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2 MASSACHUSETTS GAMING COMMISSION

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6 DAILY FANTASY SPORTS FORUM
7 VOLUME I
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P R O C E E D I N G S

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3 CHAIRMAN CROSBY: I'm Steve Crosby.
4 I'm Chair of the Massachusetts Gaming
5 Commission. Thank you all very much for
6 coming to this, which I think is probably
7 our fourth or fifth -- Commissioner --
8 Judge McHugh, there's a seat for you over
9 here if you're interested.

10 This is our fourth or
11 fifth educational forum. We've had them on
12 various issues, including problem-gambling,
13 promotion of economic developmental and
14 tourism, the criminal aspects and
15 dimensions of casino-gambling and so forth.
16 And we do it each time we think that there
17 is a topic about which there is a lot of
18 talk, a lot of heat but not enough light.
19 And that is surely the case with Daily
20 Fantasy Sports.

21 We, as you know, I think have no
22 authority relative to Daily Fantasy Sports.
23 We are not the regulator of Daily Fantasy
24 Sports. We are the regulator of casinos

1 and casinos only. We do, however, have a
2 great deal of experience in introducing new
3 industries, new gaming industries, great
4 deal of experience in dealing with the
5 kinds of mitigation issues that are
6 involved in a regulatory environment and
7 courteously the speaker of the house and
8 the senate resident and the governor all in
9 various ways said that they would
10 appreciate it if we might weigh in on some
11 of these issues about whether and how to
12 regulate, so we are doing that.

13 This meeting -- this session today
14 will focus mostly on Daily Fantasy Sports.
15 That is clearly the hot issue in the online
16 internet electronic gaming world at the
17 moment. But as you all know, there have
18 been hot button issues of other types.
19 Last year everybody talked about online
20 poker. Pretty soon probably everybody will
21 be talking about eSports. And as we've
22 learned now, there are a host of other such
23 technologies coming along.

24 We will focus mostly on Daily

1 Fantasy Sports, but we're going to keep an
2 eye on the larger environment of the whole
3 online evolving technology world of gaming.
4 And, in fact, at the end of the day, we are
5 going to discuss the possibility of
6 suggesting to the legislature that there be
7 some kind of a comprehensive omnibus
8 approach to regulating all these new
9 technologies, not just DFS, in a way that
10 the legislature could put its informant,
11 its value judgment, its regulatory criteria
12 into a package which could then be given to
13 a regulatory agency, whether that's the
14 Gaming Commission or some other agency in
15 the eyes of the legislature, could be given
16 to that, to a single agency.

17 And then that agency could then
18 apply those values, those standards, that
19 legislative direction to each of these new
20 technologies as they come about rather than
21 dealing with on one off, deal with DFS,
22 deal with eSports, deal with one off. Can
23 we do this in some kind of a comprehensive
24 way? And at the end of the day, we will be

1 talking about that idea.

2 Our work in putting all this
3 together -- incidentally this will precede
4 a white paper and help inform a white
5 paper, which we will deliver to the
6 legislature and to the governor hopefully
7 by the end of the year.

8 Our work in setting this up and in
9 doing the research on DFS and related
10 issues has been led by Commissioner Gayle
11 Cameron, who most of you know, and I am
12 going to ask her to introduce our panelists
13 and kick off the operations. Thank you all
14 for coming.

15 COMMISSIONER CAMERON: Thank you,
16 Chairman Crosby. I just wanted to say a
17 few thank yous. First of all to the
18 team -- to the fantasy team, Paul Connelly
19 Justin Stempeck really every day there was
20 something done on fantasy. Lots of experts
21 helped us out here. You know, our goal, as
22 the chairman just talked about, was to get
23 smart, to understand the issues. And,
24 frankly, they were very different than what

1 I had originally thought.

2 We had lots of conversations with
3 the Attorney General's office,
4 collaborated. You will be hearing from a
5 member of that team later. All of our
6 experts, thank you. Fascinating people,
7 great -- I mean, I love doing something
8 like this because you get to meet all these
9 interesting people and learn. So, again, a
10 big thank you.

11 We did this quickly because we
12 thought it was timely and to get everybody
13 to change their schedules to be here is
14 really amazing and very, very helpful. I
15 don't want to mention all the panelists
16 other than they've all been helpful and
17 they all will contribute, so this will be a
18 terrific day.

19 Other than Kevin Mullally, I have to
20 mention Kevin because if you notice his pin
21 he has the world championship Kansas City
22 Royals and, you know, we in Boston get a
23 little spoiled, right, we have a few
24 championships, not the case in Kansas City,

1 so he wears it proudly and I just wanted to
2 make note that we are proud of your team,
3 okay?

4 CHAIRMAN CROSBY: Talk about his
5 socks.

6 COMMISSIONER CAMERON: Well, he
7 does -- I wasn't going to really go there
8 but, yes, he has Kansas City Royal socks on
9 as well. Again, thank you to everybody and
10 our interim director, Karen Wells, will be
11 our first moderator. So, Director Wells,
12 I'm going to turn this over to you.

13 MS. WELLS: Good morning everyone
14 and thank you for being here. The first
15 panel that we have on the first discussion
16 is the Overview of the DFS Industry.

17 So what we are trying to accomplish
18 in this panel is to just really generate a
19 conversation to educate not only the five
20 commissioners but also the general public
21 on sort of the basic framework of what we
22 are talking about here today.

23 Some of the questions, what is Daily
24 Fantasy Sports, why are we talking about it

1 and what are some of the public policy
2 issues that DFS presents that could or
3 should be addressed by a regulatory schema?

4 I would like to introduce our
5 panelists here this morning starting it
6 with Chris Grove. He acts as a consultant
7 to various stakeholders in the regulated
8 online gambling market. A partner at Narus
9 Advisers and a Senior Consultant at Eilers
10 Research. Grove also oversees trade
11 publications focused on the regulated
12 online poker, eSports betting and Daily
13 Fantasy Sports industries.

14 We already had a brief introduction
15 to Kevin Mullally. Aside from being a
16 sports fan himself apparently, he is also
17 the vice president of Government Relations
18 and General Counsel for Gaming Laboratories
19 International, GLI. Mr. Mullally is GLI's
20 chief legal officer and is responsible for
21 all risk management policies for the
22 company as well as supervision of all
23 outside attorneys and consultants. In
24 addition, he serves internationally as

1 GLI's primary liaison to elected and
2 appointed officials at the federal, state
3 and local level.

4 As such he regularly interacts with
5 regulatory agencies, organizations devoted
6 to the developing gaming policy as well as
7 senior level executives of gaming equipment
8 manufacturing companies, lotteries,
9 pari-mutuel wagering facilities, social
10 gaming companies, interactive gaming
11 companies and casino operators.

12 He's a frequent teacher, author and
13 speaker on issues related to administrative
14 and business law topics, public policy
15 development, regulation issues and
16 problem-gambling. He recently authored the
17 chapter on Public Policy Implementation and
18 Regulatory Practice at the University of
19 Nevada Las Vegas Law School's textbook on
20 land-base casino regulation.

21 I also have Dan Wallach here to my
22 left. He is a leading U.S. authority on
23 gambling law and gaming law and sports law.
24 Has counseled professional sports teams,

1 fantasy sports operators, casinos,
2 racetracks, sports betting companies and
3 other gaming industry participants on a
4 wide spectrum of gaming-related matters.

5 He was one of the leading voices in
6 the emerging area of sports gambling laws,
7 frequently quoted for his incites on sports
8 betting and Daily Fantasy Sports legal
9 issues by major U.S. media outlets such as
10 the New York Times, the Washington Post,
11 Wall Street Journal, Sports Illustrated, et
12 cetera.

13 Mr. Wallach has written extensively
14 about efforts to legalize and regulate
15 sports betting in Daily Fantasy Sports in
16 the United States and is considered one of
17 the national thought-leaders on the
18 subject. So welcome to our panelists and
19 thank you very much for being here this
20 morning.

21 I think I'll start with Kevin, if I
22 can just toss the first question to you
23 just to give the audience and the
24 Commissioners just an overview what is

1 fantasy sports and how would you explain
2 that to the Commissioners and to the
3 members of the public?

4 MR. MULLALLY: You know, I think for
5 the purposes of this discussion, it's
6 important to draw a distinction between
7 fantasy sports and the traditional gaming
8 industry as we know it. I think there is
9 important -- some certain similarities that
10 have led policymakers to consider whether
11 this industry should be regulated; and if
12 so, to what extent it needs to be
13 regulated.

14 And, I think, in performing that
15 analysis, one should understand that if you
16 look historically and why gambling was
17 regulated, it was because that it was an
18 activity that was banned in most states.
19 In the few states where it did exist, it
20 had deep routes in criminal activity.

21 So, it was either something that was
22 not necessarily authorized or in the case
23 authorized but not really regulated and,
24 therefore, became heavily involved --

1 criminal enterprises became heavily
2 invested in it or it was something that
3 simply operated below the surface and was
4 on its face illegal in most other
5 jurisdictions.

6 And, so, as states wanted to either
7 deal with the criminal activity or as
8 states started to decide to legalize
9 gambling, they wanted a very, very robust
10 regulatory structure for it.

11 In addition, in almost every state
12 in Massachusetts included, the state has a
13 large equity -- almost equity interest in
14 the gambling operation. They take
15 significant portions of the gross revenue
16 generated by the operation in taxes.

17 And when you compare that to fantasy
18 games, this is something that, I think, if
19 you were to ask the average person on the
20 street a year ago, no one would have
21 suspected that it was illegal. No one
22 would have probably called it gambling.
23 They would have simply referred to it as a
24 game.

1 So, I think, the prevalence of
2 traditional fantasy sports combined with
3 the growing, oh, I don't know,
4 aggressiveness or the changing dynamic of
5 Daily Fantasy Sports prompted a lot of
6 people to say, wait a minute, this is
7 starting to look a little different than
8 what we thought it was and we think it's
9 the topic of regulation.

10 I spent a lot of my time -- you
11 know, I got involved in gaming regulation
12 in 1993 and one of the, I think, struggles
13 for regulators is watching the industry
14 evolve and trying to get regulation to
15 evolve with it. So, I spent a lot of my
16 time studying risk-based policies.

17 So one of the things that anybody
18 who has ever heard me speak, you hear it
19 over and over again and I apologize for
20 those who have heard this before, but I
21 firmly believe that when you start looking
22 at an activity that you deem worthy of
23 regulation that for every requirement you
24 should have a specific public policy

1 objective.

2 You should be able to very
3 distinctly and specifically and
4 articulately say identify what risk you're
5 trying to mitigate or what public benefit
6 you are trying to advance and make that
7 proportional to the risk.

8 So, in other words, some things are
9 high-risk activities and deserve
10 substantial oversight but the lower the
11 risk the more appropriate the regulatory
12 response.

13 So, you know, our geolized principal
14 role in this has been to analyze the games,
15 to give some transparency to how they
16 operate and to use our math department. We
17 have, I don't know, five Ph.Ds in math
18 internationally and our government math
19 team is over 20 globally now, many master's
20 degree, math professionals and our -- the
21 director of our international math
22 department, another dean who is a Ph.D, has
23 done a lot of this work personally.

24 They have taken a look statistically

1 at how the games work and how the
2 experience of the consumer, what the
3 experience of the consumer has been. Some
4 of that work has been published in a white
5 paper. Some of the other has been
6 performed on behalf of the companies, which
7 I think they have released to all of you
8 and, frankly, a lot of it now is public in
9 court documents.

10 But from a layman's standpoint, it
11 appears that most of these games, again,
12 there are some variances depending on the
13 companies, but most of these games,
14 certainly all the ones we reviewed have a
15 level of skill. That level of skill
16 appears to be somewhere higher than poker.
17 It involves more statistical variations,
18 possibilities.

19 And it is not dissimilar to what you
20 see for, for instance, somebody playing the
21 stock market. People that just go blindly
22 based on a motion are going to do -- people
23 who don't know anything are going to do not
24 as well as people who know something.

1 People who know something about the players
2 are going to do better based on their
3 gathered knowledge about players. People
4 who dive deep into statistical analysis are
5 going to do better than those who are just
6 basing it on their common knowledge.

7 And people who deploy advanced
8 metrics and advanced algorithms in their
9 analysis of large pools of statistical
10 information are going to do significantly
11 better than players who don't do that.
12 Similar to if you were playing the stock
13 market.

14 And, so, that kind of is where, you
15 know, Chris is a much better expert on the
16 size of the industry and how big it is.
17 But from an analysis of what it is and how
18 do you look at it from a regulatory
19 perspective, those are my initial thoughts.

20 MS. WELLS: So maybe, Chris, you can
21 sort of touch on, you know, how the
22 industry developed and give an overview for
23 the audience on, you know, what kind of
24 games are involved, how does this whole

1 operation work.

2 MR. GROVE: Sure. And to the
3 question of what Daily Fantasy Sports is, I
4 think that's a question that is still being
5 answered. That's one of the reasons why
6 we're in the room today. This is a
7 relatively mason product, a mason industry
8 and we're still seeing it iterate. We're
9 still seeing it evolve. And part of the
10 question of regulation is what role the
11 state has or doesn't have to play in that
12 evolution.

13 So, I think, that's an important
14 caveat when we have this conversation about
15 what the product is. There isn't a
16 homogenous answer to that question. There
17 isn't a firm answer to that question. It's
18 one that we are still seeing develop as the
19 industry itself develops.

20 That development started back in
21 2007. That's roughly where we place the
22 launch of the first Daily Fantasy Sports
23 site, the summer of 2007. It was a pretty
24 sleepy industry. In the next half of

1 decade that followed, you didn't really see
2 much growth or talk or heat around the
3 industry in 2007, '8, '9, '10, '11.

4 It wasn't until 2012 that you
5 started to see funding of these companies
6 increase and that funding be leveraged for
7 consumer acquisition. And that started in
8 motion a cycle of competition primarily
9 between FanDuel, Draft Kings, but also
10 between other tier two operators.

11 That resulted more funding, more
12 acquisition, more funding, more acquisition
13 and that's where we got that kind of hockey
14 stick growth that we witnessed over the
15 last say 12 to 18 months, something like
16 that.

17 FanDuel, Draft Kings do control
18 about 85 to 90 percent of the market.
19 There isn't a great level of visibility
20 into these numbers. These are privately
21 held companies that really select metrics,
22 so there is a little bit of plus minus in
23 any kind of number that I give you about
24 industry size, whether that be users,

1 market share, size of the market.

2 In terms of the size of the market,
3 in 2015 our estimate is that players
4 industry wide across Daily Fantasy Sports
5 sites will pay 3.13 billion-dollars in
6 total entry fees. And we are looking at
7 somewhere in the neighborhood of four and a
8 half million unique real money players that
9 will pay those entry fees. That comes out
10 to an average of roughly 700 dollars per
11 player in terms of entry fees spent.

12 That's not the same as amount won or loss.
13 That's just total amount spent on contests.

14 In terms of revenue, Daily Fantasy
15 Sites charge a hosting fee roughly 9 to
16 13 percent of entries. And, so, you're
17 looking at off of that 3.13 billion-dollars
18 in revenue for 2015 roughly 280, 290
19 million-dollars total revenue industry
20 wide.

21 And there's an interesting footnote
22 there, I think, because there is a
23 perception based on the advertising, based
24 on the coverage, based on the amount of

1 conversation about this product and the
2 culture that the industry is much bigger
3 than it is from a dollar and cents
4 perspective, from a user's perspective. So
5 I do think it's important to reground the
6 conversation in that context.

7 What we are talking about here is a
8 product that is used by millions of people
9 but not the 40 or 50 million number that
10 you might see thrown around in the media
11 quite a bit. What we are looking at here
12 is a unique pool of closer to 4 or 5
13 million paying customers 2015.

14 And that this is not an industry
15 that is generating billions of dollars in
16 revenues or hundreds of millions of dollars
17 in profits. This is an industry that is
18 generating hundreds of millions of dollars
19 in revenue industry wide and is not
20 understood to be profitable at least not at
21 the top tier of the operators. So, that is
22 where we sit today.

23 In terms of looking forward to the
24 future, that's something that we become far

1 less confident in. Thanks to the
2 instability of the last few months, it's
3 made projections about where users revenue
4 and profitability might hit in 2016 and
5 beyond.

6 MS. WELLS: And, you know, Daniel,
7 maybe you can just us give us some incite.
8 Why do you think this industry sort of took
9 off or what was the impotence for that?

10 MR. WALLACH: A combination of
11 several factors. Number one, the colossal
12 demand for sports consumption and sports
13 betting. It is absolutely no accident that
14 professional sports teams and leagues are
15 eager to partner up with Daily Fantasy
16 Sports companies.

17 You're seeing a tremendous amount of
18 fan engagement, and that exists in sort of
19 a legal environment in which there is
20 absolutely no state sponsored sports
21 betting allowed outside the State of
22 Nevada. It is no accident that the DFS
23 industry emerged in 2007 in the wake of the
24 federal law known as the Unlawful Internet

1 Gambling Enforcement Act.

2 That is a federal law that created
3 an exemption from the definition of bet or
4 wager for fantasy sports contests provided
5 that certain criteria are satisfied. And
6 in the wake of the passage of that law, the
7 DFS industry emerged, and it emerged and
8 thrived in part because states are
9 prohibited from legalizing sports betting
10 or sports gambling schemes as a result of
11 the 1991 Professional and Amateur Sports
12 Protection Act.

13 So for the last quarter of a
14 century, there has been absolutely no legal
15 sports gaming in the United States outside
16 of Nevada, Delaware, Montana, and to some
17 degree Oregon. And then along comes UIGEA
18 and the emergence of DFS to basically
19 monopolize, you know, this field and engage
20 the sports industry. And it has taken off
21 like wildfire in part because of the
22 interplay between UIGEA, PASPA and the
23 absence of any sports betting that's legal
24 outside of Nevada. And with the advent of

1 the internet, it was like wildfire.

2 And, you know, 25 years ago, we may
3 not have had this kind of emerging
4 industry. But with the internet, UIGEA and
5 an outright ban on sports betting outside
6 of Nevada, it was just a recipe for
7 phenomenal success and demand.

8 MS. WELLS: That's very helpful.
9 I'll just throw out to any of the panelists
10 just, you know, for the Commissioners and
11 the public's edification, can someone
12 explain the difference between season long
13 and Daily Fantasy Sports?

14 MR. GROVE: It's sort of like trying
15 to describe the difference between poker
16 and video games. I mean, you're talking
17 about products that aren't necessarily
18 specifically products. They are more
19 classes of products in the way the table
20 games are a class of products.

21 So to imagine that there's a season
22 long Daily Fantasy Sports' product that's
23 frozen and you can describe it to a tee and
24 then there's a Daily Fantasy Sports'

1 product that's frozen and you can describe
2 it to a tee and then bang those two up
3 against each other is disingenuous.

4 I would say at the top level there
5 are a few differences between nearly all
6 variance on one side or the other. The
7 most obvious one is length, right, you're
8 talking about a contest across season long
9 that tends to spend over the course of an
10 entire season, although the season long
11 contest can be broken up incrementally in
12 any number of ways, whereas Daily Fantasy
13 Sports contests tend to take place over a
14 much shorter period of time.

15 If we're talking about how the
16 products exist in the culture as opposed to
17 how they exist in a vacuum, traditionally
18 season long fantasy sports a little bit
19 more of a socially-based game, a little bit
20 more that something that's played between a
21 real world peer groups, although
22 nonconclusively, whereas Daily Fantasy
23 Sports a little bit more of a commercial
24 product that matches people who aren't

1 necessarily from those real world peer
2 groups against one another.

