



GAMING & HOSPITALITY LEGAL NEWS

IN SPORTS WAGERING, INFORMATION IS EVERYTHING!

by Jeff Silver, Greg Gemignani, Jennifer Gaynor and Kate Lowenhar-Fisher

In "Back to the Future, Part 2," the old Biff Tannen gives "The Grays Sports Almanac" to his 1955 alter ego. The book contained all of the statistics one would need to place winning wagers on events that would occur in the future. As a result, the future Biff became the wealthiest man in town, before reality was restored by Marty McFly, the character played by Michael J. Fox. There is no doubt that "information" is power and the best information can mean the difference between success and failure.

When it comes to running a successful sports pool or sports book, there are multiple facets to obtaining and managing information that must be considered. This includes finding an experienced odds-maker to interpret the information they gather to manage your lines and your risk, determining how to organize the sharing of information throughout your operation and ensuring that your book has access to basic game-data information.

Old-School Bookmakers are the New Hot Commodity

With the removal of legal impediments to sports wagering found in PASPA (*Murphy v. NCAA*), state legislators have been lining up to approve sports betting as their new "cash cow." With multiple betting operations on the horizon, the next question is who has the expertise as an oddsmaker to run one of these operations. Setting lines and moving them swiftly in response to wagering patterns takes a special knowledge found either in the back rooms of organized crime or the legalized betting industries in Nevada and overseas.

Bookmaking is a skill and an art that takes years of experience to develop and hone. Because Nevada is the only U.S. jurisdiction with any significant history of regulated sports betting, bookmakers from Nevada are sought out by operators in other jurisdictions that primarily take wagers on U.S. sports.

It is no wonder that several bookmakers who work with Nevada's licensed sports books have become acquisition targets for companies wishing to engage in sports wagering. Sports book managers, such as the respected Johnny Avello, has been lured away to work for fantasy sports behemoth Draft Kings, who presumably intends to sell information and risk

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management to fledgling sports operations, if not operate the books themselves.

Risk Management and the Sharing of Data across State Lines

Sports book or sports pool businesses are the only form of betting without a theoretical win and one in which the house is truly active in the wager. The only way to make money in sports wagering is to manage the risks of operation.

In an ideal world, a bookmaker will take even wagers on both sides of an event, and simply move money from the losing side to the winning side while collecting a service fee (also called a "vigorish or vig") from losing wagers. However, a balanced event is difficult to achieve in the real world and imbalanced events leave bookmakers exposed to having to pay more out to winners than they receive in wagers. To manage the exposure, risk managers adjust pricing to influence betting behavior based on the market conditions known to an experienced risk manager or bookmaker.

Unlike table games and slot machines, where the house can often not payout at the end of an event, the house always pays out at the end of a sports betting event. Therefore, the issue for risk management is whether the house has taken in more than it is paying out, and if not, how much more is it paying out and can the risk be offset with other events.

Additionally, there are no "good" roulette players, slot players and craps players as these games are all pure luck or nearly pure luck. With sports wagering there are good or sharp bettors that can take advantage of a bad line or a weakness in a sports book pricing and risk management policies.

A risk manager will look at line information, point spreads, betting balances, event conditions, event data and other market data to best manage the risk of a book. Based on the risk manager's experience and analysis, lines can change, risk can be laid off, and multiple events can be used to hedge or manage exposure.

Given the real risk of loss exposure, and the risks of sharp bettors, a sports book must manage its risks carefully. The State of Delaware learned this the hard way in the 1970s when its NFL parlay card product lost money due to ineffective risk management. Therefore, an experienced risk manager is essential to having a profitable book.

With a limited pool of experienced bookmakers, however, not every operation can find a bookmaker to assume their risk management in each state. A solution to this is centralization of risk management in one location- such as Nevada-for books in multiple locations. But is this allowable under Federal law and current state regulations in Nevada?

The U.S. Federal Wire Act (18 USC Section 1084, the "FWA") prohibits the transmission of sports bets in interstate or foreign commerce. It also prohibits information assisting in the placement of sports bets in interstate or foreign commerce, unless the transmission is between jurisdictions where wagering on such events is legal. There is no exemption for the transmission of the actual sports bets, even between jurisdictions where it is legal; therefore, distinguishing betting information from information assisting the wager is the key issue.

