

12-1-2018

The Online Sports World: the Loss of Billions, Is It Time to Take a Risk

Bhanuka Mahabamunuge

Maurice A. Deane School of Law at Hofstra University

Follow this and additional works at: <https://scholarlycommons.law.hofstra.edu/jibl>



Part of the [Law Commons](#)

Recommended Citation

Mahabamunuge, Bhanuka (2018) "The Online Sports World: the Loss of Billions, Is It Time to Take a Risk," *Journal of International Business and Law*. Vol. 18: Iss. 1, Article 8.

Available at: <https://scholarlycommons.law.hofstra.edu/jibl/vol18/iss1/8>

This Notes & Student Works is brought to you for free and open access by Scholarship @ Hofstra Law. It has been accepted for inclusion in Journal of International Business and Law by an authorized editor of Scholarship @ Hofstra Law. For more information, please contact lawscholarlycommons@hofstra.edu.

NOTE

THE ONLINE SPORTS WORLD:
THE LOSS OF BILLIONS, IS IT TIME TO TAKE A RISK?

*Bhanuka Mahabamunuge**

I. INTRODUCTION

In 2013, estimates reported that illegal sports gambling accrues approximately \$320-\$500 billion *annually*.¹ A huge portion of that money derives from American participation in this illegal online market.² In 2016, a report published by the American Gaming Association stated that illegal wagers up to \$150 billion occur in American sports annually.³ The issue even caught national attention when it came before the Supreme Court in *Murphy v. NCAA*.⁴ In response to the case, Denni Drazin, the former President of New Jersey's Thoroughbred Horsemen's Association stated, "Everybody knows this is a trillion-dollar business, it's been long enough in this country where we foster an illegal enterprise and the states and the federal government get no share."⁵

The American sports market continues to make billions of dollars in advertising, merchandise sales, and, mainly, television revenue from broadcasting companies.⁶ However, the National Football League ("NFL") remains a giant among the sports leagues.⁷ Although society may view sports leagues as a huge money-making machine, it actually consumes a small entity when it comes to global commerce.⁸ The NFL cannot compare when measured against revenue giants such as Wal-Mart, Apple, Microsoft, and so on.⁹ By legalizing online gambling, an untapped market could result in huge net gains. Legalizing online gambling

*Bhanuka Mahabamunuge, JD Candidate 2019. I would like to thank my family and friends for their support and encouragement throughout law school. I would also like to thank Dean Julian Ku for his input and advice throughout the completion of this note.

¹ Pal Singh, *bbc.com, How does illegal sports betting work and what are the fears?* (Feb. 19, 2013) <http://www.bbc.com/news/business-21501858>.

² *American Gaming Association Hot Issues: Sports Betting*, AMERICANGAMING <https://www.americangaming.org/advocacy/policy-positions/hot-issue-sports-betting> (last visited Dec. 6, 2018).

³ *Id.*

⁴ *Murphy v. NCAA*, 138 S.Ct 1461 (2018).

⁵ *4 major pro sports leagues, NCAA sue to stop N.J. from allowing betting*, NJ.COM (Aug. 7, 2012), http://www.nj.com/politics/index.ssf/2012/08/4_major_pro_sports_leagues_sue.html http://www.nj.com/politics/index.ssf/2012/08/4_major_pro_sports_leagues_sue.html.

⁶ Greg McFarlane, *How the NFL Makes Money (GME, HRL)*, INVESTOPEDIA.COM, (Apr. 27, 2017) <http://www.investopedia.com/articles/personal-finance/062515/how-nfl-makes-money.asp>.

⁷ Kurt Badenhausen, *Full List: The World's 50 Most Valuable Sports Teams of 2018*, FORBES (Jul. 18, 2018), <https://www.forbes.com/sites/kurtbadenhausen/2018/07/18/full-list-the-worlds-50-most-valuable-sports-teams-of-2018/#5f7f88546b0e>.

⁸ Greg McFarlane, *How the NFL Makes Money (GME, HRL)*, INVESTOPEDIA (Apr. 27, 2017) <http://www.investopedia.com/articles/personal-finance/062515/ho0-nfl-makes-money.asp>.

⁹ Transmission of Wagering Information; Penalties, 18 U.S.C.A.20§ 1084 (LEXIS through Pub. L. No 115-227).

and allowing respected leagues and associations to regulate the policing and market value of this venture will benefit professional sports and the United States ("US") immensely.

The purpose of this note is to analyze the market of the online sports gambling world and uncover how the black-market trade from overseas impacts the professional sports markets within the U.S. This note will focus specifically on how the illegal online sport world amassed a multi-billion dollar empire, as well as the ways in which the leagues themselves, as well as the U.S., can benefit from the legalization of online gambling. This note will touch on present laws that prohibit the online sports gambling market from becoming legalized. Lastly, this note will propose new legislation with a focus on benefitting the future world of online sports gambling.

II. DOMESTIC LAWS AND REGULATIONS PROHIBITING ONLINE SPORTS GAMBLING

The statute that prohibits legalization of gambling in the U.S. is the Federal Wire Act of 1961.¹⁰ Section (a) of the act states:

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.¹¹

The Federal Wire Act of 1961 ("Wire Act") was initially implemented to stop bookmaking¹² of illegal bets through telephones, as it was "[o]nly legal to make bets in Las Vegas."¹³ The Wire Act was created to stop habitual gambling and the transfer of sports betting information over the telephone, or, in other words, to stop illegal bookmakers from reaching out to a more national market via the telephone.¹⁴ The Act was therefore established well before illegal, online sports betting even existed.¹⁵

With the invention of the internet, however, bookmakers now have more access to a bigger, fluid market. To make illegal online gambling in the U.S possible, bookmakers use online sites that are routed through various countries and based in small islands where the

¹⁰ *Id.*

¹¹ Transmission of Wagering Information, *supra* note 9.

¹² Singh, *supra* note 1 (describing "bookmaking" or the work of "bookies" as individuals who take bets from gamblers based on odds they are given from their superior. Their job is to collect cash from the gamblers and make the payment depending on the outcome of the wager).

¹³ *Is Online Sports Betting Legal in the United States*, USASPORTSBOOKSONLINE, <http://www.usaonlinesportsbooks.com/is-sports-betting-legal-in-the-united-states.html> (last visited Dec. 6, 2018).

