BLURRED LINES: A FUTURE WHERE SOCIAL GAMING IS THE NEWEST FORM OF GAMBLING

*Cassie Bible**

INTRODUCTION

"Grandma, get out of the car. This is for your own good. There are others going through the same problems and struggles as you here. This is a safe space. Grandma, we are doing this for your own good. Please Grandma, these meetings are to help you recover."

Imagine a situation where you are saying these words to your grandmother, trying to convince her that she has a problem with gambling and needs to attend a Gambler's Anonymous meeting. Now imagine that you are taking your grandmother to a Gambler's Anonymous meeting not because of her addiction to poker or slot machines but to Candy Crush where she continues to spend money on new lives and boosts.

If you asked anyone on the street if Candy Crush is gambling, they would laugh at you. How is a game where you swipe to match colored candy gambling? There are no prizes for winning a level of Candy Crush, you just move onto the next level. What if you asked them if Clash Royale[1] is gambling? They would still laugh at you because these are just apps on your phone to help pass the time. Now, say you asked that same person on the street if poker or craps is gambling. Finally, they would realize you are not crazy and stop laughing at you. However, unbeknownst to the majority of the population, the line between games like Candy Crush and actual gambling is beginning to blur.

This note will first give background into different types of social gaming apps, including apps of skill and chance. It will discuss the basics of what constitutes gambling and where in the gaming statutes courts could find that

---

* J.D. Candidate, May 2020, William S. Boyd School of Law, University of Nevada, Las Vegas; Senior Staffer *UNLV Gaming Law Journal*. I would like to thank my husband. Without your understanding and support, I never would have had the time to write this. You kept me going when I wanted to stop. I would also like to thank my parents. You have always supported me through all my endeavors and law school has been no different. Thank you all so much.

[1] The game is explained in the background section of this note.

free-to-play applications might constitute gambling. It will discuss some of the major cases that have a chance to change the future of app development, including the Ninth Circuit case *Kater v. Churchill Downs*.[2] Then, the note will go into an analysis of different states' gambling statutes and how courts could interpret them to find that social gaming apps constitute gambling. Finally, this note will focus on what it would mean for app developers if the courts all decide that these social gaming apps are illegal gambling applications.

I. BACKGROUND

Candy Crush and Clash Royale fall into a category of games called "social gaming." Social gaming refers to all the games played through social networks such as Facebook, or on applications (apps) downloadable through the Google Play Store or the Apple App Store.[3] Social gaming games are usually free to play and contain additional in-app purchases that can be made to either speed up the wait time, receive extra lives, or get more out of the app in general.[4]

The lines are beginning to blur between social gaming and gambling due to casino-style social gaming apps. These are gambling style apps or games on websites such as Facebook that offer a casino-type experience.[5] In these apps, users can play games of roulette, poker, or bingo, and users can even play on virtual slot machines.[6] These apps are not considered gambling in most states because there is no prize of real money for winning a hand of virtual poker or winning on a virtual slot machine.[7] If there are no prizes of real money, then how could a court consider these apps gambling?

Courts most likely would follow the federal definition of gambling: "a game of chance where the participant risks something of value for the chance to gain or win a prize."[8] This definition of gambling is the reason the lines between gambling and social gaming are blurring. The definition depends on two factors: what a game of chance is, and what something of value is.

"Games of chance are those games whose outcome depends upon an element of chance, even though skill of the contestants may also be a factor influencing the outcome."[9] Essentially, these are games the player has little

---

[2] *See generally* Kater v. Churchill Downs Inc., 886 F.3d 784 (9th Cir. 2018).

[3] *See* Sally M. Gainsbury et al., *Migration from Social Casino Games to Gambling: Motivations and Characteristics of Gamers Who Gamble*, 63 COMPUTERS IN HUM. BEHAV. 59, 59 (2016).

[4] *See id.*

[5] GAMBLING COMMISSION, SOCIAL GAMING 1 (Jan. 2015), https://www.gamblingcommission.gov.uk/PDF/Social-gaming-January-2015.pdf.

[6] *Id.*

[7] *See id.* at 2.

[8] 41 C.F.R. § 102-74.395 (2019).

[9] US LEGAL, *Games of Chance Law and Legal Definition*, https://definitions.uslegal.com/g/games-of-chance/ (last visited Nov. 2, 2019).

control over. An important note is that because some games of chance can also involve a certain degree of skill, courts will have to determine if apps like Candy Crush or Clash Royale are games of skill or games of chance.[10] Clash Royale, for instance, has skill elements, because the user has to design their own battle deck, decide when to play each card, and how to use the "elixir" efficiently.[11] However, there are plenty of aspects of the game that a court could consider chance. For instance, a battle deck of cards is in random order, and the players and their decks are random.[12] It is all based on an algorithm that the user does not control.[13] So in the future, courts may decide how much skill or how much chance a game may have before it will be considered a game of chance, and then ultimately if it is considered gambling under the applicable statutes.

To determine if it is a game of skill or a game of chance, a jurisdiction may follow one of three main tests. The first is the "dominant factor" test, which has been adopted by the majority of states.[14] This test considers whether the game is more chance or skill by determining whether skill or chance is the dominating factor.[15] If the game is mostly skill, then it is a skill-based game, but if it is mostly chance, then it is a game of chance. The second most commonly used test in the United States is the "material elements" test.[16] This test relies on whether chance plays a material role in determining the game's outcome.[17] For example, in the game of Minesweeper, players can exercise a great deal of skill, but there are times when the players must randomly guess and the results of that guess determines whether they win or lose.[18] In these games, skill predominates but chance is the material element in determining the game's outcome.[19] If a jurisdiction follows the material elements test, then a game like Clash Royale, which may be a game primarily of skill, could eventually be determined as a gambling game due to the high effect that chance has on the outcome of the game. The last test, which only a few states follow, is the "any chance" test.[20] A game is considered gambling if chance influences

---

[10] *See id.*

[11] Jim Squires, *Everything You Need to Know About Clash Royale*, LIFEWIRE (May 30, 2019), https://www.lifewire.com/everything-to-know-clash-royale-1992945.

[12] *Id.*

[13] *See id.*

[14] *Games of Skill v. Games of Chance –The Legal Analysis*, KLEIN MOYNIHAN TURCO LLP (Aug. 16, 2018), http://www.kleinmoynihan.com/games-of-skill-v-games-of-chance-the-legal-analysis/.