3 But the desire to comparing and
4 contrast the two products is understandable
5 but difficult. And, I think, that in some
6 ways it almost moves the conversation away
7 from the focus point of where the
8 conversation needs to be in terms of we are
9 talking about a specific product, a class
10 of product with Daily Fantasy Sports and we
11 need to understand that as it is, not
12 necessarily as it might be in comparison to
13 a product that seems similar in name or in
14 concept.

15 MR. MULLALLY: I think the question
16 really emphasizes the point that I was
17 trying to make in that if you take an
18 infant industry and you look at it in a
19 static sense the way it is today and you
20 say, okay, here are the products they are
21 providing today and we're going to apply
22 these very specific regulations to these
23 products, that's probably a disservice and
24 over the long haul is going to have a hard

1 time adapting to a rapidly changing market.

2 And, so, it goes back to, you know,
3 what I was talking about in that when we
4 look at consumers playing a game of fantasy
5 sports, what inherent societal risks do we
6 see in that activity and what protections
7 do we think need to be in place or what can
8 a regulator do to benefit the public in
9 making better decisions about these
10 products and what can we do from a
11 regulatory standpoint to do that. So, you
12 look at the issues, not necessarily today's
13 specific product.

14 MR. WALLACH: I mean, other key
15 differences between the season long and
16 Daily Fantasy Sports product may lie also
17 in the nature of the consumer. I mean, so
18 many of us have participated in season long
19 fantasy sports contests with friends and
20 colleagues in the office. It's somewhat
21 different in terms of the intensity. And
22 I'm not talking about the frequency of the
23 velocity, but just the intensity of the
24 player experience.

1 You get instant gratification in
2 Daily Fantasy Sports. With season long you
3 have to wait, you know, three, four months
4 to have a winner declared. And that's
5 necessarily going to attract, you know,
6 different kinds of customers. Certainly
7 there will be overlap. I would certainly
8 think season long fantasy league is a
9 gateway to eventually playing Daily Fantasy
10 Sports contests.

11 The customers who play in the season
12 long as they gain knowledge are obviously
13 going to migrate over, but there are other
14 key distinctions. I believe the season
15 long leagues you are able to make lineup
16 adjustments, trades, waiver claims.

17 You can impact and adjust on the fly
18 whereas with Daily Fantasy Sports with the
19 exception of, I think, late swaps, the
20 lineup you choose is the lineup that you go
21 to play with once the game starts.

22 COMMISSIONER CAMERON: Just for any
23 of the panelists, probably for Dan and
24 Chris in particular. I know that lots of

1 people who don't know a lot about this
2 think it is very similar to sports betting.
3 And, you know, if you could take a moment
4 just to explain, you know, in your opinions
5 how it's similar, how it's different.

6 MR. WALLACH: Well, that's the
7 64,000 dollar question and one likely to
8 inspire the most debate and disagreement
9 and the answer -- the lawyer's answer is:
10 It depends on how you evaluate it.

11 As a matter of federal law or state
12 law, certainly when you take the 30,000
13 foot view of the thing, you ultimately in
14 both arenas, whether it's fantasy sports or
15 sports betting, you're looking to the
16 outcome of an underlying real-world
17 sporting event. You can consider it a game
18 level outcome versus a player level outcome
19 but it's not that simple.

20 You're talking about having to field
21 the lineup of nine different players over
22 the platform of multiple real-world events
23 whereas with sports betting it's certainly
24 one event, a point spread or in proposition

1 betting who is going to kick the next field
2 goal or a particularized event within the
3 game.

4 Certainly within the meaning of the
5 Professional Amateur Sports Protection Act,
6 there is a view that sports betting and
7 fantasy sports have enough similarities to
8 be seen as falling under that realm, but
9 there is no clear answer from any court and
10 this is a matter that is to be determined.

11 I mean, from my perspective, I view
12 fantasy sports as a form of sports gambling
13 but it is not -- but that, again, depends
14 on what state you're in, what jurisdiction
15 you're in. What might be sports gambling
16 in New York may not be sports gambling in
17 Massachusetts. So this is a controversial
18 issue.

19 But, you know, from in more of a
20 colloquial sense, I do view it as a form of
21 sports gambling on player level outcomes
22 versus game level outcomes. I mean, that
23 is probably the best way I could look at
24 it. And I know a number of folks out there

1 are going to disagree with that assessment,
2 and it just depends whether you're in
3 Massachusetts, whether you're examining it
4 under PASPA, the Wire Act. We don't have
5 any clear answers.

6 I mean, we have, you know, the Joe
7 Namath answer. If you're putting up money
8 and you expect to win or lose, then it's
9 gambling. But it's not that simple. It's
10 a very complex and sophisticated question
11 that ultimately turns on which set of laws
12 you are evaluating.

13 MR. GROVE: I think from a consumer
14 perspective there are more things that
15 connect it to activities than separate
16 them.

17 CHAIRMAN CROSBY: Say that again,
18 Chris. What do you mean by that?

19 MR. GROVE: I think there are more
20 things that connect Daily Fantasy Sports as
21 a consumer activity to what we
22 traditionally identify as sports wagering
23 than there are things that separate those
24 two activities.

1 CHAIRMAN CROSBY: What do you mean
2 by that?

3 MR. GROVE: Well, I think that they
4 have a lot in common. As Dan already
5 talked about, you're fundamentally at the
6 heart of it wagering on an outcome that
7 occurs within either a game or a series of
8 games. And, I think, that that is a
9 fundamental commonality that does connect
10 the two activities.

11 I think the way that the product is
12 deployed is significantly different.
13 Traditionally in the U.S. when we have a
14 sports fan product, it's against the house
15 product. Daily Fantasy Sports is usually
16 not presented as an against the house
17 product but rather is a peer-to-peer
18 product.

19 There are, again, talking about the
20 traditional concept of the sports bet
21 because obviously, you know, very
22 complicated and in-depth and analytical
23 with sports bets and chain several together
24 in parlay so it's not necessarily a single

1 outcome bet. But the way it's presented is
2 traditionally as a single outcome bet
3 whereas Daily Fantasy Sports relies on a
4 more complex analysis that encompasses more
5 outcomes than the typical sports bets.

6 So, again, it gets difficult to say
7 is one like the other because there are a
8 lot of variants of each. So it's unclear
9 which you're comparing to which. But my
10 sense is from a consumer's perspective that
11 there are more similarities between the two
12 products, DFS and sports betting, than
13 there are things that separate them.

14 COMMISSIONER ZUNIGA: And same could
15 be said, you know, both ideas, the same
16 could be said about pari-mutuel betting,
17 correct?

18 MR. GROVE: Sure.

19 COMMISSIONER ZUNIGA: There's also
20 enough similarities, some distinctions, et
21 cetera.

22 MR. WALLACH: And another key
23 distinction is that with fantasy sports, in
24 some ways it is like a pari-mutuel product

1 in that you're competing against other
2 players. And with single game sports
3 betting, you're playing against a line or
4 the house and that could be a critical
5 legal distinction between the two.

6 But on the other hand, the
7 connective tissue that binds the two
8 together, the common denominator is that
9 they both look to what takes place on the
10 playing field. And you wouldn't have any
11 winners or losers on a sports bet unless
12 the game was played, and there was a
13 certain outcome and the same is likewise
14 true with respect to Daily Fantasy Sports.

15 You need to see how Tom Brady
16 performs. You know, it may not turn on the
17 final score of the game, but it will turn
18 on how a players perform in the real-world
19 sporting events. And that is the overlay
20 here and it may -- there is so much more
21 that connects them than separates them.

22 But the major distinction between
23 the two, I believe, is the manner in which
24 the betting takes place, peer-to-peer in

1 the form of fantasy sports, Daily Fantasy
2 Sports or against the house or against the
3 line with respect to traditional legal
4 sports betting in Nevada, although you can
5 have, you know, peer-to-peer sports betting
6 but none that I know of are legal in the
7 United States.

8 COMMISSIONER STEBBINS: One of the,
9 excuse me, one of the interesting things
10 for me, and I'm interested in your thoughts
11 on this, is the endorsement, the support
12 given by the major sports leagues to Daily
13 Fantasy Sports. Obviously they never said,
14 hey, go to Vegas and place a bet on our
15 team. But beyond advertising dollars,
16 which they are reaping from, what is the
17 business strategy that you can see for why
18 the major sport leagues have essentially
19 partnered with Daily Fantasy Sports?

20 MR. WALLACH: Two words. It doesn't
21 get any simpler than "fan engagement."
22 You're seeing it take place across the
23 United States with stadiums now hosting
24 fantasy sports lounges, television

1 contracts reaching the stratospheric
2 proportions of the billions.

3 You know, there is a tremendous
4 insatiable interest for sports in the
5 United States. I mean, look at the front
6 pages. I mean an Adrian Peterson domestic
7 violence case gets on the front pages but a
8 Wall Street trader's domestic violence case
9 does not make the front pages.

10 Sports is one of the most
11 fascinating industries in the U.S. And the
12 more you can connect with your fan base,
13 it's a revenue driver. Franchises are
14 valued or sports franchises are selling in
15 the billions. These owners, the Dan
16 Snyders of the world, I don't mean to
17 single out Mr. Snyder, but they are paying
18 a heck of a lot more for their franchises
19 then they did 15, 20 years ago. And the
20 name of the game is monetization and
21 revenue streams and Daily Fantasy Sports is
22 great for the sports industry.

23 It drives up fan interest, fan
24 engagement, the value of television

1 contracts, the trickle effect, all down the
2 road it is a natural partnership.

3 COMMISSIONER STEBBINS: Thank you.

4 MS. WELLS: For the edification of
5 the Commissioners as well, how many
6 companies are involved in the Daily Fantasy
7 space and can you describe the companies,
8 how large, how small, you know, their level
9 of involvement in the industry?

10 MR. GROVE: Sure. It you're talking
11 about operators, you're looking at a number
12 that probably exceeds 100, but
13 realistically there are only about two
14 dozen operators that generate any
15 significant liquidity at any given point in
16 time so are able to attract players in
17 pools over 100 at any given time.

18 Let's say, as we said, at the outset
19 the market is dominated by Draft Kings and
20 FanDuel but that doesn't mean that other
21 players don't have significant share, don't
22 have a significant interest in the market.
23 A few companies from the second tier of
24 operators are worth mentioning. Yahoo is

1 the number three operator with their Daily
2 Fantasy Sports product. Obviously they
3 have a very strong season product long as
4 well and are a major media company and are
5 unique in terms of their participation on
6 those levels in the Daily Fantasy Sports
7 base.

8 Also worth noting are StarsDraft,
9 which is a product owned by Maya. Maya is
10 a publically traded company on the TSX and
11 also on the NASDAQ. And they are probably
12 better known as the corporate parent of
13 pokerstars.com, which is the largest
14 publically traded online gambling company
15 in the world, although I think they lost a
16 third of their market cap in the last
17 couple of days, so that may no longer be
18 accurate.

19 And then Draft Day also bears
20 mention as well, another second tier
21 operator, and they are owned by a company
22 called Sport Tech who are a licensed
23 international online gambling operator who
24 also operate New Jersey's regulated online

1 gambling market as well.

2 And I highlight those three to make
3 a couple of points. First is that operator
4 ownership is not a homogenous quality, not
5 a homogenous issue in this industry. There
6 are operators that come from a variety of
7 backgrounds and that approach the product
8 from a variety of angles and that they have
9 different outcomes, different optimal
10 outcomes in mind in terms of where they'd
11 like the product to go and the audience to
12 go.

13 But also to make the point that
14 ownership in these products is increasingly
15 crossing over into the world of gambling,
16 regulated gambling. And I don't make that
17 point to raise any specific issue or
18 implication. I make the point simply to
19 make the point.

20 I think it's worth noting that more
21 and more this is becoming a territory, a
22 product to market that is of interest to
23 companies who traditionally have limited
24 their activity and their interests to

1 land-base gambling and online gambling.

2 CHAIRMAN CROSBY: Chris, before the
3 controversy, what was the trajectory? You
4 were saying it's a relatively modest
5 market. It's only 4 or 5 million people.
6 Dan was talking about this meteoric
7 wildfire growth. Prior to the come on
8 coming of cropper, what was the projected
9 as best people knew; what were people
10 projecting?

11 MR. GROVE: Sure. We had for 2015
12 we were looking at a market size that was
13 closer to 4 billion in total entry fees as
14 opposed to the 3.13 billion that we're now
15 estimating, so a pretty dramatic haircut
16 right there just on this year. And then
17 out to 2020, we were looking at an industry
18 that was going to be closer to 20 billion
19 in total entry fees.

20 CHAIRMAN CROSBY: And also like
21 20 million players pro rad more or less?

22 MR. GROVE: We're growing in a
23 slightly different way. We expect that
24 over time that the average spend per player

1 would increase, so it wouldn't necessarily
2 be a direct revenue player. They both grow
3 at the same trajectory. We expect that at
4 some point the revenue would start to grow
5 per player in a way that it would then
6 outstrip the rate of growth that we're
7 seeing on the player side.

8 But, honestly, we haven't revised
9 projections out that far yet because
10 there's just such a deep uncertainty
11 regarding the product in the market that
12 would be irresponsible to do so.

13 CHAIRMAN CROSBY: Okay.

14 COMMISSIONER MACDONALD: I have a
15 question for Kevin, if I could, and I'm
16 wondering against the backup of it
17 appearing that the answers by Dan and Chris
18 to Commissioner Cameron's question about
19 the relationship of Daily Fantasy Sports to
20 sports betting is that there's much more in
21 common with it than distinguishes. You
22 know, the phrase that I wrote down of Dan's
23 is the connective tissue is that it depends
24 on what takes place on the field.

1 MR. WALLACH: That was an inside
2 joke. I plagiarized Chris Grove's, one of
3 his favorite expressions, "connective
4 tissue." So I did that as an homage to
5 Chris.

6 COMMISSIONER MACDONALD: Fair
7 enough. Then that makes it even more easy
8 for Chris to at least address the question.

9 Do you agree with Dan's conclusion
10 that there is in common a connective tissue
11 between what is generally accepted as
12 sports betting and Daily Fantasy Sports?

13 MR. MULLALLY: I think from a
14 statistical perspective, the game of Daily
15 Fantasy Sports is significantly more
16 complex than traditional sports wagering.
17 I mean, traditional sports wagering you
18 have, again, you're playing against a line
19 or a money number. You have a collection
20 of players so that there is some hedging on
21 activity.

22 I mean, I know that if Tom Brady got
23 hurt before the game started, the
24 Patriots -- they would probably be pulled

1 off the board. I happen to personally have
2 witnessed a game where the Chiefs were
3 pounding Tom Brady and he left the game.
4 Then in came Matt Cassel. You thought the
5 game was over until Matt Cassel proceeded
6 to do his best Johnny Unitas interpretation
7 and destroys the Chiefs.

8 So, you know, whereas with Daily
9 Fantasy Sports, if one of your key players
10 leaves the game early due to injury,
11 likelihood of winning becomes minuscule.
12 And, so -- and you have many more options
13 available to you. You have to assemble a
14 team based on many, many -- you know, your
15 team is assembled for you when you're
16 betting in a traditional sports betting
17 environment. You're simply doing an
18 analysis of whether the line is right.

19 That's really what you're playing
20 against. You're playing against the
21 oddsmaker whereas in a Daily Fantasy
22 situation you're playing against many other
23 players with many, many, many other options
24 and many other factors.

1 So, I think, when we look at it from
2 a mathematical perspective to do a
3 statistical analysis of player options,
4 player outcomes and things that are
5 available to you, it looks much more like a
6 game than it does a traditional sports bet.

7 COMMISSIONER MACDONALD: So the
8 bottom line of that would be is it's just a
9 function of complexity that the connective
10 tissue is there, but that it's a more
11 complex tissue in the DFS environment.

12 MR. MULLALLY: Yes. I mean,
13 replace, replace players in -- let's say,
14 we are doing football. We're taking
15 football as an example. Replace players
16 with any other variable, Dancing With The
17 Stars, American Idol, you know, pie eating
18 contest, hot dog eating contest, I don't
19 care.

20 So it's really not so much -- I
21 mean, its marketed as sports centered. But
22 from the way we look at it statistically,
23 it's a strategy game no different than any
24 other strategy game.

1 COMMISSIONER MACDONALD: But the
2 game ultimately depends upon the outcome on
3 the field if we take it from --

4 MR. MULLALLY: Correct. It's not a
5 random number generator. It's not the deal
6 of cards. It's not the roll of dice. It's
7 an outcome that is in some ways random and
8 some ways statistically -- there are
9 statistics that can predict the outcome.

10 COMMISSIONER MACDONALD: But you
11 don't know the outcome until the game is
12 over.

13 MR. MULLALLY: Correct.

14 MR. WALLACH: Commissioner
15 MacDonald, let me elaborate a little bit
16 further on the importance of PASPA. The
17 similarity that ultimately matters for a
18 state governmental body is not what Dan,
19 Kevin or Chris --

20 CHAIRMAN CROSBY: Explain again what
21 PASPA is to the audience.

22 MR. WALLACH: PASPA is the
23 Professional and Amateur Sports Protection
24 Act in 1991 or 1992 federal law that was

1 passed at the behest of the four major
2 professional sports leagues that prohibits
3 state governments and Indian Tribes from
4 authorizing, sponsoring, advertising,
5 promoting or licensing wagering gambling or
6 betting indirectly or directly on
7 Professional Amateur Sports Protection --
8 professional amateur sporting events and/or
9 the performances thereon.

10 And the similarity that ultimately
11 matters for a state government is what does
12 PASPA have to say about it. And, I
13 believe, the plain language of PASPA groups
14 single outcomes sports wagering and fantasy
15 sports under the same roof in that a state
16 government may not authorize, license,
17 promote, advertise wagering betting schemes
18 on the outcome of the events or the
19 performances of athletes in those games.

20 And the performances of athletes
21 speaks in my view and the legislative
22 history of PASPA to fantasy sports. So as
23 a state government, you will need to be
24 cognizance of the restrictions placed on

1 your authority by this federal law. It
2 does not mean that state governments can't
3 legislate in the area of fantasy sports.
4 Of course they can. But there is a line
5 that cannot be crossed, and the line that
6 cannot be crossed is the state placing its
7 imprimatur on fantasy sports.

8 I believe states can exempt fantasy
9 sports from the definition of gambling.
10 States can certainly regulate to a degree.
11 But the moment we're talking about explicit
12 authorization, licensing fees, state
13 involvement in the enterprise itself such
14 as what the Massachusetts lottery may be
15 contemplating, that could very well raise a
16 whole host of PASPA problems.

17 But as a practical matter, who is
18 going to enforce it? PASPA limits -- PASPA
19 confers standing upon the United States
20 Attorney General and the professional
21 sports league. Well, since the sports
22 league are the business partners and
23 supporters of fantasy sports, they are not
24 going to enforce PASPA.

1 So it really is left to the United
2 States government to make that
3 determination as to, one, whether fantasy
4 sports is covered under PASPA; and, two,
5 whether a particular state measure has
6 encroached upon or violates the
7 restrictions contained in PASPA. So that's
8 the similarity that ultimately matters.

9 And I would ask and remind people to
10 take a closer look at that language within
11 PASPA. And the legislative history also
12 makes clear that it does not matter how
13 much skill or chance is involved, that the
14 senate report, which accompanied the
15 passage of PASPA, said plainly that the
16 prohibition of PASPA applies regardless of
17 whether the scheme is based on chance or
18 skill or a combination thereof. So any
19 legislative measure, any regulations that
20 are issued have to bear in mind where the
21 line is under PASPA.

