Internet Gambling: Should Fantasy Sports Leagues Be Prohibited?*

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I. FANTASY SPORTS LEAGUES: AN INTRODUCTION

Fantasy sports leagues allow individual sports fans to become owners and general managers of "self-assembled dream team[s]."\(^1\) A similar set of general rules governs fantasy basketball, baseball, football, golf, NASCAR, and other professional or college sports involving statistics.\(^2\) Fantasy sports participants earn points based on their selected players' performances in actual games.\(^3\) The total number of points obtained by a fantasy sports participant's team determines weekly standings and prize winnings.\(^4\)

Although fantasy sports have "existed for more than three decades," they gained popularity when they entered the Internet.\(^5\) Whereas friends

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1. Paula Felps, The Mouse that Scored: Internet Gives Fantasy Sports a Big Assist—Taking Away the Drudgery and Leaving the Fun, NEWS & OBSERVER (Raleigh, NC), Oct. 23, 2000, at D1, 2000 WL 3950568. Dream teams consist of real players from actual sports teams. Id. Before the season begins, a draft is held so that each participant may select a team. Id.; see also Michael K. McIntyre, Armchair Team Owners in Leagues of Their Own: Millions Hooked by Drive to Win With Fantasy Sports Franchises, PLAIN DEALER (Cleveland, OH), Oct. 24, 1999, at 1-K. The competition coincides with the sport season. Id., at 1-K.

2. McIntyre, supra note 1, at 1-K. "Among all these fantasies, football is king." Id. According to the Fantasy Sports Player's Association, "more people play fantasy football . . . than all of the other fantasy sports combined." Id. According to industry executives, "[r]oughly eight million people at least dabbled in last season's football fantasy sports league, . . . and sites are seeing registrations double season over season." Rich Wilner, How to Be a GM & Have Fun Doin' It, N.Y. Post, Feb. 13, 2000, at 77, 2000 WL 3902466. Business executives estimated that six million people would participate in the 2000 fantasy baseball season. Id. Fantasy NASCAR site Fantasy Sports Enterprises, Inc. reported about 21,000 subscribers in the 1999 NASCAR racing season. Action Acquires Fantasy Sports, BUS. J. PHOENIX, Oct. 29, 1999, at 24, 1999 WL 28534044 [hereinafter Action].

3. See Felps, supra note 1; see also R. Thomas Umstead, Fantasy Games, Real Dollars, CABLEVISION, Aug. 30, 1999, at 25, 1999 WL 21955327; Wilner, supra note 2, at 77. For example, a fantasy football player receives points for "touchdowns, rushing, field goals and passing yards" scored by the players she selects. Id. Different leagues have their own ways of determining scores. Id. "Through the season, players can be traded or waived and new players can thus be added (sometimes for a nominal fee)." McIntyre, supra note 1, at 3-K.

4. Felps, supra note 1. "In most leagues, fantasy teams play against each other each week compiling records similar to those of real NFL teams." McIntyre, supra note 1, at 3-K. Prizes "range from plaques and trophies to thousands of dollars." Felps, supra note 1.

5. Felps, supra note 1 (providing an historical description of fantasy sports). Gary Patton, commissioner of the North Texas Fantasy Football League, attributes the growth of fantasy sports to technology. Id. The Internet "built a much better fantasy" by offering thousands of pages devoted to fantasy sports, including informational sites and
and business acquaintances previously competed with one another offline, the Internet has now opened the competitive doors to about thirty million fans.  

Most fantasy sports leagues require fantasy sports team owners to pay entrance fees. Money is distributed back to winners as prizes. While their conduct arguably constitutes gambling, some fantasy sports players claim they do not play for the money. Players maintain that their roles as owners and managers require a certain level of skill.

Wagering money on players’ performances to win prizes could reasonably be considered gambling under common law and statutory interpretation. Despite prosecutors’ apparent ability to charge fantasy sports businesses and contestants with gambling crimes, no lawsuits

league home pages. Id. A substantial increase in resources has made fantasy sports more popular. Id. Before the advent of the Internet, fantasy sports players “had to do everything by hand.” Id. In addition to the time saved, the sophistication of fantasy sports brought greater accuracy. Id. Players no longer struggle with miscalculated statistics and league commissioners are not pressed to deliver statistics to owners so that they may choose weekly lineups. Id. The team’s Web site automatically updates statistics as the games are played, allowing team owners to decipher their standings “without having to wait for someone to tally scores and statistic[s] by hand.” Id. Whereas the players once sat down with the sports section and figured out a player’s statistics by hand, they now sit back while software compiles the statistics for them. Id.; see also Wilner, supra note 2, at 77. Players can also use the Web site to make their updates via Internet and e-mail. Id.

6. Wilner, supra note 2, at 77. Participants include “15 percent of Americans ages 18 and over.” Id. “[T]he fan base . . . is predominantly male.” Id. “[T]he average player has a college education and daily access to the Internet.” Id. The appeal of fantasy sports games “to an advertiser-desirable young male demographic . . . has attracted a number of blue-chip sponsors . . . such as Pizza Hut, Microsoft, and Ford, [to] sponsor[] fantasy-game sites, which provide frequent page hits” and added to the genre’s revenue taking. Umstead, supra note 3, at 25.

7. See McIntyre, supra note 1, at 3-K.

8. Id. “Fantasysports.com, a new fantasy sports site expected to debut with the 2000 baseball season, is planning a $50,000 grand prize, the highest ever.” Wilner, supra note 2, at 77.

9. McIntyre, supra note 1, at 3-K. “It’s an ego thing. Everyone wants to see how good they can be as a team owner. . . . It’s all about bragging rights,” explains Kenny Roda, an afternoon sports talk host for WKNR AM 1220. Id. Participants claim they enjoy the competition more than the prizes. Felps, supra note 1. Greg Ambrosius, editor of Fantasy Sports Magazine, however, believes that “the big bucks” are bringing in new players. Wilner, supra note 2, at 77. “You used to get a T-shirt or cap and now you can double your annual salary if you win a fantasy sports league competition.” Id.

10. See McIntyre, supra note 1, at 3-K. However, “sports junkies” are not the only fantasy sports participants. Id. Women own teams, and kids may team up with parents. Id. “[E]ven folks who don’t know a Raider from a Raven have been known to give it a try, relying heavily on draft lists provided in magazines or on the Web.” Id.
have been filed. Prosecutors have not attempted to prohibit fantasy sports leagues for two reasons: (1) they have not considered the application of gambling prohibitions to fantasy sports leagues, and (2) consumer demand for fantasy sports leagues creates political pressure for legalization.

This Comment will examine fantasy sports leagues as a form of gambling. Part II considers various federal restrictions on gambling. State perspectives on gambling are addressed in Part III. Policy arguments are presented in Part IV, and practical issues are explored in Part V. Part VI concludes that Internet fantasy sports leagues violate gambling prohibitions. Finally, the Appendix sets out the gambling laws of each state.

II. FANTASY SPORTS LEAGUES VIOLATE FEDERAL LAW

A. Federal Antigambling Provisions

The transmission of gambling information in interstate or foreign commerce is prohibited under numerous federal laws, including the Interstate Wire Act, the Travel Act, and the Interstate Transportation of Wagering Paraphernalia Act. Gambling is generally illegal under the Federal Antigambling Statute. Finally, sports gambling is specifically outlawed by the Professional and Amateur Sports Protection Act.


12. Although federal and state laws may be interpreted to prohibit fantasy sports leagues, fantasy sports leagues have operated under a presumption of legality for decades. In a case of first impression, prosecutors may doubt their ability to prove, beyond a reasonable doubt, that fantasy sports leagues are illegal.

13. "The same political forces that have led to the widespread legalization of lottery, casino, and riverboat gambling will eventually favor the legalization of Internet gambling." Bell, supra note 11, at 10. Gambling is so popular that "at least 56 percent of Americans gambled in 1995." See id. at 2; supra notes 2, 5, 6, 10.


16. See 18 U.S.C. § 1953 (2000); see also Craig, supra note 14, at 79. The Act is also known as "the Paraphernalia Act."


1. The Wire Act

In 1961, Congress enacted 18 U.S.C. § 1084 to assist state enforcement of gambling laws and to create a federal prohibition against gambling in interstate commerce. The Wire Act provides:

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 under this title or imprisoned not more than two years, or both.

The Wire Act defines a “wire communication facility” as “any and all instrumentalities, personnel, and services ... used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.”

In Sagansky v. United States, the First Circuit Court of Appeals explained that the Wire Act’s prohibition on transmission relates to the use of interstate wire communication facilities in order to transmit bets or wagers. A person is deemed to transmit bets or wagers if he or she expresses a willingness to make bets or wagers and accepts offers of bets or wagers over interstate telephone facilities.

In People ex rel. Vacco v. World Interactive Gaming Corp., the New York Supreme Court extended the Wire Act’s coverage to the Internet.

19. See H.R. REP. No. 87-967, at 1–2 (1961); see also People ex rel. Vacco v. World Interactive Gaming Corp., 714 N.Y.S.2d 844, 852 (Sup. Ct. 1999) (indicating that “the purpose of these federal controls is to aid the states in controlling gambling”); United States v. Southard, 700 F.2d 1, 20 (1st Cir. 1983) (commenting that Congress’s “stated purpose was to assist the states in enforcing their own laws against gambling”). But see Sagansky v. United States, 358 F.2d 195, 201 (1st Cir. 1966) (stating that Congress “wished to reach a single use of interstate facilities by one otherwise engaged in the business of betting”); Martin v. United States, 389 F.2d 895, 898 (5th Cir. 1968) (asserting that the Wire Act is “part of an independent federal policy aimed at those who would, in furtherance of any gambling activity, employ any means within direct federal control”).


22. 358 F.2d at 200 (rejecting defendant’s argument that an “offense is committed by [a person] who ... sends [a] bet and not by [a person] who receives it”).

23. Id.

The court commented:

Like a prohibited telephone call from a gambling facility, the Internet is accessed by using a telephone wire. When the telephone wire is connected to a modem attached to a user's computer, the user's phone line actually connects the user to the Internet server and then the user may log onto this illegal gambling Web site from any location in the United States.\(^{25}\)

The court's decision furthers Congress's objective behind the Wire Act by preventing "the rapid transmission of gambling information."\(^{26}\)

Violation of the Wire Act depends upon the presence of two elements.\(^{27}\) First, the transmitted information must assist in the placing of bets or wagers.\(^{28}\) Second, the defendant must be "engaged in the business of wagering or betting."\(^{29}\)

Fantasy sports participants rave about the Internet's ability to update statistics.\(^{30}\) In addition to setting up leagues for participants, fantasy sports Web sites offer sporting news "and provide... tools for calculating stat[istic]s."\(^{31}\) Whereas fantasy sports league participants once calculated statistics by hand, computer software is now available to compile statistics.\(^{32}\)

While the advent of the Internet clearly assists in the transmission of fantasy sports game information, participants would probably deny that they use the Internet to place bets or wagers.\(^{33}\) The Wire Act does not define "betting" or "wagering,"\(^{34}\) nor have the courts explained the legal significance of these terms. A "bet" is commonly defined as "[s]omething (esp. money) staked or pledged as a wager," while a "wager" may be defined as "[m]oney or other consideration risked on an uncertain event."\(^{35}\)

Fantasy sports players often spend considerable time choosing, watching, and trading their players. Although some fantasy sports leagues do not charge entry fees, some contestants pay for a chance to

25. \textit{Id.} at 852.
27. \textit{Truchinski v. United States, 393 F.2d 627, 630 (8th Cir. 1968).}
28. \textit{Id.} Betting and wagering is not limited to sports gambling. 18 U.S.C. § 1084(a) (2000).
29. \textit{Id.}
30. \textit{See Felps, supra note 1.} "It is so simple now.... [I]n three minutes, you can make all your updates." \textit{Id.}
31. \textit{Id.}
32. \textit{Id.} "[P]layers can go directly to the team's Web site and input their own lineup changes. Statistics are automatically updated as the games are played, so team owners can see where they stand without having to wait for someone to tally scores and stat[istic]s by hand." \textit{Id.}
33. \textit{See, e.g., McIntyre, supra note 1, at 3-K; supra note 9 (explaining how participants play for the bragging rights).}
35. \textit{See BLACK'S LAW DICTIONARY 153, 1573 (7th ed. 1999).}
Fantasy sports players who pay to play fantasy sports leagues are betting and wagering. Nonpaying contestants have a stronger argument that they are not betting or wagering, especially where merchandise prizes—not money—are at stake.\(^{36}\)

While fantasy sports participants are placing bets or wagers, the Wire Act is not aimed at prosecuting individual bettors.\(^{37}\) The plain language of the statute limits the Wire Act's prohibition to persons "engaged in the business of betting or wagering."\(^{38}\) The Wire Act appears to prohibit fantasy sports providers from charging fantasy sports participants entry fees to play in fantasy sports leagues.

In United States v. Baborian, the District Court of Rhode Island suggested that a person must sell a product or service or otherwise perform an integral function before the court would find that the person was "engaged in the business of betting or wagering."\(^{39}\) Fantasy sports providers operate services that perform an integral function in the fantasy sports business.\(^{40}\) Fantasy sports providers offer fantasy sports

\(^{36}\) The issue of whether or not nonpaying fantasy sports players give consideration to win a prize will be discussed in Part III.A.


\(^{39}\) Baborian, 528 F. Supp. at 329. While the defendant need not be exclusively engaged in the business, his performed function must "provide a regular and essential contribution to the [overall operation of] that business." Id.

\(^{40}\) "Typically, providers of Net-based fantasy sports earn subscription fees as well as online ad revenue." Matthew Swibel, Patent Lawsuit Threatens Sandbox, WASH. BUS. J., Jan. 21, 2000, at 1, 2000 WL 18192230. "The burgeoning fantasy sports business is quickly becoming a powerful tool for sports-oriented network Web sites, not only to generate revenue, but also to extend brand awareness." Umstead, supra note 3, at 25. Scott Ehrlich, FOX Sports Online Senior Vice-President and Executive Producer, estimates that fantasy sports "directly or indirectly represent [between] 10 percent to 20 percent of FOX Sports' online revenues." Id. "[I]ndustry observers estimate that fantasy games ... generate[ ] millions of dollars for Internet sites." Id. Hart Hooton, CNN/SI Interactive General Manager, notes the importance of fantasy games to his Web site: "[I]t's a key part of our evolution to become the best friend of the sports fan." Id. The expansion of fantasy sports leagues led "Web site owners and magazine publishers ... making big money off the trend [to form] the Fantasy Sports Player's Association ... as a nonprofit trade group." McIntyre, supra note 1, at 3-K. "Members include media giants such as CBS, FOX and ESPN, each of whom runs pay-to-play fantasy football leagues, and other fantasy sports leagues, on their Internet sites and offer big prizes to
leagues on their Web sites, where big prizes are offered to winning contestants. In essence, fantasy sports providers offer a place for fantasy sports players to join a league, trade their players, and collect their prizes. The function performed by fantasy sports providers serves as a "regular and essential contribution" to the fantasy sports business; therefore, fantasy sports providers are engaged in the business of gambling.

The prohibition against involvement in the business of gambling should extend to cover businesses selling computer software and magazines. Whereas only a few fantasy football magazines were published a few years ago, "there are now nearly three dozen." This information also provides a "regular and essential contribution" to the fantasy sports business, allowing fantasy sports participants to keep track of their selected players and watch for new stars. Fantasy sports participants' enthusiasm over the fantasy sports business's integral function in simplifying fantasy sports leagues suggests that fantasy sports providers are violating the Wire Act.

"[I]ndustry observers estimate that fantasy [sports] games are generating millions of dollars for" fantasy sports providers. "CBS Sportsline.com, one of the largest fantasy sports operations, [anticipates that] 400,000 players will either pay $19.95 per team or $99.95 for a personal league of up to 16 teams." In addition to subscription fees, fantasy sports providers typically earn online advertisement revenue.

"‘Business is just phenomenal . . . ’ says James Sarra, co-owner of FantasyInsights.Com, a fantasy information service, and vice-president of the Fantasy Sports Player's Association." Although his service

41. McIntyre, supra note 1, at 3-K.
42. Truchinski v. United States, 393 F.2d 627, 630 (8th Cir. 1968). "A business enterprise usually involves a continuing course of conduct by persons associated together for a common purpose." Id. Fantasy sports providers offer fantasy sports contests each season, allowing fantasy sports participants to keep track of their teams and win prizes.
43. "[Fantasy Sports Player's Association] members sell software to fantasy players for tracking fantasy statistics, publish magazines that offer research and advice, offer information on the Internet or in weekly newsletters for a fee and appear on television and radio shows to talk about fantasy sports." McIntyre, supra note 1, at 3-K.
44. Id. The Fantasy Sports Players Association reports that circulation exceeds four million. Id.
45. See, e.g., Felps, supra note 1.
46. Umstead, supra note 3, at 25.
47. Wilner, supra note 2, at 77.
48. Swibel, supra note 40. Companies striving to expand their e-commerce businesses are interested in attracting frequent page hits from aggressive fantasy sports players. See Umstead, supra note 3, at 25 (referring to Pizza Hut, Microsoft, and Ford advertising on these fantasy sports Web sites in an effort to attract the "advertiser-desirable young male demographic").
49. See McIntyre, supra note 1, at 3-K.
offers discounts to repeat customers, new customers are charged as much as $114.95 for a fantasy football package, complete with player database updates and weekly statistic files.\(^50\) This package may be supplemented with a preseason report ($14.95), weekly report ($29.95), or preseason report and weekly report ($43.95).\(^51\)

The Fantasy Sports Player’s Association estimates that fantasy football alone draws eight million participants.\(^52\) Roughly six million participants join fantasy baseball leagues.\(^53\) Fantasy Sport’s version of fantasy NASCAR racing (Fantasy Cup Auto Racing), located at www.fantasycup.com, attracted “21,000 subscribers in the 1999 NASCAR racing season.”\(^54\) Fantasy Sport’s success led to its acquisition by Action Performance’s subsidiary.\(^55\)

The profitability of fantasy sports has prompted businesses and professional players to protect their shares. In 1990, Fantasy Sports Properties obtained a patent for its version of fantasy football.\(^56\) When other Web sites began introducing their fantasy football games, Fantasy Sports Properties filed suit for patent infringement.\(^57\) Although the courts were unwilling to assess damages against the other fantasy sports providers,\(^58\) one provider opted for settlement.\(^59\) The major sites were also willing to share profits with some of the athletes.\(^60\)

Fantasy sports providers have formed an interstate business of betting and wagering by transmitting information and keeping records for


\(^{51}\) Id.

\(^{52}\) McIntyre, supra note 1, at 1-K (“[a]mong all these fantasies, football is king”).

\(^{53}\) Wilner, supra note 2, at 77.

\(^{54}\) Action, supra note 2, at 1.

\(^{55}\) Id. Fantasy Sports ended its fiscal year on Sept. 30, 1999, with a revenue of $2.2 million. Id.


\(^{57}\) Id.

\(^{58}\) Id. at 893 (granting defendant’s motion for summary judgment).