[15] *Id.*

[16] *The Legality of Skill Gaming*, SKILLZ (Sept. 10, 2019, 9:58 AM), https://skillz.zendesk.com/hc/en-us/articles/200620348-The-Legality-of-Skill-Gaming.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Games of Skill*, *supra* note 14.

the outcome of the game at all.[21]

Different states have varying definitions of gambling that aid in the blurring of the abstract gaming line. For instance, Nevada defines "game" or "gambling game" as "any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value."[22] Under the plain language of the Nevada statute, if a game, such as a casino app played on an electronic device, is played for money, property, checks, credit, or any representative of value, it is considered a gambling game.[23] This means the app would have to be regulated under the applicable gambling laws. In the casino style games, users can purchase more poker chips or spins with real money, just like in Candy Crush where a user can purchase more lives or boosts.[24]

How can making an in-app purchase on an app that has nothing to do with gambling be considered gambling? The problem lies with each state's definition of "representative of value" or "thing of value." A lot of states view that something can be a thing of value even if it is not redeemable for cash.[25] For instance, Nevada defines a representative of value as "any instrumentality used by a patron in a game whether or not the instrumentality may be redeemed for cash."[26] This means that a court may be able to find in-app purchases as things of value, because they could be construed as an instrumentality used by a patron in a game. The main part of this definition is that the instrumentalities do not have to be redeemed for cash. The fact that they have value inside of the game and are used in the game could be enough to deem them a representative of value.

Now, courts actually finding that in-app purchases for more "casino" chips is gambling may seem like a reach. Most people would never think that courts would rule this way, but it is more of a reality than the public may realize. Soon, social games like Candy Crush could be gambling thanks to the Ninth Circuit and its groundbreaking ruling in *Kater v. Churchill Downs Inc*.[27]

II. KATER V. CHURCHILL DOWNS

Big Fish Casino is a game by Churchill Downs Incorporated, a publicly traded gaming and entertainment company named after the well-known racetrack in Louisville, Kentucky.[28] The game, Big Fish Casino, functions as a

---

[21] *Id.*

[22] NEV. REV. STAT. § 463.0152 (1985).

[23] *See id.*

[24] *Social Gaming*, *supra* note 5, at 2.

[25] *See* 720 ILL. COMP. STAT. § 5/28-8 (2013); NEV. REV. STAT. § 463.0152 (1985); WASH. REV. CODE ANN. § 9.46.0285 (West 2019).

[26] NEV. REV. STAT. § 463.01862 (1997).

[27] Kater v. Churchill Downs Inc., 886 F.3d 784, 789 (9th Cir. 2018).

[28] Press Release, Churchill Downs Inc., Churchill Downs Incorporated Announces

virtual casino where users can play electronic casino games like blackjack or slots.[29] Users can download the game free of charge from an app store and get a free set of chips to play the virtual casino games.[30] Users can earn free chips a lot of different ways, so users do not have to spend real money to buy the chips.[31] Once users run out of chips, they have the choice to either wait until more free chips are awarded to them, or they can purchase more chips within the app to continue playing.[32] The users get free chips when they log in everyday, a free spin on the wheel to win chips each day, and they can even earn free chips by watching advertisements within the app.[33]

Big Fish Casino's "Terms of Use" state that the virtual chips have no monetary value and cannot be exchanged for cash or other monetary value.[34] However, there is a mechanism within Big Fish Casino where users may transfer chips between users for a transaction fee.[35] This mechanism is sometimes used between users to "cash out" winnings and sell their chips on a secondary market for real monetary value.[36] This is, essentially, a black market for these virtual casino chips.

Kater v. Churchill Downs is an appeal from an earlier district court ruling in the state of Washington in 2015.[37] In its ruling, the district court granted defendant Churchill Downs' motion to dismiss.[38] This case was originally brought as a class action by Cheryl Kater who alleged (1) violations of Washington's Recovery of Money Lost Gambling Act, (2) violations of the Consumer Protection Act in Washington, and (3) unjust enrichment.[39] Kater began playing Big Fish Casino in 2013 and bought over $1000 worth of virtual chips within the game, and eventually lost all $1000.[40] Kater claimed that Churchill Downs' Big Fish Casino gambling game app constituted illegal gambling under Washington law.[41]

Closing of the Sale of Big Fish Games, Inc. to Aristocrat Technologies, Inc. for US$990 million (Jan. 15, 2018, 5:21 PM), http://www.churchilldownsincorporated.com/our_company/company_news/2018/01/15/churchill_downs_incorporated_announces_closing_of_the_sale_of_bi.

29 Kater, 886 F.3d at 785.

30 *Id.*

31 *Id.*

32 *Id.* at 785–86.

33 *How Do I Get Free Chips?*, BIG FISH CASINO, https://bigfishcasino.zendesk.com/hc/en-us/articles/229664648-How-do-I-get-free-chips- (last visited Nov. 2, 2019).

34 Kater, 886 F.3d at 786.

35 *Id.*

36 *Id.*

37 *Id.*

38 Kater v. Churchill Downs, Inc., No. C15-612 MJP, 2015 U.S. Dist. LEXIS 175049, at *1 (W.D. Wash. 2015).

39 *Id.*

40 Kater v. Churchill Downs Inc., 886 F.3d 784, 786 (9th Cir. 2018).

41 *Kater*, 2015 U.S. Dist. LEXIS 175049, at *1–2, *10–11.

