

VIDEO GAME GAMBLING: TOO BIG A BET FOR NEW JERSEY

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“All the kids are doing it.”¹ Fourteen-year-old Elijah Ballard sold his iPad on eBay for \$200 to pay for it.² But that was not enough.³ He added some money that he had earned working at a Hebrew school.⁴ But that still was not enough.⁵ The rest he billed to his father’s credit card.⁶ After his parents found out, Elijah’s mom opened a joint checking account with him, which he then paired with a PayPal account.⁷ That was not enough either, and the account was overdrafted several times over the next few months.⁸ Elijah soon began sneaking into his parents’ wallets while they slept and took photos of their credit cards to support his habit.⁹ The charges continued. Elijah’s mother eventually called PayPal to address the overdraft charges.¹⁰ The service representative did not remove the charges, but he was sympathetic, noting that “all the kids are doing it.”¹¹

What is “it”? Well, “it” is buying and wagering video game “skins” in unregulated online casinos.

I. GOALS OF THIS NOTE

This Note aims to discuss broadly how both federal and New Jersey gambling laws—as currently enacted—may be construed to apply to online video game features. More narrowly, this Note will discuss how the law *should* apply to this area and the reasons why such regulation is necessary.

With that, this Note will briefly explain these video game features and how people, particularly children and teenagers, can use them to engage in gambling. Part II of this Note will discuss online video game features and explain how gamers can acquire “skins” and then wager them in the context of games. The discussion of skins will focus on the game *Counter-Strike: Global Offensive*.¹² The discussion of Ultimate

1. Shaun Assael, *Skin in the Game*, ESPN, Feb. 6, 2017, at 34, 40 (emphasis omitted).

2. *Id.* at 38.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* at 38–40.

9. *Id.* at 40.

10. *Id.*

11. *Id.*

12. COUNTER-STRIKE: GLOBAL OFFENSIVE (Valve Corporation 2012).

Team Mode (or “Ultimate Team”) features—which also permit a form of gaming—will center on EA Sports games, with a majority of the focus on *FIFA*.¹³

Following these discussions, Part III will provide an overview of federal and New Jersey gambling laws. This overview will include statutes,¹⁴ some relevant case law,¹⁵ and some information on how the law also applies in similar areas, such as Internet poker lounges, Internet casinos, and the more recent example of fantasy sports. Looking at how the law applies in those industries will provide some analogous guidance for how the law should adapt to video games.

Lastly, Part IV will discuss how current laws should be applied to video games. This section takes notice of a gap in the law that allows this industry to grow unregulated. This section will also proffer some ideas on how this gap could be filled to prevent minors from participating in illegal online gambling.

II. BACKGROUND ON VIDEO GAMES AND GAMBLING

A. Video Games

Video games first became available for purchase by consumers in 1972 through the first console known as the “Magnavox Odyssey.”¹⁶ In the nearly fifty years that have followed, video games have become a massive industry. In 2016 alone, consumers spent \$23.5 billion on games, hardware, and accessories.¹⁷ Even more, recent industry statistics demonstrate that sixty-five percent of households in the United States “own a device used to play video games.”¹⁸ And it is not just adults who are spending their time and money playing video games. Nearly thirty percent of gamers—those who play video games—are under the age of eighteen.¹⁹

Because of such a large and ever-increasing number of Internet consumers, more and more businesses have begun to incorporate the

13. *FIFA 17* (EA Sports 2016).

14. *E.g.*, 18 U.S.C. § 1084 (2012); N.J. STAT. ANN. §§ 2C:37-1 to -9 (West 2016).

15. *State, Dep’t of Law & Pub. Safety v. Boardwalk Regency Corp.*, 548 A.2d 206, 207 (N.J. Super. Ct. App. Div. 1988) (per curiam).

16. *Magnavox Odyssey Video Game Unit, 1972*, NAT’L MUSEUM AM. HIST., http://americanhistory.si.edu/collections/search/object/nmah_1302004 (last visited Dec. 28, 2017).

17. ENTM’T SOFTWARE ASS’N, ESSENTIAL FACTS ABOUT THE COMPUTER AND VIDEO GAME INDUSTRY 13 (2016), <http://www.theesa.com/wp-content/uploads/2016/04/Essential-Facts-2016.pdf>.

18. *Id.* at 2.

19. *Id.* at 3.

Internet into their business models in some form, whether using the Internet for marketing purposes, to replace brick and mortar stores, or simply as an avenue to create new products and generate more revenue.²⁰ Video game companies are no exception.

Thus, with businesses in general relying on the Internet more than ever, the Internet now plays an expansive role in the video game industry. Although attempts at linking home video game consoles to the Internet began in the early 1990s,²¹ it was not until more than a decade later that a successful and reliable option hit the market: Microsoft's Xbox Live.²² Microsoft's competitors, Sony²³ and Nintendo,²⁴ have since developed and launched their own online networks.²⁵

These online video game networks serve several purposes. Among the most popular uses with gamers is online multiplayer. Recent industry statistics indicate that fifty-four percent of those who play video games play online with others.²⁶ In fact, those fifty-four percent spend about six and a half hours playing games online with other people per week.²⁷

But as with all businesses, the bottom line is important. To capitalize on the ability to intertwine their games with the capability of accessing the Internet, video game developers have also increasingly built online features into their video games. As discussed above, a large chunk of the Internet's use with video games concerns online multiplayer. This

20. Matthew Symonds, *The Net Imperative*, ECONOMIST (June 24, 1999), <http://www.economist.com/node/215657>. There are more than 3.7 billion Internet users across the globe. *Internet Users*, INTERNET LIVE STATS, <http://www.internetlivestats.com/internet-users> (last visited Dec. 28, 2017). As recently as 2016, nearly 290 million of those users were in the United States. *Internet Users by Country*, INTERNET LIVE STATS, <http://www.internetlivestats.com/internet-users-by-country> (last visited Dec. 28, 2017).

21. *And on The Seventh Day, God Created Xbox Live . . .*, XBOX NATION, Oct. 2004, at 52, 52.

22. See Press Release, *Xbox Live Subscriptions Double Expectations*, MICROSOFT (Jan. 7, 2003), <https://news.microsoft.com/2003/01/07/xbox-live-subscriptions-double-expectations>.

23. Sony currently produces the PlayStation gaming console. *About Sony Interactive Entertainment*, PLAYSTATION, <https://www.playstation.com/en-us/corporate/about> (last visited Dec. 28, 2017).

24. Nintendo produces the Nintendo Switch gaming system. Terrance Horan, *The Nintendo Switch's Sell-Out Launch, in Many Charts*, MARKETWATCH (July 26, 2017), <https://www.marketwatch.com/story/the-nintendo-switch-launch-in-many-charts-2017-03-27>.

25. *Nintendo Network: Frequently Asked Questions / Contact Information*, NINTENDO, <https://www.nintendo.com/support/nnid/en> (last visited Dec. 28, 2017); *PlayStation Network*, SONY, <https://www.playstation.com/en-gb/explore/playstation-network> (last visited Dec. 28, 2017).

26. ENTMT'S SOFTWARE ASS'N, *supra* note 17, at 6.

27. *Id.*

gameplay mode allows gamers to play with nearby friends or even strangers from across the globe.²⁸

But another massively popular and money-earning feature is the ability to download additional content. Many developers now offer video game players the ability to purchase additions to their games, known as downloadable content (“DLC”).²⁹ With DLC, gamers use real money to purchase additional characters, additional levels, and additional missions within the games.³⁰ Certain video games also allow gamers to purchase additional accessories, weapons, or upgrades for their characters. These are known as “skins.”³¹

The revenue generated by DLC has been projected to hit a billion dollars for one developer alone.³²

And with these items being so popular among gamers, and because the Internet is readily accessible in allowing gamers to communicate and play with and against one another, a plethora of websites have sprung up allowing gamers to wager their downloadable skins on the outcome of games.³³ These sites are generally unregulated and thus difficult to control.³⁴ And because, as previously stated, about thirty percent of gamers are under the age of eighteen, these unregulated skins-gambling sites present numerous and easily accessible avenues for adolescents to engage in gambling. This will be one of the central focuses of this Note.

In other games, specifically those created and developed by EA Sports, gamers have the ability to purchase Ultimate Team card packs using real currency. Ultimate Team modes permit gamers to collect a professional athlete’s virtual trading card in order to construct a “fantasy team” used to play in the video game.³⁵ Gamers purchase virtual coins from the video game’s developer, which are then used to purchase individual player cards or “packs,” which contain several random player

28. *What Is Online Multiplayer?*, NINTENDO, <https://www.nintendo.co.uk/Support/Parents/Online/Online-features/Online-multiplayer/What-is-online-multiplayer-908477.html> (last visited Dec. 28, 2017).

29. David Xicota, *What Does DLC Mean for Your Games*, GAMEDONIA, <http://www.gamedonia.com/blog/what-does-dlc-mean-your-games> (last visited Dec. 28, 2017).

30. *See id.*

31. *See* Evan Lahti, *CS:GO’s Controversial Skin Gambling, Explained*, PC GAMER (July 6, 2016), <http://www.pcgamer.com/csgo-skin-gambling>.

32. Matthew Handrahan, *EA’s Annual DLC Revenue on Course to Hit \$1 Billion*, GAMESINDUSTRY.BIZ (Aug. 27, 2014), <http://www.gamesindustry.biz/articles/2014-08-27-eas-annual-dlc-revenue-on-course-to-hit-USD1-billion>.

