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Exploring the Fantasy World of Internet Gambling

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Exploring the Fantasy World of Internet Gambling

By

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Advisor: John Martel Norwood

**An honors thesis submitted in partial fulfillment of the requirements for the degree of
Bachelor of Science in Business Administration**

**Sam M. Walton College of Business
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I. Introduction

This thesis explores the gambling activities arising from Fantasy Sports Leagues, in particular the gambling behavior of college students within these leagues. In my research, I investigated the development of the industry, the rules and surrounding internet gambling, and conducted a survey of college students over their Fantasy Sports behavior.

Contrary to popular belief, Fantasy Football was not the first fantasy sport to be played. The first modern fantasy sport to be played was Fantasy Baseball, invented by a group of journalists who wanted to test each other's knowledge of sports in 1980. The league came to be called "The Rotisserie," and employed the same basic principles that comprise leagues today: a league commissioner, drafting players, team names, and a statistical scoring system. The basic principle behind the league was to create a system to gauge players' sports knowledge throughout the season. This league was circulated throughout late 1980s via regional newspapers such as the L.A. Times, N.Y. Daily News, and Chicago Sun-Times, prompting readers to create their own fantasy leagues (Holleman, 2006). With the adoption of the internet in the nineties, fantasy players were able to create leagues through online providers, further growing the industry.

While the rules of fantasy leagues can vary greatly, players generally are set up through an online provider via a league commissioner. Participants join the league and a draft is held prior to the commencement of the season. A league usually has anywhere from 8-16 teams. Typically, in season long fantasy, players will be assigned a draft pick and this will determine their order of choosing players. Teams then play each other throughout the season, head to head. Each week they will submit their starting lineup, strategizing on what players to select for the week based on various factors: what team they are playing, the weather, injury status, etc. Each week the winner is determined by a scoring system that is determined by the player's performance for that week. Towards the end of the fantasy season, the top winning teams then go to a series of playoff games of single elimination. The winner of this playoff series is crowned the league champion.

Today, there is nearly a fantasy sport for every sport—Football, NBA, NASCAR, Golf, Hockey, and more. Fantasy sports continue to grow yearly and people are spending more and more time playing. The growth of the industry has given way to additional services that players can use to gain an edge. Players can now insure their players through *fantasyplayerprotect.com*, give the league's prize money to *leaguesafe.com* for safekeeping, and seek advice from *rotowire.com*. If there's a dispute, no problem. Go to *Sportsjudge.com* "Where Fantasy League Disputes are Resolved" by real lawyers (SportsJudge, 2015). FX has even created a comedy called *The League* that follows a group of friends throughout their fantasy season.

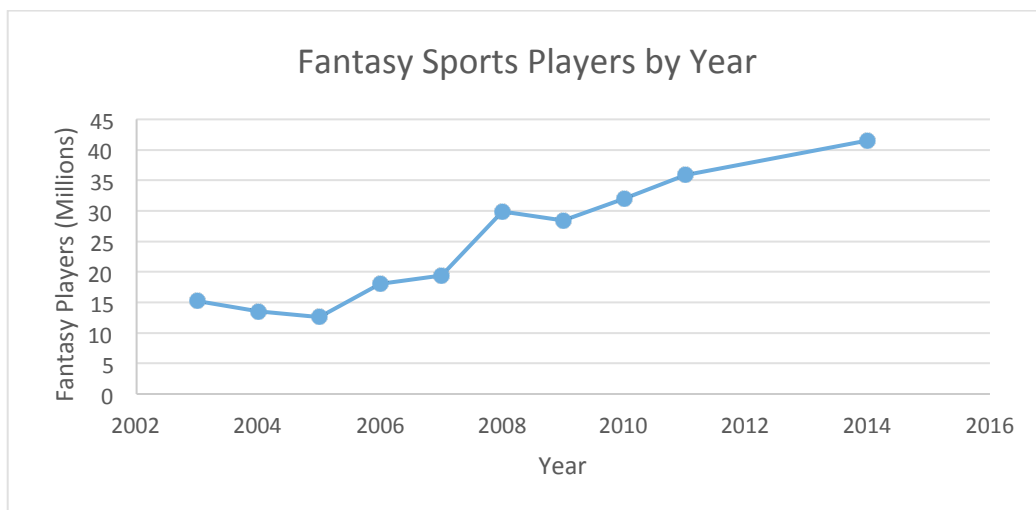
To keep things competitive, 46.9% of Fantasy Sports players pay league fees according to the Fantasy Sports Trade Association (FTSA, 2014). For Fantasy Sports, the idea that the winner of a fantasy league will be the one with the most knowledge of sports gives credence to the idea that Fantasy Sports is a game of strategy, not a game of luck; this is also why current regulations in many states allow placing wagers in leagues as long as certain conditions are met.

Over the past few years, fantasy sports have continued to evolve, with the largest growth coming from daily fantasy leagues. The most popular providers “FanDuel” and “DraftKings” are revolutionizing fantasy sports. Unlike traditional fantasy leagues, daily leagues last a day or a week. They offer the same sports as traditional fantasy leagues but are governed by different rules. Rather than a typical draft where each player has to wait their turn to draft a player, in daily leagues you choose players based on a salary cap, meaning multiple players in the league can have the same player. These leagues also differ in the number of entrants: there is no maximum number of players in a given contest; although, per regulations, the prize money must stay the same. Again, with the legalities of daily fantasy sports, providers claim that fantasy sports betting is a legal act under the Unlawful Internet Gambling Act of 2006 because it is a game of strategy.

II. Size of the Industry

Fantasy sports have created a unique way of allowing people to watch their favorite sports. The industry now has a provider for virtually any sport. Daily sports are enhancing the way sports enthusiasts test their skills against other players. While testing your skills for bragging rights can be exciting, the thrill of taking home a grand prize is even greater. This is why most season-long and daily fantasy leagues have entry fees.