¹⁴ *Id.*

¹⁵ *Id.*

THE ONLINE SPORTS WORLD: THE LOSS OF BILLIONS, IS IT TIME TO TAKE A RISK?

laws of online sports gambling differ than the U.S.¹⁶ As stated, the Wire Act was not established to make online gambling illegal, as the internet did not exist at its creation. Nevertheless, the Wire Act is broad enough in its language to outlaw the online gambling of today. For example, 18 U.S. Code § 1084(a) states:

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....¹⁷

In the U.S., in order to prove Wire Fraud, the government needs to prove four elements: (1) that the Defendant voluntarily and intentionally devised or participated in a scheme to defraud another out of money; (2) that the Defendant did so with the intent to defraud; (3) that it was reasonably foreseeable that interstate wire communications would be used; and, (4) that interstate wire communications were in fact used.¹⁸

When the U.S. Government prosecutes individual persons and false companies running illegal gambits under the theory of Wire Fraud, the Defendants in the cases usually rely on a defense that the Wire Act does not speak to sporting acts, but rather traditional casino-type wagering.¹⁹ Also, another common defense presented by those prosecuted for illegal online gambling is the statute's implication of telephone communications. Section 1084(d) and its specific reference to "common carriers" within the jurisdiction of the Federal Communications Commission ("FCC"), supports the argument that a "wire communication facility" is limited to telephone companies."²⁰ Therefore, because the statute fails to directly state that the use of online gambling violates a federal, state, or local law, the use of the internet for such purposes would not appear to implicate directly to any of the FCC's common carrier rules.²¹ Nevertheless, those in opposition argue that Congress' broad definition was purposeful in order to cover a wide range of wire communication modes that were both known and unknown in 1961, such as the internet.²²

Despite the Wire Act's seemingly narrow scope, as sports betting began to permeate the internet, the U.S. Court System used the Act to support prosecutions of online sports gambling businesses.²³ The Justice Department maintains that the Wire Act prohibits "any

¹⁶ *Id.*

¹⁷ *Is Online Sports Betting Legal in the United States*, USA SPORTSBOOKSONLINE, <http://www.usaonlinesportsbooks.com/is-sports-betting-legal-in-the-united-states.html> (last visited Dec. 67=, 2018); Transmission of Wagering Information; Penalties, 18 U.S.C.S. § 1084(a) (LEXIS through Pub. L. No.115-277).

¹⁸ Office of the United States Attorney, 941. 18 U.S.C. 1343—*Elements of Wire Fraud*, Justice.gov (retrieved Nov 4, 2017) <https://www.justice.gov/usam/criminal-resource-manual-941-18-usc-1343-elements-wire-fraud>.

¹⁹ Jeffrey Rodefer, *Federal Wire Wager Act* (Nov 4, 2017) <http://www.gambling-law-us.com/Federal-Laws/wire-act.htm>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

telecommunicated wager placed or received by a person located in the United States.”²⁴ Also, violators of this Act have argued that out-of-country betting is permissible because the company, or server, is set in another country that allows gambling.²⁵ Nevertheless, the U.S. government has made it clear that the interstate commerce construction of the statute allows for prosecution.²⁶

A. The Illegal Gambling Business Act

Section 1955 of The Illegal Gambling Business Act (“Gambling Business Act”) makes it illegal to own and operate an online gambling business.²⁷ Section (a) of the Gambling Business Act states, “Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.”²⁸ Section (b) subsection (4) of the Gambling Business Act reads, “[G]ambling 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.”²⁹ The Gambling Business Act specifically states that it is illegal to “own, operate, manage or have any financial management” of these business, and these businesses, if so owned, are capable of being penalized as they are prohibited on U.S. soil and U.S. owned territories.³⁰

To avoid the Gambling Business Act and prevent detection, many companies set up overseas and reroute through various servers before reaching the American market.³¹ Since the Gambling Business Act deters the establishment of gambling businesses within the U.S. and its Territories many people from offshore and overseas markets have hacked their way into the system, making prosecution and regulation of these companies, and/or the people involved in the companies, difficult.³²

When establishing overseas gambling sites, individuals try to avoid prosecution in the U.S. by stating that the U.S. Government has no jurisdiction and, therefore, the foreign countries in which these sites were established have no laws against online sports gambling.³³ However, even if a gambling business is established overseas thus avoiding the Gambling

²⁴ DOJ’s *Reversal on the Wire Act- What It Means for Internet Gaming*, NATLAWREVIEW, <https://www.natlawreview.com/article/doj-s-reversal-wire-act-what-it-means-internet-gaming> (last visited Dec. 6, 2018).

²⁵ *International Bancorp L.L.C. v. Societe Des Baines De Mer Et Du Cercle Des Etranges A Monaco*, 192 F. Supp. 2d 467 (E.D. VA. 2012).

²⁶ *Id.*

²⁷ Prohibition of Illegal Gambling Business, 18 U.S.C.S. § 1955 (Lexis through Pub. L. No 115-227).

²⁸ *Id.*

²⁹ Prohibition of Illegal Gambling Business, 18 U.S.C.A. § 1955.

³⁰ *United States of America v. Kaczowski*, 114 F. Supp. 2d 143 (W.D. NY. 2000) (holding that bets which were accepted offshore in a country in which gambling was legal would still be illegal under The Federal Wire Act and would be prosecuted).

³¹ *Is Online Sports Betting Legal in the United States*, *supra* note 13.

³² Kaczowski, *supra* note 30.

³³ *International Bancorp L.L.C. v. Societe Des Baines De Mer Et Du Cercle Des Etranges A Monaco*, 192 F. Supp. 2d 467 (E.D. VA. 2012) (holding that there is jurisdiction with illegal gambling sites that are established overseas).

THE ONLINE SPORTS WORLD: THE LOSS OF BILLIONS, IS IT TIME TO TAKE A
RISK?

Business Act, it is still illegal to have gambling sites do business in the U.S. through the Wire Act.³⁴

B. Professional and Amateur Sports Protection Act

Before the ruling in *Murphy v. NCAA*,³⁵ the Professional and Amateur Sports Protection Act ("PASPA") outlawed the set-up of a system or business of any illegal sports betting site by an individual or government entity.³⁶ PASPA stated that it was "unlawful for—(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity."³⁷ Therefore, it was formerly illegal for government entities to own and regulate any gambling that was considered a professional or amateur sport.³⁸ Under PASPA, professional sports leagues can request an injunction if any entity starts a sports gambling business.³⁹

In *NCAA ET AL., v. Governor of New Jersey*, an individual state (New Jersey) tried to take advantage of the revenue created from online sports gambling.⁴⁰ At the time, New Jersey was in financial trouble, looking to reboot their struggling gambling market in Atlantic City.⁴¹ Because of this, governing bodies amended the legislation allowing for casino and horse track sports betting.⁴² Under the terms, gambling is only "permitted on professional and college sports that take place in the state and on New Jersey college teams regardless of where they play."⁴³ New Jersey experienced financial benefit from the world of online sports gambling, which saved its failing market.⁴⁴ Unfortunately, New Jersey's efforts were stopped by its superior court.⁴⁵ New Jersey State Senator, Ray Lesniak, stated PASPA was "unconstitutional" and "gives a monopoly to a few states, offshore betting operators, and organized crime."⁴⁶

However, the current controversy surrounding PASPA did not end with the 2013 decision of *NCAA v. Governor of New Jersey*.⁴⁷ When the Supreme Court agreed to hear the case, Marc Dunbar, a gaming attorney, stated, "[T]he legal dispute could result in a dramatic

³⁴ In this case, the court determines that there is jurisdiction with illegal gambling sites that are established overseas. *International Bancorp L.L.C. v. Societe Des Baines De Mer Et Du Cercle Des Etranges A Monaco*, 192 F. Supp. 2d 467 (E.D. VA. 2012).

³⁵ *Murphy*, *supra* note 4.

³⁶ Professional and Amateur Sports Act, (LEXIS through Pub. L No. 102-559).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *NCAA, et Al., v. Governor of N.J.*, 730 F.3d 208 (3rd Cir. 2013).

