

Opinion: The rise of in-game fantasy sports

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Metric Gaming's Douglas Mishkin and Martin de Knijff say in-play fantasy contests will be key to DFS continuing its meteoric rise

As with any entertainment product or service, the key to continued growth is customer engagement and retention. Customer engagement requires an offer to be sufficiently compelling to make the user try it in the first place and enjoy the experience, while customer retention can be trickier, requiring the offer to retain its appeal over time after its novelty has worn off.

Today, daily fantasy sports (DFS) operators are struggling on both fronts. Paradoxical as it may seem, holding fantasy contests on a daily or weekly basis simply isn't enough, as players who log in to their fantasy sites at night will frequently see a message stating that the next fantasy contest doesn't start for 20 hours. In today's instant-gratification culture, that scenario for a purported entertainment website is unacceptable.

The market appears to have recognized this shortcoming, however, and is now responding. Just last week, two articles were released discussing the inevitable rise of real-time fantasy sports, and whether in-game contests are the future. In short, the answer is yes – the industry cannot grow without dialing up customer engagement levels, which in-game fantasy would go a long way towards achieving.

But in-game fantasy faces a potential legal hurdle that has not yet received much attention in the press – the requirement under UIGEA that the outcome of fantasy sports contests be “determined predominantly by accumulated statistical results of the performance of individuals...*in multiple real-world sporting or other events.*”

A grey area

At first blush, this requirement would appear to rule out in-game fantasy contests spanning only a portion of a single game, and the fact that neither DraftKings nor FanDuel offers any one-game contests strongly suggests their legal teams have reached the same conclusion. Ironically, however, DraftKings does offer fantasy contests spanning a single golf tournament or a single

NASCAR race, thus raising the question – what exactly is a ‘sporting event’? As an initial matter, it bears noting that the UIGEA “carve-out” was, by all accounts, a rushed piece of legislation whose author has stated publicly was never intended to allow DFS. But setting aside the legislative intent and looking only to the phrase itself – “sporting event” – the ordinary dictionary definition would translate basically to “something that happens relating to sports.” To assume that phrase, on its face, is necessarily limited to a complete match or game is therefore unfounded.

In fact, the undefined phrase “sporting event” appears elsewhere in US federal law – namely the Wire Act – which notably is the federal government’s primary weapon against sports betting. The Wire Act generally prohibits the transmission across state lines of bets or wagers (or information assisting in the placing of bets or wagers) *on any sporting event*, without defining that term. While some legal commentators have suggested that a “sporting event” under UIGEA means a full game or tournament and therefore that fantasy contests on a single golf tournament may be unlawful, if that were true for the Wire Act, it would effectively nullify the entire law.

Indeed, bookies could simply start accepting wagers from across the country on first or second halves, quarters, periods, points in tennis, individual drives in the NFL, single innings in baseball (the list is endless), and never be in violation of the Wire Act because none of their bets would be on “sporting events.” In short, the UIGEA’s “multiple real-world sporting event” requirement should not be an obstacle for in-game fantasy contests, which are likely to become a mainstay in the DFS landscape.

But while customer engagement may improve with in-play fantasy, customer retention will likely remain an issue for DFS for at least two reasons. The first is the “sharks and fish” dilemma, which arises in any P2P skill-based game where money is on the line (poker is a prime example). The basic concern is that the sharks (i.e., the individuals who have the most skill, knowledge, time, etc.) will inevitably beat out the fish (i.e., the more casual players) in the long run, resulting in all the fish eventually leaving and the sharks ultimately doing the same as they prefer not to play each other.

Level the playing field

One way to combat this issue is to help level the playing field by making player salaries more accurate – another controversial topic legally. The argument goes that if player salaries are perfect, any element of skill would be lost because it would be impossible to gain a competitive edge when drafting. But that statement is only true in theory – in practice, it would be naïve to think

that player salaries could ever be truly perfect. Instead, the goal should simply be to make them much better (a tactic FanDuel has perhaps contemplated with their recent acquisition of sports analytics company numberFire). The concept is simple: by making player salaries as accurate as they can be, the more casual fantasy players will consistently perform better, thus making them more likely to keep playing. As to the legal concern, the underlying game would still be one of skill – indeed, to beat it consistently would actually require *more* skill, thereby in essence thinning out the sharks. Improving the accuracy of player salaries should therefore be an effective way of improving customer retention.

Secondly, customer retention is not likely to improve unless DFS operators significantly lower their rake percentages. By way of illustration, a typical head-to-head match-up on DraftKings with an \$18 prize pool will charge an entry fee of \$10 each, representing a rake of 10%. To put that into perspective, a fantasy player would need to win 55.55% of heads-up matches (a very significant edge statistically) just to break even. That is ultimately not a sustainable model, as customers will be far less likely to stick around if they feel they have no chance of winning.

DFS as an industry is no doubt still in its infant stages, with much remaining to be seen in terms of the legal landscape (both for fantasy and sports betting), as well as the success of new operators with innovative and aggressive takes on the fantasy experience itself. With competition in the space likely to grow increasingly fierce, DFS operators would be wise to focus their resources on improving customer engagement with in-game options and enhancing customer retention with lower rake percentages, thus favoring long-term playability over short-term profit.