As the chart below shows, fantasy sports have experienced substantial growth in the number of users since 2003. The Fantasy Sports Trade Association estimates that 41.5 million people played fantasy sports in the USA and Canada from 2014, up from 500,000 in 1988 and 15.2 million in 2003 (FTSA, 2014). This equates to an 11% compounded annual growth rate over the past 12 years.



Data from the Fantasy Sports Trade Association

The FTSA also estimates that roughly 46.9% of players spend \$111 per 12-month period, broken down in the table below. Fantasy players are spending around 8.67 hours per week consuming

fantasy sports and 30% of players are using additional websites to obtain information, spending \$656 million a year for information materials (FTSA, 2014). This supports the notion that players are doing their due diligence as players to formulate a strategy for their fantasy teams, enhancing the idea that fantasy sports is a game of skill and not gambling based on chance.

FIGURE 3.
Fantasy sports players' spending (over 12-month period)

	Per Player	U.S. Market Share
League Fees	\$52	\$1.71 Billion
Transaction Fees	\$8	\$262 Million
Website Hosting Fees	\$9	\$290 Million
Website Prize Fees	\$7	\$230 Million
Information Materials	\$20	\$656 Million
Challenge Games	\$15	\$492 Million

(FTSA, 2014)

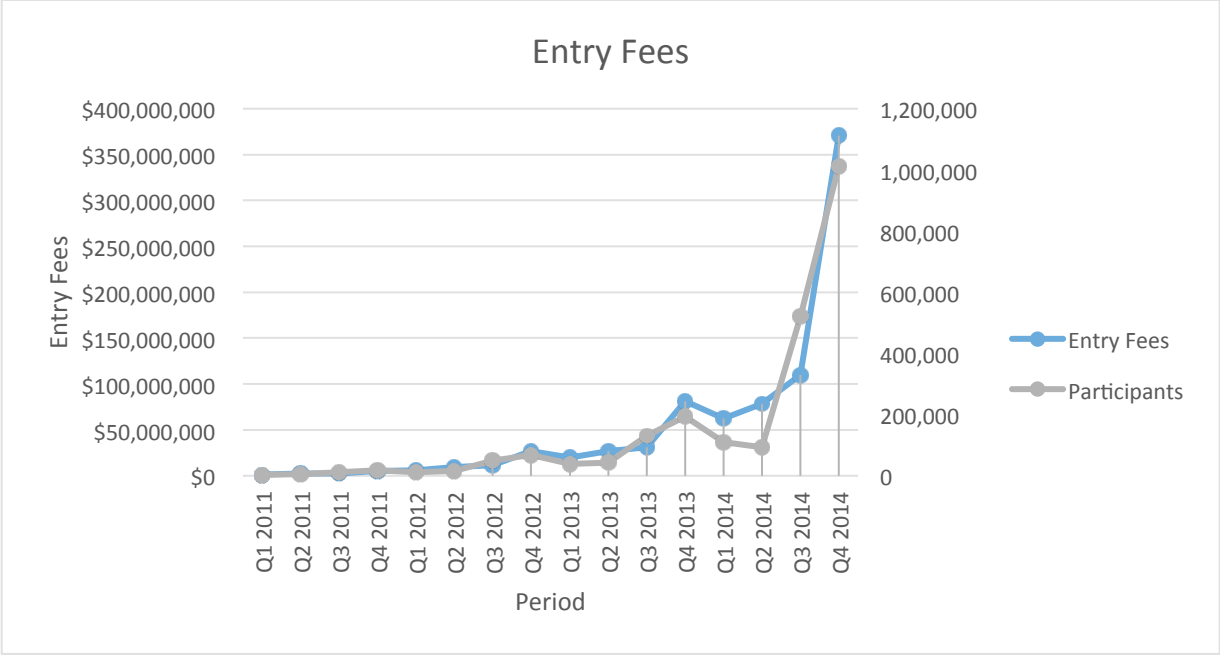
Some statistics from the FTSA reveal valuable insights about the typical fantasy sports player. As one would assume, the most popular fantasy sport is football, capturing 69.4% of total fantasy players. Fantasy sports players are predominately male (80%), educated (78.1% have at least a college degree), Caucasian (89.8%), and have an average age of 34. They are well-versed in the world of Fantasy sports and average 9.51 years in fantasy sports. They are sports fanatics, spending 17.89 hours consuming sports per week.

According to Zack's Equity Research (2015), the largest providers of traditional fantasy sports are Yahoo (18%), ESPN (13%), and CBS Sports (7%). The providers offer free to play leagues or paid leagues, with prizes, (provided you are a resident of certain states). For example, as shown in the table below, CBS offers five different fantasy leagues with various entry fees and prizes. ESPN and Yahoo offer similar paid leagues, both public and private, with cash prizes as well as gift cards in the case of ESPN.

LEAGUES	LEAGUE CHAMP PRIZE	RUNNER UP PRIZE	ENTRY FEE 1st Team / Additional Teams	
ELITE LEAGUE¹ For serious players	\$5,000¹	\$2,000	\$999.99	\$799.99
DOUBLE DIAMOND LEAGUE¹ Challenge yourself	\$2,500¹	\$1,000	\$499.99	\$449.99
DIAMOND LEAGUE¹ Right down the middle	\$1,100¹	\$500	\$249.99	\$199.99
PLATINUM LEAGUE¹ Turn up the fun	\$600¹	–	\$99.99	\$79.99
GOLD LEAGUE¹ Perfect for rookies	\$150¹	–	\$29.99	\$24.99

(CBS, 2015)

While the traditional fantasy leagues have predominately been seen as a hobby, not a means of making money, the daily leagues have attracted a market segment that is looking to test their knowledge for big money. Relatively new, the daily leagues have created the easiest way for fantasy players to take home large amounts of money in a given week. FanDuel has managed to raise \$88 million in equity with a business model based on fantasy sport wagers. These daily sports sites take in entry fees, give out prizes, and keep the excess as earnings. FanDuel has gone from \$1,356,459 and 3,158 participants in the first quarter of 2011 to \$370 million and 1 million participates in the fourth quarter of 2014 (FanDuel, 2015). This is roughly a 42% compounded annual growth rate **per quarter** since 2011.



