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Uncertainty towards the legal status of fantasy sports

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I hereby declare that I have compiled the thesis independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading. The document length is 8782 words from the introduction to the end of conclusion.

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ABSTRACT

Fantasy sport is a type of online game where participants compete against each other for the prize money. The word fantasy comes from the idea that participants are able to build a team of their fantasies by picking players or athletes from real life to collect points for their teams. Nowadays there are different variables in the structure of fantasy sports but the general concept is that the participants will earn points in the game based on how well the players who they pick are performing in real life. The team which has collected the most points after the season or some specified time period wins the game and the creator of that team wins money for reward.

The legal problem that lies in the fantasy sports games, and which slow down the growth of the industry, is the legal status of these types of games. Fantasy sports can be considered as illegal gambling due to the fact that the games are not free to play and that you can win money from them which are the characteristics of gambling. During the history of fantasy sports, the legal status of these games has come down to the question whether the success in the game is based on chance or the skills of the player. The objective of this thesis is to consider the legality of fantasy sports games focusing on the United States which is the biggest market area of the industry. However, the thesis will also make suggestions on how to erase the controversial legal status of these games if observed from the perspective of States and game providers.

Keywords: Fantasy sports, Illegal gambling, Chance, Skill

1. INTRODUCTION

Fantasy sports has its origins in the United States where the games are still the most popular around the world. The first version of modern fantasy sports was created in 1960 when the professor of Harvard University, William Gamson created a game based on baseball¹ where participants put up money on baseball players and whoever's player performed best won the money.² The concept got introduced later to other professors after which it started to gain media attention. This led to the rapid growth of the concept especially when the internet came along in the '90s.³ To demonstrate the growth of the popularity, the amount of fantasy sports players in the U.S.A and Canada has grown from 500,000 players to 41 million between 1988 and 2014⁴ and according to The Fantasy Sports & Gaming Association (FSGA), the number keeps increasing every year.⁵

The interest in fantasy sports has also spread outside of America due to the fact that sports are a huge opportunity for business. The attention professional sports gets nowadays has shown up as opportunity for the game providers to make profit by providing fantasy sports games for sports that are popular also in other regions, such as soccer in Europe. Nowadays there are fantasy games for nearly every team sport but the industry has developed into a stage where it is also possible to build a fantasy sports game around tennis or golf. This increases the popularity of the concept even more. Fantasy sports offers its participants a more active and entertaining version of gambling because they have more control of their teams' success and just like in traditional gambling, there is money on the line which equals a possibility to gain economic reward. The prize money have gone up a lot during the history of the concept due to the grown popularity which satisfies the thirst for gambling and gives a solid option for sport gamblers to try something new.⁶

¹ Edelman M. (2015). Speech: The Legal Status of Daily Fantasy Sports in a Changing Business Environment. *Northern Kentucky Law Review*, Vol. 42, Issue 3, 442-443.

² Boswell J. (2008). Fantasy Sports: A game of Skill That Is Implicitly Legal under State Law, and Now Explicitly Legal under Federal Law. *Cardozo Arts & Entertainment Law Journal*, Vol. 25, Issue 3, 328-329.

³ Edelman M. (2015), *supra nota* 1, 444.

⁴ Melone M. (2016). Fantasy Sports Contests: Does the Fun Justify the Fantasy That These Contests are Not Gambling. *Virginia Sports and Entertainment Law Journal*, Vol.15, Issue 2, 204.

⁵ *Industry Demographics*. FSGA. Retrieved from <https://thefsga.org/industry-demographics/>, 15 February 2022.

⁶ Levy A. (2016). A Risky Bet: The Future of Pay-to-Play Online Fantasy Sports. *American Bankruptcy Law Journal*, Vol. 54, Issue 1, 329-330.

The legal problem with fantasy sports games is that they are often considered illegal gambling due to the characteristics of the games. Traditional gambling consists of 1) some sort of consideration which refers to money you are willing to gamble, 2) the chance which determines the possibility of whether you win or lose the gamble, 3) and the reward which you might win depending on the outcome of the gamble.⁷ If we think about these elements and the characteristics of fantasy sports, there really is a lot in common. In fantasy sports, the participant places a bet which in this context means to pay money for being able to change their players in the game or just being eligible to play. There is also an element of chance regarding the success of the participant's team because there is no guarantee that the picked players will perform on a level that will earn points for the fantasy team. Lastly, like in gambling, there is a reward for the participants with the most points. The element of luck is the key factor that drives fantasy sports towards illegal gambling as fantasy sports games undoubtedly meet the definition of consideration and reward. Thus, the game providers have tried to argue that the games are more based on skill than luck which would mean that they cannot be considered as illegal gambling anymore.⁸

The research question of this paper is whether the fantasy sports games can be considered as a game of skill and hence fall outside the scope of illegal gambling. The paper will focus on the United States but the legal problem that lies in the fantasy sports concern other regions too. The aim of the paper is to find a solution for the game providers as well as for the legislative authorities around the world for erasing the uncertain legal status of the fantasy sports games and try to make a conclusion on how the games could be played without any legal concerns.

⁷ Rose N. (2006). Gambling and the law: an introduction to the law of Internet gambling. *UNLV Gaming Research & Review Journal*. Volume 10, Issue 1, 2.

⁸ Edelman M. (2016). Navigating the Legal Risks of Daily Fantasy Sports: A Detailed Primer in Federal and State Gambling Law. *University of Illinois Law Review*, Vol. 2016, Issue 1, 130.

2. The elements of skill and chance in fantasy sports games

The uncertainty towards the legal status of fantasy sports games comes from accusations that the skill and knowledge of the participants do not have a big enough influence on the success in the game, the success in the game is more based on luck which characterizes gambling. In the majority of the cases in the United States where the legality of fantasy sports games have been under scrutiny, the states have used the Predominance Test determining whether skill or luck dominate in the game. This has then determined whether the particular game violate state's gambling regulations.⁹ Under the Predominance test, the particular contest is considered to be a game of skill if 51% of the outcome is influenced by the participants own ability.¹⁰ Other formulas that have been used by the courts in determining the dominant element are called the Material Element Test and the Any Chance Test¹¹.

