The Players Involved within the Regulation of the Online Sports Betting Industry

A Research Paper submitted to the Department of Engineering and Society

Presented to the Faculty of the School of Engineering and Applied Science

University of Virginia • Charlottesville, Virginia

In Partial Fulfillment of the Requirements for the Degree

Bachelor of Science, School of Engineering

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Spring 2024

On my honor as a University Student, I have neither given nor received unauthorized aid on this assignment as defined by the Honor Guidelines for Thesis-Related Assignments

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Introduction

Internet Sports Betting within the United States is expected to reach a market evaluation of 9.7 billion dollars this year(2024) and increase to 15.8 billion in the next four years. Globally the online sports betting market is predicted to operate at 67 billion in revenue by 2028(Online sports betting - global: Statista market forecast). Clearly, the industry is flourishing. However, this momentum is still unprecedented and the result of an already extensive underground market. In recent years, public opinion has swayed in favor of increasing gambling freedoms. In response, lawmakers have stricken legislation aimed at protecting the "purity" of amateur and professional sports leagues. Sports competitions have a long history acting as a hotbed for illicit activities such as match-fixing sometimes perpetuated by more complex criminal organizations including the mafia. Risks of criminal enterprises using gambling as a way to launder money or deceive participants alongside the health and economic concerns have been key to the decision making process throughout gambling's tumultuous history.

The aim of this research paper is to describe the important pieces of legislation that have led to the birth of online sports betting and the possible ramifications hereafter. This is done to highlight the incentives that have led policy makers and business owners to our current predicament and the caution that must be required in the future.

Methods

This project will be predominantly focused on presenting the reader with an accurate and simplified explanation of current events. An introduction through a small historical piece will be used to describe the power of both political and citizen actors within legalization. This will be followed by a brief on the most prominent pieces of legislation including the Interstate Wire

Act(IWA), Professional and Amateur Sports Protection Act(PASPA), Unlawful Internet Gambling Enforcement Act(UIGEA), and the eventual fall of PASPA in 2018 after the Murphy decision. Furthermore, two giants of the industry, FanDuel and DraftKings, will be used to present the history through a more concrete approach. The aim of this being to show how sports betting companies have grown amid the changing legal landscape.

Afterwards, the Social Construction of Technology(SCOT) framework will be used alongside a discussion of ramifications to complete an analysis of the relevant actors and possible multifaceted dilemmas that the country will face as a result of their decisions.

Historical Background

The early colonists developed lotteries as a fundraising strategy that effectively acted as a voluntary tax to fund necessary public projects(II. History of Gambling in the United States). Beyond lotteries there exists two other popular categories: table games and sports/entertainment betting which also flourished as the colonies grew. However, after the revival of evangelical Christianity in the late 18th century, the Continental Congress passed the 1774 Articles of Association "discouraging" betting in all forms(Articles of association, 1774). Although legislation now supported the negative moral countenance gambling now wore, it still was practiced by the socially elite. Often this was a private affair, but it also survived publicly in certain cities(II. History of Gambling in the United States). With time fraud and scandals would soon become synonymous with gambling and lead to its complete restriction under President Jackson, who himself was known to gamble. However, after the Civil War the floodgates were opened to offer states an opportunity to rebuild their ravaged homeland(II. History of Gambling in the United States). From this point on, gambling legislation within the United States would continue to see-saw back and forth depending on popular consensus and the finances of the states. This process of restriction and freedom has continued to this day, though gradually more regulations have been added to maintain a certain quality of business practices.

Quite a lot of time could be spent pursuing the various state legislatures' opinions on gambling through time, but there are a select few pertinent federal laws that lay the foundation to examine the modern online sports betting phenomena. In 1961, President John F. Kennedy signed the Interstate Wire Act(IWA) making it illegal to use wire communication for the purpose of bets or information surrounding the placing of wagers(History of gambling in the US: A timeline [infographic] 2024). The intent of the bill, proposed by Attorney General Robert F. Kennedy, was to incapacitate the mob to some degree which had profited greatly from its gambling racket(Minton, 2014). In 1992, Congress passed PASPA, the Professional and Amateur Sports Protection Act, ending the government involvement in regulation processes around sports betting. What this means is that states could no longer knowingly sponsor any form of sports gambling. This effectively sent sports betting underground except for a few carve outs that allowed for Nevada, Oregon, Delaware, and Montana to continue their specific varied sports betting operations(The Professional and Amateur Sports Protection Act (PASPA) 2012). In 2011 IWA would eventually be restricted from touching internet gambling cases that were unrelated to sports. However, until then the IWA would have numerous varied interpretations on its reach leading to the development of UIGEA. The Unlawful Internet Gambling Enforcement Act(UIGEA) of 2006 was signed to in a way make up for what the IWA could no longer be used for. The UIGEA prevented any online gambling business from doing business transactions with anyone where some other statute, usually a state law, would be infringed(*Regulation GG: Prohibition on funding of Unlawful internet gambling*). The hope was also to cut off international sports betting companies operating in the United States from breaking state laws by aggressively targeting payment processors. However, the UIGEA included a carveout for fantasy sports betting. This at the time was thought to be harmless season-long bets among friends for small winnings instead of regular gambling over point spreads and player performance. In response to the existing loophole within the UIGEA, a new system developed known as "daily fantasy sports" (DFS) which allowed for huge regular prize pool tournaments for gamblers to compete(Edelman et al.). This was beyond the use lawmakers had initially predicted. Fantasy sports had been allowed under the assumption that they were games of skill and not chance. But as DFS began to rise the difference between it and traditional sports betting began to blur. This was the concept that gradually allowed for companies such as DraftKings and FanDuel among others to form. Eventually, the fall of PASPA in 2018 would allow for the full rebirth of sports betting, this time primarily online(History of gambling in the US: A timeline [infographic] 2024).