The district court originally found that Kater had failed to state a claim.[42] The district court did not think this case had any merit because Big Fish Casino's virtual chips were not a thing of value under Washington law.[43] However, Kater had two arguments as to why the virtual casino chips in Big Fish Casino were things of value: first, the virtual chips allowed users to extend gameplay;[44] second, the virtual chips in Big Fish Casino could be sold to other users on the Big Fish Casino "black market" for actual money due to the in-app mechanism for transferring chips between users.[45]

The district court did not think that the fact that users can extend their gameplay by purchasing virtual chips in the game constituted a thing of value under the gambling statutes.[46] The district court decided that because Big Fish Casino is a free-to-play game, users do not gain anything besides amusement for more plays.[47] The district court essentially decided that this is merely a game, and yes, continuing to play it longer does have value.[48] However, since there is no possibility of receiving money or merchandise from the game, there is no prize and it is not considered gambling under Washington law.[49]

As for Kater's second claim that Big Fish Casino's virtual chips are things of value because they can be sold for actual cash on the secondary market to other users in Big Fish Casino, the district court disagreed.[50] Kater's argument was that users exchange actual money for chips on the Big Fish Casino "black market" and then transfer chips to other players in the game through Big Fish Casino's exchange mechanism, and that Big Fish Casino facilitates these exchanges through the $1.99 transfer fee.[51] Churchill Downs argued in return that their Terms of Use expressly prohibits this exchange for real money on the secondary market.[52] The district court agreed with Churchill Downs.[53] The users exchanging the virtual chips on the virtual black market expressly violated the Terms of Use each user agreed to before playing the game.[54] The district court stated that allowing plaintiffs to bring suits based on their own breach of contract goes against basic public policy.[55] The district court did not

---

42 *Id.* at *4.
43 *Id.* at *12.
44 *Id.* at *5.
45 *Id.*
46 *Id.* at *10.
47 Kater v. Churchill Downs, Inc., No. C15-612 MJP, 2015 U.S. Dist. LEXIS 175049, at *10 (W.D. Wash. 2015).
48 *See id.*
49 *Id.*
50 *Id.* at *10–11.
51 *Id.* at *10.
52 *Id.* at *10–11.
53 Kater v. Churchill Downs, Inc., No. C15-612 MJP, 2015 U.S. Dist. LEXIS 175049, at *11 (W.D. Wash. 2015).
54 *Id.*
55 *Id.* at *11–12.

think that punishing Churchill Downs and condemning its entire app as illegal gambling was just, because the fact that users decide to breach the Terms of Use and illegally sell their virtual chips for real money should not mean that Churchill Downs has to be the one that is punished.[56] Ultimately, the district court granted Churchill Downs' motion to dismiss.[57] Kater then appealed the district court's ruling to the Ninth Circuit.[58]

III. THE APPEAL

On appeal, the Ninth Circuit considered whether Big Fish Casino's operations constituted illegal gambling under Washington law, and whether the district court was right in dismissing the case.[59]

This case originated for the sole reason that Washington citizens can recover money lost in illegal gambling games.[60] Thus, Kater alleged that Big Fish Casino was an illegal gambling game so she could recover the $1000 she lost within the game.[61] If the game is illegal gambling, then it is Churchill Downs' fault she lost $1000, not her own fault that she spent too much money on fake gambling for nothing but enjoyment.[62] Washington defines gambling as the following:

> (1) staking or risking something of value (2) upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, (3) upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome.[63]

The controversy in this case arose on whether the virtual chips in Big Fish Casino are a "thing of value" under Washington law.[64] Washington law defines

---

56 *Id.*

57 *Id.* at *12.

58 Kater v. Churchill Downs Inc., 886 F.3d 784, 785 (9th Cir. 2018).

59 *Id.*

60 WASH. REV. CODE ANN. § 4.24.070 (West 2019).

61 *Kater*, 886 F.3d at 786.

62 As a side note, this issue of whether a social gaming game would even be considered gambling could not have come about in just any state. It had to be a state where there is an illegal gambling statute or a similar statute where an end user could even get the court to consider if these apps are gambling, because of the in-app purchases. However, now that the Ninth Circuit has examined in-app purchases, it draws attention to the fact that these in-app purchases could be things of value. Now, at least courts in the Ninth Circuit will be thinking about this when ruling on similar subjects, even if it is not for an illegal gambling statute.

63 WASH. REV. CODE ANN. § 9.46.0237 (West 2019) (numerals added by author).

64 Kater v. Churchill Downs Inc., 886 F.3d 784, 787 (9th Cir. 2018).

a "thing of value" as the following:

> …[A]ny money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.[65]

The Ninth Circuit found that the virtual chips were indeed a "thing of value" because of the same argument the district court rejected.[66] The chips are things of value because they allow the user to extend the game and place another wager or re-spin a slot machine.[67] The Ninth Circuit's reasoned that without buying more of these virtual chips, the users could not play Big Fish Casino's games.[68] However, the court ignored Churchill Downs' argument that the users receive free chips during the course of normal game play, so extending gameplay actually costs users nothing, unless they do not want to wait.[69] The Ninth Circuit ignored this crucial fact because it was not included in the complaint.[70] This is the only saving grace for the future of social gaming apps, because if the defense argued that users do not have to buy chips or extra lives, but that they can instead wait for free, then the chips would not be considered "things of value." However, the logic in the Ninth Circuit's ruling means that even though there are ways to get chips for free and users do not have to buy chips, as they can get free chips each day[71] the game could still be considered illegal gambling since the chips are considered a "thing of value."

The Ninth Circuit's reasoning was influenced by *Bullseye Distributing LLC v. State Gambling Commission*, a previous Washington state court case.[72] In *Bullseye*, the court "held that an electronic vending machine designed to emulate a video slot machine was a gambling device."[73] The users played this game with play points they could obtain by purchasing plays, redeeming a once-a-day promotional voucher, or winning the game on the machine.[74] The *Bullseye* court determined that the play points were things of value because they "extended the privilege of playing the game without charge," despite the

---

65 WASH. REV. CODE ANN. § 9.46.0285 (West 2019).
66 Kater, 886 F.3d at 787.
67 *Id.*
68 *Id.*
69 *Id.*
70 *Id.*
71 *How Do I Get Free Chips?*, *supra* note 33.
72 Kater v. Churchill Downs Inc., 886 F.3d 784, 787 (9th Cir. 2018).
73 *Id.*
74 *Id.*

fact that they did not have any monetary value outside the game.[75] The *Kater* court relied on the *Bullseye* court's determination to find that Big Fish Casino's virtual chips fall within Washington's statutory definition of a thing of value.[76] The Ninth Circuit relied heavily on the fact its holding had nothing to do with a user's ability to sell the play points on a black market for real money, but instead that "these points fall within the definition of 'thing of value' because they extend the privilege of playing the game without charge."[77] This is essentially the Ninth Circuit shutting down any possibility of an argument that users can wait for free chips instead of purchasing them. If the users' privilege of playing the game can be extended without charge, then the game could still be considered gambling despite the fact that no money was spent in the game itself.