⁴¹ *NCAA*, *supra* note 4.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ David Purdrum et Al., *Supreme Court will hear New Jersey sports betting appeal: What's next?* (July 19, 2017) <http://abcnews.go.com/Sports/supreme-court-hear-jersey-sports-betting-appeal/story?id=48725240>.

change in how the nation approaches sports gambling.”⁴⁸ Further, “[t]he sports betting landscape in the United States has evolved significantly during nearly five years of litigation between [Governor] Christie and the sports leagues”⁴⁹ Under *NCAA*, many proponents hoped the Supreme Court would rule in favor of New Jersey, thus opening the floodgates for new legislation, but such hope was to no avail.

In 2017, among the states to introduce sports betting were Connecticut, Maryland, Michigan, New York, Oklahoma, Pennsylvania, South Carolina and West Virginia.”⁵⁰

In 2017, the U.S. Supreme Court decided to hear arguments regarding possible PASPA repeal and whether individual states should be allowed to set up establishments to allow for sports gambling in the U.S.⁵² Theodore Olson argued on behalf of New Jersey that PASPA is an “unconstitutional attempt to have the states ban sports betting.”⁵³ Olson argued PASPA “commandeers” “the states to enforce the federal law.”⁵⁵ In conclusion, Olson argued “PASPA unconstitutionally commandeers the States and, therefore the statute’s unconstitutional provisions are not severable.”⁵⁶

According to the *NCAA*, PASPA “does not force states to enact federally-prescribed legislation or to enforce any federal regulatory regime.”⁵⁷ The *NCAA* and Professional Sports League argued:

PASPA contains no affirmative command of any kind. It does not require states to maintain, enact, enforce, or do anything. Instead, under PASPA states must simply refrain from taking certain actions, i.e., from operating sports-gambling schemes or from authorizing third parties to do so in their stead.⁵⁸

Further, the defense argued “Congress sought to prevent the spread of state-sponsored gambling. In full compliance with the anti-commandeering doctrine.”⁵⁹ The arguments in the brief go on to say PASPA “prohibits a wide range of government and private conduct that would facilitate and encourage the spread of state-sponsored sports gambling.”⁶⁰

On May 14, 2018, the decision by the Supreme Court turned on whether PASPA was constitutional or not.⁶¹ The Supreme Court held, “Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own.”⁶² Further, “[The

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵² *Id.*

⁵³ Johnathan D. Salant, *Christie Optimistic after N.J. pitches U.S. Supreme Court on sports betting*, nj.com (Dec 4, 2017), http://www.nj.com/politics/index.ssf/2017/12/will_supreme_court_overturn_federal_sports_betting.html.

⁵⁵ Brief for Petitioner, Governor Christopher J. Christie, et al., v. *NCAA*, et al., (2017) No. 16-476.

⁵⁶ *Id.*

⁵⁷ Brief for Defendant, Governor Christopher J. Christie, et al., v. *NCAA*, et al., (2017) No. 16-476.

⁵⁸ *Id.* At 2.

⁵⁹ *Id.* At 59.

⁶⁰ *Id.* At 59.

⁶¹ *Murphy*, supra note 4.

⁶² *Id.*

THE ONLINE SPORTS WORLD: THE LOSS OF BILLIONS, IS IT TIME TO TAKE A RISK?

Supreme Court's] job is to interpret the law Congress has enacted and decide whether it is consistent with the Constitution. PASPA is not. PASPA 'regulate[s] state governments' regulation' of their citizens . . . the Constitution gives Congress no such power."⁶³ Essentially, the Supreme Court held that PASPA violated the 10th Amendment.⁶⁴ Additionally, PASPA was considered commandeering for it disallowed the states from regulating sports legislation.⁶⁵

C. The Unlawful Internet Gambling Enforcement Act of 2006

The Unlawful Internet Gambling Enforcement Act ("Unlawful Internet Act") of 2006 prohibits gambling businesses from knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the internet and that is unlawful under any federal or state law.⁶⁶ The U.S. Congress admitted that there is a need for more legislation to deal with the increase in online gambling.⁶⁷ In subsection (4) of the (a) findings section, Congress stated, "New mechanisms for enforcing gambling laws on the Internet are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses [s]tate or national borders."⁶⁸ The Unlawful Internet Act states, "No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling."⁶⁹ The Unlawful Internet Act defines accepting under the act as either (1) credit, or other proceeds of credit, (2) an electronic fund transfer, or funds transmitted by or through a money transmitting business, (3) any check, draft, or similar instrument which is drawn on behalf of such other person, and (4) the proceeds of any other form of financial transaction.⁷⁰ Under the Unlawful Internet Act, persons illegally setting up business and, or gambling through these businesses can be charged and indicted.⁷¹

In *Interactive Media Entm't & Gaming Ass'n Inc. v. Attorney General of U.S.*, the Plaintiff tried to attack the construction and constitutionality of the statute by calling it "vague."⁷² *Interactive* claimed, "If the law of the foreign jurisdiction provides that the bet is deemed to be placed and received in that jurisdiction, the Act becomes unconstitutionally vague because it is impossible to know where the bet was placed as a matter of law."⁷³ The court reasoned that the Unlawful Internet Act itself "does not make any gambling activity

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Unlawful Internet Gambling Enforcement Act of 2006 Overview*, FDIC (Nov. 17), <https://www.fdic.gov/news/news/financial/2010/fil10035a.pdf>.

⁶⁷ *Murphy*, supra note 4.

⁶⁸ Congressional findings and purpose, 31 U.S.C.S. § 5361 (Lexis Pub. L. No. 115-108).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Interactive Media Entertainment and Gaming Ass'n Inc. v. Attorney General of U.S.* 580 F.3d 113, 113 (3rd Cir. 2009).

⁷³ *Id.* at 113.

THE JOURNAL OF INTERNATIONAL BUSINESS & LAW

illegal,”⁷⁴ but rather “turns on how the law of the state from which the bettor initiates the bet would treat the bet, i.e., if it is illegal under that state’s law, it constitutes “unlawful internet gambling” under the Act.”⁷⁵ The Unlawful Internet Act allows the U.S. Government to prosecute any individual or business that violates laws of internet gambling according to the state’s laws.⁷⁶ Prosecution is allowed even if the foreign jurisdiction where the bet is being placed or received has legalized online gambling.⁷⁷

III. LEGALIZED SPORTS GAMBLING: A HISTORICAL GREENLIGHT

In the United States, online sport gambling is legal in Delaware, Montana, Oregon, and Delaware.⁷⁸ Legal online gambling within these states has historical roots.⁷⁹ Under the Immunity Clause, a state with both specific history of licensed gambling and, meets the criteria installed by the law is offered the ability to continue licensed gambling.⁸⁰ The Unlawful Internet Gambling Act did not directly forbid anyone from gambling, rather the act just forbade the transactions of gambling pursuant to active state laws. The Unlawful Internet Act left wiggle room for offshore betting sites, “[b]ecause... the [Unlawful Internet Act] [does] not make betting sports online illegal, only the monetary transactions from the standpoint of the business, American players are able to sign up at... sports books and bet real money legally.”⁸¹ Thus, offshore bookmakers are taking advantage of the few domestic states allowed to set up online sports gambling.⁸²

A. Overseas and Off-Shore Sites Enable Circumvention of Laws

While U.S. federal law makes gambling on sports illegal (except in Las Vegas), many individuals take advantage of this and capitalize on a market grey area with little to no competition from the states. Overseas bookmakers have set up sites for U.S. residents to use in order to gamble online, illegally, on sports.⁸³ As previously stated, there is \$150 billion wagered illegally on American sports,⁸⁴ and the worldwide revenue for illegal online sports gambling annually is estimated between \$320 and \$500 billion.⁸⁵

⁷⁴ *Id.* at 113.

