

Consumer Data Use and a Lack of Privacy: Why the Odds are Stacked against Online Sports
Bettors

Dante Camilli '23

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Introduction

Sports gambling has exploded onto the American scene in recent years and dominates advertising space during commercials, in arenas, on jerseys, on your Twitter feed, on the morning sports talk shows, on the radio, on your favorite podcast, on billboards on your morning commute, and in your own mind. It is hard to escape the thought of betting on your favorite sports team in today's sports landscape because of the constant in-your-face advertising strategies and billing of sports gambling as a fun activity to do with your friends, or something to help you earn fast money because the sportsbooks are telling you that you're a knowledgeable sports fan, and it's *fast and easy* to earn money wagering on any sporting event around the globe.

Gone are the days of sports bettors having to traverse to their local casino and place futures bet on the Phillies to win the World Series (who are +3000 to win it all at the end of their 2022 Spring Training¹). Now, bettors can bet on the result of every facet of every game straight from their phone while stuck in traffic on their commute back from work. Sports betting has evolved to a dangerous level of convenience, enough so to raise the psychological level of problem gambling thanks to dangerous patterns of convenience and loss chasing.

As sports gambling has been legal for much longer in Europe, they have begun to attack constant advertising for bettors to wager by implementing "whistle to whistle" bans during games that prohibit betting advertisements to stop reminding gamblers to place live bets. However, with the American market just opening and states continuing to join the sports betting fray, the in-your-face marketing tactics are here to stay for quite some time. It is still in states

¹ <https://sportsbookwire.usatoday.com/2022/03/30/2022-philadelphia-phillies-world-series-win-total-pennant-and-division-odds/> ***

best interest to allow heavy sports marketing, as the more advertisement and inducement to gamble exists, the more revenue state treasuries will see from their newfound business partners.

Sports gambling has essentially been normalized culturally because of the volume of advertising and air space that it sees. However, there are underlying concerns about how such a strong vice is addressed and constantly manipulated by companies despite the repercussions of addiction and irresponsible gambling being so great. Like all other businesses in the digital age, gambling companies are reserving the right to sell your information to third parties – a provision that is explicit in all sportsbook privacy policies that gamblers assent to so they can place their bets. These provisions allow sportsbooks to sell gamblers data to any third-party distributor, often ones that have direct relationships to the books.

Imagine this hypothetical: Your favorite sportsbook collects your information and sells it to a third-party data distributor. By consenting to this collection of your information you are allowing anyone that has access to this information to know you are using a sportsbook to wager on NBA games. Along with consenting to data tracking on your sportsbook app, you have also consented to data tracking on Twitter. You plan to watch the evening's NBA slate as a casual fan without placing a wager. However, as you are on Twitter during a commercial break, you see a targeted ad for a sportsbook, maybe even the one that you use regularly. The advertisement lets you know that there's a risk-free three-leg NBA parlay for tonight's games – a no-brainer to participate in because there's *no risk*. You immediately open your sportsbook app and craft up a no-brainer parlay that is guaranteed to win because you know so much about the NBA, and the stakes are in your favor because the parlay is risk-free. And while you're in the app you place a couple other bets since you already have it open and you're feeling good and confident knowing that no matter what, you will have your account replenished the next day. Unfortunately, you

overlooked the fine print saying that the parlay was risk-free only if it missed just by one leg. Through no fault of your own, your parlay missed on two of the three legs, and that risk-free bet became a complete miss. This all happened because your information and tendencies had been cycled back and advertised to you to take advantage of your impulse to gamble.

How dangerous are these practices to sports bettors in America? Should there be more protections in place to regulate advertisement to such a strong vice? Is there a real issue with advertising to people's tendencies? How different is advertising to gamblers to get them to wager than advertising food or drink to your average American consumer? This paper will take a dive into the developments of sports gambling in the United States and what regulations we've seen in other countries to combat these kinds of issues. The thesis of this paper is that the success of online sports gambling in America has been spurred on by data tracking and invasion of privacy rights of gamblers, and a lack of oversight leaves consumers especially vulnerable to problem gambling habits. To examine this thesis, there will be a breakdown of privacy policies from major United States sportsbooks and the kinds of issues they address and the protections concerning consumer data that they implement or make clear. A brief discussion of targeted advertising practices will then be parlayed (pardon the pun) into furthering the understanding of online sports betting practices and how dangerous they can be. As the world of sports betting continues to be normalized in American society, it is essential to understand the landscape and the impact it may have on gamblers in our country. American gambling is a true force, and it is here to stay, but gamblers have a right to understand if they are truly wagering responsibly, or if the books themselves are inciting wagers and irresponsible gambling practices.

A Background on Sports Gambling

In 1992 Congress passed the Professional and Amateur Sports Protection Act (PASPA) to halt states from legalizing sports betting within their borders.² This banned sports betting in all but four states that had already legalized sports wagering, Nevada chief among them as the only state that had single-game wagering.³ The passage of PASPA halted a nationwide movement toward legalized sports gambling.⁴

In 2012, the New Jersey Legislature enacted a law directly against PASPA that would permit persons over 21 years of age to wager at horseracing tracks or casinos and gambling houses in Atlantic City.⁵ The laws only prevented wagering on New Jersey collegiate teams or collegiate events taking place in the state.⁶ In the lower courts, the NCAA and three major sports leagues brought action against New Jersey for violating PASPA and the lower courts found that PASPA did not violate the Constitution's "anticommandeering" principle by preventing the State from modifying or repealing its laws prohibiting sports gambling.⁷ The Supreme Court originally denied cert on this first case, but when New Jersey filed a claim against leagues, the Supreme Court heard the case and ultimately found that PASPA did violate the Constitution's "anticommandeering" principle when states made it lawful to authorize sports gambling.⁸ As a result, every state now had the right to reevaluate their stance on sports gambling and enact legislation to permit sports gambling if they thought it was in the best interest of the state.⁹

² <https://www.legalsportsbetting.com/history-of-sports-betting-in-the-usa/#:~:text=It%20started%20with%20horse%20racing,on%20sports%20was%20made%20illegal.>

³ Id.

⁴ Id.

⁵ *Murphy v. National Collegiate Athletic Ass'n*, 138 S.Ct. 1461, 1465-14666 (2018).