Data from FanDuel.com

So far FanDuel has paid out \$600 million to date and currently offers 30 thousand daily leagues with \$20 million in weekly contest payouts (FanDuel, 2015). While DraftKings does not disclose their financial data, they assert on their website that there will be “over 1 billion guaranteed in prizes this year” (DraftKings, 2015). What are even more impressive about these daily leagues are the massive tournaments that they host. DraftKings is hosting a \$2 million Fantasy Basketball World Championship in 2015, while FanDuel hosted a \$10 million fantasy football tournament with a \$2 million first prize in Las Vegas. In order to win the big prize money, participants in daily leagues can pay an entry fee ranging from 25 cents to \$5,000. Because of regulations to be discussed later, the prizes for these tournaments are not based on the dollar value of the entry fees or number of participants that have entered.

These daily leagues are being seen as the future of the fantasy sports industry and large providers are recognizing their impact. FanDuel and DraftKings have seen equity investments from traditional fantasy sports providers, receiving capital from ESPN, Yahoo, and NBC. They are also lobbying NFL and NBA teams for sponsorships: the Los Angeles Clippers have announced

a partnership with DraftKings to help with “engaging our fan base through this new partnership” (NBA, 2015). FanDuel has seen partnerships with the Brooklyn Nets, Chicago Bulls, Dallas Mavericks, New York Knicks, and the Orlando Magic.

When selecting which daily site to use, 48% of players go with the site they trust (FTSA, 2015). This explains why FanDuel and DraftKings continually stress their legitimacy through advertising. DraftKings homepage declares: “DraftKings is based in the USA and is 100% legal” along with “safe 100% secure” and “as featured in... Wall Street Journal, The Boston Globe, Forbes.” Because daily fantasy sports is a new thing, and like any new thing it takes a while for people to get used to, the daily leagues are spending massive amounts on advertising to express their legitimacy. FanDuel employs testimonials of various participants to enhance the idea that it is a way for the average person to win money-playing sports. Both DraftKings and FanDuel continuously offer deals to attract customers and increase their market share. DraftKings offers a “Plus 100% deposit bonus” and FanDuel offers a “Money Back guarantee. Love it after your first league or your money back.”

The main question that comes to mind with these massive payouts on daily sports, as well as the entry fees in the traditional leagues, is whether the wagers are legal.

III. Regulations of the industry

After seeing the amount of money that is won/lost playing Fantasy Sports, people have begun to question whether or not the entry fees should be considered gambling. Proponents of fantasy sports wagering argue that fantasy betting is a game of skill, pointing to the expertise of the players and the time spent formulating strategies. The opponents argue the opposite; they believe that betting on fantasy sports is no different than any other form of betting.

A. The Unlawful Internet Enforcement Gambling Act [31 U.S.C. §§ 5361–5367](#) (2006)

When it comes to considering whether betting on fantasy sports is legal, the Unlawful Internet Enforcement Gambling Act is the bill that needs to be considered ([31 U.S.C. §§ 5361–5367](#) (2006)). Passed in 2006 under the Bush administration, the bill was intended to prohibit gambling businesses from accepting payments (bets) that “involves the use of the Internet and that is unlawful under any federal or state law.” The act created regulations requiring participants in payment systems to have controls in place to prevent the processing of prohibited transactions. The act defines participants as “an operator of a designated payment system, a financial transaction provider that is a member of or, has contracted for financial transaction services with, or is otherwise participating in, a designated payment system, or a third-party processor.” Due to the complexity of federal and state laws, participants are only required to perform “due diligence” to prevent these transactions. The act reasons that credit card systems would be the only payment systems that could block transactions during processing.

As explained in the act, Congress found the following: internet gambling is funded primarily through payment systems, the National Gambling Impact Study Commission recommended the prohibition of transfers to Internet gambling sites or banks that represent the sites, internet

gambling is causing debt collection problems for insured depository institutions and the consumer credit industry, and that new mechanisms for enforcing gambling laws are necessary because traditional law enforcement mechanisms are inadequate. The act specifically spells out what is considered a bet or a wager. A bet or wager means staking or risking something of value upon the outcome of chance with the understanding that the “person or another person will receive something of value in the event of a certain outcome.” This includes the purchase of a chance to win a lottery or other prize that is predominately subject to chance. Finally, it includes any instructions or information that results in the movement of funds by the “bettor or customer in, to, or from an account with the business of betting or wagering.”

The UIGEA then goes on to exclude specific transactions that would not be considered a bet or wager, including fantasy sports: “Participation in any fantasy or simulation sports game or education game or contest in which (if the game or contest involved a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or profession sports organization...and that demands the following conditions: (I) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants. (II) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominately by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events. (III) No winning outcome is based—(aa) on the score, point-spread, or any performance of any single real-world team or any combination of such teams; or (bb) solely on any single performance of an individual athlete in any single real-world sporting or other event.” By listing these requirements, the UIGEA specifically legitimized fantasy sports players and their ability to stake money on their fantasy games.

The interpretation of the act dealing with fantasy sports can be summarized as follows: (I) the prizes need to be determined before the games and not determined by the fees collected, (II) there needs to be a method of assessing the knowledge and skills of the players that is determined by a statistical scoring system across multiple sporting events, and (III) no winning outcome should be based on the score of any one team or a single athlete.