The Material Element Test is used to determine whether the chance exists in a game as a material element, in other words, what kind of role does the chance play in the outcome of the game.¹² Compared to the Predominance Test, the Material Element Test does not focus on the element of skill even if it might dominate in the game. It purely focuses on the chance and how it controls the outcome in the game.¹³ The Material Element Test is a bit more controversial formula comparing to the Predominance Test due to the fact that there is no common line on what can be considered as material. It gets defined by the facts presented, the opinions of experts, and the circumstances of the case which leaves room for interpretation. As a legal tool this makes it a less quantifiable than the Material Element Test which could be the reason it is less popular formula in

⁹ Cabot, A; Csoka, L. (2007). Fantasy Sports: One Form of Mainstream Wagering in the United States, *40 J. Marshall L. Rev.* 1195, Vol 40, Issue 4, 1204.

¹⁰ Mookhan, J. (2015). The Predominate Goliath: Why Pay-to-Play Daily Fantasy Sports are Games of Skill Under the Dominant Factor Test, *Marquette Sports Law Review*, Vol 26, Issue 1, 16.

¹¹ *Ibid.* 17-18.

¹² Okerberg, E. (2014). What's in a Game? A Test Under Which We May Call a VGT a Gambling Game Is Not So Sweet: Why Courts Should Not Apply the Material Element Test to VGTS. *UNLV Gaming Law Journal*, Vol. 5, Issue 1, 29.

¹³ Cabot, A; Light, G; Rutledge, K (2009). Alex Rodriguez, a Monkey, and the Game of Scrabble: The Hazard of Using Illogic to Define the Legality of Games of Mixed Skill and Chance, *Drake Law Review*, Vol 57, Issue 2, 392-393.

this manner.¹⁴ Another reason which makes the Material Element Test look controversial is that according to the test if chance occurs as a material element in the game, the game is considered to be gambling. Is there really a realistic possibility to create an online game where participants compete against each other without any chance or luck involved in the success in the game? Even though some particular games such as poker are heavily based on skill, there is always an element of chance involved in the game because otherwise, the number of players succeeding in the games would be relatively small. This diminishes the interest to participate because people would think that they are not good enough to win the game. In poker, even the highly skilled players cannot win the hand if the cards they are given are not good and that is purely based on luck.¹⁵ This leads us into the Any Chance Test under which game is considered a game of chance if the chance is involved in the game by any means.¹⁶ As stated, applying the Material Element Test or Any Chance Test states limit the possibilities to create online games very largely due to the fact that almost any game in the world has an element of chance and under these formulas, it is likely that fantasy sports will never be legal.

In some cases, it is fairly obvious to determine whether the outcome in the game is based on skill or luck. For instance, in bingo or lottery, it is obvious that the outcome of those games is based on luck and in chess, it is based on skill. However, there are games that falls into a no man's land where it is tricky to analyze whether skill or luck is more dominant. In some cases, they might even be equally dominant. Fantasy sports games fall into this category and therefore need some deeper analysis in this manner.

2.1. The role of chance in fantasy sports games

Nevada is one of the five states in the United States which has totally banned fantasy sports game providers to operate in the state without gambling licensure.¹⁷ According to the opinion of

¹⁴ Okerberg, E. (2014). *supra nota* 12

¹⁵ *Ibid.* 30

¹⁶ Ehrman, N. (2014). Out of Bounds? A Legal Analysis of Pay-to-Play Daily Fantasy Sports. *The Sports Lawyers Journal*, Vol. 22, 99.

¹⁷ Dourmashkin, M. (2017). Examining the Legalization of Daily Fantasy Sports. *Catholic University Journal of Law and Technology*, Vol 25, Issue 2, 435

Nevada's attorney general, fantasy sports games are considered as lotteries under the state regulations due to the fact that chance plays a huge role in the outcome of the games because the outcome of the game is determined by third parties which are the actual players.¹⁸ It does not matter how skilled and experienced you are with the fantasy sports games, the real players will eventually control the outcome of the game, not the creators of the teams. This underlines the importance of chance and makes fantasy sports games gambling rather than a game of skill.

Chance as an element occurs in different ways. The approach from Nevada's attorney general is called systematic chance which applies to games that are based on random events or other uncontrollable things by third parties.¹⁹ Card games or dice rolling demonstrate systematic chance because you cannot control the cards you get or the number the dice shows. Another element of chance is called imperfect information.²⁰ Imperfect information occurs when participants do not have a knowledge or are not fully aware for the actions that other participants or players are going to do and they cannot foresee the changing circumstances inside the game. *Vice versa*, when there is perfect information in the game, players have complete knowledge about the consequences of other players' actions and they can foresee the upcoming circumstances and start planning their next move in the game.²¹ In addition to systematic chance and imperfect information, chance could also be described as lucky shot which refers to half-court shot contest in basketball or hole-in-one contest in golf where your chance to win the contest is very low. However, sometimes, maybe even one time in a million attempts, you will hit the shot and win the prize.²²

How do these elements of chance occur in the fantasy sports games? Starting with systematic chance, there is no doubt that the systematic chance occurs in fantasy sports games. Participants pick their players, but the real-life players are humans, not robots. They play against the best players in the world and it is reasonable that there is a possibility that they will not perform on a level that would bring points for your team. Thus, there is definitely a case here where eventually the third parties which are the players, control the outcome of the game, not the participants of the fantasy sports games. When it comes to the imperfect information, one can argue that it also occurs in the fantasy sports games. The argument is partly based on the same grounds as it was for the

¹⁸ Opinion of Nevada's Attorney General 16.10.2015, available in <https://www.legalsportsreport.com/wp-content/uploads/2015/10/Nevada-AG-DFS.pdf>

¹⁹ Ottley, J. (2015). Fantasy Sports and Gambling: Drawing a Line in the Sand between Pete Rose's Gambling and Daily-Play Fantasy Sports. *Northern Kentucky Law Review*, Vol.42, Issue 3, 564.

²⁰ Cabot, A; Light, G; Rutledge, K (2009). *supra nota* 13, 396-397.

²¹ *Ibid.*

²² *Ibid.*

systematic chance. The creators of the fantasy sports teams, are not fully aware of the changing circumstances and cannot see the forthcoming. They cannot predict the outcome of the games and who is going to score a lot of points. Even though the players in the team are playing against weaker opponents and there is a huge probability that you are going to earn points, there is no guarantee that it will happen, upsets are part of sports and there is always a chance to win as a huge underdog. In addition, another thing that you cannot foresee, is the injuries of the players. Injuries are part of professional sports and you cannot predict them happening before the games when you are picking your players. Injuries are therefore part of imperfect information and when occurring, they will have a massive effect on points earned in fantasy sports games. The lucky shot element is a little bit more controversial compared to the other two. In the context of fantasy sports, the lucky shot would mean that you randomly pick a player who has not performed on a high level during this season or earlier seasons and will suddenly start scoring points for your team regularly. Of course, it is possible but the odds for that are quite as small as they would be in hole-in-one contest.