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

Today, online sports betting is allowed in twenty-three states, including: Arizona, Colorado, Connecticut, District of Columbia, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, Mississippi, Montana, New Hampshire, New Jersey, New York, Nevada, Oregon, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, and Wyoming.¹⁰ It is legal but not yet operational in Florida, Nebraska, and Ohio.¹¹ The two largest population states in America, California and Texas, have yet to pass sports betting legislation.¹² California has a strong interest in legalizing sports gambling as it has nearly 40 million people, 40+ million in annual tourists, and more professional sports teams than any other state, inherently making it a gold mine for sportsbooks and the state treasury receiving a percentage of books winnings.¹³

In 2021, more than \$52.7 billion was wagered on sports, nearly doubling the market from 2020.¹⁴ According to reports, 12% of adults placed bets once a week and 14% of bettors said their average bet was more than \$100.¹⁵ Largely, the clientele for sports betting is young men, with 19% of adults aged 21-34 having placed a bet on sports at least once a week.¹⁶ This precisely plays into the hands of books as the prototype sports bettor is male, young, tech-savvy, and professional, and is easily influenced by marketing tropes of masculinity used by gambling companies.¹⁷ The propagation of widespread gambling advertising has ultimately led to the

¹⁰ *Interactive Map: Sports Betting in the U.S.*, American Gaming Association (n.d.)

<https://www.americangaming.org/research/state-gaming-map/>

¹¹ *Id.*

¹² *Id.*

¹³ *California Sports Betting*, Legal Sports Report (March 30, 2022) <https://www.legalsportsreport.com/california/>

¹⁴ Justin Byers, *U.S. Sports Betting Doubled in 2021, Surpassing \$52B*, Front Office Sports (January 23, 2022)

<https://frontofficesports.com/us-sports-betting-doubled-in-2021-surpassing-52b/>

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Hibai Lopez-Gonzalez, Ana Estevez, and Mark D. Griffiths, *Marketing and Advertising Online Sports Betting: A Problem Gambling Perspective*, *Journal of Sport and Social Issues* Vol. 41(3) 256-272 (2017).

normalization of the public's perception of gambling as an everyday behavior, particularly among that target market of young adults.¹⁸

The current marketing strategies by sportsbooks have been bombastic to say the least. In just the first quarter of 2021 \$153.6 million dollars were spent on online gaming television ads.¹⁹ This is the price books are paying to make sure that they're rapidly increasing their client bases. These advertisements often include promises of free money just for signing up and creating an account.²⁰ New customers are brought in with the promise of risk-free bets for your first wager with the book, promising future bonuses for loyal clientele, and constantly promoting money-back exceptions for parlay bets.²¹ Inherently, the free-money wagering requires bettors to engage in further betting to reclaim their benefits, as a losing risk-free bet is often returned in the form of non-withdrawable site credit.²² Because their money is stuck on-site until they record a win, gamblers are forced

Gambling advertising also happens subliminally and naturally, as stadiums and leagues have direct sponsorships with sportsbooks and their parent companies.²³ Many stadiums are also developing or have already placed sports gambling lounges or implemented high-speed internet

¹⁸ Adrian Parke and Jonathan Parke, *Transformation of Sports Betting into a Rapid and Continuous Gambling Activity: a Grounded Theoretical Investigation of Problem Sports Betting in Online Settings*, *International Journal of Mental Health and Addiction* Vol. 17 1340-1359 (2019)

¹⁹ Sports Gambling Guides, *Sports Gambling Guides Declares Sports Betting Advertising Costs Must Come Back to Earth*, PR Newswire (December 9, 2021) <https://www.prnewswire.com/news-releases/sports-gambling-guides-declares-sports-betting-advertising-costs-must-come-back-to-earth-301441068.html>

²⁰ Wayne Perry, *Sports betting ads: Industry weighs how much is too much*, *Chicago-Tribune* (December 2, 2021) <https://www.chicagotribune.com/business/ct-biz-betting-ads-excessive-industry-20211202-7rxuaojw5jgtzdiut2hqnsydg-story.html>

²¹ Lopez-Gonzalez, *supra*. at 265.

²² *Id.*

²³ Perry, *supra*.

in their arenas to greater encourage the ability for spectators to place live wagers on the game they are attending or other events across the world.²⁴

Gambling companies also use retired athletes and celebrities heavily in their ad campaigns to create a sense of trust with their prospective customers. This is a form of risk-lowering advertising that is widespread in the business as celebrities are believed to deepen the connection of safety between the sportsbook and the consumer.²⁵ By placing a famous athlete at the forefront of a book, like PointsBet with Drew Brees, the perceived risk by the public of gambling is lowered.²⁶ The advertisements with Brees at the front, a known family man and hero of the New Orleans community, prompt new users to use PointsBet and live their “Bet Life.”²⁷ FanDuel, one of the largest sportsbooks in the country, is a partner with TNT and Charles Barkley, who advertises his own “boosted” lines or odds for certain wagers at every juncture of TNT’s national NBA broadcasts.²⁸ With Barkley at the forefront, a known gambler and famous athlete, there is a sense of security that is conveyed to the viewer. Charles knows the game and he knows gambling and he’s comfortable wagering, why shouldn’t the casual viewer be as well?

Gambling companies are aware that these high advertising costs are not sustainable and need to be cut down in the future.²⁹ As much as heads of gambling companies enjoy seeing their names everywhere they go, they realize that models of regulation that have been seen in Europe could come to pass in America if these trends continue.³⁰ Constantly shouting at customers about

²⁴ Id.

²⁵ Lopez-Gonzalez, *supra*. at 265.

²⁶ Id.

²⁷ Perry, *supra*.

²⁸ Stephen Marche, *America’s Gambling Addiction is Metastasizing*, The Atlantic (November 26, 2021) <https://www.theatlantic.com/ideas/archive/2021/11/world-our-casino/620791/>,

²⁹ Perry, *supra*.

³⁰ Id.

the promise of “free money” is effective in bringing in new customers but may be exhausting to more casual bettors or the greater public.³¹ One study on gambling advertisement reported 322 “episodes” of betting marketing across one rugby match in Australia (a country that at the time didn’t even have legal sports betting!)³² In that study an episode was characterized as any event that displayed a betting logo or explicitly mentioned sports gambling.³³

In Europe, the response to cut down on gambling advertisements was firm. For example, the U.K. has a “whistle-to-whistle” ban on sports betting ads that appear during the broadcast.³⁴ Despite this, *ten out of twenty* English Premier League clubs for the 2021-22 season feature a betting company on their jerseys.³⁵ That is a shocking number for the biggest sports league in the world in a market where gambling advertising during games is banned, therefore the jersey sponsorship serves as a loophole to the whistle-to-whistle ban. Italy has completely banned all gambling advertisements since 2019.³⁶ Spain prohibits sportsbooks from advertising on players’ jerseys of appearing as part of stadium names and also restricts broadcast ads for any form of gambling to the between 1 and 5 AM.³⁷

When the dust settles and most US states are no longer in the “gold-rush” marketing area of sports gambling, the heavy “in-your-face” advertising may subside.³⁸ The use of personal data and user tendencies may lead to more advertisement that is geared toward subliminally directing

³¹ Id.

³² Lopez-Gonzalez, *supra* at 263.

³³ Id.

³⁴ Perry, *supra*.