33. Lahti, *supra* note 31.

34. *Id.*; *see, e.g.*, GAMDOM, <http://www.gamdom.com> (last visited Dec. 28, 2017); GAMEFLIP, <http://www.gameflip.com> (last visited Dec. 28, 2017).

35. Ben Wilson, *Has EA Just Broken Fifa Ultimate Team?*, GUARDIAN (Mar. 11, 2015), <https://www.theguardian.com/technology/2015/mar/11/has-ea-just-broken-fifa-ultimate-team>.

cards.³⁶ Each athlete represented by the card receives a ranking of either bronze, silver, or gold, which correlates to the athlete's respective ability and value.³⁷ These player cards can then be kept to play on one's own fantasy team or resold to other players via the in-game store or a third-party site.³⁸

B. Gambling

Casinos and other gambling establishments comprise a highly regulated industry.³⁹ Both federal and state law regulate gambling in states where it is allowed.⁴⁰

But as with video games, the ubiquity of the Internet has opened up new avenues for the gambling industry to grow. The Internet has spawned various iterations of gambling websites and mobile applications.⁴¹ Some of these developments include Internet poker, Internet casinos, and even fantasy sports.⁴²

But while other areas of gambling have received much attention from scholars, legislators, and even prosecutors, online skins gambling has been virtually neglected. In fact, only one state⁴³ has made any attempt to reign in the "\$5 billion gambling avalanche" that has sprung up as a result of video game skins.⁴⁴ None have attempted to regulate Ultimate Team Modes.

36. *FIFA Ultimate Team Explained*, FIFA ADDICTION, <http://fifaaddiction.com/ultimate-team/what-is-fifa-ultimate-team> (last visited Dec. 28, 2017).

37. *Id.*

38. *Id.*

39. See 31 U.S.C. §§ 5361–5367 (2012); N.J. STAT. ANN. § 5:12-1(b)(6) (West 2012); *Marina Dist. Dev. Co. v. Ivey*, 93 F. Supp. 3d 327, 336 (D.N.J. 2015); *Hakimoglu v. Trump Taj Mahal Assocs.*, 876 F. Supp. 625, 633 (D.N.J. 1994), *aff'd*, 70 F.3d 291 (3d Cir. 1995); *State, Dep't of Law & Pub. Safety v. Gonzalez*, 667 A.2d 684, 687, 689 (N.J. 1995) (citing *Knight v. Margate*, 431 A.2d 833, 837 (N.J. 1981)); *Gaming*, DUANE MORRIS, <http://www.duanemorris.com/practices/gaming.html> (last visited Dec. 28, 2017).

40. Chuck Humphrey, *Gambling Laws in the United States at the State and Federal Levels Are Examined in Depth*, GAMBLING L. US, <http://www.gambling-law-us.com> (last visited Dec. 28, 2017).

41. See, e.g., CAESARSCASINO.COM, <https://www.caesarscasino.com> (last visited Dec. 28, 2017); MOBILE CASINO PARTY, www.mobilecasinoparty.com (last visited Dec. 28, 2017); MOHEGANSUNCASINO.COM, <https://www.mohegansuncasino.com> (last visited Dec. 28, 2017); VEGASLOTSONLINE.COM, www.vegasslotsonline.com (last visited Dec. 28, 2017).

42. For example, see BETFAIRCASINO, <https://www.betfaircasino.com> (last visited Dec. 29, 2017); BORGATACASINO.COM, <https://casino.theborgata.com> (last visited Dec. 28, 2017); DRAFTKINGS, <https://www.draftkings.com> (last visited Dec. 28, 2017); FANDUEL, <https://www.fanduel.com> (last visited Dec. 28, 2017); POKERSTARS, <https://www.pokerstars.com> (last visited Dec. 28, 2017).

43. As of January 20, 2017, the only state is Washington. See Assael, *supra* note 1, at 42, 44.

44. *Id.* at 44.

C. How Video Games Enable Gambling

There are several ways for people—including minors—to engage in gambling behavior by using video games. This section will focus on lottery-type gambling, using Ultimate Team Modes from EA Sports games, and skins gambling, available through Valve's *Counter-Strike: Global Offensive*, as examples.⁴⁵

1. EA Sports Ultimate Team Modes

EA Sports develops some of the most popular video games on the market today.⁴⁶ These games include *FIFA*, *Madden NFL*, *NHL*, and *Rory McIlroy PGA Tour*.⁴⁷ Two of the developer's titles were among the top ten best-selling games of 2015: *Madden NFL 16* and *FIFA 16*.⁴⁸

The sports game juggernaut generates roughly \$650 million each year through the micro-transactions that take place in Ultimate Team Mode, with the majority of the cash flowing in through the *FIFA* title.⁴⁹

45. *Counter-Strike: Global Offensive* is developed by Valve Corp. Valve is a privately-owned company. Its co-founder, Gabe Newell, has seen his personal wealth—as of January 2017—reach an estimated \$4.1 billion due to the success of *Counter-Strike*. *Id.* at 35–36. However, Bloomberg lists his net worth—as of April 2016—at about \$2.2 billion. Joshua Brustein & Eben Novy-Williams, *Virtual Weapons Are Turning Teen Gamers into Serious Gamblers*, BLOOMBERG BUSINESSWEEK (Apr. 20, 2016), <https://www.bloomberg.com/features/2016-virtual-guns-counterstrike-gambling>. Both sites reference *Forbes* as their source and were published within several months of each other. Because Valve is a private company, its books are not open to the public for review. However, Bloomberg cites an industry study suggesting the company generated \$1.6 billion in revenue in 2016. *Id.* As of December 2017, *Forbes's Real Time Net Worth* generator lists Newell's wealth at \$5.5 billion. *Gabe Newell*, FORBES, <http://www.forbes.com/profile/gabe-newell>. The discrepancy in just a matter of months could be chalked up to the massively surging popularity of *Counter-Strike*.

46. In fact, prior to consoles with Internet capability to download games virtually, fans of some of EA's series would camp out in front of the store in advance of a game's release. See Frank Schwab, *Colin Kaepernick and Russell Wilson Star Together in Funny 'Madden' Commercial*, YAHOO! SPORTS (Aug. 26, 2013), <http://sports.yahoo.com/blogs/nfl-shutdown-corner/colin-kaepernick-russell-wilson-star-together-funny-madden-223523874.html>.

47. *FIFA 16* (EA Sports 2015); *MADDEN NFL 16* (EA Sports 2015); *NHL 16* (EA Sports 2015); *RORY MCILROY PGA TOUR* (EA Sports 2015).

48. Jeff Grubb, *2015 NPD: The 10 Best-Selling Games of the Year*, VENTURE BEAT (Jan. 14, 2016), <http://venturebeat.com/2016/01/14/2015-ndp-the-10-best-selling-games-of-the-year>.

49. Dieter Kurtenbach, *EA Sports Is Making a Fortune off Its Ultimate Team Modes*, FOX SPORTS (Mar. 2, 2016), <http://www.foxsports.com/soccer/story/ea-sports-ultimate-team-mode-revenue-per-year-fut-fifa-ultimate-team-650-billion-030216>. That a majority of the revenue is generated from *FIFA* is hardly surprising. *FIFA* sold nearly 12.5 million copies in 2013 alone. See Trefis Team, *Electronic Arts' FIFA Franchise to Maintain Dominance in Sports Genre*, FORBES: GREAT SPECULATIONS (Oct. 6, 2014, 8:45 AM), <http://>

For that reason, the Ultimate Team Mode found in the *FIFA* series of games will serve as the proxy for purposes of this Note, although virtually identical versions appear in other EA titles.⁵⁰

a. How Does Ultimate Team Work?

The Ultimate Team gameplay mode allows gamers to assemble customized teams using in-game athlete cards based on real life professional athletes from various international leagues.⁵¹ For instance, instead of simply playing as Manchester United, a gamer could assemble a team consisting of Paul Pogba—of Manchester United—at midfield, Robert Lewandowski—of Bayern Munich—at forward, and Dani Alves—of Paris Saint-Germain—at right back. Gamers can use their customized teams to play other gamers, both online and offline, to win “coins.”⁵² Coins are a form of virtual currency for Ultimate Team, and they can be earned via in-game achievements.⁵³ Coins can also be purchased online from third party vendors, although it is against the game’s user agreement.⁵⁴

Ultimate Team player cards are divided into categories of bronze, silver, and gold, which correlate to the player’s ability in real life.⁵⁵ Within those three categories, there are three smaller subcategories: Normal, Rare, and In Form.⁵⁶ Normal is a generic card.⁵⁷ Rare cards are appropriately named, as they are less common than normal cards.⁵⁸ In Form cards change frequently and correlate to the best athletes in real life for the past week.⁵⁹

Each Ultimate Team card also receives a price, which reflects the demand for that particular card.⁶⁰ The cards for better athletes within the game will be more valuable and thus command a higher price.⁶¹

www.forbes.com/sites/greatspeculations/2014/10/06/electronic-arts-fifa-franchise-to-maintain-dominance-in-sports-genre/#62aa7365d5ed.

50. The Ultimate Team Mode appears in both *Madden* and *FIFA* video games.

51. *FIFA Ultimate Team Explained*, *supra* note 36.

52. *Id.*

53. *How to Earn Coins*, EA SPORTS (Sept. 16, 2015), <https://www.easports.com/fifa/ultimate-team/tips-and-tricks/earning-coins>; *see also* *FIFA Ultimate Team Explained*, *supra* note 36.