⁷⁵ *Id.* at 113.

⁷⁶ *Id.* at 113.

⁷⁷ *Id.* at 113.

⁷⁸ Roy Bragg, *The Long, strange war over legal sports gambling*, San Antonio Express-News (November 14, 2017) <http://www.expressnews.com/sports/columnists/roy-bragg/article/The-long-strange-war-over-legal-sports-gambling-12357412.php>.

⁷⁹ Legal Sports Betting Sites, *States With Legal Sports Betting Available*, LegalSportsBettingSites.com (Nov. 17, 2017) <http://www.legalsportsbettingsites.com/states/index.html>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Gamble Online, *U.S. Online Gambling Sites, Laws & FAQ*, gambleonline.co (Oct. 28, 2018) <https://www.gambleonline.co/usa/>.

⁸⁴ Americangaming.org, *American Gaming Association Hot Issues: Sports Betting* (Retrieved 2017), <https://www.americangaming.org/advocacy/policy-positions/hot-issue-sports-betting>.

⁸⁵ Singh, *supra* note 1.

THE ONLINE SPORTS WORLD: THE LOSS OF BILLIONS, IS IT TIME TO TAKE A RISK?

With the complexities of online bookmakers and sites, the U.S. government experienced issues while policing and prosecuting the owners of these operations.⁸⁶ This in turn creates a lucrative market for illegal online sports gambling on American sports.⁸⁷ Thus, there is a lack of control and changes in regulation allowing sport leagues to get rid of illegal operators.

The implementation of the Wire Act allowed the U.S. to prohibit and prosecute bookmakers outside of Nevada.⁸⁸ The Wire Act's inception made it easier for officials to implement restrictions and regulate phone communications nationally and on the state level.⁸⁹ Since the invention of the internet, illegal gambling has not only expanded to offshore and overseas sites, making it difficult to prosecute, but also, the speed and fast-paced nature of the internet changes the type of regulation needed.

Each individual state has their own laws governing gambling. For example, Las Vegas and Maryland allow online gambling, but other states, such as New York do not.⁹⁰ The fact that PASPA disallowed state governments from establishing and regulating sports betting makes it almost impossible for a national solution where each state's residents may bet on sports online.

In an attempt to police online gambling, the Federal Bureau of Investigation ("FBI") warns against general betting online on unknown sites. The FBI warns that only some sites are allowed to operate and only some persons in the U.S. are allowed to take part in said operations.⁹¹ FBI advisory on online gambling states, "no placing cyber bets on sporting events or in virtual card games; no transferring money electronically for gambling; and no wagers in offshore Internet casinos even if you live in the U.S."⁹² The FBI states its strategy for dealing with and "tackling" illegal online gambling is to go after the "owners."⁹³

Stopping offshore and illegal sports betting operators from entering into the U.S and setting up shop has been difficult. These operators capitalize on opportunities arising from ineffective laws.⁹⁴ Leagues like the NFL, National Basketball Association ("NBA"), and Major League Baseball ("MLB") capitalize on marketing and television rights from overseas,

⁸⁶ Gamble Online, *supra* note 83.

⁸⁷ David Purdum, *Research shows U.S. could dominate global legalized sports betting market*, ESPN (Sep. 9, 2015) http://www.espn.com/chalk/story/_id/13614240/research-shows-united-states-dominate-global-legalized-sports-betting-market.

⁸⁸ Christine Hurt, *Regulating Public Morals and Private Markets: Online Securities Trading, Internet Gambling, and the Speculation Paradox*, 86 B.U. L. Rev. 371, 400 (2006).

⁸⁹ *Angelini v. Illinois Bell Telephone Company*, 418 F. 2d Ill (7th Cir. 1969) (holding that a telephone subscriber, who did not accept wagers but transmissions of information as to, wagers, betting odds, or changes in betting odds, violated IL statutes).

⁹⁰ *Lists the Gambling Legislation that each state has that is different from a state-to-state case*. NCSL, Gambling Legislation (Aug. 21, 2015), <http://www.ncsl.org/research/financial-services-and-commerce/2015-internet-gambling-legislation.aspx>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Lists the Gambling Legislation that each state has that is different from a state-to-state case*. NCSL, Gambling Legislation (Aug. 21, 2015), <http://www.ncsl.org/research/financial-services-and-commerce/2015-internet-gambling-legislation.aspx>.

but they lose on the gambling market.⁹⁵ “More than \$150 million of the NBA’s annual revenue comes from China. With so much access to sports at our fingertips, major leagues are christening foreign lands with community education programs to foster tangible connections.”⁹⁶ These leagues are capable of a global outreach that is unprecedented: “The world is getting smaller, and sports leagues are about to become incredibly grandiose.”⁹⁷ With sports from America becoming a bigger staple in overseas markets, it is only a matter of time before these laws involving the regulation of leagues, transactions, and economics become rudimentary and “old-fashioned;”⁹⁸ thus setting up the perfect framework to spring online sports gambling into the forefront of American commerce.

Talk of NFL teams moving abroad is becoming part of the national dialogue. NFL Commissioner Roger Goodell stated, “We don’t have to push teams to go now; they want to go, I actually believe a franchise in London is realistic.”⁹⁹ If an NFL franchise in a European country forms, imagine what effect the franchise will have on the laws that govern online sports gambling.¹⁰⁰ Forget the offshore bettors that are able to infiltrate the U.S. sports market to make \$320-500 billion a year,¹⁰¹ instead imagine the revenue other countries will reap if any franchise is to incorporate overseas.

A prominent case that encompasses violations of the Wire Act¹⁰² and the Internet Gambling Act¹⁰³ is *United States of America v. Lyons*.¹⁰⁴ The *Lyons* case provides an example of how people take advantage of the lack of regulation, difficulties of policing, and business opportunities exploited and created when an offshore gambling business invades the U.S. online sports betting market.¹⁰⁵ Due to the lack of online gambling business in the U.S., along with the huge popularity of participation in the illegal market, *Lyons* was able to profit from this illegal market.¹⁰⁶ Although the law forbids online sports gambling in the U.S., it will never stop black market businessmen from setting up offshore gambling sites that allow U.S. citizens to bet on sports illegally. The U.S. prosecuted the Defendants under the Internet Gambling Act and the Wire Act.¹⁰⁷ The court held that even though the business was set up

⁹⁵ *Id.*

⁹⁶ Matt Foley, *Major League Sports Gamble on World Domination*, OZY.com, (June 22, 2017) <http://www.ozy.com/the-huddle/major-league-sports-gamble-on-world-domination/77416>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Daniel Kaplan, *NFL considers selling data for overseas betting*, SportsBusinessJournal.com (April 2, 2018) <https://www.sportsbusinessdaily.com/Journal/Issues/2018/04/02/Leagues-and-Governing-Bodies/NFL.aspx>.

¹⁰¹ Singh, *supra* note 1.

¹⁰² Penalties, 18 U.S.C.S. § 1084(a) (LEXIS through Pub. L. No.115-277).