After going through the different elements of chance and how they occur in fantasy sports, it is fair to say that chance exists more or less in its all elements in fantasy sports games. You will need a certain amount of luck in order to succeed in the game because otherwise, the concept would lost its excitement and unpredictability if you can predict everything that will happen. That being said, if certain states in the United States apply the Any Chance Test which measures whether chance has any influence on the outcome, fantasy sports games will definitely fall under that scope and be considered illegal gambling.

2.2. The role of skill in fantasy sports games

In states that do not apply the Any Chance Test, fantasy sports games must be created in a way that skill dominates the chance in the outcome of the games in order to not be considered as illegal gambling. The supporters of fantasy sports games have pointed out that selecting the right players at the right time underlines the knowledge and skill of the participants and hence, fantasy sports

games should be considered as games of skill.²³ In 2018, the researchers of Massachusetts Institute of Technology created a study where they gathered data of win/loss records of fantasy sports players over several seasons and tried to analyze the role of skill in the success in fantasy sports.²⁴ The analysis of the role of skill in the study was based on four questions/hypotheses which were expressed by authors who concluded a legal and economic analysis on Texas Hold ‘Em.²⁵ The aim of the four questions was to distinguish games of pure chance from those involving skill by trying to point out the influence of skill of the participants. The data that was gathered for the purpose of the study was from the users of FanDuel which is one of the biggest fantasy sports providers in the world. The data was gathered from two different types of fantasy sports games that are called head to head and 50/50.²⁶ Head to head fantasy sports means that two players set a buy-in for which they compete for head to head against each other and the winner takes it all.²⁷ 50/50 game mode means that the best 50% of the competition, will win the double of the entry fee and the bottom half will get nothing.²⁸

The first question that was being analyzed in the study was if the players have different expected payoffs when playing the game? In other words, if I have never played fantasy sports before, do I have the same chances to win the game than player who has played fantasy sports for many years? If I do, then the game should be considered as a game of chance.²⁹ The research on the first question was done by dividing the population into two parts; players who play the game a lot and players who do not. The part that was analyzed was the win ratio. The outcome of the study was that players who played the games most had a better win ratio than players with less experience which is very logical.³⁰ If you have never played fantasy sports and you do not watch actively the particular sport on which the game is based on, it is nearly impossible to beat the players who have watched that sport their whole lives and played fantasy sports before. One aspect that is good to keep in mind here is that there is a concept called Daily Fantasy Sports (DFS) which differs from

²³ Holleman, C. (2006). Fantasy Football: Illegal Gambling or Legal Game of Skill. *North Carolina Journal of Law and Technology*, Vol. 8, Issue 1, 70

²⁴ Getty, D; Hao, L; Masayuki, Y; Charles, G; A.E. Hosoi (2018). Luck and the Law: Quantifying Chance in Fantasy Sports and Other Contests. *SIAM Review*, Vol.60, No.4, 869-887.

²⁵ Miles, T; Levitt, S; Rosenfield, A. (2013). Is Texas Hold ‘Em A Game Of Chance? A Legal and Economic Analysis. *101 Georgetown Law Journal*, Vol 581, 618.

²⁶ Getty, D; Hao, L; Masayuki, Y; Charles, G; A.E. Hosoi (2018). *supra nota 24*.

²⁷ Feeney, P. (2016). Turning Fantasy into Regulatory Reality: A New Approach to Daily Fantasy Sports Laws. *Columbia Journal of Law & Arts*, Vol.40, Issue 1, 111.

²⁸ Messick, J. (2018). Rejecting the Zero-Sum Game in Daily Fantasy Sports: A proposal for Arizona. *Arizona Law Review*. Vol. 60, Issue 1, 169.

²⁹ Getty, D; Hao, L; Masayuki, Y; Charles, G; A.E. Hosoi (2018). *supra nota 24*.

³⁰ *Ibid*.

traditional fantasy sports in a way that in DFS, the time period for the competition is shorter, it could be only for one day when in traditional fantasy sports, it is much longer.³¹ When the duration of the game is shorter, it is arguable that the influence of chance is higher than in longer duration games because you have to pick players who only need to perform for one night, not for a season.³² That reduces the skill gap between the players and you might get lucky with your picks but still the odds are not very high for non-skilled players because you would have to know which players are in form and which other elements could affect their performance on tonight's game which also requires some scouting.

The second question that was addressed in the study was that do there exist predetermined characteristics about players that help one to predict payoffs across players? Keeping it in mind that the analysis where these questions were taken from was based on poker where there are predetermined characteristics about the players for instance their playstyle, when they bluff, and when they have a solid hand. In fantasy sports, it is not possible to predict the moves that the other players make which makes it impossible to identify any characteristics of your rivals and to predict what they are possibly going to pick for the next round. In addition, it was stated in the study that the data that was gathered was anonymized so it is not possible to identify any characteristics of some certain player hence the second question was not answered.³³

The third question concerned the effect of player action or, more precisely, how do the actions and decisions of the players affect the payoffs statistically? The test was executed in a way that the researchers compared fantasy sports teams generated by real players with teams generated by the computer for the four major leagues in North America which are National Football League (NFL), National Basketball League (NBA), Major League Baseball (MLB), and National Hockey League (NHL). After running thousands of games, the teams that were created by real players beat the computer-created teams in all four leagues. The lowest win percentage was in the NHL which was 68% and the highest in the NBA which was 95%.³⁴ This correlates the importance of the player actions in the outcome of the games and shows that the odds for a non-skilled player who picks his/her team randomly competing against skilled players are not very high.

³¹ Taggart, J. (2016). Is Daily Fantasy a Form of Gambling Hidden by Skill. *Mississippi Sports Law Review*, Vol. 6, Issue 1. 89-90.

³² *Ibid.* 90-91.

³³ Getty, D; Hao, L; Masayuki, Y; Charles, G; A.E. Hosoi (2018). *supra nota* 24.