Providers have taken these requirements and specifically designed their services to meet the requirements of the UIGEA act. They have created leagues where the prizes are determined beforehand. For example, as mentioned earlier, CBS has predesigned leagues that have specific league champ prizes. These prizes do not change, are not influenced by the number of entrants, and are disclosed beforehand. In this case, the “Elite League” will have a league champ prize of \$5,000 no matter what. One might ask how the leagues guarantee a piece of the pie if they cannot change the entry fees charged or the prize given. For example, if a provider creates a league that guarantees \$250 payout, what is to guarantee that they will have enough entrants/entrance fees to cover the prize? In the case of the traditional providers, the leagues are much smaller, usually just 10 teams. On the other hand, the daily leagues have varying tournaments with small or large prizes and an unlimited number of participants. Therefore, the daily leagues are much more reliant on traffic to ensure that they cover the prizes of their

leagues. Both providers, traditional and daily, must take into account the supply and demand for their leagues in order to ensure they have enough entrants for their created leagues, since the leagues are created with prizes determined beforehand. If the leagues pass the breakeven point, i.e. entry fees=prizes, the excess will be pure profit since they are **legally required** not to change the prize money after the league has been created. Most fantasy league players are oblivious to this regulation and wonder why there are \$20,000 in entry fees but only \$10,000 in prizes. Like anything, the provider is rewarded for taking the risk that there will not be enough entries for a given tournament.

The second requirement that there needs to be a method of assessing the knowledge and skills of the players that is determined by a statistical scoring system across multiple sporting events is also reflected in the leagues of the providers. Fantasy leagues employ precise scoring systems in order to determine points. The stipulation that the scoring system should be across multiple sporting events can be illustrated by the daily leagues. Both FanDuel and DraftKings were unable to create a daily tournament for the Superbowl because it is a single scoring event (“Daily Fantasy Sports 101,” 2015). If they had created a daily league for the big event, it would have violated the requirement that the outcome be dependent on multiple sporting events.

Finally, the third requirement is that no winning outcome is based on the score of any single team performance or any single performance of an individual athlete. The first part of this requirement is why a fantasy player cannot draft his fantasy team from a single real-world team, i.e. players cannot have their entire team composed of the Dallas Cowboys, because this would result in the outcome being based solely on the performance of the Dallas Cowboys. The second part of the requirement is why fantasy leagues have a diversified lineup of players. The typical fantasy lineup has 1 quarterback, 2 running backs, 2 wide receivers, 1 flex RB/WR/TE, 1 tight end, 1 kicker, and one defense (although this lineup can change with varying league rules). This setup allows for the outcome of a fantasy match to be the culmination of the efforts of individuals—a team effort. If a fantasy league with an entry fee were created that required teams to only have 1 player, then this requirement would be violated.

§5363 of the UIGEA deals with the prohibition of accepting any financial instrument for unlawful internet gambling, while §5364 deals with requiring participants to have policies and procedures in place to identify and prevent restricted transactions. This includes credit cards, electronic fund transfer, check, or the proceeds from any other transaction. §5365 and §5366 spell out the civil and criminal remedies for violations of the act, respectively. The civil remedies will be under the original and exclusive jurisdiction of the district courts and could result in a “temporary restraining order, a preliminary injunction, or an injunction against any person to prevent or restrain a restricted transaction.” For the criminal penalties, violators of section §5363 “shall be fined under title 18, imprisoned for not more than 5 years, or both” and could receive a permanent injunction upon a conviction, “enjoining such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.” Although the act excluded fantasy sports from violating federal gambling statutes, states can still impose their own restrictions: “(A) In General- the term ‘unlawful internet gambling’ means to place, receive, or otherwise knowingly

transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable **Federal or State laws** in State or Tribal lands in which the bet or wager is initiated, received, or otherwise made” (UIGEA).

Most states define gambling similar to the definition declared by the Article VI of the Utah Constitution: "Gambling means risking anything of value for a return or risking anything of value upon the outcome of a contest, game, gaming scheme, or gaming device when the return or outcome is based upon an element of **chance** and is in accord with an **agreement** or understanding that someone will receive **something of value** in the event of a certain outcome." Therefore, to be considered gambling in the majority of states, three elements must be satisfied: consideration, reward, and chance.

Consideration can be defined as “quid pro quo,” meaning something for something. In the context of gambling, most courts have defined consideration as providing something valuable (i.e. money) for the chance of greater winnings, while a minority of courts have found consideration to involve “any legal detriment” for the chance to win a prize (Edelman, 2011). The element of reward can be viewed as the prize of winning a bet. Courts have generally ruled that a reward must be a tangible item (Edelman, 2011). The third element, chance, is where state laws differ from federal law when it comes to fantasy gambling. Chance, as defined by the Merriam-Webster dictionary, is “something that happens unpredictably without discernible intention or observable cause.” Courts have ruled that the chance element “requires that a game’s result be driven not by judgment, practice, skill, or adroitness, but rather by factors entirely outside of the participants’ control” (Edelman, 2011). In other words, chance can be considered the luck element. States differ on their ideas of what satisfies the chance element. The four tests that are generally used to test for chance are: the predominance test, the material element test, the gambling instinct test, or the any chance test (Cabot and Csoka, 2006).

The predominance test, used by most states, declares an activity to satisfy the chance element if greater than 50 percent of the result is derived from chance (Edelman, 2011). In applying this test, fantasy players assert that the outcomes of fantasy games are through hours of strategizing rather than mere luck. In assessing the material element test, courts look to whether or not chance has a material effect on the outcome (Cabot and Csoka, 2006). The gambling instinct test satisfies the chance element if it “appeals to the player’s gambling instinct” (Cabot and Csoka, 2006). Finally, the any chance test is the most restrictive of the four. Under this test, an activity satisfies the chance element “if a particular game contains any chance that influences the outcome of the game” (Edelman, 2011).

