

“SKINS” IN THE GAME: COUNTER-STRIKE, ESPORTS, AND THE SHADY WORLD OF ONLINE GAMBLING

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I. INTRODUCTION

Released in 2012, *Counter-Strike: Global Offensive* (CS:GO) is the sequel to *Counter-Strike*, the most-played online PC action game of all time.¹ CS:GO casts players as two teams of five players with the goal to either eliminate the opposing team or disarm a bomb set by them.² The fast-paced first-person-shooter has rapidly grown in popularity among the online video game community.³ Since *Counter-Strike*'s original release in 1999, two major movements have occurred: 1) the rise of Esports⁴ as a major industry; and 2) an explosion of interest in online gambling. With the release of CS:GO in 2012, these two phenomena converged, fostering a growing practice of wagering in-game items on CS:GO matches through a number of third-party sites not affiliated with Esports leagues or game developers.⁵

Scholars, industry experts, and legal theorists have just begun to explore the link between online gambling and video games.⁶ As of late, however, the

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¹ *Counter-Strike: Global Offensive*, STEAM, http://store.steampowered.com/app/730/?snr=1_5_9_300 (last visited Oct. 24, 2016).

² *About*, COUNTER-STRIKE: GLOBAL OFFENSIVE BLOG, <http://blog.counterstrike.net/index.php/about/> (last visited Oct. 24, 2016).

³ *See Counter Strike: Global Offensive*, STEAMCHARTS, <http://steamcharts.com/app/730#ALL> (last visited Apr. 30, 2017).

⁴ Much ado has occurred recently in the video games industry about whether the correct styling is “Esports” or “eSports.” For the purposes of this paper, “Esports” will be used, in conjunction with ESPN’s usage of the term. *See* Matt Peckham, *Why ESPN Is so Serious About Covering Esports*, TIME (Mar. 1, 2016), <http://time.com/4241977/espn-esports/>.

⁵ *See infra* Part IV.

⁶ *See* Sue Schneider, *eSports Betting: The Intersection of Gaming and Gambling*, 19 GAMING L. REV. & ECON. 419 (2015) (discussing Esports and its convergence with “sports-bet” style wagering); *see also* Katherine E. Hollist, *Time to Be Grown-Ups About Video Gaming: The Rising Esports Industry and the Need for*

practice of wagering in-game items—specifically the “weapon-skins” bought, sold, and traded in the CS:GO community—has received very little attention from the legal community. This article addresses the skins-betting phenomenon through the lens of online sports wagering. Part II of this article provides a brief overview of the Esports growth. Part III dives into CS:GO’s bustling “skins” trade, highlighting the avenues spectators can use to wager their skins on CS:GO matches. Part IV then pivots, exploring the ways in which wagering in-game items is synonymous with the traditional elements of gambling. Part V explores three major federal laws used to curb online gambling, most notably sports betting. Part VI assesses the applicability of these three federal gambling laws to in-game item betting. Finally, Part VII addresses a number of current and potential issues with skins betting, ultimately answering why the practice even deserves regulation in the first place.

II. ESPORTS, A GROWING TREND

CS:GO is one of many games in the growing roster of titles that comprise “Esports,” which are essentially “professional video game matches where players compete against other players before an audience.”⁷ Esports evolved out of the video arcades of the 1980s, where viewers would gather around competing *Mortal Kombat* and *Pac Man* players furiously mashing buttons to get the highest score.⁸ During the 1990’s, with the rise of home consoles and PC gaming, the advent of the modern first-person-shooter replaced arcade gaming.⁹ In 1997, the first true Esport tournament, the Red Annihilation Tournament, took place.¹⁰ At Red Annihilation, over two thousand competitors battled each other in matches of the first-person-shooter *Quake*, each vying for a chance to take home the top prize: a used Ferrari.¹¹

The industry’s current state began in 2000 with the establishment of both the World Cyber Games and the Electronic Sports World Cup, two major international tournaments still held to this day.¹² In 2002, the North American based Major League Gaming (MLG) was established, where it would go on to be the first Esport league to broadcast a tournament on national television.¹³

Regulation, 57 ARIZ. L. REV. 823, 833-34 (2015) (discussing professional Esports players and the potential for match-fixing).

⁷ Hollist, *supra* note 6, at 825.

⁸ See generally Peter Rubin, *Check Out This Glorious, Colorful History of Arcade Games*, WIRED (May 13, 2014), <http://www.wired.com/2014/05/arcade-history/>.

⁹ Kevin Morris, *A Beginner’s Guide to eSports*, DOT ESPORTS (Dec. 13, 2013), <http://www.dailydot.com/esports/beginners-guide-esports-dota-2-league-of-legends-starcraft-2/>.

¹⁰ Tyler F.M. Edwards, *Esports: A Brief History*, ADANAI (Apr. 30, 2013), <http://adanai.com/esports/>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Over the past four years however, “thanks to advances in video-streaming technology and Internet broadband, [Esports have become] more accessible” and more popular than anyone could have dreamed.¹⁴

In 2016, ESPN, the major sports network conglomerate, announced that it would begin covering Esports in an online vertical alongside its other online verticals dedicated to traditional sports, such as football and basketball.¹⁵ When discussing why ESPN jumped into Esports coverage, ESPN Magazine and Online Editor-in-Chief Chad Millman stated that “it’s intense, the competition is crazy, it has million-dollar performers, it has high stakes, it has owners who are trying to steal team members from different teams, it has everything that makes sports interesting to cover.”¹⁶

Perhaps the most interesting trend in Esports is that millions of people go online to watch the matches, events, and tournaments, yet never pick up a console controller or PC mouse themselves.¹⁷ In 2013, the Los Angeles Staples Center held the *League of Legends* Championship; tickets for the event sold out in an hour.¹⁸ A year later, the same championship was held in the 40,000 seat World Cup Stadium in Seoul, South Korea while another 27 million people watched online—more than the TV viewership for the final round of the Masters, the NBA Finals, the World Series, and the Stanley Cup Finals, for that same year.¹⁹

Watching Esport tournaments and matches feels like viewing traditional sports, such as football and golf: viewers “watch the games live, watch pre- and post-game interviews with the players,” and watch banter and dialogue from hosts and commentators.²⁰ In short, Esports “is similar to the traditional sports from which it derives its name: it is an entertainment industry built around competition, fan loyalty, and spectatorship.”²¹

As the popularity of Esports has grown over the past few years, so too has betting on the outcomes of Esports matches and tournaments.²² Internationally,

¹⁴ Morris, *supra* note 9.

¹⁵ Peckham, *supra* note 4.

¹⁶ *Id.*

¹⁷ Hollist, *supra* note 6, at 824.

¹⁸ *Id.* at 827 (citing Paul Tassi, *League of Legends Finals Sells Out LA’s Staples Center in an Hour*, FORBES (Aug. 24, 2013), <http://www.forbes.com/sites/insertcoin/2013/08/24/league-of-legends-finals-sells-out-las-staples-center-in-an-hour/>).

¹⁹ Ben Casselman, *Resistance Is Futile: eSports Is Massive . . . and Growing*, ESPN (May 22, 2015), http://espn.go.com/espn/story/_/id/13059210/esports-massive-industry-growing.

²⁰ Hollist, *supra* note 6, at 826.

²¹ *Id.* at 826-27.