³⁴ *Ibid.*

The fourth and last question of the study concerned the persistence of the players. If the game is based on skill the players should perform consistently on a certain level meaning that their level does not drop off or improve massively out of a sudden during the season. That means that there is an element of persistence in skill if players' success correlates over the season.³⁵ To analyze this question, the researchers of the study divided the season of the four major leagues into two and compared the win fraction for each half of the season to see whether some significant changes occurred. Players' performances were demonstrated by horizontal and vertical axes which represented the win fraction of the players. The result was that the graph skewed more linear rather than circular which indicated that most of the players with good performances in the first half of the season, continued with a good record in the second half of the season. This also refers to a game of skill because non-skilled players most likely cannot keep up with the good results for the whole season.³⁶ The conclusion that we can make on the role of skill in the fantasy sports games is that skill of the players is a significant factor in the outcome of the games as the study proves. However, we cannot deny the fact that the element of chance is also involved in the games and its influence varies from the circumstances. Also it is clear that it is up to state legislatures to determine whether the influence of chance is enough to establish illegal gambling.

³⁵ Suh, P. (2017). Daily Fantasy Sports: A Call for Clear Guidelines. *Hastings Business Law Journal*, Vol. 13, Issue 3, 370.

³⁶ Getty, D; Hao, L; Masayuki, Y; Charles, G; A.E. Hosoi (2018). *supra nota* 24.

3. Federal actions concerning fantasy sports

The legality of fantasy sports is not only defined by state laws, but the games must also be legal under federal gambling laws which creates risks for game providers.³⁷ The aim of federal gambling laws is to serve as a primary source for state anti-gambling laws. Their aim is also to prevent the issues where gambling providers are trying to circumvent the state laws by abusing the loopholes they might offer.³⁸ During the history of fantasy sports, there have been several actions on a federal level that could have had an influence on the fantasy sports industry. This section will go through these legislative acts and examine their connections and consequences to fantasy sports.

3.1. The Wire Act

The Interstate Wire Act, signed in 1961, was designed to be a legal tool to assist state gambling laws against illegal gambling operated by organized crime.³⁹ U.S. Attorney General Robert F. Kennedy stated that illegal gambling especially results for horse races was more valuable for organized crime than drugs and prostitution which calls out the importance of enforcing the Wire Act.⁴⁰ As the name suggests, the Wire Act prohibits betting or wagering on any sporting event or contest via wire communication facility which means any services or instrumentalities involving wire, cable or other like connection between the points of origin and reception of such transmission.⁴¹ The legal definition of wire communication under the Wire Act creates a threat to fantasy sports due to the fact that the games are played on the internet which definitely falls under the scope of wire communication. This was also the view of the court in *United States v. Lyons* where the court interpreted that the appellants had violated the Wire Act because the internet was used in sports betting activities which violated the Wire Act.⁴² The Wire Act practically prohibits fantasy sports completely if they are interpreted as wagering but the Act is more or less useless

³⁷ Edelman, M. (2012). A Short Treatise on Fantasy Sports and the Law: How America Regulates Its New National Pastime. *Harvard Journal of Sports and Entertainment Law*, Vol.3, Issue 1, 34.

³⁸ *Ibid.*

³⁹ Melone, M. (2016). *supra nota* 4. 209.

⁴⁰ Edelman, M. (2016). *supra nota* 8. 136-138.

⁴¹ 18 U.S. Code § 1084 – Transmission of wagering information; penalties.

⁴² *United States v. Lyons*, 740 F.3d 702, 716 (1st Cir. 2014)

because it does not solve the problem of the legal status of the games. The Wire Act prohibits betting or wagering via the internet but it does not state whether fantasy sports are considered as betting or wagering which is the main problem of the industry. Thus, the scope of the Wire Act does not really really raise concerns towards fantasy sports if the whole idea of the concept stays as it has been during the years. However, it does not mean that this cannot be the situation in the future. The industry evolves constantly and competition is hard between the game providers and perhaps someday there is going to be a fantasy sports game that consists of characteristics of betting and wagering and which would make the Wire Act more relevant. Currently, it is hard to see that this would be the situation, for instance between the early stages of fantasy sports and 2013, the Department of Justice has not prosecuted any fantasy sports providers under the Wire Act which underlines the irrelevance of the Act when it comes to regulating fantasy sports as the things stand.⁴³

3.2. The Professional and Amateur Sports Protection Act

The Professional and Amateur Sports Protection Act (PASPA), passed by Congress in 1992, is a federal act that prohibits states or private persons to operate any betting scheme that is based on any amateur or professional sports including the NCAA which means college sports.⁴⁴ According to PASPA, it is not only unlawful to operate betting on the results of the games, it is also prohibited to operate betting on one or more performances of athletes in such games directly or indirectly.⁴⁵ This could constitute a legal problem for fantasy sports, due to the fact that in fantasy sports, you do not make a bet on a result of a game, the idea is to make a bet on a performance of an athlete on that particular game. However, for being a legal asset against the fantasy sports, PASPA lacks the same definitions as the Wire Act. Like the Wire Act, PASPA also concerns betting and wagering, in other words, games of chance for which fantasy sports games has not been officially and legally classified.⁴⁶ In order to make PASPA relevant federal act with fantasy sports, once again we come down to the problem where we need to classify whether the games are considered to be wagering or not. As written, if the games are considered to be wagering, there is a clear

⁴³ Edelman, M. (2012). *supra nota* 34. 137.

⁴⁴ Standen, J. (2015). The Special Exemption for Fantasy Sports. *Northern Kentucky Law Review*, Vol. 42, Issue 3, 427-429.

⁴⁵ 28 U.S. Code §3702 – Unlawful sports gambling

⁴⁶ Carlson, C. (2021). “Functionally Equivalent”: How Daily Fantasy Sport Ended American Legal Debates on Sports Gambling. *The International Journal of the History of Sport*, Vol 38, Issue 1. 41-59.

violation under PASPA due to the fact that in fantasy sports your success is based on the performances of athletes.

3.3. Unlawful Internet Gambling Enforcement Act

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) is an anti-gambling statute that prohibits any person engaged in the business of betting or wagering knowingly accepting in connection with the participation of another person in unlawful internet gambling any credit, an electronic fund transfer, checks or the proceeds of any other form of financial transaction.⁴⁷ Comparing to the Wire Act and PASPA, there is a carve-out for fantasy sports in UIGEA which regulates the characteristics of the games. UIGEA states that bet or wager does not include „participation in any fantasy or simulation sports game or contest in which no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization“.⁴⁸ Fantasy sports falls out of this scope because the teams created in fantasy sports are indeed based on actual professional sports organizations. In addition to that previous clause, there are three different conditions that have to be met in order to comply with the carve-out.