Churchill Downs tried to argue that Big Fish Casino cannot be illegal gambling and relied on other federal courts that have held that certain "free to play" games are not illegal gambling.[78] The court rejected those cases because they were from different states, with different statutes, and they were being applied to different games.[79]

The Ninth Circuit did not consider Big Fish Casino's Terms of Use, which states that the virtual chips within the game cannot be exchanged for cash or any other tangible thing of value.[80] The court instead relied on Washington's broad definition of a "thing of value" and because the virtual chips are a thing of value, Big Fish Casino is an illegal gambling game under Washington law.[81]

IV. OTHER JURISDICTIONS' TAKE ON A SIMILAR ISSUE

The Ninth Circuit and the state of Washington are not the only courts to have taken on the issue of whether social gaming should be considered gambling. Churchill Downs cited to the two cases discussed below when it was trying to convince the Ninth Circuit and the state of Washington that Big Fish Casino should not be considered gambling.

A. Phillips v. Double Down Interactive

Churchill Downs relied on *Phillips v. Double Down Interactive LLC* to persuade the Ninth Circuit that Big Fish Casino was not an illegal gambling

---

[75] *Id.* (internal citations omitted).
[76] *Id.* at 787–88.
[77] *Id.* at 787 (internal citations omitted).
[78] Kater v. Churchill Downs Inc., 886 F.3d 784, 788 (9th Cir. 2018).
[79] *Id.*
[80] *See id.* at 786.
[81] *Id.* at 788.

game.[82] This case is similar to *Kater v. Churchill Downs* because the plaintiff claimed that Double Down Interactive LLC's online casino games were unlawful gambling devices under Illinois state law.[83]

Double Down operates "Double Down Casino"—a virtual casino that can be accessed through the internet, Facebook, or apps downloadable though the Apple App Store or the Google Play Store.[84] Like Big Fish Casino, Double Down Casino has virtual gambling games such as poker and slot machines, and the players play these virtual gambling games by using virtual chips.[85] When users first join the game, they are given a bundle of free chips and are given additional virtual free chips each day they return, but if they run out of chips and they do not wish to wait, users do have the option to purchase more chips.[86] Regardless, the only thing that a user can gain from winning one of the virtual gambling games is more virtual chips.[87] Double Down also explicitly prohibits the transfer of its virtual currency for real monetary gain.[88] Fundamentally, Double Down Casino is exactly like Big Fish Casino, just by a different company name with different developers.

The background in this case is strikingly similar, except this case occurs in Illinois. Another woman, Margo Phillips, began playing Double Down Casino through her Facebook account.[89] After she ran out of the free chips, Margo started to buy chips within the game and estimated she lost over $1000 from January 2013 to April 2015.[90] Similar to Kater, Phillips brought this suit because she spent too much money in an app and wanted someone else to be held responsible.[91] Phillips claimed that Double Down operated illegal or unlawful gambling devices, and because it operated this virtual casino, Double Down illegally profited from thousands of Illinois consumers.[92] Phillips claimed Double Down violated the Illinois Loss Recovery Act,[93] an act similar to Washington's Recovery of Money Lost Gambling Act. Section 28-8 of the Illinois Loss Recovery Act states the following:

> Any person who by gambling shall lose to any other person, any sum of money or thing of value, amounting to the

---

82 *Id.* at 788; *see* Phillips v. Double Down Interactive LLC, 173 F. Supp. 3d 731 (N.D. Ill. 2016).
83 Phillips, 173 F. Supp. 3d at 733.
84 *Id.* at 734.
85 *Id.*
86 *Id.* at 734–35.
87 *Id.* at 735.
88 Phillips v. Double Down Interactive LLC, 173 F. Supp. 3d 731, 735 (N.D. Ill. 2016).
89 *Id.* at 736.
90 *Id.*
91 *See id.*
92 *Id.*
93 *Id.*

> sum of $50 or more and shall pay or deliver the same or any part thereof, may sue for and recover the money or other thing of value, so lost.[94]

Illinois, similar to the state of Washington, defines gambling as "knowingly play[ing] a game of chance or skill for money or other thing of value."[95] The court noted in its decision that the statutory language and the case law interpreting the statute "make clear that a plaintiff may only recover what he or she 'lost' from the person who 'won' it[.]"[96]

Double Down however did not buy into Phillips' claims. Double Down asserted that Double Down Casino is not a gambling device under the statute, that it is not a "winner" and Phillips is not a "loser" under the statutes, and that the virtual chips are not "things of value."[97] The court denied Double Down's argument that Double Down Casino cannot be a gambling device, because it is on the internet and is not tangible.[98] The court reasoned that the statute, while it did not have the internet in mind when it was drafted, is broad enough to encompass something like Double Down Casino as a gambling device.[99] All that is relevant is whether a device was intended to be used as something where money could be bet.[100]

The court then ignored the issue of whether the virtual chips could be "things of value," because it held that Double Down was not a "winner" and Phillips was not a "loser" under the statute.[101] This leaves this issue open in Illinois because it did not make a determination on what could be considered a thing of value. However, the court's reasoning that followed may be enough to keep the issue at bay. The court found that Double Down was not a winner because Double Down never directly participated in the games, did not have any stake in the outcome of the games, and Double Down kept the money regardless of whether the users win or lose the game.[102] "Because no amount of money earned ever hangs in the balance or depends on the outcome of a game, Double Down [was] not a 'winner' under the Illinois Loss Recovery Act."[103] The court also went one step further and found that Phillips wasn't a "loser" under the statute because she was buying the right to continue playing the

---

94 720 ILL. COMP. STAT. § 5/28-8 (2013).

95 Phillips v. Double Down Interactive LLC, 173 F. Supp. 3d 731, 737 (N.D. Ill. 2016) (citing 720 ILL. COMP. STAT. § 5/28-1(a)(1)).

96 *Id.*

97 *Id.*

98 *Id.* at 738.

99 *Id.*

100 *Id.* at 739.

101 Phillips v. Double Down Interactive LLC, 173 F. Supp. 3d 731, 739 (N.D. Ill. 2016).

102 *Id.* at 740.