³⁵ *Premier League Gambling Shirt Sponsors for 2021-22*, Bookie SignUp Offers (August 13, 2021) <https://www.bookiesignupoffers.com/2021/08/13/premier-league-gambling-shirt-sponsors-for-2021-22/>

³⁶ Perry, *supra*.

³⁷ Id.

³⁸ Hersh Patel, *Sports Gamblers: How Contextual Advertising Can Engage This Untapped Market*, Forbes (November 10, 2021) <https://www.forbes.com/sites/forbesbusinesscouncil/2021/11/10/sports-gamblers-how-contextual-advertising-can-engage-this-untapped-market/?sh=42d386062775>

users to gamble through social media advertising or push notifications.³⁹ Contextual advertising is the method of placing dynamic ad placement according to a user's preference in front of them thanks to the use of their information.⁴⁰ These forms of targeted advertisements will be much cheaper than mass media advertising and naming rights obligations, and will likely yield better results with existing customers.⁴¹ However, the use of a gambler's habits in advertisement may be a dangerous practice socially as it could negatively force bettors to gamble irresponsibly, regardless of the mandated warnings on each advertisement to gamble responsibly and seek help if needed.

Targeted Advertising

Targeted advertising is a byproduct of consumer data collection that is enormously prevalent in marketing channels and how companies conduct business today. Personalized recommendation services have become extremely effective revenue drivers for online business.⁴² Studies suggest that 35% of what consumers purchase on Amazon and 75% of what users watch on Netflix can be attributed to personalized recommendation services or targeted advertisements.⁴³ Targeted advertisements exist to create a perfect nexus of interaction between consumers, service or good providing websites, and advertising firms.⁴⁴ To create a targeted advertisement, consumers provide websites that they use with their personal information,

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

⁴² Cong Wang, Yifeng Zheng, Jinghua Jiang, and Kui Ren, *Toward Privacy-Preserving Personalized Recommendation Services*, Elsevier on behalf of Chinese Academy of Engineering and Higher Education Press Limited Company (2018)

⁴³ Id.

⁴⁴ Yan Lau, *A Brief Primer on the Economics of Targeted Advertising*, Bureau of Economics – Federal Trade Commission (January 2020)

whether implied or through cookies and other data tracking mechanisms.⁴⁵ This data is often collected as a result of purchasing something on a site or through account creation.⁴⁶ When a website has collected this information, it is either shared or sold with advertising websites or firms in exchange for money or ad space and presents advertisements to consumers on their return to their website that targets their wants and needs based off of algorithms of information collected from the users habits and behavior on the internet and in person.⁴⁷

Specifically, targeted ads are directed at a specific subset of consumers who are believed to be particularly interested in a type of good or service.⁴⁸ As a result, consumers will find their advertising space to be more “relevant” than if the advertisements were untargeted, increasing the likelihood that they interact with the advertisement.⁴⁹ Content-based recommendation systems typically generate recommendations by comparing properties of items with those users’ personal preference and behavioral data.⁵⁰ Thanks to targeted advertising, a consumers “search costs” or time on the internet looking for things that they want or need are reduced and the targeted advertisement is successful because it reduces that time for the consumer and brings them utility.⁵¹ However, this utility is challenged because of the privacy concerns of companies using consumer personal data to market directly to them.⁵²

Concerns relating to privacy show up for consumers for several reasons. Consumers often underestimate how invasive it truly is to supply websites with their personal information in

⁴⁵ Id. at 2.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id. at 5.

⁴⁹ Id.

⁵⁰ Wang at 21.

⁵¹ Lau at 5.

⁵² Id. at 9.

exchange for free digital goods and services.⁵³ Inherently, data collection poses a privacy risk to consumers as it undesirably discloses the users' personal interests to the site they originally interact with and that site may abuse that person's data by selling it third parties⁵⁴ The more personal data a service or website collects, the more accurate consumer recommendations can be sold or used by third parties.⁵⁵ Third parties can have access to a myriad of data sets, including location, activity status, browsing history, and purchasing habits.⁵⁶ Consumer harm can also come directly from the perceived manipulation that a consumer may feel from realizing the targeted nature of advertisements, resulting in a form of reactance that makes the user more reluctant to use the targeted advertisement.⁵⁷

Another facet of targeted advertisement comes in the form of targeted coupon delivery.⁵⁸ This form of advertising can come from direct emails, text messages, or app push notifications that directly offer a benefit or special promotion to a consumer based off of their prior usage of the site or service and catered toward the interests that have been established based off the collection of consumer data.⁵⁹ Targeted coupon delivery is especially prevalent in gambling advertisements and marketing because companies often track consumer gambling habits and deliver promotions that are in line with the gambling practices that the consumer has previously displayed.

Targeted advertising may make some users uncomfortable, but at this point there is a direct economic interest in maintaining at least some level of targeted advertising moving

⁵³ Id.

⁵⁴ Wang at 21.

⁵⁵ Id. at 22.

⁵⁶ Id.

⁵⁷ Lau at 10.

⁵⁸ Wang at 24.

⁵⁹ Id.

forward. If policies were to restrict websites from collecting consumer personal data, consumers would then lose the advantages of reduced search costs, which ultimately would result in an income effect that would cause consumers to then pay in dollars or time to sift through a greater number of targeted advertisements.⁶⁰

Ultimately, targeted advertisements provide benefits to consumers. However, in vice industries such as gambling, targeted advertisements and access to consumer information may create too much power for gambling companies and create many lasting and dangerous effects on gamblers who are subjected to these constant advertising strategies.

Problem Gambling Habits in Online Sports Betting

Gambling, although an activity that can be done responsibly and can be enjoyed by casual patrons, is designed to create addiction and bad habits, and gamblers are not prone to consistent winning. Online sports betting is a form of gambling that has created tons of problems for addiction and responsible gambling practices for bettors because of the ease of access and the constant stream of “in-your-face” marketing tactics. As a result, problem gambling habits among online sports bettors has increased tremendously. Online sports betting is increasingly reported as the principal gambling activity causing harm in populations of treatment-seeking problem gamblers.⁶¹ The structural transformation of online sports betting in recent years, alongside the changing situational factors in online gambling, is playing a huge role in facilitating the high proportion of impulsive bets observed online.⁶²

⁶⁰ Lau at 11.

⁶¹ Adrian Parke and Jonathan Parke, *Transformation of Sports Betting into a Rapid and Continuous Gambling Activity: a Grounded Theoretical Investigation of Problem Sports Betting in Online Settings*, *International Journal of Mental Health and Addiction* Vol. 17 1340-1359 (2019) at 1341.