The first condition states that „all prizes and awards offered to winning participants are established and made known to the participants in advance of the game and their value is not determined by the number of participants or the amount of any fees paid by those participants“.⁴⁹ In the most situations, fantasy sports falls out of this scope because the amount of money you can win from fantasy sports depends on the amount of fees paid by the other participants.⁵⁰ According to the second condition „all winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of an individual in multiple real-world sporting events“.⁵¹ The third condition does not raise any debate because it states that the winning outcome cannot be based on any performance of a real-world

⁴⁷ 31 U.S. Code § 5363 – Prohibition on acceptance of any financial instrument for unlawful Internet gambling

⁴⁸ 31 U.S. Code § 5362 - Definitions

⁴⁹ *Ibid.*

⁵⁰ Palanzo, D. (2011). Non-Exempt but Unenforced: The Status of Fantasy Sports under the UIGEA. *Sports and Entertainment Law Journal*, Vol. 1, Issue 1. 135-136.

⁵¹ *Ibid.*

team or individual athlete in any single real-world sporting event which is the actual situation in fantasy sports and hence fantasy sports does not comply with this.⁵² The second condition, however, is quite controversial and confusing. In order to comply with the condition, the winning outcomes in fantasy sports games must reflect the relative knowledge and skill of the participants but it does not define what does it actually mean. It does not clarify how we can classify whether the knowledge and skill have an influence on the outcome of the games which once again leaves a lot of room for interpretation. In addition, the definition of wagering in UIGEA requires that the outcome of the result has to be subject to chance, and the skill and knowledge of the participants is mentioned in the carve-out for fantasy sports which could suggest that UIGEA considers fantasy sports as a game of skill.⁵³ Even though UIGEA was supposed to be a federal asset to regulate unlawful internet gambling it seems like that when it comes to fantasy sports, it does not clearly determine whether the fantasy sports are legal or not, that responsibility eventually stays in the hands of the states.⁵⁴ However, there has also been some benefits from UIGEA on a state level. At least in Kansas, UIGEA has been a primary source for determining the legality of the fantasy sports referring to the opinion of the attorney general which declared that any contest that falls inside the definition of fantasy sports according to UIGEA complies with the laws of the state.⁵⁵ This does not change the fact that the definition of fantasy sports in UIGEA leaves a lot of room for interpretation and there is no mention about the DFS model for example, where the outcome of the game depends more on a chance than seasonal fantasy sports. However, it is important to keep in mind that UIGEA was enacted in 2006 when the DFS was a relatively new concept and the fantasy sports exemption in UIGEA was more intended to be for a seasonal fantasy sports which could be the reason why UIGEA has been so controversial on this manner.⁵⁶

⁵² *Ibid.*

⁵³ Griffin, A. (2017). A Fantastic Gamble: An Analysis of Daily Fantasy Sports under the UIGEA and the Predominance Test. *Boston University Journal of Science and Technology Law*, Vol. 23, Issue 2. 473-474.

⁵⁴ *Ibid.*

⁵⁵ Opinion of the Kansas' Attorney General 24.4.2015, available in <https://www.legalsportsreport.com/wp-content/uploads/2015/04/2015-009.pdf>

⁵⁶ Larson, D. (2017). Can Daily Fantasy Sports Overcome the Odds. *Journal of High Technology Law*, Vol. 17, Issue 2, 465-467.

4. Call for clear guidelines over the legal status of fantasy sports games

The uncertainty towards the legal status of fantasy sports comes from the lack of legal definition of such games on a federal level which automatically leaves a lot of interpretation for states to determine how the games should be categorized from the legal point of view. There have to be more precise regulations regarding the industry in order to get rid of this legal problem. As the federal laws do not generally provide a solution for this problem, during the 21st century states have taken matters into their own hands and steps towards solving the issue by enacting bills or implementing special legislation to regulate fantasy sports.⁵⁷ The reason for this could be the increased popularity of DFS and the illegal gambling accusations the concept has gained through its existence. As mentioned earlier in this paper, the definitions for fantasy sports in UIGEA suggest that the season-long fantasy sports games are considered as a game of skill and therefore they should not raise any legal concerns. The same cannot be said about the DFS. The DFS has come into the scene at the beginning of the 21st century when the biggest DFS providers, representing 95% of the market, DraftKings and FanDuel were established.⁵⁸ The scrutiny towards the DFS started in 2015 in a scandal where DraftKings employee won money out of DFS game based on leaked information which was not public.⁵⁹ The scandal led to a chain reaction where DFS providers started to get allegations of inside trading and illegal gambling which eventually led into the situation whereby the end of 2015 several states considered DFS as a game of chance and therefore illegal.⁶⁰ By the time of writing this paper, we are in a situation where 5 states are considering fantasy sports and its all variations as illegal gambling and banned all game providers operating inside these states.⁶¹ Even though fantasy sports is legal in most of the states, it does not change the fact that its legality shares opinions. Therefore, new regulations are

⁵⁷ Edelman, M. (2017). Regulating Fantasy Sports: A Practical Guide to State Gambling Laws, and a Proposed Framework for Future State Legislation. *Indiana Law Journal*, Vol. 92, Issue 2, 671-682.

⁵⁸ Dourmashkin, M. (2017). *supra nota* 17, 421-422.

⁵⁹ Champion, W; Rose, N. (2017). Daily Fantasy Sports and the Presidential Debate, *Marquette Sports Law Review*, Vol. 27, Issue 2, 302-303.

⁶⁰ Saginario, K. (2017). Regulation Is Crucial for Daily Fantasy Sports: Why Illinois's Proposed Bill Is One the States Should Follow. *Rutgers University Law Review*, Vol. 69, Issue 2, 865-866.