54. *Know the Rules in EA Sports FIFA*, EA (Nov. 21, 2017), <https://help.ea.com/en-us/help/fifa/fifa-rules>.

55. *FIFA Ultimate Team Explained*, *supra* note 36.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *See id.*

When a gamer first creates her Ultimate Team, she receives a team made up of mostly bronze and silver players, with a few gold category players.⁶² Gamers then earn coins by playing games, seasons, and tournaments against other gamers online or offline.⁶³

Coins can also be purchased using real-life money.⁶⁴ One hundred coins costs ninety-nine cents for most users.⁶⁵ Gamers can also generate coins by selling their player cards at auction via the in-game marketplace.⁶⁶ The best cards often cost more than one million coins.⁶⁷ This correlates to nearly \$10,000 if one is purchasing coins with real currency.

Aside from purchasing player cards directly in the in-game auction/marketplace, gamers can also use their coins to purchase card packs.⁶⁸ Each pack comes with a random selection of players of varying levels of skill and rarity.⁶⁹ The Premium Gold pack is a gamer's best chance at receiving an elite player card and costs 750 coins, about \$7.50.⁷⁰ This pack includes ten gold-rated player cards and two silver-rated player cards.⁷¹ However, even with this pack, the game's most elite players are still rare.⁷² This is not surprising because those players go for nearly one million coins in the marketplace.⁷³

If a gamer elects to sell a player card in the in-game marketplace, the game collects a five percent tax.⁷⁴ For instance, if a gamer sells a player for 2000 coins, 100 coins are taken by the game as the tax, and the gamer will receive 1900 coins.⁷⁵

As mentioned previously, teenagers are incurring massive debts with these in-game purchases in an attempt to collect the rarest player cards. For instance, a seventeen-year-old in Canada recently made news after he racked up more than \$7500 worth of in-game charges on his father's credit card.⁷⁶

62. *Id.*

63. *How to Earn Coins*, *supra* note 53.

64. *FIFA Ultimate Team Explained*, *supra* note 36.

65. Kurtenbach, *supra* note 49.

66. *FIFA Ultimate Team Explained*, *supra* note 36; *How to Earn Coins*, *supra* note 53.

67. *FIFA Ultimate Team Explained*, *supra* note 36.

68. *Id.*; Kurtenbach, *supra* note 49.

69. *FIFA Ultimate Team Explained*, *supra* note 36; Kurtenbach, *supra* note 49.

70. Kurtenbach, *supra* note 49.

71. *Id.*

72. *See id.* (noting that the Internet community has calculated the odds of getting a player like Messi or Ronaldo at "roughly 1-in-impossible").

73. *FIFA Ultimate Team Explained*, *supra* note 36.

74. *Id.*

75. *Id.*

76. *Pembroke Parent Gets \$8K Xbox Bill After Son Racks Up Charges*, CBC NEWS (Jan. 11, 2016), <http://www.cbc.ca/news/canada/ottawa/pembroke-xbox-bill-8000-1.3397534>.

2. Counter-Strike: Global Offensive

Counter-Strike: Global Offensive (“CS:GO”) is a first-person shooter game⁷⁷ available on Xbox, PlayStation, and PC and released in August 2012.⁷⁸ The game’s objective is relatively simple. Players are placed onto one of two teams—terrorists or counter-terrorists—and each team then tries to “eliminate” the other while also trying to rescue hostages or plant bombs.⁷⁹

While *CS:GO* is similar to other games on the market,⁸⁰ the game has a few distinct features.⁸¹ First is the introduction of “skins,” or purely decorative virtual weapons.⁸² Second is the ability to purchase skins with both real money and money earned in the game from kills and victories.⁸³ While the ability to make in-game purchases is not novel, the game’s developer, Valve, innovated the market by giving these skins real-life value.⁸⁴ Third, *CS:GO*’s “permanent death” rules force gamers, after they are killed by the other team, to “spectate until the next round begins.”⁸⁵

In 2013, Valve introduced the “Arms Deal Update.”⁸⁶ According to Valve, the update allows gamers to “experience all the illicit thrills of black market weapons trafficking without any of the hanging around in darkened warehouses getting knifed to death.”⁸⁷ The update allows

77. “A first person shooter (FPS) is a genre of action video game that is played from the point of view of the protagonist.” *First Person Shooter (FPS)*, TECHOPEDIA, <https://www.techopedia.com/definition/241/first-person-shooter-fps> (last visited Dec. 28, 2017).

78. *Counter-Strike: Global Offensive Wiki Guide*, IGN, <http://www.ign.com/wikis/counter-strike-global-offensive> (last updated Apr. 20, 2016).

79. See Alistair Pinfof, *Review: Counter-Strike: Global Offensive*, DESTRUCTOID (Aug. 24, 2012), <https://www.destructoid.com/review-counter-strike-global-offensive-233724.phtml>. Based on the subject matter, and as you may have guessed, the game has received a “Mature” rating due to content that includes blood and “Intense Violence.” *Counter-Strike: Global Offensive*, ENT. SOFTWARE RATING BOARD, <http://www.esrb.org/ratings/Synopsis.aspx?Certificate=100491&Title=Counter-Strike%3a+Global+Offensive> (last visited Dec. 28, 2017). Despite its rating, the game has a significant number of teenage players. But the game is not just for teens. At any given time, there are roughly 380,000 people playing across the globe. Brustein & Novy-Williams, *supra* note 45.

80. See, e.g., CALL OF DUTY: ADVANCED WARFARE (Activision 2014); SHADOWRUN (Catalyst Game Labs 2013).

81. Pinfof, *supra* note 79.

82. Brustein & Novy-Williams, *supra* note 45.

83. *Id.*; Pinfof, *supra* note 79.

84. Brustein & Novy-Williams, *supra* note 45.

85. Pinfof, *supra* note 79.

86. 8/13 — *The Arms Deal Update*, COUNTER-STRIKE: BLOG (Aug. 14, 2013), <http://blog.counter-strike.net/index.php/2013/08/7425>.

87. *Id.*

players to collect skins in the game, but also allows them to be sold, bought, or traded in the Steam Marketplace.⁸⁸

The Arms Deal Update works like this. Players use cash to purchase skins.⁸⁹ They then go to any number of websites⁹⁰ to place bets on the outcome of a *CS:GO* match.⁹¹ The winning bettor now has a new skin that can be sold in the Steam Marketplace to convert it into cash.⁹² Because cash goes in, and cash comes out, betting on skins is, for all practical purposes, the same as betting with cash directly.⁹³

An estimated \$2.3 billion in skins was wagered in 2015.⁹⁴ That number more than doubled to \$5 billion in 2016.⁹⁵ And estimates project that amount could balloon to more than \$20 billion by 2020 if left unregulated.⁹⁶

III. GAMBLING LAWS AND APPLICATION

Gambling has long been considered harmful for society because it leads to “increased crime rates, economic loss, and erosion of morality.”⁹⁷ Those who oppose gambling suggest that the activity causes increased organized crime, money laundering, and a general rise in crime resulting from “compulsive gambling behavior.”⁹⁸ Another argument against

88. *Id.*

89. Brustein & Novy-Williams, *supra* note 45.

90. Simply searching “skins gambling site” into Google will yield many results. *See, e.g.*, FARMSKINS, <http://farmskins.com> (last visited Dec. 28, 2017); GAMDOM, *supra* note 34; GAMEFLIP, *supra* note 34; PVPRO, <https://www.pvpro.com/pvpro/csgo-na/home> (last visited Dec. 28, 2017).

91. Brustein & Novy-Williams, *supra* note 45. Bettors can wager on games that they are involved in or on games of third parties. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. Assael, *supra* note 1.

96. Joshua Brustein & Eben Novy-Williams, *Game-Maker Valve Moves to Choke Off \$7.4 Billion Gambling Market*, BLOOMBERG TECH. (July 13, 2016), <https://www.bloomberg.com/news/articles/2016-07-13/game-maker-valve-moves-to-choke-off-7-4-billion-gambling-market>.

97. Nicole Davidson, Comment, *Internet Gambling: Should Fantasy Sports Leagues Be Prohibited?*, 39 SAN DIEGO L. REV. 201, 221 (2002) (citing Aaron Craig, *Gambling on the Internet*, 1998 COMPUTER L. REV. & TECH. J. 61, 64).