\(^{59}\) See Matthew Swibel, Gannett Settles Fantasy Sports Patent Suit, WASH. BUS. J., Mar. 24, 2000, at 3, 2000 WL 18192447 (reporting that one of five named defendants agreed to give Fantasy Sports “a 10 percent cut of [its] online gaming revenue”).

\(^{60}\) See McIntyre, supra note 1, at 3-K. When the National Football League Players Association recommended that it “be paid when fantasy Web sites use players’ names and likenesses,” the major sites” began sharing the profits. Id. “The major sites have paid fees to the association ranging from $20,000 to $25,000 as well as a percentage of profits.” Id.
participants. Not only do fantasy sports providers violate the Wire Act, but they also potentially aid and abet the interstate transmission of wagering information for professional gamblers. In United States v. Kelley, the Second Circuit held that the Wire Act prohibited the defendant bookmaker from informing prospective bettors "that someone was ready to place a bet" and providing instruction as to "how that person could be reached." Fantasy sports providers similarly aid and abet because they use the Internet to bring participants together, endorse game rules, and provide prizes for the winners.

2. The Travel Act

The Travel Act’s broad language could be extremely effective in prohibiting fantasy sports leagues. The Act applies to “any business enterprise involving gambling.” The Travel Act provides:

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 any of the acts specified in subparagraphs (1), (2), and (3), shall be fined . . . or imprisoned . . . .

After applying the Wire Act to Internet gambling, the court in World Interactive Gaming Corp. found that the Travel Act also prohibits such activity. Unlike the Wire Act, however, fantasy sports participants are not shielded from liability under the Travel Act. Participants might argue that using a league and software is not unlawful activity;
however, the United States Supreme Court rejected this type of argument in *Erlenbaugh v. United States*.69

Fantasy sports providers also fall within the Travel Act’s prohibition. In *United States v. Miller*,70 the Seventh Circuit court held that defendants violated the Travel Act when they used or allowed customers to use a Western Union tickertape to post baseball scores on the defendant’s business’s blackboards.71 Instead of determining whether the defendants operated the ticker machine, the Seventh Circuit focused on defendants’ “use”72 of the machine to tabulate winning tickets inside their establishment. The circuit court commented:

> Defendants were responsible for the installation and presence of the ticker on their premises. They wanted the ticker in their establishment so that the customers could check the scores. They provided blackboards so that scores obtained from the ticker could be posted. They knew that these scores would be of interest to their baseball pool customers. With defendants’ knowledge and approval, their customers promoted the pool by posting the scores obtained from the tickertape. These activities constituted a “use” of an interstate facility by defendants.73

The court concluded that the ticker need not “be essential to the gambling operation; [rather], it need only ‘facilitate’ an illegal gambling operation.75

Fantasy sports providers use the Internet to post preseason reports, weekly reports, player rankings, and fantasy statistics.76 ESPN Internet Ventures director of consumer products, Jim McGee, asserted that fantasy sports are probably among “the most mature revenue-generating industries on the net.”77 While the Internet is not necessary to operate

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69. *Erlenbaugh*, 409 U.S. at 243. Defendants caused a scratch sheet, which “contains more complete and detailed horse racing information than... regular newspapers” and “was used extensively by [gambling] customers... in placing their bets,” to be carried in interstate commerce. *Id.* at 241. The Court held that the carrying of gambling aids across state lines violated the Travel Act. *Id.* at 248.

70. 379 F.2d 483 (7th Cir. 1967).

71. *Id.* at 485.

72. *Id.* The ordinary meaning of “use” is broad enough to encompass defendants’ operations. *Id.*

73. *Id.*

74. “[F]acilitate’ means ‘to make easy or less difficult.'” *Id.* at 486.

75. *Id.*

76. See, e.g., Fantasy Insights, *supra* note 50.

fantasy sports leagues, participants enjoy the ease by which statistics are calculated. Fantasy sports providers use the Internet in interstate commerce to facilitate gambling in violation of the Travel Act.

3. The Paraphernalia Act

The Paraphernalia Act is designed to eradicate illegal gambling by "erect[ing] a substantial barrier to the distribution of certain materials used in the conduct of various forms of illegal gambling." Although a ban on Internet fantasy sports sites, computer software, and specialty magazines would not lead to the demise of fantasy sports leagues, such a ban would present a substantial barrier and impede the operation of fantasy sports leagues.

The Paraphernalia Act provides, in relevant part:

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 . . . wagering pools with respect to a sporting event . . . [shall be fined and/or imprisoned].

Courts have applied the Paraphernalia Act to Internet gambling. In addition, courts have broadly interpreted the word "device," thereby applying the Paraphernalia Act's prohibition to software programs.

Despite Congress's broad language, two exemptions may protect fantasy sports providers. First, the Paraphernalia Act provides an exemption for conduct that occurs in states that permit sports gambling. A second stronger argument for exemption of fantasy sports providers and associated organizations, however, is that these providers

78. See Felps, supra note 1; see also Wilner, supra note 2, at 77. Internet "fantasy sports games have flourished [because] . . . complex computer programs do all the number crunching [while] players have all the fun." Id.
80. 107 CONG. REC. 16,537 (1961). "The primary purpose is to prevent the transportation in interstate commerce of wagering material. The purpose actually is to cutoff and shutoff gambling supplies, in reality to prevent these lotteries and kindred illegal diversions." Erlenbaugh v. United States, 409 U.S. 239, 246 n.18 (quoting 107 CONG. REC. 16,537 (1961) (statement of Representative Celler)).
84. See, e.g., United States v. Mendelsohn, 896 F.2d 1183, 1187 (9th Cir. 1990).
85. 18 U.S.C. § 1953(b)(2) (2000) (exempting "the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State").
transport newspapers or similar publications. Fantasy statistics are publications containing results or predictions, which Congress intended to exclude.

4. The Federal Antigambling Statute

Whereas the statutes previously discussed prohibit gambling in both the state housing the operation and the state where betting takes place, the Federal Antigambling Statute applies only when gambling violates the law of the state where the gambling operation is conducted. If gambling is illegal under state law, then it must also involve five or more significant persons and "remain[] in substantially continuous operation for a period in excess of thirty days or [have] a gross revenue of $2,000 in any single day" to fall within this prohibition.

The Federal Antigambling Statute arguably includes Internet activity and sport-related betting in its definition of "gambling." While individual participants are excluded, any fantasy sports business would be subject to the prohibition if five or more persons perform any acts necessary or helpful in the ordinary operation of the business.

5. The Professional and Amateur Sports Protection Act

The Professional and Amateur Sports Protection Act makes it unlawful for a governmental entity or person to "sponsor, operate, advertise, [or] promote" any gambling operation "based, directly or indirectly . . . , on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one

86. 18 U.S.C. § 1953(b)(3) (2000) (exempting "the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication").
91. 18 U.S.C. § 1955(b)(2) (2000) ("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.").
92. 18 U.S.C. § 1955(b)(2); see also United States v. Reeder, 614 F.2d 1179, 1182 (8th Cir. 1980).
93. See Reeder, 614 F.2d at 1182.
or more performances of such athletes in such games." 95

The Professional and Amateur Sports Protection Act does not address the medium over which gambling is prohibited; therefore, statutory construction dictates that the Act's prohibition applies to Internet sports gambling. 96 Prosecutors would probably favor this Act because it can reach intrastate violations. 97

One legal writer has already recognized that "[t]his statute could be construed to proscribe a wide range of activities," including fantasy sports leagues. 98 For reasons set forth below, however, policy arguments suggest a contrary result.

B. The Internet Gambling Prohibition Act

Despite the potential applicability of at least five federal statutes to fantasy sports, Senator Jon Kyl (R-AZ) championed a bill to prohibit Internet gambling as part of the 1995 Crime Prevention Act. 99 Although the bill died in committee, 100 Senator Kyl returned with the Internet Gambling Prohibition Act (IGPA) in 1997 (the 1997 Kyl bill). 101 The final version of the 1997 Kyl bill provided an exemption for fantasy sports leagues. 102

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96. Craig, supra note 14, at 82.
97. Id.; Robbins, supra note 37, at 28. Individual bettors, however, would not be liable for fantasy sports participation since they do not sponsor, operate, advertise, or promote any gambling operation.
98. Craig, supra note 14, at 82. Craig concludes that "it would be bad policy to enforce [the Professional and Amateur Sports Protection Act] to its full extent." Id. at 83.
102. See S. 474, 105th Cong. § 1085 (1997); Internet Gambling: Hearing on S. 474 Before the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information, 105th Cong. (1998) (testimony of Marianne McGgettigan, Major League Baseball Players Association representative), 1998 WL 163342 (F.D.C.H.) [hereinafter McGgettigan]; Hiestand, supra note 101. The bill specifically permits participation in a lawful game or contest "in which the winner or winners may receive a prize or award if
While the Fantasy Sports Player's Association actively encouraged an exception for fantasy sports, other special interest groups were not as successful in obtaining an exemption. The Department of Justice criticized the proposed exception. The Kyl bill died because the Senate and House versions of the IGPA were never reconciled.

III. VOID WHERE PROHIBITED BY STATE LAW

State law often controls the issue of gambling; therefore, this Part will consider the application of state gambling laws to fantasy sports contests. Fantasy sports promoters generally leave participants to determine whether their involvement violates state gambling laws. An exception is ESPN, which permits residents of Arizona, Florida, Louisiana, Maryland, Minnesota, Montana, North Dakota and Vermont to play fantasy sports contests even though they are prohibited from winning prizes. An analysis of each state is contained in the Appendix.
A. Common Law

At common law, state courts considered an activity gambling when consideration was paid for a chance to win a prize.\textsuperscript{108} Fantasy sports contestants compete for prizes, including cash and merchandise.\textsuperscript{109} The issue of whether fantasy sports leagues constitute gambling depends upon the elements of consideration and chance.

Consideration is established when contestants pay entry fees to participate in fantasy sports leagues.\textsuperscript{110} Fantasy sports providers such as ESPN,\textsuperscript{111} Fantasy Insights\textsuperscript{112} and FOXSports\textsuperscript{113} are more susceptible to gambling charges because they run pay-to-play fantasy sports leagues. In states that require valuable consideration, fantasy sports providers can avoid liability by choosing not to demand entry fees.\textsuperscript{114}

Although some fantasy sports providers, such as CNN,\textsuperscript{115} do not demand entry fees, they arguably receive a nonmonetary form of consideration. These fantasy sports providers require contestants to register online using their e-mail accounts.\textsuperscript{116} The mere act of

\textsuperscript{109}. See, e.g., ESPN, supra note 107, ¶ 7. Prizes for ESPN's 2000-2001 fantasy basketball leagues range from a grand prize of a TV valued at $2200 to weekly prizes of ESPN fantasy games hats. \textit{Id}.  
\textsuperscript{110}. Although fantasy sports proponents would argue that payment of an administrative fee does not qualify as consideration, the requirement that contestants pay a fee would almost certainly constitute consideration. See, e.g., FCC, 347 U.S. at 295 n.15 (holding that "the payment of money" qualifies as consideration). Even if fantasy sports providers charge entry fees only to cover administrative costs, the payment of such a fee satisfies the consideration element.  
\textsuperscript{111}. See ESPN, supra note 107, ¶ 6. The entry fee is $49.95 for a "'3-pak' of three teams"; $29.95 for "[f]irst-time owners"; $19.95 for fantasy football, baseball or hockey owners; or $19.95 for ESPN Insiders." \textit{Id}. Additional entries cost $17.95. \textit{Id}.  
\textsuperscript{112}. See Fantasy Insights, supra note 50.  
\textsuperscript{114}. See generally Mid-Atlantic Coca-Cola Bottling Co., Inc. v. Chen, Walsh & Tecler, 460 A.2d 44, 47 (Md. 1983) (stating that the purchase of Coca-Cola was sufficient consideration for entry into a game lottery); Commonwealth v. Wall, 3 N.E.2d 28, 29-30 (Mass. 1936) (stating that the purchase of an admission ticket for a theatre was sufficient consideration for entry into a lottery drawing, even though admission was not required for a chance to win); State v. Eames, 183 A. 590, 591 (N.H. 1936) (requiring "pay" in terms of money for a chance game to be considered a lottery); State v. Big Chief Corp., 13 A.2d 236, 239 (R.I. 1940) (stating that consideration must have pecuniary value).  
\textsuperscript{116}. See, e.g., CNN, supra note 115.
completing a registration form may constitute sufficient consideration in some jurisdictions. In addition, a fantasy sports provider’s ability to use contestant information for advertising and marketing purposes confers a benefit that may qualify as consideration.

Fantasy sports proponents would argue that consideration requires monetary payment. In some jurisdictions that require the payment of money to satisfy the consideration element, this argument would preserve the lawful status of fantasy sports leagues.

However, fantasy sports proponents’ attempts to analogize fantasy sports leagues to sweepstakes do not hold water for two reasons. First, federal law permits sweepstakes that are operated on an occasional basis as an ancillary activity. By contrast, fantasy sports leagues are

117. See Affiliated Enterprises, Inc. v. Waller, 5 A.2d 257, 261 (Del. Super. Ct. 1939) (holding that mere registration for a prize may qualify as consideration); Midwest Television, Inc. v. Waaler, 194 N.E.2d 653, 657 (Ill. App. Ct. 1963) (defining consideration to include any “forbearance, detriment, loss, or responsibility given, suffered or undertaken by the [participant]”); State v. Wilson, 196 A. 757, 760 (Vt. 1938) (stating that “the word pay ... may be taken to include the doing of an act”); Seattle Times Co. v. Tielsch, 495 P.2d 1366, 1369 (Wash. 1972) (stating that sufficient consideration is present when “the participant is required to do something ... he might not otherwise do, and if there is in fact a benefit flowing to the promoter, which induces him to make the offer”). The opinion of the participant that he has given nothing of value is not determinative. Tielsch, 495 P.2d at 1369.

118. See Midwest Television, Inc., 194 N.E.2d at 657 (defining valuable consideration to include “some right, interest, profit or benefit accruing to one party”); Troy Amusement Co. v. Attenweller, 28 N.E.2d 207, 215 (Ohio Ct. App. 1940) (stating that “[t]he element of advertisement and increased patronage is sufficient consideration”); Knox Indus. Corp. v. State ex rel. Scanland, 258 P.2d 910, 914 (Okla. 1953); see also KAN. STAT. ANN. § 21-4302(c) (1995 & Supp. 2000) (defining consideration as “anything which is a commercial or financial advantage to the promoter”); Kayden Indus., Inc. v. Murphy, 150 N.W.2d 447, 450 (Wis. 1967) (defining consideration as “anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant”). Consideration may also be satisfied if fantasy sports Web sites profit from visits by nonsport fans, who were attracted by the chance to win prizes. “The fact that prizes of more or less value are to be distributed will attract persons to the theaters who would not otherwise attend. In this manner those obtaining prizes pay consideration for them, and the theaters reap a direct financial benefit.” Sproat-Temple Theatre Corp. v. Colonial Theatrical Enter., 267 N.W. 602, 603 (Mich. 1936) (quoting Society Theater v. City of Seattle, 203 P. 21, 22 (Wash. 1922)).

119. See, e.g., Wall, 3 N.E.2d at 29.

120. See 18 U.S.C. § 1307(a)(2)(B) (2000). Sweepstakes conducted by nonprofit or governmental organizations are also permissible. See 18 U.S.C. § 1307(a)(2)(A) (2000). This exception does not apply to fantasy sports providers who run for-profit businesses. An exception is also made for “promotional activity by a commercial organization [that] is clearly occasional and ancillary to the primary business of that organization.”
operated throughout each sport season and provide a principal source of a Web site’s income. Second, state law recognizes that sweepstakes lack consideration.\textsuperscript{121}

If contest providers and participants were unsuccessful in their arguments that consideration is absent, then they would argue that the element of chance is absent because fantasy sports leagues depend primarily upon skill.\textsuperscript{122} Since games commonly involve a combination of skill and chance, courts generally must determine which factor dominates the game.\textsuperscript{123} However, states apply different tests and would probably differ in their resolution of this issue.\textsuperscript{124}

Fantasy sports proponents argue that fantasy sports contestants use their skill and knowledge of the sport and the fantasy sports rules to create and manage their own fantasy team of players who will accumulate the most points.\textsuperscript{125} They would likely concede that an unskilled contestant may enjoy a rare victory; however, they would maintain that contestants’ skills generally determine the winners.

Fantasy sports opponents argue that fantasy sports contests involve more chance than skill.\textsuperscript{126} First, the performance of athletes depends

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\item[\textsuperscript{121}]{See, e.g., Glick v. MTV Networks, 796 F. Supp. 743, 747 (S.D.N.Y. 1992) (finding that contestants are not required to pay something of value since no purchase is necessary to enter sweepstakes).}
\item[\textsuperscript{122}]{See ESPN, supra note 107; McIntyre, supra note 1, at 3-K (claiming that contestants are more concerned with winning and losing as general managers); Wilner, supra note 2, at 77 (reporting that one contestant commented, “[i]t’s not just the competition but the people I have met in the league.”). But see id. (“You used to get a T-shirt or cap and now you can double your annual salary if you win a fantasy sports league competition.”).}
\item[\textsuperscript{123}]{See, e.g., Johnson v. Collins Entm’t Co., 508 S.E.2d 575, 583 (S.C. 1998). The “dominant factor doctrine” requires that “chance dominate[] the distribution of prizes” before an activity may be labeled gambling. Id. The fact that some skill or judgment is present is significant only where the role of skill is greater than the role of chance. See id.}
\item[\textsuperscript{124}]{See infra app.}
\item[\textsuperscript{125}]{See, e.g., ESPN, supra note 107.}
\item[\textsuperscript{126}]{Fantasy sports opponents would analogize fantasy sports leagues to horse racing, which is generally considered gambling. Fantasy sports contestants’ assertion that they rely on skill in selecting players for their fantasy team is similar to an argument that winners at horse races rely on skill in selecting horses. Horse racing itself is a “sport” or a “game” in which the winning horse is determined by the breeding, stamina and training of the horse, and the skill, experience and management of the owner, trainer and jockey. . . . But, when members of the public at large engage in placing bets upon the result of the races, no such conclusion can be drawn. The patrons of the race tracks know little or nothing about either the quality of the horse, or of the jockey. Their choice of a horse to “win,” “place” or “show,” is at most a guess. Any distribution they may receive is the result of chance. Most such bets are placed as a result of a hunch or some whimsical fancy, and do not result from the application of skill or judgment.}
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upon skill, while attempts by third parties to predict the future performances of athletes involve chance guesses. Fantasy sports contestants lack the ability to control the performances of athletes. Second, a party who bets on the outcome of a game is a gambler; therefore, a party who bets on the outcome of a player is also a gambler. Finally, one need only look at the winners of fantasy sports contests to realize that skill, although concededly helpful, does not control the distribution of prizes. 127

B. Statutory Definitions

Several state statutes eliminate the distinction between games of chance and games of skill. 128 Even if fantasy sports proponents succeed with their argument that contests involve more skill than chance, statutes may nonetheless prohibit games of skill. The legality of fantasy sports contests would then depend upon the element of consideration.

