Despite coming a long way this year, iPoker remained elusive for California stakeholders. But we need to look further than supposedly insurmountable divisions over “bad actors” for the reasons why it failed, many of which are fixable, argues California gaming lawyer David Fried.

I thought of Gatsby’s wonder when he first picked out the green light at the end of Daisy’s dock. He had come a long way to this blue lawn and his dream must have seemed so close that he could hardly fail to grasp it ...

Gatsby believed in the green light, the orgastic future that year by year recedes before us. It eluded us then, but that’s no matter — tomorrow we will run faster, stretch out our arms farther... And one fine morning —

So we beat on, boats against the current, borne back ceaselessly into the past.

(The Great Gatsby, F. Scott Fitzgerald)

In some states it is legal to smoke marijuana, own a flamethrower, buy liquor and ammunition at the same drive-through window, eat road kill, get drunk with your kids, marry your cousin or turn your backyard into a gun range.

Yet legalizing the activity of playing internet poker in your pajamas remains elusive, none more so than in California. We may have come a long way this year – a bill made it through committee for the first time and the issue of horse racing’s participation was apparently solved – but the green light at the end of Daisy Buchanan’s dock is still out of reach.

What happened?
- Horse racing eagerly agreed to take up to $57 million a year in lieu of owning money-losing iPoker businesses (any other takers?).
- PokerStars remained a conundrum. First, they were in, then they were out for five years from the first wager. Then the five years was changed to a fixed date of January 1, 2022, which rendered the exclusion period uncertain given that the actual market launch date is unknown.
- The Poker Players Alliance demanded a law for consumer protection, then decided lobbying for PokerStars (again) was more important.
- The Pechanga/Agua Caliente group got seemingly the Daisy embrace of everything they wanted, including subtle changes tilting the bill toward tribal businesses, then got something extra and more public when it was revealed that the Pechanga tribe had hired the committee chair’s father-in-law’s lobbying firm for albeit unrelated work.
- The newspapers decided, rather vehemently, that there was nothing in the bill for the public benefit.
- The Department of Justice attached a ridiculous estimate of $74-79 million for regulatory start-up costs.
- Last but not least, and ultimately telling, insufficient numbers of legislators saw the wisdom of voting for something at the end of the session where the coalitions for and against the measures flipped overnight. In short, there was not enough upside to taking sides, and the relationships among legislators were not strong enough to overcome all the last minute-confusion and dreadful optics.

What now?
First come the post mortems. The conventional view is that iPoker in California will never happen because there are two opposing coalitions regarding “bad actors.” Shame on everyone.

The Poker Stars camp will go further and spin the bill’s demise as a vindication of their position. Shame on everyone else.

But these positions hardly represent the whole picture. There were a number of other reasons why the bill was not acted upon at the end of the legislative session. There is also, in fact, little pro-PokerStars sentiment in the legislature.

The primary fact to take into account here is that any bill that imposes new taxes requires the support of two-thirds of the legislature. A supermajority always makes the passage of a bill more difficult, and requires not only the building of a list of those who will vote “yes”, but building a depth of support so that members cannot be easily swayed. The bill needs to provide a compelling motivation for legislators to make a choice between support and opposition, where they lack comfort with the alternate outcome.

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A complaint that did resonate in California this past year was that the bill would not result in much money pouring into state coffers. And while regulation would introduce much-needed consumer protection, neither consumers or the media identified that as a priority. Therefore, we are not likely to see a groundswell of constituents standing up and applauding a legislator for their vote in support of this bill; this has been a bill driven by state interests and interest groups, not public clamor.

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Then there was the timing. The end of a legislative session is chaotic in the best of circumstances, with hundreds of bills in flux and myriad amendments to those bills, both big and small. For legislators, absorbing all the fast-moving changes to hundreds of bills is an impossible feat by itself. Now add in the confusion caused by the many switched allegiances at the end of the session, all played out to an unsympathetic fanfare in the newspapers.

Where to next year?
Some of these issues are fixable, even it means initially rowing against the current. The place to start would be with a bill, blessed by the regulators, that provides common-sense protection to the public without overzealous micro-management hard coded into the bill or a bloated regulatory apparatus. Also, one which provides a level playing field for card rooms and tribes, and sets out clear public benefits.

History has shown that currents, both political and legislative, can change direction. If every other issue and distraction can be eliminated, then we will know if PokerStars and its allies can stop legislation.