²² Kamali Melbourne & Matthew Campbell, *Professional Video Gaming May Have an Underage Gambling Problem*, BLOOMBERG (Sept. 6, 2015), <http://www.bloomberg.com/news/articles/2015-09-07/professional-video-gaming-has-an-underage-gambling-problem>.

many online sites allow for individuals to bet real money on the outcomes of professional Esports matches.²³ UK bookmaking site William Hill took more than 14,000 bets on Esports in 2015, constituting close to \$395,000.²⁴

In April 2015, Seattle-based²⁵ Rahul Sood and Karl Flores launched Unikrn (*sic*), a website designed to “provide eSports fans and newcomers alike a safe and legal place to gather, game, and bet on eSports.”²⁶ Unlike many other online betting sites supported through “a shadow industry of offshore online betting houses,”²⁷ Unikrn has also earned legitimacy in its efforts to provide a safe and legal way for individuals to electronically bet on Esports by attracting investors, such as Mark Cuban, to help grow the site.²⁸ When asked in an interview with *Fortune* magazine why he invested in Unikrn, Cuban—the billionaire investor and *Shark Tank* star—reasoned that because “[g]ambling is available in more than 100 countries . . . [and with] the explosive growth of eSports,” Unikrn provided an enticing and cutting-edge investment.²⁹

The only catch? As of now, Unikrn is only available for Australian users to place bets.³⁰ U.S. users may sign up for an account but are restricted from wagering on matches.³¹ This is due to the myriad of federal laws that currently prohibit online wagering in the United States.³² There exists, however, a separate avenue for U.S. Esports viewers to bet on professional Esports matches online, which currently slips between the cracks of the federal laws regulating online gambling and sports betting.

III. THE SKIN TRADE

With Esports viewership and wagering clearly on the rise, one could liken Esports viewing to traditional sports viewing. As of early 2014, in the United States alone, an estimated 31.4 million people viewed or participated in some form of Esport.³³ Analysts believe that by the year 2017, there will be some 335

²³ Ben Richmond, *The US Finally Has an Esports Gambling Site, but Americans Can't Use It*, MOTHERBOARD (Apr. 29, 2015), <http://motherboard.vice.com/read/the-us-finally-has-an-esports-gambling-site-but-americans-cant-use-it>.

²⁴ Melbourne & Campbell, *supra* note 22.

²⁵ Richmond, *supra* note 23.

²⁶ UNIKRN, <https://unikrn.com/about> (last visited Apr. 13, 2016).

²⁷ Richmond, *supra* note 23.

²⁸ Dustin Gouker, *Mark Cuban: Says Legal U.S. Sports Betting 'Inevitable' Before His Keynote at Fantasy Sports Conference*, LEGAL SPORTS REP. (Jan. 4, 2016), <http://www.legalsportsreport.com/7123/mark-cuban-inevitable-u-s-sports-betting/>.

²⁹ John Gaudiosi, *Mark Cuban Believes Legalizing Gambling in the U.S. Is 'Inevitable,'* FORTUNE (Jan. 4, 2016), <http://fortune.com/2016/01/04/mark-cuban-interview/>.

³⁰ Richmond, *supra* note 23.

³¹ *Id.*

³² *See infra* Part V.

³³ Hollist, *supra* note 6, at 840.

million Esports fans globally, a number some believe is bigger than the NFL's total fan base.³⁴ Among the games played and watched on the Esports circuit, CS:GO is one of the most popular.³⁵ In December 2012, the average number of players on CS:GO servers for the month was a lowly 14,079; one year later, in December 2013, the average player count for the month was up to 46,788 players.³⁶ Fast forward to December 2015, which saw an all-time high of 823,694 players in a single day and an average monthly player count of 377,447.³⁷

A. CS:GO, Steam, and SkinXchange.com

In addition to being one of the most widely played and watched games in the Esports sector, CS:GO also has a bustling in-game-item economy.³⁸ CS:GO was developed and continues to be supported by Valve, a major innovator in the video games industry.³⁹ Valve is also the developer, creator, and owner of Steam, a "pioneering game platform that distributes and manages thousands of games directly to [a] community of more than 65 million players around the world."⁴⁰ Steam also allows CS:GO players to purchase and trade in-game items, known as "skins," using the Steam Community Market.⁴¹ Casual and professional players alike create⁴² and sell these skins on the Steam Community Market for Steam Wallet Funds, which can then be used to purchase various software and add-ons on Steam.⁴³

Steam allows users to sell their skins on their Steam Community Market for Steam Wallet Funds, which are equivalent to a gift card balance on Amazon or iTunes in that users cannot exchange Steam Wallet Funds for cash once the

³⁴ Gaudiosi, *supra* note 29.

³⁵ See Mitch Bowman, *How Counter-Strike: Global Offensive Is Turning into the World's Most Exciting eSport*, PCGAMES N (Dec. 18, 2014), <http://www.pcgamesn.com/counter-strike-global-offensive/how-counter-strike-global-offensive-is-turning-into-the-worlds-most-exciting-esport>.

³⁶ STEAM CHARTS, *supra* note 3.

³⁷ *Id.*

³⁸ Melbourne & Campbell, *supra* note 22.

³⁹ Counter-Strike: Global Offensive, *supra* note 1.

⁴⁰ VALVE, <http://www.valvesoftware.com/> (last visited Oct. 24, 2016).

⁴¹ Community Market, STEAM COMMUNITY, <https://steamcommunity.com/market/search?appid=730> (last visited Oct. 25, 2016).

⁴² Jeff Williams, *The Problem with Underage Gambling in CSGO on the Rise*, WCCF TECH, <http://wccftech.com/problem-underage-gambling-csgo-rise/> (last visited Oct. 25, 2016).

⁴³ Community Market, *supra* note 41. At any given time, the skins for sale on the Steam Community Market are listed for as little as \$0.01 and up to \$400 per item. Steam Support, *Community Market FAQ*, STEAM SUPPORT, https://support.steampowered.com/kb_article.php?ref=6088-UDXM-7214 (last visited Oct. 25, 2016). Steam caps sales at \$400, but other third-party sites allow users to sell skins for sums well over \$400. *Id.*

funds are in the Steam Wallet.⁴⁴ However, third-party sites not affiliated with Steam have created a bypass for those in possession of rare CS:GO skins to sell their skins for real-world currency.⁴⁵ For example, SkinXchange.com, lets users sell skins using PayPal.⁴⁶ Posting skins to SkinXchange is as simple as logging in with a Steam ID, posting an item you wish to sell, setting a price, and waiting for a buyer.⁴⁷ Once the item is purchased by another user, all the seller needs to do is log on to SkinXchange and enter their PayPal information; depending on Paypal, the seller will receive their money 1-14 business days after the sale.⁴⁸

B. CS:GOLounge.com: A Primer

Selling skins on third-party sites not affiliated with Valve is not the issue. The concern with skins is how simple it is to transfer skins to third-party, non-Valve affiliated websites, to act as currency for the wager. Some sites allow users to bet and win skins while playing online poker.⁴⁹ Other sites, such as CS:GOLounge and FanoBet, allow the user to transfer skins to the site, wherein you can bet skins on the outcome of matches, much like real-world sports betting in Las Vegas casinos.⁵⁰

CS:GOLounge, established in 2003, is the forefather of the CS:GO in-game item wagering craze and the most popular of the CS:GO skins betting sites.⁵¹ To bet on a match, a user simply enters his Steam ID onto CS:GOLounge and chooses an upcoming or current CS:GO match hosted by a number of Esports leagues from a list of several.⁵² A screen then appears, allowing the user to select one or more skins from the user's own "CS:GO Backpack."⁵³ This screen also allows the user to examine other bets currently

⁴⁴ *Id.*

⁴⁵ Melbourne & Campbell, *supra* note 22.