Fantasy sports proponents argue that consideration is absent because fantasy sports providers earn no monetary compensation. Where monetary compensation is paid, it consists of entry fees, which should not be considered bets or wagers. 129 Fantasy sports opponents argue that entry fees constitute consideration. 130 They also point out that some states do not require monetary consideration. 131 The consideration element will vary based on state law. 132

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Oneida County Fair Bd. v. Smylie, 386 P.2d 374, 394 (Idaho 1963) (holding that the pari-mutuel system of wagering on horse races does not constitute a lottery).

127. See McIntyre, supra note 1, at 3-K. "Last year, Barb and partner Sue Wargo won their league, . . . [but this year they] are cellar dwellers." Id. Nonsports fans now join fantasy sports leagues, "relying heavily on draft lists provided in magazines or on the Web." Id.

128. See ARIZ. REV. STAT. § 13-3301(4) (2001) (defining “gambling” as the “act of risking or giving something of value for the opportunity to obtain a benefit from a game or contest of chance or skill or a future contingent event”); 720 ILL. COMP. STAT. 5/28-1(a)(1) (1993 & Supp. 2001) (defining “gambling” as playing “a game of chance or skill”).


130. See supra notes 116–18.


132. See infra app.
ESPN compiled a list of states whose residents would be permitted to compete in fantasy sports contests despite their claimed inability to collect any prize winnings.\textsuperscript{133} CNN originally joined ESPN's decision to deny Florida residents prize eligibility but has since opened prize eligibility to Floridians.\textsuperscript{134} This restriction against Florida is most likely a response to a state statute that expressly prohibits "the operation of and participation in a fantasy sports league."\textsuperscript{135}

Interestingly enough, ESPN denies prize winnings to residents of the only state that passed a statute expressly permitting fantasy sports contests.\textsuperscript{136} Although Montana allows fantasy sports leagues, it places limits on the profits that can be earned by fantasy sports providers.\textsuperscript{137} It is possible that ESPN's profit earnings explain its exclusion of Montana residents from prize eligibility.

While ESPN's decision to restrict residents of certain states may reflect a fear of prosecution in stricter jurisdictions, ESPN allows state residents from two of the strictest jurisdictions to fully participate.\textsuperscript{138}

ESPN's decision to deny prize winnings to residents of Arizona and

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\item \textsuperscript{133}See ESPN, supra note 107; supra text accompanying note 107. By singling out certain state residents, ESPN curiously collects entry fees in exchange for its guarantee that it will distribute no prizes to these participants. \textit{See id.} In the event that a winner is unable to collect a prize winning, his or her place will nonetheless be added in the standings. \textit{Id.}
\item \textsuperscript{135}See FLA. STAT. ANN. § 849.14 n.2 (West 1997); \textit{see also} Op. Att’y Gen. 91-3, at 6–8 (Fla. 1991).
\end{itemize}

Prohibit[ing] . . . operation of and participation in a fantasy sports league whereby contestants pay an entry fee for the opportunity to select actual professional sports players to make up a fantasy team whose actual performance statistics result in cash payments from the contestants' entry fees to the contestant with the best fantasy team.

FLA. STAT. ANN. § 849.14 n.2 (West 1997). ESPN does not award cash prizes; therefore, it may have an argument around the Florida statute. \textit{See ESPN, supra note 107.} CNN, however, offered $1 million as one of its prizes. \textit{See Official Rules and Regulations, supra note 134.}

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\item \textsuperscript{136}See MONT. CODE ANN. § 23-5-802 (1999). "It is lawful to conduct or participate in a fantasy sports league." \textit{Id.}
\item \textsuperscript{137}See MONT. CODE ANN. § 23-5-802(2) (1999) (requiring that a commercial establishment charg[ing] . . . administrative fee[s] for conducting . . . fantasy sports league[s]" may not charge greater than 15 percent of the participant’s entrance fee). "The total value of payouts to all league members must equal the amount collected for entrance, administrative, and transaction fees, minus payment for administrative expenses." MONT. CODE ANN. § 23-5-805(1) (1999).
\item \textsuperscript{138}Hawaii and Utah prohibit all forms of gambling, including state lotteries. \textit{See HAW. REV. STAT.} § 55 (1993); UTAH CONST. art. VI, § 27.
\end{itemize}
Vermont seems arbitrary.

IV. POLICY CONSIDERATIONS

A. Arguments for Prohibition

Gambling opponents generally present three arguments against legalized gambling: increased crime rates, economic loss, and erosion of morality. In addition to these concerns, fantasy sports leagues pose a severe threat to the sanctity of sports.

1. Increased Crime Rates

The argument that gambling increases crime focuses on organized crime, illegal profit laundering, and increased derivative crime. Over thirty years ago, Congress expressed concerns that gambling operations finance organized crime. Crime may also be financed when gamblers evade taxes through skimming. These concerns probably do not apply to fantasy sports contests. First, fantasy sports providers maintain records of winning contestants, which would avoid any need for regulatory agencies to enforce antiskimming auditing techniques. Second, fantasy sports contests do not involve the type of gambling operation that appeals to organized crime. Prizes often involve merchandise, not cash. Furthermore, criminals would probably choose a gambling operation that gives quick payouts, rather than wait until the end of the sports season.

139. Craig, supra note 14, at 64. The moral argument stresses the societal cost of gambling addicts. See id. at 65; see also ROBERT GOODMAN, THE LUCK BUSINESS: THE DEVASTATING CONSEQUENCES AND BROKEN PROMISES OF AMERICA’S GAMBLING EXPLOSION 51 (1995). “[G]ambling is an inappropriate use of welfare funds, leads to higher suicide rates, and causes anxiety.” Craig, supra note 14, at 65 (footnotes omitted).


142. See Craig, supra note 14, at 69; I. Nelson Rose, The Legalization and Control of Casino Gambling, 8 FORDHAM URB. L.J. 245, 257 n.56, 274 (1980). Not only is the government “unable to collect tax revenues,” but “profits are often used to finance other illicit activity.” Craig, supra note 14, at 70.
While organized crime and illegal profit laundering probably would not apply to fantasy sports contests, another concern stressed by gambling opponents is that legalized gambling may increase the incidence of crimes that result from compulsive gambling behavior. For example, the introduction of casinos typically increases the crime rate in the surrounding area. While some people would attribute the increased crime to increased traffic and tourism, others disagree. They argue that legalized gambling creates "problem gamblers" who "turn to more serious criminal activity to support their habits." The private environment of the Internet would not increase the incidence of street crime and prostitution. It is hard to imagine how fantasy sports contests would encourage white-collar crime. Fantasy sports contests tend not to involve great amounts of money and arguably would not have any affect on crime rates. Although the Internet's privatized environment, ready accessibility, and abundance of fantasy sports leagues could arguably present a troublesome atmosphere for compulsive gamblers, fantasy

144. See id.; see also Carl G. Braunlich, Lessons from the Atlantic City Casino Experience, 34 J. TRAVEL RES. 46, 55 (1996) ("In 1977, before the first casino opened, the Atlantic City Metropolitan Statistical Area (MSA) ranked 50th among the nation's 257 MSAs in per capita violent and property crime. In 1981 the Atlantic City MSA was ranked first."); Priscilla Painton, Boardwalk of Broken Dreams, TIME, Sept. 25, 1989, at 64, 66 (noting that the crime rate in Atlantic City has increased to the highest in the state); James Popkin, A Mixed Blessing for 'America's Ethiopia': Big-Time Gaming Helps But Is No Cure-All, U.S. NEWS & WORLD REP., Mar. 14, 1994, at 52, 56 (noting that arrests for drunken driving went up 500 percent in Tunica, Mississippi after casinos arrived).
146. "White-collar crime, such as insurance fraud, cannot be easily explained by increased traffic or tourism. This crime results most directly from the compulsive gambling behavior." Browne et al., supra note 143, at 51.
148. See S. REP. No. 106-121 (1999). "The harms caused by addiction to gambling and crimes related to gambling are well documented." Id. at 14. Internet gambling may increase "the number of addicted gamblers" by expanding "the total number of gamblers." Id. "[T]he anonymous nature of Internet gambling increases the likelihood that individuals will become addicted to gambling." Id. Furthermore, the ability to gamble in the convenience of one's home threatens to erode "the stigma that may be
sports leagues do not fit the profile of dangerous games.

2. Economic Loss

Fantasy sports opponents contend that “Internet gambling sites owned and managed by the private sector would exacerbate many of the economic problems associated with gambling.” 149 Whereas casinos create jobs and provide additional tax revenues, Internet gambling would create fewer jobs. 150 To the extent that a state could collect gambling taxes from fantasy sports providers, “the convenience of Internet gambling would cannibalize state lottery and pari-mutuel revenues by diverting money from the state fund into private pockets.” 151

Fantasy sports opponents argue that economic problems must be weighed against the economic benefits of fantasy sports leagues. Fantasy sports leagues offer a unique form of entertainment for sports fans and nonsports fans alike. 152 The task of balancing competing societal interests should be left to state and federal legislators. 153

A second economic argument against gambling maintains that the redistribution of discretionary spending from local businesses to gambling operators may harm the community. 154 In the case of fantasy sports leagues, the local sporting industry would suffer if sports fans choose to watch more games at home. 155 An avid contestant may prefer to switch stations between games to watch selected players, rather than attend a local game and cheer for the home team. On the other hand, fantasy sports leagues may bring new fans into the market, especially in

attached to [public] gambling.” Id. at 13.

149. Craig, supra note 14, at 68.

150. See id. The few jobs created would likely go to computer programmers and professionals—workers who “could certainly benefit society in more useful capacities.” Id. at 68-69.

151. Id. at 69. “From an economic standpoint, private Internet gambling, in any form, will result in a net loss for the state.” Id. In addition to the transfer of revenue to private pockets, the state would need to increase spending to collect tax revenues. See id; see also GOODMAN, supra note 139, at 27; Rose, supra note 142, at 253-54 n.43.

152. See McIntyre, supra note 1, at 3-K.

153. Fantasy sports proponents have managed to keep the balance in their favor through the use of lobbyists. See id. A lobbyist working for the Fantasy Sports Players Association ensured that the proposed Internet gambling bill carved out an exemption for fantasy sports. See id.

154. See Craig, supra note 14, at 64; see also GOODMAN, supra note 139, at 2.

155. See McIntyre, supra note 1, at 3-K (commenting that fans are less likely to attend games and “cheer for their own team because of the high cost” and weakened team allegiance).
areas without local teams.\textsuperscript{156}

Finally, economic disadvantages include the societal costs of gambling addiction.\textsuperscript{157} Although fantasy sports leagues provide another gambling opportunity for addicts, it is not clear that fantasy sports leagues present a serious danger of gambling addiction.

3. Erosion of Morality

"[L]egalizing gambling gives it the state stamp of approval, which results in new bettors, with a direct correlation to an increase in compulsive gambling."\textsuperscript{158} Gambling opponents also argue that it "is an inappropriate use of welfare funds, leads to higher suicide rates, and causes anxiety."\textsuperscript{159} Although none of these arguments seem to apply to fantasy sports leagues, opponents' concern that gambling be kept away from minors may be pertinent.\textsuperscript{160}

Gambling opponents fear that youths may turn to crime if they learn that financial gain may result without hard work.\textsuperscript{161} Early gambling exposure may also increase the risk of addiction.\textsuperscript{162} While minors may experience a negative impact if their parent wins or gambles compulsively, it is unlikely that many minors would have a bad experience with parental involvement in fantasy sports leagues. However, the danger of minor involvement in gambling may be serious because fantasy sports providers are unable to discern the age of contestants.\textsuperscript{163}

\begin{footnotes}

\item 156. \textit{See id.} "Having a team—even a fantasy one—was important to Cleveland fans the past three years when there was no Browns team." \textit{Id.} One sports fan commented that having a fantasy sports team gave Cleveland fans a reason to watch football. \textit{Id.} Furthermore, fantasy sports leagues may give fans a reason to watch even though their home team is having a bad season. \textit{See id.}

\item 157. \textit{See Craig, supra note 14, at 64–65; see also GOODMAN, supra note 139, at 51.} These costs range from $13,200 to $52,000 per year per addict. Craig, \textit{supra} note 14, at 64.

\item 158. Craig, \textit{supra} note 14, at 65 (footnote omitted); \textit{see also} GOODMAN, \textit{supra} note 139, at 48; I. Nelson Rose, \textit{Gambling and the Law} 13 (1986).

\item 159. \textit{See Craig, supra} note 14, at 65 (footnotes omitted); \textit{see also} David Dixon, \textit{From Prohibition to Regulation: Bookmaking, Anti-Gambling, and the Law} 57–60, 219 n.1 (1991); Rose, \textit{supra} note 142, at 263.

\item 160. \textit{See Craig, supra} note 14, at 69; \textit{see also} Lisa McLaughlin, \textit{Teen Betting}, TIME, Apr. 9, 2001, at 83 (citing the increased danger that teenagers will become addicted to gambling). Most underage "betting is on sports or card games," and "growing numbers of kids are dabbling in lotteries and online gambling." McLaughlin, \textit{supra}, at 83.

\item 161. \textit{See Craig, supra} note 14, at 65 n.51; \textit{see also} Dixon, \textit{supra} note 159, at 210; Goodman, \textit{supra} note 139, at 43–45.

\item 162. \textit{See Craig, supra} note 14, at 65 n.51.

\item 163. For example, a minor who has access to a credit card could enter the card owner's name, credit card number, and expiration date.

\end{footnotes}
4. The Sanctity of Sports

A concern unique to fantasy sports leagues is the threat that they present to the sanctity of sports. Fantasy sports leagues promote the individualistic attitude displayed by today’s professional athletes. Fantasy sports contestants select players without regard to the teams on which those players exist. By cheering for the players, rather than the teams, spectators support a free agent ideal, which counters the traditional team allegiance. Fantasy sports leagues encourage sports fans to focus their attention on individual players and fantasy teams rather than actual teams.

B. Arguments Against Criminalization

Gambling proponents argue that legalized gambling provides valuable revenue. Proponents assert that gambling provides social value because it provides entertainment, “offers a substitute social system,” allows an opportunity “to prove [one’s] character,” provides an opportunity for financial gain, and “represents a realization of work values.” Furthermore, gambling proponents maintain that gambling laws are unenforceable.

1. Legalized Gambling Provides Revenue

As previously discussed, the impact fantasy sports leagues would have on state revenues is questionable. It is clear, however, that fantasy sports leagues provide revenue for the private sector. Therefore,

164. See, e.g., McIntyre, supra note 1, at 1-K.
165. See id. Professional athletes have become more concerned with their paychecks than with their love of the game. One need only consider the frequency of strikes in modern sports. While athletes condone fantasy sports contests, their greater concern seems to be their cut of the proceeds.
166. See Craig, supra note 14, at 64; see also Rose, supra note 142, at 256. But see Rose, supra note 142, at 259–62. Moreover, revenue will not be monopolized by state governments as with lotteries. See Guy Calvert, Cato Institute, Policy Analysis No. 349: Gambling America: Balancing the Risks of Gambling and Its Regulation, at 11 (June 18, 1999), at http://www.cato.org//pubs/pas/pa-349es.html (last visited Apr. 3, 2001).
167. Craig, supra note 14, at 64; see also John Dombink & William N. Thompson, The Last Resort: Success and Failure in Campaigns for Casinos 15–18 (1990); Rose, supra note 142, at 263.
168. Craig, supra note 14, at 64; Rose, supra note 142, at 254.
169. See text accompanying supra note 151.
170. See Calvert, supra note 166, at 11. Whereas state-operated gambling results in high monopoly rents (“effectively a consumption tax on lottery participants”), fantasy
states could tax the profits made by private businesses. \(^{171}\)

2. *The Social Value of Gambling*

Fantasy sports contests provide a form of entertainment for sports fans and nonsports fans alike. \(^{172}\) The average person has an opportunity to prove his or her skills as a team owner. \(^{173}\) Financial gain may or may not be at stake. Similarly, work values may or may not be realized, depending upon how much effort a contestant puts into the fantasy sports team.

3. *Gambling Laws Are Unenforceable*

Gambling proponents argue that Internet technology presents obstacles for law enforcement. \(^{174}\) Although gambling proponents often assert that United States courts cannot exercise personal jurisdiction over foreign Internet gambling businesses, \(^{175}\) gambling laws are enforceable against fantasy sports providers that operate inside the United States. \(^{176}\) Contestants who identify themselves by credit card or on a registration form would also be subject to prosecution. \(^{177}\)
V. PRACTICAL CONSIDERATIONS

If fantasy sports contests are deemed gambling operations, then fantasy sports providers and creditors may have difficulty collecting entry fees. Credit card companies should be concerned with the lawful operation of fantasy sports contests because fantasy sports participants generally pay league and information fees by credit card. A decision that fantasy sports contests constitute gambling could prevent credit card companies from recovering entry fees charged by contestants.

The first wave of lawsuits brought by losing gamblers was unsuccessful. In December 1998, a man who lost $30 in an Internet blackjack game attempted to file a class action lawsuit, requesting declaratory relief that the gambling debt was unlawful. In a similar suit filed in federal court, a gambler sued to recover $9398, which he allegedly lost at an Internet casino. Parties seeking class action status filed suit in another federal court against MasterCard and its bank in

178. See Craig, supra note 14, at 87. "[A] player willing to sacrifice his credit rating could refuse to pay a credit card debt ... so long as the credit card company lent the money knowing it was being used for a gambling transaction." Id. at 87. "It is unclear whether the courts would allow a losing gambler to escape his debt to a credit card company." Id. For a state by state analysis, see infra app.

179. Most states retain the Statute of Anne, which treats gambling contracts as void and illegal. See Craig, supra note 14, at 85. The statute provides: "[A]ll notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatsoever given ... for any money or other valuable thing whatsoever, won by gaming or playing at ... [any] games whatsoever, or by betting ... shall be utterly void, frustrate, and of none effect, to all intents and purposes whatsoever." Id. (quoting 9 Anne, c. 14 (1710)). Nevada, New Jersey and New York are the only states which have repealed the statute. See Craig, supra note 14, at 85 n.192; see also Resorts Int'l Hotel, Inc. v. Agresta, 569 F. Supp. 24, 26 (E.D. Va. 1983) (holding contract void because enforcement of the contract would violate public policy). The contract arose when a Virginia resident gambled in a New Jersey casino. Id. The contract would have been enforceable in New Jersey. Id.


181. See Kelly, supra note 105, at 165 (citing Class Action Complaint, Freeman (No. CV-98-JEO-3029-S)). His complaint alleged that defendants Citibank and Visa, who attempted to collect his gambling debt, violated the Racketeer Influenced and Corrupt Organizations Act (RICO). See id.; see also 18 U.S.C. § 1952(a) (2000); 18 U.S.C. § 1955(a) (2000). The court rejected plaintiff’s argument that a contractual relationship with a credit card company could constitute a RICO enterprise and granted defendant’s motion to dismiss. See Jubelirer, 68 F. Supp. 2d at 1053, 1055.