22 COMMISSIONER ZUNIGA: Where is that
23 likely to be tested in your opinion?

24 MR. WALLACH: Not Massachusetts. I

1 think the Massachusetts AG's regulations
2 are probably the perfect model of staying
3 beneath where the line is. States that
4 license -- now, I have seen a couple of
5 bills. California, Washington State -- I
6 don't know for sure about Washington
7 State -- but California and Florida imposed
8 licensing and permit fees as part in parcel
9 of any Daily Fantasy Sports regulation. I
10 believe that the Florida bill and the
11 California bill immediately run a foul of
12 PASPA. You don't even pass go. Those are
13 nonstarters.

14 Massachusetts and Illinois and those
15 states which simply exempt fantasy sports
16 from the definition of gambling or remove
17 it from the ambit of the penal code or the
18 gambling code, those might pass muster.
19 But if you're licensing the activity,
20 forget it. It's a clear violation.

21 The real question though is: Who is
22 going to enforce it? If the leagues are --
23 the sports leagues aren't incentivized to
24 raise a challenge, then you're really left

1 with the United States Attorney General or
2 an implied private right of action and
3 that's a very difficult uphill challenge
4 for any non-specified plaintiff to bring.

5 I mean, and traditionally PASPA can
6 only be enforced by the sports leagues and
7 by the U.S. government. Potentially an
8 outside group could raise an implied
9 private right of action, but that is a very
10 steep hill to climb.

11 But as a state government, if you
12 certainly are looking to air on the side of
13 caution and do things the right way without
14 trip wiring a federal statute, I would be
15 looking more towards regulation and
16 exemption rather than authorizing and
17 licensing.

18 MR. MULLALLY: I think Dan's
19 analysis is very sound, including the point
20 that no court has ruled on this and the
21 issue isn't settled. I think there is a
22 consensus of -- there is a consensus of an
23 analysis among gaming attorneys that is
24 quite similar to Dan's.

1 I think the open question is: Does
2 the game of combining multiple performances
3 create enough of a separation from a
4 traditional sports bet or talking about the
5 outcome of a performance or performances
6 but does the game of assembling multiple
7 performances together and competing against
8 other players and how they put it is it all
9 against -- is the game settled only because
10 of the performance or because I performed
11 better than the other players in putting
12 together my lineup? Does that create
13 enough of a separation to distinguish it
14 from PASPA? And, I think, that is
15 completely unsettled.

16 MR. WALLACH: And that's also the
17 issue in play in New York, by the way, you
18 know, the issue of the separation and what
19 event you actually control or influence. I
20 mean, that's part in parcel of the court
21 case in New York as well as the analysis
22 that Kevin just highlighted.

23 MR. MULLALLY: I mean, I can put
24 together a horrible lineup. But if the

1 nine other people I play against put
2 together a more horrible lineup, I still
3 win, right? But in the end, it's based on
4 a combination of -- my outcome is based on
5 a combination of the outcome of certain
6 performances in sporting events and how the
7 other players that I competed against
8 performed their analysis of how those
9 players might do. It's not based solely on
10 those performances. It's a major factor,
11 but it also depends on how the other people
12 I'm playing against did.

13 COMMISSIONER MACDONALD: If I'm
14 understanding what you're saying accurately
15 that there appears to be a consensus that
16 Daily Fantasy Sports runs a foul of PASPA
17 but that no federal prosecutor, whether the
18 Department of Justice and the U.S.
19 Department of Justice or U.S. attorney has
20 actually taken action to enforce it.

21 MR. WALLACH: There has been no
22 legislation. The rumblings of legislation
23 or an idea of a bill, that's not far along
24 enough in the continuum to raise a bright

1 legal challenge. In fact, to my knowledge,
2 only two states have explicitly weighed in
3 on fantasy sports and that would be
4 Maryland and Kansas.

5 All these other bills are in the
6 pipeline, whether it's New York, Florida,
7 California, Illinois, they're at varying
8 points in the continuum. And until such
9 point in time as there is an enacted law,
10 there is no point of entry for anybody to
11 raise a legal challenge. They're
12 hypothetical laws, not actual laws.

13 MR. MULLALLY: And when I say a
14 consensus, I think a consensus of gaming
15 attorneys, overwhelming consensus, believes
16 that fantasy sports involves the AAA pay of
17 consideration in the chance -- in the hope
18 of winning a prize that involves the
19 outcome of a performance in a sporting
20 event, and that directly triggers an issue
21 in PASPA.

22 Now, whether it runs a foul of PASPA
23 because of the reasons I previously stated
24 because there are other factors that are

1 involved in the game of Daily Fantasy
2 Sports leaves whether PASPA directly
3 applies an open question and it's open
4 because no court in the U.S. Department of
5 Justice, even though asked, has refused to
6 provide any clear answer on it. So, I
7 think, by that definition it is an open
8 question.

9 MS. WELLS: So, we're coming to the
10 end of the time for this panel. Do the
11 Commissioners have any final questions or
12 the panelists have any sort of
13 conclusionary statements?

14 CHAIRMAN CROSBY: I would like to
15 ask, Kevin, you talked about sort of the
16 conceptual structure about how you might
17 compare casinos to casino regulation to DFS
18 and other regulation with your risk-based
19 analysis what the history was and the
20 casinos coming out of the organized crime
21 world and so forth. Casinos are now run by
22 public companies basically.

23 Where do you see in your own sense
24 of a risk-based analysis, does a regulatory

1 environment which is comparable to the
2 casino world make sense for DFS or not and
3 where on the continuum might it fall if it
4 doesn't?

5 MR. MULLALLY: I mean, I think, if
6 you look at what the early stages of what
7 is being proposed, I think, are moving in a
8 direction that makes a lot of sense. I
9 think if you start looking at applying a
10 traditional land-based or internet-based
11 gaming regulatory structure of Daily
12 Fantasy Sports, the industry simply folds
13 under its own weight because it doesn't
14 have the monetary wherewithal to withstand
15 that type of regulatory cost or oversight,
16 nor does it involve an equity interest from
17 state governments, nor does it involve the
18 type of revenue that you would see in a
19 traditional gaming environment, whether it
20 be casino gaming, whether it be lottery.
21 Or, frankly, if you look at the really
22 successful charitable gaming states, it
23 doesn't even rise to that level.

24 So, I think, the things that are

1 being discussed and certainly the
2 regulations that have been put out by the
3 Attorney General here take a good approach
4 in saying that, look, we need some -- this
5 is a high profile activity that has had
6 rapid growth with no supervision. We
7 believe that it needs some consumer
8 protection in areas of game transparency in
9 order of transaction security. That there
10 should be some responsible player
11 requirements.

12 I think those are all very
13 reasonable affordable risk-based
14 protections that can be put in place at a
15 cost that's affordable for the industry.
16 If you start talking about doing background
17 investigations and, you know, into all the
18 not only the operators but the suppliers
19 and the people working in the industry, if
20 you talk about having, you know, on-site
21 inspectors and audits of daily receipts and
22 all the types of things that we see in the
23 gaming environment, I just don't think
24 there's revenue there to support it and I

1 don't think the activity merits it as game.

2 CHAIRMAN CROSBY: Okay, thanks.

3 MS. WELLS: Thank you very much.

4 I'd like to thank our panelists. I think
5 all three of you are coming back on other
6 panels later in the day, so I want to thank
7 you for being here. And I will turn it
8 over to Paul Connelly and the Industry
9 Perspective on DFS Operations. We have
10 folks from Draft Kings and FanDuel.

11 CHAIRMAN CROSBY: Thank you all.

12 That was well done.

13 MR. CONNELLY: Thank you very much
14 again to the previous panel, I think, did
15 an excellent job of setting the stage in
16 defining the context not only of the size,
17 scope and scale of the industry but also,
18 frankly, describing some of the unsettled
19 environment we find ourselves in.

20 And part of that unsettled
21 environment, you know, we have to note
22 anyone who follows the news, there is
23 litigation out there. We have asked Draft
24 Kings and FanDuel to come. They have come

1 and, I promised them I wouldn't get into
2 areas where they are currently in
3 litigation, so I am going to steer clear of
4 those issues as I ask my questions.

5 So we, again, we heard from some
6 very intelligent, deeply, knowledgeable
7 people who comment on this space and we get
8 to hear from the industry themselves now
9 and their representatives.

10 We've had an opportunity to sit down
11 with FanDuel and Draft Kings and other
12 operators, and I have to admit that we have
13 been really impressed with their
14 willingness to share really thoughtful
15 commentary on a number of issues,
16 particularly given all of the issues they
17 are facing right now.

18 I imagine you're, you know, you're
19 sea level executives are probably in five
20 different states right now at similar
21 panels, and I know that there is a plant
22 panel today going on that's touching on a
23 similar topic in another state.

24 And because of that, and also we

1 have gotten great information, we felt it
2 wise to split the panel between Draft Kings
3 and FanDuel so that we can give each of the
4 major operators their own individual time.
5 I won't name names but if we had Jason
6 Robbins here, I think he -- we met with
7 him, and he just was effusive in his
8 knowledge and willingness to share.

9 So we split the panel in two, and
10 I'm going to do my best to work through
11 equally. And you will see the same
12 questions, so if FanDuel can block their
13 ears and pretend they didn't hear any of
14 these ahead of time.

15 So, first, I would like to introduce
16 our panelists. First, someone who needs no
17 introduction to this audience I think
18 Martha Coakley. Former Massachusetts
19 Attorney General Martha Coakley is of
20 counsel in Foley Hoag's Litigation
21 Department. She focuses her practice on
22 government and internal investigations,
23 litigation and data privacy and security.

24 General Coakley has substantial

1 experience in civil and criminal litigation
2 in all state and federal courts, including
3 the U.S. Supreme Court. She has performed
4 extensive grand jury work and defended
5 federal grand juries and has considerable
6 experience conducting complex
7 investigations.

8 As the first female Attorney General
9 of Massachusetts, General Coakley was a
10 national leader in addressing the economic
11 crisis by holding banks accountable and
12 keeping residents in their home, protected
13 civil rights as the first Attorney General
14 to successfully challenge the Defense of
15 Marriage Act, investigated fraud and
16 corruption, championed major initiatives to
17 address health care and energy costs and
18 recovered hundreds of millions of dollars
19 for the taxpayers of the Commonwealth.

20 She served as Attorney General from
21 2007 to 2015 and now Draft Kings is
22 fortunate to benefit from her wise counsel
23 and experience. Welcome, General Coakley.

24 GENERAL COAKLEY: Thank you very

1 much, Paul.

2 MR. CONNELLY: Zakary Cutler, Zakary
3 Cutler is the Director of Product
4 Management for Draft Kings. Zakary joined
5 Draft Kings a year ago in February of 2015.

6 In his role as Director of Product
7 Management, Zakary is responsible for
8 prioritizing and executing the product
9 roadmap for internal expansion, payments,
10 fraud, backened tools and various
11 compliance initiatives for Draft Kings, all
12 things we want to hear a lot about.

13 Zakary's primary responsibility is
14 to work between the executive stakeholders
15 to build out a product roadmap, to
16 communicate the product roadmap to various
17 engineering teams to ensure they are all
18 working on the company's highest priority
19 initiatives and to ensure that engineering
20 has all the business requirements to
21 execute company initiatives.

22 Welcome, Zak.

23 MR. CUTLER: Thank you.

24 MR. CONNELLY: So one of the things

1 instead of jumping into a set of questions,
2 I thought it was prudent to give you an
3 opportunity to give a brief opening
4 statement of sorts, kind of maybe talk
5 through the origin story, so to speak, of
6 Draft Kings, talk about some of the
7 challenges you faced as a company
8 throughout growth and also your perspective
9 on the current environment.

10 MR. CUTLER: Sure. So, Draft Kings
11 was founded in 2011 by former Massachusetts
12 natives that were members of Vista Print
13 with a heavy focus in analytics. At that
14 time, we were really like any other
15 startup. We were just trying to prove out
16 our business model, see if our product was
17 something that players wanted and would
18 monetize.

19 Now, from a product standpoint at
20 that time, we actually had a lot of the
21 same concerns and, you know, constraints
22 that we have right now. We were at a much
23 lower volume of players. So a lot of the
24 things like consumer protection, where

1 people were, how old they were, we were
2 doing all those things. That was a concern
3 of ours. It was just being done in a more
4 manual process back then.

5 You know, as time went by, we have
6 grown about, you know, tenfold. We have a
7 lot more customers now. And as a result,
8 technology has caught up as well. The
9 challenges that we were facing then, they
10 have gotten bigger but technology has
11 caught up.

12 And, so, now we are in a position
13 where everything we were doing manually
14 before, we are now in a position where
15 we're automating that. And that's sort of
16 the focus of my remnant right now as far as
17 the product roadmap is concerned.

18 We've contracted many different
19 companies, Geo Comply. They are licensed
20 in Nevada and New Jersey that have now done
21 this over the last two years. And all
22 those things are starting to come together
23 to build our consumer protection and all of
24 our security policies.

1 GENERAL COAKLEY: And, Paul, if I
2 could just, first of all, thank you to the
3 Chair and to the Commission for not just
4 today but for taking the time you have to
5 understand what this industry is about.
6 It's important, I think, as you understand
7 to get this as right as we can.

8 I know my experience was it's hard
9 to regulate things you don't understand and
10 we have seen that in sometimes in this case
11 and in other areas, so I really appreciate
12 your efforts to do this.

13 I first met with Draft Kings back in
14 August and I was impressed by their good
15 idea, their implementation of that idea but
16 also said, you know, from my background as
17 a consumer regulator, you are going to get
18 questions and concerns around advertising
19 perhaps or whether or not you're
20 transparent enough and that is the function
21 that I have served in working with them to
22 make sure they are doing what, I believe,
23 they want to do, which is to cooperate as
24 they have with Attorneys Generals around

1 the country, taking the initiative in many
2 instances to meet with regulators and
3 explain this is our business model, explain
4 your concerns.

5 We are willing to work with you now,
6 and we are willing to work with you as we
7 go forward on this. And to, as we have
8 done with legislatures and others, be as
9 transparent and address those risks, the
10 kinds of risks that Kevin spoke about
11 earlier on the panel, for instance, to make
12 sure that as states go forward to see how
13 do we make these consumers safe, that we
14 are cooperative and that we are
15 transparent.

16 And I will say this. It seems
17 pretty clear to me that their business
18 model will not succeed unless they are
19 transparent, they treat their players
20 fairly because all of the players of this
21 game, many of whom play for the fun of the
22 game, and I believe will not engage in this
23 if they do not feel the company is being
24 fair and transparent with them.

1 MR. CONNELLY: So, I guess, to pick
2 right up on that central topic
3 transparency, how do you ensure that there
4 is transparency, that there is a level
5 playing field that, for example, tools are
6 available equally to all players?

7 MR. CUTLER: Sure. So all the data
8 that exists about players' statistics and
9 things that are available, they are
10 available to all players. Now, we do
11 recognize that beginning players it takes
12 time to grow your skills. We find that the
13 longer a player is with us the better they
14 tend to do as they get better and learn
15 more about the game.

16 As a precaution, we have beginner
17 only contests where if you played a certain
18 number of matches or greater you can't
19 enter those contests. So, we really give
20 players a chance to play amongst people at
21 a similar skill level and, you know, hone
22 their skills until they feel ready to play
23 in different matches.

24 MR. CONNELLY: Take a brief step

1 back because I do want to --

2 CHAIRMAN CROSBY: Excuse me, can I
3 interrupt? Are you ready for a question?

4 MR. CONNELLY: Of course.

5 CHAIRMAN CROSBY: That was a pretty
6 limited response to the question of
7 transparency. There are a whole lot of
8 different aspects to it. And I wonder if
9 you could talk about are there other
10 dimensions of the operation and of the
11 whole -- is it a whole continuum of the
12 transaction where you either are taking
13 steps or think you should or should not
14 take steps about transparency?

15 MR. CUTLER: When you say
16 transparency, you know, I interpreted that
17 as sort of from a skill perspective. If
18 you can be specific what would --

19 CHAIRMAN CROSBY: How odds are
20 calculated, how values are assigned to
21 players, you know. There's a whole range
22 of issues along the way. What happens to
23 your money why you're waiting for the
24 decisions to be made, who you are playing

1 against, you know, et cetera.

2 MR. CUTLER: Sure. So, when you're
3 drafting a lineup, you have -- there are
4 statistics in the actual screen. When you
5 open up the product, you can see all the
6 various statistics about a player.
7 Everybody playing our game has access to
8 that. Everybody starts with the same
9 salary cap, and they use that salary cap as
10 they may.

11 They select a certain amount of
12 players. Everyone starts out with the same
13 amount of money, the same amount of
14 information. And, you know, from that
15 point, we try to give all of our players
16 all that information.

17 There is various third-party
18 sources. If you go on the internet, you
19 can see tons of -- you know, there is now a
20 ton of content around this that's become
21 quite popular that players have access to
22 and they use that. And, you know, from our
23 standpoint, that definitely helps even the
24 playing field.

1 The same thing with season long when
2 you go to RotoGrinders and things like that
3 where you're seeing -- you're checking
4 player injuries. You're checking all the
5 statistics on players. And, you know, from
6 my perspective as a product guy, all that
7 stuff is available to our players. And
8 whoever chooses to use it, you know, that's
9 how I view transparency for our product.

10 GENERAL COAKLEY: There's also a set
11 game winning, for instance. There is a set
12 for each game, and that's one of the
13 differences that I know the earlier panel
14 talked about. It's not playing against
15 other players for that amount to raise the
16 pool. It's not playing against the house.

17 And in some instances, you know, the
18 entry fees for a particular game don't rise
19 to the level of that and the company takes
20 that into account but that is one
21 difference. But players know what is the
22 game level or the money that is available
23 for this contest.

24 MR. CUTLER: Another thing when

1 you're entering a contest you can see how
2 many people are going to be in the contest,
3 how much the entry fee is, how much the
4 prize bowl is going to be, when it's going
5 to be paid out, how long the contest lasts
6 for. So, you know, we are fully
7 transparent as to all aspects of all of our
8 contests and every player has access to
9 that information.

10 MR. CONNELLY: Do you have a sense
11 of how much people are using the data you
12 make available?

13 MR. CUTLER: Yes. I think that kind
14 of goes back to beginning players. When
15 you enter any new product or you play any
16 new game, you have sort of -- the first
17 time you play you are probably not going to
18 be as good as someone who has been there
19 for a while and sort of knows where
20 everything is.

21 And, I think, right now we're
22 building things to help getting players
23 make that information probably more visible
24 than it might have been early on as we

1 recognize that our volumes have grown so
2 much and there are a large pool of
3 beginning players that, you know, we want
4 to get up to speed on where to find certain
5 things, what that symbol means that a
6 player is injured, that type of stuff. So
7 of course people that have been here longer
8 are going to understand that better. But
9 we are working to try to solve those
10 problems now.

11 GENERAL COAKLEY: And if I could
12 just add, Paul, I know Jason Robbins talks
13 about the engagement of the players of this
14 game. He will get e-mails from people who
15 are unhappy because they didn't know
16 something and they have a complaint. And
17 one of the models, I think, that they've
18 adopted as they are based in Boston and as
19 they have grown their team, it is that
20 customer satisfaction model. That they are
21 very responsive to their players in terms
22 of changes they make, additional
23 transparency. And, I think, that's one of
24 the things that made them popular.

1 CHAIRMAN CROSBY: It's a great
2 feedback loop for transparency if you're
3 willing to follow the lead. That's great.
4 I agree with you.