¹⁰³ 31 U.S.C.A. § 5361, *supra* note 68.

¹⁰⁴ *United States v. Lyons*, 740 F.3d 702 (1st Cir. 2014).

¹⁰⁵ *Id.* at 711-712 (illustrating a case where a Defendant set up a bookmaking business founded in 1966 named Sports off Shore (“SOS”) based in Antigua. The Defendant took bets by phone or over the Internet from the U.S. Most customers bet on sports teams and SOS allowed bettors to place bets against funds placed on deposits with SOS).

¹⁰⁶ See generally *United States v. Lyons*, *supra* note 104.

¹⁰⁷ *Id.*

THE ONLINE SPORTS WORLD: THE LOSS OF BILLIONS, IS IT TIME TO TAKE A
RISK?

in a foreign country and under a foreign jurisdiction, the Defendants were still in violation of the Wire Act due to the federal law that prohibited online sports gambling.¹⁰⁸

Failure to realize the value of the markets and propose proper legislation causes the states and leagues to continue to lose out on money. Gambling is so prevalent in today's global society that it has become an e-commerce market of its own.

IV. OPPORTUNITIES IN SPORTS GAMBLING

In addition to the complexities of tracking online sports gambling from offshore sites, due to the high prevalence of online sports gambling, many are encouraged to participate in online gambling using different forms of currency, such as cryptocurrency like Bitcoin.¹⁰⁹ Some sites urge people to use Bitcoin, making the possibility of being "caught" tougher as it is difficult for the FBI to trace.¹¹⁰ A simple search on the internet is likely to reveal websites encouraging people to gamble with Bitcoin as it makes detection of online gambling daunting for the proper authorities. There are even websites, such as "professionalrakeback.com" that endorse this method of gambling and provide "A Step-By-Step Guide to Using Bitcoin for Internet Poker, Sports, Casino (Anything Really)" on how to do it.¹¹¹ This type of encouragement is dangerous because no matter what laws are put into action to "outlaw" and/or "prohibit" online sports gambling, people will always find their way around the rules. With the evolution of the internet, cryptocurrency and e-commerce is going to make the task of policing this issue even more daunting.

The impact of tight online gambling restrictions and legislation is a conversation worth noting. An article in Investopedia speaks directly to this concept: "There is a better chance that increased gaming regulation will drive more people into cryptocurrency than away from it."¹¹² With the anticipation of new legislation regarding Bitcoin and online sports gambling, the outcome may not be what the legislators want; it is more likely that bettors will further rely on Bitcoin because it is harder to trace.¹¹³

Many sites are now accepting different types of payment methods including, "[c]onventional payment methods such as credit/debit cards as well as... the latest payment forms like e-wallets and bitcoins."¹¹⁴ Bitcoin, and other cryptocurrencies, are an emerging trend among the commercial market. A new "trend... among the medium and small size online bookies and casino establishments" is the acceptance of various forms of cryptocurrencies, such as Ethereum,¹¹⁵ Bitcoins, Dogecoins¹¹⁶ and more.

¹⁰⁸ *Id.*

¹⁰⁹ *5 Reasons Why Online Gamblers Should Use Bitcoin*, BITCOINIST (Oct. 10, 2016), <http://bitcoinist.com/5-reasons-bitcoin-online-gambling/>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Joe Liebkind, *Will New Online Gambling Regulations Affect Bitcoin?*, INVESTOPEDIA (Sep. 28, 2017), <https://www.investopedia.com/news/gaming-regulations-bitcoin-gambling-price/>.

¹¹³ John O'Leary, *How Online Football betting and playing online casino games are similar*, thesportsbank.net (November 16, 2017) <http://www.thesportsbank.net/business/online-football-betting-playing-online-casino-games-similar/>.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

A. Growing Demographics and Emerging Trends

As discussed prior, another opportunity for offshore sites is to cash in on cell phone applications and betting through other forms of mobile platforms.¹¹⁸ As online gambling becomes more popular and the demographic participating in online sports gambling expands, “[the] accessibility to new gambling distribution methods such as the Internet and mobile phones has resulted in the formation of new groups of customers of all age groups.”¹¹⁹ Recent trends reveal that there will be a vast growth in the global sports betting market, and by 2020, the market is “forecasted” to reach \$253.3 billion.¹²⁰ As growth booms in sports marketing and “the number of televised sports events,” the number of viewers resulting in a higher demand for betting follows.¹²¹

Another growing demographic in the world of sports betting is female gamblers.¹²² In the U.S. in 2015, female gamblers accounted for 40% of all gamblers, and in the U.K. in 2015, female gamblers accounted for 49% of all gamblers.¹²³ In 2015, “Cameo Casino” emerged as the first online casino launched for women with the slogan “made by women, for women.”¹²⁴ With a growing demographic inclusive of men, women, and young adults, illegal online gambling has grown tremendously. Projections expect illegal online gambling to grow further with a heavy involvement of viewers through televised sporting events.¹²⁵

The previously established emergence and expansion of online gambling through mobile devices and applications has impacted consumer behavior.¹²⁶ With the easy accessibility and popularity of gambling applications, social gambling has become a major factor of consumer behavior.¹²⁷ Social gambling has emerged as a new trend amongst social groups because it allows individuals to “compete” with each other.¹²⁸ Of course, this consumer behavior is especially prevalent amongst sports viewers and bettors because, it allows these individuals to place bets on their favorite teams, against other teams, creating a new type of competition amongst social groups.

B. Fantasy Sports

With the boom of online gambling, another opportunity to wager and win money has emerged. Fantasy sports have been around for a long time, but thanks to the internet,

¹¹⁸ *Id.*

¹¹⁹ Jesse Maida, *Top 4 Emerging Trends Impacting the Sports Betting Market: Technavio*, BUSINESS WIRE (Oct. 19, 2016) <https://www.businesswire.com/news/home/20161019005427/en/Top-4-Emerging-Trends-Impacting-Sports-Betting>.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Jesse Maida, *Top 4 Emerging Trends Impacting the Sports Betting Market: Technavio*, BUSINESS WIRE (Oct. 19, 2016) <https://www.businesswire.com/news/home/20161019005427/en/Top-4-Emerging-Trends-Impacting-Sports-Betting>.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

THE ONLINE SPORTS WORLD: THE LOSS OF BILLIONS, IS IT TIME TO TAKE A RISK?

fantasy sports has prospered as a lucrative business opportunity.¹²⁹ Many sports fans not only place bets online, but now fans can bet on individual players on any team as well. Fantasy sports allow individual fans to bet on game-day projections, such as the yards and touchdowns of an NFL player, the points and rebounds of an NBA player, or the amount of runs or stolen bases of an MLB player.¹³⁰ The statistics of player performances give bettors a certain amount of points and the bettor with the most points at the end wins a sum of money.¹³¹ According to the Washington Post, more than 56 million fantasy sports players in the U.S. and Canada wagered millions of dollars on fantasy sports.¹³² The CEO of the fantasy sports website, DraftKings.com, stated, "It's like the stock market. They (the bettors) enjoy looking at something and trying to figure out something that someone else doesn't see. They do their homework;"¹³³ thus, distinguishing Daily Fantasy Sports ("DFS") as wholly separate from "gambling."