182. See Man Suing First Citizens Bank, Visa over Gambling Debts, LAS VEGAS REV.-J., Aug. 19, 1999, 1999 WL 9291066. The gambler also sought to prevent Visa or its bank from enforcing Internet gambling debts. See id.
August 1999. \(^{183}\)

Despite a few unsuccessful attempts to avoid paying credit card bills, some experts believed that Cynthia Haines would be successful.\(^{184}\) Over a three year period of Internet gambling, Haines “racked up $70,000 in credit card bills.”\(^{185}\) When Providian National Bank filed suit to collect the gambling debts, Haines filed a counterclaim against three credit card companies, alleging illegal business practices.\(^{186}\) Haines argued that she was not liable for her gambling losses because Internet gambling was illegal, and therefore, her debt could not be legally enforced.\(^{187}\) In July 1999, MasterCard International settled Haines’ claim and changed its policy.\(^{188}\)

While credit card companies face uncertainty in collecting gambling debts, fantasy sports contestants might also consider the consequences of participation. For example, what would happen if a fantasy sports provider refused to award a prize to a winning contestant? The depth of antigambling law suggests that participants should engage in fantasy sports contests for the activity, not the prize.\(^{189}\)

VI. CONCLUSION

Fantasy sports leagues violate federal and state gambling laws.

183. Tom Lowry, Debtors Take Credit Cards to Task for Allowing Bets, USA TODAY, Aug. 17, 1999, at 1B, 1999 WL 6850955.
185. Suit Against Credit Cos. Seeks to Nullify $70,000 Internet Gambling Debt, ANDREWS GAMING INDUSTRY, Sept. 1998, at 3 [hereinafter Suit Against Credit].
187. Suit Against Credit, supra note 185, at 3. Haines asked the court for restitution of gambling debts and “a declaration that online gambling and collection efforts are illegal in California.” Id.; see also Second Amended Cross-Complaint for Restitution, Declaratory Relief, Damages and Injunctive Relief at 1, Haines v. VISA International, Inc. (Cal. Super. Ct. 1998) (No. CV 980858), reprinted in ANDREWS GAMING INDUSTRY, Sept. 1998, at B1.
189. If contestants play fantasy sports leagues to test their skill, then the prizes should not be so important. Since contestants arguably present monetary or other consideration to participate in fantasy sports leagues, they would have a stronger argument that consideration is absent if it were paid only to play and not to win prizes.
Despite proponents' claims that fantasy sports contests are not played for prizes, it is likely that contestants rely more on chance than on their skill in choosing athletes. Since the payment of a valuable consideration would, in most circumstances, satisfy the final element and trigger the common law gambling prohibition, pay-to-play fantasy sports leagues should be outlawed. Although some leagues do not charge entry fees, they may enjoy profits. This benefit should qualify as a consideration, and the fantasy sports business should be closed down.

While the fantasy sports business has demonstrated an ability to produce revenue, that revenue is collected by private businesses. States may tax prize winnings; however, this indirect compensation may be significantly lower than the state's loss in gambling revenue. Fantasy sports contestants arguably enjoy a form of entertainment that may be accompanied by monetary gain. However, their entertainment involves individualizing players on a team. When spectators bet on the outcome of individual games, they are accused of gambling. Why should it be any different if they bet on individual players?

The Internet has devised a system whereby strangers can bet against one another. Fantasy sports providers operating within the United States are subject to personal jurisdiction in federal and state courts. Fantasy sports contestants provide personal information to fantasy sports providers, which would assist law enforcement officials seeking to identify and prosecute gamblers.

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190. See Craig, supra note 14, at 69 (warning that "the convenience of Internet gambling would cannibalize state lottery and pari-mutuel revenues by diverting money from the state fund into private pockets" and that "from an economic standpoint, private Internet gambling, in any form, will result in a net loss for the state") (footnote omitted); see also GOODMAN, supra note 139, at 27.
APPENDIX

A. ESPN Won't Pay, but These States Can Play

1. Arizona

Arizona common law defines gambling as “payment of a price for a chance to gain a prize.” However, Arizona statutes eliminate the distinction between chance and skill. Since fantasy sports contests do not fit into amusement gambling or social gambling exceptions,

191. Boies v. Bartell, 310 P.2d 834, 837 (Ariz. 1957) (emphasis omitted) (holding that digger machines are unlawful gambling devices); see also Engle v. State, 90 P.2d 988, 993 (Ariz. 1939) (holding that a gambling house that conducts horse racing constitutes public nuisance). The Boies court based its decision on Arizona Revised Statutes sections 13-431 and 13-432 (current version at §§ 13-3301 to 13-3302), which prohibited the use of gaming devices or machines. See Boies, 310 P.2d at 835. The Arizona statute stated:

Every person who shall deal, carry on, or open, or cause to be opened, or who shall conduct . . . any game . . . whatsoever, played with . . . any other device . . . whether the same be played for money, checks, credits or any other representative of value within the state of Arizona; and every person who shall participate . . . shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine . . . or by imprisonment.

Id.

192. Section 13-3301(4) defines “gambling” as the “act of risking or giving something of value for the opportunity to obtain a benefit from a game or contest of chance or skill or a future contingent event.” ARIZ. REV. STAT. § 13-3301(4) (2001). Gambling “does not include bona fide business transactions which are valid under the law of contracts including contracts for the purchase or sale at a future date of securities or commodities, contracts of indemnity or guaranty and life, health, or accident insurance.” Id.

193. See ARIZ. REV. STAT. § 13-3302(A)(1) (2001). Fantasy sports are not subject to an “amusement gambling” exception because the outcome of the contest is materially under the control of athletes. See ARIZ. REV. STAT. § 13-3301(1)(b) (2001) (requiring that “[t]he outcome . . . not [be] in the control to any material degree of any person other than the player or players”). “Amusement gambling” also requires one of the following: (1) players only benefit from “an immediate and unrecorded right to replay which is not exchangeable for value”; (2) gambling involves an athletic event where only the player profits from gambling proceeds; (3) “gambling is an intellectual contest or event, the money paid to gamble is part of an established purchase price for a product,” the price has not been increased “in connection with the gambling event and no drawing or lottery . . . determine[s] the winner(s)”; or (4) skill, not chance, predominates and “the odds of winning the game based upon chance cannot be altered,” provided licensing or regulatory requirements are satisfied. ARIZ. REV. STAT. § 13-3301(1)(d) (2001).

Players compete for cash and merchandise prizes; therefore, players are not merely seeking an opportunity to play. Since businesses and athletes enjoy their shares of gambling proceeds, players are not the only persons financially enjoying fantasy sports. While fantasy sports arguably involve an intellectual contest where drawings and lotteries have no role in determining winners, it is difficult to conceptualize a product which players purchase. Players are purchasing a service. Finally, assuming skill predominated fantasy sports rather than chance, the role of chance is too significant to
they may constitute unlawful gambling.\textsuperscript{195}

Arizona Revised Statutes section 13-3305 eliminates the distinction between skill and chance by prohibiting the collection of a fee by a defendant engaged in the business of accepting bets or wagers on the results of games of skill or chance.\textsuperscript{196} Entrance fees, however, are not considered bets or wagers.\textsuperscript{197} ESPN fantasy sports, therefore, would not be considered illegal gambling under this statutory provision.

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\textsuperscript{195} ESPN would be liable for promoting gambling if it awarded prizes to Arizona state residents. See Ariz. Rev. Stat. \textsection 13-3303(A) (2001). "[A] person commits promotion of gambling if he knowingly... (1) [c]onducts, organizes, manages, directs, supervises or finances gambling; [or] (2) [f]urnishes advice or assistance for the conduct, organization, management, direction, supervision or financing of gambling" for a benefit. Id. ESPN provides a preranked draft list of players and weekly articles to give participants insight into athletes. See ESPN, ESPN Fantasy Games, at http://games.espn.go.com. (last visited Feb. 12, 2002). ESPN also supplies player ratings, injury reports, and feature articles to keep owners informed. See ESPN, Fantasy Basketball, at http://games.espn.go.com/cgi/fba/Request.dll?FRONTPAGE (last visited Oct. 19, 2001). ESPN organizes and supervises gambling. It also furnishes advice in expectation of earning a profit. Furthermore, ESPN would potentially be liable for unlawfully benefiting from gambling. See Ariz. Rev. Stat. \textsection 13-3304(A) (2001) ("Except for amusement or regulated gambling, a person commits benefiting from gambling if he knowingly obtains any benefit from gambling.").

\textsuperscript{196} Ariz. Rev. Stat. \textsection 13-3305(A) (2001) (providing that "no person may engage for a fee, property, salary or reward in the business of accepting, recording or registering any bet, purported bet, wager or purported wager... with respect to the result or purported result of any race, sporting event, contest or other game of skill or chance or any other unknown or contingent future event or occurrence whatsoever"); State v. Am. Holiday Ass'n, Inc., 727 P.2d 807, 808 (Ariz. 1986).

\textsuperscript{197} Am. Holiday Ass'n, 727 P.2d at 812 (holding that "neither the initial entrance fee nor the voluntary additional fees charged participants in... crossword puzzle contests... are bets or wagers" under Arizona Revised Statutes section 13-3305). Fantasy sports leagues which do not charge entry fees are exempt under section 13-3305. Ariz. Rev. Stat. \textsection 13-3305 (2001). A commercial entity may lawfully conduct a contest (1) awarding "cash prizes and merchandise to weekly contest participants who successfully predict the winners of... sporting events"; (2) where "[e]ntries [are] submitted without [an] entry fee"; (3) where "[e]ntries [may] be submitted by anyone, whether customers of the commercial entity or not"; and (4) provided the "amount of the prize [does] not vary based on the number of entries and all prizes [are] paid out of the general funds of contest sponsor." Op. Att'y Gen. 188-115 (Ariz. 1988).
2. Florida

Florida defines gambling using the traditional common law terms. Florida statute expressly “prohibits the operation of and participation in a fantasy sports league.” ESPN’s declaration that Florida residents may not win fantasy sports contests protects ESPN from felony gambling prosecution. Since Florida deems gambling contracts void, it is conceivable that contestants could prevent creditors from collecting promised entrance fees.

3. Louisiana

At common law, Louisiana defines lottery as “a scheme for the distribution of prizes by chance.” Louisiana’s legislature endorsed a broad statutory definition of gambling, which would most likely include

198. Little River Theatre Corp. v. State ex rel. Hodge, 185 So. 855, 860 (Fla. 1939) (“The three essential elements of a lottery are: first, consideration; second, prize; and third, chance.”); see also Bellamy v. State, 347 So. 2d 419, 420 (Fla. 1977); Creash v. State, 179 So. 149, 150 (Fla. 1938) (defining gaming as “an agreement between two or more to risk money on a contest of chance of any kind, where one must be loser and the other gainer”) (quoting McBride v. State, 22 So. 711, 712 (Fla. 1897)).
199. Op. Att’y Gen. 91-3 (Fla. 1991); see also FLA. STAT. ANN. § 849.14 n.2 (West 2000). The statute prohibits the operation of and participation in a fantasy sports league whereby contestants pay an entry fee for the opportunity to select actual professional sports players to make up a fantasy team whose actual performance statistics result in cash payments from the contestants’ entry fees to the contestant with the best fantasy team. FLA. STAT. ANN. § 849.14 n.2.
200. See FLA. STAT. ANN. § 849.01 (West 2000) (outlawing gambling houses and other places designed to facilitate gambling).

[Anyone who] has, keeps, exercises or maintains . . . gaming implements or apparatus . . . [or place] for the purpose of gaming or gambling [or place where offender] may directly or indirectly have charge, control or management, either exclusively or with others, procures, suffers or permits any person to play for money or other valuable thing at any game whatever, whether heretofore prohibited or not, shall be guilty of a felony of the third degree . . . .

Id.

201. See FLA. STAT. ANN. § 849.26 (West 2000).

All promises, agreements, notes, bills, bonds or other contracts, mortgages or other securities, when the whole or part of the consideration if for money or other valuable thing won or lost, laid, staked, betted or wagered in any gambling transaction whatsoever, regardless of its name or nature, whether heretofore prohibited or not, or for the repayment of money lent or advanced at the time of a gambling transaction for the purpose of being laid, betted, staked or wagered, are void and of no effect; provided, that this act shall not apply to wagering on pari-mutuels or any gambling transaction expressly authorized by law.

Id.

fantasy sports contests. ESPN determined that Louisiana residents are ineligible to win prizes. In addition, creditors may have difficulty collecting promised entrance fees from fantasy sports participants.

4. Maryland

Maryland uses the traditional common law definition of gambling. A broad statutory prohibition on betting, wagering, and gambling most likely outlaws ESPN’s fantasy sports contest. Consideration is

203. See LA. REV. STAT. ANN. § 14:90(A)(1)(a) (West 1986 & Supp. 2001) (defining gambling as “intentional[ly] conducting, 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”). Prohibited games expressly include “football pools” and bets placed on the “outcome of other athletic events.” Id., Reporter’s Cmplt.

204. Fantasy sports providers that charge entry fees would likely be subject to liability if they allow contestants to win prizes. See LA. REV. STAT. ANN. § 14:90(A)(1)(a). Convicted gamblers may be fined and imprisoned. LA. REV. STAT. ANN. § 14:90(A)(1)(b) (West 1986 & Supp. 2001). Owners of illegal gambling businesses are subject to increased fines and prison terms when “five or more persons are involved” and the business operates for “thirty days or more or . . . has a gross revenue of two thousand dollars in a single day.” LA. REV. STAT. ANN. § 14:90(A)(2) (West 1986 & Supp. 2001). A winning contestant residing in Louisiana would be unable to sue ESPN to collect a prize. LA. CIV. CODE ANN. art. 2983 (West 1994) (providing “no action for the payment of what has been won at gaming or by a bet”); Wilson v. Sawyer, 106 So. 2d 831, 832 (La. Ct. App. 1958). Louisiana courts “will not entertain actions to recover what has been either won or lost in gambling.” Wilson, 106 So. 2d at 832.

205. See id. at 832; see also Domino v. La Bord, 99 So. 2d 841, 843 (La. Ct. App. 1958) (declaring that “courts will not render assistance to a litigant to enforce a gambling obligation”).

206. Mid-Atlantic Coca-Cola Bottling Co., Inc. v. Chen, Walsh & Tecler, 460 A.2d 44, 47 (Md. 1983) (stating that “the essential elements of lottery are consideration, chance, and prize”); see also United States v. 83 Cases of Merchandise Labeled “Honest John,” 29 F. Supp. 912, 914 (D. Md. 1939); Shelton v. State, 84 A.2d 76, 79 (Md. 1951); Long v. State, 22 A. 4, 5 (Md. 1891). While some states use the term “lottery” in a general sense, Maryland draws a distinction between games of chance and lottery schemes. Am. Legion, Clopper Michael Post No. 10, Inc. v. State, 447 A.2d 842, 845 (Md. 1982); see also Bender v. Arundel Arena, Inc., 236 A.2d 7, 13 (Md. 1967) (“All lottery is a form of gambling but all gambling need not be legislatively considered to be or actually be lottery . . . .”). Furthermore, a distinction must be drawn between games of chance and games of skill. Games of skill may be excepted from gambling prohibition. MD. CODE ANN., COM. LAW I § 13-305(a)(4) (2000). Fantasy sports contests involving entrance fees, such as ESPN’s contest, are prohibited under section 13-305(g)(7)(ii) of the Maryland Code. Md. CODE ANN., COM. LAW I § 13-305(g)(7)(ii) (2000) (stating that participants may not be required to pay money).

207. See MD. CODE ANN., COM. LAW I § 240 (1996) (outlawing all attempts to “bet, wager, or gamble in any manner, or by any means”). Maryland does not allow anyone “to receive . . . any money, bet, wager, thing or consideration of value, to be bet,
lacking unless money or some other item of value is paid;\textsuperscript{208} therefore, fantasy sports providers that do not charge entry fees may be permitted. Where fantasy sports contests are considered gambling, losing contestants may file suit to recover entry fees.\textsuperscript{209} However, winning participants are prevented from successfully suing for prizes won in fantasy sports contests.\textsuperscript{210}

5. Minnesota

Minnesota follows the traditional common law definition of gambling.\textsuperscript{211} The distinction between chance and skill does not protect fantasy sports contests from being deemed unlawful betting.\textsuperscript{212} Furthermore, fantasy sports contests may fall within Minnesota’s definition of “sports bookmaking.”\textsuperscript{213} Fantasy sports contests that do not

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\textsuperscript{208} Mid-Atlantic Coca-Cola Bottling Co., 460 A.2d at 47.

\textsuperscript{209} See MD. CODE ANN., COM. LAW § 243 (1996). However, recovery depends on the court’s construction of a “gaming table.” Web sites would not typically be considered gaming tables; however, the Internet serves the same purpose as a table (a medium over which bets are placed). A broad construction is supported by Maryland Code section 237. MD. CODE ANN., COM. LAW § 237 (1996) (prohibiting gaming tables or any “place ... [kept] for the purpose of gambling”); see also MD. CODE ANN., COM. LAW § 244 (1996) (defining “gaming table” to include any “device[... at which money ... shall be bet or wagered”).

\textsuperscript{210} See MD. CODE ANN., COM. LAW § 243 (1996). If the Web sites are considered gaming tables, fantasy sports providers would be subject to a misdemeanor, punishable by a fine or imprisonment. See MD. CODE ANN., COM. LAW § 241 (1996).

\textsuperscript{211} Albert Lea Amusement Corp. v. Hanson, 43 N.W.2d 249, 252 (Minn. 1950); State v. Stern, 275 N.W. 626, 629 (Minn. 1937); Amlie Strand Hardware Co. v. Moose, 224 N.W. 158, 158 (Minn. 1929); State v. Powell, 212 N.W. 169, 169 (Minn. 1927) (holding that a lottery consists of “a prize, a chance to get it, and a consideration given for the chance”). For a statutory definition of lottery, see MINN. STAT. ANN. § 609.75(1) (West 1987 & Supp. 2001).

\textsuperscript{212} See MINN. STAT. ANN. § 609.75(2) (West 1987 & Supp. 2001) (defining “bet” as “a bargain whereby the parties mutually agree to a gain or loss by one to the other of specified money ... dependent upon chance although the chance is accompanied by some element of skill”); see also Gilbert v. Berkheiser, 196 N.W. 653, 655 (Minn. 1924) (defining “bet” as “the wager of money ... upon an incident by which one or both parties stand to win or lose by chance”). Fantasy sports contests may be permissible as bona fide contests of skill. See MINN. STAT. ANN. § 609.75(3) (West 1987 & Supp. 2001). However, the state attorney general suggested that a public contest to select winners of weekly football games was a lottery. See Op. Att’y Gen. 510-E-3 (Minn. 1947) (recognizing that the dominant factor in winning the prize was chance, not skill); see also MINN. STAT. § 609.75(4)(a) (West 1987 & Supp. 2001) (expressly outlawing “associated equipment” used in connection with gambling, including computerized systems of betting on a sports pool).