⁴⁶ *See FAQ*, SKINXCHANGE, <https://skinxchange.com/> (last visited Oct. 25, 2016).

⁴⁷ *How Do I Sell an Item on SkinXchange?*, SKINXCHANGE, <https://blog.skinxchange.com/article/46-how-does-the-selling-process-work> (Apr. 1, 2016).

⁴⁸ *Id.*

⁴⁹ STEAMPOKER, <https://web.archive.org/web/20160701011723/https://steampoker.com/>.

⁵⁰ Melbourne & Campbell, *supra* note 22; *Welcome to FanoBet*, FANOBET, <https://fanobet.com/about> (last visited Oct. 26, 2016).

⁵¹ Pedro Lima, *Should You Bet on CSGOLounge or FanoBet?*, CS:GO BOOK BLOG, <https://csgobook.com/csgolounge-or-fanobet/> (last visited Oct. 28, 2016).

⁵² *See id.*; *see also Beginners Guide to Betting on CS:GO*, COUNTER STRIKE: GLOBAL OFFENSIVE BETTING SUGGESTIONS, <http://csgobettingsuggestions.weebly.com/beginners-guide-to-betting-on-csgo.html> (last visited Oct. 28, 2016).

⁵³ Lima, *supra* note 51. A "backpack" in this instance refers to the user's digital inventory of skins, weapons, knives, etc.; in essence, it is the screen where all the skins and digital items the user owns is listed. From here, the user can select which items to wager, from a list of the stock they currently possess.

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placed by other CS:GOLounge users.⁵⁴ Once the user hits submit “bet,” the user is then taken to another screen to “trade in” their items.⁵⁵

Once his items are submitted, he gets a “value” for their skins—the more expensive or rare the skin, the higher the value of the bet.⁵⁶ Betting in CS:GOLounge is based on the “value of the skins” versus the amount of bets other individuals have placed on the competing teams.⁵⁷ When the user enters the trade-in page, he sees a section under each team that displays the potential value of his bets—again, the more expensive or rare the skin, the higher the potential value.⁵⁸

Once the bet is locked in—meaning the trade is accepted—the user then waits until the end of the match.⁵⁹ Like professional sports betting, if the user’s team wins the CS:GO match, he wins as well. “[I]f [the user] wins, [he] gets [his] skins back plus random skins valued at [his] potential return [value].”⁶⁰ Once the user accepts his winnings, he can then “withdraw [the skins] to [his] Steam” inventory.⁶¹ The users can then transfer the skins to sites like SkinXchange to sell for real-world currency.⁶²

IV. SKINS BETTING—IS IT GAMBLING?

As with professional sports, the rise in popularity and mainstream acceptance of Esports has led to increased scrutiny of both its competitors and its practices. Recent calls for regulation include testing for the use of performance-enhancing drugs—such as Adderall⁶³—as well as investigating

⁵⁴ See Robert Yakubouski, *How to Place Bets with Browser*, YOUTUBE (Mar. 9, 2014) <https://www.youtube.com/watch?v=WvpCr2HeQI4>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Beginners Guide to Betting on CS:GO*, *supra* note 52.

⁵⁸ *Id.* CS:GOLounge does have a bet limit on each match—\$75 per skin or \$300 per match. *Id.* These amounts may seem small, until one realizes that unlike professional football, which may have 15 or so games per week during the regular season, CS:GO matches and tournaments can be held 365 days a year, at almost any time of day, which can lead to potentially hundreds of matches a day to bet on. *Id.*

⁵⁹ *Trade Rules*, CS:GO LOUNGE, <https://csgolounge.com/guide> (last visited Oct. 28, 2016).

⁶⁰ Lima, *supra* note 51.

⁶¹ *Id.*

⁶² *How Do I Sell Skins on SkinXchange?*, SKINXCHANGE (Nov. 14, 2016), <https://skinxchange.com/article/259-how-do-i-sell-skins-on-skinxchange?auth=true>. Again, in order to sell skins from a Steam inventory, players must first enter their Steam ID, which is linked to their inventory of digital items.

⁶³ Ben Gilbert, *Here’s Why Adderall Is Taking Over the World of Professional Gaming*, TECH INSIDER (July 30, 2015) <http://www.businessinsider.com/how-adderall-is-used-in-esports-2015-7>.

allegations of match-fixing among professional teams in Europe.⁶⁴ Thus, it is no surprise that the rise of the Esports industry facilitated the growth and popularity of Esports betting, both cash-based and through in-game items.

The initial problem with a portion of online betting on video game matches is that the entirety of the process takes place online through the wagering of intangible items. Though the skins bought on the Steam Community Market and wagered on sites like CS:GOLounge are obtained using real-world currency, they are intangible; no matter the price or market value, one cannot print them out and physically hold the skin in their hands, like they could with currency bets at a craps table or slot machine.

The fact that the skins are intangible is not the issue. Even though the skins wagered are intangible, they are wagered in a traditional gambling fashion. “Gambling is generally defined as a transaction that involves the classic elements of consideration, chance, and prize.”⁶⁵ If we take these three elements at face value, then wagering on CS:GO matches on sites like CS:GOLounge surely constitutes gambling.

First, consideration exists in the form of skins. The skins act like casino chips. For example, an individual wishing to gamble at a craps table must first walk up to the dealer and exchange cash or check for denominational chips. The gambler is unable to bet at the craps table until his money has been exchanged for chips. In the same vein, an individual cannot wager on a CS:GO match until he has skins transferred into his CS:GOLounge account “backpack.” In this case, however, the “chip” solely exists online, where the user purchases skins using his credit card on sites like Steam Community Market and SkinXchange. This is similar to online gambling sites like the one at the center of *In re Mastercard*, wherein the gamblers used their credit cards “to purchase [gambling] credits which the bettor may then use” to bet on casino-style games.⁶⁶ Regardless of whether the individual can physically touch his skins, the skins are consideration required to facilitate a bet on the website.

Second, chance exists on CS:GOLounge much like it does when betting on a professional sporting event. Neither the bettor nor the institution taking the bet knows the outcome of the match.⁶⁷ Because the outcome is unknown, chance enters the equation.

Lastly, a prize is available to win. Although the payouts in CS:GOLounge and casinos are different—skins and cash, respectively—the “thing” won is the prize, the last element of gambling. It is clear that betting skins on sites like

⁶⁴ Richard Lewis, *CS:GOLounge Investigation reveals More Suspected European Match-Fixing*, THE DAILY DOT (Feb. 4, 2015) <http://www.dailydot.com/esports/mgry-amnesia-csgo-lounge-match-fixing/>.

⁶⁵ Jeffrey Standen, *The Special Exemption for Fantasy Sports*, 42 N. Ky. L. Rev. 427, 427-28 (2015).