⁶¹ *What are the States where you can play daily fantasy sports?* Legal Sports Report. Retrieved from <https://www.legalsportsreport.com/daily-fantasy-sports-blocked-allowed-states/>, 24 April 2022.

necessary and needed if the industry wants to achieve legal status in all states. Nobody wins in the current state by state approach as the states who have banned the fantasy sports lose tax money and licensing fees. On the other hand, the game providers have to spend millions of dollars fighting legal battles and lobbying over the legality of their businesses across the country which hurts the growth of the industry.⁶²

4.1. Proposals for regulating the fantasy sports

4.1.1. Clear definition for fantasy sports

When drafting new regulations concerning fantasy sports, the first thing that needs to be regulated more precisely is the definition of fantasy sports. Many of the current and proposed state bills adopt the definitions stated in UIGEA which simply are not accurate enough in the world we are living in currently.⁶³ UIGEA lacks terminology which would be crucial for regulating modern fantasy sports referring to the existence of DFS. The new regulations should clearly clarify the difference between the seasonal and daily fantasy sports and whether these games are legal and under which conditions. DFS has brought a lot of controversy to the industry and up until this day, its legal status is divided across the United States. By regulating fantasy sports more broadly keeping in mind the existence of DFS we could be a step closer to getting rid of this endless debate about the legal status of fantasy sports.

4.1.2. Are fantasy sports games based on skill or chance?

The second fact that constitutes a problem in this manner that needs to be regulated is whether fantasy sports games are games of skill or not – that is, whether the skill is the dominant factor in the outcome of the game. Under most state’s gambling laws, games based on chance defined by predominant purpose test, material element test, or any chance test depending on the state are prohibited due to illegal gambling.⁶⁴ As mentioned earlier in this paper when these particular tests were examined, they do not promote legal clarity because fantasy sports always involve a certain

⁶² Peterson, L. (2019). The Winning Lineup: Framework for Federal Regulation of Daily Fantasy Sports, *University of Pittsburgh Law Review*, Vol. 80, Issue 3, 709-711.

⁶³ Edelman, M. (2017). *supra nota* 57, 683-690.

⁶⁴ *Ibid.*

amount of chance. The games will never be legal in states which adopt any chance test, hence these tests should not be the indicators for the legality of the games and they should be removed. Instead, new regulations should take place stating that seasonal fantasy sports games have the characteristics which promote the skill of the players and therefore they cannot be considered as illegal gambling. When it comes to the DFS, they should be also categorized as a game of skill if they include certain strategic and skill-based elements. These underline the importance of the expertise of the participants because just like in seasonal fantasy sports, DFS has definitely an element of chance in it will never be legal if the legality is depended on whether the game consists of chance.⁶⁵ Another option is that DFS would be nationally considered as gambling due to the importance of chance and therefore banned in every state. Either way, this situation calls for clear regulations on whether these types of games are based on skill or not hence legal or illegal.

4.1.3. The improvement of consumer protection

The next area that needs to be regulated regarding fantasy sports is the consumer protection of the participants. As the popularity of fantasy sports has grown, concerns about whether proper consumer protection mechanisms exist in the industry as inside trading, monopoly concerns, false advertisement, and proper age verification of participants have been raised.⁶⁶ Whether or not fantasy sports is considered as gambling, age-verification procedures should be implemented to ensure that minors cannot participate these games by putting the fake date of birth while creating an account.⁶⁷ Minors need to be protected because fantasy sports is addictive and it costs money which could have economic consequences that minors might not realize. In addition, minors play against experienced players who most likely are going to beat them which means the money minors put into the game ends up in the pocket of these experienced players and hence has economic consequences.⁶⁸ That is why it would be good to have information on who are you competing against. Some states already require it, but it would be ideal to require fantasy sports providers in every state to create competitions separately for beginners and experienced players. By doing this, players would know exactly who they are competing against which would erase the fear and uncertainty to invest in the games which would increase the popularity and grow the industry.⁶⁹

⁶⁵ *Ibid.*

⁶⁶ Jessop, A. (2018). 21st Century Stock Market: A Regulatory Model for Daily Fantasy Sports, *Journal of Legal Aspects of Sport*, Vol.28, Issue 1, 40.

⁶⁷ Peterson, L. (2019). *supra nota* 62, 749.

⁶⁸ *Ibid.*

⁶⁹ Jessop, A. (2018). *supra nota* 66, 55.

When regulating fantasy sports, the focus should not totally be on the characteristics and the structure of the games, other areas such as consumer protection should also be taken into account if we want to build a sustainable legal framework for the industry.

4.1.4. Changes to the structure and rules of the game

The last suggestion this paper proposes regarding the regulation of fantasy sports is aimed more towards the game providers. The way DFS is currently operated has a lot in common with traditional gambling such as poker with the difference that in DFS your selections can be leaked. This creates an opportunity for fraud. Firstly, the game providers should ensure that the employees of fantasy sports websites or real athletes should not have the chance to participate in the games because they have the opportunity to have an influence on the outcome, especially in DFS. Athletes have the inside track on everything that happens inside their team, so they know who would be a good selection on a fantasy team. This gives them an unfair advantage against regular players.⁷⁰ When it comes to the employees of DraftKings for instance, they have the opportunity to see the player selections of other players which could possibly have an influence on who they are going to select. This also gives an unfair advantage because the regular players do not have this opportunity.⁷¹ Fortunately, in the aftermath of the scandal previously mentioned, game providers have taken care of this by banning their employees from participating on fantasy sports not only on their own platform but also on the other platforms.⁷² This action could be seen as a solution to solve problems regarding frauds executed by the employees but can this really be the waterproof procedure? How is it ensured that an employee of DraftKings cannot participate in games provided by FanDuel via someone else's identity or use someone else's account to play the games and use the classified information using it to succeed in the games? How about delegating that information to someone else so he/she can use it and benefit out of it?

DFS offers a scary opportunity for fraud when classified information gets leaked. That is why the solution for this threat would be that no one has the access to the player selections before the deadline for making changes in the line-up. By doing this we can ensure that every participant's team selection is protected and no one can benefit from them which not only makes the competition fair, it also promotes the skill factor even more which would be warmly welcome for the industry.

⁷⁰ Conley, B. (2018). How the Rise of the Daily Fantasy Sports Industry Can Catalyze the Liberalization of Sports Betting Policies in the United States, *Buffalo Law Review*, Vol. 66, Issue 3, 747.

⁷¹ *Ibid.*

⁷² Shapiro, Z. (2016). Regulation, Prohibition, and Fantasy: The Case of FanDuel, DraftKings, and Daily Fantasy Sports in New York and Massachusetts, *Harvard Journal of Sports and Entertainment Law*, Vol. 7, Issue 2, 290.