Courts have distinguished bets from information assisting in the placement of bets as follows:

"Bets" are the agreement between a bookmaker and a patron. This encompasses all information used to create that agreement. In the context of phone and internet wagering, the communications to offer, accept and record bets are all deemed to be part of the bet.

"Information Assisting a Bet" is information a bookmaker uses to operate their business, whether or not a bet flows from such information. This might include:

- Line information
- Point spreads
- Patron account information
- Patron messages for call-backs
- Pricing information
- Risk profile

So long as bets are not accepted across state lines, the act of managing lines, spreads, balances and risk can be done from Nevada for book operators in other jurisdictions in which wagering on the events at issue is legal.

This notion is reinforced by NRS 463.810 which addresses global sports book management and requires approval of global risk management arrangements when a licensed Nevada book is



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involved in the relationship. Providing remote risk management services alone, however, does not require a Nevada gaming license. If the risk manager in Nevada is not taking wagers in Nevada and is not providing services to Nevada books, then the risk manager is not engaged in an activity requiring a license in Nevada.

If the remote risk manager, however, is taking wagers in Nevada or receives a percentage of gaming revenue in Nevada, then a Nevada sports pool license is required. Additionally, if the risk manager is providing line information, spread information or risk management advice to a Nevada licensed book then the risk manager should obtain a Nevada information service provider license.

Obtaining Information: What is Protectable and the Role of the Leagues

Where do sports books obtain their “information”? This article began by stating that “information” is the key to any successful sports book operation. A Global Risk Manager relies on information it may receive from multiple sources, whether publicly available or “stringers” with “inside information” about injuries or condition which could affect the odds. The Global Risk Manager also may have access to betting patterns at other legalized operations, or in some cases, the shadowy underworld’s knowledge of illegal wagers placed upon particular events. But could access of books to the most key information- the official game data- be threatened or controlled by the sports leagues themselves?

As we have all learned from past experience, opportunism knows no boundaries. A looming challenge faced by sports book operators is the claim by professional sports leagues, such as NBA, NFL, MLB and NHL (the “Leagues”) that only they may control sports information. With the Leagues lining up to participate in what they believe will be a financial bonanza, information, which was once freely given, may now have a price.

The question is whether the gaming industry should be forced to use League-approved “official” information, which would make the value of game data soar, or whether sports information is protectable at all? Initially, the Leagues’ direct financial participation in sports wagering was referred to as an “integrity fee,” but most recently it has been called what it may truly be, a “royalty” for the right to use information generated

from their events. These fees are a concession the Leagues feel they should be entitled to receive for their conditional support of sports wagering.

During West Virginia sports betting testimony, the Leagues argued that their data is simply faster and better than third party data. While the ultimate score is never in dispute, the advent of in-game wagering requires facts and statistics which the Leagues argue can only be provided by trained and monitored scorekeepers. (Source: Legal Sports Report, Eric Ramsey, March 22, 2018).

The seminal case which discusses the issue of protectable information is *National Basketball Association v. Motorola, Inc.* 105 F. 3d 841, (2nd Cir. 1997). The facts involved Motorola as the manufacturer of the SportsTrax paging device and STATS, a supplier of game information that was transmitted to the pagers. The product became available to the public in 1996, at a retail price of \$200. SportsTrax displayed information on NBA games in progress, including (i) the teams playing; (ii) score changes; (iii) the team in possession of the ball; (iv) whether the team is in free-throw bonus; (v) the quarter of the game and (vi) the time remaining in the quarter, all updated periodically.

The NBA complaint alleged that this amounted to unfair competition and misappropriation of information, among other allegations, and sought an injunction and damages. The lower court found that there was misappropriation of data and entered an injunction. However, the Appellate Court disagreed, finding that the underlying basketball games was the subject matter of Federal Copyright protection, but was expressly not protected by federal statutes, because they do not constitute “creative works of authorship” entitled to copyright protection. The Court went on to state that “statistics from sports events are not “creative works of authorship” in any common sense of phrase.”

Accordingly, the Court concluded that Motorola and STATS had not engaged in unlawful misappropriation under the “hot news” test standard discussed in the case and the injunction was lifted with the NBA’s claim for “misappropriation” dismissed.

It should be interesting to see whether the Leagues will be able to control the release of information which would be their predicate for earning a “fee,” or whether their share of the profits derived from wagering activities, however characterized, will



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be merely assumed as a “participation in gaming revenues,” which could, without appropriate exemptions, subject them to licensing in the various jurisdictions which have approved sports wagering.

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