⁶⁶ *In re MasterCard Int’l Inc.*, 132 F. Supp. 2d 468, 474 (E.D. La. 2001).

⁶⁷ Barring match-fixing and game-throwing, of course.

CS:GOLounge and FanoBet involves the three traditional elements of gambling. The question then becomes whether wagering skins on a CS:GO match violates current U.S. law.

Like online gambling, playing online video games such as CS:GO and *League of Legends* is an "activity that, by its nature, crosses both national and state borders."⁶⁸ Yet, as of now, wagering skins on professional matches on sites like CS:GOLounge is a wholly unregulated activity, provided it does not fall under a federal gambling statute. For an answer, it may prove useful to turn towards the current (admittedly) gray legal area that regulates online sports betting in the United States.

V. SPORTS BOOKS AND "ESPORTS" BOOKS

Gambling regulation, including regulation over sports betting, has traditionally been a state police power, wherein the federal government ceded authority to the states to best determine the fate of gambling within their borders.⁶⁹ With the advent of the internet, certain gambling activities—sports betting and poker, in particular—have attempted to move from the casino to the computer, forcing the federal government to step in and attempt to alter federal policies already on the books that aim to combat illegal interstate gambling.⁷⁰ Like many other online gambling activities, Esports skins wagering cannot be left to the states to regulate however they see fit because the activity transcends state boundaries due to its online-only existence. For this reason alone, it would seem that federal law should be the law governing any future regulation of online skins betting. Taking sports betting as a logical analogy to Esports skins wagering online, three federal acts relating to sports betting might shed light on the legality of the skins wagering occurring online.

A. *The Wire Act*

"With the growth of gambling and organized crime in the 1950s, the federal government enacted laws aimed at cracking down on organized-crime-run gambling rings."⁷¹ "The government's concern with gambling can be seen through [the passage of] various federal laws [. . .] specifically applicable to

⁶⁸ Jonathan Conon, *Aces and Eights: Why the Unlawful Internet Gambling Enforcement Act Resides in "Dead Man's" Land in Attempting to Further Curb Online Gambling and Why Expanded Criminalization Is Preferable to Legalization*, 99 J. CRIM. L. & CRIMINOLOGY 1157, 1158 (2009).

⁶⁹ Jordan Hollander, *The House Always Wins: The World Trade Organization, Online Gambling, and State Sovereignty*, 12 RUTGERS J. L. & PUB. POL'Y 179, 182 (2015).

⁷⁰ See generally Greenberg Traurig's Gov'tl Affairs Practice, *DOJ's Reversal on the Wire Act - What It Means for Internet Gaming*, NAT'L. L. REV. (Jan. 3, 2012), <http://www.natlawreview.com/article/doj-s-reversal-wire-act-what-it-means-internet-gaming>.

⁷¹ *Id.* at 184.

[sports gambling].”⁷² One of the earliest attempts to curb illegal sports gambling came in 1961 with the passage of the Federal Interstate Wire Act, written as “an anti-bookie statute, designed to help the states suppress organized criminal gambling” by covering telegraph lines used by bookmakers.⁷³

The Wire Act outlaws three types of wire transmissions related to interstate or foreign commerce:⁷⁴ 1) “bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest;” 2) “the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers;” and 3) any “information assisting in the placing of bets or wagers.”⁷⁵

Since the passage of the Wire Act in 1961, a major technological breakthrough has changed the way Americans live their lives—the Internet. With the rise of online gambling in the 1990s and early 2000s, federal prosecutors relied on the language of the Wire Act to apply its prohibitions to all forms of online gambling, including slots, poker, and sports betting.⁷⁶ But based on the language of the Wire Act, many argued that the statute only applied to sports betting and not online casino-style games.⁷⁷

A 2002 case reached the Fifth Circuit asking, among other things, whether the Wire Act applied only to sports betting.⁷⁸ “Before *In re Mastercard Intl. Inc.*, no court specifically addressed the issue of non-sports betting over the Internet.”⁷⁹ Plaintiffs argued that credit card companies, with the help of online casinos, facilitated illegal gambling online, thus creating a “worldwide gambling enterprise.”⁸⁰ Plaintiffs argued that the “credit card companies facilitate[d] the enterprise. . . by authorizing the casinos to accept credit cards, by. . . processing the ‘gambling debts’ resulting from the extension of credit.”⁸¹ Plaintiffs also alleged that the credit card companies violated the Wire Act when accepting credit card transactions tied to online casinos; the Fifth Circuit rejected this interpretation and agreed with the lower court that the Wire Act

⁷² Erica N. Reib, *Ante Up or Fold: What Should Be Done About Gambling in College Sports?*, 21 MARQ. SPORTS L. REV. 621, 624 (2011).

⁷³ Hollander, *supra* note 69, at 185–86.

⁷⁴ Benjamin Miller, *The Regulation of Internet Gambling in the United States: It's Time for the Federal Government to Deal the Cards*, 34 J. NAT'L. ASS'N ADMIN. L. JUDICIARY 527, 533 (2014).

⁷⁵ 18 U.S.C. § 1084(a) (2012).

⁷⁶ Hollander, *supra* note 69, at 186.

⁷⁷ Miller, *supra* note 74, at 533.

⁷⁸ *In re MasterCard Int'l Inc.*, 313 F.3d 257, 262 (5th Cir. 2002).

⁷⁹ Elizabeth A. Walsh, *In re Mastercard International, Inc.: The Inapplicability of the Wire Act to Traditional Casino-Style Games*, 20 J. MARSHALL J. COMPUTER & INFO. L. 445, 446 (2001).

⁸⁰ *In re Mastercard*, 313 F.3d at 260.

⁸¹ *Id.*

only "concerns gambling on sporting events or contests."⁸²

Before *In re Mastercard*, the Wire Act "was long interpreted as prohibiting online wagering in all forms," regardless of whether it was sports-based wagering.⁸³ But in 2011, the Justice Department, in memoranda addressing whether New York and Illinois could sell lottery tickets online, explicitly stated that "the Wire Act prohibits only the transmission of communications related to bets or wagers on sporting events or contests."⁸⁴ As a result, the new interpretation of the Wire Act "eliminated a significant federal barrier to state legalization of Internet gambling for games such as poker, blackjack, and craps."⁸⁵ Since the shift in opinion, three states—Delaware, Nevada, and New Jersey—have authorized online gambling within their state borders,⁸⁶ though none have received the economic boosts that analysts had first predicted would come to the states once online gambling became legal.⁸⁷

B. PASPA

Long before the Justice Department declared Wire Act pertained only to sports wagering, Congress enacted another law aimed at curbing sports betting throughout the country. In 1992, President George H.W. Bush signed the Professional and Amateur Sports Protection Act [*hereinafter* PASPA].⁸⁸ In response to calls for regulation from the major U.S. sporting leagues, Congress enacted PASPA to "crack down on private and state-sponsored sports gambling."⁸⁹ One of the chief factors in passing PASPA were "concerns over preventing the growth of gambling by minors,"⁹⁰ a fear some in the Esports community have regarding skins betting.⁹¹

⁸² *Id.* at 262.

⁸³ Hollander, *supra* note 69, at 180.