\textsuperscript{213} See MINN. STAT. § 609.76(2) (West 1987 & Supp. 2001) (punishing such conduct as a felony); MINN. STAT. § 609.75(7) (West 1987 & Supp. 2001) (defining “sports bookmaking” as “intentionally receiving, recording or forwarding within any 30-
charge entry fees, however, may be permissible. 214

6. Montana

The traditional common law definition of gambling is enforced in Montana. 215 The Montana legislature passed a statute that specifically covers fantasy sports leagues. 216 Although fantasy sports leagues qualify as gambling, Montana expressly permits fantasy sports contests. 217 It is likely that ESPN prohibits Montana residents from winning prizes because ESPN keeps more than fifteen percent of entry fees as profit. 218

day period more than five bets, or offers to bet, that total more than $2,500 on any one or more sporting events"). Fantasy sports providers that collect entry fees in excess of $2500 within 30 days, possibly including ESPN, may be violating Minnesota’s gambling prohibitions. Outlawed games expressly include “sports pools.” MINN. STAT. § 609.75(10) (West 1987 & Supp. 2001). ESPN’s decision not to allow Minnesota residents to win prizes may also be attributable to the Attorney General’s willingness to prosecute Internet gambling operations. See State v. Granite Gate Resorts, Inc., 568 N.W.2d 715, 717 (Minn. Ct. App. 1997).

214. See Op. Att’y Gen. 510-C-3 (Minn. 1947) (stating that if there is no payment, there is no consideration and no lottery).

215. State v. Cox, 349 P.2d 104, 105 (Mont. 1960) (“The three elements of a lottery are: [t]he offering of a prize; the awarding of the prize by chance; and the giving of consideration for an opportunity to win the prize.”); see also State ex rel. Smith v. Fox Missoula Theatre Corp., 132 P.2d 711, 712 (Mont. 1942); State v. Hahn, 72 P.2d 459, 460 (Mont. 1937) (partially reversed on other grounds). For a statutory definition of lottery game, see MONT. CODE ANN. § 23-7-103(4) (1999). Montana’s Constitution also prohibits gambling and lotteries. See MONT. CONST. art. III, § 9.

216. MONT. CODE ANN. § 23-5-801 (1999). Fantasy sports leagues are recognized as gambling activity. Id.

217. See MONT. CODE ANN. § 23-5-802 (1999). “It is lawful to conduct or participate in a fantasy sports league.” Id.; see also MONT. CODE ANN. § 23-5-112(11) (1999) (defining gambling as the risking of money or credit “for a gain that is contingent in whole or in part upon” chance).

218. See MONT. CODE ANN. § 23-5-805(2) (1999) (requiring that “a commercial establishment charg[ing] an administrative fee for conducting a fantasy sports league” not charge greater than 15 percent of the participant’s entrance fee). “The total value of payouts to all league members must equal the amount collected for entrance, administrative, and transaction fees, minus payment for administrative expenses.” MONT. CODE ANN. § 23-5-805(1) (1999). Anyone “who purposely or knowingly violates or procures, aids, or abets in a violation of this” statute is subject to misdemeanor prosecution. MONT. CODE ANN. § 23-5-810 (1999). Losing contestants would be allowed to recover entry fees. See MONT. CODE ANN. § 23-5-131 (1999). Losing contestants would have a year to recover their entry fees, which would be sufficient time regardless of the fantasy sports involved. See id.
7. North Dakota

In North Dakota, courts apply the traditional common law definition of gambling. The legislature has enacted strict antigambling laws. Both fantasy sports contestants and the entire fantasy sports business arguably violate gambling laws. Fantasy sports contests that require entry fees fall within North Dakota’s statutory definition of gambling.

8. Vermont

The traditional common law elements are used to define gambling in Vermont. Vermont does not require monetary payment to satisfy the element of consideration; therefore, fantasy sports contests are equally treated regardless of whether entry fees are required. While fantasy sports contests may qualify as unlawful lotteries, Vermont’s gambling prohibitions provide no greater obstacle to the fantasy sports business.
than do other state laws. Furthermore, losing contestants would be unable to sue for their entry fees.225

B. Prohibitions Under Laws of Other States

1. Alabama

Alabama’s “public policy is emphatically ... against lotteries of any scheme,” both by constitution and by statute.226 Lotteries contain three elements: prize, chance and consideration.227 Alabama applies the dominant factor test.228 However, Alabama does not forbid “betting, wagering, or gaming.”229 Since fantasy sports leagues are more aptly labeled bets, wagers, or games than lotteries, fantasy sports contests should be legal in Alabama.230

225. VT. STAT. ANN. tit. 9, § 3981 (1993) (providing only “one month from the time of payment” for people to file suit to recover money lost at a “game or sport”). Fantasy sports contestants would not lose until more than a month passed; therefore, they would be unable to file a timely suit.

226. Minges v. City of Birmingham, 36 So. 2d 93, 96 (Ala. 1948). The ALA. CONST. art. IV, § 65 provides:

The legislature shall have no power to authorize lotteries or gift enterprises for any purposes, and shall pass laws to prohibit the sale in this state of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; and all acts, or parts of acts heretofore passed by the legislature of this state, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby avoided.

ALA. CONST. art. IV, § 65; see also Opinion of the Justices, 251 So. 2d 751, 752 (Ala. 1971).

227. Opinion of the Justices, 251 So. 2d at 753; see also Minges, 36 So. 2d at 96; Grimes v. State, 178 So. 73, 74 (Ala. 1937).

228. Minges, 36 So. 2d at 96. The Minges court held that Pepsi-Cola Company’s “National Sweepstakes” to describe “why Pepsi-Cola hits the spot” was “a contest of skill, will, and effort” and therefore not an illegal lottery. Id. at 95–97. “[T]he most apt, the most original and the most interesting, statement shall be adjudged the winner.” Id. at 97.

229. Opinion of the Justices, 251 So. 2d at 753–54 (holding that “pari-mutuel betting on horse or dog races does not contravene constitutional prohibitions against lotteries”).

230. If, however, fantasy sports contests are considered illegal gambling, fantasy sports participants could recover their entry fees and use gambling as a defense to creditors’ attempts to collect promised entry fees. See ALA. CODE § 8-1-150 (1993 & Supp. 2000).
2. Alaska

Alaska follows the common law definition of gambling. An Alaskan court is likely to find that chance exists where an outcome is uncertain. Alaskan statutes define "contest of chance" as a "contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance," even where contestant skill is also a factor. Since fantasy sports contests are subject to a high degree of chance, an Alaskan court could find that fantasy sports leagues violate common law gambling prohibitions.

231. State v. Pinball Machines, 404 P.2d 923, 925 (Alaska 1965) (holding that a pinball machine is an unlawful gambling device). The essential elements of gambling are "price, chance and prize." Id. Alaska's statutory definition of gambling also includes these elements. ALASKA STAT. § 11.66.280(2) (Michie 2000). Gambling occurs when a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that that person or someone else will receive something of value in the event of a certain outcome.

232. See Pinball Machines, 404 P.2d at 925. The Pinball Machines court found that "[u]ncertainty in the number of free games that one may win greatly predominates over any skill that may be involved." Id. at 926. The court held that chance was present where predetermined odds set by a mechanism inside a pinball machine determined the number of free games a player could win. Id. A player's skill cannot control the odds, "which vary according to the number of coins ... inserted or the number of accumulated games won ... [and utilized] for free play." Id. "The odds are controlled entirely by an intricate mechanism within the machine. When balls are placed in a certain sequence of holes, the odds determine the number of free games that the player will receive without regard to his skill or lack of it." Id.

Alaskan courts generally apply either the pure chance doctrine or the dominant factor doctrine. See Morrow v. State, 511 P.2d 127, 129 (Alaska 1973). Under the pure chance doctrine, "a scheme is considered a lottery when a person's judgment plays no part in the selection and award of the prize." Id. Since judgment plays at least some role in choosing fantasy sports teams, fantasy sports contests would not be considered gambling under the pure chance doctrine. Under the preferred dominant factor doctrine, "a scheme constitutes a lottery where chance dominates the distribution of prizes, even though such a distribution is affected to some degree by the exercise of skill or judgment." Id. Under the dominant factor doctrine, an Alaskan court could find that fantasy sports contests are based more on chance than on skill. Therefore, an Alaskan court could hold that fantasy sports contests are unlawful gambling.

233. ALASKA STAT. § 11.66.280(1) (Michie 2000).

234. Fantasy sports leagues do not fall into the "social game" exception because they take place over the Internet, not merely within homes. See ALASKA STAT. § 11.66.280(9) (Michie 2000). If fantasy sports leagues were considered unlawful gambling, a service provider would be subject to liability as a "gambling enterprise." See ALASKA STAT. § 11.66.280(4) (Michie 2000). Alaska's "gambling enterprise" prohibition is similar to the federal antigambling statute. See id.; see also 18 U.S.C. § 1955 (2000). Businesses conducting fantasy sports leagues could also be liable for "promoting gambling." See ALASKA STAT. § 11.66.280(8) (Michie 2000). A person may be liable for "promoting gambling" when he "engages in conduct that materially aids any form of gambling." Id.; see also ALASKA STAT. § 11.66.220 (Michie 2000) ("A
Similarly, fantasy sports leagues may violate Alaskan gambling statutes. "Anch[orage] Mun[icipal] Code § 8.16.010(c) defines gambling as: '[T]he staking or risking of something of value upon the outcome of a contest of chance or a sporting event, upon an agreement or understanding that someone will receive something of value in the event of a certain outcome.'"

3. Arkansas

Arkansas' common law definition of gambling does not distinguish between skill and chance. Fantasy sports contests, therefore, may constitute unlawful gambling. If Arkansas considers fantasy sports contests gambling, then all participants in the fantasy sports business, including contestants, could face liability. Losing contestants may file

person commits the crime of promoting gambling in the second degree if the person promotes or profits from unlawful gambling."). Businesses that create or establish fantasy sports leagues, or who maintain Web sites devoted to fantasy sports contests, as well as businesses that design or sell fantasy sports "paraphernalia, equipment, or apparatus" could face liability in Alaska. ALASKA STAT. § 11.66.280(8)(A)(i) (Michie 2000). Although these businesses urge participants not to gamble, they advocate nongambling purposes with knowledge that their services and products will be used in conjunction with gambling. See ALASKA STAT. § 11.66.280(8)(B) (Michie 2000). Simply warning participants not to gamble would probably be too minimal to constitute an effort to prevent the occurrence or continuation of gambling, as required by section 11.66.280(8)(B).

235. McKenzie v. Municipality of Anchorage, 631 P.2d 514, 517 n.5 (Alaska Ct. App. 1981). "'[G]ambling' does not include raffles, bingo and related activities of a bona fide non profit nature conducted under a valid and existing permit issued pursuant to law by the Department of Revenue, State of Alaska." Id. The McKenzie court held that a newspaper's decision to publish point spreads on games does not constitute illegal gambling.

236. State v. Torres, 831 S.W.2d 903, 905 (Ark. 1992) (defining "gaming" as "the risking of money, between two or more persons, on a contest or chance of any kind, where one must be loser and the other gainer") (quoting Portis v. State, 27 Ark. 360, 362 (1872)).

237. See ARK. CODE ANN. § 5-66-114(a) (Michie 1997). Statute prohibits persons, partnerships, or corporations from "receiv[ing] or transmitt[ing] information in the State of Arkansas relating to football, baseball, basketball, hockey, polo, tennis, horse racing, boxing, or any other sport or game for the purpose of gaming." Id. Participants in the fantasy sports business transmit information into Arkansas, which contestants receive through the Internet, television, or by other mediums. An exception is made for radio stations or newspapers which publish information as "news, entertainment, or advertising." ARK. CODE ANN. § 5-66-114(a)(1) (Michie 1997). Radio talk shows featuring fantasy sports experts may be exempt from the prohibition. See id. Most information is accessed over the Internet or television, or through magazines, which are

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suit to recover entrance fees or argue that the contract to pay entrance fees is invalid.\textsuperscript{238}

4. California

California follows the common law definition of gambling.\textsuperscript{239} California recognizes three forms of gambling: lotteries, gaming, and betting.\textsuperscript{240} While fantasy sports contests appear to fall within the prohibition on gaming, conflicting common law and statutory definitions leave room for doubt.\textsuperscript{241} If California deemed fantasy sports contests to

not expressly exempt. Therefore, it is not clear whether Arkansas would label Internet sites, television programs, and magazine features as “gaming devices.” See ARK. CODE ANN. § 5-66-114(b) (Michie 1997). One indication that these information sources may constitute “gaming devices” is a broad definition that includes any device that allows “money or property [to] be won or lost.” ARK. CODE ANN. § 5-66-104 (Michie 1987 & Supp. 2001). Violation of this prohibition is deemed a misdemeanor, which subjects offenders to a fine and imprisonment. See id.

238. ARK. CODE ANN. §§ 5-66-104, 16-118-103(a)(1) (Michie 1987 & Supp. 2001). However, this statute would not offer protection to fantasy sports participants since an action must be brought within ninety days of the time entrance fees are paid. Id. Sport seasons generally last more than ninety days. Therefore, fantasy sports participants could not win within ninety days after entrance fees are paid. The result may be different for fantasy sports participants who enter midway through the season. A court would probably be hesitant to make a fantasy sports contestant winner pay a portion of the prize won to a losing contestant. Fantasy sports participants may seek to avoid payment by charging entrance fees on credit cards, then using gambling as a defense to payment of the charge. See ARK. CODE ANN. § 16-118-103(e) (Michie 1987 & Supp. 2001) (“It is the strong public policy of the State of Arkansas that gambling, whether regulated or unregulated, on credit is an unenforceable contract and the courts of this state shall not enforce gambling debts, regardless of whether the contract was entered into within this state or without this state.”).


240. W. Telcon, Inc. v. Cal. State Lottery, 917 P.2d 651, 655 (Cal. 1996); Kelly v. First Astri Corp., 84 Cal. Rptr. 2d 810, 816 (Ct. App. 1999). A “lottery” is defined as “a distribution of prizes by lot or chance.” Kelly, 84 Cal. Rptr. 2d at 816. Although this definition does not seem to apply to fantasy sports contestants, the definitions of gaming and betting more accurately describe the activity involved. Gaming is defined as “the playing of any game for stakes hazarded by the players,” while betting involves a “promise to give money or money’s worth upon the determination of an uncertain or unascertained event in a particular way, and (unlike a lottery) may involve skill or judgment.” Id.

241. The statutory definition is more limited than the common law definition. See CAL. PENAL CODE § 330 (West 1999) (defining “gaming” as “any banking or percentage game played with . . . any device for . . . value”). “[A] banking game” occurs “[w]hen one party wagers simultaneously against a number of others on the outcome of a game.” W. Telcon, Inc., 917 P.2d at 657; Kelly, 84 Cal. Rptr. 2d at 816. The ultimate test of
constitute gambling, then it is unlikely that winners could collect prizes or losers could defend credit charges.\(^{242}\)

5. Colorado

Colorado statutes employ the traditional common law definition of gambling.\(^{243}\) Any degree of chance is sufficient to constitute gambling when a consideration is paid to win a prize.\(^{244}\) Fantasy sports contests whether a game should be considered a banking game is whether the banker “pays all the winnings and suffers all the losses.” \textit{Kelly}, 84 Cal. Rptr. 2d at 817 (quoting \textit{People v. Ambrose}, 265 P.2d 191, 194 (Cal. App. Dep’t. Super. Ct. 1953)). Although fantasy sports contestants wager against each other on the outcome of games, they do not bet against a banker. Rather, the service provider pays a selected number of winners and also makes a profit.


California’s strong, long-standing public policy regarding gambling is a broad policy against judicial resolution of civil claims arising out of lawful or unlawful gambling contracts or transactions, and in the absence of a statutory right to bring such claims, this policy applies both to actions for recovery of gambling losses and actions to enforce gambling debts. \textit{Kelly}, 84 Cal. Rptr. 2d at 815.

\(^{243}\) \textit{COLO. REV. STAT.} § 18-10-102(2) (1999 & Supp. 2001) defines “gambling” as “risking any money, credit, deposit, or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device, or the happening or outcome of an event, including a sporting event, over which the person taking a risk has no control.” \textit{See also} \textit{Leichliter v. State Liquor Licensing Auth.}, 9 P.3d 1153, 1154 (Colo. Ct. App. 2000). Colorado has declared a statutory policy against gambling. \textit{COLO. REV. STAT.} § 18-10-101 (1999 & Supp. 2001). While Colorado seeks to balance a citizen’s right to participate in sport and social pastimes, the statute expressly provides that such pastimes do not include activities conducted for profit. \textit{Id.} Fantasy sports leagues are conducted for profit, suggesting that Colorado’s legislature did not intend to allow such contests. One Colorado court allowed four golfers to bet against a game in which they competed against one another on the basis that the golfers had sufficient control over the outcome. \textit{Berckefeldt v. Hammer}, 616 P.2d 183, 185 (Colo. Ct. App. 1980). In the case of fantasy sports, contestants do not physically compete in the sport; therefore, they have less control over the outcome. This distinction suggests that fantasy sports contestants are not excepted as social gambling.

\(^{244}\) \textit{See COLO. REV. STAT.} § 18-10-102(2) (1999 & Supp. 2001). If fantasy sports contests are considered unlawful gambling, then all participants would be subject to liability for providing or using gambling information. \textit{See COLO. REV. STAT.} § 18-10-106 (1999 & Supp. 2001). “Whoever knowingly transmits or receives gambling information by telephone... or other means or knowingly installs or maintains equipment for the transmission or receipt of gambling information commits a class 3 misdemeanor.” \textit{COLO. REV. STAT.} § 18-10-106(1) (1999 & Supp. 2001); \textit{see also COLO. REV. STAT.} § 18-10-102(4) (1999 & Supp. 2001) (defining gambling information).
may, however, fit into a statutory exception. 245

6. Connecticut

Connecticut follows the traditional common law definition of gambling. 246 Any degree of chance is sufficient to constitute gambling; therefore, it is possible that fantasy sports contests are outlawed. 247

Section 18-10-104(1) provides that gambling prizes are subject to confiscation by the state. COLO. REV. STAT. § 18-10-104(1) (1999 & Supp. 2001). "Gambling proceeds shall be forfeited to the state and shall be transmitted by court order to the general fund of the state." Id.; see also COLO. REV. STAT. § 18-10-102(6) (1999 & Supp. 2001) (defining gambling proceeds).

