

Is fantasy football online gaming?

By Eddie Pells, AP

Some of the newest incarnations of fantasy football look a lot more like gambling than intricate, outsmart-your-opponent strategy games.

Since 2011, the billion-dollar fantasy market has been infused with dozens of daily and weekly games. Those games allow players to win huge prizes quickly, sometimes in one week, sometimes in just one night. With players betting thousands or even tens of thousands a night, legal experts believe it's time to review the section of the 2006 federal law that was written specifically to protect fantasy sports from being banned the way online poker was.

"There's importance in clarifying the law," says Marc Edelman, a professor at Fordham Law School who studies the law as it applies to fantasy sports. "As long as there's uncertainty about the legality of these games, some potential businesses that might enter the marketplace stay out."

Seasonal leagues are largely the domain of billion-dollar companies such as CBS and ESPN, with close ties to the NFL. For now, they have remained on the sidelines of the short-term business, leaving it largely in the hands of companies such as FanDuel, which is expecting to triple its base to 500,000 fans this season.

"We have the most popular fantasy football game going," said Kevin Ota of ESPN, which boasts an estimated 14 million fantasy players. "It's been incredibly successful, and we're focused on improving our game every year. We always keep our eye on opportunities to serve sports fans better."

ESPN officials say they have no immediate plans for weekly cash games.

Traditional leagues at ESPN and elsewhere received their legal clearance from the 2006 Unlawful Internet Gambling Enforcement Act, which was designed mainly to stop Internet poker. It included an important “carve out” for fantasy football. Meanwhile, most state laws define fantasy football as skill-based propositions, which keeps them legal.

Peter Schoenke, chairman of the Fantasy Sports Trade Association, says daily and weekly games that adhere to the group’s rules also are protected by the 2006 law, and that the NFL and Major League Baseball “have fully embraced fantasy sports in all forms, both free and pay.”

“If a game operator doesn’t follow the UIGEA, the FSTA doesn’t consider the contest to be a true ‘fantasy sports’ contest,” Schoenke said.

Las Vegas-based attorney Tony Cabot, who has practiced gambling law for three decades, said it’s easy to argue that season-long games are skill based “because you exercise a great deal of skill in operating a team.”

“You have to figure out who to draft, play, trade and all those things to have a successful season,” Cabot said. “And because you’re doing all that, you’re betting on an outcome you can control.”

The day-game world can be much different and the skill level needed to “run” a team that exists for only one week is far lower than that for a season-long enterprise.

And a growing number of fantasy sites have games that “look very much like prop bets or parlay cards,” Cabot says, with some games as simple as paying an “entry” fee, and then choosing who, between two players, will finish a certain day with more receiving yards.

“It depends on how you run your game,” Cabot said. “If you said, ‘We’re going to do fantasy, quick pick, random drafts,’ I say, ‘How can that be skill based?’ But if it’s a daily game where you’re doing a draft, have the ability to change players halfway through the game and make all these decisions, then it’s much closer to a traditional model.”

In 2007, Cabot co-authored a legal paper titled “Fantasy Sports: One Form of Mainstream Wagering in the United States.” It offers a point-by-point deconstruction of the federal law that essentially legalized a growing industry that, to some, looks very much like gambling. One of Cabot’s key points is that the NFL, seeing the revenue and viewership possibilities of fantasy football, hired a well-paid lobbyist who helped smooth the way for an imperfect bill to become law.

Cabot’s conclusion is that the process “ultimately has done a great disservice to reasoned policymaking and, potentially, to the long-term future of the fantasy sports industry itself.”

He counts the growing day-game business as one area especially susceptible to confusion. Edelman agrees.

“One can argue whether the fantasy sports carve out applies to the short-duration game, given that, at the time the (federal law) was passed, there was no such thing as daily fantasy sports,” Edelman said.

Day games didn’t get much traction until 2011 – five years after the law was passed.

The games are pretty much unregulated, and they are exploding. They allow anyone over 18 to gamble on sports outcomes online, while traditional sports gambling is available online only in Nevada and, in some forms, in Delaware. The laws in the states take precedence over the federal law and they vary, most of them basing the legality of a game on how much of it is predicated on skill vs. chance. Last year, a federal court in Illinois dismissed a lawsuit alleging day games were games of

chance.

A few of the bigger media players – most notably USA Today and Sports Illustrated – have gotten into the day-game business, seeing ample opportunity in an industry that drew an \$11 million investment from Comcast Ventures, which plunked the money into FanDuel last year.

Meanwhile, the NFL, which did not respond to questions emailed by the Associated Press, keeps watching the numbers swell, while walking the line between using fantasy football to grow its game and maintaining its long-held, hard-line stance against anything perceived as gambling.

“Part of the problem with entrepreneurial endeavors on the Internet is that some people push the envelope and some cross the line,” Cabot said. “Until there’s some sort of enforcement action on some level, I think you’ll see them keep pushing that line out further and further.”