98. *Id.* at 221–22 (citing M. Neil Browne et al., *The Role of Ethics in Regulatory Discourse: Can Market Failure Justify the Regulation of Casino Gaming?*, 78 NEB. L. REV. 37, 50 (1999)). They also raise arguments that legalized gambling leads to “problem gamblers” who support their habits with criminal activity. *Id.* at 222 (quoting Ronald J. Rychlak, *The Introduction of Casino Gambling: Public Policy and the Law*, 64 MISS. L.J. 291, 346 (1995)); *see also* Priscilla Painton, *Boardwalk of Broken Dreams: The Hometown of the Con Job May Now Be the Victim of One*, TIME, Sept. 25, 1989, at 64, 66 (noting casinos in Atlantic City increased the city’s crime rate to the highest in the state).

gambling is that it redistributes “discretionary spending from local business” to the gambling operators, thus harming the community.⁹⁹ Perhaps chief amongst those who oppose gambling is the concern “that youths will be attracted to the activity, and early exposure to gambling will lead to a higher ‘risk of addiction.’”¹⁰⁰

A. Federal Gambling Laws

In response to those concerns, Congress has enacted several laws. Most association with gambling businesses that are illegal under state law was made a federal crime under the Illegal Gambling Business Act.¹⁰¹ The transmission of gambling-related information in interstate or foreign commerce was prohibited by the Wire Act,¹⁰² the Travel Act,¹⁰³ and the Interstate Transportation of Wagering Paraphernalia Act (“Paraphernalia Act”).¹⁰⁴ Certain activities connected to sports wagering were prohibited by the Professional and Amateur Sports Protection Act (“Bradley Act”).¹⁰⁵ In 2006, the Unlawful Internet Gambling Enforcement Act (“UIGEA”) was passed.¹⁰⁶

1. The Wire Act

Congress enacted the Wire Act in 1961 as part of the federal government’s “war on organized crime.”¹⁰⁷ The Wire Act intended specifically to aid states in combatting bookmaking schemes, but it also applies to all other forms of gambling more generally.¹⁰⁸

The Wire Act imposes fines, up to a two-year prison sentence, or both for anyone who bets or wagers and “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

99. Davidson, *supra* note 97, at 223.

100. Kimberly Saginario, Note, *Regulation Is Crucial for Daily Fantasy Sports: Why Illinois’s Proposed Bill Is One the States Should Follow*, 69 RUTGERS U. L. REV. 843, 854 (2017) (quoting Davidson, *supra* note 97, at 224).

101. 18 U.S.C. § 1955 (2012) (amended 2014).

102. 18 U.S.C. § 1084(a) (2012).

103. 18 U.S.C. § 1952 (2012) (amended 2014).

104. 18 U.S.C. § 1953(a) (2012) (amended 2014).

105. 28 U.S.C. § 3702 (2012).

106. Unlawful Internet Gambling Enforcement Act, Pub. L. No. 109-347, 120 Stat. 1884 (2006) (codified as amended at 31 U.S.C. §§ 5361–5367 (2012)). The UIGEA was the first federal statute to address the fantasy sports phenomenon. Saginario, *supra* note 100, at 854.

107. I. Nelson Rose & Rebecca Bolin, *Game On for Internet Gambling: With Federal Approval, States Line Up to Place Their Bets*, 45 CONN. L. REV. 653, 659 (2012).

108. *Id.*

or wagers on any sporting event or contest.”¹⁰⁹ The Wire Act also prohibits transmissions that entitle “the recipient to receive money or credit as a result of bets or wagers.”¹¹⁰

When the Wire Act was initially passed, gamblers used telegraphs to gather the results of horse races.¹¹¹ Gamblers also contacted sportsbooks using telephones.¹¹² However, by interpreting the statute to define a “wire communication facility” to include the Internet and cell phones, courts began to use the statute to regulate Internet gambling.¹¹³

The Wire Act applied beyond mere sports gambling at one point, and beyond the actual taking or placing of bets.¹¹⁴ However, in September 2011, the Department of Justice’s Office of Legal Counsel published a memorandum opinion stating that “[i]nterstate transmissions of wire communications that do not relate to a ‘sporting event or contest’ fall outside the reach of the Wire Act.”¹¹⁵ Accordingly, the Wire Act has been limited fairly significantly in recent years.

Furthermore, although the Wire Act does not define the terms “betting” or “wagering” explicitly, the term “bet” has been interpreted as “[s]omething (esp. money) staked or pledged as a wager.”¹¹⁶ Similarly, “wager” has been interpreted to mean “money or other consideration risked on an uncertain event.”¹¹⁷

The Department of Justice’s stance of enforcing the Wire Act only in regard to a “sporting event or contest” raises an interesting question: what constitutes a sporting event or contest? Does a video game count as a sport?

109. 18 U.S.C. § 1084(a) (2012).

110. *Id.*

111. Rose & Bolin, *supra* note 107, at 659.

112. *Id.* at 659–60.

113. *See, e.g.*, *United States v. Lyons*, 740 F.3d 702, 716–17 (1st Cir. 2014); *United States v. Cohen*, 260 F.3d 68, 71, 76 (2d Cir. 2001); *see also* Rose & Bolin, *supra* note 107, at 661, 670 (“The Wire Act certainly applies to the Internet, as a ‘wire communications facilit[y],’ as would any other common communication technology, including wireless phones, since ‘wire[s]’ are inevitably involved.” (both alterations in original) (quoting I. NELSON ROSE & MARTIN D. OWENS, JR., *INTERNET GAMING LAW* 118–19 (2d ed. 2009))).

114. *See United States v. Lombardo*, 639 F. Supp. 2d 1271, 1279–82 (D. Utah 2007) (upholding indictment under the Wire Act for organization that processed payments for illegal gambling websites).

115. Whether Proposals by Ill. & N.Y. to Use the Internet & Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act, 35 Op. O.L.C. 1 (2011).

116. Aaron Levy, Note, *A Risky Bet: The Future of Pay-to-Play Online Fantasy Sports*, 39 CONN. L. REV. 325, 335 (2006) (alteration in original) (quoting *Bet*, BLACK’S LAW DICTIONARY (8th ed. 2004)).

117. *Id.* (quoting *Wager*, BLACK’S LAW DICTIONARY (8th ed. 2004)).

Some cases seem to imply a strict, narrow interpretation for “sporting event.”¹¹⁸ However, there is a growing trend recognizing video game competitions as “eSports.”¹¹⁹ But given that the Wire Act was passed in 1961, legislators could not have intended it to apply to video game gambling occurring via the Internet. Even in 2011, at the time of the Department of Justice memo, eSports was still a nascent idea and likely was not intended as a target of the Wire Act. However, it is certainly possible for the statute to be interpreted broadly enough to include eSports or even video games more generally.

2. The Unlawful Internet Gambling Enforcement Act (“UIGEA”)

As Internet popularity boomed, Congress felt the need to pass some form of legislation to control online gambling.¹²⁰ In 2006, after several failed attempts to update the Wire Act, Congress passed the UIGEA.¹²¹ According to the UIGEA, “[n]o person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling,” any type of financial transaction.¹²² Financial transactions include checks, credit or electronic fund transfers, or “virtually any type of payment.”¹²³

The UIGEA therefore regulates betting indirectly by prohibiting certain financial transactions in relation to unlawful Internet gambling, thereby attempting to make sources of payment methods for illegal gambling less accessible (e.g., credit cards).¹²⁴ Put simply, the UIGEA makes it a “crime for Internet betting sites to accept bets.”¹²⁵

118. See, e.g., *In re MasterCard Int'l Inc.*, 132 F. Supp. 2d 468, 480–81 (E.D. La. 2001), *aff'd*, 313 F.3d 257 (5th Cir. 2002).

119. See Henry Young, *Seven-Figure Salaries, Sold-Out Stadiums: Is Pro Video Gaming a Sport?*, CNN (May 31, 2016), <http://edition.cnn.com/2016/05/31/sport/esports-is-professional-gaming-a-sport> (charting the growth of eSports and drawing a comparison to extreme sports).

120. Michael Trippiedi, Note, *Daily Fantasy Sports Leagues: Do You Have the Skill to Win at These Games of Chance?*, 5 UNLV GAMING L.J. 201, 213 (2014).

121. *Id.*; see also Greenberg Traurig, LLP, *DOJ's Reversal on the Wire Act—What It Means for Internet Gaming*, NAT'L L. REV. (Jan. 3, 2012), <http://www.natlawreview.com/article/doj-s-reversal-wire-act-what-it-means-internet-gaming> [hereinafter Greenberg Traurig].

122. 31 U.S.C. § 5363 (2012).

123. *Id.*; Anthony N. Cabot & Louis V. Csoka, *Fantasy Sports: One Form of Mainstream Wagering in the United States*, 40 J. MARSHALL L. REV. 1195, 1197 (2007).

124. Rose & Bolin, *supra* note 107, at 668.

125. Eric Meer, Note, *The Professional and Amateur Sports Protection Act (PASPA): A Bad Bet for the States*, 2 UNLV GAMING L.J. 281, 292 (2011).

The UIGEA, however, failed to define specifically unlawful Internet gambling.¹²⁶ Instead, the UIGEA relies “on other federal and state laws as to what wagers [are] illegal.”¹²⁷

The UIGEA does define “bet[ting]” or “wager[ing]” to include “staking or risking . . . something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.”¹²⁸

The UIGEA also carved out several exceptions to its enforcement.¹²⁹ Among these exceptions are fantasy sports,¹³⁰ as well as “skill games”¹³¹ and wagers that are “accepted by a state-licensed entity from individuals in the state where it was licensed.”¹³²

Because the UIGEA includes “virtually any type of payment,” skins could easily be included, particularly since they indeed have some real-life value. The key language could turn out to be “contest of others.” If teens are wagering skins on the outcome of contests in which they participate, this would not necessarily be a wager on a “contest of others.” However, some of the skins are wagered on matches streamed online, where the bettor is not a participant, which would give the UIGEA some teeth.

One may also confront the notion that eSports are sporting events within the meaning of the UIGEA. Further, because the UIGEA carves out an exception for skill games, this could be a situation where courts are left to determine whether video games are games of chance or games of skill.¹³³

3. The Travel Act

The Travel Act provides penalties for anyone traveling in interstate commerce, or using mail in interstate or foreign commerce, with intent to “(1) distribute the proceeds of any unlawful activity; or (2) commit any

126. Rose & Bolin, *supra* note 107, at 668; Greenberg Traurig, *supra* note 121.

127. Greenberg Traurig, *supra* note 121; *accord* Rose & Bolin, *supra* note 107, at 668.

128. 31 U.S.C. § 5362(1)(A) (2012).