⁶² *Id.*

Problem gambling can be defined as impulsive or uninformed wagering.⁶³ Problem gamblers are more attracted to online sports betting than recreational gamblers because of the quicker betting cycle, because betting outcomes that are determined in a shorter time-frame provide rapid reinforcement on successful wagers and instant feedback on unsuccessful wagers so that gamblers can conduct loss chasing.⁶⁴ Loss chasing is the practice of continuing to wager after a loss with the idea of needing to recoup losses immediately rather than finding a wager through research or thoughtful gambling to come back from that loss.⁶⁵ Some content in online sports wagering that makes problem gambling habits increasingly likely are live wagering, micro-event betting, cash-outs and complex (otherwise known as “parlay”) bets.⁶⁶

Tied in with all of the online sports betting mechanics that this paper will soon examine, is the tendency for online bettors to bet until their account is empty.⁶⁷ This is otherwise known as bettors being stuck in the “Online Sports Betting Loop.”⁶⁸ This loop traps gamblers in a system of fast and loose wagering, loss chasing, and constant betting in order to see fast returns.⁶⁹ Thanks to technological advances in online payment systems, gamblers can deposit further gambling funds into their account within a few seconds and limit the potential for breaks in play when their account is empty.⁷⁰

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id. and Philip W.S. Newall, Ankush Thobhani, Lukasz Walasek, and Caroline Meyer, *Live-odds gambling advertising and consumer protection*, PLOS ONE (2019).

⁶⁷ Parke at 1345.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id.

Factors that also contribute to bettors being stuck in the Online Sports Betting Loop are structural features and designs of sports betting apps and websites that keep players interested in staying on the app and placing wagers.⁷¹ The traditional situational and structural features that made gamblers feel comfortable were designs of casinos that had appealing colors, music, smells, the idea of social facilitation and intrinsic association with other gamblers.⁷² Some of these factors are addressed directly in apps as they are often designed well and are easy to use for gamblers of all age with a wide variety of wagers available to the user.⁷³

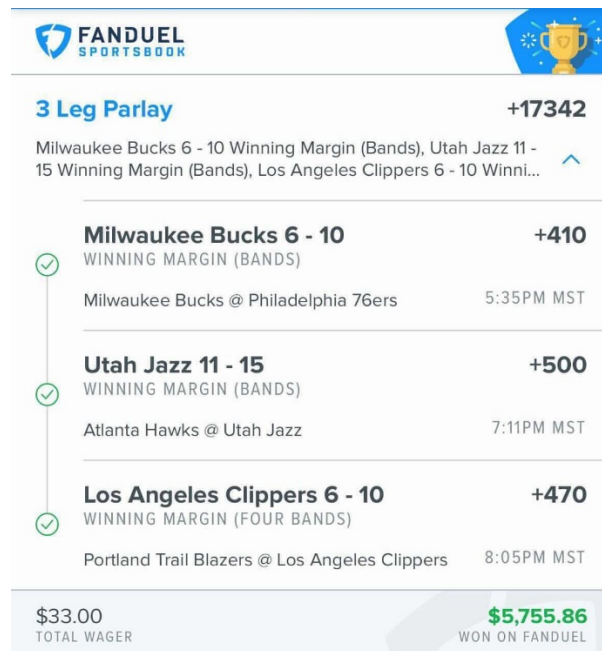


Figure 1: An example of a winning bet slip on FanDuel⁷⁴

Displays that are meant to elicit happiness and encourage gambling are embedded in how the app displays your successful bets, often with sites displaying your winnings alongside an image of a trophy or images of coins while your successful bet is highlighted in bright

⁷¹ Id.

⁷² Id.

⁷³ Lopez-Gonzalez at 260.

⁷⁴ @FDSportsbook, *This customer parlayed 3 win margin bands together last night and hit BIG!*, Twitter (November 10, 2021) <https://twitter.com/fdsportsbook/status/1458471512239915008>

colors(Figure 1).⁷⁵ In contrast, losing bets don't have that same aesthetic appeal and are often displayed with negative colors or images to elicit the opposite reaction from gamblers.⁷⁶The idea of social facilitation is still alive in the online sports betting world through sites like FanDuel and DraftKings that have their own social platforms for their Daily Fantasy portions of their business and public accounts and sweepstakes being a part of their business model.

Some new situational factors meant to elicit comfort in online gambling include the ease and fast access to multiple unique betting opportunities, seamless availability of bettable competitions around the globe at any time of day, anonymity and comfort in the ability to bet from home or anywhere else on a mobile device, and the intrinsic association of sports betting that is highlighted through themes of competition, team identity and loyalty that are conveyed in frequent sports gambling advertisements.⁷⁷

The ideas of competition are attacked in gambling advertisements in "skill-enhanced" advertising that tells bettors that they have a wealth of gambling intelligence and that they are completely in control of their sports betting world.⁷⁸ These advertisements are often partnered with themes of masculinity telling bettors to be a real man and be brave enough to prove their sports betting knowledge.⁷⁹

The ideas of team loyalty are of particular concern relating to targeted advertisement and books knowing the preferences of their bettors because many gamblers may not think rationally when it comes to betting on teams that they are a fan of.⁸⁰ For example, advertisements from

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id. at 264.

⁷⁹ Id.

⁸⁰ Newall at 3.

gambling companies often are offering first time visitors to a site \$100-200 for wagering \$1 on their home team in special promotions. For casual fans it may also be easier to gamble on the home team because a lay sports viewer may only have so much knowledge about the sport as it is tied to their viewership of their home team. That sense of affinity may create associations in gambling and increase the likelihood that a gambler is wagering on the home team when they see or are notified that their home team is playing. It is also evident that the constant temptation of being able to instantly re-engage in betting is difficult to manage for gamblers after experiencing significant losses, which is directly targeted by many of the mechanics offered by online sports betting companies.⁸¹

Returning to problematic mechanics of online sports betting, the most prevalent and dangerous mechanic is live betting. Live betting has further increased the opportunity for problem gamblers to be motivated to chase losses and to extend their online sports betting sessions.⁸² Live bets are placed and enabled after a game begins.⁸³ As a result, gamblers are no longer restrained to only wagering on events that happen in the future or later in the day.⁸⁴ Instead, online sports bettors have the capability to wager from moment to moment as betting lines are constantly shifting with the flow of a live game.⁸⁵ Problem gamblers are known to frequently place a host of live bets simultaneously and then instantly wager a winning live bet on another live event to continue actively playing and wagering.⁸⁶ The ease of which money can be won and re-entered into a new wager thanks to online sports betting and the capabilities of live wagering is a huge issue for problem gamblers. Live wagering is spurred on in part by sports

⁸¹ Parke at 1352.

⁸² Id. at 1347.

⁸³ Id. at 1348.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

broadcasts that present the live odds and how they have shifted throughout the game.⁸⁷ As gamblers are able to see odds live on screen without even needing to be in their respective gambling apps, the idea of wagering on the line on screen is heightened because they have knowledge about what the current betting market is without actively seeking that information. And apart from active gamblers, seeing live odds is problematic for former gamblers who may be enticed to bet by having the wagering information in front of them as they are casually watching the game.