103 *Id.*

games, and she got to do just that.[104] Phillips got to keep playing those games with the chips, and so she never "lost" the value of those chips.[105]

The point of buying these extra chips is so players can keep playing the game. It is so players can have the enjoyment of fake gambling or matching colored candy. However, just because Illinois ruled this way, does not mean that in the future Double Down Casino could not be considered gambling in Illinois. The court did not rule if these virtual chips were "things of value." This means that Illinois could still find that virtual chips from a casino app are "things of value." If another plaintiff is able to break the winner-loser threshold, then these virtual chips may be deemed things of value, and apps with in-app purchases could be considered gambling. However, the court established precedent so app developers would be protected in Illinois since they have no stake in the outcome of the games and they get their money regardless of a win or loss.

B. Mason v. Mach. Zone. Inc.

Another significant case regarding loss-recovery statutes and losing money through apps is *Mason v. Machine Zone.*[106] This case is similar to *Kater* and *Phillips*, but the main difference is that the app in contention in this case was not a designated gambling app but a free-to-play multiplayer online strategy app with in-app purchases.[107] The app is called Game of War: Fire Age ("Game of War").[108] It is a strategy game where players build their own empires and attempt to conquer the virtual world by battling real time with other players.[109] There is no cost to play the game, but there are in-app purchases for virtual gold that help the players progress more quickly in the game.[110]

Plaintiff Mia Mason filed a class action against Machine Zone, Inc. ("Machine Zone"), the developer of the mobile game Game of War, under Maryland's Loss Recovery Statute.[111] Mason asserted in her claim that she, along with thousands of other players, lost money by participating in this unlawful gaming device.[112] Mason claimed that part of the app was unlawful—a component that allowed players to spin a virtual wheel to win virtual prizes that they could use within the game.[113] This component is called the Game of

---

104 *Id.* at 741.
105 *Id.*
106 Mason v. Mach. Zone, Inc., 851 F.3d 315, 317 (4th Cir. 2017).
107 *See id.*
108 *Id.* at 316.
109 *Id.* at 317.
110 *Id.*
111 *Id.* at 316.
112 Mason v. Mach. Zone, Inc., 851 F.3d 315, 317 (4th Cir. 2017).
113 *Id.*

War Casino, and when players first join the game they get a free spin on the virtual wheel where they can win virtual prizes like wood, stone, chests, or even gold.[114] After the first free spin, players must use 5000 virtual chips for another spin.[115] These virtual chips can be obtained by converting virtual gold, and virtual gold can be earned throughout gameplay or bought for various real dollar amounts.[116] The virtual wheel is completely chance and players have no control, and thus no skill is involved in this part of the app.[117]

Mason began playing Game of War in 2014, and after she used the complimentary chips, she began purchasing virtual gold to obtain more virtual chips in order to continue playing.[118] Between 2014 and 2015, Mason paid over $100 for virtual gold.[119] The district court originally dismissed Mason's complaint because it decided that she did not lose money when she spun the virtual wheel and therefore, she failed to state a claim under Maryland's Loss Recovery Statute.[120] Maryland's Loss Recovery Statute states the following:

> In general
> (a) A person who loses money at a gaming device that is prohibited by this subtitle, Subtitle 2 of this title, or Title 13 of this article: (1) may recover the money as if it were a common debt; and (2) is a competent witness to prove the loss.
>
> Limitation
> (b) Notwithstanding subsection (a) of this section, a person may not recover money or any other thing that the person won by betting at a gaming device prohibited by this subtitle, Subtitle 2 of this title, or Title 13 of this article. [121]

On appeal, Mason argued that the district court was wrong when it dismissed her claim, because the prizes she won from the virtual wheel were worth less than the amount of money she spent to spin the virtual wheel and therefore, she was entitled to recover.[122] The Fourth Circuit did not agree with Mason's arguments.[123] The Fourth Circuit liberally interpreted Maryland's Loss Recovery Statute and for the purposes of Mason's appeal, it assumed,

---

114 *Id.* at 317–18.
115 *Id.* at 317.
116 *Id.*
117 *Id.* at 318.
118 Mason v. Mach. Zone, Inc., 851 F.3d 315, 318 (4th Cir. 2017).
119 *Id.*
120 *Id.* at 317.
121 MD. CODE CRIM. LAW § 12-110 (2002).
122 Mason, 851 F.3d at 318.
123 Mason v. Mach. Zone, Inc., 851 F.3d 315, 318 (4th Cir. 2017).

without deciding, that the Game of War Casino was a prohibited gaming device.[124] The court stated that even if Mason had received resources of a lesser value than the virtual gold she paid for when she spun the wheel in the virtual casino, Machine Zone did not win any money because she received resources of a lesser value.[125] In fact, Machine Zone did not lose money if Mason had received a prize of greater value than the virtual gold.[126] Machine Zone kept the money that Mason paid them for the virtual gold regardless of whether she used it in their virtual casino or for some other aspect of the game.[127] The Fourth Circuit found that because of the way that the Game of War Casino operates, Mason could not have either won or lost money by participating in the virtual casino.[128] Therefore, Mason failed to state a claim upon which relief could be granted.[129]

The Fourth Circuit took its analysis a step further. It stated that the statutory word "money" is unambiguous, and it does not include the virtual resources that are available only in the Game of War app.[130] While the Loss Recovery Statute only explicitly stated the word "money" where other loss-recovery statutes like in Washington say "money or a thing of value," the money does not just have to be physical dollars, it can also include any other thing or consideration of value.[131] However, the Fourth Circuit was not influenced by Mason's argument that players can sell their Game of War accounts on a secondary black market, and therefore, the virtual chips were equivalent to money.[132] The court stated that the virtual gold and the virtual chips themselves are not sold on the secondary market, but the player account as a whole, which included level advancements in the game.[133] This meant that the virtual chips themselves were not equal to money.[134]

There could be a potential problem due to the different jurisdictions across the country seeing these casino apps in different lights. To recap, the Ninth Circuit in *Kater v. Churchill Downs* saw the virtual chips within Big Fish Casino as a thing of value, because they extended the privilege of playing the game without charge.[135] The Ninth Circuit also deemed that Big Fish Casino was an illegal gambling app, and therefore Kater was able to recover under

---

124 *Id.* at 319.
125 *Id.*
126 *Id.*
127 *Id.*
128 Mason v. Mach. Zone, Inc., 851 F.3d 315, 319 (4th Cir. 2017).
129 *Id.* at 320.
130 *Id.*
131 *Id.*
132 *Id.*
133 *Id.*
134 Mason v. Mach. Zone, Inc., 851 F.3d 315, 320 (4th Cir. 2017).
135 Kater v. Churchill Downs Inc., 886 F.3d 784, 787 (9th Cir. 2018).