The Nevada Gaming Control Board had another idea about DFS, "[a] state regulator in Nevada has ruled DFS- in which players wager on athletes' performances on a single day rather than over entire seasons- is not a game of skill, but gambling."¹³⁴ The state regulators of Nevada gaming outlawed online fantasy sites like DraftKings¹³⁵ and FanDuel¹³⁶ as they did not have proper licensing to actively solicit players from Nevada.¹³⁷ The argument from FanDuel was that this decision "stymies innovation" and ignores that this is "skill-based entertainment."¹³⁸ According to FanDuel, the "decision deprives... fans of a product that has been embraced broadly by the sports community including professional sports teams, leagues, and media partners."¹³⁹

The Internet Gambling Act¹⁴⁰ specifically mentions that fantasy sports can be played online, so long as the game does not have to do with the outcome of any real world team, and/or their "score, point spread, or any performance or performances of any single-real world team or any combination of such teams."¹⁴¹ Jeff Ifrah, a D.C.-based gaming attorney stated "although Congress may have exempted DFS from federal laws involving gambling, it remains up to the states to decide whether DFS as games of skill fall within the available

¹²⁹ Jenna Portnoy and Drew Harwell, *Fantasy sports games make a play for legitimacy*, WASHINGTON POST (Mar. 18, 2016) https://www.washingtonpost.com/local/virginia-politics/fantasy-sports-games-make-a-play-for-legitimacy/2016/03/17/0b56f244-e6df-11e5-b0fd-073d5930a7b7_story.html?utm_term=.06ebf1a9f092.

¹³⁰ Joe Drape, *Lost a Fantasy Game? Try Again Tomorrow*, THE NEW YORK TIMES (Jul. 28, 2014) <https://www.nytimes.com/2014/07/29/sports/baseball/daily-fantasy-sports-sites-draw-the-real-worlds-attention.html>.

¹³¹ *Id.*

¹³² Justin Wm. Moyer, *Sorry, daily fantasy sports is gambling, not a game of skill, Nevada says*, THE WASHINGTON POST (Oct. 16, 2015) https://www.washingtonpost.com/news/morning-mix/wp/2015/10/16/nevada-sorry-fantasy-sports-is-gambling-not-a-game-of-skill/?utm_term=.e64649188e26.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ 31 U.S.C.A. § 5361, *supra* note 68.

¹⁴¹ Definitions. 31 U.S.C.S. § 5362 (ix)(III)(aa) (LEXIS through Pub. L. No. 115-277).

exceptions to prohibited games of chance.”¹⁴² The matter of deciding remaining DFS games played is left to individual states’ discretion to determine for themselves if the Internet Gambling Act allows for DFS.

During the boom of DFS sites like DraftKings¹⁴³ and FanDuel,¹⁴⁴ New York and other states alike filed injunctions in court to stop their citizens from playing these daily fantasy games within state borders.¹⁴⁵ After NY Attorney General Eric Schneiderman (“AG Schneiderman”) filed an injunction against DraftKings¹⁴⁶ and FanDuel¹⁴⁷ deeming them as illegal gambling operators, the two companies responded by filing a suit seeking injunctions against AG Schneiderman’s order.¹⁴⁸

AG Schneiderman stated that under New York law DFS sites like DraftKings¹⁴⁹ and FanDuel¹⁵⁰ constituted “illegal gambling.”¹⁵¹ AG Schneiderman further stated, “DFS games were ‘contests of chance’ in which winning or losing depended on ‘numerous elements of chance to a material degree.’”¹⁵² Justice Manuel Mendez granted the motions for temporary stays of injunction on his assessment that the AG Schneiderman had a “greater likelihood of success on the merits.”¹⁵³

In March of 2016, FanDuel¹⁵⁴ and DraftKings¹⁵⁵ reached a settlement with AG Schneiderman to halt operations until September 2016 when the Appellate Hearing on Mendez’s order was scheduled. At that order, “The parties stipulated that if New York authorized DFS by June 30, 2016, Attorney General would drop lawsuits against the DFS powerhouses and allow them to quickly restart operations.”¹⁵⁶

On August 3, 2016, New York’s Governor Cuomo signed a bill into law clarifying that DFS sites fall under the category of “games of skill.”¹⁵⁷ Once Governor Cuomo signed the legislation, the DFS sites became the purview of the New York State Gaming Commission (“NYSGC”), allowing the state to introduce regulations aimed at protecting consumers, while collecting millions of dollars in fees from the sites.¹⁵⁸ Governor Cuomo

¹⁴² Justin Wm, *supra* note 132.

¹⁴³ David McCabe, *FanDuel blocks NY players after attorney general files lawsuit*, thehill.com (Nov. 17, 2015), <http://thehill.com/policy/technology/260443-new-york-ag-moves-on-draftkings-and-fanduel>.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Daniel Roberts, *Fanduel, Draftkings file lawsuits against NY Attorney General*, Fourtune.com (Nov. 13, 2015) <http://fortune.com/2015/11/13/fanduel-draftkings-lawsuits-schneiderman/>.

¹⁴⁹ David McCabe, *supra* note 143.

¹⁵⁰ *Id.*

¹⁵¹ Roni Mathew, *The Legality of Daily Fantasy Sports Is In Gamble In Some States: A Closer Look At New York And Delaware’s Response To This New(ish) Trend*, 24 Jeffrey S. Moorad Sports L. J. 275, 279-281 (2017).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ David McCabe, *supra* note 143.

¹⁵⁵ *Id.*

¹⁵⁶ Roni Mathew, *supra* note 151.

¹⁵⁷ Tom Huddleston Jr., *DraftKings and FanDuel Are Once Again Legal in New York*, FOURTUNE (Aug. 4, 2016) <http://fortune.com/2016/08/04/draftkings-fanduel-legal-new-york/>.

¹⁵⁸ *Id.*

THE ONLINE SPORTS WORLD: THE LOSS OF BILLIONS, IS IT TIME TO TAKE A RISK?

stated that the legislation “strikes the right balance allow[ing] this activity to continue with oversight from state regulators, new consumer protections, and more funding for education.”¹⁵⁹ By coming to a solution that benefited both parties, the world of online fantasy sports stayed alive in NY.

V. EXISTING INTERNATIONAL LAWS ON ONLINE SPORTS GAMBLING

A. Gambling Laws in the United Kingdom

In the United Kingdom (“U.K.”) most forms of gambling, including internet gambling, are legal and heavily regulated.¹⁶⁰ U.K. Gambling Legislation makes it legal for individuals and industries to gamble online as long as the Gambling Commission has given the site a license to operate. The Gambling Act of 2015 (“U.K. Gambling Act”) states that the objective of the Gambling Commission is for:

- a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
- b) ensuring that gambling is conducted in a fair and open way, and,
- c) protecting children and other vulnerable persons from being harmed or exploited by gambling.¹⁶¹

The U.K. Gambling Act’s intent is to deter outsiders or offshore sites from establishing p a market with U.K. players.¹⁶² The U.K. Gambling Act allows its citizens to gamble legally at reputable sites that are regulated and promulgated by the U.K.¹⁶³ Under the Act, citizens can gamble anywhere from casinos to online.¹⁶⁴ The U.K. can monitor gambling and make a fair and safe channel for all to gamble. Due to this legislation, the U.K. does not have an issue with illegal sites from offshore servers invading the sports betting market, unlike the U.S., because U.K. has many legal sites for their citizens to bet.