Case Study

Humble Beginnings

Nowadays, DraftKings(DK) and FanDuel(FD) are reputed as titans of the industry nearing 75% of the market share. At their onset, they weren't much to write home about. FanDuel got their start in 2009 after their predecessor organization HubDub which attempted to allow users to make bets on anything and everything failed to gain traction(Hendelmann, 2022). DraftKings followed 3 years later. Both made use of the allocation within the UIGEA and grew first as Daily Fantasy Sports(DFS) sites. Additionally, they shared an intense focus on advertisement and together spent over ¾ of a billion dollars before the NFL season(*History of* *draftkings - from origins to online gambling giant*). Within a few years, these two organizations had gripped what was still an infant market operating barely atop the table.

Another Run in with the Law

The UIGEA granted states the power to decide whether online gambling was allowed to operate within their borders. And unfortunately for DK and FD, New York, Illinois, Mississippi, Nevada, and Hawaii all came to the conclusion that DFS gambling violated their statutes. A wave of fear then spread throughout the industry. Media giant ESPN pulled out of their arrangement with DraftKings. Citigroup, Vantiv, and Bank of America refused to process payments. These though were merely the latest lashings as just beforehand both companies faced legal trouble as a DK employee had used their insider knowledge to bet on a FD wager(History of draftkings - from origins to online gambling giant). FD specifically was also fighting allegations they'd misled players about their likelihoods to win, as well as possible nonconsensual likeness infringements of players. At the verge of a collapsing empire FD and DK attempted to merge, but were blocked by the FTC. At the time their market share eclipsed 90%. Possibly fearing huge losses, the founders and initial FD investors made their exit after the company settled its legal disputes(Hendelmann, 2022).

FD and DK weathered the storm and in 2016, Governor Cuomo signed a bill allowing DFS within New York. Concurrently, New Jersey had started a war with the federal government after Governor Chris Christie pushed legislation in conflict with PASPA. Eventually in a landmark 2018 Supreme Court Case Murphy vs NCAA, the court ruled to strike PASPA from law citing anti commandeering doctrine(History of draftkings - from origins to online gambling giant). Put simply, the federal government could not compel the legislative process of the States.

As a result, an underground operation where over 150 billion dollars were spent yearly was now open to states should they choose to accept it, regulate it, and tax it.

States have gradually followed the example set by New Jersey. FD and DK have continued to partner with sports leagues and media companies. Currently DK operates as a publicly traded company and FD is also considering a similar move. Both are leagues above their competition and are continuing to expand.

How They Make Their Money

In order for many of these sportsbooks to create an active user base, most tend to be unprofitable for quite some time as they offer new users deals to play with house money. When they set up shop in new states, they generally commit to a period of losing money both on advertising and business operations for the promise of greener pastures to come. In terms of generating revenue, FD charges a 10% fee from the money that comes in for their daily fantasy sports competitions(Hendelmann, 2022). Additionally, they of course make money when people lose their bets. Moreover, as a sportsbook, FD places a tax on any bet placed called vigorish to ensure they receive a piece of the pie regardless of outcome. Lastly, because they operate by allowing customers to transfer money into the app they can also charge a monthly inactivity fee until the account has a zero balance. If that doesn't seem enough, both DK and FD operate online casino games as a part of their business, which in accordance with the law are allowed to have the odds slightly favoring the company(Hendelmann, 2022). With a user base set to grow 52 million in the next few years and with FD already making over 2 billion in reported revenues as of 2021, it's clear why investors and state governments are looking to get their share of America's new pastime.