5 COMMISSIONER ZUNIGA: I just have
6 one question, and I know we may not want to
7 get too technical this early. But how is
8 the value of players determined? You
9 mentioned the salary cap.

10 MR. CUTLER: Yes. So, I'm
11 definitely not the right person to answer
12 that question. We hire people who are a
13 lot smarter than I am to come up with, you
14 know, from MIT. We have some unbelievably
15 smart people. We have an analytics team.
16 We have a contest management team, a
17 contest operations team and those guys will
18 determine the actual salary numbers. That
19 is not under my remit.

20 COMMISSIONER ZUNIGA: Is it fair to
21 say that there's models and statistical
22 analysis and what have you that may have a
23 lot of inputs into the model to come up
24 with that?

1 MR. CUTLER: Yes, I think that's
2 fair to say. But I truly don't understand
3 the nuts and bolts of how that comes
4 together.

5 COMMISSIONER ZUNIGA: And that's
6 different from perhaps your competitor; in
7 other words, there's no standards, if you
8 will, there's no industry --

9 MR. CUTLER: I don't know how
10 FanDuel calculates their salaries.

11 MR. CONNELLY: Is it fair to say,
12 correct me if I am wrong but I understand,
13 is there some kind of like an auction style
14 where there are experts who kind of work
15 with each other to set relative values
16 based upon the information they have within
17 the team?

18 MR. CUTLER: I don't know. I'm
19 sorry.

20 CHAIRMAN CROSBY: I agree with
21 Commissioner Zuniga. That's an area -- how
22 much is a completed pass worth? What does
23 that get you? What's the player worth?
24 And if you don't know what those valuations

1 are or they are done in a black box
2 somewhere, there's clearly a place where
3 there's room for funny business.

4 If you undervalue somebody that you
5 know is going to be pretty good or
6 overvalue somebody who is not or whatever,
7 there is a lot of ways to play games in
8 that structure.

9 MR. CONNELLY: And just to clarify
10 because I think that's a point we brought
11 up before, there's really two aspects to
12 it. One, there is the scoring, right, so
13 you and I play head-to-head. We each have
14 a roster of, you know, same kind of lineup.
15 How are those scored versus how when we go
16 into basically purchase a team, purchase
17 players, those valuations versus scoring,
18 if you can differentiate between the two.
19 And granted you said you don't have full
20 visibility on the valuation piece. If you
21 can speak as much as you can about the two
22 and how they relate.

23 MR. CUTLER: Yes. So, scoring is
24 always consistent, right, certain amount of

1 points for a touchdown, for a pass, things
2 like that. It's no different than in
3 season long how, you know, every league
4 is -- the difference is we set a standard
5 throughout the site whereas in season long
6 they set it per league. The commissioner
7 will go and say, okay, a pass is worth two
8 points. A touchdown is worth six. For us
9 it never changes. It's always the same.

10 The salaries, again, they are what
11 they are. They are the same for everybody
12 else, and everyone starts with the same
13 salary caps. So, you know, they utilize
14 their salary cap and they try to pick the
15 best people. All the scoring is right in
16 front of them, you know, a catch is worth
17 this, a touchdown is worth this. And as a
18 result, people are trying to pick players
19 that fit the scoring as best as they can.

20 GENERAL COAKLEY: But we're also
21 happy to supply the information that you're
22 looking for. Among the two of us, we don't
23 have that expertise. I can guarantee you
24 the team at Draft Kings has that, and we

1 are happy on that and other things to
2 provide that to you.

3 COMMISSIONER ZUNIGA: Thank you.
4 And I realize that this could be at the
5 center of propriety information, so I know
6 we need to be delicate about that. But I
7 just wanted a general explanation, and I
8 think you did that.

9 GENERAL COAKLEY: No, that's fair.

10 COMMISSIONER STEBBINS: Paul, I have
11 two questions. One, I had an original
12 question I want to add. But this
13 conversation of the player ratings, there's
14 going to be a population of other bloggers'
15 websites, everybody else that is offering
16 up their own statistical analysis on top of
17 what you and FanDuel's offer.

18 Do you get a sense of how much your
19 players kind of look to those other
20 resources instead of just relying on the
21 information you're sharing?

22 MR. CUTLER: I don't know the exact
23 numbers behind it. I do know that you can
24 go to those sites and what they will do is

1 they'll say, oh, optimize your lineup for
2 Draft Kings, optimize your lineup for
3 FanDuel. Given that our salary information
4 is all public, anyone who works at those
5 companies, they can go to our site and they
6 can see what they see and they say, okay,
7 we think that based on Draft King's scoring
8 this is an optimal lineup. Now, those are
9 third parties that they are just websites,
10 basically blogs.

11 COMMISSIONER STEBBINS: They have no
12 risk.

13 MR. CUTLER: Yes. So, they operate
14 and they give advice and people can use it
15 or not. You know, I think that those sites
16 can be helpful but they have an algorithm
17 that they probably use to come up with this
18 data, and it's up to the public whether or
19 not they want to use those.

20 COMMISSIONER STEBBINS: My original
21 question was going back to something you
22 talked about at the beginning saying a lot
23 of the things you wanted to do as a company
24 in your case. It was nice to see

1 technology kind of catch up with those
2 things, so you moved away from some things
3 you previously did manually.

4 If you look back to kind of where
5 all the interest in Daily Fantasy Sports
6 took off, kind of this hockey stick
7 projection, can you share with us some of
8 the things that since that point in time
9 that the company has tried to do to keep up
10 either, you know, with consumer protection
11 efforts or, you know, how -- what changes
12 have happened say since let's go back to
13 spring training of this year. That's when
14 Daily Fantasy Sports, I think, kind of
15 caught a majority of the country's
16 interest.

17 MR. CUTLER: Sure. So, we have now
18 engaged companies -- there's a company
19 called GeoComply that has state-of-the-art
20 location services. We always were able to
21 tell through -- we had IP banning. We had
22 player address, and we would get fraud
23 alerts when we got any suspicion that
24 somebody was in a state that might not have

1 been, you know, appropriate.

2 So now what happens is we have a
3 company called GeoComply and we have a ton
4 of data in real-time at our disposal from
5 your mobile phone and, you know, they
6 basically have been licensed by Nevada, New
7 Jersey where they're state-of-the-art.

8 And what they do is they allow us to
9 pinpoint where you are and we know that if
10 a person is in a banned jurisdiction such
11 as Nevada, for example, we now will not let
12 that person deposit or enter a contest and
13 that all happens right away.

14 From an age verification standpoint,
15 what we are doing now is -- before we would
16 collect date of birth and we verify through
17 third parties with your address and your
18 credit card information in real-time. But
19 now as soon as you sign up, you're required
20 in real-time before even depositing to
21 enter all this information.

22 And in the background, we run a
23 check to a third party that's approved to
24 check for age and identity verification.

1 And if anything doesn't match up, our fraud
2 teams get an alert and they immediately ban
3 the accounts.

4 When we were a smaller company, it
5 was easier to do this more manually and
6 retroactively. But now, you know, with
7 such high volumes, we do this earlier in
8 the process right at the front door before
9 deposit. Now it's right at registration.

10 COMMISSIONER STEBBINS: Okay, thank
11 you.

12 COMMISSIONER MACDONALD: I wanted to
13 ask a question that draws on what I took
14 from the last panel and that is sort of a
15 summary as to what unites the common
16 elements of a Daily Fantasy Sports game
17 and, I believe, that there were three
18 elements as the panel was talking.

19 One -- first element is the payment
20 of a fee, an entry fee, a payment for
21 consideration for participating in the
22 game. The second is it's done with the
23 hope of winning, of getting a return on
24 that. And the third element is that

1 whether one wins is dependent on the
2 outcome of a sporting contest.

3 Would you agree that Draft Kings
4 games are ones that have as its essence
5 those three elements?

6 GENERAL COAKLEY: Commissioner
7 MacDonald, with all due respect, I think
8 certainly the first thing is true, that
9 people play -- pay an entry fee to play and
10 many people do that I think to play.

11 The other two elements, I think, are
12 the subject of a lot of the discussion
13 right now in litigation ongoing in New
14 York, for instance, and in other forum. So
15 I don't think it's our job today to address
16 that. We certainly have another forum and
17 will continue to do that.

18 We firmly believe that this is a
19 game of skill that is legal in
20 Massachusetts and that is and should be
21 subject to reasonable regulation, part of
22 which I talked about earlier I think
23 working on the consumer end particularly.
24 But it would be our preference today not to

1 get into the discussion on those other two
2 points.

3 COMMISSIONER MACDONALD: So you're
4 saying that as far as elements two and
5 three that you really can't address that
6 today because of the fact that this is very
7 much in the litigation forum in various
8 jurisdictions.

9 GENERAL COAKLEY: Yes. And, I
10 think, those factual determinations and
11 much of it is done state by state as the
12 former panel indicated both because of
13 legislation that has already happened in
14 those states and some because the standards
15 by which those things are determined
16 relative to the status of Daily Fantasy
17 Sports depends upon case law. It depends
18 upon courts and judges.

19 So it is a new game, and I think our
20 goal here today is to really ask this panel
21 to consider that it is in some ways a very
22 high-tech consumer product we haven't seen
23 before. And, although, there are aspects
24 as everybody knows that if you -- like the

1 blind man with the elephant. If you pull
2 the tail, you have a different description
3 of the thing than if you look at something
4 else.

5 This is a business, a game and,
6 frankly, is in our disruptive knowledge
7 economy I think is a good indication of
8 where the interest of the founders here to
9 use their skills and interest and their
10 passion frankly for this game engage
11 players in a way while providing consumer
12 product safety is an excellent addition to
13 the Massachusetts economy.

14 And we have and will, you know,
15 fight the legal battles that we need to
16 fight. But our goal here today is to make
17 sure that you understand what that business
18 model is.

19 MR. CONNELLY: Excellent. And I
20 think to pick up on that point, it
21 obviously is a new disruptive some would
22 say business model. And, General Coakley,
23 in your opening remarks, you had said
24 number of areas where you gave counsel to

1 Draft Kings when you came on to work with
2 them in terms of things to look at.

3 I am curious about that overtime how
4 the company's risk model has evolved, what
5 issues has it faced early on and what it's
6 looking at now. I think it's fair to say
7 as we've gone around asking people and
8 talking to people about this topic and
9 trying to get at the heart of the issues as
10 we prepare the white paper for the
11 legislature, some say, well, these
12 companies obviously didn't care about
13 compliance, didn't care about know your
14 customer rules until it was forced on them.

15 You gave a slightly different
16 response up front. And I would like you to
17 elaborate on that kind of within the
18 context of the growth of the company, when
19 did you start thinking about these things
20 and where are you now.

21 MR. CUTLER: I think from the
22 beginning it's fair to say that we never
23 wanted underage players on our site. We
24 knew that there were certain states that we

1 were prohibited from operating in. And we
2 always made sure that we had all the data.
3 We had fraud alerts in place that
4 alerted -- we had a fraud team of 12
5 people. That team has grown since then.
6 Probably actually, no, in the beginning it
7 was about three to four. It's grown
8 tremendously since then.

9 Those people were working to ensure,
10 you know, that no underage players got on
11 the site. They work to make sure that
12 multi-accounting, for example, people
13 creating multiple accounts, they had built
14 tools to ensure that they would be alerted
15 if somebody with the same e-mail tried to
16 create an account.

17 But if somebody tried to sign up
18 with similar information or a similar
19 device, we would be alerted. They'd get
20 those alerts, and they would act on those
21 accounts. We were doing this to protect
22 the safety and the integrity of the game
23 and our company.

24 Now, that was done early on by a

1 small number of fraud analysts. Now what I
2 am trying to say is that as we've grown
3 tremendously, we are building out
4 technology panels, real-time alerting
5 systems that are much more robust than they
6 were back then.

7 So, I think we've also had a focus.
8 I just think that now it's we just have so
9 many more players on the site. It would be
10 very difficult to do it the way we did it
11 back then. And one other thing to that,
12 we've even recently added something called
13 KBA, which is knowledge-based
14 authentication.

15 And it's similar when you try to
16 sign up for online banking where they say
17 what was your first car, what street did
18 you live on and those types of questions.
19 And that is even a requirement now for
20 certain aspects of our withdrawal process
21 so, you know, where that might not have
22 been before. We're really just beefing
23 that up as volume has increased.

24 MR. CONNELLY: Obviously you thought

1 of this or you say you have been thinking
2 about this for a long time, manual
3 processes where individuals intervene to a
4 model where there's really, you know, as my
5 words not yours, you're kind of leveraging
6 the big data at your disposal to identify
7 and address these issues.

8 So given that and given your ability
9 to self-identify, how do you respond to
10 comments about need for regulation and what
11 do you think makes sense in that regard?

12 MR. CUTLER: I think we are very
13 open to it. If you look at what has
14 happened here in Massachusetts, those
15 regulations are in line of what we are
16 doing or what we really expect to do. I
17 mean, we should really be no different than
18 an online bank or any other, other -- any
19 other site that, you know, holds player
20 funds and that has sensitive data.

21 I think that all of the things are
22 very reasonable. You know, I think we
23 welcome it. I think that the key thing is
24 just making sure that there is enough

1 education that people understand our
2 business and do it in a way that's
3 commercially viable for us, and that's
4 technically reasonable.

5 I think those are really the two key
6 things. And, I think, that Massachusetts
7 has definitely done that and, you know, I
8 don't think we're against it at all.

9 MR. CONNELLY: Do you have a -- you
10 know, you defined the bounds of the
11 existing regulations that the Attorney
12 General put forward as reasonable. Is
13 there anything else you think that is left
14 out there to be addressed?

15 MR. CUTLER: That's a good question.
16 The regulations that she has put forth are
17 pretty thorough. You know, they deal with
18 age. They deal with skill. They deal with
19 location. At this time, it's tough for me
20 to think of anything that they left out.

21 GENERAL COAKLEY: And, I think, as,
22 you know, the business grows or changes or
23 there is other competitors in the market,
24 we're certainly willing to look at that

1 also. But one of the things raised by the
2 earlier panel I know that is of interest to
3 AG's in general and to this panel is the
4 compulsive behavior issue. That is
5 something that they are aware of and have
6 addressed. We will continue to do that.
7 But, I think, it's important to keep track
8 of what those risks are.

9 I think those risks are different in
10 this game than they might be in a
11 brick-and-mortar casino or a slot machine
12 or even for people who are compulsive
13 shoppers at Amazon dot com. I mean,
14 there's a lot of compulsive behavior that
15 we deal with and alcohol and drugs and in
16 shopping.

17 And so as a business, they are going
18 to be aware of that. And as complaints
19 come to them or to any regulators, they
20 will, I think, be very responsive to having
21 ways to deal with customer complaints at
22 the site early before they go larger. And
23 I am sure that on customers who are unhappy
24 will not be shy about going to regulators

1 with those complaints, and we will work
2 with them to resolve them.

3 MR. CONNELLY: So we do plan on
4 starting the next panel to speak directly
5 and get some perspective on compulsive
6 behaviors and some of the issues that have
7 been identified.

8 Can you speak to -- you know, you
9 agree there's mutual concern there. Can
10 you speak to what Draft Kings is doing
11 about that?

12 MR. CUTLER: Sure. So just like any
13 gaming company, even if it was X-Box Live
14 or Playstation where people can go and play
15 online, there are going to be kids that
16 stay up all night and play. There are
17 going to be people that just, you know,
18 they might have some type of an issue with
19 control over these things. And this kind
20 of goes back to what I was saying earlier
21 from a manual standpoint.

22 Early on we always had an option for
23 users to reach out to customer service and
24 say I want to ban my account. I want to

1 close my account or I want to decrease my
2 deposit limits and they would reach out to
3 customer service and we would facilitate
4 that.

5 But, again, in the nature of
6 scaling, what we're specifically doing
7 now -- we are already live on the site
8 today in the U.S. We have something called
9 self-exclusion, responsible gaming section
10 of our site where we will say something --
11 where it basically informs the user, look,
12 if you'd like to take a break, you can
13 literally do this automated.

14 They don't have to reach out to
15 customer service. They can select a time
16 frame that they would like to self-exclude
17 for. They enter their password and they
18 hit submit and they are excluded from that
19 time frame.

20 You know, in addition to that, we
21 are working on doing the same thing with
22 player limits so they can decrease their
23 limits in real-time as well. So, I think,
24 that, you know, we are doing a lot in that.

1 We're open to doing a lot.

2 Another thing we've added is
3 parental controls on the site. So if you
4 are an adult, you might have, you know,
5 share a computer with somebody in your
6 house that you don't want playing and you
7 can actually -- we have resources and links
8 to how to set that up properly so you can
9 protect, you know, them from accessing our
10 product.

11 GENERAL COAKLEY: And of course that
12 company does not extend credit. It is not
13 part of the business model to extend any
14 credit.

15 COMMISSIONER ZUNIGA: Could you just
16 talk briefly about multiple entries as part
17 of the business model and the risk model?

18 MR. CUTLER: Sure. So users, I
19 think, we capped the multiple entries at I
20 forget the -- I don't want to quote. I'm
21 happy to get that to you. But, yes, we
22 recognize that we don't want a certain
23 percentage of entries coming from a certain
24 user, so that's capped. And even if you

1 look at the Mass. regs., I think it's three
2 percent if a contest is over 100.

3 So we already have that technology
4 in place, and it's just a matter of what
5 people -- we were already doing it before.
6 It's a matter of adjusting it to what's
7 come out in the public.

8 COMMISSIONER ZUNIGA: Thank you.

9 GENERAL COAKLEY: And, Commissioner,
10 were you also asking about they have the
11 know your player technology so that someone
12 can't play under different names or
13 different accounts also.

14 COMMISSIONER ZUNIGA: Yes, that's an
15 excellent point, yes.

16 MR. CUTLER: So, that's actually a
17 tool that we can check if someone is
18 playing from the same IP. We can check if
19 somebody is playing from the same device.
20 We can check if somebody is, like I said,
21 they might have entered -- during the
22 registration process, maybe they entered
23 the same e-mail address or a variation of
24 that e-mail address. We can get alerted on

1 that as well. So we have a lot at our
2 disposal to detect multi-accounting.

3 Another thing we do when during the
4 withdrawal process, we review player
5 activities. So, remember, everything is
6 logged, you know. It's not like walking
7 into a store where you don't really know
8 what someone is doing in the
9 brick-and-mortar store.

10 Every action on the site is logged.
11 We know what time it happened. We know who
12 did it. And during the withdrawal process,
13 we can see, even in heads-up matches, we
14 can say okay, you know, were these lineups
15 do they actually fill the salary, were
16 these soft lineups and things like that.

17 So we have a lot of data that can
18 tell us pretty accurately and very quickly
19 almost in real-time if someone is trying to
20 create multiple accounts or if there is any
21 suspicious behavior on the site.

22 COMMISSIONER ZUNIGA: And you keep
23 all that data, right, in case there is a
24 need to go back and review a contest

1 dealing with a customer complaint or
2 whatever.

3 MR. CUTLER: Yes. And we collect it
4 and we store it securely, so we do both of
5 those things.

6 MR. CONNELLY: That extensive
7 knowledge of player data and activity, does
8 that extend internally to internal people
9 who work at Draft Kings and their access
10 and use of systems?

11 MR. CUTLER: So one of the things we
12 have done is -- so obviously we have
13 external protections that we just talked
14 about with player limits and things like
15 that. Another thing we have is internal
16 protections as well.