245. See COLO. REV. STAT. § 18-10-102(2) (1999 & Supp. 2001). Fantasy sports contests are arguably "[b]ona fide contests of skill ... in which awards are made only to entrants or the owners of entries." COLO. REV. STAT. § 18-10-102(2)(a) (1999 & Supp. 2001). The exception for social gambling does not apply. See COLO. REV. STAT. § 18-10-102(2)(d) (1999 & Supp. 2001). Although the statute does not define social gambling, common law suggests that social gambling must be based on something more than a profit-seeking motive. See Leichliter, 9 P.3d at 1156 (holding that a bona fide social relationship was present because bar posting NCAA pool "provided a social gathering place for a close-knit portion of the local community"); People v. Wheatridge Poker Club, 569 P.2d 324, 328 (Colo. 1977) (holding that poker playing for money in a social club that received some profit involved no shared purpose other than gambling and therefore was not incidental to a bona fide social relationship); see also Charnes v. Central City Opera House Ass'n, 773 P.2d 546, 552 (Colo. 1989) (holding that a fundraising event which featured gambling was incidental to a bona fide social relationship based on the fact that the event was limited to participants who, although not necessarily friends, "were brought together for the common purpose of raising money ... and not solely for the purpose of gambling"); Houston v. Younghans, 580 P.2d 801, 802 (Colo. 1978) (holding that an existing social relationship between friends playing poker at the home of one of the players was incident to a bona fide social relationship).

The statute also prohibits participation in professional gambling. See Charnes, 773 P.2d at 552. Professional gambling includes "[a]iding or inducing another to engage in gambling, with the intent to derive a profit therefrom." COLO. REV. STAT. § 18-10-102(8)(a) (1999 & Supp. 2001). Aiding and abetting means that one "knowingly ... give[s] or lend[s] money or extend[s] credit to be used for, or to make possible or available, or to further the activity thus aided or assisted." Wheatridge Poker Club, 569 P.2d at 327. Fantasy sports providers award monetary prizes to winning contestants. They also extend credit to allow contestant entries via the Internet.

246. See CONN. GEN. STAT. § 53-278a(2) (1994 & Supp. 2001) (defining "gambling" as the "risking [of] any money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance or the operation of a gambling device").

Additionally, Connecticut will void any wagering contract.\textsuperscript{248} However, fantasy sports contests arguably fall within the contest of skill exception.\textsuperscript{249}

7. Delaware

Delaware uses the traditional common law definition of gambling.\textsuperscript{250} The dominant factor test determines the element of chance.\textsuperscript{251} Despite some element of skill, fantasy sports contests are predominantly subject

value risked in gambling, or any claim thereon or interest therein”). Fantasy sports providers are profit-seeking businesses that accept money and credit risked for gambling. Television broadcasts and Internet sites may also be considered “gambling devices.” \textit{See} CONN. GEN. STAT. § 53-278a(4) (1994 & Supp. 2001). Any device “use[d] in connection with professional gambling” is a gambling device. \textit{Id.} Devices used to share fantasy sports information may be passing along “gambling information.” \textit{See} CONN. GEN. STAT. § 53-278a(6) (1994 & Supp. 2001). “Gambling information” is defined as “a communication with respect to any wager made in the course of, and any information intended to be used for, professional gambling.” \textit{Id.} Similar to the Wire Act, section 53-278d(a) of the Connecticut Code prohibits “any person [from] knowingly transmit[ting] or receiv[ing] gambling information by telephone, telegraph . . . or other means, or knowingly install[ing] or maintain[ing] equipment for the transmission or receipt of gambling information.” CONN. GEN. STAT. § 53-278d(a) (1994 & Supp. 2001). This provision would subject all participants to misdemeanor prosecution. \textit{Id.}


All wagers, and all contracts and securities whereof the whole or any part of the consideration is money or other valuable thing won, laid or bet, at any game, horse race, sport or pastime, and all contracts to repay any money knowingly lent at the time and place of such game, race, sport or pastime, to any person so gaming, betting or wagering, or to repay any money lent to any person who, at such time and place, so pays, bets or wagers, shall be void . . . \textit{Id.} Losing contestants could sue a winning contestant for the lost wager. CONN. GEN. STAT. § 52-554 (1994 & Supp. 2001) (requiring that suit be brought within three months). However, the time restriction would prevent fantasy sports contestants from filing a timely lawsuit. Connecticut especially prohibits gambling on credit. \textit{See} Mashantucket Pequot Gaming Enter., 1999 WL 799526 at *4. “The prohibition of gambling on credit has been a part of anti-gambling statutes in this state for about two hundred years.” \textit{See} King Int’l Corp. v. Voloshin, 366 A.2d 1172, 1174 (Conn. Super. Ct. 1976).

\textsuperscript{249} \textit{See} CONN. GEN. STAT. § 53-278a(2) (1994 & Supp. 2001) (excluding contests of “skill, speed, strength or endurance” in which awards are won only by entrants or the owners of entries).


\textsuperscript{251} \textit{Nat’l Football League, 435 F. Supp. at 1384 (holding that determining contest winners by the outcome of professional football games is gambling). Pools may be lotteries despite the existence of some element of skill. \textit{Id.}
to chance. Fantasy sports providers may be liable, therefore, even if contestants do not pay to enter games.

8. Georgia

Georgia defines gambling using the traditional common law elements. Gambling prohibitions may apply to contests of chance or skill; however, chance appears to be a required element. If fantasy sports contests are considered gambling, then losing contestants may sue to recover their entrance fees.

252. But see Nat'l Football League, 435 F. Supp. at 1385 ("[T]he results of NFL games are a function of myriad factors such as the weather, the health and mood of the players and the condition of the playing field."). Although "educated predictions can be made... each is also subject to last minute changes and to an element of the unknowable." Id. These unknowable factors were multiplied by the number of games a participant bet on. Fantasy sports contests are similar in that players do not bet on the outcome of a single game. See id.

Other courts have joined the conclusion that sport betting pools and schemes based on sporting events constitute games of chance. See Commonwealth v. Laniekwi, 98 A.2d 215, 217 (Pa. Super. Ct. 1953) ("[T]here are many unpredictable elements which can and do enter into the eventual outcome."). "No one knows what may happen once the game has begun." Id. But see Opinion of the Justices, 385 A.2d 695, 705 (Del. 1978) (permitting pari-mutuel betting). A horse better exercises reason, judgment, and discretion in selecting the winning horse. Horse racing is similar to football and baseball in that skill and judgment enter into the outcome; therefore, these games are not predominantly determined by chance. See id. at 703.

253. Consideration need not be money. Affiliated Enterprises, Inc., 5 A.2d at 261 (holding that mere registration for a prize qualifies as consideration). Consideration consists of "an act done at the request of the proprietor of the scheme if, upon a reasonable and realistic view, the act is bargained for." Id.


255. The game may be one "of chance or skill for stakes." Fleming v. State, 53 S.E. 579, 579 (Ga. 1906). But see Russell v. Equitable Loan & Sec. Co., 58 S.E. 881, 885 (Ga. 1907) (emphasizing chance as an essential element of a lottery). See also GA. CODE ANN. § 16-12-20(4) (1998) (defining lottery). "The chance here referred to is... where the attempt is to attain certain ends, not by skill or any known or fixed rules, but by the happening of a subsequent event, incapable of ascertainment or accomplishment by means of human foresight or ingenuity." Russell, 58 S.E. at 885. Skill admittedly plays some role in fantasy sports contests, and fixed rules determine a winner; however, the awaited outcome is not predetermined. It is unclear, therefore, whether fantasy sports contests involve chance or skill.

256. See GA. CODE ANN. § 13-8-3(b) (1998). A losing contestant must sue a winning contestant within six months after the entry fee is lost. Id. If the losing
9. Hawaii

Hawaii adheres to the traditional common law definition of gambling.\textsuperscript{257} However, Hawaii draws no distinction between chance and skill.\textsuperscript{258} The social gambling exception is inapplicable.\textsuperscript{259} All fantasy sports participants risk misdemeanor prosecution for gambling.\textsuperscript{260}

contestant is unable to file a timely lawsuit, then an action may still be brought within four years for the joint benefit of the losing contestant and the county education fund. \textit{Id.} Creditors and providers would not see any benefit. Creditors would be unable to collect promised entry fees because gambling contracts are deemed null and void. \textit{See} GA. CODE ANN. § 13-8-3(a) (1998). Providers would be subject to imprisonment or a fine if held liable for “communicating gambling information.” \textit{GA. CODE ANN.} § 16-12-28(b) (1998). “A person who knowingly communicates information as to bets, betting odds, or changes in betting odds or who knowingly installs or maintains equipment for the transmission or receipt of such information with the intent to further gambling commits the offense of communicating gambling information.” \textit{GA. CODE ANN.} § 16-12-28(a) (1998).

\textsuperscript{257} \textit{See HAW. REV. STAT.} § 712-1220(4) (1993 & Supp. 2000) (defining “gambling” as “stak[ing] or risk[ing] something of value upon the outcome of a contest of chance or a future contingent event not under [one’s] control or influence, upon an agreement or understanding that [the winner] will receive something of value in the event of a certain outcome”).\

\textsuperscript{258} State v. Prevo, 361 P.2d 1044, 1049 (Haw. 1961). Rather, all games where something of value is staked or wagered on an outcome are gambling games. \textit{See id.; see also HAW. REV. STAT. ANN} § 288-4 (Michie 1955) (prohibiting “[any] game in which money or anything of value is lost or won”). In addition to prohibiting a list of gambling activities known at the time legislation was passed, the legislature intended to include gambling games designed in the future. \textit{Prevo}, 361 P.2d at 1049. “[B]road construction [of ‘gambling games’] is warranted in view of the clear legislative purpose of the statute to outlaw gambling in all its forms.” \textit{Id.} at 1048. Under the previous gambling law, no distinction was drawn between chance and skill, or games of chance and games of skill, but all games so designed that money or other things of value were staked or wagered on the outcome qualified as gambling games. \textit{Id.} at 1049. “The legislature intended to criminalize the playing of any game so designed that money or property is risked on the contingency of winning some valuable reward.” \textit{Id.} “[W]hether or not the element of skill predominates chance is of no materiality.” \textit{Id.} at 1051 n.1.

\textsuperscript{259} \textit{See HAW. REV. STAT.} § 712-1231 (1993 & Supp. 2000). The affirmative defense of social gambling contains six requirements:

\begin{itemize}
  \item[(1)] players compete on equal terms . . .
  \item[(2)] no player [may] . . . receive anything of value or any profit . . . other than . . . personal gambling winnings; . . .
  \item[(3)] no other person . . . [may] receive anything of value or . . . profit . . .
  \item[(4)] gambling may not take place at specified places; . . .
  \item[(5)] no[.] . . . player[f] [may be] below the age of majority; and
  \item[(6)] the gambling activity is not bookmaking.
\end{itemize}

\textit{Id.} Fantasy sports contests violate several of these requirements. First, contestants may win valuable items, including hats, shirts, and other accessories. Second, the fantasy sports business enjoys a share of profits, as do athletes. Third, Internet providers have no means of preventing underage gamblers from participating in fantasy sports contests.

10. Idaho

Idaho statutorily adopted the traditional common law definition of gambling.\textsuperscript{261} At least one Idaho court recognized that betting on the result of athletic contests does not convert a game of skill into a contest of chance.\textsuperscript{262} If Idaho determined that fantasy sports contests constitute unlawful gambling, then all participants would face liability.\textsuperscript{263} The presence of some degree of skill, however, may result in an exception for fantasy sports contests.\textsuperscript{264}


Conduct of this nature includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device, or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, toward the solicitation or induction of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation.

Id. Fantasy sports providers “advance gambling activity” by creating and establishing Internet sites devoted to fantasy sports games or contests, by maintaining Web sites, by soliciting or inducing people to participate in fantasy sports contests, and by providing up-to-date information to assist the playing phases. Internet Web sites and magazines devoted to fantasy sports may constitute “gambling devices.” See HAW. REV. STAT. § 712-1220(5) (1993 & Supp. 2000). “[A]ny device, machine, paraphernalia, or equipment . . . used . . . in the playing phases of any gambling activity” is outlawed. Id. Furthermore, fantasy sports businesses “profit from gambling activity.” See HAW. REV. STAT. § 712-1220(9) (1993 & Supp. 2000) (prohibiting persons from accepting or receiving money pursuant to an agreement based on gambling activity). Knowingly advancing gambling activity or enjoying a profit from gambling activity could subject fantasy sports business participants to another misdemeanor for “promoting gambling.” See HAW. REV. STAT. § 712-1222 (1993 & Supp. 2000). Individual participants also “advance gambling.” See HAW. REV. STAT. § 712-1220(1) (1993 & Supp. 2000). “A person advances gambling activity if he plays or participates in any form of gambling activity.” Id.

261. IDAHO CODE § 18-3801 (Michie 1997) (defining “gambling” as the “risking [of] any money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance . . . or the happening or outcome of an event, including a sporting event”); see also State v. Village of Garden City, 265 P.2d 328, 330–31 (Idaho 1953) (establishing that a lottery consists of chance, consideration, and prize); Oneida County Fair Bd. v. Smylie, 386 P.2d 374, 376–77 (Idaho 1963). Gambling violates the public policy of Idaho. IDAHO CONST. art. III, § 20(1).

262. See Oneida County Fair Bd., 386 P.2d at 391 (holding that pari-mutuel wagering on horse racing is not prohibited as a lottery).


264. See IDAHO CODE § 18-3801(1) (Michie 1997). Gambling does not include “[b]ona fide contests of skill . . . in which awards are made only to entrants or the owners of entrants.” Id.
11. Illinois

Illinois uses the traditional common law definition of gambling.265 However, the distinction between chance and skill is statutorily omitted.266 ESPN fantasy sports contests involve payment of consideration for a chance to win a prize; therefore, it is questionable whether Illinois residents may participate and win prizes.267 In addition, a determination that fantasy sports leagues are unlawful gambling would extend to leagues that do not require entry fees.268 Losing contestants who paid entrance fees, however, would have the option of suing to recover fees that totaled at least fifty dollars.269

12. Indiana

Indiana follows the traditional common law definition of gambling.270

265. Midwest Television, Inc. v. Waaler, 194 N.E.2d 653, 655 (Ill. App. Ct. 1963). “As indicated by ... [statute], the essential elements of a lottery are (1) a prize, (2) a chance, [and] (3) a consideration.” Id.

266. See 720 ILL. COMP. STAT. 5/28-1(a) (1993 & Supp. 2001) (defining “gambling” as “play[ing] a game of chance or skill for money or other thing of value”).

267. See id.; see also 720 ILL. COMP. STAT. 5/28-1(a)(5) (1993 & Supp. 2001) (defining “gambling” as “knowingly own[ing] or possess[ing] any book, instrument or apparatus by means of which bets or wagers have been, or are, recorded or registered, or knowingly possess[ing] any money which ... [was] received in the course of a bet or wager”). ESPN possesses fantasy sports Web sites which allow contestants to wager entry fees against other contestants to win prizes. ESPN keeps entry fees in excess of the prizes it distributes as its own profit. Similar to the Wire Act, Illinois includes the knowing transmission of information regarding wagers by telephone or similar means in its definition of gambling. 720 ILL. COMP. STAT. 5/28-1(a)(11) (1993 & Supp. 2001). The most damaging section, however, expressly prohibits anyone from “[k]nowingly establish[ing], maintain[ing], or operat[ing] an Internet site that permits a person to play a game of chance or skill for money or other thing of value by means of the Internet.” 720 ILL. COMP. STAT. 5/28-1(a)(12) (1993 & Supp. 2001). ESPN and other fantasy sports providers establish, maintain, and operate their Web sites with full knowledge that participants play fantasy sports for money and other prizes offered by providers. It is possible, however, that fantasy sports leagues are exempted as bona fide contests of skill. See 720 ILL. COMP. STAT. 5/28-1(b)(2) (1993 & Supp. 2001).

268. See Midwest Television, Inc., 194 N.E.2d at 657 (defining “valuable consideration” as “some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other”). Fantasy sports providers benefit from frequent page hits by contestants.

269. 720 ILL. COMP. STAT. 5/28-8(a) (1993 & Supp. 2001). Suit must be filed against the winner of the fantasy sports contest. Id. If suit is not filed within six months, then any person is permitted to bring suit against the winning contestant. 720 ILL. COMP. STAT. 5/28-8(b) (1993 & Supp. 2001) (resulting in treble damages).

270. State v. Nixon, 384 N.E.2d 152, 163 (Ind. 1979) (defining “lottery” as “consideration (paid for a chance to win); prize (awarded to winner); and chance (in
The dominant factor test is used to determine whether chance controls the outcome of the contest.\footnote{Lashbrook v. State, 550 N.E.2d 772, 775 (Ind. Ct. App. 1990) (determining that pyramid schemes constitute an illegal lottery).} Fantasy sports contests may fall into the statutory exception for bona fide contests of skill.\footnote{See IND. CODE ANN. § 35-45-5-1(1) (Michie 1998 & Supp. 2001).} If fantasy sports are considered gambling, then participants could face liability for a misdemeanor charge.\footnote{See IND. CODE ANN. § 35-45-5-2 (Michie 1998 & Supp. 2001).}

\section*{13. Iowa}

Iowa defines a lottery using the traditional common law elements.\footnote{Central States Theatre Corp. v. Patz, 11 F. Supp. 566, 568 (S.D. Iowa 1935); St. Peter v. Pioneer Theatre Corp., 291 N.W. 164, 167 (Iowa 1940) (stating that these elements include prize, chance, and consideration); State v. Khalsa, 542 N.W.2d 263, 266 (Iowa Ct. App. 1995). The common law elements are codified by section 725.12. IOWA CODE ANN. § 725.12 (West 1993) (defining a “lottery” as “any scheme, arrangement, or plan whereby a prize is awarded by chance or any process involving a substantial element of chance to a participant who has paid or furnished a consideration”).} The element of chance “refers to the absence of skill.”\footnote{Khalsa, 542 N.W.2d at 266.} Since fantasy sports contests involve at least some element of skill, these contests do not qualify as lotteries.\footnote{See id. Note that fantasy sports contests do not fall into games of chance or games of skill as statutorily defined. See IOWA CODE ANN. § 99B.1(14)-(15) (West 1996). “Game of chance” is defined as “a game whereby the result is determined by chance and the player in order to win aligns objects or balls in a prescribed pattern or order or makes certain color patterns appear.” IOWA CODE ANN. § 99B.1(14). “Game of skill” is defined as “a game whereby the result is determined by the player directing or throwing objects to designated areas or targets, or by maneuvering water or an object into a designated area, or by maneuvering a dragline device to pick up particular items, or by shooting a gun or rifle.” See IOWA CODE ANN. § 99B.1(15). The consideration element, on the other hand, requires a substantial expenditure, which means that fantasy sports leagues that do not charge entry fees would be legal. See id. [A] consideration shall be deemed to have been paid or furnished only in such cases where . . . participants are required to make an expenditure of money or consideration.”} Iowa’s policy against gambling on credit may
or may not present difficulties for creditors seeking to enforce payment of entry fees.  

14. Kansas

Kansas applies the traditional common law definition of gambling. A broad definition of consideration would include even fantasy sports leagues which do not charge entrance fees. Kansas prohibits betting; however, fantasy sports contests may fit within the bona fide contest of skill exception.

15. Kentucky

Kentucky adheres to the traditional common law definition of gambling. Kentucky case law suggests that the difference between chance and skill is such that fantasy sports contests should be outlawed; however, statutory enactments suggest otherwise. If Kentucky

something of monetary value through a purchase, payment of an entry or admission fee, or other payment or the participants are required to make a substantial expenditure of effort.

