



Pinsent Masons

Nelson Mullins and Pinsent Masons Present

Regulation of Fantasy Sports in the US, the UK, and Europe
January 25, 2024

Definitions

Regulated Gaming in the U.S.

- Regulation of Sports Betting
- Regulation of Fantasy Sports
- Sports Betting vs. Fantasy Sports

Regulated Gaming in the U.K. and Europe

- Industry Landscape in Europe
- Gambling or Not Gambling?
- Should Daily Fantasy Sports Be More Regulated?
- The Specific Case of Sorare
- Further Legal Considerations

Future Outlook – U.S.

Future Outlook – Europe and others

Concluding Remarks



Fantasy sports



Daily fantasy sports



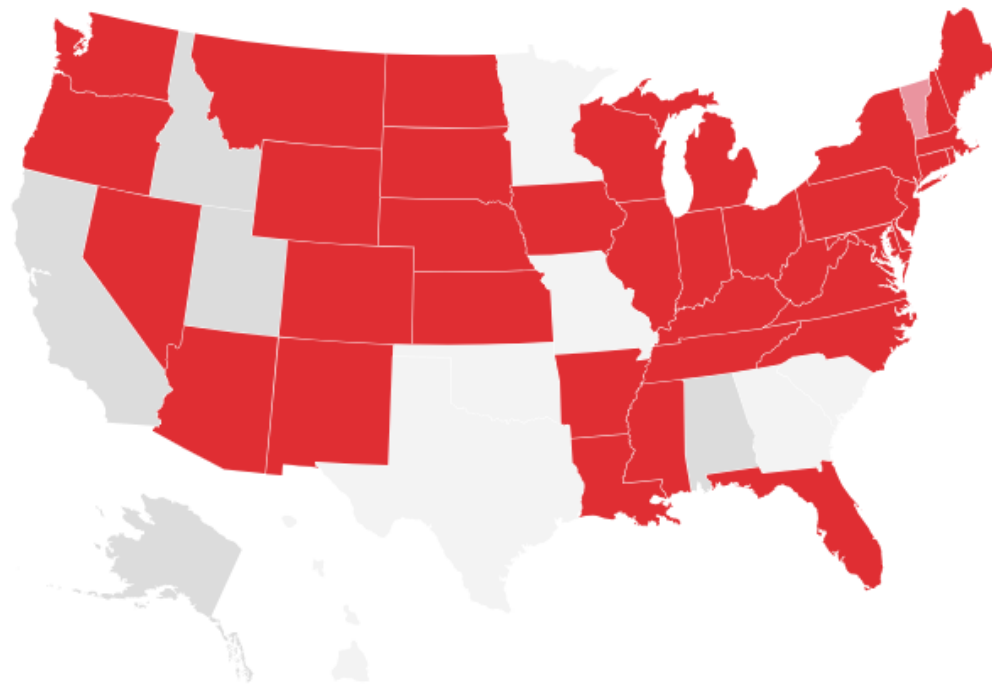
Regulated Gaming in the U.S.

- **Gaming is a highly regulated industry**
 - Generally, state anti-gambling laws prohibit placing a bet, stake or wager on an event whose outcome is determined predominantly by chance in the hope of receiving something of value, and anti-lottery laws generally prohibit private lotteries consisting of a prize (anything of value), chance, and mandatory consideration which can be monetary or non-monetary
 - Most states have legalized some forms of gaming: e.g., casinos, sports betting
 - Robust licensing process, substantial fees and taxes, and strict regulation by state regulators
- **Regulated primarily at state level, but gaming companies also need to be aware of the federal legal framework**
 - Examples of key federal laws:
 - Interstate Wire Act of 1961 - Prohibits gambling businesses from knowingly using wire communication facilities for the transmission of bets or wagers (prohibits sports betting from occurring across state lines)
 - Travel Act - Prohibits and criminalizes interstate travel or use of any facility, e.g., telephone lines, in interstate commerce to participate in illegal gambling
 - Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) - Prohibits gambling businesses from knowingly accepting payments to settle unlawful internet gambling debts



Regulation of Sports Betting – U.S.

- Over 35 states have some form of legalized sports betting
 - In person vs. mobile betting
 - Most states permit online sports betting



SPORTS BETTING ACTIVITY

Legal Landscape as of November 7, 2023

- Live, Legal* (37 States + DC)
- Legal, Not Yet Operational** (1 State)
- Active Legislation/Ballot Initiative*** (0 States)
- No Legislation (5 States)
- Dead Legislation (7 States)

*Live, Legal: Sports betting is legally offered through retail and/or online sportsbooks.