Providers of Fantasy Sports have long argued that their leagues are skill based in order to pass the chance test in many of the states. Since most states use the predominance test, if providers can prove that fantasy sports involve a greater percentage of skill than chance, then they only have to worry about the other two elements to be considered gambling. In order to create the perception that fantasy sports are a game of skill, providers explicitly advertise as games of skill. In FanDuel’s terms of use, it adamantly declares: “FanDuel is a game of skill” and even goes further, stating “winners are determined by the individuals who use their skill and knowledge of relevant professional sports...” (“FanDuel’s Terms of use,” 2015). Advertising as games of skill

can be further seen through ESPN, Yahoo's, and CBS's tools that are available to participants. Each offers analysis software and expert advice in order to help fantasy players create the best strategies.

To further enhance the perception that fantasy sports are a game of skill, one can look to the nature of the games. Three skill elements are found in a fantasy league: drafting, playing, and trading players (Cabot and Csoka, 2006). Fantasy teams must strategize on which players to draft based on past performance and future expectations; to do this, they can use the analysis packages and expert advice offered by their fantasy providers. In traditional fantasy leagues where a player can only be chosen once, teams need to pick players based on the other team's choices. In the traditional leagues, the player that gets first draft choice has a leg up on the other teams by being able to choose first, creating an element of chance in the draft process (Edelman, 2011). Also, if a league employs the "auto-draft" option, the draft selection will be entirely based on chance and fail the predominance test. On the other hand, in daily leagues, participants need to maximize the output of their players that is restricted by a salary cap; in other words, they need to strategize and to draft the players that will optimize the amount of salary they have available to spend. In these leagues, more is left up to chance, though, due to the length of the season. Because daily leagues span a short time-frame, there is more that is left open to chance in the short-term—a player can have an off day or the weather conditions can affect a game. Daily leagues also don't have other strategies that are seen in the traditional leagues. Choosing which players to play week in and week out can be seen as a skill in traditional games that is not available in daily leagues, where only one line-up is chosen for a league. Also, in traditional leagues where players must use their skills to negotiate in trading players with other teams, daily leagues have no interactions between fantasy teams. Therefore, while in daily leagues the research is done before the league and ceases after the commencement of the league, traditional league participants must continually research their players throughout the length of the season. While these attributes will help provide evidence that fantasy sports are a game of skill, there are still elements of chance in any league. For example, the risk of injury, adverse weather conditions, suspensions, and more are based solely on chance. Fantasy providers need to defend their positions that fantasy sports are predominately skill in order to meet the chance element in the majority of states.

Taking the Unlawful Internet Gambling Enforcement Act and state laws into account, fantasy providers have carefully placed restrictions on who can participate in their prize leagues. CBS, Yahoo, FanDuel, and DraftKings restrict legal residents of Arizona, Iowa, Louisiana, Montana, and Washington from winning prizes from their leagues. CBS does not allow residents of these states from participating in its Platinum, Diamond, Double Diamond, and Elite Leagues, although, it does allow them to participate in its Gold league, but they are ineligible to win a prize. ESPN goes further than the other providers, restricting North Dakota and Tennessee as well. Residents of these states are allowed to participate in their paid leagues but ineligible to win a prize. All of the providers listed require participants to be at least 18 years old or the age of majority in their state at the time of the entry.

The providers' terms of use highlight the fact that some states are stricter than others on fantasy sports. To analyze the state gambling laws that pertain to fantasy sports, it is easiest to consider the states that the providers explicitly prohibit from participating. I will then consider the states that would seem to be against fantasy gambling but are allowed to participate in the main providers leagues.

B. States Restricted by the big providers:

In Arizona, the predominance test is employed and gambling is allowed to a certain extent. However, the reason that fantasy providers choose to restrict Arizona residents from participating comes from the restriction that only players can benefit from the gambling activities, not the providers. From Arizona's criminal statute Title 13, Chapter 13, Section 3302: "No other person receives or becomes entitled to receive any benefit, directly or indirectly, from the gambling activity, including benefits of proprietorship, management or unequal advantage or odds in a series of gambles." Therefore, providers cannot receive a fee for hosting the league. They can only receive payment if they actually participate in the league and win, assuming they don't have favorable rights. Since the main providers take the excess of the entry fees over the prizes given out, they violate this stipulation. Residents of Arizona are still allowed to play in the leagues, but providers would not be able to allow them to win a prize in a league where a portion of the fees is taken from the entry fees.

Under the statutes and court rulings in Iowa, the chance element has been interpreted to be satisfied if there is "any chance." The Iowa Supreme Court ruled in *Parker-Gordon Imp. Co. v. Benakis* that "as to whether the game is one of skill or chance seems to be immaterial. The statute provides that to 'play at any game for any sum of money or other property of any value,' is gambling Code, Sec. 4028" (213 Iowa 136, 142 Iowa 1931). Considering the ruling of this case and the Iowa code, fantasy providers would violate the state gambling laws in Iowa since there is some chance involved in fantasy games: weather conditions, injuries, etc. However, there is hope for the future of fantasy sports in Iowa; recently, a bill was sent to the state senate floor to legalize prizes from fantasy sports leagues.

Louisiana defines gambling as "the intentional conduction, or directly assisting in the conducting, **as a business**, of any game, contest, lottery, or contrivance whereby a **person risks the loss of anything of value in order to realize a profit**" (Title 14 RS 14:90). The code goes further to expand the definition to include "the Internet, World Wide Web, or any part thereof by way of any computer, computer system, computer network, computer software, or any server" (Title 14 RS 14:90.3). Because fantasy sports participants are not operating "as a business," they would not violate gambling laws in Louisiana. However, fantasy leagues would violate gambling laws in Louisiana since they are conducting leagues as a business and the participants are risking a loss in order to realize a profit.