¹⁵⁹ *Id.*

¹⁶⁰ *UK Gambling Jurisdiction and Regulations*, GAMBLINGSITES, (Jan. 2, 2018) <https://www.gamblingsites.com/online-gambling-jurisdictions/uk/>.

¹⁶¹ Gambling Act 2005, § 2455, art. 2(1) sch. 3 (Eng).

¹⁶² *Id.*

¹⁶³ Gamblingsites, *supra* note 160.

¹⁶⁴ *Id.*

The U.K. Gambling Act states that any person over the age of 18 that intends to gamble can legally place wagers online or at a licensed establishment.¹⁶⁵ This is an intelligent alternative to outlawing gambling in the U.K. for the sites and establishments where these wagers are placed are overseen by the Secretary of the State.¹⁶⁶ The U.K. Gambling Act states:

- (4) The Secretary of State may by order, for the purposes of subsection (3)(c) -
- (a) provide that facilities of a specified nature, or adapted or presented in a specified way, cannot reasonably be expected to be used for purposes other than gambling;
 - (b) provide that facilities of a specified nature, or adapted or presented in a specified way, can reasonably be expected to be used for purposes other than gambling;
 - (c) specify criteria by which it is to be determined whether facilities can reasonably be expected to be used for purposes other than gambling;
 - (d) provide that facilities of a specified nature, or adapted or presented in a specified way, shall be taken as being intended to be used wholly or mainly for gambling;
 - (e) provide that facilities of a specified nature, or adapted or presented in a specified way, shall be taken as not being intended to be used wholly or mainly for gambling;
 - (f) specify criteria by which it is to be determined whether facilities are intended to be used wholly or mainly for gambling.¹⁶⁷

Under the statute, the Secretary of State is given the ability to promulgate what establishments are seen as betting facilities and to license these facilities.¹⁶⁸ The creation of the Gambling Commission through this act also gives this statute more power and a regulatory basis, as the Commission may investigate an offense and institute criminal charges if an offense has been committed.¹⁶⁹

B. Gambling Laws in Ireland

For a long time, Ireland has been known for allowing online sports gambling and betting.¹⁷⁰ The success of Ireland's legalizing of betting on games comes from laws regulating and promulgating gambling, just as in the U.K.¹⁷¹ A "person or company" must be qualified to promote and or own these gambling establishments, whether it be a brick and mortar establishment or remote (internet).¹⁷² Ireland's laws require that before an

¹⁶⁵ Gambling Act 2005, *supra* note 161.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Gambling Legislation in Western European Countries*, <https://everymatrix.com/blog/gambling-legislation-western-europe.html> (last visited Dec. 6, 2018).

¹⁷¹ *Id.*

¹⁷² *Id.*

THE ONLINE SPORTS WORLD: THE LOSS OF BILLIONS, IS IT TIME TO TAKE A RISK?

establishment is set as a gambling establishment, remote or not, licenses are to be acquired from the proper authorities.¹⁷³

The laws of Ireland are quite similar to those of the U.K. when it comes to gambling. Just as in the U.K., bookmakers in Ireland must show that they meet the requirements and are a “fit and... proper person” to hold a bookmaker’s license.¹⁷⁴ Also, there is a common gambling age of 18 in both countries’ laws.¹⁷⁵ Both the U.K. and Ireland tax persons and organizations that run these betting businesses.¹⁷⁶ The Online sports betting operations will be charged at a 15% net revenue rate, the same rate set by the U.K. Gambling Commission, for activities in the U.K. market.¹⁷⁷ The operators that do not acquire a license, but still offer services, can face a fine up to \$320,000.¹⁷⁸

Both the U.K. and Ireland have found ways to stymie illegal gambling online, as well as ways to deter criminal activity from online sports gambling.¹⁷⁹ Thus, there exists a general awareness of both countries that if online gambling is not allowed and regulated, outside entities will find a way into the country to allow people to gamble on sports via unregulated sites.¹⁸⁰ Just as in the U.S., China does not allow for online gambling and has made it illegal;¹⁸¹ “Media reports state that online gambling in China soared during the recent World Cup, causing a major blow to the bottom line of major casinos.”¹⁸² This shows that even though there is legislation in place to prohibit online gambling, people will always resort to the black market sites of online sports betting. Prohibiting online sports betting is just creating a larger market for the black market sites to operate. This is a \$500 billion market¹⁸³ that is exploited, mainly because of various countries’ unwillingness to solve the problem and expand into the future.

VI. A LEGISLATIVE FIX TO SPORTS GAMBLING

A. PASPA: A Roadblock

The major issue with legalizing online sports gambling in the U.S. is PASPA.¹⁸⁴ PASPA made it illegal to license and set up businesses for wagering on any sports games by a

¹⁷³ *Id.*

¹⁷⁴ Betting Amendment Act 2015 (Act No. 7/2015) (Ir.) <http://www.irishstatutebook.ie/eli/2015/act/7/enacted/en/pdf>.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ iGamingBusiness, *Irish Government passes new Gambling Act*, [igamingbusiness.com](http://www.igamingbusiness.com/news/irish-government-passes-new-gambling-act) (Apr. 21, 2015) <http://www.igamingbusiness.com/news/irish-government-passes-new-gambling-act>.

¹⁷⁸ *Id.*

¹⁷⁹ Gambling Act 2005, § 2455, art. 2(1) sch. 3 (Eng); Betting Amendment Act 2015 (Act No. 7/2015) (Ir.) <http://www.irishstatutebook.ie/eli/2015/act/7/enacted/en/pdf>.

¹⁸⁰ *Id.*

¹⁸¹ Steve Dickinson, *China Online Gambling. Illegal But Everywhere*, CHINALAWBLOG (Oct. 25, 2014) <https://www.chinalawblog.com/2014/10/china-online-gambling-illegal-but-everywhere.html>.

¹⁸² *Id.*

¹⁸³ Singh, *supra* note 1.

¹⁸⁴ Professional and Amateur Sports Act, PL 102–559, October 28, 1992, 106 Stat 4227.

person or government entity.¹⁸⁵ The purpose of PASPA was to protect the amateurism of sports, such as the NCAA, and maintain the integrity of the professional leagues.¹⁸⁶ Additionally, the purpose was to avoid the public from viewing these leagues as an entity that can be persuaded or convinced to “throw” games due to the bets and wagers placed upon them.¹⁸⁷ When individual organizations legalize the online betting of sports, the Leagues and the NCAA file an injunction stating under PASPA that it was illegal, as in the case of *NCAA ET AL., v. Governor of New Jersey*.¹⁸⁸

PASPA made it possible for the leagues to file an injunction anytime a sport betting business is started by an individual or state.¹⁸⁹ But the intention of the PASPA legislation is to keep betting out of sports and to keep the sports “amateur” and “clean;” however, there have been scandals of point shaving and misconduct in the leagues even with this PASPA in place.¹⁹⁰

In 2007, former NBA referee Tim Donaghy was at the center of an FBI investigation into organized crime involving the fixing of games, or, in other words, initiating a predetermined game result.¹⁹¹ According to the report, Donaghy was making calls to affect the point spread “so he and mobster cronies could cash in on large bets.”¹⁹² This is not the only instance of such cheating, as there have been other occurrences by players themselves. In the 1980’s, Boston College basketball players shaved points to affect the outcome of bets placed on their games.¹⁹³ The issue here is simple: outside influences are influencing sports betting. As stated prior, the U.K. and Ireland knew organized crime would take control of sports if the government themselves failed to implement and subsequently regulate laws allowing sports gambling.¹⁹⁴ Despite attempts to prohibit gambling, it is better to let the states and government entities regulate said bets, than to let outside criminal influences orchestrate betting rings.¹⁹⁵

B. Time for Change: The Regulation of Sports Gambling

A proposed solution that will fix this issue is to allow states to regulate sports gambling. By allowing the states themselves to regulate sports gambling, each state can create an individual Gaming Commission (“Gaming Commission”) just as the U.K. and Ireland.¹⁹⁶ By setting laws that are similar to that of the U.K. and Ireland, the changes to

¹⁸⁵ Michelle Minton, *Let States Regulate Sports Gambling within their Borders*, CEI (Oct. 17, 2018), <https://cei.org/content/let-states-regulate-sports-gambling>.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ 730 F.3d 208, 209 (3rd Cir. 2013).