Another problematic online sports betting mechanic is micro-event betting, or the ability to deconstruct a game into smaller wagers for events in a game.⁸⁸ Instead of bettors wagering exclusively on the entire outcome of a game, they can instead wager on the outcome of a singular inning, quarter, or half of any game.⁸⁹ As a result of this mechanic, the volume of betting opportunities for gamblers is much larger and much more flexible.⁹⁰ This deconstruction of games into smaller “micro” events also has the effect of reducing the time that a player must wait to see the results of their bet.⁹¹ Instead of having to wait for forty-eight minutes of a basketball game to be completed to know the result of a wager, a gambler on the micro-event of a first quarter may only need to wait twelve minutes before receiving their winnings or commencing in loss chasing.⁹²

The next mechanic that creates fast feedback and encourages more wagers is the cash out function provided by most sportsbooks. Cashing out closes an active bet for an agreed upon

⁸⁷ Id. at 1342

⁸⁸ Id. at 1348.

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Id.

⁹² Id.

value in relation to the live likelihood of a wager winning and losing.⁹³ Cash outs can be provided in both active games and for future bets that are placed on championship or player award odds throughout a year. The cash out market creates a trading aspect for players to buy the likelihood of an event occurring and then profiting early or escaping a potentially losing bet so that they can have wagerable cash back in their account.⁹⁴ This is a problematic practice because it is inherently tied with loss chasing, as gamblers can pull cash from an active bet that they may see as a losing bet and re-wager it, rather than having to see a bet lose and depositing funds to continue to play.⁹⁵

The last mechanic already existed before online sports betting but has been specifically highlighted in sportsbooks marketing campaigns and strategies. Complex wagering or parlay betting is the practice of combining many different wagers into one bet slip for much larger odds or potential return on investment. Complex parlay betting has been adopted by the major sportsbooks by allowing gamblers to wager on vast combinations of player props and game results on singular tickets because of the potential for huge returns. However, because the likelihood of success is more in favor of the books because of the development of so many longshot parlays, books have taken to heavily advertising risk-free parlays. Advertisement of risk-free parlays often guarantees a return on your wager IF only one leg of the parlay misses. Risk-free wagers that are returned to players are often returned in site credit rather than real money, so the book retains the winnings from that wager. Advertisement for complex wagers is problematic because they are often billed with “boosted odds” that would indicate an even greater return for a multi-faceted bet. However, advertising these parlays is an inducement to

⁹³ Id. at 1349

⁹⁴ Id.

⁹⁵ Id.

wager on something that is wildly unlikely. In 2014, only 4% of World Cup gambling advertisements in Europe mentioned complex bets, but in 2018 that number increased to 34.8%.⁹⁶ By increasing marketing for high payout but low likelihood parlays, books are asking players to wager on events that they know are nearly guaranteed to return a losing bet, and by advertising specific parlays to the masses (in the World Cup example – Germany to win 3-1 and Thomas Muller to score first⁹⁷) they are daring users to wager.

These are all areas of sports gambling that offer dangerous practices and routines to gamblers. Can these already addictive practices be manipulated further by sportsbooks? As indicated by the parlay bet analysis, books can take whatever liberties they want in manipulating the information they have on users to place odds and events that they can wager on in front of their faces. Although a majority of advertising is done subliminally through TV marketing and ad placement on jerseys, books can still advertise directly to users through push notifications, texts, emails, or through selling user data to third parties who in turn then advertise gambling right back to sportsbook users. How is this possible? Through the use of any sportsbook app, you automatically consent to all provisions of the company's privacy policy. What exactly do you offer up if you place a bet?

Sportsbook Privacy Policies

With knowledge about targeted advertisements and familiarity with problem gambling habits in online sports betting, it is important now to examine privacy policies that have been implemented by the most popular sportsbooks in America and see how they define their data privacy practices and permit themselves to use consumer data. The sportsbooks that will be

⁹⁶ Newall at 7.

⁹⁷ Id.

examined are FanDuel Sportsbook, DraftKings Sportsbook, BetMGM, PointsBet, and Barstool Sportsbook (or Penn National Gaming). These are some of the most heavily marketed and prevalent books in the country and focusing on their practices will be essential to understanding the landscape and some of the dangers that consumers may face in interacting with them.

These five policies are all similar in form from company to company, but some are more verbose than others particularly when it comes to data collection and use. Four out of the five make explicit mention of the California Consumer Privacy Act (CCPA) with heavy detail on the provisions of the act and the opt-out provisions available to the book's consumers. This is an interesting addition to these policies considering that sports gambling is not yet legal in California, but is likely in effect to protect transient California residents that may create accounts when traveling or cross state-lines to regularly wager. As a result, all of these sportsbooks, with the exception of PointsBet insulate themselves from violations of the CCPA.

FanDuel Sportsbook

FanDuel has the most complex and detailed privacy policy, but a curious consumer wouldn't notice that at first glance.⁹⁸ After a brief definition section that outlines that use of FanDuel's services results in your consent to be subject to their Terms and Conditions and Privacy Policy, a skeleton version of the policy is first displayed.⁹⁹ This rough outline of the privacy policy provides brief answers and explanations of the key topic headers like "What Information Do the Services Collect?" which is answered with "We collect and receive certain information about you as you interact with our Services, explained further in this Section," as several subheadings drill deeper into their information collection process with just as little detail

⁹⁸ - FanDuel SportsBook, *Privacy Policy*, FanDuel (n.d.) https://www.fanduel.com/privacy#privacy_section_9

⁹⁹ Id.

as the section before it.¹⁰⁰ This would be shocking to see from a company that pulled in \$896 million in revenue in 2020¹⁰¹, but continuing to scroll through the policy beyond the skeleton version reveals the most detailed policy in the gambling industry.¹⁰²

Dense lines of text detail the complete ownership that FanDuel has over a consumer's information, including the information consumers submit to the website in account creation, location tracking, and consumer interactions with third parties.¹⁰³ Tucked away in a separate section at the end of a paragraph are brief instructions on how to opt-out of third-party use of consumer information through the Network Advertising Initiative (NAI) and Digital Advertising Alliance (DAA), but this information is close to the end of the privacy policy, a huge document that most consumers won't read nor scrutinize for the inclusion of an opt-out provision.¹⁰⁴

As far as the use of customer data, FanDuel explicitly states, among other things, that consumer information will be used “to customize your experience on the Services or to serve you specific content or ads that are relevant to you, including using your location information to display advertisements for businesses in your close vicinity,” and “to identify your product and Services preferences so that you can be informed of new or additional products, services and promotions.”¹⁰⁵ The policy also explicitly mentions targeted and behavioral advertisements.¹⁰⁶ This expressly permits FanDuel to “target advertisements to you for products and services in which we believe you might be interested.”¹⁰⁷

¹⁰⁰ Id.

