

knowledge snapshot



Co-regulation and commercial accommodation of fantasy sports in Australia

What this article is about

This article focuses on the regulation of fantasy sports in Australia. In fantasy sports, people create a “fantasy team”. This fantasy team is made of real athletes. Players then compete against other players’ fantasy teams based on how these real players perform in real sports matches. In traditional fantasy sports, the teams compete for the entire duration of the season. In Australia, sport governing bodies are actively involved in fantasy sports. For example, some sports governing bodies run their own fantasy sports competitions.

This article explores the issues related to the regulation of fantasy sports in Australia. Although the regulation of fantasy sports has been easier in Australia compared to the U.S., it is not without challenges.

What was done?

The researcher explored the regulation of fantasy sports in Australia. The article consists of three parts. First, the article provides information about fantasy sports in Australia. Second, the article examines the regulatory issues around fantasy sports. Third, it discusses how sport governing bodies have become co-regulators of fantasy sports in Australia.

What you need to know

Fantasy sports in Australia

Fantasy sport arrived in Australia in 2001 based on the Australian Football League. Fantasy sports are popular in Australia for two reasons. First, sports are a key element of Australian culture. Second, Australians gamble more than people from some other countries.

Why is this article important?

Fantasy sports are a popular form of gambling in Australia. But, fantasy sports present legal and regulatory challenges. This article examines the regulation and legal challenges of fantasy sports in Australia. This article first provides information about fantasy sports in Australia. It highlights that fantasy sports are popular for two reasons. First, sports are part of Australian culture. Second, Australians gamble more than people from some other countries. Next, the article explores the regulatory and legal issues. These legal issues are related to gambling regulation, protection of technology and system inventions, use of athletes’ statistical data, and use of athletes’ or sport teams’ names, images, and likeness. Lastly, the article discusses how sport governing bodies in Australia have become co-regulators of fantasy sports gambling. This is because, in Australia, fantasy sports operators need the permission of and a data-sharing agreement with the sport governing bodies. This allows the sport governing bodies to reach commercial accommodation with the operators and share in the revenue.

Fantasy sports grew rapidly from 2001 to 2012, then slowed down until 2015. In 2016, daily fantasy sports (DFS) was introduced. In DFS, the competition is over after a day, one round, or a week. Then, the competition starts again. DFS also requires payment to enter with winners receiving a cash payment. DFS has attracted sports fans and people who gamble and increased the popularity of fantasy sports in Australia.

Regulatory and legal Issues

An important legal issue is that fantasy sports need to be in line with gambling laws. Fantasy sports that are free to enter are not considered gambling. As such, they are not prohibited by gambling laws. But, fantasy sports that require people to bet money are regulated as a form of sports betting. To offer fantasy sports competitions, the operator must have approval from the sporting event's governing body. The operator also needs an information-sharing agreement. The sport governing bodies can also charge a fee for this agreement. This agreement makes it easier to form relationships between fantasy sport operators and sport governing bodies.

The protection related to technology and systems inventions is also a legal issue. Patents offer the best legal protection. Patents offer a way for fantasy sports operators to be the only ones to make money from the invention. However, getting a patent is not easy. The operator will need to prove that the technology used in its fantasy sport competition makes significant advances in the field. Fantasy sports rely on the statistical data from the athlete's performance. The performance data is not copyrighted. This means that anyone can use and publish the data. But, the statistical data could be copyrighted if how it is collected and displayed is considered to be original. Statistical tables of sports data are one example that would count as being original.

Using athletes' and sport teams' names, images, and likeness is also a legal issue in fantasy sports. Issues related to this include misleading and deceptive use of an athlete's or a team's name. The use of trademarks is also a legal issue. This can be minimized by using generic names or different versions of team names. Copyright of existing logos or symbols, and defamation that can lower the reputation of an athlete or sport team are also important legal issues.

Co-regulation and commercial accommodation

As mentioned, fantasy sports operators need approval and information sharing from the sport governing bodies. This has led to the sport governing bodies becoming co-regulators of fantasy sports betting in Australia and benefiting from its revenues. This co-regulation has both benefits and risks. The benefit is

that regulation can be more effective and efficient. The risk is that there is a conflict of interest by the sport governing bodies. They are both the promoter of their sport and a regulator.

Who is it intended for?

This research is intended for policy makers, legal experts, and regulators of gambling and fantasy sports. This research is also meant for sport governing bodies who have partnerships with fantasy sports operators or who run their own fantasy sports competitions.

About the researcher

Eric L. Windholz is affiliated with the Centre for Commercial Law and Regulatory Studies, Faculty of Law at Monash University in Melbourne, Australia. For more information about this study, please contact Eric L. Windholz at eric.windholz@monash.edu.

Citation

Windholz, E. L. (2021). Fantasy sports in Australia: Co-regulation and commercial accommodation. *The International Sports Law Journal*, 21, 154-165. <https://doi.org/10.1007/s40318-021-00187-x>

Study funding

No funding was declared for this article.

About Greo

Greo has partnered with the Knowledge Mobilization Unit at York University to produce Research Snapshots. Greo is an independent knowledge translation and exchange organization with almost two decades of international experience in generating, synthesizing, and mobilizing research into action across the health and wellbeing sectors. Greo helps organizations improve their strategies, policies, and practices by harnessing the power of evidence and stakeholder insight.

Learn more about Greo by visiting greo.ca or emailing info@greo.ca.