17 So what we do is there's various
18 administrative tools where there's
19 different views of a player. So you have a
20 very general view for some of our more
21 entry level customer service
22 representatives. And then there is certain
23 data that you really can't get to. It's
24 encrypted. Maybe one or two people have

1 access to in the event we have to pull it,
2 typically a C level or a founder.

3 Basically it's a permission-based
4 system, right, and there's a check and a
5 balance there. So even giving out those
6 permissions is audited. Everything that a
7 customer service representative does to a
8 player's account, there is an audit trail
9 in there as well, so everything is tracked
10 pretty closely.

11 MR. CONNELLY: And you can go back
12 and do a forensic analysis either
13 externally or internally to see, you know,
14 if you identified me as a bad actor, as a
15 player you could trace all of my
16 information from the inception of the
17 account.

18 MR. CUTLER: From the day you signed
19 up, yes.

20 MR. CONNELLY: Obviously, there's a
21 lot of issues that you've had to deal with
22 in terms of know your customer, potential
23 liabilities. You received a lot of
24 funding, you know, from number of sources.

1 As those funding sources did their
2 due diligence, was there anything through
3 those processes that changed the way that
4 Draft Kings did business?

5 MR. CUTLER: You know, our CFO sort
6 of has that up mainly and it's a small
7 group of people that, you know, that are
8 part of the fundraising process. I do know
9 that, you know, those are questions that
10 KYC questions, you know, how we're
11 protecting players. I know that those are
12 always questions that were asked.

13 Because, remember, producing those
14 data points, the points I talked about
15 earlier, those are points, you know, that
16 we had to put together as part of the
17 funding process. But I can't speak, you
18 know, in too much detail because I'm not in
19 those conversations.

20 MR. CONNELLY: So, I think we have a
21 couple of minutes left on the panel and I
22 wanted to take a bit of a forward look, if
23 we could. Two questions kind of in the
24 same question. It was brought up on the

1 previous panel about the concept of
2 lounges. There's a Draft King's lounge,
3 for example, at Gillette Stadium.

4 One, how do you see the integration
5 with existing kind of brick-and-mortar
6 environments; and, two, generally, where do
7 you see the future evolution of the product
8 and the company?

9 MR. CUTLER: Sure. I think the
10 thing that makes our product fun is it's
11 really engaging, right, so people set their
12 lineups and the thing they love to do is
13 consume the media that drives that, which
14 is the sports game. So of course these
15 people love sports, and I think anything we
16 can do that ties them to the sports venue
17 is going to help players and help us.

18 So, I think, I definitely -- to your
19 point as far as where we are heading, I
20 think, I think it's more of them, more
21 experiences for our players that make
22 things more engaging for them.

23 I think as we move into the future
24 it's just really -- right now we've

1 acquired a lot of customers and we're
2 beefing up all of our security and our
3 policies. And then I think, you know, we
4 still want to focus -- compliance is always
5 not fun for the customer, right. In fact,
6 it's something that, you know, they want
7 more features. They want more fun stuff on
8 the site.

9 So, I think, once we have an idea
10 of, you know, once all the regulations and
11 everything is buttoned up and we know
12 exactly what we need to do to be compliant,
13 I think that we can then start focusing
14 again on what makes this a really fun
15 experience for customers, and we have a
16 whole lot of things that we want to do and
17 we will get to those I think after that
18 point.

19 COMMISSIONER CAMERON: Speaking to
20 that, keeping it fun and exciting, it makes
21 me think of a younger person. We didn't
22 speak about that. Could you tell me your
23 demographics on age of players as well as
24 gender?

1 GENERAL COAKLEY: Younger than all
2 of us except for Zak here.

3 MR. CUTLER: So, I think, it skews
4 towards a younger male more in his 30s.
5 That sort of bulk of it, 20s and 30s, you
6 know, that like sports. And, you know, we
7 have over -- now we have, you know, over
8 5 million users. And we do have people
9 from all genders and ages but, yes,
10 primarily young males in 20s and 30s.

11 GENERAL COAKLEY: And, I think, that
12 speaks to the social media engagement that
13 not being a digital native myself and
14 understanding that this is how this
15 generation has grown up and shops and meets
16 spouses and plays games.

17 We did in meeting with legislators
18 in Massachusetts find there were people who
19 played with their father, who played with
20 their college classmates who were able to
21 use this game in the social media way with
22 their own games.

23 You have the ability to do that with
24 people you know and through this mechanism

1 can set up that as a way to stay in touch
2 with family and friends. And, I think, the
3 popularity of it is for that demographic
4 just because of the nature of it is now a
5 game that's available on the media they are
6 most used to engaging in sports.

7 And, frankly, for many people who
8 maybe played sports in high school or who
9 didn't, as Jason Robbins will say, this is
10 an opportunity for sports players or for
11 sports fans engagement in a way that they
12 haven't had before. And it just speaks, I
13 think, to the idea and the passion that the
14 finders of this company had and its
15 popularity.

16 I know from seeing what they have
17 done that unless they are transparent and
18 are able to answer not only your questions
19 and AG's question and comply with that they
20 will not be a successful business model.

21 COMMISSIONER STEBBINS: Going back
22 to player information. A lot of the
23 information you're obviously relying on
24 isn't yours. It's coming from a second

1 party source, third party source. It's
2 game time decisions on whether somebody is
3 going to play or not. How do you either --
4 is all of that information rolled into what
5 you're sharing about the players or is
6 there some type of protection or disclaimer
7 to say to the user, to the player, hey,
8 subject to a game time decision, we don't
9 know if Tom Brady is going to start? I
10 mean, how does a player figure out that
11 type of information? It's not your source
12 of information. You're relying on it
13 coming from another source.

14 MR. CUTLER: Sure. So, all the
15 player statuses, I think, there are
16 various, you know, there is probables.
17 There is things like that. Just like you
18 see -- I think a lot of people have seen
19 ESPN sites that have been around over the
20 last 15, 20 years where you have an
21 indicator symbol as to what the status of
22 the player is. And, again, back to level
23 playing field, everyone has that same
24 amount of information.

1 So it says right there when you
2 click on player here is the latest report,
3 here's the latest injury status. You can
4 even see it from a symbol too. But when
5 you click on it, you can see all the
6 details and it's pretty obvious and very
7 evident when you look at it on the site
8 what these indicators are and what they
9 mean.

10 And when you're selecting your
11 player, you have to see it because you
12 literally have to look at the player's
13 name, add them and you see the information
14 on that player. So that's sort of how we
15 manage it and --

16 COMMISSIONER STEBBINS: So your
17 internal team is not only following looking
18 at stats from previous contests, stats from
19 previous weeks, you're also relying on
20 information coming from the sports teams
21 themselves as to somebody's status.

22 MR. CUTLER: Yes, on the contest
23 management side. I believe it's a feed
24 that, you know, populates automatically.

1 There's not a lot of manual processes that
2 have to take place. I think it's called --
3 there's a third party -- I forget the
4 name -- that feeds this information into
5 us, and we can update it in real-time.

6 COMMISSIONER STEBBINS: Thank you.

7 MR. CONNELLY: So we're just at the
8 end of our panel and Zakary's phone is
9 going crazy. But, Commissioner MacDonald,
10 I saw you were trying to get a question in
11 a minute ago.

12 COMMISSIONER MACDONALD: Yes, just
13 one final question and it has to do with
14 industry priorities for the future. At the
15 last panel there was some reference to the
16 origin of gambling laws and reference to
17 organized crime. My thought was that
18 that's got things backwards or at least
19 it's not in the right order.

20 Gambling laws in my view likely have
21 their origin in a prevailing moral sense at
22 the time and widely shared perhaps with the
23 exception of Nevada that gambling --
24 gambling is generally illegal and that

1 organized crime is connected to gambling by
2 virtue of that fact. That it was illegal.
3 It was enforced by the criminal laws, and
4 yet there was a market that people that
5 wanted to gamble.

6 So organized crime is a function of
7 the illegality which raises the question as
8 to whether the prevailing moral sense, you
9 know, of the Commonwealth and of other
10 states and nationally has shifted in a
11 fundamental way about this kind of activity
12 and that whereas when the Puritans were
13 here and their successors making money on
14 the basis of wagering on fatuitous events
15 was seen as immoral, a strong argument
16 could be made that there's certainly not
17 that consensus right now and perhaps the
18 function of the popularity of your games is
19 a reflection or a reflection of that.

20 My question is: Is there a strategy
21 being implemented by Draft Kings now to
22 address the legislative framework so that
23 the new moral compass, if you will, could
24 be expressed in legislation that would no

1 longer make illegal that which you are
2 involved with?

3 GENERAL COAKLEY: If I may, I may
4 answer it this way, I guess. For a long
5 time of course we had no legalized gambling
6 in Massachusetts or gaming. I happened to
7 be the Attorney General when this
8 legislation was passed. It was passed, I
9 think, with popular approval perhaps as a
10 result of changing views of this but also
11 with the idea that the focus had to be on
12 making sure that it would not be
13 infiltrated by criminal elements.

14 In fact, I remember specifically
15 saying, "but we don't even have a money
16 laundering statute here in Massachusetts,"
17 so we passed that and with adequate
18 consumer protection for the kinds of things
19 that we thought in communities we might
20 have seen with increase in domestic
21 violence or traffic or compulsive behavior.
22 So we built in, I believe, including
23 building in a terrific Commission that
24 would be properly funded, as you have been,

1 with terrific people to make those
2 decisions.

3 And, so, as we move forward when
4 people do get more engaged I think in their
5 entertainment and the way they live and
6 that changes with technology, I think, you
7 know, taking those appropriate safeguards,
8 I'm always going to be on the side of that,
9 taking those appropriate safeguards.

10 But this is a new innovative thing,
11 if you will, that I think as we are
12 discussing today and we will continue to
13 and I think Kevin put it in a good way.
14 What is the risk we are looking at and how
15 do we balance that risk in a way that
16 provides for safety to consumers and making
17 sure there is no criminal element here?

18 They are a business like any other
19 business. They need to be aware of that.
20 And certainly I know from your background
21 and mine, Commissioner, we think about that
22 a lot and rightfully so. But, I think,
23 that they have grown quickly in their
24 popularity. And, I think, the best answer

1 is to say they are trying to make their
2 business grow but be aware of these
3 concerns and we'll address either
4 legislative or other framework in a way
5 that makes sense.

6 COMMISSIONER MACDONALD: But isn't
7 the most direct way to address yourself to
8 the legislative framework and through an
9 industry association literally change the
10 words of the statutes that are pre-dibbling
11 you around the country?

12 GENERAL COAKLEY: I don't think we
13 are there yet, and you may be right. But
14 this is a process that, frankly, has come
15 upon them and a lot of the attention to
16 this sport really is in this past year.
17 And so, I think, that process will play out
18 and we are happy to do that.

19 And, I think, panels like this help
20 us raise those questions and make us better
21 at doing what we're trying to do in this
22 business industry not just for Draft Kings
23 but for consumers and for competitors.

24 They are in an association with

1 others to make sure there's a level playing
2 field and, you know, I think you raise a
3 very good question and I think it may just
4 be too early to ask it but this is the
5 process we are engaged in now.

6 MR. CONNELLY: Thank you very much.
7 And as General Coakley mentioned a moment
8 ago, we will continue to talk about this.
9 Unfortunately, not in this panel in this
10 particular time. But, again, reinforce
11 this is really the beginning of a dialogue
12 as we are putting together a white paper,
13 you know, I'll ask you in public so that I
14 can get you on the record. We will
15 probably reach out with questions and ask
16 for more information as we put our thoughts
17 on paper.

18 GENERAL COAKLEY: And, Paul, could
19 I -- I'd like to extend an invitation to
20 the Chair and to the Commissioners to come
21 visit. We have extended that to others, to
22 legislatures who are interested but we
23 would invite you all to come to Draft Kings
24 and see the operation.

1 COMMISSIONER CAMERON: I suspect
2 we'll accept that invitation and thank you
3 very much.

4 GENERAL COAKLEY: Terrific, thank
5 you.

6 MR. CONNELLY: Proximity certainly
7 helps.

8 COMMISSIONER CAMERON: Thank you
9 both.

10 MR. CONNELLY: Well, one quick thing
11 before I go into the introductions, I think
12 I didn't introduce myself, which is a
13 little bit rude of me. I'm Paul Connelly.
14 I'm the Director of Licensing with the
15 Massachusetts Gaming Commission.

16 So, I want to start out again same
17 kind of ground rules apply. That unsettled
18 environment is still here despite the last
19 45 minutes. There's a lot going on and my
20 questions I don't intend to stray into some
21 of the legal aspects that you're currently
22 involved in. So I just wanted to make sure
23 that was clear before we started.

24 And by way of introductions, Cory

1 Fox to my left is the Counsel for Policy
2 and Government Affairs at FanDuel. Prior
3 to joining FanDuel earlier this year, Cory
4 was a senior policy counsel at the
5 Entertainment Software Association where he
6 handled internet privacy,
7 telecommunications and e-commerce issues
8 for the video game industry. Cory Received
9 his J.D. from American University, great
10 school. Thank you, Cory.

11 It always seems like the private
12 sector bios are much shorter than the
13 public sector ones.

14 To his left is Stephen Martino, a
15 good friend of ours. Stephen Martino is a
16 partner at Duane Morris who focuses his
17 practice on the casino industry, lottery,
18 pari-mutuel racing and interactive gaming
19 industries. He also engages in a variety
20 of compliance and government affair issues
21 for individuals and companies in highly
22 regulated industries.

23 Mr. Martino is a nationally
24 recognized figure in gaming industry policy

1 development oversight and regulation and
2 new gaming jurisdiction startup issues.
3 He's experienced in all forms of gaming,
4 including lotteries, casinos and
5 horseracing, both traditional and
6 internet-based. Mr. Martino is also a
7 member of Duane Morris' Cuba Business
8 Group, which I can only imagine has to be
9 fascinating. Thank you, Mr. Martino.

10 Again, I want to start with the same
11 offer is if you would speak a little bit
12 about the background and the origin story
13 of FanDuel, again, how it got started, what
14 were some of the concerns and issues that
15 you faced upon starting and throughout your
16 growth and where you find yourself now.

17 MR. FOX: Sure. Good morning, and I
18 want to first thank the Commission for
19 spending the time to really study this
20 issue and understand it in detail. We
21 really appreciate that, and we appreciate
22 the opportunity to be here today and share
23 some information about our company.

24 FanDuel started in 2009. It was

1 originally our founders were looking at
2 sort of news prediction type of a site.
3 But as they moved forward, they realized
4 that with fans what their customers really
5 wanted to predict and what their fans
6 really wanted to talk about was sports.

7 And, so, they realized that there
8 was an opportunity to fix some of the
9 problems with traditional fantasy sports,
10 which had been somewhat similar for the 25
11 years before that by allowing, you know, a
12 daily or a weekly lineup instead of being
13 stuck with the same team all season where
14 if you made a bad draft, like I did this
15 year, and all you could do is sit around
16 and wait for the season to end because
17 there was nothing to do. So this way, you
18 know, you can select a new team every week
19 and they felt that was a much more fun way
20 to play and we found that our fans agreed.

21 You know, FanDuel as it's evolved it
22 has a singular goal, to enhance fan
23 enjoyment of sports. And as sort of a
24 partnership of that, we have gone ahead and

1 partnered with 16 National Basketball
2 Association teams, 16 National Football
3 Leagues teams and we are the official one
4 day fantasy sports responsible for the
5 National Basketball Association.

6 To us, Daily Fantasy Sports
7 represents a natural step in the continued
8 evolution of fantasy sports just as these
9 days you might go on Stub Hub to purchase
10 event tickets or on Instacard to purchase
11 groceries, you know, this is a way of using
12 technology to enhance the customer
13 experience.

14 We have over 5 million customers,
15 and there is any number of ancillary
16 businesses producing radio and television
17 and websites with analytical information
18 that serves the broader fantasy sports'
19 community and has made us an accepted part
20 of that broader fantasy sports' community.

21 And, you know, we expect that to
22 grow. We aspire to be a Mass. market
23 sports entertainment platform. We are
24 looking for ways to enhance fan enjoyment

1 with experiential things like being on NFL
2 sideline passes and NBA courtside seats,
3 being general manager of the day of your
4 favorite team, that kind of thing to sort
5 of enhance sports enjoyment, which is
6 really our goal.

7 That said, we know that our ability
8 to grow and to flourish is really dependent
9 on operating our platforms in a transparent
10 manner that consumers trust. And as part
11 of that, we are committed to working with
12 you and other regulators to make sure that
13 we have the right sort of protections in
14 place. So, we thank you for having us here
15 today.

16 MR. CONNELLY: Great, thank you.
17 And just as a point, I turned my page too
18 quick in introducing Stephen Martino, who
19 will be on a panel later today but won't
20 get the benefit of an introduction. I want
21 to make sure I get to the point that
22 Mr. Martino was also the chief executive
23 officer of the Maryland State Agency that
24 operates lottery games, regulates

1 commercial casinos and has primary
2 regulatory enforcement gaming devices in
3 Maryland. So, I just wanted to make sure
4 that everyone understood the perspective
5 that Mr. Martino brings to these panels as
6 well.

7 So, you described a little bit --
8 you touched on where the business is going.
9 You know, kind of a basic question. You
10 know, this may sound strange but how do you
11 classify yourself; what business segment
12 would you say FanDuel is in?

13 MR. FOX: Enhancing with sports
14 experience. So we're certainly in the
15 sports industry. I'd say that. We
16 currently have a fantasy sports platform
17 but we're looking at, you know, all
18 different types of inner arena experiences,
19 other things to just make being a sports
20 fan even more fun.

21 MR. CONNELLY: So an experiential
22 company, entertainment?

23 MR. FOX: Yes, absolutely an
24 entertainment. You know, in some ways, you

1 know, playing a contest on FanDuel is like
2 purchasing a movie ticket for the weekend.
3 You know, you might spend 15 dollars and it
4 makes watching the sports games a whole lot
5 more fun, and that's your entertainment for
6 the weekend win or lose.

7 MR. CONNELLY: And kind of a
8 different question that we got to in the
9 first panel but obviously there is two
10 major operators in the space, a number of
11 second tier operators. Are there enough
12 customers to support these big companies?

13 MR. FOX: Well, you know, I think it
14 was touched on earlier by Chris Grove that
15 there are roughly 5 million daily fantasy
16 sports players and about 50 million total
17 fantasy sports players in the country. I
18 think our view is that this is a new great
19 way to play fantasy sports and that many of
20 the 45 million season long players who
21 don't play daily fantasy might move towards
22 daily fantasy as probably an addition to
23 their season long league. So, yes, I do
24 think there is continued room for growth.

1 MR. CONNELLY: And I imagine
2 obviously the extent you can always capture
3 new users by introducing new games that
4 address sports or activities that people
5 are interested in. As you go through your
6 evolution, are there any sports that you
7 actively decided not to include?

8 MR. FOX: You know, I will admit
9 that I wasn't there for all of those
10 decisions but, I think, we've also
11 gravitated towards where the fans are,
12 which is why we offer the four major team
13 sports in the country professionally and
14 the two biggest college sports in the
15 country. So, I think, we're gravitating
16 towards where our fans are.

17 MR. CONNELLY: But, I guess, to that
18 point, Mr. Martino, as you serve to advise
19 a company like FanDuel, are there any
20 sports or game types where you would
21 steer -- have them steer clear?

