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# Legal Issues with Social Games, eSports and Fantasy Sports

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# Overview

The well known mantra

Prize, chance, consideration

is only part of the story

# Overview

In some states ...

illegal to bet on games of chance **or skill**

# Overview

Illegal gambling

not gambling

Regulated, legal gambling

# Overview

Eliminate one of prize, chance or consideration

consideration, **skill**, prize = contest

**no consideration**, chance, prize = sweepstakes

Consideration, chance, **no prize** = ?

# Compliance

If contest or sweepstakes

Must comply with contest/sweepstakes laws

# Consideration

Money...  
or anything of value

May include virtual currency, points, etc.

# AMOE

Beware - Free Alternative Means of Entry

Even if some can play for free ....

if others pay, it may be gambling!

# Enforcements

Kelly Mathis

serving 6 years for illegal gambling

internet sweepstakes cafes

despite having AMOE

# Class Action Lawsuits

3 social game companies recently sued

allegedly using game mechanics that involved gambling

Offer free currency to play, option to buy (AMOE?)

# Chance v. skill

Test varies by state

Some innovative and emerging fantasy sports business models raise risks

**shorter duration** (daily vs. season long)

**less skill exerted** (randomly picked teams vs. player selection and management), more risk

Each business model is different and all of the facts need to be considered to assess legality

# Prize

Prize = money or other thing of value

Virtual currency/virtual goods?

Impact of secondary markets?

# Fantasy Sports

UIGEA does not make all fantasy sports legal

Specific, limited exemption under that law

Other federal and state law still may apply

# UIGEA Carve-out for Fantasy Sports

UIGEA's fantasy sports exemption applies if:

- (a) no fantasy team is based solely on the current membership of an actual team;
- (b) all winning outcomes reflect the **relative knowledge and skill** of the participants and are determined predominantly by the **accumulated statistical performance** of individual athletes in real-world sporting events;
- (c) no winning outcome is based:
  - (i) on the score, point spread, or any performance of a single real-world team or
  - (ii) solely on the performance of a single athlete in a single real-world sporting event; **and**
- (d) all prizes offered to the winning participants are **established and made known to the participants in advance** of the game and the value of the prize pool is **not determined by the number of participants or the amount of fees paid by the participants**.

# Other Federal Laws

Wire Act prohibits most interstate telecommunications involving bets or wagers

December 2011 DOJ memo limited to:  
bets or wagers on a sporting event **or contest**

# PASPA

The Professional & Amateur Sports Protection Act prohibits:

... a lottery, sweepstakes or other betting, gambling or wagering scheme based .... on one or more competitive games in which amateur or professional athletes participate ...or on one or more performances of such athletes in such games

# eSports - Good News/Bad News

eSports participants = professional athletes

good news – can get visas

bad news ? – may complicate legal analysis  
of some business models regarding sports  
betting

# Key Take-aways

A little knowledge is a dangerous thing!

Many layers of complexity to the law

Many subtle issues

Need to thoroughly analyze legality of business  
models

# Questions?

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