¹⁰¹ Viktor, *The FanDuel Business Model – How Does FanDuel Make Money?*, Productmint (July 5, 2021) <https://productmint.com/fanduel-business-model-how-does-fanduel-make-money/>

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id. at Section 5.

¹⁰⁵ Id. at Section 2.

¹⁰⁶ Id. at Section 5.

¹⁰⁷ Id.

Although FanDuel is the most explicit and detailed in the use of consumer information, they have the only privacy policy that has a section that discloses the third-parties that they share consumer information with so that consumers can contact them and opt-out of data sharing.¹⁰⁸ This section includes a detailed table naming all third-parties that permit FanDuel customers to opt-out of the use of their data, with links to the websites that consumers can complete opt-out forms.¹⁰⁹

FanDuel also reserves the right to change the Privacy Policy at any time.¹¹⁰ Of course, these changes are immediately effective whenever a consumer uses the company's services, so any changes that occur are likely to be consented to by a hasty gambler that is notified of the change and will not go through the effort to scrutinize those changes that may alter the rights that FanDuel reserves to their information.¹¹¹

DraftKings Sportsbook

Like FanDuel, DraftKings opens their policy with the provision that using their "Website, Application(s), or Services" creates informed consent for the consumer.¹¹² DraftKings notably has a social media component across all of their services, and use of those services creates consent of your wagering information for those accounts in the spirit of consumers sharing their wins with their friends.¹¹³ As far as data collection, all personal information on consumer

¹⁰⁸ Id. at Section 12.

¹⁰⁹ Id.

¹¹⁰ Id. at Section 11.

¹¹¹ Id.

¹¹² DraftKings Sportsbook, *Privacy Notice*, DraftKings (August 16, 2021) <https://sportsbook.draftkings.com/legal/nj-privacy-policy?wpsrc=Organic%20Search&wpaffn=Google&wpkw=https%3A%2F%2Fsportsbook.draftkings.com%2Flegal%2Fnj-privacy-policy&wpcn=legal&wpcsn=nj-privacy-policy>

¹¹³ Id. at Section 1a.

accounts, location data, survey participation, sweepstakes and game participation is collected and sharable with third-parties or can be used by DraftKings to conduct promotions.¹¹⁴

DraftKings can also create “Pixel Tags” (also known as clear gifs, web beacons, or web bugs) to track the online usage of consumers.¹¹⁵ The use of these tags is inherently used to collect data on how users interact with the site and track the areas that they frequent within DraftKings apps or website. This provides feedback to DraftKings to understand what areas users frequent to better target them in advertising. In the “Collection of Data in Connection with Advertising” section, DraftKings also details that third-party vendors like Facebook, Twitter, Reddit, TikTok, Snapchat and beyond can collect consumer information and information about consumer visits to DraftKings by implementing their own pixel tags or identifiers.¹¹⁶ That section goes on to state that these vendors can use this information to “deliver advertising targeted to your interests and to better understand your usage of ... our Services.”¹¹⁷

Tucked away in a small paragraph, similar to FanDuel’s policy, is the opt-out ability through the NAI and DAA.¹¹⁸ DraftKings also provides that the consumer is responsible to review the privacy policy if there are any changes, and that DraftKings would notify the consumer if any material changes were made.¹¹⁹

DraftKings reserves the right to use information collected about consumers to determine whether they are “responsibly playing the Games.”¹²⁰ Although this is a thoughtful protection for the consumer, it feels off considering that some of their practices regarding sale of consumer data

¹¹⁴ Id.

¹¹⁵ Id. at Section 1b.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id. at Section 14.

¹²⁰ Id. at Section 3.

for advertisements linked to encourage consumers to gamble more is more prevalent and likely through DraftKings practices. They state that they may reach out to the consumer to provide resources to help ensure that they are playing the games responsibly,¹²¹ but that may come after too much damage is done through targeted advertisements encouraging the misuse of their services beforehand.

BetMGM

BetMGM has a relatively straight forward policy when set up next to FanDuel and DraftKings. They follow the same informed consent procedure as customers use the Service, and collect all consumer personal information associated with the account, location information, and explicitly “your gaming activity, and all transactions associated with your Account.”¹²² The policy goes on to say that BetMGM may share this information with government regulatory authorities and “third parties including business partners.”¹²³ This sets the stage for some of their use provisions of consumer information.

BetMGM clearly defines the data use of consumer information in Section II of the policy into sections detailing Marketing, Non-Marketing, Business Transaction, Affiliate Sharing, and Third-Party use of consumer information.¹²⁴ BetMGM makes clear that they collect user information including wagering history to offer special promotions and events through push notifications, e-mail, and “other means.”¹²⁵ In this Section it also details that consumer data will

¹²¹ Id.

¹²² BetMGM, *Privacy Policy BetMGM – Pennsylvania Online Gaming services*, BetMGM (n.d.), <https://help.pa.betmgm.com/en/general-information/security/privacy-policy>

¹²³ Id. at Section 1B.

¹²⁴ Id. at Section 2.

¹²⁵ Id. at Section 2A.

be shared for “joint marketing” purposes with third parties.¹²⁶ BetMGM follows this information with their own opt-out through a web link or formally writing to BetMGM at their offices in Jersey City, New Jersey.¹²⁷

One difference between BetMGM and the already examined books is the length of its CCPA sections. The BetMGM policy in itself is only two sections detailing data collection and data use, but the CCPA section dwarfs the original policy and goes into extensive detail of California consumer protection protocol.¹²⁸ This may be partly because BetMGM, a subsidiary of Las Vegas company MGM Resorts International, is so close to California being stationed in Nevada that they are creating extensive protection from any involvement with California tourists that frequent their betting jurisdictions.

PointsBet

PointsBet’s policy does not have any extraordinary provisions and does not have much that truly stand out. They mention that “your betting information with us” is generally collected and that it may be used “to upgrade and enhance your experience within the PointsBet Website or over the telephone, or to tailor or develop information, services or products to suit your needs which may include market research and conducting promotions.”¹²⁹ The policy also details that “when registering as a Member, you may be automatically signed-up to receive promotional or marketing information from PointsBet by selecting the appropriate option on the registration page...we may use your Personal Information to inform you about PointsBet’s products or services or about promotional activities which PointsBet believes may be of interest or of benefit

¹²⁶ Id. at Section 2C.

¹²⁷ Id. at Section 2F.

¹²⁸ Id. at Section 3.