IOWA CODE ANN. § 725.12 (West 1993). Consideration is lacking where a participant merely registered a “name, address, and related information.”  

277. See IOWA CODE ANN. § 537A.4 (West 1997) (stating “promises [and] agreements . . . staked, or bet, at or upon any game of any kind or on any wager, are absolutely void and of no effect”).


279. See KAN. STAT. ANN. § 21-4302(c) (1995) (defining “consideration” as “anything which is a commercial or financial advantage to the promoter or a disadvantage to [the] participant”). Fantasy sports businesses operate for profit, which may be deemed a commercial and financial advantage.

280. KAN. STAT. ANN. § 21-4303(a) (1995) (stating that gambling includes “[m]aking a bet”); KAN. STAT. ANN. § 21-4302(a) (1995) (defining a “bet” as “a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement”).


282. See KY. CONST. § 226(3) (outlawing lotteries); Commonwealth v. Allen, 404 S.W.2d 464, 466 (Ky. Ct. App. 1966) (incorporating the familiar elements of prize, chance, and consideration).

283. See Commonwealth v. Bowman, 102 S.W.2d 382, 384 (Ky. Ct. App. 1936) (explaining that a chance “should be denounced as gaming whenever the player hazards
determines that fantasy sports contests constitute gambling, then creditors may have difficulty recovering promised entry fees.  

16. Maine

Maine uses the traditional common law elements of gambling in its definition of a lottery. It is unclear whether fantasy sports contests would fall within Maine's definition of "games of chance." The strongest argument that fantasy sports contests should be prohibited as a form of gambling comes from a line of cases holding that the payment of consideration for a chance to win something more constitutes gambling.
17. Massachusetts

Massachusetts adheres to the traditional common law definition of gambling. However, the consideration element strictly requires the payment of a price. As a result, fantasy sports leagues that charge no entry fee would not be considered lotteries. Regarding the element of chance, Massachusetts adopted the predominating factor test. If fantasy sports contests are deemed unlawful, then winning contestants would be unable to enforce prize winnings in a Massachusetts court.

18. Michigan

Michigan courts have described gambling using the traditional common law elements. Recognition of indirect forms of


290. No price is paid for a chance to win a prize in such case. See id.

291. See Commonwealth v. Plissner, 4 N.E.2d 241, 244 (Mass. 1936); see also Lake, 57 N.E.2d at 925 (“Where the game contains elements both of chance and of skill . . . a game is now considered a lottery if the element of chance predominates and not a lottery if the element of skill predominates.”). The Lake court suggested that where a game involved some degree of skill and some degree of chance, the court could look beyond the game and consider whether participants play the game dependent upon chance or skill. See id. The Massachusetts state prosecutor could, therefore, bring suit against ESPN and other pay-to-play fantasy sports contest providers if a majority of contestants relied on chance. Furthermore, a prosecutor could rely on the fact that chance may thwart the exercise of skill or judgment of even the most skilled contestant. Plissner, 4 N.E.2d at 245 (“[I]f the element of chance is present in such a manner as to thwart the exercise of skill or judgment in a game, then there may be a lottery.”).

292. See MASS. GEN. LAWS ANN. ch. 137, § 3 (West 1991) (voiding any conveyance where consideration consists of money or goods won by gambling upon any game). Losing contestants may file suit to recover lost entry fees within three months after payment is made. MASS. GEN. LAWS ANN. ch. 137, § 1 (1991). Fantasy sports contestants would be unable to file in a timely manner because the season lasts more than three months; therefore, a losing contestant or any other person may sue to recover treble damages. Id.

consideration in the definition of lotteries would include fantasy sports contests that do not charge entry fees. However, Michigan’s lottery statute strongly suggests that fantasy sports contests do not constitute lotteries.

19. Mississippi

Mississippi recognizes the traditional common law definition of gambling. Fantasy sports contests, including ESPN, may violate several gambling provisions. If Mississippi determines that fantasy sports contests qualify as gambling, then losing contestants may recover their entrance fees. Furthermore, creditors may have difficulty


294. See Sproat-Temple Theatre Corp., 267 N.W. at 603 (“The fact that prizes of more or less value are to be distributed will attract persons to the theaters who would not otherwise attend. In this manner those obtaining prizes pay consideration for them, and the theaters reap a direct financial benefit.” (quoting Society Theater v. City of Seattle, 203 P. 21, 22 (Wash. 1922))). In the case of fantasy sports providers, the offer of various prizes caught the attention of nonsport fans who would not otherwise visit the fantasy sports Web sites.

295. A determination that fantasy sports contests predominantly involve chance may result in fantasy sports Web pages being considered “gambling devices.” See Oatman v. Davidson, 16 N.W.2d 665, 665 (Mich. 1944) (holding that pinball machines were “gambling devices” because skill was only a slight factor in winning free plays). Fantasy sports contests may also constitute “gaming” or “betting.” See Shaw v. Clark, 13 N.W. 786, 787–88 (Mich. 1882) (defining “gaming” as “play[ing] with stakes ... to see which [person] shall be the winner and which the loser” and “betting” as “the putting of a certain sum of money or other valuable thing at stake on the happening or not happening of some uncertain event”). Michigan outlaws any person from winning any game by betting. Mich. Comp. Laws Ann. § 750.314 (West 1991). Winning fifty dollars or less subjects an individual to misdemeanor liability, while winning more than fifty dollars may result in a misdemeanor punishable by imprisonment or a fine. Id.

296. Miss. Gaming Comm'n v. Treasured Arts, Inc., 699 So. 2d 936, 938 (Miss. 1997); Knight v. State ex rel. Moore, 574 So. 2d 662, 664 (Miss. 1990); Naron v. Prestage, 469 So. 2d 83, 86 (Miss. 1985); R.J. Williams Furniture Co. v. McComb Chamber of Commerce, 112 So. 579, 580 (Miss. 1927) (stating that lottery consists of prize, chance, and consideration). For statutory codification, see Miss. Code Ann. § 75-76-3 (2000).


298. Miss. Code Ann. § 87-1-5 (1999). “If any person, by playing at any game whatever, or by betting [on any] ... sport or pastime ... shall lose any money ... the person so losing ... or his wife or children, may sue for and recover such money ....” Id.
recovering promised entry fees from contestants.299

20. Missouri

Missouri defines gambling using the traditional common law elements.300 The presence of chance in a contest is determined by the dominant factor test.301 Since chance plays a large role in determining the winner of a fantasy sports contest, there is a good chance that a Missouri court would outlaw such contests as gambling.302

21. Nebraska

Nebraska follows the traditional common law definition of gambling.303 In determining whether or not the element of chance is

299. See MISS. CODE ANN. § 87-1-1 (1999) (declaring any contract based on money bet on any sport "utterly void").


301. See McKittrick, 110 S.W.2d at 713 ("[A] contest may be a lottery even though skill, judgment, or research enter thereinto in some degree, if chance in a larger degree determine[s] the result."); see also MO. ANN. STAT. § 572.010(3) (West 1995) (defining "contest of chance" as "any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that the skill of the contestants may also be a factor therein").

302. See MO. ANN. STAT. § 572.010(3) (West 1995); see also MO. ANN. STAT. § 572.010(4) (West 1995) (defining "gambling" as "stak[ing] or risk[ing] something of value upon the outcome of a contest of chance or a future contingent event not under [one's] control or influence upon an agreement or understanding that [the winner shall] receive [a prize]"). If Missouri in fact deemed fantasy sports contests unlawful, then participants in the fantasy sports business would face liability for "promoting gambling." See MO. ANN. STAT. § 572.040 (West 1995). "Promoting gambling" involves "knowingly advanc[ing] or profit[ing] from unlawful gambling or lottery activity." MO. ANN. STAT. § 572.040(1) (1995). "Promoting gambling" is treated as a misdemeanor. MO. ANN. STAT. § 572.040(2) (West 1995).

satisfied, courts consider the predominant nature of the game.\textsuperscript{304} The role that chance plays in fantasy sports contests may be sufficient for a Nebraska court to decide that such contests should be outlawed.\textsuperscript{305}

22. \textit{Nevada}

The traditional common law definition of gambling was statutorily adopted in Nevada.\textsuperscript{306} Fantasy sports contests could fall within the definition of lotteries; however, they would more likely be prohibited as gaming.\textsuperscript{307} In addition, fantasy sports contests may be outlawed as "sports pool[s]."\textsuperscript{308}


\textsuperscript{304.} Contact, 324 N.W.2d at 806.

\textsuperscript{305.} Participants would be subject to liability for gambling. See Neb. Rev. Stat. § 28-1101(4) (1995) (defining "gambling" as betting "something of value upon the outcome of a future event, which outcome is determined by an element of chance, or upon the outcome of a game [or contest]").

\textsuperscript{306.} Nev. Rev. Stat. Ann. 462.105(1) (Michie 2001) (defining "lottery" as "any scheme for the disposal or distribution of property, by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining that property, or a portion of it"). For the constitutional prohibition against lotteries, see Nev. Const. art. IV, § 24.


\textsuperscript{308.} Nev. Rev. Stat. Ann. 463.160(1)(c) (Michie 2001) (making it unlawful for any person to receive "any compensation . . . or share of the money or property played, for keeping, running or carrying on any gambling game . . . or sports pool" without first obtaining a gambling license); Nev. Rev. Stat. Ann. 463.0193 (Michie 2001) (defining
23. New Hampshire

New Hampshire uses the traditional common law definition of gambling. The statutory definition of lottery requires payment to satisfy the element of consideration; therefore, fantasy sports contests that do not charge entry fees would not be prohibited. Pay-to-play fantasy sports contests, however, may be outlawed as gambling.

24. New Jersey

New Jersey applies the traditional common law definition of gambling. The element of chance is determined by the predominant factor test. In addition, fantasy sports contests arguably fall within

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“sports pool” as “the business of accepting wagers on sporting events by any system or method of wagering”). “Wagering” is defined as “a sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain.” NEV. REV. STAT. ANN. 463.01962 (Michie 2001). When fantasy sports contests choose their players, they bet on games whose outcomes are yet to be decided.


310. N.H. REV. STAT. ANN. § 647:1(1) (1996); see also Eames, 183 A. at 591 (“Consideration must be something of value.”).

311. See N.H. REV. STAT. ANN. § 647:2(II)(d) (1996 & Supp. 2000) (defining “gambling” as “risk[ing] something of value upon a future contingent event not under one’s control or influence, upon an agreement or understanding that something of value will be received in the event of a certain outcome”). Fantasy sports participants could be subject to a misdemeanor offense for gambling. N.H. REV. STAT. ANN. § 647:2(I)(b) (1996 & Supp. 2000). Fantasy sports providers could be convicted of a misdemeanor for unlawfully permitting gambling on their Web sites. See N.H. REV. STAT. ANN. § 647:2(I-a)(a) (1996 & Supp. 2000) (prohibiting any person from “conduct[ing], financ[ing], manag[ing], supervis[ing], direct[ing], or own[ing] all or part of a business” where that person “knowingly and unlawfully permits gambling”). Felony conviction could also await fantasy sports providers. See N.H. REV. STAT. ANN. § 647:2(I-a)(b) (1996 & Supp. 2000) (prohibiting any person who allows gambling on business premises from collecting $2000 gross revenue in a single day, “remain[ing] in substantially continuous operation” for more than ten days, or “accept[ing] wagers exceeding $5,000 during any 30 day period on future contingent events”).

312. State v. Horn, 1 A.2d 51, 53 (N.J. 1938) (a lottery consists of a prize, a chance, and a consideration). Cf. Lucky Calendar Co. v. Cohen, 117 A.2d 487, 494 (N.J. 1955) (consideration is not a necessary element of a lottery). If consideration is not required, then all fantasy sports contests, regardless of whether entry fees were paid, would fall into the definition of lotteries. For a statutory definition, including the element of chance, see N.J. STAT. ANN §§ 2C:37-1(h) (West 1995).

313. See N.J. STAT. ANN. § 2C:37-1(a) (West 1995) (defining “contest of chance” as “any contest, game, pool, gaming scheme or gaming device in which the outcome
New Jersey’s prohibition on gambling. 314

25. New Mexico

New Mexico adheres to the traditional common law definition of gambling. 315 Fantasy sports contests involve some degree of skill; therefore, they would more appropriately be prohibited as “bets.” 316 The presence of skill may be sufficient for fantasy sports contests to be permitted. 317

26. New York

New York follows the traditional common law definition of
gambling.\footnote{Garden City Chamber of Commerce v. Wagner, 100 F. Supp. 769, 772 (E.D.N.Y. 1951) ("[A] lottery is composed of three elements: [p]rize, consideration, and chance."); People ex rel. Ellison v. Lavin, 71 N.E. 753, 754 (N.Y. 1904). New York’s statutory codification of the common law definition may be found at N.Y. PENAL LAW § 225.00(10) (McKinney 2000). For New York’s constitutional lottery provision, see N.Y. CONST. art. I, § 9 (prohibiting "the sale of lottery tickets, pool-selling, bookmaking, or any other kind of gambling").} Games of chance are determined using a test similar to the dominant factor test.\footnote{See N.Y. PENAL LAW § 225.00(1) (McKinney 2000) (defining "contest of chance" as "any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein").} New York’s statutory definition of gambling would conceivably include fantasy sports contests.\footnote{See N.Y. PENAL LAW § 225.00(2) (McKinney 2000) (defining "gambling" as "stak[ing] or risk[ing] something of value upon the outcome of a contest of chance or a future contingent event not under [one’s] control or influence, upon an agreement or understanding that [the winner] will receive [a prize] in the event of a certain outcome").} Fantasy sports contests could also be outlawed as "sports betting."\footnote{See N.Y. PENAL LAW § 225.00(4) (McKinney 2000) (prohibiting persons from materially aiding gambling activity). Fantasy sports providers "advance gambling activity" by creating and establishing fantasy sports contests. See id.; see also N.Y. PENAL LAW § 225.00(9) (McKinney 2000) (stating that "advancing gambling activity" is also prohibited as "bookmaking" where businesses accept bets "upon the outcomes of future contingent events"). Fantasy sports providers could also be penalized for "promoting gambling." See N.Y. PENAL LAW § 225.10 (McKinney 2000) (prohibiting anyone from "knowingly advanc[ing] or profit[ing] from unlawful gambling activity by (1) [e]ngaging in bookmaking to the extent that [one] receives or accepts in any one day more than five bets totaling more than five thousand dollars; or (2) [r]eceiving ... more than five hundred dollars in any one day" where such business may be defined as a lottery). "Promoting gambling" is classified as a felony. Id. Even if a gambling enterprise involves neither bookmaking nor lottery, "promoting gambling" may result in a misdemeanor. N.Y. PENAL LAW § 225.05 (McKinney 2000). The entire fantasy sports business may be convicted for "profiting from gambling activity." See N.Y. PENAL LAW § 225.00(5) (McKinney 2000) (prohibiting nonplayers from receiving money in conjunction with profiting from gambling activity).} Fantasy sports providers could be subject to liability for "advancing gambling activity." See N.Y. PENAL LAW § 225.00(4) (McKinney 2000) (prohibiting persons from materially aiding gambling activity). Fantasy sports providers "advance gambling activity" by creating and establishing fantasy sports contests. See id.; see also N.Y. PENAL LAW § 225.00(9) (McKinney 2000) (stating that "advancing gambling activity" is also prohibited as "bookmaking" where businesses accept bets "upon the outcomes of future contingent events"). Fantasy sports providers could also be penalized for "promoting gambling." See N.Y. PENAL LAW § 225.10 (McKinney 2000) (prohibiting anyone from "knowingly advanc[ing] or profit[ing] from unlawful gambling activity by (1) [e]ngaging in bookmaking to the extent that [one] receives or accepts in any one day more than five bets totaling more than five thousand dollars; or (2) [r]eceiving ... more than five hundred dollars in any one day" where such business may be defined as a lottery). "Promoting gambling" is classified as a felony. Id. Even if a gambling enterprise involves neither bookmaking nor lottery, "promoting gambling" may result in a misdemeanor. N.Y. PENAL LAW § 225.05 (McKinney 2000). The entire fantasy sports business may be convicted for "profiting from gambling activity." See N.Y. PENAL LAW § 225.00(5) (McKinney 2000) (prohibiting nonplayers from receiving money in conjunction with profiting from gambling activity).

The traditional common law definition of gambling applies in North
Carolina. North Carolina defines a “game of chance” as one in which chance predominates over skill. Fantasy sports contests may be considered lotteries; however, such contests could also be outlawed under North Carolina’s statutory gambling prohibition.

28. Ohio

Ohio uses the traditional common law definition of gambling. The reliance of fantasy sports contestants on future athletic performances most likely satisfies the chance requirement. The element of consideration is satisfied without the payment of an entry fee; therefore, all fantasy sports providers are arguably conducting lotteries.

29. Oklahoma

Oklahoma uses the traditional common law definition of gambling.


324. See N.C. GEN. STAT. § 14-292 (1999) (defining “gambling” as “play[ing] at or bet[ting] on any game of chance at which any money, property or other thing of value is bet”). A gambling offense is punishable as a misdemeanor. Id.


326. Great Atl. & Pac. Tea Co., Inc. v. Cook, 240 N.E.2d 114, 118 (Ohio Ct. C.P. 1968) (“If the winner’s success is due primarily to his own skill or ability, the contest is not a lottery—if, on the other hand, the winner’s success is due to something beyond his control then ‘chance’ appears and becomes a part of the game or contest.”); see also OHIO REV. CODE ANN. § 2915.01(C) (Anderson 1997) (defining “scheme of chance” as “a lottery, numbers game, pool, or other scheme in which a participant gives a valuable consideration for a chance to win a prize”). But see OHIO REV. CODE ANN. § 2915.01(D) (Anderson 1997) (requiring outcome to be largely or wholly dependent on chance in order for contest to qualify as “game of chance”). See also OHIO REV. CODE ANN. § 2915.01(E) (Anderson 1997) (defining “scheme or game of chance conducted for profit” as “any scheme or game of chance designed to produce income for the person who conducts or operates the scheme or game of chance”).

327. See Kroger Co., 244 N.E.2d at 797; see also Troy Amusement Co. v. Attenweiler, 28 N.E.2d 207, 215 (Ohio Ct. App. 1940) (“The element of advertisement and increased patronage is sufficient consideration flowing to the operator to bring the transaction within the condemnation of promoting and advertising a scheme of chance.”). “It is only necessary that the person entering the competition shall do something or give up some right sufficient to comply with that requirement.” Id. at 213.