Montana explicitly regulates fantasy sports gambling in its statutes. In Title 13 23 of the Montana Code, it concludes: "it is lawful to conduct or participate in a fantasy sports league, including a fantasy sports league that is operated under a parimutuel system of wagering regulated under Title 23, chapter 4. It is **unlawful** to wager on a fantasy sports league by

telephone or by the **internet.**” This makes it almost impossible for providers to allow Montana residents to participate in fantasy leagues unless they somehow find a way to circumvent the internet and telephone restriction. The code also creates restrictions on the portion of entry fees that providers can take for administrative expenses (23-5-805):

“ (1) Except as provided in subsection (2)(b), the total value of payouts to all league members must equal the amount collected for entrance, administrative, and transactions fees, minus payment for administrative expenses.

(2) (a) Except as provided in subsection (2)(b), if a commercial establishment charges an administrative fee for conducting a fantasy sports league, the fee for each participant may not be more than 15% of the amount charged as a participant's entrance fee.

(b) The parimutuel network, as defined in [23-4-101](#), shall distribute all funds wagered on fantasy sports leagues in any wagering pool pursuant to the requirements of [23-4-302](#) and [23-4-304](#).”

Taking this into consideration, it makes it far less profitable to operate a league in Montana: they would be restricted to 15% of the entry fees.

As declared by the Washington State Gambling Commission “in 1973, when the Gambling Act was first passed, 100 square sports pool boards were authorized. This is the only type of sports betting allowed in Washington State. Bracket pools, office sports pools, and **fantasy sports** have never been authorized as gambling activities in Washington State and are illegal.” Judging from the restriction of residents from Washington by most providers, it seems they have heeded the advice from the Washington State Gambling Commission.

C. Additional states restricted by ESPN:

In addition to the states mentioned above, ESPN further restricts residents of Tennessee and North Dakota from participating in its fantasy sports leagues.

Tennessee restricts gambling based on the “any-chance” restriction, concluding that “(1) Gambling is contrary to the public policy of this state and means risking anything of value for a profit whose return is to **any degree contingent on chance**, or any games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like...” (Chapter 17 39-17-501). Since fantasy sports have some degree of chance, they would be illegal gambling activities. Taking this statute into consideration, it would seem that CBS, Yahoo, FanDuel, and DraftKings could be subject to litigation by allowing Tennessee residents to participate in their paid leagues.

North Dakota also employs the “any-chance” restriction: “1. "Gambling" means risking any money, credit, deposit, or other thing of value for gain, contingent, **wholly or partially, upon lot, chance**, the operation of gambling apparatus, or the happening or outcome of an event, including an election or sporting event, over which the person taking the risk has no control.

Gambling does not include: a. Lawful contests of skill, speed, strength, or endurance in which awards are made only to entrants or to the owners of entries...” (Chapter 12.1-28). Although the state allows contests of skill, fantasy sports would not be allowed since it is based partially on chance. The Attorney General of North Dakota, Wayne Stenehjem, states: “Online gambling is prohibited under the state’s Constitution, regardless of the amount wagered” (Stenehjem, 2015). Again, it is interesting that the other major providers allow residents of North Dakota while ESPN restricts these residents.

D. Other states to consider:

In Arkansas one must look towards cases to determine what is considered gambling. In *Portis v. State*, the Arkansas Supreme Court defined gambling as: “the risking of money, between two or more persons, on a contest or **chance of any kind**, where one must be the loser and the other gainer” (*Portis v. State*, 27 Ark. 360, 362 (1872)). Since gambling is illegal in the state, a game that involves a “chance of any kind” would also be illegal; thus, fantasy sports leagues with entry fees should be illegal. What is interesting under Arkansas law is that to recover the entry fee, a person must file suit within 90 days after the paying of the money or property lost (Arkansas Code: 16-118-103). Since traditional leagues last longer than 90 days, this would not allow fantasy participants to recover their entry fees (Davidson, 2002). Daily leagues, on the other hand, could be subject to litigation for the recovery of lost fees since the time between when the entry fee is paid and the end of the competition is much shorter.

Florida attorney general Robert A. Butterworth concluded in 1991 “the operation of a fantasy sports league such as described in your letter would violate s. 849.14, F.S” (Butterworth, 1991). Even though Florida uses the predominance test, Florida statute declares it “unlawful to bet on result of trial or contest of skill, etc.—whoever states, bets or wagers any money or other thing of value upon the result of any trial or contest of skill...shall be guilty of a misdemeanor” (Title XLVI Chapter 849 §14). Therefore, since a fantasy sports league can be considered a contest, it would be illegal to bet or wager anything of value. It is interesting to note that Florida used to be one of ESPN’s restricted states, but things have changed since AG Butterworth has left office (Davidson, 2002).

In Kansas, the Kansas Gaming and Racing Commission declares that paid fantasy sports leagues satisfy the elements of prize and consideration (“Illegal Gambling – Frequently Asked Questions,” 2015). When it comes to chance, Kansas uses the predominance test. However, unlike what the providers advocate, the Kansas Gaming Commission declares: “chance predominates over skill in fantasy sports leagues.” Since an opinion by the attorney general is mainly to provide guidance, it is not the primary authority when assessing whether or not fantasy sports betting would be considered gambling. As the Kansas Gaming Commission states it: “Ultimately, the legality of any particular fantasy sports league enterprise (or any other gambling enterprise) would have to be resolved in a court of law, based on the facts of the particular case and a court’s own legal analysis of Kansas gambling laws.” Because providers allow residents of Kansas to participate in their paid leagues, one could conclude that they think they could win the battle in court if it came down to it. Also, since the gambling commission explicitly states: “to our knowledge, no agency at the State or local level is ramping up efforts to go after FSL

participants,” they may be allowing residents to participate because there is no fear of prosecution.