Washington's Loss Recovery Statute for illegal gambling.[136] Similarly, in Illinois, which is in the Seventh Circuit, the court in *Phillips v. Double Down* stated that Double Down Casino could be a gambling device, but it did not address whether the chips were considered "things of value" under that Illinois statute.[137] Instead, the court focused on how Double Down did not "win" and Phillips did not "lose."[138] The court found that Phillips never lost the value of the chips, because when she purchased the chips she was buying the right to keep playing the game, and she got to do just that, keep playing the game.[139] In contrast, the Fourth Circuit in *Mason v. Machine Zone* found that the virtual chips in Game of War were not equivalent to money.[140] The court left it open for another decision on whether the casino within Game of War could actually be considered gambling.[141] The court also found that Machine Zone did not win or lose, similar to the *Phillips* case, and therefore, there was no room for recovery.[142]

The real, lingering question is how will other jurisdictions see it, and what will it mean for app developers in the future? As demonstrated in this article, every state has different statutes and courts interpret them differently.

V. STATES' DEFINITIONS OF PERTINENT TERMS AND HOW THESE DEFINITIONS COULD AFFECT FUTURE RULINGS

One of the reasons the Ninth Circuit found Big Fish Casino to be illegal gambling was due to the broad definitions in Washington for what a "thing of value" is in conjunction with its gambling statutes. What makes the statute so broad and are other states similar or different to Washington?

This section will analyze four different states' definitions of pertinent terms, such as "gambling" and "thing of value." It will also talk about how the different definitions could have different effects on future rulings and the future of social gaming. The four states that will be analyzed are Washington (due to *Kater v. Churchill Downs*), Nevada (due to it being the gambling hub of the United States and being more accepting of gambling than other states), Illinois (due to *Phillips v. Double Down*), and Maryland (due to *Mason v. Machine Zone*).

---

136 *Id.* at 788.
137 Phillips v. Double Down Interactive LLC, 173 F. Supp. 3d 731, 739 (N.D. Ill. 2016).
138 *Id.* at 740–41.
139 *Id.* at 741.
140 Mason v. Mach. Zone, Inc., 851 F.3d 315, 320 (4th Cir. 2017).
141 *See id.*
142 *Id.*

A. Washington

The State of Washington defines "gambling" as the following:

> (1) staking or risking something of value (2) upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, (3) upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome.[143]
>
> The State of Washington defines a "thing of value" as the following:
>
> [A]ny money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.[144]

Some of the key language in the gambling statute is "risking something of value" on a game of chance or some future event that is not under the person's control.[145] Big Fish Casino can be considered gambling because the player was not in control on a virtual gambling platform. Big Fish Casino's death sentence came from the second broad statute defining "thing of value." A thing of value is any money, property, token, object or article, that is exchangeable for any form of credit or promise.[146] This definition is extremely broad; it essentially can encompass anything, even the virtual chips in Big Fish Casino that are not redeemable for anything of value in real life. Big Fish Casino chips are also considered a "thing of value" under the statute because a thing of value "involv[es an] extension of a service, entertainment or a privilege of playing at a game or scheme without charge."[147] The Big Fish Casino chips gave the players the privilege of playing the game without charge.[148]

Overall, Washington's applicable statutes are very broad and encompass multiple different items that are considered a "thing of value."[149] The one redeeming aspect for app developers in Washington is that even if they have "things of value" within a game, for the app to be considered gambling it must

---

143 WASH. REV. CODE ANN. § 9.46.0237 (West 2019) (numerals added by author).
144 WASH. REV. CODE ANN. § 9.46.0285 (West 2019).
145 WASH. REV. CODE ANN. § 9.46.0237 (West 2019).
146 WASH. REV. CODE ANN. § 9.46.0285 (West 2019).
147 *Id.*
148 *See* Kater v. Churchill Downs Inc., 886 F.3d 784, 787 (9th Cir. 2018).
149 WASH. REV. CODE ANN. § 9.46.0285 (West 2019).

be based "upon the outcome of a contest of chance or a future contingent event not under the person's control or influence[.]"[150] This most likely means that apps that have elements of skill, even if they have elements of chance, like Clash Royale, would not fall under the category of gambling. Games that involve skill aspects are partly under the player's control.[151] This is promising for app developers, as a way they can avoid liability in Washington is to include elements of skill, but they probably need to avoid any element that is just chance like a wheel that spins. This is because the broad liberal interpretations of Washington courts and the Ninth Circuit could cause the app to be considered gambling.

B. Nevada

The state of Nevada defines "game" or "gambling game" as "any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value[.]"[152] Just from this statute, Big Fish Casino could be considered gambling if the "representative of value" definition fits the virtual chips, because Big Fish Casino is a game played with an electronic device (a phone) for any representative of value. Nevada's statute defines a gambling game broadly. There is no caveat for it needing to be a game of chance.[153] Thus, depending on the definition of a representative of value, more types of apps could be found to be gambling games in Nevada.

Nevada defines "representative of value" (another phrase for thing of value) as "any instrumentality used by a patron in a game whether or not the instrumentality may be redeemed for cash."[154] This is extremely broad, just like the gambling-game statute. The language emphasizes "any instrumentality" used by a player, which could mean items such as chips in Big Fish Casino, lives in Candy Crush, or gold in Clash Royale.[155] In Nevada, it does not matter if the "representative of value" cannot be redeemed for cash, it can still have value. Nevada does not use the term "thing of value" in their statute, but instead uses the phrase "representative of value." Nevada is making its statute so broad that anything that could possibly represent value is something of value for the purposes of gambling. Obviously, this statute was not written in the times of smartphone applications, but it could have consequences for application developers since Nevada is in the Ninth Circuit. It is possible that games like Big Fish Casino, Candy Crush, and Clash Royale could all be considered

---

150 WASH. REV. CODE ANN. § 9.46.0237 (West 2019).
151 *See generally Games of Skill v. Games of Chance*, *supra* note 14.
152 NEV. REV. STAT. § 463.0152 (1985).
153 *See id.*
154 NEV. REV. STAT. § 463.01862 (1997).
155 *Id.*

gambling games.