22 MR. MARTINO: You know, I'm not
23 engaged in that level or that part of their
24 business. I've been retained to help them

1 with and to essentially to be regulatory
2 counsel for them. So as they're engaging
3 with regulators, be the gaming regulators
4 or other regulatory agencies and states
5 whether they are not a commercial gaming
6 regulator in place, maybe that's a lottery,
7 maybe it's an attorney general, maybe in
8 some states it's the Department of
9 Agriculture might be appropriate.

10 I think clearly there are issues
11 that need to be looked at. You have the
12 intersection of PASPA. And, I think, that
13 was on the first panel reasonably
14 well-explained and described the issues
15 there.

16 But as Cory said, you know, I think
17 roughly 50 percent of the play for at least
18 FanDuel, and I think probably this follows
19 generally for the industry, is for
20 football, National Football League, about
21 30 percent is NBA, about 15 percent is
22 baseball and then everything else is five
23 percent. So, I think, given where the
24 customers are --

1 MR. FOX: No disrespect to hockey.

2 MR. MARTINO: Given where the
3 customers are and where the customer's
4 interest is, that is going to be where the
5 continuing engagement is going to be, the
6 partnerships are. It's not a mistake that
7 I think what, FanDuel has 16 partnerships
8 with NFL teams and the NBA. They have the
9 daily game relationship with the National
10 Basketball Association. So, that's where
11 the effort of the company is going to be
12 and probably where the growth opportunities
13 are going to be for the industry.

14 MR. CONNELLY: So, I want to get
15 back to a topic that we discussed in the
16 previous panel with Draft Kings around
17 transparency. Obviously, that really gets
18 to the core of a lot of the concerns that
19 folks have about the games, about their
20 fairness, about, you know, who am I playing
21 against and is this a level playing field.
22 How does FanDuel address that?

23 MR. FOX: So, I think, transparency
24 takes a lot of forms within our game.

1 First and foremost, it's important that we
2 describe exactly the type of contest you're
3 joining, how many entrances there are into
4 that contest, what the entry fee is and
5 what the prize payout will be for the
6 various winning positions in that contest.

7 But as you suggested, it's also an
8 issue, you know, of fairness and
9 transparency. So, you know, for new users
10 we try to push new users into a rookie
11 lobby where they can play against other new
12 users so they can get their feet wet
13 against nonexperts and learn what they are
14 doing.

15 We also offer a variety of game
16 types so that users who don't want to be
17 playing against the best players can play
18 in a private league, can play in a smaller
19 league, can play in a league where the top
20 50 percent wins so they don't need to be in
21 one of the top ten or something like that.
22 So transparency is certainly important.

23 We are aware of the Attorney
24 General's proposed regulations that would

1 have us, I think, demark who is a highly
2 experienced player might be the terminology
3 and we are looking at that. We are still
4 evaluating that. That may come into play,
5 and we'll do that. So there's a variety of
6 ways to ensure the game is fair.

7 But the other thing on our mind is
8 that our consumer research shows that
9 players favorite part of playing fantasy
10 sports is actually doing the research. For
11 NFL games, you know, Sunday is their second
12 favorite time but Tuesday and Saturday is
13 really their favorite time when they are
14 doing the research and constructing their
15 rosters.

16 So, we're really dedicated towards
17 making sure that they have the tools and
18 the numbers they need to make the decisions
19 on constructing their roster. So we --
20 earlier this year, we hired a company
21 called Number Fire, which has a number of
22 analytical tools which we're incorporating
23 into the app and the website to make sure
24 that the players can really have all the

1 information they need at their fingertips
2 because that's what's really fun and that's
3 what they want to do.

4 MR. CONNELLY: And does that
5 information include not only real-world
6 activity but activity on the site in terms
7 of composition of rosters and player
8 activity, players being those that are
9 customers of FanDuel?

10 MR. FOX: So, the Number Fire really
11 refers to real-world activity, the
12 underlying app.

13 MR. CONNELLY: But do you make that
14 data publically available about lineups
15 and, you know, Tom Brady and percentage of
16 peoples' lineups?

17 MR. FOX: So, once rosters lock for
18 a particular contest, that's when the
19 player ownership information is available.

20 MR. CONNELLY: And that is made
21 available and generally available?

22 MR. FOX: Yes.

23 MR. CONNELLY: Does it get, just out
24 of curiosity, does it get utilized; do you

1 have any utilization statistics on how many
2 of the players are actually using that to
3 support their decisions?

4 CHAIRMAN CROSBY: Well, that's after
5 it locks.

6 MR. CONNELLY: It's after it locks
7 but they could utilize it for future
8 lineups, you know, historical because, you
9 know, given that we have heard it a lot
10 that the analysis is the most fun part of
11 the game, I'm curious what -- you know, on
12 a couple of fronts, this leads kind of to a
13 question I had.

14 If the general public is using that
15 data to perform analysis, they may also use
16 that data to spot anomalies and the
17 ability, and it's kind of not fair we
18 didn't bring this up with Draft Kings. But
19 one of the topics we discussed internally
20 is the ability in this environment where
21 information is so distributed and people
22 have great capability in the big data
23 environment to do a lot.

24 Could users, do users spot anomalous

1 activity in the past, identify it and are
2 they able to do that?

3 MR. FOX: I'm not quite sure what
4 you mean by anomalous activity. They're
5 certainly looking for players that have a
6 low ownership percentage and a lot of value
7 and could score a lot of fantasy points.

8 MR. CONNELLY: Right. So they're
9 looking for those sleepers.

10 MR. FOX: That's right.

11 MR. CONNELLY: And it could
12 theoretically be used, you know, for
13 example, if suddenly ten percent of users
14 put Jonas Gray in right before the game a
15 couple of years back against Indianapolis
16 someone would say, "Where did that come
17 from?"

18 MR. FOX: But they don't know until
19 it locks.

20 MR. CONNELLY: Until after, exactly.
21 I'm speaking purely -- I understand that's
22 speaking purely from because I know that's
23 a sensitive topic and one that I just
24 accept as de facto that none of the

1 information about a week's performance is
2 available until after there is no ability
3 to do anything about it for that week.

4 MR. FOX: That's right. We have
5 contests that begin on Thursday evenings.
6 So for those contests, once they lock the
7 game starts on for Thursday night football,
8 that information is then available and so
9 while the games that start on Sunday are
10 obviously different because you can't
11 select players who played on Thursday
12 night. That data is something that people
13 look at to try to figure out where there
14 might be value.

15 MR. MARTINO: But if I can, I might
16 add to kind of follow-up to that point. I
17 think what the subject you were kind of
18 getting around there really goes to the
19 heart of what Daily Fantasy Sports is and
20 the skill and nature of it. I'm not sure
21 how hopeful, you know, how many players or
22 how many DFS players played a certain
23 player this week would be for the next week
24 because the circumstances change.

1 And that is part of the skill that
2 is baked into the effort of constructing a
3 lineup. Players look at who matchups are,
4 a certain quarterback going against a
5 certain pass defense, a player that may be
6 playing indoors as opposed to playing
7 outdoors. So what necessarily happened the
8 week before would have no bearing on what
9 would happen this week or the week after
10 that.

11 Certainly there are trends. Some
12 might allege that there's a quarterback in
13 this area that is roughly consistent week
14 to week, some may not agree with that,
15 doesn't matter, that there is value in that
16 and that ends up becoming reflected in the
17 price that you have to pay for that
18 quarterback but circumstances are going to
19 change.

20 You may take a different defense
21 based on a matchup against a particular
22 weak offense that you hadn't taken the week
23 before. You may have somebody -- again,
24 the weather could play a role in this. So

1 I'm not sure that, you know, that you can
2 necessarily draw a trend from week to week
3 on players in the sport that are played
4 because the circumstances change. And
5 that's really where the skill takes over
6 and what those DFS players are doing from
7 Tuesday to Saturday in constructing their
8 lineup.

9 MR. CONNELLY: Right. I agree
10 completely that, you know, last weeks game
11 has perhaps no impact on next weeks game
12 because the situation is different. But I
13 was curios in the sense of using historical
14 data to spot perhaps where there may have
15 been some anomalous activity in the past in
16 terms of user activity.

17 But, I guess, that leads me to the
18 question when we talked about in the last
19 panel about concerns of fraud, you know,
20 players again being customers, you know.
21 What are the issues that you're concerned
22 about regarding your customer's use of the
23 site and how they may act inappropriately?

24 MR. FOX: Sure. Well, we have a

1 dedicated fraud team and they look for
2 anything that's anomalous that's outside of
3 the normal player patterns. Generally, our
4 players their first time deposit, for
5 instance, tends to be 25 and 35 dollars.
6 If someone deposits 21 dollars, that's a
7 little bit odd. We'll take a closer look
8 at that. If someone deposits 100 dollars,
9 that will also get flagged. That's not
10 normal, so we take a look at that.

11 We're looking for any sort of
12 situation where there may be depositing and
13 then never playing in a contest and then
14 withdrawing. We're wondering why they are
15 doing that. We will also take a look at if
16 they only play head to head and maybe they
17 win 100 percent of their head to head
18 matches with somebody else. We are looking
19 at are those two players colluding in some
20 way. So we're constantly looking for
21 fraud.

22 We have a dedicated fraud team but
23 we also have a much larger customer service
24 team, and they are trained to look for

1 these flags that might indicate some sort
2 of various behavior and send that over to
3 the fraud team who will then investigate.

4 MR. CONNELLY: Have you had to ban
5 customers in the past?

6 MR. FOX: There are instances where
7 we've seen things that didn't make any
8 sense, and we had to ban them.

9 MR. CONNELLY: Now, how about player
10 protection in terms of know your customer,
11 what types of activities do you have in
12 that realm?

13 MR. FOX: Not entirely dissimilar
14 from what was discussed earlier at Draft
15 Kings. We currently upon registration we
16 collect name, date of birth and address and
17 we run that through a third-party vender
18 who verifies identity with respect to your
19 age and who you are and we take that really
20 seriously.

21 If that doesn't work, for some
22 reason you can't distinguish between two
23 John Smiths who live on the same street, we
24 will collect social security number to dig

1 down and make sure that we have the right
2 person and we know exactly who they are and
3 how old they are because that is obviously
4 an issue.

5 We also -- it sort of goes to the
6 three things we need to know, your identity
7 to make sure you don't have multiple
8 accounts, your age to make sure that you're
9 over 18 or maybe even older in the state
10 going forward and where you are because
11 obviously there is different regulations in
12 different states. So we also use
13 geo-location information to determine
14 exactly where you are.

15 MR. CONNELLY: Excellent, excellent.

16 So I wanted to ask about insider
17 information, you know, and the protections
18 on insider information and we had talked
19 about it in the last panel.

20 Do you have the same level of
21 understanding not only of what your users
22 do but also the folks that work at FanDuel
23 what they access, when and what they do?

24 MR. FOX: Yes. I think, we are a

1 young, growing company. And whether or not
2 six months ago or a year ago or two years
3 ago, we've always known that there was
4 sensitive information and have had very
5 strict policies in place. But whether or
6 not it was totally backed up by controls,
7 you know, within the computer system is
8 something that we have been working to beef
9 up over the last six months at least.

10 We've also, you know, in wake of the
11 story that came out regarding insider
12 information in the industry, we hired
13 former federal judge and Attorney General
14 Mukasey and his law firm is doing an
15 in-depth internal review of our policies
16 and procedures and controls.

17 And when we get that report, we'll
18 take a close look at it and we'll implement
19 the things that he recommends to make sure
20 that our controls are as thoughtful as they
21 could possibly be.

22 MR. CONNELLY: And, so, obviously
23 controls are necessary, you know, in the
24 existing environment that we're currently

1 in brick-and-mortar casinos internal
2 controls is a huge issue that we spend a
3 lot of attention on.

4 But the same question I asked the
5 previous panel, where do you feel there's
6 room or do you feel there's room at all for
7 additional regulation? You've referenced
8 the regulations that have been put out for
9 comment by the Attorney General's office.
10 Is there anything that you think is
11 missing; is it too much, not enough?

12 MR. FOX: You know, I think we're
13 taking a close look at these regulations
14 and we're really appreciative of the
15 Attorney General's close attention to the
16 issue, and we think the notes and comment
17 period is really the right way to go to
18 make sure that we get the regulations right
19 size.

20 I mean, obviously there is some
21 comparison to other skill-based gaming
22 games but there is also some, you know,
23 major differences in our game. We don't
24 have the systemic chance that exists in

1 certain other games that use dice or cards
2 or whatever is inside the slot machines.
3 So, we think there's some real differences
4 between us and sort of land-base casino
5 games.

6 But our CEO sent a letter to our
7 users, I think, at this point 6 weeks ago
8 and said we think regulation is the right
9 way to go to ensure you have enough trust
10 in us that we can operate these games
11 transparently and fairly and we're
12 committed to that.

13 MR. CONNELLY: Excellent.

14 MR. MARTINO: And I just wanted to
15 add as someone who has been a regulator for
16 ten years in two different jurisdictions
17 and really kind of adopt, if I could, some
18 of the remarks that General Coakley made in
19 speaking for Draft Kings said, you know, on
20 behalf of my client and I have been around
21 the Draft Kings team a fair amount. They
22 are not my client.

23 But, I think, I have a sense of the
24 commitment of the industry to adopt

1 consumer protections whether you want to
2 call that regulatory compliance or consumer
3 protection to make sure that the right
4 thing is done, the players are protected.

5 There is integrity and transparency
6 in this activity just like there is for
7 internet gaming in some states or
8 brick-and-mortar casinos in others or curve
9 mutual facilities. It doesn't really
10 matter if it's an entertainment activity or
11 a pure game of chance.

12 I think that there is a real
13 commitment that, as Cory mentioned, has
14 come from the very top of FanDuel with a
15 letter from the CEO to all of its FanDuel
16 players that we are embracing and working
17 with regulators such as yourself, attorneys
18 general on a whole number of issues.

19 And that is what I have been engaged
20 in. I know Cory is working on the whole
21 team with them. But we appreciate forums
22 like this to talk about those and
23 obviously, you know, the draft regulations
24 that have been put out by the Attorney

1 General of Massachusetts we think is a good
2 starting point. There is a comment period
3 for that, and we look forward to
4 commenting.

5 But without getting specific on
6 those, we would certainly want to praise
7 that process and hope that just as this
8 forum, the process with the AG here in
9 Massachusetts used, would become a template
10 for other states in looking at this and
11 certainly happy to go into some of the
12 things that we're looking at from a
13 consumer protection perspective but, I
14 think, overarching there's a real
15 commitment to see the right thing done.

16 MR. CONNELLY: Excellent.

17 CHAIRMAN CROSBY: Could I expand on
18 that, a little bit on that? Not
19 necessarily drawing any conclusions or
20 making any definitive statements but I'm
21 interested in the way you all are thinking
22 about the pros and cons of permitting play
23 from people associated with the industries
24 that where the sports are played, you know,

1 should -- again, you don't have to say yes
2 or no necessarily unless you got it.

3 But what are the issues whether or
4 not people who work for the Patriots, play
5 for the Patriots, own the Patriots
6 should -- and all the sports and sports
7 teams that are involved should the -- what
8 are the issues involved in whether there is
9 an insider problem or an appearance problem
10 with them being involved?

11 MR. FOX: I'll take a first crack at
12 that. I think obviously people have raised
13 a sort of insider information issue, and
14 I'll agree that that exists, though, I
15 suggest that it's actually quite difficult.
16 I am not sure just how well you do even if
17 you were at Patriot's practice and you knew
18 who they were throwing the ball to. Maybe
19 you'd get a tip about one player doing a
20 little bit better. But, again, our games
21 our you're usually selecting nine players.
22 I'm not sure just how helpful that would
23 be.

24 That said, we don't want people

1 playing on our site who have inside
2 information. I think several of the
3 leagues have internal policies that their
4 employees and players can't play. We have
5 a policy that if you have inside
6 information you should not be on our site.
7 We are happy to work with regulators and
8 the leagues and anyone else to make sure
9 that's implemented properly.

10 MR. MARTINO: I think that's the
11 policy that they don't want them to play.
12 I think from a compliance perspective it's
13 one of the many things that's going to be
14 unique about this. I think just having a
15 conversation yesterday, in some ways it's
16 not terribly dissimilar from self-exclusion
17 on DFS or anything that's internet-based.
18 How do you set that up?

19 If you have self-exclusion at a
20 brick-and-mortar casino, I don't know of
21 any casinos that have facial recognition
22 software but you have lots of internal
23 controls that allow people to get caught
24 before they claim at a W2-G claiming event.

1 But, you know, if someone wins 1,000
2 dollars on a slot machine and they're on a
3 self-exclusion list, which probably happens
4 all the time, you can see this across the
5 country, you're never going to know because
6 there's not that triggering event.

7 But obviously you have information
8 about those players and how that is done
9 on, you know, something that takes place
10 on, you know, through the internet on your
11 Smart phone, your tablet, that's your
12 interaction. We're going to have to think
13 through that. And, I think, the same thing
14 is going to apply with people who should be
15 excluded because of their proximity to
16 insider information.

17 It's clearly the right thing to do
18 from a perception. I think we have to work
19 through the logistics of how you work that
20 out. I don't think there's a policy
21 disagreement. It's just how do you
22 implement them, and it's probably going to
23 require partnership with the leagues who
24 are clearly working with this industry.

1 CHAIRMAN CROSBY: And to wit, the
2 stock market, there is no guarantee no
3 matter what you do.

4 MR. CONNELLY: So, to speak about
5 transparency again, I wanted to ask if you
6 had, you know, any additional comments.
7 FanDuel spoke about transparency in terms
8 of the calculations behind, you know,
9 player pricing, which is something a lot of
10 people are interested in. I don't know if
11 you have anything to add to that.

12 MR. FOX: You know, I thought the
13 discussion is similar on our side. We have
14 a team of people who do it who are experts
15 who use both mathematical models but also,
16 you know, it's not that the mathematical
17 isn't the end of the story because there's
18 news reports regarding injuries, weather,
19 different lineup changes that the coach is
20 making, whatever affect the relative value
21 of the players.

22 But I'd also say, you know, lineups
23 we -- for instance, for NFL, which is sort
24 of the easiest to talk about because we're

1 in NFL season but it's similar for other
2 sports, you know, on Monday nights after
3 the Monday night games, our experts come up
4 with the pricing and I think it comes out
5 Monday night or Tuesday morning and that
6 price is locked for the week.

7 So it's completely transparent in
8 terms of what the price is, and it's not
9 changing. So if there is news that comes
10 out on Thursday that Tom Brady tore his
11 ACL, not to give anyone a heart attack,
12 then his price would still be high and that
13 his ownership percentages will likely be
14 low because everyone will leave. I think
15 the issue surrounding player pricing really
16 has to do with how fun the game is.

17 But by nailing the price
18 incorrectly, we create a game where you
19 have to use a lot of skill to figure out
20 which players are the best. If we make Tom
21 Brady players on our fake salary cap system
22 are somewhere between 2,000 and 15,000
23 dollars, if you could get Tom Brady for
24 2,000, it wouldn't be a very fun game

1 because everyone would just get Tom Brady
2 for 2,000. It's a whole lot more fun if
3 Tom Brady's salary is 15,000 and then you
4 have to really think do I want to spend all
5 that money there and not be able to get
6 Adrian Peterson at running back.

7 So, to me, that's really an issue of
8 how fun the game is and how much our
9 customers are going to enjoy it because it
10 is transparent in terms of what the price
11 is and that's part of the game rules in
12 essence.

13 MR. CONNELLY: So keeping the game
14 fun, one aspect of that obviously is kind
15 of ease of entry. How do you balance, you
16 know, a system where you want people to
17 sign up and get on, get playing quickly
18 with the need to capture a lot of
19 information so you know your customer, so
20 you know who they are, that they are an
21 appropriate customer?