**Legal, Not Yet Operational: States have legalized sports betting, but not yet launched.

***Active Legislation/Ballot Initiative: Bills to legalize sports betting have been pre-filed/introduced or a voter referendum is scheduled.

American Gaming Association, Interactive U.S. Map, Sports Betting, <https://www.americangaming.org/research/state-gaming-map/>

Regulation of Sports Betting – U.S.

- Federal regulation, e.g.,
 - Wire Act prohibits interstate sports wagering
 - Professional and Amateur Sports Protection Act (PASPA) – struck down in 2018 (*Murphy v. National Collegiate Athletic Association*)
- States with legalized sports betting have their own regulatory scheme
 - Usually governed by a sports-betting specific statute and accompanying regulations and criminal anti-gambling law – strictly enforced by gaming agency (e.g., fines, suspension, revocation of licensure)
 - Sports betting operators, key employees, material shareholders generally required to obtain licenses
 - Application process includes paying fees, investigation by gaming regulator to ensure the applicant has sufficient moral character and fitness (generally, no history of fraud, deceit, gaming violations etc.), which involves extensive background checks and submitting forms and documentation
 - Most states require vendor licensing or registration for sports betting service providers, especially for services related to the operation of sports wagering
- Regime and regulation vary state-to-state:
 - Tax rates + credits
 - Reserves and holds
 - Skins, licenses, lotteries
 - Oversight
 - Responsible gaming and marketing
- Regulation of sports betting → precursor to regulation of fantasy sports in some states

Regulation of Fantasy Sports – U.S.

- **FEDERAL LAW**

- Interstate Wire Act of 1961
- Interstate Transportation of Wagering Paraphernalia Act
- Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises Act
- Illegal Gambling Business Act of 1970
- Unlawful Internet Gambling Enforcement Act (UIGEA)
 - Fantasy Sports Safe Harbor (31 U.S.C. § 5362(1)(E)(ix))
 1. No fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization;
 2. All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of fees paid by those participants;
 3. All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events; and
 4. No winning outcome is based: (a) on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams; or (b) solely on any single performance of an individual athlete in any single real-world sporting or other event.
- 2009-2016: Recognition of UIGEA Carve-Out and the Birth of modern-day DFS

Regulation of Fantasy Sports – U.S. (cont'd)

- **STATE LAW**

- States began to regulate fantasy sports in the last few years following repeal of PASPA for sports betting
 - trending toward more regulation
- Fantasy sports are regulated in around 25 states
 - Regulation and scope of regime varies widely from state to state
 - E.g., licensure or registration process, age restrictions, protection of consumer funds provisions, responsible gaming
- Generally considered legal games of skill in states with no regulatory scheme or specific prohibition, but some gray area



Sports Betting vs. Fantasy Sports – U.S.

- Where is the line?
 - State regulators have increasingly been examining this difficult question
 - Policy issue – consideration of stricter regulation to combat concerns such as problem gambling and targeting of minors
- Key points of analysis for categorization: game of skill vs. game of chance, entry fee vs. bet or wager, fixed and known nature of prizes



Sports Betting vs. Fantasy Sports – U.S. (con't)

- State regulators play an increasingly active role in drawing this line between sports betting and fantasy sports
 - What do regulators consider identifying markets of skill vs. chance:
 - “relative knowledge and skill”
 - Peer-to-peer contests vs. single-player; is the house a “participant”?
 - What does “statistical accumulation” mean and who defines it (e.g., Colorado Division of Gaming)
 - What factor does state use of UIGEA model language play and how does it inform state interpretation
 - What drives policy issues?
 - Tax revenue and licensing fee
 - Barriers to entry
 - Age discrepancy (18 vs. 21)
 - Is the line between Sports Betting and Fantasy Sports blurred beyond recognition and what is the resolution?

Industry Landscape in Europe

- In Europe, "free" fantasy sports are very popular.
- DraftKings obtained a licence to operate in the UK in 2015.
- In 2022, Sorare had 1.8 million users worldwide.
- There were over 11 million Fantasy Premier League players worldwide in 2023.



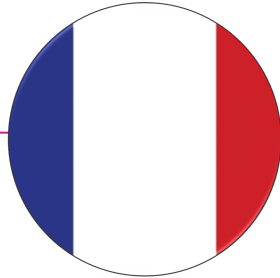
Gambling or Not Gambling?

