented reality monster-catching game seeing popularity [like no other app before \(/story/tech/gaming/2016/07/22/pokmon-go-sets-download-record-apples-app-store/87446714/\)](#) it — isn't a get-out-of-jail-free card when it comes to being stupid.

"I think most (juries) are going to say you have to take personal responsibility for your actions," said Rogge Dunn, a partner at the law firm of Clouse Dunn in Dallas, Texas.

Accidents and crimes have occurred due to distracted players making bad decisions in pursuit of Pokémon: a man [crashed his vehicle into a police car \(/story/news/nation-now/2016/07/20/driver-slams-into-baltimore-cop-car-while-playing-pokemon-go-accident/87333892/\)](#) because he was playing the game while driving, and two men [fell off a cliff \(/story/money/business/2016/07/14/two-fall-cliff-reportedly-playing-pokemon-go/87105884/\)](#) because they ignored warning signs on a fence.

"It's very easy for people to get so engrossed in this game and not watch where they are going," said Loretta Powers, an attorney with the law firm of Tim Powers in Denton, Texas.

Which isn't to say game makers are entirely off the hook in cases of injury or crime. As augmented reality games spread, Dunn said courts will need to make sure game makers adequately caution players of potential safety hazards.

"Courts and juries are going to be looking at this very carefully to make sure that people that are bringing forth these games are doing so in a manner that doesn't endanger the players of the game as well as the general public," Dunn said.



## Criminal behavior

Pokémon Go has also been used to aid [illegal activity \(/story/tech/gaming/2016/07/21/bad-and-ugly-pokmon-go/87378730/\)](#), from [luring robbery victims to secluded areas \(/story/tech/2016/07/10/four-suspects-arrested-string-pokemon-go-related-armed-robberies/86922474/\)](#) to breaking and entering into homes in search of Pokémon.

It's only a matter of time until one of these crimes is tried in court and using Pokémon Go as a defense won't help wrongdoers avoid punishment, Powers said.

Lawyers have called on Niantic to make more evident the risks players face when using Pokémon Go. (Photo: Niantic, Inc.)



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[Watch out, Tinder: Pokémon Go is the new way to find love](#)

[\(http://www.usatoday.com/story/tech/news/2016/07/21/watch-out-tinder-pokmon-go-new-dating-scene/87401376/\)](http://www.usatoday.com/story/tech/news/2016/07/21/watch-out-tinder-pokmon-go-new-dating-scene/87401376/)

If a player gets sued for making an honest mistake while playing the game, such as trespassing on private property unknowingly, that could be evaluated on a case-by-case basis.

But for the most part, people must take responsibility for their actions. Committing crimes under the guise of playing Pokémon Go is no excuse, Powers said.

If a defendant were to try to make a "Pikachu defense," it wouldn't be the first time someone blamed video entertainment for their illegal actions.

In the 1980s, two teenagers who robbed a convenience store and shot the clerk said they had been brainwashed by watching the film "Natural Born Killers" too many times.

For this reason, Dunn said he could see Pokémon Go come up as a defense in court, but he felt it would be a difficult to win on those grounds.



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['Pokémon Go' sets download record on Apple's App Store](#)

[\(http://www.usatoday.com/story/tech/gaming/2016/07/22/pokmon-go-sets-download-record-apples-app-store/87446714/\)](http://www.usatoday.com/story/tech/gaming/2016/07/22/pokmon-go-sets-download-record-apples-app-store/87446714/)

Powers attributed some of the Pokémon Go-related incidents to the game's insufficient warning labels. She said Niantic, the maker of Pokémon Go, does not do enough to caution players of serious injury or vulnerability to crime if not paying attention to their surroundings.

Pokémon Go's terms and conditions, which players must click to acknowledge, does include a paragraph on "safe play" within the game. It warns the player that Niantic is not responsible for any injuries incurred during game day or laws broken.

The game also sends players an alert to be aware of their surroundings when they first register.

That might need to be further emphasized. If Niantic does not improve its warning process, it runs the risk of liability lawsuits for failing to sufficiently warn players to be aware of their surroundings to avoid injury or accident, she said.

Snapchat faced a similar liability lawsuit earlier this year when a [Georgia man sued the company \(/story/news/nation/2016/04/28/newser-snapchat-crash/83641460/\)](#) after a car accident involving a teenager who was using Snapchat left him with permanent brain damage. The teen was driving at speeds up to 100 mph in order to post a photo using Snapchat's speed filter.



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[Holocaust Museum, Auschwitz want Pokémon Go hunts out](#)

[\(http://www.usatoday.com/story/tech/news/2016/07/12/holocaust-museum-auschwitz-want-pokmon-go-hunts-stop-pokmon/86991810/\)](http://www.usatoday.com/story/tech/news/2016/07/12/holocaust-museum-auschwitz-want-pokmon-go-hunts-stop-pokmon/86991810/)

Snapchat claimed it discouraged people from using its speed filter while driving with an in-app warning message.

Dunn said Pokémon Go could prevent injuries by using in-app warning icons, or using one or multiple disclaimers at the beginning of the game, front and center. If a game like Pokémon Go is dangerous enough to where it requires warning labels, the game maker must ensure the warning is conspicuous and clear – even if it may scare away potential players.

"Sure it might hurt sales, but if it's the right thing to do, it's the right thing to do."

Niantic did not respond to requests for comment.

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