Another component of this analysis is whether the state has a loss-recovery statute. Nevada does not have a loss-recovery statute like Washington and other states, so it is more difficult for a player to bring a suit against an app developer of these games, because he or she lacks standing to bring the case. The player would have to bring the case under another way than plaintiffs in the *Kater*, *Phillips*, and *Mason* cases, because all of those states have loss-recovery statutes for illegal gambling.

C. Illinois

The state of Illinois defines gambling as the following: "(a) A person commits gambling when he or she: (1) knowingly plays a game of chance or skill for money or other thing of value, unless excepted in subsection (b) of this Section."[156] The state of Illinois also has a loss-recovery statute that states the following:

> (a) Any person who by gambling shall lose to any other person, any sum of money or thing of value, amounting to the sum of $50 or more and shall pay or deliver the same or any part thereof, may sue for and recover the money or other thing of value, so lost and paid or delivered, in a civil action against the winner thereof, with costs, in the circuit court.[157]

An important fact about Illinois is that it lacks a specific definition for "thing" or "representative of value." This means that the definition for "thing of value" would be left to the courts to decide. The ruling could go either way, and unless there is a ruling in the circuit courts, the interpretation of the definition could vary depending on the district court or state judge. As such, there would not be any consistency in how it is interpreted until there is a circuit court ruling. Cases could turn out differently for different app developers, at least at the beginning of the lawsuits, until the Seventh Circuit makes a ruling.

Interestingly, Illinois defines gambling as playing a game of chance or a game of skill for money or thing of value.[158] It does not have to be just a game of chance. Illinois includes games of skill in this definition.[159] This means that apps like Clash Royale that involve elements of skill could be considered gambling. An Illinois court ruled in *Phillips* that Double Down was not a winner because it got the money regardless of whether the plaintiff used it in

---

156 720 ILL. COMP. STAT. § 5/28-1(a) (2019).
157 720 ILL. COMP. STAT. § 5/28-8 (2013).
158 720 ILL. COMP. STAT. § 5/28-1(a) (2019).
159 *Id.*

the gambling part of the app or not.[160] Illinois' loss-recovery statute hinges on the words "winner," and if there is technically no winner then there is no gambling that occurred. Illinois courts have not yet defined a "thing of value" or ruled on whether these apps could be considered gambling.

D. Maryland

The state of Maryland also has a loss-recovery statute that states the following:

> In general
> (a) A person who loses money at a gaming device that is prohibited by this subtitle, Subtitle 2 of this title, or Title 13 of this article: (1) may recover the money as if it were a common debt; and (2) is a competent witness to prove the loss.[161]

The state also defines a gaming device as the following:

> (d)(1) "Gaming device" means: (i) a gaming table, except a billiard table, at which a game of chance is played for money or any other thing or consideration of value; or (ii) a game or device at which money or any other thing or consideration of value is bet, wagered, or gambled.[162]

Maryland has a loss-recovery statute, so a player would have standing to bring a suit against these app developers, but it does not have a specific definition of "thing" or "consideration of value." Those words themselves are very broad. The fact that Maryland uses the phrase "consideration of value" very broadly, and the closest definition could be consideration in contract law. Since there is no actual definition for "thing" or "consideration of value," this means that it would be up to the courts, just like in Illinois.

Application developers may find refuge in the definition of a "gaming device." They could argue a phone is too broad to be considered a gaming device since that is not its main function. Again, this would be something for the courts to decide or for the legislature to publish a better definition. Following the changes in technology, it is likely that a phone and the applications on it will be considered gambling devices throughout the country.

Overall, Maryland's statute is sort of broad, but sort of limited. It seems

---

160 Phillips v. Double Down Interactive LLC, 173 F. Supp. 3d 731, 740 (N.D. Ill. 2016).

161 MD. CODE CRIM. LAW § 12-110 (2002).

162 MD. CODE CRIM. LAW § 12-101 (2003).

like Maryland tried to narrow down categories of what gaming devices are, but the categories are broad enough to change and adapt to the changing technologies, whether that was intentional or not.

VI. THE QUESTIONABLE FUTURE FOR APP DEVELOPERS

One big problem to consider is not how the courts holding these applications as illegal gambling affects consumers, but how it could affect app developers. The future for app developers is murky because these questions do not necessarily have answers yet and the answers depend on how courts in different states end up ruling. Overall, several questions may arise for social gaming companies if their games are considered illegal gambling due to varying state statutes. One, what do the states' gambling and/or gaming-device statutes say? Two, do they define "representative of value" or "thing of value"? Three, is there a loss-recovery statute? Four, how broad are the statutes, and have courts previously ruled? And finally, do the statutes talk about just games of chance, or do they include games of skill, or do they not specify? These are all important factors and questions to consider when trying to figure out if games like Big Fish Casino, Candy Crush, or Clash Royale could be considered gambling in certain states.

Of course, the main problem for app developers is that the statutes vary so greatly by state. Not all states have loss-recovery statutes.[163] Thirty of the fifty states allow recovery for gambling losses.[164] Within the thirty states that allow for recovery of gambling losses, some allow for treble damages, while others do not.[165] They all have different language and requirements based on their own gambling statutes. These circumstances do not make it easy for an app developer trying to navigate a national market, while also having to abide by fifty different state laws. A cautious app developer should consider the variations by state as he or she develops games. If there is a possibility that courts are going to allow people to recover gambling losses from apps, then app developers will have to be aware that over half of the states might allow recovery of losses from their applications, and that they as the developers may be liable.

Developers must consider multiple facets, like would the "gambling" social gaming apps have in-app purchases to speed up getting free items within the game? Or would it apply only to gambling games? Or, would there be a broader way of looking at which social gaming apps are gambling? Would the

---

[163] *See* Chuck Humphrey, *State Laws on Ability to Recover Gambling Losses*, GAMBLING-LAW-US, http://www.gambling-law-us.com/Articles-Notes/loss-recovery.htm [https://web.archive.org/web/20170204070810/http://www.gambling-law-us.com/Articles-Notes/loss-recovery.htm].

[164] *Id.*

[165] *Id.*

apps that are purely games of chance, like Candy Crush, be considered gambling while the apps that have skill elements be fine? Or would social gaming apps that have both elements of chance and skill, like Clash Royale, be considered gambling? Would this leave too much discretion up to courts in different states?