328. Knox Indus. Corp. v. State ex rel. Scanland, 258 P.2d 910, 912 (Okla. 1953); State ex rel. Draper v. Lynch, 137 P.2d 949, 951 (Okla. 1943) (“[A] lottery is any gambling scheme which contains elements of (1) prize, (2) chance, (3) consideration.”); State ex rel. Callihan v. Wokan Amusement Co., 19 P.2d 967, 968 (Okla. 1933). For Oklahoma’s statutory codification, see OKLA. STAT. ANN. tit. 21, § 1051 (West 1983 &
Oklahoma recognizes that consideration does not require payment of an entry fee;\textsuperscript{329} therefore, fantasy sports contests should be treated similarly regardless of whether entry fees are charged. Fantasy sports contests may qualify as unlawful lotteries or forbidden bets.\textsuperscript{330} Fantasy sports participants may be liable for "betting" while fantasy sports providers may be subject to "commercial gambling" liability.\textsuperscript{331}

30. Oregon

Oregon applies the traditional common law elements of gambling.\textsuperscript{332}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{329} Knox Indus. Corp., 258 P.2d at 914; see also OKLA. STAT. ANN. tit. 21, § 981(2) (West 1983 & Supp. 2001) (defining "consideration" as "anything which is a commercial or financial advantage to the promotor or a disadvantage to any participant").
\item \textsuperscript{330} See State v. Koo, 647 P.2d 889, 891 (Okla. Crim. App. 1982) (defining "bet" as "a bargain in which the parties agree that, dependent upon chance, or in which one of the parties to the transaction has valid reason to believe that it is dependent upon chance, one stands to win or lose something of value specified in the agreement"). For a statutory definition, see OKLA. STAT. ANN. tit. 21 § 981(1) (West 1983 & Supp. 2001). The Koo court specifically recognized that sporting games may qualify as games of chance. Koo, 647 P.2d at 892.
\item \textsuperscript{331} See OKLA. STAT. ANN. tit. 21, § 982(A) (West 1983 & Supp. 2001). "Commercial gambling" includes "receiving all or part of the earnings of a gambling place," receiving bets with intent to receive bets and possessing required facilities, "[f]or gain, becoming a custodian of anything of value bet," and "[c]onducting a lottery." \textit{Id.} Fantasy sports providers arguably perform four functions that may qualify as "commercial gambling." \textit{See id.} If convicted, fantasy sports providers would be guilty of a felony and punished by imprisonment, fine, or both. OKLA. STAT. ANN. tit. 21, § 982(B) (West 1983 & Supp. 2001).
\item \textsuperscript{332} Quatsoe v. Eggleston, 71 P. 66, 66–67 (Or. 1903) (stating that a lottery consists of prize, chance, and consideration); see also State v. Coats, 74 P.2d 1102, 1106 (Or. 1938); McFadden v. Bain, 91 P.2d 292, 294 (Or. 1939); State v. Schwemler, 60 P.2d Supp. 2001). "Every lottery is unlawful, and a common public nuisance." OKLA. STAT. ANN. tit. 21, § 1052 (West 1983 & Supp. 2001).
\end{enumerate}
\end{footnotesize}
Oregon’s statutory definition of lottery suggests that the element of consideration will only be satisfied by monetary payment or obligation.°°° The outcome of a fantasy sports contest is impacted by chance. Therefore, pay-to-play contests may be prohibited.°°° Fantasy sports contests may also qualify as gambling.°°°

31. Pennsylvania

The traditional common law definition of gambling is followed by Pennsylvania courts.°°° Fantasy sports providers arguably set up lotteries in violation of Pennsylvania law.°°° Furthermore, creditors may

938, 940 (Or. 1936). Oregon’s Constitution prohibits lotteries. See OR. CONST. art. XV, § 4(1).


°°°. See OR. REV. STAT. § 167.117(6) (1999 & Supp. 2000) (defining “contest of chance” as “any contest ... in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein”).

°°°. See OR. REV. STAT. § 167.117(7) (1999 & Supp. 2000). The statute defines “gambling” as:

stak[ing] or risk[ing] something of value upon the outcome of a contest of chance or a future contingent event not under the control or influence of the person, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome.

Id. Oregon defines “something of value” as “money ... or any form of credit ... contemplating transfer of money.” OR. REV. STAT. § 167.117(21) (1999 & Supp. 2000). Oregon’s gambling statute would only apply to pay-to-play fantasy sports contests. Fantasy sports contestants who risk entry fees have no control over the performances of their selected players. They play to win and may be rewarded with cash or other prizes.

The fantasy sports business may also face gambling liability. See OR. REV. STAT. § 167.117(16) (1999 & Supp. 2000) (stating that a nonplayer “profits from unlawful gambling activity” by receiving money “pursuant to an agreement or understanding with another person whereby the person participates or is to participate in the proceeds of unlawful gambling”). “Promoting unlawful gambling” charges may also be brought against the fantasy sports business. See OR. REV. STAT. § 167.117(17) (1999 & Supp. 2000) (subjecting those persons who materially aid unlawful gambling to liability). Fantasy sports providers arguably “promote unlawful gambling” by creating fantasy sports contests and maintaining Web sites to facilitate scoring. See id.


°°°. See 18 PA. CONS. STAT. ANN § 5512(b)(1) (West 2000 & Supp. 2001) (punishing offenders with a misdemeanor). Pennsylvania applies the predominant factor test in deciding whether the element of chance is established. Laniewski, 98 A.2d at 217. “[A] particular scheme may be a lottery even though skill, judgment or research enter into it in some degree, if chance in a larger degree determines the result.” Id. The
have difficulty recovering entry fees from losing contestants.  

32. Rhode Island

Rhode Island defines gambling using the traditional common law elements. The element of consideration is satisfied only by pecuniary value; therefore, fantasy sports contests that do not charge entry fees would be permissible. Rhode Island uses the dominant factor doctrine to determine whether a contest involves chance or skill. Fantasy sports contests are subject to chance, perhaps significantly enough that a Rhode Island court would outlaw such contests as lotteries.

33. South Carolina

South Carolina applies the traditional common law definition of gambling. Neither courts nor statutes provide insight into the type of consideration or degree of chance required for a contest to be outlawed as a lottery. However, South Carolina’s statutes outlawing gambling arguably prohibit fantasy sports contests.
34. South Dakota

The traditional common law elements are used to define gambling in South Dakota. South Dakota uses the predominant factor doctrine to determine whether a contest involves chance or skill. Many fantasy sports contests, including ESPN's version, are not created in accordance with statutory lottery restrictions. Fantasy sports contests may also be outlawed as gambling.


345. Poppen v. Walker, 520 N.W.2d 238, 243 (S.D. 1994) (superseded by statute); Chance Mgmt., Inc. v. South Dakota, 97 F.3d 1107, 1109 (8th Cir. 1996) (explaining that South Dakota's legislature amended the state constitution to permit state sponsored lotteries). The Poppen court defined a lottery as "any plan or scheme which has three essential elements: 1) a prize, 2) the element of chance, and 3) consideration paid for the opportunity of winning the prize." Poppen, 520 N.W.2d at 243. For a statutory codification, see S.D. CODIFIED LAWS § 22-25-24 (Michie 1998).

346. See Poppen, 520 N.W.2d at 245 (considering chance the "determining element in the outcome of the game").

347. See S.D. CODIFIED LAWS § 22-25-25 (Michie 1998). For example, profits made from a lottery may not benefit an individual. S.D. CODIFIED LAWS § 22-25-25(2) (Michie 1998). The fantasy sports business, including all individuals working for individual businesses, benefit from contest profits. Surely the services of these individuals are compensated "in excess of the state minimum wage per hour or sixty dollars, whichever is greater." S.D. CODIFIED LAWS § 22-25-25(4) (Michie 1998) (prohibiting a certain level of compensation for persons conducting services in connection with lotteries). Finally, lotteries may not result in an award of more than $18,000. See S.D. CODIFIED LAWS § 22-25-25(5) (Michie 1998). Although this provision would not apply to ESPN's fantasy sports contests, it might apply to fantasy sports providers who offer larger awards to entice contestants.


Any person who shall lose any thing of value at any game, or by betting on any game, may recover the same or the value thereof from any other person playing at any game at which such thing was lost, or from the person with whom the bet was made, or from the proprietor of the place where the game was played. . . .

Id.
35. Tennessee

Tennessee adopted the traditional common law definition of gambling. Tennessee's statutory definition of lottery implies that consideration would be established where fantasy sports contests charge entry fees. Any degree of chance is sufficient to satisfy the element as required by Tennessee's gambling statute. All fantasy sports participants may face prosecution for gambling. Since gambling contracts are not enforced, creditors might face difficulty collecting entry fees.

36. Texas

Texas defines gambling using the traditional common law elements. The legislature explicitly forbids lotteries where a “winner is chosen on the basis of the outcome of a sports event.” However, fantasy sports contests that do not involve entry fees would lack the element of consideration and therefore be permissible. Fantasy sports contestants

349. Secretary of State v. St. Augustine Church/St. Augustine School, 766 S.W.2d 499, 501 (Tenn. 1989); State ex rel. Dist. Attorney Gen. v. Crescent Amusement Co., 95 S.W.2d 310, 311 (Tenn. 1936). For Tennessee's constitutional prohibition on lotteries, see TENN. CONST. art. XI, § 5.


351. TENN. CODE ANN. § 39-17-501(1) (1997) (defining “gambling” as “risking anything of value for a profit whose return is to any degree contingent on chance”).


353. TENN. CODE ANN. § 29-19-101 (2000). “All contracts founded . . . on a gambling or wagering consideration, shall be void to the extent of such consideration.”


355. TEX. GOV'T CODE ANN. § 466.024(a) (Vernon 1998). “Sports events” include “football, basketball, baseball, or similar game[s].” TEX. GOV'T CODE ANN. § 466.024(c)(1) (Vernon 1998).

who pay to play, including ESPN contestants, arguably violate Texas' gambling prohibitions. Fantasy sports providers may also operate in violation of Texas' bookmaking laws.

37. Utah

Utah uses the traditional common law definition of gambling. Utah courts apply the predominant factor doctrine to determine whether a contest involves chance. Fantasy sports contests are arguably determined by chance and subject to being outlawed as lotteries or gambling schemes. All fantasy sports participants may be found in violation of gambling prohibitions.

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for the privilege of participating in the contest).

357. See Tex. Penal Code Ann. § 47.02(a)(1) (Vernon 1994 & Supp. 2001) (making it an offense for anyone to "bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest"). A "bet" is defined as "an agreement to win or lose something of value solely or partially by chance." Tex. Penal Code Ann. § 47.01(1) (Vernon 1994 & Supp. 2001). Fantasy sports contestants pay entry fees for a chance to win prizes based on the performance of selected athletes. Fantasy sports contests may be protected as bona fide contests of skill. Tex. Penal Code Ann. § 47.01(1)(B) (Vernon 1994 & Supp. 2001).

358. See Tex. Penal Code Ann. § 47.01(2)(C) (Vernon 1994 & Supp. 2001) (defining "bookmaking" as "a scheme by three or more persons to receive . . . a bet"). Fantasy sports providers operated by three or more persons receive entry fees that arguably qualify as bets. Even if fewer than three people were involved, fantasy sports providers would be subject to misdemeanor liability if they received more than five bets in a twenty-four hour period. Tex. Penal Code Ann. § 47.01(2)(A) (Vernon 1994 & Supp. 2001); Tex. Penal Code Ann. § 47.03(a)(2) (Vernon 1994 & Supp. 2001). Fantasy sports providers may also be prosecuted for "promoting gambling." See id. Fantasy sports providers also earn a profit from holding contestant's bets. Tex. Penal Code Ann. § 47.03(a)(3) (Vernon 1994 & Supp. 2001) (prohibiting any person from intentionally or knowingly becoming "a custodian of anything of value bet or offered to be bet" for gain). Furthermore, fantasy sports providers "sell chances . . . on the performance of . . . participant[s] in . . . [athletic] game[s]." Tex. Penal Code Ann. § 47.03(a)(4) (Vernon 1994 & Supp. 2001).


360. See D'Orio v. Startup Candy Co., 266 P. 1037, 1038 (Utah 1928).

361. See Utah Code Ann. § 76-10-1101(1) (1999) (defining "gambling" as "risking anything of value . . . upon the outcome of a contest . . . [when the] 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").

38. Virginia

Virginia applies the traditional common law definition of gambling. All fantasy sports participants involved in pay-to-play contests may be in violation of Virginia’s gambling prohibition. Virginia does not recognize the validity of gaming contracts; therefore, residents may be unable to collect prize winnings and creditors may have difficulty recovering entry fees.

39. Washington

Washington defines gambling using the traditional common law elements. The element of chance requires only that “chance ... be an integral part which influences [the contest’s] result.” Consideration does not require monetary payment; therefore, all fantasy sports contests arguably qualify as lotteries. Furthermore, fantasy sports contests

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364. See VA. CODE ANN. § 18.2-325(1) (Michie 1996) (defining “gambling” as “[t]he making, placing or receipt, of any bet or wager ... made in exchange for a chance to win a prize ... or thing of value, dependent upon the result of any game, contest or any other event the outcome of which is uncertain or a matter of chance”). Anyone who illegally gambles is guilty of a misdemeanor. VA. CODE ANN. § 18.2-326 (Michie 1996).


366. Seattle Times Co. v. Tielsch, 495 P.2d 1366, 1368 (Wash. 1972); State ex rel. Schillberg v. Safeway Stores, Inc., 450 P.2d 949, 953 (Wash. 1969); Sherwood & Roberts-Yakima, Inc. v. Leach, 409 P.2d 160, 162 (Wash. 1965); D’Orio v. Jacobs, 275 P. 563, 565 (Wash. 1929); State v. Danz, 250 P. 37, 38 (Wash. 1926); Society Theater v. City of Seattle, 203 P. 21, 22 (Wash. 1922) (stating that the elements of a lottery include consideration, prize, and chance). Washington’s legislature declared a public policy against gambling, also prohibiting lotteries “for which no valuable consideration has been paid or agreed to be paid.” WASH. REV. CODE ANN. § 9.46.010 (West 1998). For a statutory definition of lotteries, see WASH. REV. CODE ANN. § 9.46.0257 (West 1998).

367. Seattle Times Co., 495 P.2d at 1369. “[T]he fact that skill alone” eliminates many contestants “does not make [a] contest any less a lottery if chance ... [then] proximately influences the final result.” Id. at 1370.

368. See id. at 1369. Sufficient consideration is present when a “participant is required to do something he might not otherwise do, and if there is in fact a benefit flowing to the promoter ... induc[ing] him to make [an] offer,” the opinion of the
may constitute unlawful gambling.\textsuperscript{369}

40. West Virginia

The traditional common law definition of gambling is endorsed by West Virginia.\textsuperscript{370} West Virginia uses the predominant factor doctrine to determine the element of chance.\textsuperscript{371} However, the attorney general explicitly recognized that chance is not a predominant factor in determining which sports bettors receive prizes; therefore, sports betting may be legalized by appropriate legislation.\textsuperscript{372} Fantasy sports contests, including ESPN’s version, should be permitted in West Virginia.

41. Wisconsin

Wisconsin defines gambling using the traditional common law elements.\textsuperscript{373} The element of chance requires that chance, not skill, be the dominant factor determining the winner.\textsuperscript{374} While chance plays a significant role in fantasy sports contests, it is possible that such contests would be permitted as bona fide contests for the determination of skill.\textsuperscript{375} Consideration does not require monetary payment;\textsuperscript{376} therefore, participant that he has given nothing of value is not determinative. \textit{Id.}

\textsuperscript{369} See \textit{WASH. REV. CODE ANN.} \textsection 9.46.0237 (West 1998) (defining “gambling” as “staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person’s control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome”).


\textsuperscript{371} Hudson, 37 S.E.2d at 558.


\textsuperscript{373} Kayden Indus., Inc. v. Murphy, 150 N.W.2d 447, 449 (Wis. 1967); \textit{State ex rel. Regez v. Blumer}, 294 N.W. 491, 492 (Wis. 1940); \textit{State ex rel. Trimpe v. Multerer}, 289 N.W. 600, 603 (Wis. 1940); \textit{State ex rel. Cowie v. La Crosse Theaters Co.}, 286 N.W. 707, 710 (Wis. 1939) (lottery involves “prize, chance and consideration”); Coca-Cola Bottling Co. of Wis. v. La Follette, 316 N.W.2d 129, 132 (Wis. Ct. App. 1982). For a statutory codification, see \textit{WIS. STAT. ANN.} \textsection 945.01(1) (West 1996 & Supp. 2000). For Wisconsin’s constitutional gambling prohibition, see \textit{WIS. CONST. art. IV, \textsection 24(6)(c)}.

\textsuperscript{374} State v. Dahlk, 330 N.W.2d 611, 617 (Wis. Ct. App. 1983).

\textsuperscript{375} See \textit{WIS. STAT. ANN.} \textsection 945.01(1)(b) (West 1996 & Supp. 2000). However, if chance dominates the outcome of fantasy sports contests, then such contests may also be considered illegal bets. \textit{See WIS. STAT. ANN.} \textsection 945.01(1) (West 1996 & Supp. 2000) (defining “bet” as “a bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value specified in the agreement”).

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all fantasy sports contests are subject to interpretation as lotteries. Both fantasy sports contestants and providers could be subject to misdemeanor liability.  

42. Wyoming

Wyoming uses the traditional common law elements to define gambling. Fantasy sports contests arguably fall within Wyoming’s prohibition on gambling. However, fantasy sports contests may be permitted as bona fide contests of skill. If Wyoming determines that fantasy sports contests constitute gambling, then Wyoming residents may have difficulty enforcing prize winnings.

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376. See Blumer, 294 N.W. at 492 (saying “[c]onsideration consists in a disadvantage to the one party or an advantage to the other”; see also Kayden Indus., Inc., 150 N.W.2d at 450 (defining “consideration” as “anything which is a commercial or financial advantage to the promoter or a disadvantage to the participant”).

377. WIS. STAT. ANN. § 945.02(1), (3) (West 1996) (prohibiting anyone from making bets or conducting lotteries). Fantasy sports providers could face felony prosecution for “commercial gambling.” See WIS. STAT. ANN. § 945.03(1m)(b), (d) (West 1996 & Supp. 2000) (prohibiting anyone from receiving bets for gain or conducting a lottery where the consideration and prize are money). Any fantasy sports business that relies on wire communication facilities to send information to the public could also be subject to “commercial gambling” liability. WIS. STAT. ANN. § 945.03(1m)(g) (West 1996 & Supp. 2000) (prohibiting the use of “wire communication facility for the transmission . . . of information assisting in the placing of a bet or offer to bet on any sporting event or contest”).

378. 37 Gambling Devices v. State (Cheyenne Elks), 694 P.2d 711, 718 (Wyo. 1985); Williams v. Weber Mesa Ditch Extension Co., Inc., 572 P.2d 412, 414 (Wyo. 1977) (“The three elements of a lottery are consideration, chance and prize.”). 379. See WYO. STAT. ANN § 6-7-101(a)(iii) (Michie 2001) (defining “gambling” as “risking any property for gain contingent . . . upon . . . chance . . . or the happening or outcome of an event, including a sporting event, over which the person taking a risk has no control”). Fantasy sports contestants may be liable for engaging in gambling. See WYO. STAT. ANN. § 6-7-102(a) (Michie 2001) (subjecting offenders to misdemeanors punishable by imprisonment or fine).


381. See WYO. STAT. ANN. § 1-23-106 (Michie 2001) (voiding all contracts for money or other items of value won through gambling).