⁸⁴ *Whether Proposals by Ill. and N.Y. to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act*, 35 Op. O.L.C. 4 (Sep. 20, 2011) (https://www.justice.gov/sites/default/files/olc/opinions/2011/09/31/state-lotteries-opinion_0.pdf). [Hereinafter *Proposal*].

⁸⁵ Miller, *supra* note 74, at 543.

⁸⁶ *Id.* at 546.

⁸⁷ *Why Online Gambling Is Still Illegal in Most States*, CANYON NEWS (Apr. 8, 2016), <http://www.canyon-news.com/why-online-gambling-is-still-illegal-in-most-states/49753>.

⁸⁸ Hollander, *supra* note 69, at 188.

⁸⁹ Marc Edelman, *Navigating the Legal Risks of Daily Fantasy Sports: A Detailed Primer in Federal and State Gambling Law*, U. ILL. L. REV. 117, 139 (Jan. 28, 2016, 8:45AM).

⁹⁰ Hollander, *supra* note 69, at 189 (*citing* S. Rep. No. 102-248, at 4 (1992), *reprinted in* U.S.S.C.A.N. 3553, 3555-56).

⁹¹ *See* Alex Walker, *Tabcorp's Esports Partner Says Children Are Betting on Video Games*, KOTAKU AU (Apr. 20, 2016), <https://www.kotaku.com.au/2016/04/tabcorps-esports-partner-says-children-are->

Though its primary purpose is to curb state-licensed sports wagering,⁹² PASPA also makes it unlawful for any private individual “to sponsor, operate, advertise, or promote . . . a lottery, sweepstakes, or other betting, gambling or wagering scheme based, directly or indirectly. . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.”⁹³

Essentially, PASPA “grants standing to America’s four major professional sports leagues, as well as the [NCAA], to bring suit against any state or individual that operates such a wagering scheme.”⁹⁴ By doing so, it allows the major sporting leagues to bring a civil suit to “enjoin any violator in a United States District Court” engaged in a sports betting or wagering scheme tied to the sporting leagues.⁹⁵ Some have criticized PASPA “based on the unusual power it grants to U.S. professional sports leagues,”⁹⁶ yet as of March 2016, it remains the law of the land.⁹⁷

C. *The Unlawful Internet Gambling Enforcement Act*

In 2006, President George W. Bush signed into law the Unlawful Internet Gambling Enforcement Act, which does not outlaw Internet gambling, but rather “prohibits some financial transactions related to unlawful Internet gambling.”⁹⁸ The UIGEA defines “‘unlawful Internet gambling’ as placing or receiving a ‘bet or wager’ over the Internet if that bet or wager violates federal or state law in the jurisdiction in which it is made or received.”⁹⁹

“The Act prohibits gambling businesses from knowingly accepting payments in connection with the participation of another person in a bet or

betting-on-video-games/.

⁹² See Edelman, *supra* note 87, at 140.

⁹³ 28 U.S.C. § 3702 (2016).

⁹⁴ Edelman, *supra* note 89, at 140.

⁹⁵ Hollander, *supra* note 69, at 189.

⁹⁶ Edelman, *supra* note 89, at 140.

⁹⁷ In February 2016, however, the Third Circuit sitting *en banc* heard arguments in *NCAA v. Gov. of N.J.*, an ongoing battle between New Jersey and the 4 major U.S. sports leagues and the NCAA over whether New Jersey’s 2011 constitutional referendum allowing state-regulated sports wagering should be allowed. Jordan Hollander, *Sports Gambling in New Jersey: The Wild, Wild East?*, JEFFERY S. MOORAD CTR. FOR STUDY SPORTS L. (Mar. 17, 2016), http://lawweb2009.law.villanova.edu/sportslaw/?p=3536#_ftn1. Among the issues at play in the case is the constitutionality of PASPA. *But see* Andrew Kim, *Goliath Versus Goliath: Three Takeaways from the En Banc Rehearing of NCAA v. New Jersey*, GOODWIN GAMING (Mar. 23, 2016), <http://www.goodwingaming.com/2016/03/23/goliath-versus-goliath-three-takeaways-from-the-en-banc-rehearing-of-ncaa-v-new-jersey/>. If the Third Circuit panel chooses to address the constitutional standing of PASPA in its’ opinion, this could have major ramifications on PASPA’s future.

⁹⁸ Hollander, *supra* note 69, at 193-94.

⁹⁹ James Romoser, *Unstacking the Deck: The Legalization of Online Poker*, 50 AM. CRIM. L. REV. 519, 535 (2013 (citing 31 U.S.C. §5362(10)(A))).

wager that involves the use of the Internet and that is unlawful under any federal or state law."¹⁰⁰ In conjunction with the passage of the UIGEA, the Treasury Department issued a joint rule in the form of 31 CFR 132.3, listing five payment systems covered by the UIGEA, including "card systems" that encompasses debit and credit card transactions.¹⁰¹

The UIGEA was designed in part to curb the growing online poker industry by targeting not the game but the transfer of funds to and from the sites using designated financial systems.¹⁰² After its passage in 2006, many wondered where the legality of the online poker industry stood. In 2011, the Department of Justice answered those queries, by handing down a number of indictments against the three largest U.S. poker sites, alleging a number of criminal activities violating the UIGEA.¹⁰³

The day the indictments were handed down, now known as "Black Friday," rocked the online poker world to its core.¹⁰⁴ Yet ever since, the UIGEA has languished as a federal statute, precisely because no one is quite sure of the UIGEA's function following both the Justice Department's reversal of the Wire Act opinion and a relatively recent 2012 New York case, *United States v. Discristina*, which held that poker is not gambling under federal law.¹⁰⁵

¹⁰⁰ FDIC, FINANCIAL INSTITUTION LETTERS: UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT OF 2006 (2010), <https://www.fdic.gov/news/news/financial/2010/fil10035a.pdf>.

¹⁰¹ *Id.* at 1-2 (Card Systems is further defined as all "credit, debit, and stored value" cards).

¹⁰² Benjamin B. Nelson, *Regulation or Prohibition? The Troubled Legal Status of Internet Gambling Casinos in the United States in the Wake of the Unlawful Internet Gambling Enforcement Act of 2006*, 9 TEX. REV. ENT. & SPORTS L. 39, 42 (2007).

¹⁰³ Romoser, *supra* note 99, at 536. In addition to the indictments, the DOJ seized the domains of the sites that were indicted. *Id.* Should legal action ever be brought against skins-betting sites, a possible reaction would be the seizure of the domain names, which could have an adverse effect on those Steam users that bet on the sites; this could theoretically include the loss or seizure of their digital inventories of bet-able items. When US attorneys seized the infamous dark-web black market Silk Road, they also seized over \$28 million dollars in bitcoins, the unregulated digital-only currency. Russell Brandom, *US Attorney Seizes \$28 Million in Bitcoin from the Silk Road Server*, THE VERGE (Jan. 16, 2014) <http://www.theverge.com/2014/1/16/5316948/us-attorney-seizes-28-million-in-bitcoin-from-the-silk-road-server>. It is not a stretch to imagine the seizure of skin-betting sites could be synonymous to the silk road-bitcoin seizure, with authorities also seizing the skins and items bet on the sites. If so, those betting on the sites not only have to worry about violating interstate gambling laws, but the seizure of their potentially-valuable digital items as well.