129. See § 5362(1)(E); see also Greenberg Traurig, *supra* note 121.

130. § 5362(1)(E)(ix). For a more in-depth analysis of the fantasy sports exemption, see Saginario, *supra* note 100, at 860.

131. Rose & Bolin, *supra* note 107, at 668.

132. Greenberg Traurig, *supra* note 121. However, the UIGEA made clear that although they were exempted from prosecution under the Act, it did not intend to legalize them. *Id.*

133. Courts have recently had to grapple with this same issue in regard to daily fantasy sports. See *infra* Subection III.C.2 for a brief discussion on the topic and on the distinction between games of skill and games of chance. For a more in-depth discussion, see Saginario, *supra* note 100, at 862–65.

crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate . . . the carrying on, of any unlawful activity.”¹³⁴ The Travel Act defines “unlawful activity” to include “any business enterprise involving gambling.”¹³⁵ But, just like the Wire Act, the Travel Act does not define “gambling.”¹³⁶

By using the Internet to carry out gambling across state lines, video game companies fall under the purview of the Travel Act, provided they meet any of the three grounds listed above. The first ground requires an “intent to . . . distribute the proceeds of any unlawful activity.”¹³⁷ Because the video game companies distribute their gambling prizes—either skins, Ultimate Team card packs, coins, or real currency—they are distributing the proceeds of their gambling enterprise. The video game companies may satisfy the third potential ground as well: traveling, using the mail, or any facility to establish, promote, or carry on an unlawful activity. By shipping the games used to gamble or selling the games across state lines, the companies meet this ground.

4. The Interstate Transportation of Wagering Paraphernalia Act (“Paraphernalia Act”)

By passing the Paraphernalia Act¹³⁸ in 1961, Congress intended to prevent illegal gambling by creating “a substantial barrier to the distribution of certain materials used in the conduct of various forms of illegal gambling.”¹³⁹ More to the point, the Paraphernalia Act prohibits “send[ing] in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used . . . or designed for use in . . . bookmaking . . . [or a numbers game].”¹⁴⁰

By simply making the games available across state lines, video game producers are arguably sending devices used in a gambling scheme in violation of the Paraphernalia Act.

But, there nonetheless remain several exemptions to the Paraphernalia Act.¹⁴¹ For instance, the Paraphernalia Act does not apply to “the transportation of betting materials to be used in the placing of

134. 18 U.S.C. § 1952(a) (2012).

135. § 1952(b).

136. See § 1952.

137. § 1952(a).

138. 18 U.S.C. § 1953(a) (2012) (amended 2014).

139. Levy, *supra* note 116, at 337; see also Erlenbaugh v. United States, 409 U.S. 239, 246 (1972) (“By interdicting the flow of these materials to and between illegal gambling businesses, the statute purposefully seeks to impede the operation of such businesses.”).

140. 18 U.S.C. § 1953(a) (2012).

141. § 1953(b); see, e.g., Davidson, *supra* note 97, at 212.

bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State.”¹⁴²

Further, the Act will not impose fines or jail time for “the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication.”¹⁴³ However, the exception’s applicability towards video games may be limited, as this exception was “primarily designed to exclude . . . a newspaper or other publication containing racing results or predictions.”¹⁴⁴

5. The Illegal Gambling Business Act

The Illegal Gambling Business Act was passed in 1970. The Illegal Gambling Business Act imposes criminal penalties on anyone who “conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business.”¹⁴⁵ Three elements are required in order to constitute an “illegal gambling business” according to the Act: (1) “[it] is a violation of the law of a State,” (2) five or more people are involved in the business, and (3) continuous operation for a period of more than 30 days, or has a “gross revenue of \$2,000 in any single day.”¹⁴⁶

The Act targets “high stakes illegal gambling,” and video game gambling is a highly profitable industry that would likely meet the requirements for the third condition.¹⁴⁷ However, because the federal statute relies on the laws of a state declaring the game illegal, the Illegal Gambling Business Act is powerless unless the state acts first.¹⁴⁸

6. The Professional and Amateur Sports Protection Act (“Bradley Act”)

The Professional and Amateur Sports Protection Act (also known as the “Bradley Act”) makes it illegal for someone to

sponsor, operate, advertise, promote, license, or authorize . . . a lottery, sweepstakes, or other betting, gambling, or wagering

142. § 1953(b)(2).

143. § 1953(b)(3).

144. See *United States v. Mendelsohn*, 896 F.2d 1183, 1186 (9th Cir. 1990) (citing H.R. REP. NO. 87-968, at 3 (1961)); *United States v. Kelly*, 328 F.2d 227, 231 (6th Cir. 1964).

145. 19 U.S.C. § 1955(a) (2012) (amended 2014).

146. § 1955(b)(1)(i)–(iii).

147. What is “high stakes illegal gambling?” See Nathaniel J. Ehrman, Note, *Out of Bounds?: A Legal Analysis of Pay-to-Play Daily Fantasy Sports*, 22 *SPORTS LAW. J.* 79, 91, 96 (2015).

148. See *United States v. DiCristina*, 726 F.3d 92, 98–99 (2d Cir. 2013) (stating that a conviction under the Illegal Business Gambling Act requires a violation of state law).

scheme based, directly or indirectly . . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.¹⁴⁹

Interestingly, the Bradley Act attempted to ban all state-authorized sports wagering, although it provided an exemption for any state which operated some form of an authorized sports wagering scheme during the fifteen year period between 1976 and 1990.¹⁵⁰ Accordingly, the clause provided exceptions for “limited sports lotteries” in Oregon and Delaware, as well as “sports pools” operating in Nevada and Montana.¹⁵¹ Further, states that operated licensed casinos for the previous ten years were permitted a one-year window to legalize sports betting and fall within the exemption.¹⁵²

Whether video games count as sports for the purposes of the law is a somewhat difficult question to answer and one that appears often in addressing issues pertaining to video game gambling. However, no court decision has yet to confront the issue. Some consider playing video or computer games as eSports, and put them in the same category as more traditional athletic endeavors.¹⁵³ Many, however, see them as mere games, or rather hobbies, or competitions.

ESPN, a sports media powerhouse, appears to give inconsistent opinions on the subject. ESPN president John Skipper has gone on the record as saying that he does not view video games as a sport.¹⁵⁴ When

149. 28 U.S.C. § 3702(1)–(2) (2012). Supporters of the law were not only concerned with “stopping the spreading of state-sponsored sports gambling,” and protecting “the integrity of professional sports,” the proponents were “also concerned about the potential effect of legalized sports betting on America’s youth.” See Saginario, *supra* note 100, at 858–59 & n.128 (citing S. REP. NO. 102-248, at 4–5 (1991)) (“Sports gambling is a national problem. The harms it inflicts are felt beyond the borders of those States that sanction it. The moral erosion it produces cannot be limited geographically. Once a State legalizes sports gambling, it will be extremely difficult for other States to resist the lure.” (quoting S. REP. NO. 102-248, at 5 (1991))).

150. § 3704(a)(1); *see also* Meer, *supra* note 125, at 287.

151. Meer, *supra* note 125, at 287; Saginario, *supra* note 100, at 858; Jeffrey Rodefer, *Professional and Amateur Sports Protection Act of 1992*, GAMBLING L. US, <http://www.gambling-law-us.com/Federal-Laws/sports-protection.htm> (last visited Dec. 28, 2017).

152. Rodefer, *supra* note 151. It seems this exemption was specifically carved out for New Jersey. *Id.* However, the state failed to legalize a sports gambling regime and is now prohibited from legalizing sports betting. *Id.*

153. Paul Tassi, *The U.S. Now Recognizes eSports Players as Professional Athletes*, FORBES (July 14, 2013), <http://www.forbes.com/sites/insertcoin/2013/07/14/the-u-s-now-recognizes-esports-players-as-professional-athletes/#5ac7eac1691d>.

154. Paul Tassi, *ESPN Boss Declares eSports ‘Not a Sport’*, FORBES (Sept. 7, 2014), <http://www.forbes.com/sites/insertcoin/2014/09/07/espn-boss-declares-esports-not-a-sport/#4db018a55a80>.

asked about the rise of eSports, Skipper responded “[i]t’s not a sport—it’s a competition. Chess is a competition. Checkers is a competition Mostly, I’m interested in doing real sports”¹⁵⁵

But as eSports garner more attention and become more popular, the notion that video games are not sports appears as if it is beginning to change. In 2015, TBS (via Turner Sports) reached a deal to broadcast two seasons of live eSports competitions.¹⁵⁶ Both Valve and *Counter-Strike: Global Offensive* were included as part of the broadcast deal.¹⁵⁷

Further, while it appears that some mainstream sports media may not consider video games as sports, that may not matter much in the eyes of the law. The United States has started granting athletic visas to professional video game players to come to the United States from overseas purely to play video games.¹⁵⁸ While that may simply be an acknowledgement from the government that there is some commercial interest in eSports, officially recognizing video gamers as athletes may very well be crucial in starting to regulate the video game gambling industry under the Professional and Amateur Sports Protection Act.