22 MR. FOX: Yes. So, I mean, I think
23 that is an important balance. And at this
24 point, we know that know your customer

1 technology is critical to ensuring that we
2 have the identity and the age correctly.
3 So we've implemented know your customer
4 technology where we do collect name,
5 address, date of birth. Obviously they
6 have to fund the account, so generally
7 there's a credit card number involved as
8 well. So those are just requirements.

9 I don't think there is anything --
10 we can balance from there in trying to make
11 it as frictionless as possible once we have
12 that information and we know your identity
13 and we're sure the credit card information
14 is correct, but those are just sort of
15 non-negotiables.

16 MR. CONNELLY: Do you employ those
17 third parties, for example, credit card
18 companies and payment processors as part of
19 that gate, so to speak?

20 MR. FOX: Yes, we use trusted credit
21 card processors.

22 MR. CONNELLY: So, again, we're
23 concluding our time. I wish there was
24 more. But I would like to turn a little

1 bit to the forward look and where you see
2 FanDuel going and also where you see, same
3 kind of question, I'm very interested in
4 the integration of an online product in
5 existing brick-and-mortar like the lounges
6 that are in sports stadiums around the
7 country.

8 MR. FOX: Yes. I think this goes
9 back to what I was pointing out in sort of
10 my opening remarks is that we're trying to
11 make fan enjoyment of sports as great as it
12 can be, and so we think that those lounges
13 at football stadiums and NBA arenas and the
14 rest are a way that fans can really enjoy
15 our product and enjoy fantasy sports, so we
16 will continue to do that.

17 In terms of our other roadmap
18 features moving forward, we're building up
19 social features. We already have private
20 leagues of course where you can play
21 against your friends, but we are building
22 out those systems to be even better so that
23 you can invite friends from other social
24 networks and so you can import your leagues

1 from other systems, because we think social
2 is the way to go for fantasy.

3 And we are also building out the
4 analytical tools I talked about earlier to
5 make sure you have all the numbers at your
6 fingertips that you might want to use to
7 figure out the right play this week. So
8 those are some of the things on our product
9 roadmap.

10 At the moment, as Zak from Draft
11 Kings sort of mentioned, you know, we're
12 spending a lot of time making sure that we
13 will be able to adhere to any regulations
14 that are put in place. It requires a
15 decent bit of engineering and product team
16 time. But we are hopeful that we can
17 continue to make the product more fun as we
18 take care of those things as well.

19 CHAIRMAN CROSBY: I have a question
20 for Stephen, which we talked about -- Kevin
21 Mullally talked about the risk-base
22 measurements and we talked about the
23 context of we all sort of come at this from
24 a standpoint look how we regulate casinos.

1 Commissioner MacDonald has talked about,
2 you know, maybe moral environment has
3 changed dramatically over the years. Maybe
4 we should have a completely different
5 mindset on this. You have been a regulator
6 of traditional gambling. You're now
7 obviously representing a client.

8 But as best you can, what is your
9 sense on that? You are a highly respected
10 regulator. You now know this industry.
11 How would you advise regulators, what are
12 the parallels, if any, is this a wholly
13 different thing from casinos and we should
14 think in a totally different paradigm or is
15 this a mini version of it or, you know,
16 where does it fit on the continuum of how
17 big picture thinker legislatures or
18 regulators should try to position this
19 industry in its appropriate need for
20 regulation?

21 MR. MARTINO: So, daily fantasy and
22 a lot of the other things that are coming
23 as well --

24 CHAIRMAN CROSBY: Right. And I

1 don't mean just DFS. I mean this whole
2 world.

3 MR. MARTINO: Absolutely. At some
4 point in time, you're probably going to be
5 having a session like this on eSports
6 because people are playing those and
7 they're starting to wager on them.

8 So, there are similarities to
9 land-based casinos. There are some
10 similarities to what goes on in the
11 internet gaming space, but there are
12 differences as well. I think that you're
13 talking specifically about Daily Fantasy
14 Sports, a game of skill.

15 We believe strongly that it is a,
16 you know, there is certainly an element of
17 chance in it but we don't think that it is
18 a significant one that's a game of skill.
19 It's, generally speaking, a low velocity
20 game certainly compared to anything that
21 you have in a casino where you have people
22 that just sit in front of a slot machine
23 and play or, you know, even go with a table
24 game and that's not in any way to criticize

1 it. It's just a different kind of
2 entertainment, so there are different
3 issues.

4 On a mapper level, I came to believe
5 quite some time ago, and I think it was
6 reflected in some of the stuff that we did
7 in Maryland over the past five years, in
8 general, there is more overregulation than
9 is necessary.

10 I think that you still have a lot of
11 remnants of legislation that was passed in
12 the late '70s, especially on the east coast
13 where you had gaming that came into
14 Atlantic City and there was a lot of
15 concern about infiltration from organized
16 crime, criminal element and you had a lot
17 of structures put in place that over time
18 became calcifications and it was really
19 hard to get out of that.

20 You're talking about a much more --
21 and I am talking right now about casino
22 gaming -- a much more sophisticated
23 streamed line industry that is frankly far
24 more responsive and responsible to Wall

1 Street than they are to someone in a dark
2 corner.

3 So, I think, too, that, you know,
4 that there is that saying that if the only
5 tool you have is a hammer every issue or
6 opportunity looks like a nail and I think
7 that that's a concern for this industry
8 that if it just -- if you have regulators
9 who aren't supple in their thinking, who
10 aren't flexible in seeing that there are
11 different ways to do different things, that
12 you're going to have this industry
13 regulated like a brick-and-mortar casino
14 and that is just going to put in a level of
15 regulation that will be stifling. I don't
16 think Cory was prepared to say this, I
17 will. FanDuel is not a cash positive
18 company right now. It hopes to be at some
19 point in time.

20 MR. FOX: Our investors certainly
21 hope so.

22 MR. MARTINO: So, I think regulators
23 have to look, and obviously we want to be
24 part of that conversation, how do you build

1 a regulatory or consumer protection scheme
2 regimen that fits what this does? You
3 don't regulate a virtual racetrack like you
4 do a brick-and-mortar casino. Certainly
5 the lottery, which is entirely a game of
6 chance, is not regulated anywhere near like
7 these other forms are.

8 And, I think, that kind of looking
9 at the list of things that we've advised,
10 there are things that certainly would apply
11 in, I think, a global context to
12 pari-mutuel or brick-and-mortar casinos.
13 There are things that are unique to this
14 industry that we have been thinking about
15 such as, you know, lineup locking, the
16 integrity of that, player collusion.

17 You know, in some cases they occur
18 in other game settings but others they are
19 unique. And, so, I don't think that you
20 just take the forum of regulation and you
21 have now for your brick-and-mortar casinos
22 or your racetracks and apply that.

23 I think that regulators and public
24 policymakers are going to have to become

1 flexible in how they approach this so that
2 they can find the right level of regulation
3 meets the risk that this form of
4 entertainment potentially can pose.

5 And I endorse entirely, and Kevin
6 knows it and he and I co-authored a chapter
7 of a book last year on regulation, the
8 notion of passing regulation that either
9 promotes public good or is there to
10 mitigate some risk to the public. And,
11 oftentimes, I'm not sure regulators can
12 actually answer that question when they're
13 passing something. There is kind of a
14 frenzy.

15 In gaming regulation, there is not a
16 race to the bottom. There's a race to the
17 top. Everyone thinks that they can do it
18 better, do it more stringently than the
19 other state that did it. I think there
20 needs to be some self-examination.

21 In some areas, the expertise that
22 has been developed in agencies such as this
23 is going to be very helpful. But in other
24 cases, I think you're going to have to

1 think differently because this is a
2 different industry. It's a different form
3 of entertainment with different risks.

4 CHAIRMAN CROSBY: Interesting, thank
5 you.

6 MR. CONNELLY: And, Stephen, that's
7 exactly why we were smart enough to ask you
8 to sit on the panel this afternoon and talk
9 about regulation. Again, I want to extend
10 our thanks to you. Again, I know how busy
11 you are as a business right now and we
12 really do appreciate your time.

13 I also, while I have you on the
14 hook, want to extend the request that as we
15 go forth and develop our white paper, we
16 will probably be reaching out again for
17 some more information, clarifications
18 because it really is, as the Chairman said
19 and as all the Commissioners have indicated
20 throughout the morning, it really is our
21 intent to get the story straight in this
22 paper and really give people something they
23 can lean on as they attempt to understand
24 the industry and some of the public policy

1 issues that may be present.

2 We are going take a quick break now,
3 and we'll reconvene. We are almost by some
4 small miracle on time. So we will
5 reconvene at 11:45 with the panel
6 Identifying Emerging Public Policy Issues
7 and Remedies. Thank you.

8

9 (A recess was taken from 11:30 a.m.
10 to 11:52 a.m.)

11

12 MR. STEMPECK: Good morning
13 everyone. My name is Justin Stempeck. I'm
14 one of the staff attorneys at the Gaming
15 Commission. I'm going to be co-moderating
16 this next panel with Paul Connelly.

17 The title of the panel is
18 Identifying Emerging Public Policy Issues
19 and Remedies. You will recognize the same
20 faces we had in the earlier panel this
21 morning. We have here Chris Grove, Dan
22 Wallach and Kevin Mullally back again for
23 round two.

24 We've touched on a large number of

1 the various public policy issues that have
2 entered the spotlight since DFS has
3 garnered the splits of media attention and
4 to help us think through these in perhaps a
5 deeper level than they've already been
6 discussed are our three experts.

7 Additionally, towards the latter
8 half of this particular panel, we'll have
9 two responsible gaming experts be joining
10 us and we will introduce them when they
11 take the stage as well.

12 Just to get started here, many of
13 these issues have been talked about but
14 what I would like to do is ask the panel
15 most of these questions are going to be
16 posed in such a fashion that I invite any
17 of you to offer your thoughts. I don't
18 think any of them are particular to your
19 particular skill-set but to really examine
20 why these particular issues have become
21 public policy issues, what it means from if
22 you can take the industry hat for a moment
23 and how they are addressing them as well as
24 what it means for consumer protection and

1 possibly also look at it from a regulator
2 standpoint why this is an important public
3 policy concern and possible ideas on how to
4 address it.

5 Obviously, we had some advancement
6 in that by way of our Attorney General's
7 proposed draft regulations. But even that,
8 I think, is an invitation for more
9 discussion as to why these issues are
10 important and I'm certain there will be
11 more of that as comments come in during the
12 commentary period on those.

13 So, just to get the ball rolling
14 here, one of the first things that I would
15 like to address is the issue of fairness
16 has been talked about a lot. How do we
17 make these DFS games fair? And, I think,
18 before we even get into that question, I
19 think we really have to ask is what do we
20 mean when we say want to make them fair?
21 Do we want -- because obviously there is --

22 If you attribute that there is skill
23 involved in these games, some people will
24 naturally be better than others. We're not

1 talking about making someone worse and
2 applying some sort of artificial hindrance
3 to them. So when we're talking about
4 fairness, what are we really trying to get
5 at by using that term? And I'll just
6 invite anybody to comment.

7 MR. GROVE: I think that there are
8 two foundational concepts when you're
9 talking about fairness in the context of
10 these games. And the first one is obvious,
11 but that doesn't mean it shouldn't be
12 introduced into the conversation, and that
13 is just all players are on equal footing
14 with the platform. That given the same
15 exercise of skill and the same access to
16 equal amounts of information, players of
17 identical skill would perform identically.

18 But the platform does not in any way
19 provide a unique opportunity that is
20 exclusive to any one individual or group of
21 individuals that would confer under them a
22 specific advantage.

23 And then, I think, we're going to
24 talk about this second part a little bit

1 more during the course of this panel. The
2 other foundational concept is transparency.
3 So, there is some level of amount of
4 information about the game, about the
5 platform, about the participants, whatever
6 other genres of information might be
7 relevant that is provided to players in
8 advance of playing the game and perhaps
9 during the course of the game.

10 So, for this product and many others
11 when we do talk about this concept of
12 fairness, to me it is those two concepts.
13 All players are of equal footing in terms
14 of the platform that they're using to
15 compete. And then there is some
16 consideration of what information about the
17 games, about the contest, a cannon should
18 be provided to consumers in order to create
19 an atmosphere that we describe as fair.

20 MR. MULLALLY: I think the only
21 thing I would add to that, I think, it's
22 well said is that there is some type of
23 third-party validation that what is being
24 presented to the player is in fact true.

1 So that you're not just relying on the
2 provider but that there has been some
3 independent evaluation of key aspects of
4 risk control that have been validated and
5 are continuing monitoring.

6 MR. CONNELLY: Kevin, do you see
7 that or can you identify an area where
8 that's in place currently?

9 CHAIRMAN CROSBY: Or not in place.

10 MR. MULLALLY: You know, I think the
11 nice thing about this subject is that
12 you're really building from a construct
13 that is well-proven and has over a decade
14 worth of experience. I mean, with all due
15 respect for congress' activities on RAWA
16 with regard to whether or not internet
17 gambling can be regulated or not, the fact
18 of the matter is it has been regulated.

19 It is being regulated in Europe for
20 over a decade, and it is being regulated
21 here in the United States in three states
22 for about the past three years with no
23 incidents of any magnitude. So you're
24 talking about proven technologies.

1 And, frankly, I think you as
2 regulators are going to fall in love with
3 the tools that are not presented to you.
4 Because one of the things I have long
5 stated is I can't figure out why this is
6 even an issue.

7 Because if you compare it to a
8 land-base environment where someone walks
9 in and you don't know who they are, you
10 don't know where they are from, you don't
11 know how old they are, you don't know where
12 their money came from, you don't know what
13 games they like to play, you don't know
14 what their play history is, you don't know
15 how many games they played that day, that
16 week, that month, that year, in an online
17 environment, you know all of that.

18 You know who I am. You know where I
19 am. You know how old I am. You know the
20 source of my funds. You know where they
21 are going. So much better controls for not
22 only social issues but issues like money
23 laundering and they are well-established
24 proven technologies. So that ought to give

1 you some level of comfort. It's really how
2 do you apply those tools to this category
3 of product more so than, oh, do we have
4 tools available to us.

5 COMMISSIONER CAMERON: Kevin, you
6 mentioned internet-gaming. I know there
7 are many differences between fantasy
8 internet-gaming. But if I am hearing you
9 correctly, when you talk about know your
10 customer and the tools that are available,
11 they would be very similar; is that
12 accurate?

13 MR. MULLALLY: Yes, really the
14 internet -- correct, Commissioner. And
15 really the internet-gaming industry borrows
16 from the banking industry, borrows from
17 other securities industry, any payment
18 industry. You know, if you look at other
19 regulated industries, their path to going
20 online was not nearly as complicated.

21 I mean, when banks said we are going
22 to let you take a picture of your check and
23 deposit it and we're going to have
24 technology to do that, nobody said, oh,

1 wait a minute. I mean, obviously they
2 needed to come up with a construct that
3 satisfied their regulators, but it wasn't
4 considered a whole new category of banking.

5 So, the technology, not just in the
6 gaming industry but the age verification,
7 the things related to payment processing,
8 the technologies used to prevent money
9 laundering, those are used in all kinds of
10 industries. Companies that do that, I
11 mean, gaming is obviously probably an
12 important client for them but it's not
13 their only client.

14 MR. STEMPECK: And, Kevin, just to
15 follow-up one of the things you mentioned,
16 which I think is a really interesting
17 topic, is that given that these are
18 data-driven companies and there's a vast
19 amount of data that they absorb when they
20 acquire new customers and get to see their
21 patterns of behavior, obviously the
22 operators have access to all that
23 information.

24 What is your thoughts or opinions as

1 for as how much of that information,
2 obviously not any of the personal
3 identifying information or the sensitive
4 stuff, but how much of that other game play
5 information and other types of information,
6 what do you think should be available to
7 other players?

8 I mean, there has been some talk
9 about evaluating the expert level player
10 versus the beginner level player. So is
11 that where it should stop? Is that the end
12 point of the conversation? I mean, what
13 are your thoughts about that?

14 MR. MULLALLY: I think those are
15 issues that regulators should be given the
16 authority to continually solve. You know,
17 Malcolm Sparrow, who teaches risk control
18 over here at the Kennedy School of Harvard,
19 says that what regulators really do is they
20 pick important problems and they solve
21 them. So, I think, with the current
22 category of products -- I mean, we have
23 today's knowledge base.

24 So, I think, you look at the way the

1 games are played today and you make good
2 decisions about what information should be
3 made available to players. But to hardwire
4 that forever more into, for instance,
5 legislation, I think would be -- would not
6 be my policy recommendation.

7 I think it would be to provide
8 regulators with the ability to develop a
9 dynamic risk control system that
10 continually evaluates new products and
11 makes decisions about what information
12 should be made available to players based
13 on the information available to them at the
14 time.

15 MR. STEMPECK: Dan.

16 MR. WALLACH: I call it KYO, know
17 your opponent. This entire model is
18 predicated upon having vast amounts of data
19 and knowledge centered on the quarterbacks,
20 running backs, how they perform in games
21 yet there is an absolute vacuum of
22 information about your opponents.

23 And these contests often involve
24 head-to-head and we have learned that there

1 are, you know, a lot of sharks that occupy
2 these waters. And if you're an
3 inexperienced player, I think you should
4 have the right and it is the duty of these
5 companies to flag who these players are so
6 that you are not necessarily being picked
7 off, you know, swallowed like a minnow.

8 It is not a tremendous -- it is not
9 revolutionary or complicated to disclose
10 player information as to history of how
11 long they have been playing, how many
12 contests they've entered, how much money
13 they won. We're not asking for social
14 security numbers or addresses or
15 information that could aid tax authorities.

16 We are talking about something that
17 goes to the very heart of a level playing
18 field. And to me in my view, a level
19 playing field involves as much information
20 and a level amount of information as
21 possible so that an inexperienced player or
22 even an experienced player knows who their
23 opponent is. We know everything about Tom
24 Brady. We know everything about Adrian

1 Peterson, but we know zero about our
2 opponents.

3 And the Massachusetts Attorney
4 General's regulations make a significant
5 move towards addressing and alleviating
6 that problem. But, I think, maybe even
7 more could be done. Because within the
8 realm of experienced players, there are
9 differentiating levels of experience and
10 success and merely being a frequent player
11 and an experienced player does not make one
12 a great player.

13 And if you're participating in an
14 environment where you are not betting
15 against the house or playing against a
16 point spread but you're competing against
17 another person, I think as a contestant
18 that information, one, could easily be made
19 available without violating any privacy
20 concerns and it goes -- it strikes at the
21 very cord of fairness and a level playing
22 field.

23 And, I think, if we have an
24 environment where we can identify the

1 performance history of the DFS contestants
2 will go a long way towards leveling the
3 playing field and upending the dynamic of
4 90 to 91 percent of players grabbing two
5 percent of the prizes.

6 I mean, the lack of disclosure isn't
7 the only reason for that imbalance.
8 Certainly scripts and automated entries
9 play a large role in the success of
10 players. But knowing who your opponents
11 are, if the company has a right to know who
12 their customer is, I think the players have
13 the right to know who their opponents are
14 and much more can be done in the way of
15 disclosure than presently exist.

16 Should it go as far as what I'm
17 recommending? I mean, that's a policy
18 determination to be made by the
19 legislature, the AG's office, maybe even
20 the Gaming Commission but that information
21 is out there and depending on --

22 CHAIRMAN CROSBY: Is there an
23 analog -- you're saying passionately that
24 players ought to know who they are playing

1 against and that is -- is there an analog
2 in any other electronic competition or even
3 for that matter a brick-and-mortar
4 competition? I mean, you don't know who
5 you are playing against when you go sit
6 down at a poker table.