For instance, as mentioned earlier, Illinois says that gambling constitutes games of skill or games of chance.[166] This means in Illinois, Clash Royale and Candy Crush could both be considered gambling (if the other applicable parts of the statutes apply) because one is a game of skill and the other is a game of chance. However, other states just refer to games of chance, and still other states do not make a reference to either games of skill or games of chance.[167] Also, would any in-app purchase count towards being a thing of value, or would it have to be an in-app purchase that extends game play, or would it have to be an in-app purchase that involves an element of chance, like spinning a wheel? Courts will face these questions if more people decide to sue app developers in different states. Again, a lot of the answers to these questions come down to specific state laws and court interpretations.

This opens the gateway to other questions that both app developers and state legislatures should consider: would the app developers be held to different laws across the different states? Or would they only be held to the laws of the state they are incorporated and headquartered in? Would these social gaming companies be able to write into their Terms of Service—similar to a forum selection clause, but a clause where-in someone chooses to play this game—that they are choosing to be bound by the laws of whatever state the social gaming company selects? If the social gaming companies are supposed to follow different laws throughout the different states that users play in, then how are companies realistically supposed to manage that? Currently, neither states nor courts have answered these questions, which will likely cause problems in the future for app developers.

A lot of these unanswered questions are something that would need to be addressed by the Supreme Court or by federal legislation. In a simpler route, the Supreme Court could address the question if these application developers should be held to all of the different state laws, or if they should just be held to the state laws in their places of incorporation and headquarters. The latter seems like it would solve a lot of the problems. Alternatively, Congress could pull rank, and use the Commerce Clause to tell the states that Congress will regulate these apps, because applications could be considered interstate commerce. The applications can be downloaded by all the different players across the nation and world. However, Congress regulating social gaming does take power away from the states to regulate gaming in their own states. Another problem is that different states have different approaches and views on

---

166 720 ILL. COMP. STAT. 5/28-1(a) (2019).

167 Humphrey, *supra* note 163.

gambling. These social gaming apps do not actually allow people to win real money. They are just mindless games, and part of the business model is these in app purchases. This is where, if the government could legislate the idea that when there is no way to earn real money (except on the black market, which Terms of Use expressly forbid), then the applications are not gambling and should not be treated as such.

Another major question is whether these social gaming companies can be held accountable under the Congressional Wire Act of 1961 ("the Wire Act").[168] The first part of the act states:

> (a) Whoever being engaged in the business of betting or wagering 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 or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.[169]

If these apps are considered gambling, then they would be transferring funds across state lines when in-app purchases occur. The Wire Act has been used to prosecute internet gambling-related sites in recent years,[170] so who is to say that it would not start extending to these "gambling" applications? Since it is unlikely that the state gambling laws will ever become consistent, these app developers who are based in one state and who are redeeming in-app purchases from other states could be prosecuted under the Wire Act. This would severely discourage app developers from developing gambling apps, and depending on how broad the courts choose to take this ruling, on most apps that have components of chance. However, one thing to consider is that the Wire Act prohibits "betting or wagering" and does not broadly refer to gambling.[171] This may help the application developers, because the states seem to refer to these applications more as gambling in general and not specifically betting or wagering. It is more probable than not that social gaming application developers would not be subjected to the Wire Act, but it is good to be aware that this could be a potential problem depending on how different states treat

---

168 Eric Eldon, *Could Social Gaming Run Afoul of Gambling Laws?*, VENTURE BEAT (June 4, 2009, 1:36 PM), https://venturebeat.com/2009/06/04/could-social-gaming-companies-get-nailed-for-illegal-gambling/.

169 18 U.S.C. § 1084 (1994).

170 Eldon, *supra* note 168.

171 18 U.S.C. § 1084 (1994).

social gaming.

App developers also need to consider is whether these apps need to be restricted by age. And how would these social gaming companies restrict the app so that children cannot play the game even if it is downloaded only on their parents' phones? Would the social gaming companies be liable for allowing minors to gamble because the children were playing games on their parents' phones and they chose to play one of the gambling games? Would the social gaming companies have to put in a thousand safeguards in order to not be held liable?

If these applications are gambling, then children should not be playing them; however, if children do not have the opportunity to spend money and they are just free applications then it should not matter if children play them. It should be up to the parents to regulate what their children do on the internet, not the gaming companies. However, if social gaming is considered gambling, then social gaming companies should safeguard themselves against minors playing these applications, just in case. In this case they would probably have to work with the companies that run the app stores, like Google and Apple, to develop safeguards to prevent downloads by children. This might hinder the developers' markets, since a lot of people aged thirteen to twenty-one download applications. This is the generation that grew up with smart phones and applications always easily accessible on their phones. Trying to keep children from playing social gaming applications could end up becoming a huge problem for social gaming app developers. Both states and developers have many issues to tackle, and they need to be aware of the upcoming challenges they may face.

CONCLUSION

In the end, it is difficult to predict exactly what will affect social gaming companies due to the range of state statutes. These statutes could become major problems for app developers, who could stop developing these apps that people love out of fear of being prosecuted.

The best solution is for Congress to create legislation on social gaming, since it arguably falls under its purview. The states will likely be unhappy, but social gaming apps are likely interstate commerce and should be regulated federally, otherwise it might be nearly impossible for app developers to develop apps. Another option would be to set some safeguards in the Terms of Use or create safeguards, like the gaming company Blizzard did, that would actively shut down illegal "black market" sites.[172]

Overall, the varying state statutes may be a few outlier cases. Other circuits

---

[172] *See* Dave Thier, *Blizzard to Shut Down 'Diablo 3' Auction House*, FORBES (Sept. 17, 2013, 4:59 PM), https://www.forbes.com/sites/davidthier/2013/09/17/blizzard-to-shut-down-diablo-3-auction-house/#100d4d454534.

could rule differently, and the ruling in *Kater* might not even affect other states within the Ninth Circuit depending on state statutes. But, the reality is that the different state gambling statutes could become a problem for social gaming developers, and they must be aware of the possible future that is in store. If courts continue to decide cases like *Kater,* those rulings could change the face of social gaming forever, or the case could just disappear into the background. The jury is still out on what exactly is going to happen. Overall, social gaming companies can protect themselves by looking into whether these gaming applications and possibly applications that are games of chance may be considered gambling. Otherwise, grandma's love of Candy Crush just may be a gambling addiction.