¹⁰⁴ See Jeffrey S. Moad, *The Pot's Right: It's Time for Congress to Go "All In" for Online Poker*, 102 KY. L.J. 757, 757 (2013 – 2014).

¹⁰⁵ *United States v. Discristina*, 886 F. Supp. 2d. 164, 235 (E.D.N.Y. 2012), *rev'd*, 726 F.3d 92 (2d Cir. 2013).

VI. ESPORTS BETTING

Like the Internet, skins betting and the world of Esports continues to grow, evolving from its initial iteration every day. Betting skins on matches on sites like CS:GOLounge is an interesting legal quandary that falls between the cracks of the three major federal gambling laws discussed above—the Wire Act, PASPA, and the UIGEA. As one scholar noted, “[t]he federal criminal law governing the Internet gambling industry in the United States consists of a complex web of ill-equipped statutes passed over several decades.”¹⁰⁶ Like its inability to regulate the Internet gambling industry as it exists today, the current federal trifecta of the Wire Act, PASPA, and the UIGEA are also ill-equipped to apply to skins wagering activities for a variety of reasons.¹⁰⁷

A. The Inapplicability of the UIGEA on Skins Wagering

The UIGEA, passed by Congress closest in time to the advent of skins betting, is the federal statute least likely to have any major impact on the skins wagering market online. When betting on CS:GOLounge, one does not enter their credit card information onto the site. Rather, they transfer their skins to the site from sites like Steam Community Market or SkinXchange, using their Steam account information.¹⁰⁸ In this case, the skins wagered on the matches are the currency. Any skin won on CS:GOLounge can then be transferred back to Steam Community Market and traded for Steam Wallet Funds, or sold on third-party sites like SkinXchange.com and OPSkins.com for a cash payout through PayPal.

Because money does not flow directly through the skin betting sites, any argument that the skin wagering occurring on these types of sites constitutes a violation of the UIGEA is effectively quashed. The skins bets on CS:GOLounge do not constitute one of the five transaction types covered under the Treasury Department’s rule in conjunction with the UIGEA.¹⁰⁹ Furthermore, one would be hard-pressed to implicate the major credit card companies *a la In re Mastercard* because their systems do not reach third-party betting sites like CS:GOLounge.¹¹⁰

The other reason the UIGEA does not explicitly outlaw skins betting on CS:GOLounge is because it simply “prohibits Internet gambling operators from accepting money related to any online gambling that violates state or federal law.”¹¹¹ The UIGEA “only criminalizes activity that is already illegal under a

¹⁰⁶ Moad, *supra* note 104, at 759.

¹⁰⁷ *Id.*

¹⁰⁸ *Beginners Guide to Betting on CS:GO*, *supra* note 57.

¹⁰⁹ 31 C.F.R. § 132.3 (2015).

¹¹⁰ *See In re MasterCard Int’l Inc.*, 313 F.3d 257 (5th Cir. 2002).

¹¹¹ Hollander, *supra* note 69, at 194.

different law,” be it state or federal.¹¹² Thus, to fall under the prohibitions of the UIGEA, states would need to already have laws in place outlawing skins betting. Without any state statutes outlawing skins betting or any activity analogous, the UIGEA seems the least likely to affect the current skins betting practices found online.

B. PASPA and Esports: The Future?

Unlike the UIGEA, PASPA could potentially have an effect on skins wagering, only if the “sport” being played is sponsored by a league akin to the major sports leagues covered under PASPA. Unlike the Wire Act, which covers telecommunicated wagers (as opposed to explicitly banning sports betting),¹¹³ PASPA is the only federal statute that *explicitly* outlaws certain forms of sports gambling.¹¹⁴ On its face, PASPA would seem to outlaw the type of betting occurring on CS:GOLounge and FanoBet, by saying that it is unlawful for a person to operate a betting scheme based “on one or more competitive games in which amateur or professional athletes participate.”¹¹⁵

The issue with being recognized under PASPA has to do with whether Esports are sports at all. A debate has raged over the past few years in both the video game industry and the press as to whether Esports and its players should be viewed akin to traditional sports like football and basketball.¹¹⁶ Though ESPN began its coverage of Esports in 2015,¹¹⁷ others associated with the company felt differently regarding ESPN’s new “Esports-as-real-sports” mentality. In 2014, when asked to comment on Amazon’s foray into the Esports market, ESPN president John Skipper declared that “[Esports are] not a sport—it’s a competition. . . I’m interested in doing real sports.”¹¹⁸

Others disagree, and point to the fact that as of 2013, the United States began recognizing foreign Esports players visiting the country for tournaments as “professional athletes” when granting U.S. visas.¹¹⁹ And though it might not

¹¹² Miller, *supra* note 74, at 538.

¹¹³ See Greenberg Traurig’s Gov’t Affairs Practice, *DOJ’s Reversal on the Wire Act - What It Means for Internet Gaming*, NAT’L. L. REV. (Jan. 3, 2012), <http://www.natlawreview.com/article/doj-s-reversal-wire-act-what-it-means-internet-gaming>.

¹¹⁴ Edelman, *supra* note 89, at 140.

¹¹⁵ 28 U.S.C. § 3702 (2016).

¹¹⁶ See Ben Dirs, *Is Computer Gaming Really Sport?*, BBC 1WONDER, <http://www.bbc.co.uk/guides/zygq2hv> (last visited Oct. 26, 2016).

¹¹⁷ Casselman, *supra* note 19.

¹¹⁸ Paul Tassi, *ESPN Boss Declares eSports ‘Not a Sport,’* FORBES (Sept. 7, 2014, 3:56 PM) <http://www.forbes.com/sites/insertcoin/2014/09/07/espn-boss-declares-esports-not-a-sport/#3b9fb3d455a8>.

¹¹⁹ Paul Tassi, *The U.S. Now Recognizes eSports Players as Professional Athletes*, FORBES (July 14, 2013, 11:27 AM) <http://www.forbes.com/sites/insertcoin/2013/07/14/the-u-s-now-recognizes-esports-players-as-professional-athletes/#789da9d8691df>.

be on the same level in terms of physical performance as football, there is no denying that, based on the massive growth the Esports industry has seen, many view Esports as a new 21st century sport.¹²⁰

Based solely on the language of PASPA, professional CS:GO players who compete on the national and international scene could be “amateur athletes.” One could also make the argument that the players are in fact professional athletes, but doing so would likely mean that the leagues they play for would need to fall under PASPA as well.

Esports are unique in that there is no single entity or league that regulates all the matches played online with respect to the video game being played. Unlike football in the United States—where participation, viewing, and betting is focused almost exclusively on the National Football League and the collegiate National Collegiate Athletic Association—a number of different Esports Gaming Leagues host and regulate CS:GO Esports matches, tournaments, and championships.¹²¹ CS:GO alone has several separate leagues that host CS:GO Esports events, including the Electronic Sports League (primarily U.S. and Europe-based audience),¹²² Major League Gaming (North American-centric audience and tournaments),¹²³ and the E-sports Entertainment Association League (a league with a worldwide focus).¹²⁴

All of these unique leagues sponsoring Esports tournaments and qualifiers have different rules and regulations pertaining to players, match settings, scheduling, and cheating. What this means is that professional matches might vary significantly from league to league in the way they are played. Looking to the language of PASPA, an “amateur sports organization” is one that: “(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more amateur athletes participate, or (B) a league or association of persons or governmental entities described in subparagraph (A).”¹²⁵ Likewise, a “professional sports organization” is defined the same as an amateur one, except that the game is played by “one or more professional athletes.”¹²⁶

To qualify as a league covered under PASPA, one simply would have to

¹²⁰ See *supra* Part II.