B. New Jersey Gambling Laws

To determine whether an activity constitutes illegal gambling, states often look to the dichotomy between games of skill and games of chance.¹⁵⁹ Indeed, several of the federal regulations discussed above also recognize this distinction. “Skill” is typically defined as the “exercise of ‘sagacity upon known rules and fixed probabilities where sagacity includes keenness of discernment or penetration with soundness of

155. *Id.* This statement may sound hypocritical for a number of reasons. ESPN has in the past broadcast coverage of eSports events, both on television and on ESPN3, the company’s Internet streaming channel. *See id.* Also, a look at some of ESPN’s programming choices may show that this was simply sour grapes griping after the network lost out to a competitor. ESPN airs professional poker, fishing, trick shot pool, and juggling. *See Tassi, supra* note 153; *see also* Jason Garfield, *WJF 11 November 5–8, 2015 Las Vegas*, WORLD JUGGLING FED’N (July 29, 2015), <http://www.thewjf.com/2015/07/wjf-11-november-5-8-2015-las-vegas>; *Professional Trick Shots & Tournament Information*, ARTISTIC POOL PLAYERS, <http://www.artisticpoolplayers.com/tournaments.php> (last visited Dec. 28, 2017).

156. Ross Kelly, *eSports Ready for Mainstream as New League Lands TV Deal*, CBS LOC. SPORTS (Sept. 25, 2015), <http://sports.cbslocal.com/2015/09/25/esports-new-league-tv-deal>.

157. Todd Spangler, *Turner, WME/IMG Form E-Sports League, with TBS to Air Live Events*, VARIETY (Sept. 23, 2015), <http://variety.com/2015/tv/news/turner-wme-img-esports-league-tbs-1201600921>.

158. Tassi, *supra* note 153; *see also* Yannick Lejacq, *Score! Professional Video Gamers Awarded Athletic Visas*, NBC NEWS (July 19, 2013), <http://www.nbcnews.com/technology/score-professional-video-gamers-awarded-athletic-visas-6C10679998>.

159. Ken LaMance, *Games of Chance vs. Games of Skill Lawyers*, LEGALMATCH, <http://www.legalmatch.com/law-library/article/games-of-chance-vs-games-of-skill.html> (last modified Sept. 11, 2017).

judgment; shrewdness; or the ability to see what is relevant and significant.”¹⁶⁰ Meanwhile, “chance” involves “a lack of control over events or the absence of controllable causation, that is, the opposite of intention.”¹⁶¹

To determine whether an activity is a game of skill or chance, most states use a “dominant factor” or “predominance” test, which asks “whether chance or skill is the dominating factor in determining the result.”¹⁶² Activities with a dominating factor of skill are deemed contests, while activities with a dominating factor of chance are considered gambling.¹⁶³ However, other states take a more rigid approach and also ban games “whose outcomes are primarily determined by skill.”¹⁶⁴

New Jersey has rejected the “dominant factor” test, instead opting to ban activities where “the element of chance is a factor material to the final result.”¹⁶⁵

New Jersey statute defines “gambling” as “staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the actor’s control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome.”¹⁶⁶

Further, the state defines “contest of chance” as “any contest, game, pool, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants or some other persons may also be a factor therein.”¹⁶⁷

160. Ehrman, *supra* note 147, at 101–02 (citing 38 AM. JUR. 2D *Gambling* § 4 (2015)).

161. 38 AM. JUR. 2D *Gambling* § 2 (2015).

162. Trippiedi, *supra* note 120, at 215.

163. *Id.*

164. Jon Boswell, Note, *Fantasy Sports: A Game of Skill that Is Implicitly Legal Under State Law, and Now Explicitly Legal Under Federal Law*, 25 CARDOZO ARTS & ENT. L.J. 1257, 1264 (2008). States that do not distinguish between games of skill and games of chance are Arizona, Arkansas, Florida, Hawaii, Illinois, Iowa, Louisiana, Maryland, and Tennessee. *Id.* at 1264 n.48.

165. *Boardwalk Regency Corp. v. Attorney Gen.*, 457 A.2d 847, 849–50 (N.J. Super. Ct. Law Div. 1982) (“[T]he proper focus of the inquiry . . . is not on the level of skill which may affect the outcome of the contested activity but rather on whether the element of chance is a factor that is material to the final result.”); N.J. STAT. ANN. §§ 2C:37-1(a)–(b), :37-2 (West 2016). New York follows a similar structure to New Jersey. See N.Y. PENAL LAW § 225.00(1) (McKinney 2017). Even further, Delaware, Kansas, Michigan, Ohio, Wisconsin, Washington, and Vermont apply a fully distinct test that relies on contract law to determine whether “the contest participant expends substantial time or effort that benefits the contest’s host in some way.” Ehrman, *supra* note 147, at 98 (quoting *State v. Wilson*, 196 A. 757, 758–59 (Vt. 1938)). Arkansas, Iowa, and Tennessee apply an “Any Chance Test” where any element of chance will make the game illegal. *Id.* at 98–99.

166. § 2C:37-1(b).

167. § 2C:37-1(a).

In New Jersey, it is also a crime to promote illegal gambling.¹⁶⁸ Accordingly, one is guilty of promoting gambling if he knowingly: “[a]ccepts or receives money or other property, pursuant to an agreement or understanding with any person whereby he participates or will participate in the proceeds of gambling activity;” or “[e]ngages in conduct, which materially aids any form of gambling activity.”¹⁶⁹ Such conduct includes, but is not limited to, conduct intended to create

the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation.¹⁷⁰

1. New Jersey Casino Law

Current laws regulating New Jersey casinos may be a good place to look, should legislators aim to regulate the Internet video game gambling industry. In New Jersey, courts impose near strict liability for underage gambling on casinos where they permit minors to enter and remain on a casino’s gambling floor.¹⁷¹ Further, the state imposes criminal charges on minors who enter or place wagers in casinos or other authorized betting facilities.¹⁷² The minor’s parents or guardians also face charges if they knowingly allow or permit a minor to wager or attempt to place a wager at a casino or authorized gambling facility.¹⁷³ However, the state does recognize a defense for casinos where an underage person claims to be of legal age or where a reasonable person would believe the minor is of age.¹⁷⁴

Accordingly, states should at least attempt to regulate websites that allow video game gambling, even if they do not decide to outlaw them outright. Requiring some sort of authorization from the user certifying his or her age would be a good start for these sites. If states do so, this certification may provide a way out from liability under the current

168. § 2C:37-2.

169. § 2C:37-2(a)(1)–(2).

170. § 2C:37-2(a)(2).

171. *State, Dep’t of Law & Pub. Safety v. Boardwalk Regency Corp.*, 548 A.2d 206, 210 (N.J. Super. Ct. App. Div. 1988) (per curiam).

172. N.J. STAT. ANN. § 5:12-119(a) (West 2012).

173. § 5:12-119(c).

174. § 5:12-119(b).

casino laws, as it may allow casinos to argue they reasonably believed the minor was of legal age.¹⁷⁵

2. New Jersey Lottery Law

In New Jersey, lotteries are also highly regulated by legislation.¹⁷⁶ A state statute defines a lottery as a gambling scheme in which three conditions are met. First, “the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are to be designated the winning ones[.]”¹⁷⁷ The second element requires the winning chances “to be determined by a drawing or by some other method based upon the element of chance[.]”¹⁷⁸ Finally, the holders of the winning chances must receive something of value.¹⁷⁹

The New Jersey common law essentially echoes the statute by defining a contest as an illegal lottery if it involves “(1) the distribution of prizes, (2) according to chance, (3) for a consideration.”¹⁸⁰

Under New Jersey law, it is certainly possible that Ultimate Team Mode could be found to constitute an illegal lottery. First, the common law requires distribution of prizes for a contest to be a lottery.¹⁸¹ The player cards that are awarded may be considered “prizes” by the plain meaning of the word.

To the second factor, the statute requires the chance “must be ‘represented by and differentiated by numbers or by combinations of numbers or by some other media.’”¹⁸² Although the player cards are not necessarily numbers or a combination of numbers—despite the fact that the players are assigned a number rank and a numbered set of skills—the player cards seemingly satisfy the “some other media” requirement.¹⁸³ Further, the awarding of player cards is completely randomized, satisfying the requirement of chance.

175. *See id.*

176. *See* N.J. STAT. ANN. § 2C:37-6 (West 2016).

177. *Id.* § 2C:37-1(h).

178. *Id.*

179. *Id.*

180. *Lucky Calendar Co. v. Cohen*, 117 A.2d 487, 494 (N.J. 1955) (citing *Fed. Commc'ns Comm'n v. Am. Broad. Co.*, 347 U.S. 284, 290 (1954)).

181. *Id.*

182. *State v. DeLuzio*, 643 A.2d 609, 615 (N.J. Super. Ct. App. Div. 1993) (quoting § 2C:37-1(h)).

183. *See State v. Bey*, 618 A.2d 373, 376 (N.J. Super. Ct. App. Div. 1992) (holding that the legislature intended to incorporate the “normal usage of the word lottery” wherein someone purchases a chance to be randomly determined as a winner of a prize).