¹⁸⁹ Professional and Amateur Sports Act, PL 102-559, October 28, 1992, 106 Stat 4227.

¹⁹⁰ FBI: *NBA Ref Donaghy ‘Fixed’ Games*, NEW YORK POST (Jul. 20, 2007) <https://nypost.com/2007/07/20/fbi-nba-ref-donaghy-fixed-games/>.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ House of Commons, *The Gambling Act 2005: A bet worth taking?*, Publications.parliament.uk (July 24, 2012) <https://publications.parliament.uk/pa/cm201213/cmselect/cmcomeds/421/421vw.pdf>.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

THE ONLINE SPORTS WORLD: THE LOSS OF BILLIONS, IS IT TIME TO TAKE A RISK?

sports gambling can hold the same integrity that the original legislation of PASPA¹⁹⁷ held. Each individual state should be allowed to legalize gambling as long as an individual Gaming Commission appointed by the leagues and the NCAA, along with the State Secretary, will regulate and promulgate the laws and credibility of the remote gambling facilities.¹⁹⁸ Any website, betting parlor, or any other form of gambling machine that is not authorized and licensed by the Gaming Commission should not be allowed to let patrons' place bets.¹⁹⁹ The licensing, as in Ireland,²⁰⁰ should only be available to those of "fit and proper person" deemed by the Gaming Commission.²⁰¹

To ensure the sanctity and amateurism of the games, states can also amend laws to state: "no players, officials, coaches, or league employee can gamble and participate in sports betting while in their capacity as an aforementioned personnel."²⁰² If all betting on sports continues through proper channels, once legalized, it would be easier to keep track of bets being placed on sporting events, so the sanctity of the games is kept intact. Also, the personnel involved in games can register with the Gaming Commission to keep track of players, like stockbrokers and employees of hedge funds do with the SEC.

Some concerns of legalizing sports betting online are the exacerbation of gambling addictions. However the reality is online sports betting is very common in the U.S. If legalized, states can better monitor such concerns. A state can better monitor gamblers and potentially recognize at-risk gamblers. States can thus, set up organizations available for gambling addicts, and potentially reach out to at-risk gamblers. Also, gamblers will have the option of putting a cap on the money that should be gambled for that month or year, so they will not go over their available funds. By having the proper protocol and actions in place, it is a viable option to fixing the black market reach of online sports betting in the U.S.

C. Proposal of The Gambling Act of 2018

The Gambling Act of 2018 ("The Act") would allow states to regulate gambling within state borders and allow an established Gaming Commission to regulate and promulgate gambling on sports. The Act would stop outside influences and black market gambling on sports currently in existence, just like in China.²⁰³ The issue with gambling is that if this Act was not in place, then the black market of online sports betting will continue to grow. Statistics already show that citizens of the U.S. will gamble, even if illegally, through the use of offshore websites. The Act will significantly limit organized crime, as gambling can be accomplished in an open and fair way. States and Gaming Commissions would have full

¹⁹⁷ Professional and Amateur Sports Act (LEXIS through Pub. L. No. 102-559).

¹⁹⁸ Gambling Act 2005, § 2455, art. 2(28) sch. 3 (Eng). Betting Amendment Act 2015 (Act No. 7/2015) (Ir.) <http://www.irishstatutebook.ie/eli/2015/act/7/enacted/en/pdf>.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Betting Amendment Act 2015 (Act No. 7/2015) (Ir.) <http://www.irishstatutebook.ie/eli/2015/act/7/enacted/en/pdf>.

²⁰² Bo. J. Bernhard, et al., *Professional Team Sports in Las Vegas: What the Research Says*, UNLV.edu (Feb. 1, 2016) https://www.unlv.edu/sites/default/files/page_files/27/IGI-PublishedResearch-NFLStudy.pdf.

²⁰³ Steve Dickinson, *China Online Gambling. Illegal But Everywhere*, Chinalawblog.com (Oct. 25, 2014) <https://www.chinalawblog.com/2014/10/china-online-gambling-illegal-but-everywhere.html>.

control over who is able to gamble, as in the U.K. Gambling Act, increasing the safety of gamblers through the detection of at-risk gamblers.²⁰⁴ One of the major issues of offshore gambling sites is that the money cannot be tracked and traced once the bets are placed on the games. With the states regulating the bets on games the money can be tracked and the citizens will not be vulnerable to the scams and tricks of these offshore sites.

The Act would set regulations, allowing only the states to license remote facilities and engage in business dealings. It would authorize the state to pursue criminal charges on anyone that is running an illegal gambling facility that is not licensed, but facilitating bets on sports. The Act would also set regulations for these establishments and remote facilities to be taxed just as the U.K. and Ireland.²⁰⁵ The taxes and fees would help with state funding, just as New York's Governor Cuomo realized when he allowed DFS sites to operate in NY.²⁰⁶ The taxes and fees can go to education, housing, and other areas in need of funding. The main purpose of the implementation of The Act is to cut the influence of offshore and international sites enabling U.S. citizens to gamble illegally online. With The Act in place, states can control and regulate gambling and it would no longer stand as the "Wild West" of today.

VII. CONCLUSION

Since the Supreme Court held PASPA as unconstitutional, states will immediately be able to start organizing markets to facilitate sports gambling. The fallout from this landmark decision has made it legal for States to create legislation to govern over sports betting inside its borders. There will be a gold rush to seek who can take advantage of this profitable industry first, as everyone wants a piece of this market, including the NBA who has backtracked on previous statements supporting the NCAA.²⁰⁷ NBA attorney Dan Spillane stated, "[W]e have studied these issues at length, our conclusion is that the time has come for a different approach that gives fans a safe and legal way to wager on sporting events while protecting the integrity of the underlying competitions."²⁰⁸ With these proposed laws in place, the states can make sure to foster a safe and legal way for citizens to gamble.

²⁰⁴ Gambling Act 2005, *supra* note 161.

²⁰⁵ iGamingBusiness, *supra* note 177.

²⁰⁶ Huddleston, *supra* note 157.

²⁰⁷ Chris Perez, *The NBA wants to legalize sports gambling*, NYPOST (Jan 24, 2018) <https://nypost.com/2018/01/24/the-nba-wants-to-legalize-sports-gambling/>.

²⁰⁸ *Id.*