In addition, if we want to make fantasy sports more skill-based concept, the access to DFS should be restricted. Either the number of participation in such concept or the amount of the prize money won out of DFS could be limited. This would increase the popularity of seasonal fantasy sports which reminds much less gambling. The easiest option would be to erase the concept of DFS totally but since it has become so popular and a gold mine for game providers it is hard to see that happening. Therefore, above mentioned proposal could be a great change for the concept of DFS and the whole industry.

The legality of fantasy sports is a complex dilemma that is mainly caused by the lack of clear guidelines and definitions on a federal level regarding the industry. It is comparable to a sports team without a coach. When no one is giving the instructions to the players on what to do, every individual starts to make decisions and conclusions on their own which leads to disagreements and problems. These proposed regulations would certainly help in this manner. The proposed regulations are focused on clarifying what types of games fall under the definition of fantasy sports. Also they would determine which elements need to be found in these games so they can be classified as games of skill not forgetting the importance of consumer protection and the need for change in the concept of DFS. The actions need to be done on a federal level by designated agency which would enforce these proposed regulations. One option for enforcing these proposals could be establishing a smaller board inside existing commission or creating a whole new commission which would be designated to deal exclusively with fantasy sports.⁷³By having a federal institute dealing with fantasy sports, it would be possible to get rid of the current state-by-state approach which would be a huge step toward the legality of fantasy sports in its all elements across the United States.

⁷³ Peterson, L. (2019). *supra* nota 62, 730.

5. CONCLUSION

As the name fantasy sports suggests, the idea of the whole concept is to build a team of real-life athletes that you have always wanted to see playing together, or in other words, matching your fantasies. It is hard to define what has been the original goal of the idea of creating such a concept but fantasy sports offers fun, entertainment, and excitement for its participants and a whole new spark for us sports fans who love the games we watch every single day. It is hard to believe that the creators of the whole concept invented it for gambling purposes but more as a friendly competition between friends and colleagues for the bragging rights. Unfortunately, things have evolved into a direction where this beautiful idea has come under scrutiny due to the characteristics of gambling existing in fantasy sports games. The research problem of this paper was that there occurs an uncertainty towards the legal status of fantasy sports games in the United States. The uncertainty towards the legal status of fantasy sports comes from the fact that many states define gambling as an activity where three elements are fulfilled. These elements are consideration, chance, and reward. Two of these elements, consideration, and reward are met in fantasy sports games because there is an entry fee for being even eligible to play these games and also a reward for the participants with the best success. The last element, chance, is the one that causes controversy and the legal problem of this paper. The research question of this paper was to find out whether fantasy sports games and the success in these games are based on skill when they can be considered legal or on chance when they are considered illegal due to the gambling definition which would make the games illegal gambling. The methods used to find out the answer to the research question were to go through the structure of the games and to analyze which one, skill or chance, has the bigger influence on the outcome of the fantasy sports games. This would then determine the dominant factor which would make the game a game of skill or a game of chance. The aim of this paper was also to suggest proposals on how to regulate fantasy sports in the future in order to erase the uncertainty towards the legal status of the concept and make it legal across the United States. The proposals were based on the facts and conclusions this paper brought to light when examining the reasons for the legal problem of this paper.

While doing the research on whether fantasy sports games are based on skill or chance it became clear based on the results of this paper that both of these elements occur in the games. Participants have to own knowledge and experience about the players and their form in real-life in order to make the correct selections for their teams which would collect the most points. The participant who does not watch sports and has no experience in fantasy sports has worse odds to succeed in the competition than experienced player which underlines the importance of skill and knowledge. On the other hand, everything is not fully in the hands of the participants. Eventually, the success in fantasy sports is based on the performances of real athletes which is not in the control of the participants. This means that luck is also involved in fantasy sports because there is no guarantee that a basketball player will perform at a high level even though the stats from the previous game would estimate so. There could even be an unexpected injury when there will be no points at all. In addition, in DFS where the competition is based on one day rather than the whole season, the role of chance is more crucial because you have to select the players that will perform only for one game, not for the whole season. In order to find out whether the skill or chance dominates the other, the states have used different tests to analyze this question but finding out an answer has become a complex issue especially when DFS has gained popularity. It is really complicated to determine which one of the two is a dominant factor and has more influence on the outcome when both of the elements exists and the success in fantasy sports requires both elements.

Fantasy sports are not legal in every state in the United States so its legality divides opinions and there is a legal problem to be solved. The lack of guidelines and definitions on a federal level for fantasy sports guided this paper to make proposals for future regulations regarding fantasy sports exactly in these areas. The definition of fantasy sports and what criteria need to be met in order to be a game of skill and legal must be clarified on a federal level so there would be no need for interpretation on the legality, dominance of the skill or chance, or any sort of tests on a state level. Fantasy sports is a huge business and a modern way to watch sports. The legal uncertainty regarding fantasy sports slows down the growth of the industry and it is difficult to tell who are the winners in the current situation because the states who have banned fantasy sports do not get the tax money out of the game providers and the game providers would certainly want to operate on every state of the country which would bring in more customers and money. The proposed regulations are not necessarily the path to eternal happiness but as this paper has proved, they are at least a crucial step toward the right way which is erasing the uncertainty towards the legal status of fantasy sports in the United States.

In the time scope of this graduation thesis and the resources given, this paper focused on the elements of skill and chance in fantasy sports games and proposed new regulations regarding the industry for making it legal across the United States. Future researches will show whether there will be new regulations for fantasy sports and whether the industry will gain legal status in every state across the country.