Lastly, as to the “consideration,” the court only requires enough consideration to satisfy a simple contract.¹⁸⁴ Something as small as “a ‘peppercorn’ or the filling in and delivering of a coupon is sufficient consideration.”¹⁸⁵ So long as the bargained-for exchange is completed, the court will not interfere.¹⁸⁶ Because player cards are not awarded until the gamer purchases the player packs for the required amount of in-game coins, the transaction satisfies the requirement of consideration. Although the virtual coins have an actual cash value, this fact is insignificant. The consideration need not have any intrinsic value.¹⁸⁷

C. How Gambling Laws Apply to Other Types of Online Gambling

1. Internet Poker

The game of poker has been popular for centuries.¹⁸⁸ As such, it is no surprise that the card game also became popular for Internet gamblers. Poker players simply visit one of the many websites offering Internet poker lounges and deposit a sum of money via a credit or debit card, direct bank account transfer, or other types of eWallets, and begin playing.¹⁸⁹

On April 15, 2011, the Department of Justice indicted the three largest Internet poker websites, effectively striking down a \$1 billion industry.¹⁹⁰ The indictments charged the poker sites with conspiracy to violate the UIGEA, operation of an illegal gambling business, conspiracy to commit bank fraud, conspiracy to commit wire fraud, and money laundering conspiracy.¹⁹¹

184. *Lucky Calendar*, 117 A.2d at 495.

185. *Id.*

186. *Id.*

187. *Id.*

188. See James McManus, *No More Bluffing*, N.Y. TIMES (Aug. 24, 2012), <http://www.nytimes.com/2012/08/25/opinion/poker-an-american-pastime-and-a-game-of-skill.html>.

189. Peter T. Busch, Note, *Piecemeal State Legislation: The Wrong Way to Divide the Internet Poker Pie?*, 33 CARDOZO ARTS & ENT. L.J. 181, 184 (2015).

190. See Press Release, Preet Bharara, U.S. Attorney, S. Dist. N.Y., Manhattan U.S. Attorney Charges Principals of Three Largest Internet Poker Companies with Bank Fraud, Illegal Gambling Offenses and Laundering Billions in Illegal Gambling Proceeds (Apr. 15, 2011), <https://www.justice.gov/archive/usao/nys/pressreleases/April11/scheinbergetalindictmentpr.pdf>; GAMBLING COMPLIANCE LTD., US ONLINE POKER DATA REPORT 1 (2011), https://gamblingcompliance.com/files/GD_US_pokerEXEC_SUMMARY_1.pdf.

191. Busch, *supra* note 189, at 181–82.

However, since the crackdown—known as “Black Friday”¹⁹²—steps have been taken to allow regulated online poker businesses to operate.¹⁹³ Because the UIGEA is a federal statute, it only governs gambling activity that occurs between states or across state lines.¹⁹⁴ Any gambling site that only operates within the boundaries of one state, would therefore escape federal jurisdiction. Further, the Obama administration chose to leave the regulation of Internet poker to the states.¹⁹⁵ However, only three states have fully legalized online poker or general Internet gambling, while others elect to passively permit it.¹⁹⁶

2. Fantasy Sports

The debate over fantasy sports is usually analyzed in two ways: traditional fantasy sports and daily fantasy sports. Traditional fantasy sports are generally considered a legal game of skill.¹⁹⁷ This conclusion springs from the research, analysis, and decision-making required over the course of a fantasy season.¹⁹⁸

Some argue daily fantasy games require less skill, however, and therefore require a different analysis to determine its legality.¹⁹⁹ Essentially, this argument insists that a single athlete’s performance on any given day can vary wildly due to any number of factors from injury to weather to opponent or the performance of one’s teammates.²⁰⁰ Meanwhile, the normal ebb and flow of a season has a way of bringing performance back to a baseline trend that is easier to predict over the course of time.

192. Nate Silver, *After ‘Black Friday,’ American Poker Faces Cloudy Future*, N.Y. TIMES: FIVETHIRTYEIGHT (Apr. 20, 2011, 8:47 PM), <http://fivethirtyeight.blogs.nytimes.com/2011/04/20/after-black-friday-american-poker-faces-cloudy-future>.

193. Busch, *supra* note 189, at 185.

194. *Id.*

195. *Id.*

196. Julianne Pepitone, *Online Gambling Toes a Confusing Legal Line*, CNN MONEY (June 10, 2013), <http://money.cnn.com/2013/06/10/technology/innovation/online-gambling-poker/index.html>; see also Brian Deese, *What We Have to Say About Online Poker*, WHITE HOUSE: WE THE PEOPLE (Sept. 22, 2011), <https://petitions.obamawhitehouse.archives.gov/petition/protect-consumers-create-jobs-and-generate-revenue-licensing-and-regulating-online-poker> (archived petition to Obama Administration).

197. Trippiedi, *supra* note 120, at 220.

198. See *id.* at 220, 222.

199. See *id.* at 220; see also Ehrman, *supra* note 147, at 96.

200. See, e.g., Joshua Brustein, *Fantasy Sports and Gambling: Line Is Blurred*, N.Y. TIMES (Mar. 11, 2013), <http://www.nytimes.com/2013/03/12/sports/web-sites-blur-line-between-fantasy-sports-and-gambling.html>.

However, the legality of daily fantasy sports is in a state of flux, with many states still in the midst of determining its legality.²⁰¹

IV. HOW THE LAW SHOULD ADDRESS VIDEO GAME GAMBLING

With such large amounts of money being generated, it seems unlikely that game developers such as EA Sports or Valve will voluntarily shut down the features allowing in-game purchases. For that reason, governments will likely need to get involved. One state has already begun. The Washington State Gambling Commission has contacted Valve to cease permitting skins gambling.²⁰² Other states will need to follow in Washington's footsteps if the problem of underage video game gambling is to be remedied or eliminated.

With the state of Washington now applying pressure, consumers have also attempted to encourage Valve to shut down the Steam system's gambling abilities. Some consumers have filed class action lawsuits against Valve,²⁰³ alleging claims of unjust enrichment and violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), a federal racketeering statute providing civil remedies.²⁰⁴

While the outcomes of these types of suits are currently pending, they are just the beginning. As more and more suits pop up, and national awareness of the problem continues to grow, governments and legislators will feel more pressure to get involved and protect the nation's youth.²⁰⁵ However, current gambling laws may be interpreted to address the issue without the need to pass new legislation.

201. See James M. Breslow, Ly Chheng & Dan Nolan, *Is It Gambling? How States View Daily Fantasy Sports*, PBS (Feb. 8, 2016), <http://www.pbs.org/wgbh/frontline/article/is-it-gambling-how-states-view-daily-fantasy-sports>.

202. Jacob Wolf, *Washington State Gambling Commission Orders Valve to Stop Skins Gambling*, ESPN (Oct. 5, 2016), http://www.espn.com/esports/story/_/id/17723033/washington-state-gambling-commission-orders-valve-stop-skins-gambling.

203. Class Action Complaint at 19–20, *McLeod v. Valve Corp.*, No. 3:16-cv-01018-AWT (D. Conn. June 23, 2016), ECF No. 1; Michael McWhertor, *Counter-Strike Player Files Suit Against Valve over 'Illegal Gambling' Surrounding CSGO*, POLYGON (June 23, 2016), <http://www.polygon.com/2016/6/23/12020154/counter-strike-csgo-illegal-gambling-lawsuit-weapon-skins-valve>.

204. 18 U.S.C. §§ 1961–1968 (2012).

205. It is also possible that the costs of defending the lawsuits and lobbying legislators against criminalizing the gambling could remove Valve from the industry altogether.

A. *Interpret Existing Federal Law to Criminalize Video Game Gambling*

Current federal law may provide a viable way to address the problem in a swift manner that will adequately address the issue, but also take it out of the hands of the individual states. In fact, much of the federal government's current gambling laws could conceivably cover video game gambling, as discussed previously.

Perhaps the simplest option would be to explicitly declare that eSports are athletic events and classify gamers as athletes. This simple declaration would bring video game gambling under the umbrella of the Wire Act, especially considering that the Internet has been deemed under the purview of the Wire Act.²⁰⁶ Because the Wire Act has been limited to only apply to sports, the statute would be useless in this context unless video games were interpreted to fall into that category.

However, prosecuting gambling under the Wire Act would only punish those who gamble—in this case, the children and teens who have been wagering skins. Prosecuting children for illegal gambling seems like a poor solution and a waste of government resources. Rather, the better option would be to criminalize the gambling websites or software that makes such activity possible.

Declaring video games as eSports would also bring the gambling into the ambit of the Professional and Amateur Sports Protection Act.²⁰⁷ This path would allow the government to crack down against the websites and Valve, rather than criminalizing the act of placing bets.

The UIGEA is another possible way of attacking the problem.²⁰⁸ Under the UIGEA, a business is prohibited from using the Internet to receive payment as part of unlawful Internet gambling. The key question would then become whether virtual skins are a form of payment or a financial transaction.

While these skins are purchased for cash and then later exchanged for cash, some courts have been reticent to find video game products as a form of currency. In fact, one court has gone so far as to declare that laws “do not trifle with play money,” noting the need to draw “clear and distinct lines between real and virtual worlds, particularly when it comes to the serious business of going to court and litigating real claims and

206. See *supra* Section III.A.1.

207. See *supra* Section III.A.6.

208. See *supra* Section III.A.2.

interests. Even in the Internet age, there is a crucial distinction between that which is pretend and that which is real and true.”²⁰⁹

The more inclusive language of the Paraphernalia Act would be a viable option, as it forbids the transfer of essentially “any device” used in a bookmaking scheme.²¹⁰ This seems a fairly appropriate way to address the issue.

The Illegal Gambling Business Act would seem directly appropriate on its face.²¹¹ This Act outlaws gambling where (1) it violates state law; (2) five or more people are involved in the business; and (3) it involves a continuous operation for a period of more than thirty days, or generates \$2000 of gross revenue in any single day.²¹² Because many states already regulate online gambling, they would simply need to expressly include video games into their existing laws. The second and third factors are likely to be met due to the sheer magnitude and scale of the global popularity of these games.