¹²⁹ PointsBet, *Privacy Policy*, PointsBet (January 2022), <https://pa.pointsbet.com/privacy>

to you.”¹³⁰ In the next paragraph, Pointsbet provides an unsubscribe link and an email contact to opt-out from promotional material in any particular form from PointsBet.¹³¹

Barstool Sportsbook / Penn National Gaming

Barstool Sportsbook’s privacy policy was written by their parent company Penn National Gaming and is in line with FanDuel as one of the more extensive policies. Like all the other companies, informed consent is given by the customer by using their Services.¹³² The usual information is listed as collectable by the policy but also includes a very specific provision for “Biometric Data using technological means, such as identification document scanners, digital cameras, and facial recognition scanners, either in person or via your device.”¹³³ Although the policy goes on to say “Penn National will not use your Biometric Data for marketing purposes or share your Biometric Data with third parties for such third parties’ own marketing purposes,” it is strange that this is the only company that mentions Biometric Data, particularly face scans, so clearly.¹³⁴

Penn National states that they do not *sell or rent* any information gathered online to any outside organization but then goes on to state that they may share that information with of their subsidiaries or affiliates.¹³⁵ Although they are not selling the information, Penn National states that they may share personal information with business partners and alliances related to specific

¹³⁰ Id.

¹³¹ Id.

¹³² Penn National Gaming, *Our Privacy Policy*, Penn National Gaming (January 1, 2020), <https://www.pngaming.com/privacy-policy>

¹³³ Id.

¹³⁴ Id.

¹³⁵ Id.

marketing efforts and purposes.¹³⁶ Users can access the personal information that gets submitted to Penn National through submitting a request that is also detailed in the policy.¹³⁷

Penn National's policy, like BetMGM, also has a particularly detailed section on the CCPA and things that California residents should be made aware of under the Act.¹³⁸ This policy is also unique because they provide a section for Nevada residents and their opt-out protections that are provided by their state legislature.¹³⁹

The Perspective FOR Gambling

Inherently, there is always an uncomfortable feeling following gambling. The negative connotation that surrounds it is tied to years of underground sportsbooks, ties to the Mafia, implications of point shaving or fixing games, and all the social issues and dangers associated with wagering is hard to escape. In 2011, the estimated social cost of problem gambling to society for each pathological gambler was about \$9,393.¹⁴⁰ As gambling practices have expanded and normalized in the last decade, that estimation must have ballooned. But with all the social awareness that gambling is bad and harmful to society, what is stopping it? Why are these practices permitted and thrown at gamblers on television and in their inbox? Why is there no oversight?

The short answer is that there is no national governing body for gambling. Unlike agriculture, guns, drugs, and the like, there is no federal enforcement agency that oversees gambling. This is in part because gambling is not a federally legislated activity. After *Murphy v.*

¹³⁶ Id.

¹³⁷ Id.

¹³⁸ Id.

¹³⁹ Id.

¹⁴⁰ Earl L. Grinols, *The Hidden Social Costs of Gambling*, Center for Christian Ethics at Baylor University (2011), <https://www.baylor.edu/content/services/document.php/144584.pdf>

NCAA, the Supreme Court effectively gave every state the license to figure out what they wanted to do with sports gambling and decided that it should be a states issue. As a result, states are free to regulate gaming as they see fit, and one huge reason for the lax oversight on gambling practices is the tax revenue that they see from wagers.¹⁴¹ For example, Pennsylvania has received \$224,236,007 in tax dollars by allowing sportsbooks to operate in the state since 2019.¹⁴² For 2.5 full years of operation, the state nets approximately \$89 million a year, a small fraction of the \$1 billion in total gross revenue for sportsbooks in the state for that time period.¹⁴³ Additionally, unlike the U.K. which can regulate gambling on a federal level directly, doing so in the United States would create issues with conflicting state laws, and any act has to pass constitutional muster, which has already been decided in *Murphy* to give power regarding the matter to the states.¹⁴⁴ As a result, mimicking the oversight and federal regulation of the UK and other European countries is a tall legislative task.

The American Gaming Association (AGA) is the biggest advocate for gambling, stating that federal regulatory oversight is “unwarranted” and that states are managing this seismic shift well thanks to the tax benefits granted from gambling revenue.¹⁴⁵ Most research published by the AGA states that the tax revenue from sports betting goes straight into state school districts and is

¹⁴¹ Ulrik Boesen, *Large Spread in Tax Treatment of Sports Betting Operators*, Tax Foundation (February 9, 2022) <https://taxfoundation.org/sports-betting-tax-treatment/>

¹⁴² *Pennsylvania Sports Betting Revenue*, Play Pennsylvania (n.d.) <https://www.playpennsylvania.com/sports-betting/revenue/>

¹⁴³ Id.

¹⁴⁴ Sean M. Farrell, *Cashing in on Murphy v. NCAA: Looking to the United Kingdom and Australia for Solutions to Regulating Sports Betting in America*, Indiana Int’l & Comp. Law Review Volume 30, Number 2 at 271 (2020) <file:///C:/Users/dante/Downloads/30IndIntlCompLRev251.pdf>

¹⁴⁵ American Gaming Association, *Legal Sports Betting*, (n.d.) <https://www.americangaming.org/policies/hot-issue-sports-betting/>

an irreplaceable benefit.¹⁴⁶ Instead of the AGA advocating for protections for consumers, most of their stance relies on attacking the “illegal market” or unlicensed bookies and sportsbooks.¹⁴⁷ They cite the lack of “transparency and safeguards” that are seen for consumers using licensed sportsbooks, but the association rarely addresses issues of mental health and addiction for gamblers, so long as companies are posting their warnings from state regulators and listing resources to get help for gambling addiction.¹⁴⁸

A fact that may detract from the thesis of this paper is that is that typically sportsbooks are taxed on every dollar that is wagered, including promotional or free bets. Gross gaming revenue and formulas that exist to determine tax returns for states with gambling often provide that free bets should be factored into total gaming revenue.¹⁴⁹ With that included, there is a natural deterrent from the states to the sportsbooks that says “Sure you can offer promotions and free money to customers, but that money is coming out of your pocket.” So, for every \$200 risk free bet that is offered to new users, that’s extra money that the sportsbook is on the hook for during tax season. Inherently, this is a positive for advocates of gambling, proving that tax practices have the best interests of gamblers in mind, which would cause an incentive for books to offer *less* promotional advertising and protect consumers. However, many states have waived those kinds of tax expenses for free promotions, including Arizona, Colorado, Connecticut, Michigan, Pennsylvania, and Virginia.¹⁵⁰ That tax provision is marginal as well when it is considered that promotional bets aren’t always offering free money which is factored into the tax

¹⁴⁶ American Gaming Association, *State of the States 2021: The AGA Survey of the Commercial Casino Industry* (2021), https://www.americangaming.org/wp-content/uploads/2021/05/AGA-2021-State-of-the-States_FINALweb-150ppi.pdf

¹⁴⁷ AGA, *Legal Sports Betting*, *supra*.

¹⁴⁸ *Id.*

¹⁴⁹ Boesen, *supra*.