LIST OF REFERENCES

Scientific articles

1. Boswell J. (2008). Fantasy Sports: A game of Skill That Is Implicitly Legal under State Law, and Now Explicitly Legal under Federal Law. *Cardozo Arts & Entertainment Law Journal*, Vol. 25, Issue 3, 328-329.
2. Cabot, A; Csoka, L. (2007). Fantasy Sports: One Form of Mainstream Wagering in the United States, *40 J. Marshall L. Rev.* 1195, Vol 40, Issue 4, 1204.
3. Cabot, A; Light, G; Rutledge, K (2009). Alex Rodriguez, a Monkey, and the Game of Scrabble: The Hazard of Using Illogic to Define the Legality of Games of Mixed Skill and Chance, *Drake Law Review*, Vol 57, Issue 2, 392-393.
4. Champion, W; Rose, N. (2017). Daily Fantasy Sports and the Presidential Debate, *Marquette Sports Law Review*, Vol. 27, Issue 2, 302-303.
5. Conley, B. (2018). How the Rise of the Daily Fantasy Sports Industry Can Catalyze the Liberalization of Sports Betting Policies in the United States, *Buffalo Law Review*, Vol. 66, Issue 3, 747.
6. Dourmashkin, M. (2017). Examining the Legalization of Daily Fantasy Sports. *Catholic University Journal of Law and Technology*, Vol 25, Issue 2, 435.
7. Edelman M. (2015). Speech: The Legal Status of Daily Fantasy Sports in a Changing Business Environment. *Northern Kentucky Law Review*, Vol. 42, Issue 3, 442-443.
8. Edelman M. (2016). Navigating the Legal Risks of Daily Fantasy Sports: A Detailed Primer in Federal and State Gambling Law. *University of Illinois Law Review*, Vol. 2016, Issue 1, 130.
9. Edelman, M. (2012). A Short Treatise on Fantasy Sports and the Law: How America Regulates Its New National Pastime. *Harvard Journal of Sports and Entertainment Law*, Vol.3, Issue 1, 34.
10. Edelman, M. (2017). Regulating Fantasy Sports: A Practical Guide to State Gambling Laws, and a Proposed Framework for Future State Legislation. *Indiana Law Journal*, Vol. 92, Issue 2, 671-682.
11. Feeney, P. (2016). Turning Fantasy into Regulatory Reality: A New Approach to Daily Fantasy Sports Laws. *Columbia Journal of Law & Arts*, Vol.40, Issue 1, 111.
12. Getty, D; Hao, L; Masayuki, Y; Charles, G; A.E. Hosoi (2018). Luck and the Law: Quantifying Chance in Fantasy Sports and Other Contests. *SIAM Review*, Vol.60, No.4, 869-887.

13. Griffin, A. (2017). A Fantastic Gamble: An Analysis of Daily Fantasy Sports under the UIGEA and the Predominance Test. *Boston University Journal of Science and Technology Law*, Vol. 23, Issue 2. 473-474.
14. Holleman, C. (2006). Fantasy Football: Illegal Gambling or Legal Game of Skill. *North Carolina Journal of Law and Technology*, Vol. 8, Issue 1, 70
15. Jessop, A. (2018). 21st Century Stock Market: A Regulatory Model for Daily Fantasy Sports, *Journal of Legal Aspects of Sport*, Vol.28, Issue 1, 40.
16. Larson, D. (2017). Can Daily Fantasy Sports Overcome the Odds. *Journal of High Technology Law*, Vol. 17, Issue 2, 465-467.
17. Levy A. (2016). A Risky Bet: The Future of Pay-to-Play Online Fantasy Sports. *American Bankruptcy Law Journal*, Vol. 54, Issue 1, 329-330.
18. Melone M. (2016). Fantasy Sports Contests: Does the Fun Justify the Fantasy That These Contests are Not Gambling. *Virginia Sports and Entertainment Law Journal*, Vol.15, Issue 2, 204.
19. Messick, J. (2018). Rejecting the Zero-Sum Game in Daily Fantasy Sports: A proposal for Arizona. *Arizona Law Review*. Vol. 60, Issue 1, 169.
20. Miles, T; Levitt, S; Rosenfield, A. (2013). Is Texas Hold ‘Em A Game Of Chance? A Legal and Economic Analysis. *101 Georgetown Law Journal*, Vol 581, 618.
21. Moohan, J. (2015). The Predominate Goliath: Why Pay-to-Play Daily Fantasy Sports are Games of Skill Under the Dominant Factor Test, *Marquette Sports Law Review*, Vol 26, Issue 1, 16.
22. Okerberg, E. (2014). What’s in a Game? A Test Under Which We May Call a VGT a Gambling Game Is Not So Sweet: Why Courts Should Not Apply the Material Element Test to VGTS. *UNLV Gaming Law Journal*, Vol. 5, Issue 1, 29.
23. Ottley, J. (2015). Fantasy Sports and Gambling: Drawing a Line in the Sand between Pete Rose’s Gambling and Daily-Play Fantasy Sports. *Northern Kentucky Law Review*, Vol.42, Issue 3, 564.
24. Palanzo, D. (2011). Non-Exempt but Unenforced: The Status of Fantasy Sports under the UIGEA. *Sports and Entertainment Law Journal*, Vol. 1, Issue 1. 135-136
25. Peterson, L. (2019). The Winning Lineup: Framework for Federal Regulation of Daily Fantasy Sports, *University of Pittsburgh Law Review*, Vol. 80, Issue 3, 709-711.
26. Rose N. (2006). Gambling and the law: an introduction to the law of Internet gambling. *UNLV Gaming Research & Review Journal*. Volume 10, Issue 1, 2.

27. Saginario, K. (2017). Regulation Is Crucial for Daily Fantasy Sports: Why Illinois's Proposed Bill Is One the States Should Follow. *Rutgers University Law Review*, Vol. 69, Issue 2, 865-866.
28. Shapiro, Z. (2016). Regulation, Prohibition, and Fantasy: The Case of FanDuel, DraftKings, and Daily Fantasy Sports in New York and Massachusetts, *Harvard Journal of Sports and Entertainment Law*, Vol. 7, Issue 2, 290.
29. Suh, P. (2017). Daily Fantasy Sports: A Call for Clear Guidelines. *Hastings Business Law Journal*, Vol. 13, Issue 3, 370.

Other country's legislation

30. 18 U.S. Code § 1084 – Transmission of wagering information; penalties.
31. 31 U.S. Code § 5362 – Definitions
32. 31 U.S. Code § 5363 – Prohibition on acceptance of any financial instrument for unlawful Internet gambling

Other court's decisions

33. Opinion of Nevada's Attorney General 16.10.2015, available in <https://www.legalsportsreport.com/wp-content/uploads/2015/10/Nevada-AG-DFS.pdf>
34. Opinion of the Kansas' Attorney General 24.4.2015, available in <https://www.legalsportsreport.com/wp-content/uploads/2015/04/2015-009.pdf>
35. United States v. Lyons, 740 F.3d 702, 716 (1st Cir. 2014)

Other sources

36. *Industry Demographics*. FSGA. Retrieved from <https://thefsga.org/industry-demographics/>, 15 February 2022.
37. *What are the States where you can play daily fantasy sports?* Legal Sports Report. Retrieved from <https://www.legalsportsreport.com/daily-fantasy-sports-blocked-allowed-states/>, 24 April 2022

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