¹²¹ See Esports Online, *Top Esports Tournaments and Championships*, FANTASY ESPORTS LEAGUES (Oct. 31, 2015) <http://fantasyesportsleagues.com/top-esports-tournaments-championships/>.

¹²² *Counter-Strike Global Offensive*, ELECTRONIC SPORTS LEAGUE, <http://play.eslgaming.com/counterstrike/csgo/> (last visited Oct. 25, 2016).

¹²³ *Counter-Strike: GO's Rankings*, MAJOR LEAGUE GAMING, <http://gamebattles.majorleaguegaming.com/pc/counter-strike-global-offensive/> (last visited Oct. 25, 2016).

¹²⁴ E-SPORTS ENTERTAINMENT ASSOCIATION LEAGUE, <https://play.esea.net/index.php> (last visited Oct. 25, 2016).

¹²⁵ 28 U.S.C. § 3701(1) (2016).

¹²⁶ 28 U.S.C. § 3701(3) (2016).

argue that each autonomous league sponsoring CS:GO matches and tournaments (such as MLG or ESL) falls under the definition of professional or amateur sports organization. If this could successfully be argued, then any Esports league that is covered under PASPA could potentially have standing to sue the skins betting sites found online, as well as other betting sites such as Unikrn, which allow for real-world currency wagering.

C. The Wire Act: A Possible Saving Grace

Though the Wire Act predates both the "modern" iteration of the Internet and the skins wagering that occurs online, it is perhaps the piece of federal legislation that could have the most impact on sites like CS:GOLounge and FanoBet. Yet, for a time, there was concern that the Wire Act did not apply to the Internet at all.¹²⁷ In 2001, the Second Circuit Court of Appeals ruled in *United States v. Cohen* that where the Wire Act is concerned, the Internet and telephone lines constitute "two forms of wire facilities."¹²⁸

In *United States v. Lyons*, a recent First Circuit gambling and Wire Act case, the court echoed a similar sentiment regarding the Wire Act's applicability to the Internet. In *Lyons*, two defendants convicted of operating an illegal sports betting business based in Antigua attempted to argue on appeal that the Wire Act, which covers "wire communication facilit[ies]," did not in fact extend to the Internet.¹²⁹ In rejecting this theory, the court quoted the language of the Wire Act, stating that the "internet is an 'instrumentalit[y] . . . used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.'"¹³⁰

The Justice Department affirmatively ruled in a 2011 opinion that the Wire Act does not apply to wire transmissions that do not relate to a sporting event or contest.¹³¹ With the Justice Department's opinion that the Wire Act only covers sports betting and no other type of chance-based gambling coupled with the fact that prosecutors have recently applied the Wire Act to Internet sports gambling with success, online skins betting could violate the Wire Act.

To bring violations of the Wire Act against skins wagering sites, one would likely need to prove that the electronic betting transmissions between the skins bettor and the host site constitute wire transmissions that relate to a sporting event or contest. In order to prove this, one would first have to make the same argument needed to prove skins betting falls under PASPA's prohibitions; to do so, Esports would need to be classified as a "sport" under the respective act's

¹²⁷ Miller, *supra* note 74, at 533-34.

¹²⁸ *United States v. Cohen*, 260 F.3d 68, 76 (2d Cir. 2001).

¹²⁹ *United States v. Lyons*, 740 F.3d 702, 716 (1st Cir. 2014).

¹³⁰ *Id.* (quoting 18 U.S.C. § 1081).

¹³¹ Proposal, *supra* note 84, at 3-4.

definition of a sports organization, be it on either the amateur or professional level.

VII. WHY REGULATE?

One might look at skin betting and ask: is this even a practice that should be regulated? A 2015 study on Esports betting by Eilers Research estimates that 3.2 million individuals placed wagers on matches with in-game items through informal betting markets.¹³² With the growth in popularity of Esports as well as the steady incline in the number of players playing CS:GO—both casually and professionally—the number of in-game items bet in time will likely only rise.

A. Age Factors

Though the Eilers report did not dive into the in-game item betting market, it has become apparent that wagering skins online has not been limited to adults 21 and over. In an interview with Bloomberg, SkinXchange developer Justin Carlson explained that “underage gambling [in the Esports world] is a huge problem.”¹³³ Carlson explains that “he has had to call ‘countless’ parents whose children have taken their credit cards without their knowledge,” in order to “to buy skins and bet on gaming on other sites.”¹³⁴

Even if the phenomenon of young children absconding with their parent’s credit card to buy skins online is a rare occurrence, there still exists a disparity between the suggested age rating of CS:GO and the legal gambling age of some states. In the video game industry, the dominant ratings agency in the U.S. is the Entertainment Software Ratings Board, a non-profit group established in 1994 that assigns ratings to almost every video game that is released, much like the Motion Picture Association of America does for films in the U.S.¹³⁵ The ESRB assigned CS:GO an “M” rating, which stands for Mature 17+, meaning the ESRB suggests that the game should only be played by those age 17 and up.¹³⁶ In the United States, most major retailers do not sell “M” rated games to

¹³² Chris Grove & Adam Krejcik, *eSports Betting: It’s Real, and Bigger Than You Think*, EILERS RES., LLC 1, 3 (2015).

¹³³ Melbourne & Campbell, *supra* note 22, at 2.

¹³⁴ *Id.* (this phenomenon is not as far-fetched as it may sound; in 2012, Apple came under fire from parents whose children had racked up significant iTunes bills thanks to deceptive “in-app” purchases on kid-targeted apps; see *Apple Under Fire Over Children’s App Bills*, TELEGRAPH (Apr. 17, 2012, 7:00 AM), <http://www.telegraph.co.uk/technology/apple/9207646/Apple-under-fire-over-childrens-app-bills.html>).

¹³⁵ *Frequently Asked Questions*, ENTERTAINMENT SOFTWARE RATINGS BOARD, <http://www.esrb.org/ratings/faq.aspx#1> (last visited Oct. 25, 2016). For an explanation of the Motion Picture association of America, see <http://www.mpa.org/our-story/>.

¹³⁶ *Counter Strike: Global Offensive*, ENTERTAINMENT SOFTWARE RATINGS BOARD,

buyers under 17 unless accompanied by an adult. Steam, however, merely requires one to be 13 years of age or older to create an account to buy games such as CS:GO,¹³⁷ which means that players could in fact be well under the age suggested by the ESRB.

"Whereas the federal government has stepped in and directed states to establish uniform age limits for purchasing tobacco products (age 18) and alcohol (age 21), they have stayed on the sidelines regarding age limits for gambling."¹³⁸ This creates a patchwork of various ages for various gambling activities in various states across the nation. Online skins betting transcends state boundaries due to the Internet. And as long as someone has a verified Steam account, sites such as CS:GOLounge allow any Steam user to bet on matches, so a potential age disparity exists between those legally allowed to play the game and those not allowed to bet on the game at the same time.