¹⁵⁰ *Id.*

rate. Instead, odds boosts or different lines are what is advertised to consumers, and that does not fall into that categorization of extra wagered money. As a result, there is no real mechanism in place to protect consumers from the dangers of gambling, and without the threat of government oversight, companies have full license to use data and pursue whatever practices they choose.

Still, advocates of gambling point to the extensive tax revenue gathered from the gross gaming revenue tax. Tax rates for each state bring a wide array, from Nevada at 6.75%¹⁵¹ to Rhode Island's 51%, with most states coming in at the higher end with The Ocean State.¹⁵² There is also a 0.25% federal handle tax that goes to the U.S. government, but that is the only bit of oversight that comes from Congress.¹⁵³ These rates dwarf what is seen in the heavily regulated European gambling markets, as most countries in Europe tax around 18-25% of gross gaming revenue.¹⁵⁴ In 2017, Oxford Economics predicted that a "high" tax rate in the U.S. would be about 15% of gross gaming revenue.¹⁵⁵ That high estimate has been overshadowed by reality as states are taking in a huge sum of gambling revenue, a premium books are willing to pay in order to reach more customers.

Advocates for gambling will also point to built in protections provided by the sportsbooks. "Responsible gaming" is a theme and name that effectively shifts the burden of playing responsibly on the user, nearly absolving the books from all devious practices.¹⁵⁶ To

¹⁵¹ Nevada, License Fees and Tax Rate Schedule, Nevada.gov (n.d.) <https://gaming.nv.gov/index.aspx?page=94>

¹⁵² Brooke Keaton, *The Highest and Lowest Gambling Taxes Around the World*, Casino.org (June 26, 2020) <https://www.casino.org/blog/comparing-gambling-taxes-around-the-world/>

¹⁵³ Adam Sacks and Aran Ryan, *Economic Impact of Legalized Sports Betting*, Oxford Economics at 14 (May 2017) <https://www.americangaming.org/wp-content/uploads/2018/12/AGA-Oxford-Sports-Betting-Economic-Impact-Report1-1.pdf>

¹⁵⁴ Id.

¹⁵⁵ Id. at 16.

¹⁵⁶ Maris Catania and Mark D. Griffiths, *Understanding Online Voluntary Self-Exclusion in Gambling: An Empirical Study Using Account-Based Behavioral Tracking Data*, International Journal of Environmental Research and Public Health Vol. 18, Number 2000 (2021) <file:///C:/Users/dante/Downloads/ijerph-18-02000-v2.pdf>

assist their customers, sportsbooks provide in their account settings the ability to place certain limits on wagering: limits on time spent in the app, amount deposited, or amount wagered daily.¹⁵⁷ There are also options to “self-exclude” or notify the state gambling authority or sportsbook directly to ban the gambler from placing any bets.¹⁵⁸ In a survey of 1940 moderate-risk and problem gamblers in Sweden, only 4% (approximately 78 people) reported self-excluding from gambling using their national self-exclusion system.¹⁵⁹ Although self-exclusion is an incredibly powerful tool to prevent problem gambling, seeing such a low rate of return in Sweden when they implemented a national self-exclusion system does not provide encouraging results if such a national system were to be used in America. Instead, the self-governance of American self-exclusion is the only real method to allow gamblers to protect themselves from their own problem gambling habits. Unfortunately, without the lack of oversight, regulation, and true warnings and awareness presented by casinos and books, the odds are stacked against gamblers from protecting themselves from their own bad habits.

Conclusion

Problem gambling habits die hard, but they die even harder when there are no protections from the American government that ensure gamblers are safe from bad advertising practices and forcing consumers to rejoin the Online Sports Betting Loop. Every sportsbook privacy policy gives the casino the right to use consumer data, betting habits, and information to cater gambling advertisements toward them. In a space where gamblers are so fragile, and the design of the

¹⁵⁷ Sports Shield, *Responsible Gaming Tools at Legal Online Sportsbooks in the US*, SportsShield.org (n.d.) <https://sportsshield.org/guides/responsible-gaming-tools-us-online-sportsbooks/#safety>

¹⁵⁸ Id.

¹⁵⁹ A. Hakansson, *Who chooses to enroll in a new national gambling self-exclusion system? A general population survey in Sweden*, Harm Reduction Journal Volume 17, Number 82.

website and app is so welcoming, giving gamblers specialized wagers, deals, and offers is a dangerous practice that has no oversight.

States are left to regulate gambling themselves but are mostly in the business of profiting off the high tax rates of the sportsbooks. With the state requiring 30-50% returns across the country, pulling in nearly \$100 million annually, why would any state push back against their biggest cash cow? Limiting the business practices of online wagering would call for a significant tax reduction, a stance that no state would want to see when they are getting such a financial commitment from books. The well-being of state citizens is a normal policy concern, but there is not much lobbying about the dangers of gambling mental health, particularly since the Supreme Court opened Pandora's Box of problem gambling in permitting sports wagering nationwide.

Now, books can manipulate user data and information, mostly unbeknownst to users as they consent just by using a sportsbook's services. As a result, the bombardment of advertisement doesn't stop when a fan stops watching the broadcast. They can be hit with endless advertisements, notifications, and emails from all angles and all different kinds of platforms, direct and indirectly related to the book itself.

"Responsible gambling" is a phrase that places the burden on the consumer to make sure that they are wagering with care, but no burden is on the oddsmakers to not imposition their consumers. It is true that books are in the business of making themselves money, and that they themselves rig the numbers based off their models so that they only take in five to seven percent of the handle in any given year.¹⁶⁰ Despite limiting their profit each year, the small annual return

¹⁶⁰ Brian Pempus, *Pro Gamblers Accuse NV Bookmaker of 'Cheating' on In-Game Bets*, SportsHandle (October 19, 2020) <https://sportshandle.com/pro-gamblers-william-hill-cheating/#:~:text=Typically%2C%20a%20sportsbook%20holds%20between,higher%20than%20on%20pregame%20selections>.

of the handle is not indicative of books doing business in good faith. They do not discriminate in how they advertise, and certainly do not care who is winning or losing or if you may be losing more than usual. Every user is just part of the greater whole as they approach their revenue goals for the year, and whether or not their methods in inciting users to bet can develop bad gambling habits is not ultimately their concern.

It is difficult to say what can be done to fix the issues of data privacy in gambling, particularly because data privacy issues are so widespread in America even outside of the scope of sports betting. Without federal guidance on data privacy and the sale of user information, state reliance on ties to the California Consumer Privacy Act is not nearly enough to protect all American citizens from the current reality that privacy is an idea of the past. Ultimately, time will tell how the issue of data privacy is addressed. However, protections for data privacy in gambling may be a few steps removed. With gambling continuing to sprawl across the country, and states enjoying significant tax revenues from their “regulations” of the industry, any real outcry to protect gamblers from themselves and prying data brokers is likely to be an issue for a later decade.