Taking these facts into consideration, providers need to weigh the costs and benefits of allowing residents from these three states to participate in their paid leagues. Given that there have been adverse opinions that fantasy sports would constitute illegal gambling in these states, providers need to consider the probability of litigation. For example, although the Kansas Gaming Commission explicitly stated that online gambling is illegal, it also said that government agencies were not actively pursuing fantasy sports participants. Providers also need to consider their ability to support their assertion that fantasy sports are a game of skill rather than chance. With the conclusion of Attorney General Robert Butterworth’s term in 2002, providers have started to allow residents of Florida to participate in their leagues. If a Florida Attorney General assumes the same stance as Mr. Butterworth in the future, I would expect the providers to begin excluding residents from Florida from participating. While ESPN is playing it safe in Tennessee and North Dakota, other providers are allowing residents from these states to participate. It is possible that ESPN will begin to allow residents from these two states or the other major providers start to restrict residents from these states. It will depend on who is in office and whether or not the providers think they will be prosecuted.

E. Other federal regulations to consider:

Other than the UIGEA and the applicable state laws, providers need to consider five other federal laws as well.

1. The Interstate Wire Act of 1961 (18 U.S. Code § 1084):

The wire act sets forth the penalties for the transmission of wagering information. §1084 of the act declares “Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.” Part b of the act exempts those states where gambling is legal.

Wire communications have been expanded to include the internet under the New York Supreme Court ruling *People Vacco v. World Interactive Gaming Corporation* (185 Misc. 2d 852, 714 N.Y.S.2d 844 (N.Y. County Sup. Ct. 1999)). Taking this act into consideration, if a fantasy sports provider was deemed to be unlawfully conducting gambling in a state, they could be subject to the fines and penalties listed in the act.

2. Illegal Gambling Business Act (18 U.S. Code § 1955)

The “Gambling Act” declares “Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.....(2) “gambling” includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries,

policy, bolita or numbers games, or selling chances therein.” It is broader than the Wire Act of 1961 in that it includes any illegal gambling activity whereas the Wire Act only includes illegal gambling activities that use wire communications. However, the act describes illegal gambling business as gambling business that:

- “(i) is a violation of the law of a State or political subdivision in which it is conducted;
- (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
- (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.”

Therefore, the act is narrower than the Wire Act inasmuch as it exempts businesses that do not have gross revenues over \$2,000 in any single day. Given the size of current fantasy providers, most would meet the \$2,000 threshold. If the providers were found to violate state gambling laws, they would be subject to prosecution under the Gambling Act.

3. Professional and Amateur Sports Protection Act (28 U.S.C. § 3701)

The Professional and amateur sports protection act, PASPA, was passed after lobbying efforts from the professional sports industry (Edelman, 2011). PASPA declares that it is unlawful for a governmental entity or a person to “sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly... on one or more competitive games in which amateur or professional athletes participate...” Taking this act into consideration, if a fantasy provider’s league was deemed to meet the elements to be considered gambling or wagering, they could be subject to litigation. Because daily leagues place such a high emphasis on entry fees and payouts, they could be at more risk to be considered wagering and be subject to litigation (Edelman, 2011).

4. The Travel Act (18 U.S.C. §1952)

The Travel Act sets forth fines and punishments for violations of unlawful activities. The act states “(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—

- (1) distribute the proceeds of any unlawful activity; or
- (2) commit any crime of violence to further any unlawful activity; or
- (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform—
 - (A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or
 - (B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.”

The act declares gambling to be an unlawful activity if federal or state laws are violated. If fantasy leagues were found to be gambling activities, providers would be violating the travel act when distributing the proceeds. Providers may also be in violation of the act due to facilitating unlawful activity. Because providers use preseason reports, weekly reports, player rankings, fantasy statistics and more, they could be considered facilitating illegal gambling activities in violation of the Travel Act (Davidson, 2002). This goes back to the case *United States v. Miller*, where the defendants were found in violation of the travel act for facilitating an illegal gambling operation (379 F.2d 483, 485 (7th Cir. 1967)). The court found that tickertape and blackboards used in the establishment were facilitating illegal gambling operations, even though the establishment did not create and operate the illegal gambling pools. The court stated that the ticker need not “be essential to the gambling operation; (rather), it need only “facilitate” an illegal gambling operation” (Davidson, 2002).

5. Interstate Transportation of Wagering Paraphernalia (18 U.S. Code § 1953)

The Paraphernalia act declares:

“Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event...shall be fined and/or imprisoned for not more than five years or both.”

Fantasy providers could be in violation if their gambling activities are illegal. However, the act provides an exception in states where gambling is legal. Also, fantasy providers would be exempted if the statutes of the state do not consider fantasy leagues to be gambling.

IV. Research and Analysis:

To better understand the mentality of fantasy sports participants, I conducted a survey of college students. The software used to conduct the survey was Qualtrics, an “Online Survey Software & Insight Platform” (Qualtrics, 2015). I sent the survey out through the Walton College of Business Listserv and had 313 responses. A breakdown of the students surveyed can be seen in the tables below. As you can see, the majority of participants were male (57%). 57% of the students surveyed were from Arkansas while 20% were from Texas.

“Are you:”

#	Answer	Response	%
1	Male	175	57%
2	Female	134	43%
	Total	309	100%

“What is your current classification in school?”

#	Answer	Response	%
1	Freshman	72	23%
2	Sophomore	65	21%
3	Junior	77	25%
4	Senior	96	31%
5	Graduate Student	0	0%
	Total	310	100%

When asked: “How often do you gamble on a sporting event,” the majority of the participants responded never (65%). 82% of people that never gambled did **not participate** in a fantasy league this past season. Of those that reported some gambling, 77% **participated** in a fantasy sports league this past season. This could be due to the gender of the participants: 93% of females did not participate in a fantasy sports league this past season and 88% said they never gamble on a sporting event. On the other hand, 63% of males said they participated in a fantasy sports league this past season and 47% said they never gamble on a sporting event.