United Kingdom



Fantasy sports betting activities are considered pool betting and classified as gambling under the Gambling Act 2005.

France



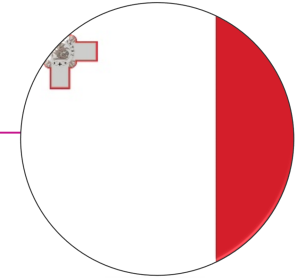
Fantasy sports betting activities are considered sports betting offered in the form of a pool and regulated under Law No. 2010-476 of May 12, 2010 on the opening up to competition and regulation of online gambling.

Spain



Fantasy sports betting activities are considered pool betting and classified as gambling under Law No. 13/2011 of May 27, 2011 on gaming regulation.

Malta



Since 2017, fantasy sports betting activities have been considered as skill games under the Skill Games Regulations.

Should Daily Fantasy Sports Be More Regulated?

Key consideration : element of skill vs chance

Germany - In 2023, the German regulator ("*Gemeinsamen Glücksspielbehörde der Länder*") classified certain forms of daily fantasy sports as illegal gambling in the country.

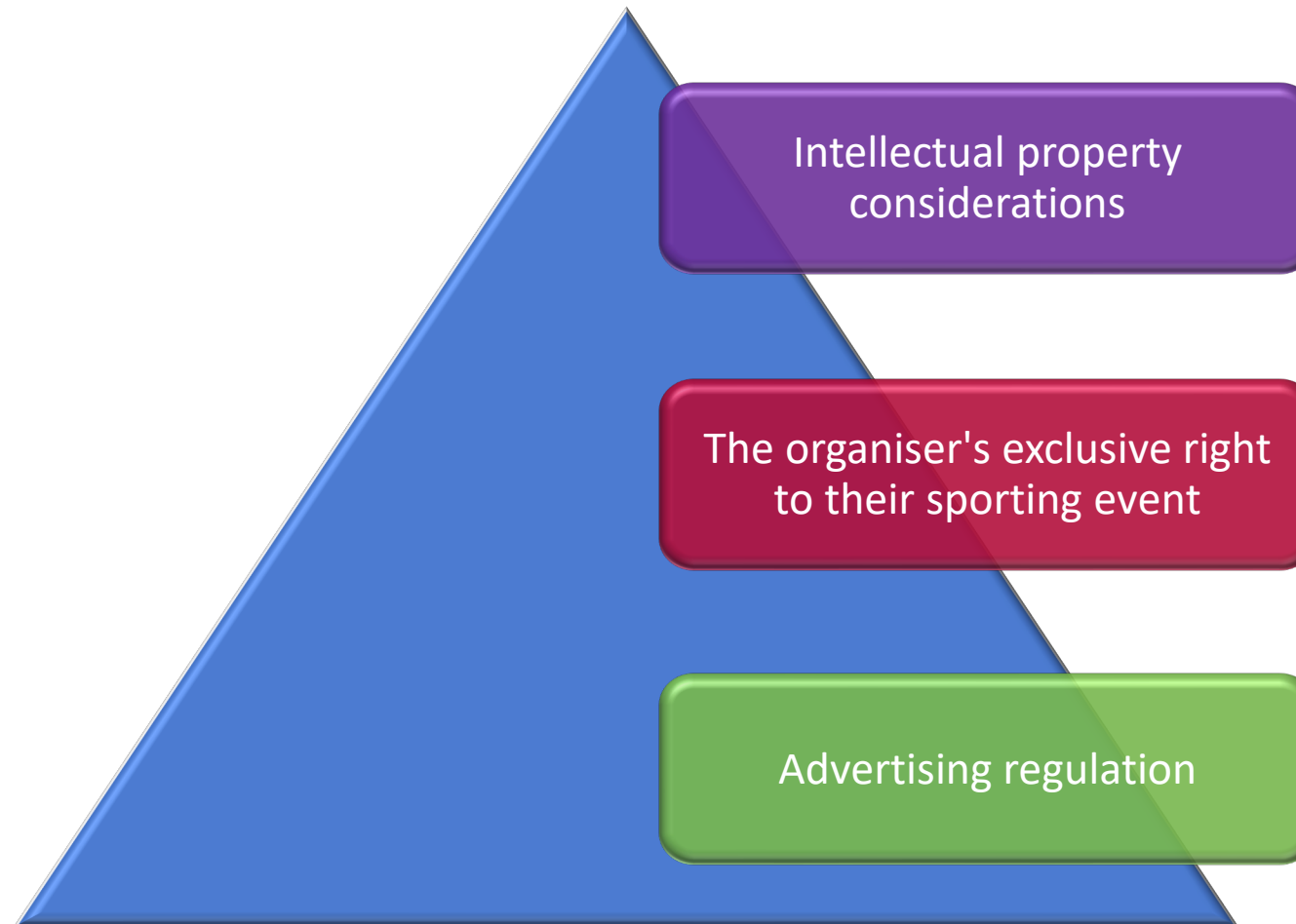
The Specific Case of Sorare

In 2021, the UK Gambling Commission opened an investigation into the company to establish whether Sorare requires an operating licence or whether the services it provides do not constitute gambling.

In 2022, the French National Gaming Authority ("*Autorité Nationale des Jeux*") asked Sorare to prove that it was not a disguised sports betting platform and issued a warning.

France's upcoming JONUM regime redefines Web3 games

Further Legal Considerations



Future Outlook – U.S.

- Continued fracturing amongst states of what constitutes fantasy sports
- Little state consistency in defining boundary between fantasy sports and sports wagering
 - States refine definition of sports wagering – inclusive of DFS
 - More states adopt standalone fantasy legislation – resolve policy issues
 - Increased uniformity with sports wagering
 - Heightened consumer protections
 - Increased regulatory oversight
 - Increased tax rate and licensing fees
- Federal intervention
 - Better on our Futures Act (Rep. Tonko)
 - Closure of UIGEA loophole
 - Pre-emption on all gaming activities
 - Tribal activities and DOI rules



Future Outlook – Europe and others

- Variety of regulations on fantasy sports all over Europe
- **Middle East:**
 - Fantasy sports is gaining traction with both regional and international fantasy sports platforms growing in popularity
 - Gaming, crypto and promotions regulations remain a key consideration in the Middle East
