



The Legality of Fantasy Sports

By Jonathan Griffin

Fantasy sports is a multibillion-dollar business these days, tripling in growth over the last decade. Clearly, the game in which participants' fantasy teams compete against each other based on actual professional players' or teams' statistics, has captured the country's imagination. Major League Baseball partners with fantasy heavyweight site DraftKings on a daily fantasy game, and Sunday morning television has as much fantasy football coverage as actual NFL coverage. The Fantasy Sports Trade Association (FSTA) estimates that 56.8 million people play fantasy sports and spend an average of \$465 a year on fantasy games.

While people have been playing season-long fantasy sports since the 1980s, daily fantasy sports (DFS) is a relatively new form of gaming. Rather than picking a team over the course of a season, players now can select a team for a day or week and win prizes based on their performance. DFS represents more than half of FSTA's estimated yearly spending by players. This brief examines the legal questions and actions surrounding these games.

Federal Action

Two historic pieces of federal legislation still may have an impact on fantasy sports. The first, the Interstate Wire Act of 1961 (the Wire Act), prohibited people from making bets or wagers over the phone. The Wire Act subsequently was found to apply to Internet communication as well. The second is the Professional and Amateur Sports Protection Act (PASPA), which makes wagering on sports generally illegal throughout the country. The law exempts Nevada's well-known sports wagering business, as well as the sports lotteries in Delaware, Montana and Oregon, because they were in operation prior to the legislation's passage in 1993.

PASPA and the Wire Act could, in theory, prohibit fantasy sports, but fantasy games have never been challenged under either law. The Wire Act may not pertain, since it applies only to "games of chance," and fantasy sports have never been classified as such. PASPA may not apply either, because fantasy games generally have not been considered gambling. Many professional sports leagues host fantasy games on their league websites and promote their use on television and radio.

A fantasy sport is a game where participants act as owners to build a team that competes against other fantasy owners. The competition is based on statistics generated by actual professional sports players or teams. Probably the most common variant converts statistical performance into points that are compiled and totaled according to a roster selected by a manager who makes up a fantasy team. These point systems typically are simple enough to be manually calculated by a "league commissioner." More complex variants use computer modeling of actual games based on statistical input generated by professional sports. In fantasy sports, participants can trade, cut and sign players, just like real sports owners do.

Source: Wikipedia

Did You Know?

- Montana is the only state that currently prohibits Internet fantasy gaming in statute.
- Fantasy sports are exempted from the Unlawful Internet Gambling Enforcement Act.
- Massachusetts introduced legislation in 2015 to allow the state's lottery to offer online daily fantasy games.

Fantasy sports also could have been affected by the Uniform Internet Gambling Enforcement Act (UIGEA), which made it illegal to gamble over the Internet. UIGEA, however, includes a specific exemption for fantasy sports, provided they meet three requirements: 1) the value of prizes is not dependent on the number of players; 2) the outcome is determined by fantasy-player skill and knowledge, and is based on statistical results of real-world athletes; and 3) the outcome cannot be determined by the score of the game or based solely on one individual player's performance. These protections, which were built into UIGEA before DFS sites existed, were carved out to support season-long fantasy contests. The effect on DFS sites is unknown.

State Action

States still maintain the most control over determining which activities constitute illegal gambling. Most states do not address fantasy sports in statute. In fact, only two states do. Maryland enacted legislation in 2012 to explicitly exempt fantasy sports competitions from the state's gaming laws. Montana legalized fantasy sports leagues in 2007, but explicitly prohibited people from "conduct[ing] [I]nternet or telephone wagering on fantasy sports leagues."

Without a statute to clarify the law, the other states and territories have relied on court precedent, attorneys general opinions, public statements, or other laws to determine or predict the legality of fantasy sports in their jurisdictions. The most common reason to consider fantasy sports a legal activity is the "dominant element test," which accepts that there is a percentage of chance in many legal activities, such as stock trading. However, if the amount of skill outweighs the amount of chance needed to be successful, the activity does not constitute gambling. DraftKings and FanDuel, the two largest DFS sites, both state that, because fantasy sports rely on the skill of the player competing, they are not games of chance and general state gambling laws do not apply to them.

A few jurisdictions have left fantasy sports' legal status undecided due to a combination of unfavorable court opinions, a more stringent definition of a "game of chance" or public assertions by the state about fantasy sports' legality. Four states—Arizona, Iowa, Louisiana and Washington—have so much uncertainty that most fantasy sites prohibit players in those states from accessing their sites. In turn, legislators in all four states have worked to clarify their laws to allow for fantasy play. Lawmakers in Montana have also introduced legislation to remove the statutory provisions that prohibit online fantasy play. So far, none of the bills has passed.

States also have introduced other legislation around fantasy gaming. Indiana, Massachusetts and Pennsylvania introduced legislation this term to allow their casinos or lottery to offer daily fantasy games, and Texas introduced legislation that would require sports betting sites, including fantasy sports sites, to obtain a license before offering sports betting in the state.

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Additional Resources

Fantasy Sports Trade Association, [Industry Demographics](#).

Marc Edelman. "A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime." Harvard Law School, *Journal of Sports & Entertainment Law*,