B. Look to Other Industries for Guidance

The involvement of minors in gambling has been subjected to legal regulations for a long time. However, other areas where some believe minors may need some protection have been able to exist without much government interference. For instance, violent video games and Internet pornography are generally not regulated by laws due to First Amendment freedom of speech concerns.²¹³ Instead, these areas typically rely on industry or state regulations—as opposed to federal legislation—to help curb minors’ access.²¹⁴

209. *Mason v. Mach. Zone, Inc.*, 140 F. Supp. 3d 457, 469 (D. Md. 2015) (dismissing plaintiff’s complaint in which she alleged to have suffered losses after purchasing \$100 in virtual gold coins from a mobile app—*Game of War*—and then losing those coins in the games virtual casino).

210. See *supra* Section III.A.4.

211. See *supra* Section III.A.5.

212. 18 U.S.C. § 1955(b)(1)(i)–(iii) (2012).

213. See Todd A. Nist, Note, *Finding the Right Approach: A Constitutional Alternative for Shielding Kids from Harmful Materials Online*, 65 OHIO ST. L.J. 451, 458–59 (2004); Jon B. Robinson, Comment, *From Pong to Porn: Considering the First Amendment, Violent Video Games, and the Federal Trade Commission’s Constitutional Concerns*, 52 LOY. L. REV. 409, 425 (2006).

214. See Nist, *supra* note 213, at 458–59; Robinson, *supra* note 213, at 425; see also Lawrence G. Walters, *The End of the Age of Innocence—And the Beginning of Responsible Age Verification*, WALTERS L. GROUP, <http://www.firstamendment.com/innocence> (last visited Dec. 28, 2017). The music and film industries have also established their own set of internal regulations and ratings systems. *Id.*

The United Kingdom has in fact just passed a law requiring verification which is very similar to the ones previously struck down by the United States. *The UK Is Trying to Make It Harder for Teens to Watch Porn Online*, VICE (July 7, 2016), <https://www.vice.com/>

Many pornographic websites use some measure to attempt to verify the ages of those viewing adult content. For instance, many websites voluntarily require visitors certify their age before accessing the main pages. However, the effect of such certification procedures is not foolproof in preventing access by minors, as the minor could simply just click on the "I am over the age of 18" button.²¹⁵ Typically, these sites often have no other procedures to verify the visitor's age.²¹⁶ In fact, only three percent of adult websites require any type of age verification that does not solely rely on the honor system.²¹⁷

But a small minority of sites has attempted other measures. For instance, commercial porn sites will sometimes prohibit access to adult material until a "membership" has been purchased using a credit card.²¹⁸ Because credit cards are not typically issued to minors, sites can generally rely on this information.

But that is not to say Congress has not attempted to restrict minors' access to Internet pornography. In fact, legislators have made several attempts to foray into regulating minors' access to adult materials. Initially, legislators passed the Communications Decency Act of 1998.²¹⁹ This law prohibited the "knowingly" transmission of "indecent" messages to minors and the publication of materials which depict, in a manner "patently offensive as measured by contemporary community standards, sexual or excretory activities or organs", unless those materials were protected from access by minors, for example by the use of credit card systems.²²⁰

Next, Congress passed the Child Online Protection Act.²²¹ The Child Online Protection Act required all commercial distributors of "material that is harmful to minors" to restrict their sites to prevent access by minors.²²² "Material that is harmful to minors" was defined as materials

en_us/article/qbn4gd/porn-sites-will-need-proper-age-verification-by-2017-digital-economy-bill.

215. Walters, *supra* note 214.

216. *Id.*

217. *Id.*

218. *Id.*

219. 47 U.S.C. § 223 (2012), *invalidated by* Reno v. Am. Civil Liberties Union, 521 U.S. 844, 874 (1997).

220. *Id.* However, the law was struck down almost immediately by the Supreme Court as unconstitutionally limiting First Amendment rights to freedom of speech. *Reno*, 521 U.S. at 874.

221. 47 U.S.C. § 231 (2012), *invalidated by* Am. Civil Liberties Union v. Mukasey, 534 F.3d 181 (3d Cir. 2008).

222. § 231(a)(1) (2012).

that by “contemporary community standards” are judged to appeal to the “prurient interest” and that show sexual acts or nudity.²²³

Both statutes have been overturned and found unconstitutional, not because they block minors’ access to the materials, but because they add encumbrances to adults who want to access the materials.

But porn and gambling have their differences. First, as discussed above, pornography is constitutionally protected by the First Amendment. Gambling, on the other hand, is not.²²⁴ It is likely that an age verification requirement, or rather a credit card requirement, would pass constitutional muster. In fact, due to the nature of the gambling industry, a credit card or some other money transfer account—such as PayPal—is needed somewhere along the chain in order to have money to gamble with. Pornographic material is easily found for free.

But as mentioned earlier in this piece, simply requiring a credit card for gambling will likely not have any effect in the future, because it is not having any effect now. This Note has already listed several examples of minors stealing their parents’ credit cards to try to access and participate in these gambling sites.²²⁵ Many more stories can be found online.²²⁶ Something else will need to be done in order to curb minors’ use of video games to gamble.

C. Regulation from Within the Industry

As with movies, music and various other industries, perhaps the easiest and fastest way to regulate video game gambling would be to have the industry regulate itself.

In July 2016, Valve came forward and withdrew its support from sites permitting skins gambling, clarifying that the company had “no business relationships” with any of the gambling sites.²²⁷ Valve wrote

223. § 231(e)(6). This law was also struck down nearly a decade later. *Judge Strikes Down ‘98 Law Aimed at Online Porn*, MERCURY NEWS (Mar. 22, 2007), <http://www.mercurynews.com/2007/03/22/judge-strikes-down-98-law-aimed-at-online-porn>.

224. See *Lewis v. United States*, 348 U.S. 419, 423 (1955) (“[T]here is no constitutional right to gamble.”). Further, this is evidenced by the glut of laws and regulations already controlling the industry. See 18 U.S.C. § 1084 (2012); N.J. STAT. ANN. §§ 2C:37-1 to -9 (West 2016).

225. Assael, *supra* note 1; *Pembroke Parent Gets \$8K Xbox Bill After Son Racks Up Charges*, *supra* note 76.

226. Colin Campbell, *The True Cost of Counter-Strike Skin Gambling*, POLYGON (July 18, 2016), <http://www.polygon.com/features/2016/7/18/12203534/counter-strike-cs-go-skin-gambling>.

227. Joshua Brustein & Eben Novy-Williams, *Game-Maker Valve Moves to Choke Off \$7.4 Billion Gambling Market*, CDC GAMING REP. (July 13, 2016), <http://www.cdcgamingreports.com/game-maker-valve-moves-to-choke-off-7-4-billion-gambling-market>.

cease and desist letters to dozens of gambling sites that same month, informing them that they had violated Valve's terms and condition.²²⁸ Valve's letter further stated that failure to comply would result in the deletion of their accounts.²²⁹

However, per an article dated January 24, 2017, it appears half the sites targeted by Valve are still operating, and new ones are still appearing every day.²³⁰ It is likely that Valve itself will never be able to eliminate the gambling on its own. The company has said that to do so would disrupt its service to its 125 million registered players.²³¹

But for now, the easiest ways to curb the vast popularity of video game gambling is simply for parents to become more involved. Parents can use content filters on the Internet to block access to gambling sites. Further, monitoring credit card activity can alert parents to the children's gambling activities.

V. CONCLUSION

Because of the proliferation of the Internet, video game profits have become increasingly linked to online content purchased using real cash. Further, the ubiquity of the Internet has allowed the content purchased in video games to be wagered and then sold in online casinos. Effectively, cash goes into the system in exchange for virtual skins, which are then wagered for better, more valuable skins. Those valuable skins are then resold, and cash goes back out. Because these wagering sites are essentially unregulated, minors have unfettered access to engage in this gambling activity. Further, other game-play modes, such as *FIFA Ultimate Team* essentially operate as lotteries.

Federal and New Jersey gambling law could potentially cover this area; however, it needs to be enforced. As of now, Washington is the only state that has sought to shut down this type of gambling. More states need to follow this example. Meanwhile, while other industries, such as music or movies, may self-regulate, the video game gambling problem

228. Katie Barlowe, *\$5 Billion in Skins Wagered in 2016 Despite Valve Shutdown*, CASINO.ORG (Jan. 24, 2017), <https://www.casino.org/news/5-billion-skins-wagered-2016-despite-valve-shutdown>.

229. *Id.*

230. *Id.* However, at least two sites visited by the author were currently suspended. One site displayed the following notice: "Dear friends, [i]n light of the recent announcement from Valve CSGOPolygon has decided to close operations. All bots are stopped now, games are not functioning. Thank you for being a part of this amazing project." *CSGOPolygon Suspending Operations Indefinitely*, CSGOPOLYGON, <https://csgopolygon.com/closed.php> (last visited Dec. 28, 2017).

231. Barlowe, *supra* note 228.

has not yet received enough public scrutiny to force the industry to regulate itself.

For this reason, parents should ultimately be responsible for ensuring that their children are not engaging in gambling activity. Gambling cannot occur without access to funds. Until legislatures intervene or the industry self-regulates, parents need to be mindful of their credit cards and PayPal accounts and ensure that their children do not gamble.

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