- **India:**
 - Fantasy sports are very popular, with the creation of the Federation of Indian Fantasy Sports in 2017
 - Gambling mostly illegal in India except for games of skill.
- **Possible impact of AI powered fantasy sports games on their regulation?**



Concluding Remarks

Presenter Biographies

KATHERINE BAKER

Katherine is the Chair of the Gaming Industry Group at Nelson Mullins and represents businesses and individuals in a wide variety of complex civil litigation at the trial and appellate levels. A primary focus of her practice is assisting casino gaming, sports betting, and fantasy sports operators, vendors, and entrepreneurs to navigate the state and federal commercial and tribal gaming landscape, including leveraging FinTech solutions.

JOSHUA KIRSCHNER

Josh focuses his practice at Nelson Mullins on the gaming and gambling sectors and represents businesses and individuals in a wide variety of regulatory and white collar litigation matters. A primary focus of his practice is assisting casino, iGaming, sports betting and daily fantasy sports operators, vendors and entrepreneurs to navigate the state, federal and tribal gaming landscapes.

DIANE MULLENEX

Diane is a dual-qualified French lawyer and UK Solicitor, heading the international telecom and gaming & gambling practices at Pinsent Masons. She specialises in and has extensive experience advising a wide range of clients in telecommunications, technology and other highly regulated industries, such as gaming and gambling.

ANNABELLE RICHARD

Annabelle is a dual-qualified French Avocat à la Cour in Pinsent Masons' Paris office. Her strong background in new technologies, from both an operational and regulatory standpoint, as well as her international education, have made her a strong asset on all information technologies, outsourcing, cybersecurity and data protection projects.



Contact Details

To learn more about this presentation, please contact:

Katherine Baker
One Financial Center
Suite 3500
Boston, MA 02111
Tel. 617.217.4618
katherine.baker@nelsonmullins.com

Joshua Kirschner
Atlantic Station
201 17th Street NW, Suite 1700
Atlanta, GA 30363
Tel. 404.322.6177
joshua.kirschner@nelsonmullins.com

Diane Mullenex
30 Crown Place
Earl Street
London EC2A 4ES
Tel. 44 (0)20 7490 9250
diane.mullenex@pinsentmasons.com

Annabelle Richard
21 - 23 Rue Balzac
Paris
75008
Tel. 33 1 53 53 02 23
annabelle.richard@pinsentmasons.com

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