What is interesting, though, is that of those that said they never gambled on a sporting event, 27% said they paid an entry fee for a fantasy league, implying that they do not think fantasy league wagers are considered gambling.

“How often do you gamble on a sporting event?”

#	Answer	Response	%
1	Never	202	65%
2	Less than Once a Month	58	19%
3	Once a Month	17	5%
4	2-3 Times a Month	13	4%
5	Once a Week	7	2%
6	2-3 Times a Week	7	2%
7	Daily	9	3%
	Total	313	100%

The majority of respondents that play fantasy sports reported playing fantasy football (94%). 21% of respondents reported playing fantasy basketball while 14% play fantasy baseball. Some interesting “other” fantasy sports the respondents reported playing were soccer (5 people), women’s tennis, women’s badminton, hockey, and golf.

“What fantasy sports did you play? (Check all that apply)”

#	Answer	Response	%
1	Football	115	94%
2	Baseball	14	11%
3	Auto Racing	2	2%
4	Basketball	26	21%
5	Other	15	12%

ESPN was a dominant favorite as a provider with 79% of students saying they had an ESPN league. 16% said they had an NFL.com league and 24% said they used Yahoo. 11% and 5% of Respondents used daily leagues FanDuel and DraftKings, respectively.

“Through which provider was your league set up? (Check all that apply)”



#	Answer	Response	%
1	ESPN	96	79%
2	NFL.com	19	16%
3	Yahoo	29	24%
4	CBS	7	6%
5	Fanduel	13	11%
6	Draftkings	6	5%
7	Other	8	7%

Of the 122 students that reported playing fantasy sports, 53% said there was an entrance fee for the league. The majority of these students reported an entrance fee of \$10-49. A good proportion of students reported spending over \$100 on their entrance fees (11%). When asked if they would consider the entrance fee a gamble, 74% said yes while 26% said no. This shows that while participants may consider fantasy sports a game of skill, they recognize that there is still some chance element of the leagues and it would constitute a gamble.

“How high was this entrance fee?”

#	Answer	Response	%
1	\$0-9	3	5%
2	\$10-49	46	71%
3	\$50-99	7	11%
4	Over \$100	9	14%
	Total	65	100%

“Would you consider the entrance fee a gamble (i.e. a bet)?”

#	Answer		Response	%
1	Yes		48	74%
2	No		17	26%
	Total		65	100%

V. Conclusion:

Fantasy sports have become a widespread way for fans to test their skills and knowledge of sports. Available for almost any sport, fantasy sports have come a long way since its modern creation in the eighties. The creation of daily fantasy leagues has allowed participants to test their skills for big money. With the continuing evolution of the Fantasy Sports industry, it will be necessary for providers to adhere to regulations in order to avoid future litigation.

The Unlawful Internet Enforcement Gambling Act is what gave rise to the legitimacy of paid fantasy leagues. The UIGEA declares it illegal for a fantasy provider to accept any financial instrument from unlawful internet gambling. The fantasy providers will need to continue to have controls and policies in place to ensure that none of their paid participants are residents of a state where paid fantasy leagues are considered illegal gambling. For fantasy providers’ paid leagues to remain legal, they will need to meet three specific requirements of the UIGEA. Providers need to ensure that their fantasy league prizes are determined before the games and not determined by the fees collected. They also need to ensure that there is a method of assessing the knowledge and skills of the players that is determined by a scoring system that spans multiple events. Finally, the providers need to create a way to ensure that the winning outcome of a league is not based on the score of any one team or a single athlete.

While a fantasy league may pass the requirements of the UIGEA, they still must consider applicable state regulations. States vary on what they consider gambling, but three elements are common amongst all states: consideration, reward, and chance. In terms of gambling, consideration can be taken as providing something of value for the chance of greater winnings. Reward can be interpreted as the prize from winning a bet. The third element, chance, is something that happens unpredictably. Chance is the main issue to consider when determining whether or not paid leagues are illegal in a state. Most states use the predominance test, which declares an activity to satisfy chance if it is predominately based on chance. In these states, it is necessary for providers to provide factual evidence that fantasy sports is a game of skill, not chance. In states that use a different test for chance, or any of the other elements, fantasy providers must carefully review statutes to determine whether or not they could be subject to litigation. It will be interesting in the future to see which states remain restricted by providers and which states will begin to be allowed based on future rulings.

Beside the applicable state laws and the UIGA, providers must also consider other federal regulations. They need to consider the Interstate Wire Act of 1961, which declares it illegal for a business to assist or transmit illegal wagers. The Illegal Gambling Business Act goes further than the wire act, encompassing any business that conducts illegal gambling activity. The Profession and Amateur Sports Protection Act declares it illegal for a business to conduct gambling activities that are based on amateur or professional athletes. Under the Travel Act, fantasy providers need to be careful in accepting and distributing interstate/foreign league proceeds as well as transmitting information that facilitates illegal gambling activities, such as conducting leagues for participants to illegally gamble. Finally, the Interstate Transportation of Wagering Paraphernalia Act declares it illegal for an entity to knowingly conduct interstate gambling. Fantasy providers must be aware of these federal laws when considering whether or not to allow their leagues in a state that considers paid fantasy sports illegal. If a fantasy provider was found to be conducting illegal gambling activity in a state, it could be subject to the fines and penalties of these federal regulations.

Through my survey, there are numerous points to be made of college students and their fantasy sports behavior. The majority of people surveyed that said they participated in a fantasy league were male. Students that report some gambling are far more likely to participate in a fantasy league. However, it was surprising that 65% of students said they never gamble on a sporting event and very few said they gamble multiple times a week. As fantasy sports providers would want the public to believe, many students did not consider their entry fees to be a gambling activity. 53% of fantasy respondents reported paying an entrance fee for a league, with some paying over \$100. Finally, the majority of fantasy respondents said they participate in a fantasy football league and that ESPN is their main provider.

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