B. Tax Issues?

Taxes are another potential issue relating to skins betting and the subsequent potential sale of winnings to either the Steam Community Market or third-party sites such as SkinXchange. Currently, Steam is required to "collect certain taxpayer identifying information from those who engage in more than 200 transactions in a calendar year."¹³⁹ If a seller exceeds 200 individual transactions in a calendar year while also exceeding \$20,000 in gross sales, that information is reported to the IRS, and Steam sends the seller a Form 1099.¹⁴⁰

SkinXchange.com, however, makes no mention of taxes related to the selling of skins in its site's terms of service.¹⁴¹ Because SkinXchange uses PayPal for its cash-out system, PayPal also falls under the 200-individual-transactions-exceeding-\$20,000-limit on Steam.¹⁴² But other third-party sites,

<http://www.esrb.org/ratings/Synopsis.aspx?Certificate=100491&Title=Counter-Strike%3a+Global+Offensive> (last visited Oct. 25, 2016); *ESRB Ratings Guide*, ENTERTAINMENT SOFTWARE RATINGS BOARD, http://www.esrb.org/ratings/ratings_guide.aspx#rating_categories (last visited Oct. 25, 2016).

¹³⁷ *Create an Account*, STEAM, <https://store.steampowered.com/join/> (last visited Dec. 2, 2016).

¹³⁸ Ken C. Winters, *Introduction: What We Know about Youth and College Gambling*, 1 INCREASING THE ODDS: 2, 2 (2009), <http://www.ncrg.org/sites/default/files/uploads/docs/monographs/ncrgmonographyouthforwebfinal.pdf>.

¹³⁹ *Community Market FAQ*, STEAM SUPPORT, https://support.steampowered.com/kb_article.php?ref=6088-UDXM-7214 (last visited Oct. 25, 2016).

¹⁴⁰ *Id.* (this is listed under the FAQ on the page listed above in FN 136, under the heading "Do I have to pay income taxes on the proceeds of sales I make in the Community Market?" found on the site's FAQ).

¹⁴¹ *See Terms of Service*, SKINXCHANGE, <https://skinxchange.com/> (last visited Oct. 25, 2016).

¹⁴² *Tax Information Reporting for Online Sellers*, PAYPAL, <https://www.paypal.com/webapps/mpp/irs6050w> (last visited Apr. 13, 2016).

like skinsbazaar.com and OPSkins.com, let users sell skins and other in-game items for Bitcoin, whose current tax regime is significantly more complicated and less understood than the system governing Steam and PayPal.¹⁴³ With the frequent exorbitant rates some skins sell for on third-party sites coupled with the popularity of CS:GO and the Esports industry, it is not a stretch to think that potential taxes are overlooked simply by staying under the relatively lax \$20,000-or-more threshold.

C. Fraud, Money Laundering, and the Russian Mob

There is a third potential issue that some in the skins betting community debate on sites like Reddit dedicated to skins wagering: money-laundering and fraud.¹⁴⁴ Because the skins bet, bought, and sold all occur online without users actually physically possessing the items, the potential for abuse is higher.

In May 2014, online video game magazine Polygon published a story about individuals who have lost significant amounts of money selling in-game items due to fraud and other shady dealings on Steam's in-game item marketplace.¹⁴⁵ In December 2012, economics student Samuel Louie discovered that a number of in-game item traders had caused a spike in the price of in-game "earbuds" for another Valve-developed game, *Team Fortress 2*.¹⁴⁶ Through examination of other users' item inventories,¹⁴⁷ Louie discovered that the earbud purchases were all coming from "relatively new Steam accounts, all of which appeared to be of Russian origin."¹⁴⁸ The accounts were buying the earbuds for up to \$75 a piece, while almost immediately selling them for around \$22 each.¹⁴⁹ In his post to the Steam forums, Louie reported the scam to other users, many of whom believed that the Russian mafia was involved due to the suspicious

¹⁴³ See OPSKINS.COM (last visited Oct. 25, 2016) (follow FAQ, click "help" tab; select "FAQ"; select "cashout" from menu on left); for a brief discussion of the IRS' Bitcoin Tax policies, see INTERNAL REVENUE SERVICE, *Notice 2014-21*, <https://www.irs.gov/pub/irs-drop/n-14-21.pdf> (last visited Apr. 13, 2016).

¹⁴⁴ See generally *Giant Bombcast* 08/11/2015, GIANT BOMB at 1:16:45-1:21:00 (Aug. 11, 2015), <http://www.giantbomb.com/podcasts/giant-bombcast08112015/1600-1313/> (a humorous discussion where the hosts layout a detailed plan to launder drug money through the buying and selling of digital items from another Valve-developed game, *Team Fortress 2*).

¹⁴⁵ Mitch Bowman, *The Hidden World of Steam Trading*, POLYGON (May 22, 2014, 11:30 AM), <http://www.polygon.com/features/2014/5/22/5590070/steam-valve-item-trading>.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* Louie was able to obtain this information via Steam's API system, which allows users to download other user's item inventories free of charge, which enabled him to rearrange the data into stats that suggested the spike in price and volume of the in-game items.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

Russian link.¹⁵⁰ Louie, however, believes the spike can be attributed to credit card fraud, where individuals in possession of stolen numbers buy and sell at a high volume in a short period of time in order to maximize their take.¹⁵¹

Regardless of whether the Russian mafia or identity thieves were involved in the earbud price spike, the potential for illicit and shady dealings in connection with in-game items bet, bought, and sold online is high, especially given the ease in which skins can be exchanged and moved around, with nary a paper trail existing. For these reasons above, it seems only logical that something should be done to introduce some sort of regulation into the skins betting phenomenon, whether it be guided by a federal hand or a video-game-industry-controlled one.

VIII. CONCLUSION

“Today’s federal laws governing Internet gambling are a patchwork that reflects . . . uncertainty about the laws’ application for particular types of technology and gaming. . . .”¹⁵² Because of this patchwork, the question exists as to whether skins betting falls under federal statutes regulating gambling. The states are ill-equipped to regulate skins wagering because the practice transcends state borders, due to ties to the Internet and Esports leagues. Federal law makes no mention of this particular type of sports betting—completely understandable considering the three acts listed herein were created long before skins betting came to prominence. Under the three current federal laws examined above, PASPA and the Wire Act both place specific prohibitions on “sports wagering.” But in order to apply federal statutory law to skins betting, one would need to show that the practice is in fact “sports wagering” as defined by PASPA and the Wire Act. At the end of the day, the question of whether online skins wagering violates the Wire Act or PASPA turns on one simple issue: whether Esports are sports. At the pace this industry is growing in popularity, it seems that the answer is, or will eventually be, a definitive yes. Once Esports are regarded as professional sports, all bets are off.

¹⁵⁰ *Id.* For a detailed explanation of how Louie discovered this, see his detailed post at base64, *Today I Discovered That There are Tons of Keys with Doubtful Origin Injecting into the Market*, STEAMREP (Nov. 11, 2012), <http://forums.steamrep.com/threads/today-i-discovered-that-there-are-tons-of-keys-with-doubtful-origin-injecting-into-the-market.14096/>.

¹⁵¹ Bowman, *supra* note 145.

¹⁵² I. Nelson Rose & Rebecca Bolin, *Game on for Internet Gambling: With Federal Approval, States Line Up to Place Their Bets*, 45 CONN. L. REV. 653, 659 (2012).