Case Study Conclusion

Gambling has been at the beck and call of state and federal legislations for centuries. The future of law will most likely be a consistent struggle to limit the industry due to the inherent wide reach of internet companies and the difficulty to control a much more mobile population. The phenomena of the Internet Sports Betting Industry is the most recent example of the up and down caused by changing laws. There is no clearer example of this than FD and DK which both made a name for themselves through a gap created in UIGEA and now are the industry standard after the Murphy decision.They have both grown into revenue printing machines and should they avoid any catastrophic run in with the law we may witness their possible acquisition by a larger conglomerate.

STS Theory

The Social Construction of Technology(SCOT) framework builds upon the idea that there are relevant social groups and a complex development process that results in the concepts of closure and stabilization. Social groups include companies such as DK and FD, gamblers who use the service, politicians and citizens who advocate one way or another, as well as bystanders who merely feel the effects. In gambling's history various actors with SCOT social group methodology have taken a stance to dictate the course of its position legally. Oftentimes these discussions have centered on gambling's lack of stability(as defined in SCOT) which have led to many legal loopholes for companies to utilize. The concept of stability being the idea that the prototypical design of a given technology has been agreed upon and can now be used to define other similar products (Humphreys, 2005). In the case of sports betting legislation, the UIGEA is a great example of instability as lawmakers were unsure of the boundary between fantasy sports, DFS, and sports betting. Furthermore, internet sports betting also lacks closure, where a given technology has been accepted by relevant social groups as a solution. In this case, the law continues to change to adapt to the advantages and disadvantages of sports betting. This is seen through the IWA's numerous legal interpretations and how later laws continually adapt the government's stance on sports betting. Much remains to be seen how successful these betting revenues are in providing a solution to struggling state finances and improving quality of life. This has led to its unstable position as a business regardless of its impressive revenue.

Analysis

The Sports Betting Industry is an increasingly relevant source of income for many states as legalization surpasses 30 states. New Jersey the firestarter has claimed a total 506 million tax dollars in the past six years. In January of 2024 they collected over 24 million. That's a great deal of money that can be used to support public education, roads, healthcare, and criminal justice improvements. Moreover, much of this industry still existed underground before the fall of PASPA, so why not tax it? As described in the historical background, while gambling occurred under the table, often the only individuals who earned large winnings were the elite betting against their cohorts. So in a sense, the online betting industry has created an opportunity for those with limited financial resources to bet the same lines. In this case it offers a breakthrough for those of lower socioeconomic status to be seen as equal customers.

Unfortunately that is only the positive side of sports betting. There is a genuine public health concern with frequent gamblers. It is, however, difficult to develop a systematic approach if the gambler themselves must admit they have a problem. In response, the term problem gambling(PG) was coined to describe gamblers who are experiencing clinically significant impairment or related issues underneath the threshold of a mental disorder. PGs have shown increasing levels of sensitivity toward short term wins and a lack of the same sensitivity toward losses. In short, they overemphasize their wins. There have also been signs of reductions in both gray and white matter within the brain. Severe losses in gray and white matter result in deficiencies in memory, speech, and sensory capabilities. In a Queensland survey 83% of PGs reported financial difficulties as a result of gambling. What's more, gamblers who sought treatment had higher levels of debt if they primarily bet online as opposed to in person. PGs also have shown increased levels of poor work performance, worsened health, and psychological distress.

The online sports betting industry has some unique problems to deal with in comparison to their gambling predecessors. The sheer volume of advertisements during sporting events as well as streamable television has extended their reach. It has also widened their customer age range. This comes with its own ramifications as the New York Council reported that children 12 and under who participated in gambling were four times more likely to become PGs and were at higher risk for substance abuse.

There are a number of positive benefits associated with the regulation of sports betting. Increased state funding could very much lift the burden of federal assistance. And that additional tax revenue could potentially offset the cries for increases in mental health services and financial welfare caused by more PGs. Politicians in the future may face an ugly battle where road and educational improvements are not visible enough for people to forget that a second or third connection struggles with gambling abuse. Citizens may not realize that the additional tax revenue has benefited more people than its harmed or vice versa, leading to a shift to more regulation once again.

Conclusion

Online sports betting was brought to the masses by way of the advent of technology. It was gradually iterated upon using loopholes within the legal system until the states won the ability to decide for themselves. Popular opinion has been in favor of letting consumers choose to self regulate and allow the public to reap the benefits of both added entertainment and public spending. This though, is not the first time in American history that gambling has held this position. Instead what makes this situation unique is its “reach.” Anyone with access to a device that connects to the internet is a possible consumer regardless of their distance from the nearest bookie. As a democratic republic, how the representatives decide to handle that reach will determine the precedent. Will it be self-regulation above all else, or will the government decide the negative consequences far outweigh the positive should it be left to its own devices? The only option now however, is to be as educated as possible on the series of actor incentives throughout the generations that have directed gambling’s path and now dictate its future.

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