7 So is there an analog, A; and if
8 not, why should DFS -- why are you so
9 passionate about know your competition for
10 DFS if there's no particular analog in the
11 rest of the gaming competition?

12 MR. WALLACH: There may be in online
13 poker, and maybe Chris could better speak
14 to that issue.

15 MR. GROVE: Sure. I will answer
16 that and let Dan handle the second part of
17 the conversation. There's a loose analog
18 in online poker. Some rooms will mark
19 players based on their VIP status, which
20 gives you an indication of the level of
21 volume they put in. Rooms also release
22 quite a bit of information in the form of
23 hand histories, which are just digital
24 records of the poker hand that was played

1 in like a text file format.

2 And then those are more or less
3 publically available and third-party
4 services will aggregate those and then
5 create from those relatively reliable
6 sources of information about the win/loss
7 rate of various players that players could
8 go and access.

9 So it's a loose analog in that it
10 stops someone short of what Dan is
11 describing, which is the operator
12 themselves providing a trove of information
13 about potential opponents directly. But
14 there's certainly some precedent for the
15 release of game data as a proxy for
16 eventually being able to understand who
17 you're playing against and the level of
18 skill that they may have possessed.

19 MR. STEMPECK: And even currently, I
20 believe, there are some online sites that
21 do aggregate that publically disclosed data
22 for the DFS operators and accumulate
23 statistics on well-known DFS players. So I
24 think I know RotoGrinders is one of those

1 sites. There is some other online sites
2 that aggregate that data and kind of do the
3 work for you similar to what Chris was
4 describing with the poker rooms.

5 MR. GROVE: The one big caveat with
6 RotoGrinders and most DFS sites that do
7 that aggregation is that it's on an opt end
8 basis whereas with the poker the parallel
9 that I'm describing is not opt end. It
10 just happens as a course that you're
11 playing the game.

12 MR. WALLACH: And, Justin, I think
13 that's a really good point. But, I think,
14 new entrance to the system, neo fights
15 aren't going to necessarily know about a
16 RotoGrinders, you know, during their first
17 rodeo.

18 I think, the more sophisticated,
19 savvy and experienced player is wired into
20 third-party sites like RotoGrinders but the
21 new players would certainly benefit from
22 having that information within the same
23 operating system as they're joining. If
24 that information can be released to third

1 parties, it could just as easily be wired
2 to be disclosed on the site.

3 And I don't see any great harm, and
4 whatever harm there is, which would be
5 infinitesimal, in my view is greatly
6 outweighed by the benefit to consumers in
7 having the kind of information that could
8 inform the decision as to whether to join a
9 particular head-to-head contest or to
10 participate in a guaranteed prize pool that
11 may have an inordinate number of
12 experienced successful players. This is
13 all about information, odds, risk
14 assessment and what the players currently
15 know is next to nothing.

16 COMMISSIONER ZUNIGA: Can I just
17 pick up on something that Steve asked and
18 Dan mentioned very quickly? The use of
19 scripts or models prior to the contest,
20 where do you see that in general? Maybe
21 it's inevitable to the game because of the
22 physicality. There is a lot of time that I
23 can spend up until the contest when it
24 begins.

1 In contrast to poker, Mr. Chairman,
2 you're limited by time. You need to, you
3 know, you need to exercise -- if you want
4 to exercise your skill, and many do, you
5 have to call a bet or fold, right, because
6 the game progresses. And the difference
7 with this game is that a lot of that skill
8 is involved prior to the contest and at
9 times involves on best player and I hear
10 the use of models and what have you. Can
11 you just speak a little bit about that?

12 MR. STEMPECK: And just on that
13 point, maybe you can explain for the
14 education of anyone who is watching or who
15 is maybe not technical savvy, what is a
16 script just so everybody is on the same
17 field here.

18 MR. WALLACH: Chris.

19 MR. GROVE: When we talk about
20 technological aids, we're basically talking
21 about two categories of aids. I think
22 sometimes it gets tricky when we start
23 using words like "scripts" or "algorithms,"
24 so I will just describe them as classes

1 because I think it makes it a little
2 easier.

3 So, you have some aids that I would
4 put under a function class. They don't
5 tell you what to do necessarily. They just
6 help you to execute better. So, you might
7 have a script that allows you to submit
8 hundreds of lineups simultaneously or to
9 edit hundreds of lineups simultaneously.

10 These functions don't make you a
11 better player or say they don't help you
12 make any better decisions. They simply
13 help you to execute the decisions that
14 you've already made, the strategies that
15 you've already developed in a more timely
16 fashion, more efficient fashion.

17 And then the second class has more
18 to do with models, with tools that are more
19 predictive, more proscriptive in nature
20 where you feed the data in and what comes
21 out is a suggestion for how you ought to
22 proceed strategically. So both classes of
23 tools are in play in DFS, and I think both
24 would naturally emerge in any kind of

1 product that fits the general contours of
2 DFS. It's even also emerging in online
3 poker, and I am sure they're equivalence in
4 horserace betting as well.

5 But those are the general two
6 purposes that tools are used for either to
7 automate some part of the process, to
8 execute or to help with the strategic
9 planning.

10 MR. MULLALLY: I think the policy
11 decision that needs to be made is at what
12 point is there a public benefit in putting
13 the -- in providing the data. Because
14 you're going to have a bit of a spiral
15 because the more data you make visible
16 about your players -- so right now the
17 contest largely centers on picking the best
18 lineup. The outcome is also affected by
19 the quality of the other players that you
20 happen to be playing against in that pool.

21 To the extent that you increase the
22 visibility of data available about the
23 players, there becomes more analytics about
24 your opponent, which again theoretically

1 raises the level of skill again, so you're
2 more concentrating things again on the more
3 skilled player.

4 I recently watched the movie, and I
5 apologize, I don't remember the name of it.
6 It was the one about Bobby Fisher playing
7 against the Russians. Very good movie, by
8 the way. And there's a line in there where
9 Bobby Fisher is kind of screaming about
10 being the best player in the world and
11 about the Russians. He says, "I know every
12 move and every game you've ever played" to
13 all of the Russian players. So there is
14 going to be a guy that knows all this
15 stuff.

16 So that I think, and I don't have
17 the answer for you now, I think we have
18 people that can help, you know, talk about
19 statistically what information is relevant
20 and why it's relevant to help you make a
21 decision as to what should be visible.

22 But I do agree with Dan. I think
23 there is some level of information about
24 players that should be available. I mean,

1 when you go to a horserace, you know the
2 jockey, you know how many times he's run,
3 you know the previous races of the horses,
4 what tracks they were at, things like that.

5 So, I think, there is probably some
6 data that should be available but I fear
7 information overload where these kind of
8 very obscured things are used by experts to
9 even further concentrate the advantage to a
10 few players, so I think you need to strike
11 that balance.

12 MR. GROVE: I'm going to go with
13 Kevin's points. I understand the drive
14 behind Dan's advocacy. But the moment that
15 you identify a strong player, you have to
16 by exclusion identify the weak player,
17 right, so it has to be considered that
18 there are two sides to the data point.
19 It's also a potentially significant burden
20 on the operators.

21 And as Kevin was talking about,
22 there has to be a fairly clear connection
23 between problem solved and burden incurred
24 when we're talking about these issues.

1 COMMISSIONER CAMERON: The
2 conversation by both of the major operators
3 around rookie games, new player games and
4 then the actual amount that can be wagered
5 at different games, wouldn't that --
6 wouldn't rational players kind of enter at
7 their own level, let's say, and if you're
8 new, you would be -- and not allowing
9 experienced players to play in those rookie
10 games or new player games and wouldn't the
11 really skilled players be drawn to the
12 higher level so that they can -- I would
13 assume they'd want to make more money and
14 want to compete against the best.

15 MR. GROVE: Sure. I think that
16 that's an accurate analysis up and to the
17 point where you run into the reality of the
18 Daily Fantasy Sports product, which is that
19 as a highly skilled player in the modern
20 environment, there's really no -- there is
21 no harm to me adding the low dollar games.

22 I can enter so many lineups, and
23 there are so few restrictions that if I'm
24 not restricted from entering them because

1 their beginner games are somehow put in a
2 different class in the lobby, it's not like
3 online poker where to add an extra table
4 I'm taking away my focus from all of my
5 existing tables and, therefore, I'm
6 unlikely to drop too far down. I can enter
7 additional lineups and additional contents
8 incrementally or almost at no cost to me as
9 a player, so I'm not sure that that
10 necessarily serves as a built-in
11 protection.

12 And to wit, if you look at the lobby
13 of a major operator, you will see players
14 spanning stakes from 10,000 dollar entires
15 to dollar entries. And it's because they
16 recognize that there is still enough of an
17 opportunity even in the dollar entry in
18 terms of a return on their investment that
19 it's worth their time to be in that contest
20 such a small amount of time.

21 COMMISSIONER ZUNIGA: Please go
22 ahead, Kevin.

23 MR. MULLALLY: I think you also risk
24 players manipulating the data. In other

1 words, I will invest small amounts in a lot
2 of games against highly skilled players
3 where I know I'm not going to win, and so
4 my skill level looks very poor when, in
5 fact, I'm probably pretty good and now we
6 have caught -- I just think this issue is
7 one that should be explored but explored
8 with caution and taking a lot of time to do
9 it.

10 MR. WALLACH: And of course we raise
11 the issue of jumping around to different
12 sites. An experienced player on Draft
13 Kings can migrate over to a different site
14 and be an inexperienced player because he
15 has no track record. So any regulation or
16 any measures to that end have to somehow be
17 global and not site or company specific
18 because there are, as Chris pointed out,
19 over 100 companies in the space. And even
20 if you talk about the ones that move the
21 needle, we're talking in excess of ten and
22 it's quite natural for players to begin a
23 new fresh start on another site.

24 So how do you fold that in when you

1 attempt to identify not only the good
2 players, the experienced players but
3 provide specific information about them if
4 they can begin a new life and a new chapter
5 simply by signing up to another site?

6 COMMISSIONER ZUNIGA: Can I ask a
7 clarifying question? The previous panel
8 the industry mentions they are okay with
9 the three percent limit on the number of
10 entries as perhaps currently suggested by
11 the regulations. But that is multiple
12 entries in one contest; is that correct?

13 MR. GROVE: That was my
14 understanding.

15 COMMISSIONER ZUNIGA: Because you
16 could have a very, very high amount of
17 contests, let alone in multiple sites, that
18 you could enter at any given point if you
19 are playing, right?

20 MR. GROVE: That's my understanding
21 that the three percent is the limit on a
22 particular contest, not a slate. I'd add
23 one more footnote. I know we have quite a
24 bit to cover. There is a benefit to the

1 release of bulk information that hasn't
2 necessarily been covered in this
3 conversation, and it's that when this
4 information enters the public, the public
5 becomes an assistant to regulators, the
6 public becomes an assistant to
7 policymakers.

8 They have the ability to review and
9 analyze this data and appreciate fraud,
10 appreciate cheating, appreciate all sorts
11 of nuances in the data that operators may
12 not necessarily be motivated to explore or
13 motivated to disclose and that regulators
14 and policymakers may not necessarily have
15 the wherewithal or the understanding, the
16 deep understanding of the product to
17 appreciate.

18 We saw this happen. There is a
19 meaningful example of this in online poker.
20 There is a multimillion dollar scheme
21 perpetrated by the owners of an online
22 poker site where they basically included a
23 cheating function into the software so that
24 certain people could see the whole cards of

1 opponents.

2 And really the scheme only came to
3 light and unraveled as a result of the mass
4 amount of data that was available on play
5 at this site, which was then taken by
6 players in the community and analyzed
7 exhaustably.

8 And the result of that analysis is
9 what more or less lead to the unraveling of
10 that scheme, which did the fraud players
11 out of tens, if not, hundreds of millions
12 of dollars.

13 So there definitely is the
14 undercurrent of a public benefit to some
15 release of data. But as Kevin pointed out,
16 there's a spectrum between what Dan is
17 suggesting and just an aggregate bulk
18 release of all game outcomes and probably
19 somewhere on that spectrum is the
20 appropriate point.

21 But I do think finding that
22 appropriate point, honing in on it requires
23 a level of analysis and conversation that
24 we're just not equipped to undertake at a

1 forum like this.

2 MR. STEMPECK: Chris, I think that's
3 a really fascinating topic, frankly, the
4 crowd sourcing of information as an
5 assistant to regulators, whoever they may
6 be ultimately in this field, I think is
7 really something that hasn't been explored
8 nationally or in any great way or form. So
9 it's a topic that's certainly beyond what
10 we can get to here today.

11 Just jumping back a minute here, we
12 talked about the bots and scripts issues.
13 One of the reactions to those is to ban
14 them. And just as we're talking about kind
15 of the flip side of releasing information,
16 is there a flip side that you see to
17 banning bots and scripts in an effort to
18 try and ensure fairness for new players
19 versus expert players?

20 MR. GROVE: I think it puts
21 regulators in a really unviewable position.
22 I mean, fundamentally you're playing a game
23 of whack-a-ball. It's very difficult to
24 define broadly a class of products that

1 cannot be used. There's a serious economic
2 incentive to deploying these products. So,
3 I think, what you will see is basically
4 that economic incentive translate into the
5 continual development of products that come
6 right up to the line of whatever regulators
7 ban but don't quite cross over it.

8 You'll also see the emergence of
9 gray and black markets for similar
10 products. I think you have so many issues
11 not only definitionally but also on the
12 enforcement front that it almost kills the
13 question before you even get to the other
14 issues of is this really what we're driving
15 at when we say fair play?

16 Is the development of some of these
17 automated tools merely an extension of the
18 skill of the players and, therefore, not
19 really thought for regulatory intervention
20 but more properly understood as an
21 extension of the skill of those individual
22 players and the application of their time
23 and their resources and their energy?

24 And those are tricky philosophical

1 questions. But, like I said, I don't think
2 you ever get to them because the
3 problematic questions surrounding these
4 technological aids are so difficult that
5 they have such a high hurdle that I don't
6 really see how you surmount it. But I'm
7 certainly open to competing opinions.

8 MR. MULLALLY: Yes, I don't disagree
9 with anything Chris said. If I was making
10 suggestions with regard to, for instance,
11 draft regulation, I would certainly give
12 the regulator the authority to have
13 authority over third-party tools being used
14 on one of these sites. Whether you choose
15 to exercise it, I think, is a future
16 question that I'm not prepared to answer
17 today. I'm sure there is somebody in our
18 company that could give a more thorough
19 technical answer as to how these things
20 operate. But, I think, it's certainly an
21 area where you should have discretion.

22 MR. CONNELLY: Chris, if I can ask
23 you to follow-up on your two classes of
24 technological aids. We call them scripts

1 or bots or just call them aids. It seems
2 to me there is really nothing you can do in
3 your modeling class, which is someone who
4 is smart enough and someone really should
5 use their own ability and tools at their
6 disposal outside of the DFS realm to draw
7 good conclusions, you know, write a script
8 that simulates hundreds or thousands of
9 games and gives you outcomes and you use
10 that information and input it.

11 But the function class is clearly a
12 place where the operators will know or
13 should know. If they don't know, then I
14 think that raises other issues but at least
15 should know and should be able to prevent.
16 Do you think -- am I drawing an artificial
17 distinction there or do you think there's
18 really room to go at one class of aid?

19 MR. GROVE: I don't think it's an
20 artificial distinction, because obviously
21 you had an aid that is directly interfacing
22 with the client with the daily fantasy
23 platform that's easier to detect and at
24 least in theory prevent. But I still think

1 you get back to that trickier question of
2 where does skill somehow cross into
3 exploitation? Where does the skill, which
4 we believe to be a fair advantage, somehow
5 morph into an unfair advantage that should
6 be prohibited?

7 That to me starts to sound a lot
8 like regulators or policymakers choosing
9 winners or losers in this game. And, I
10 think, that's a slippery slope that then
11 opens up, not just this Commission but any
12 regulatory body, to a host of other
13 questions of, well, then why aren't you
14 doing more on this front or that front or
15 this other front? Because there are nearly
16 limitless number of points of which the
17 outcome of the game could conceivably be
18 impacted.

19 So I don't think -- it's not an
20 artificial division. It's a real division.
21 But you still run into that tricky question
22 of where are we drawing the line about what
23 we think is fair and unfair, can that line
24 be solid over time as the game evolves and

1 do we need to be constantly moving if it
2 can't be solved?

3 MR. CONNELLY: Can I ask the panel,
4 does it matter in the sense that if DFS is
5 clearly -- you know, I shouldn't say
6 clearly. For many people DFS is a game
7 that's enjoyed through the analysis as
8 opposed to the playing. Is it in that by
9 that definition a skillful game as opposed
10 to Angry Birds where you play it as you're
11 waiting for the elevator or whatever you're
12 doing, those kind of casual games and by
13 its nature -- I mean, does it matter if
14 skilled players who are very interested in
15 doing the analysis to set themselves up and
16 position themselves, does it matter that
17 they do better than me if I just randomly
18 pick a bunch of players?

19 MR. WALLACH: Wait a second. I want
20 to tackle that. Where is the skill in the
21 function aspect of the script that Chris
22 talked about? Simply having the ability to
23 automate how many times you enter or making
24 automated last minute adjustments because

1 you find out your starting running back is
2 being held out of the game, there is no
3 skill in that. It's simply the ability to
4 replicate adjustments 100 times faster than
5 anyone who plays manually.

6 Now, I agree the predictive aspect
7 of scripts and I don't view the function
8 component -- I don't view the predictive
9 component as a script. That's just simply
10 an analytical tool that allows you to
11 exercise your skill to a greater degree.

12 There is simply no skill in being
13 able to enter lineups at a much faster clip
14 or adjust your lineups at a much faster
15 clip than someone who does not use an
16 automated tool that we would commonly refer
17 to as a script. There's no skill at all
18 involved in there. It just gives you an
19 unfair advantage through automation.

20 MR. GROVE: I would disagree, and I
21 think that this disagreement points to the
22 stickiness of these questions. To me,
23 there's clearly a skill. You have to
24 identify that the tool exists. You have to

1 determine that it's worth your time to use
2 this particular tool for this particular
3 function. You may many number of ways
4 tweak or otherwise alter the tools so that
5 it better serves the outcome that you're
6 looking for and you choose to use this and
7 not to use that when you pick a particular
8 tool. And in that is a decision and in a
9 decision is arguably the presence of skill.

10 But, I think, the disagreement here
11 is, again, more to the point that these are
12 by and large arbitrary questions. And when
13 you start weighting into those sorts of
14 waters, especially with a product that is
15 so new and so undefined, there is a feeling
16 at least to me that the car was going
17 before the horse.

18 MR. MULLALLY: And I tend to agree
19 with Chris. I think, you know, a player
20 making a choice that allows them to manage
21 their decisions more efficiently doesn't
22 necessarily shift the competitive balance.
23 It just means that they have become more
24 efficient in managing their money in the

1 way they play the game.

2 So, for instance, using Dan's
3 example, if you make a last minute decision
4 to substitute a player based on information
5 and you did it across many, many lineups,
6 if that ends up being a bad decision, you
7 more officially lost a lot of money. So, I
8 think, that is a player decision.

9 I think where I still sit is that
10 the Commission should have authority over
11 this area and make decisions when they
12 don't think it's in the best interest of
13 the game for the industry.

14 Let's use another skill sport, the
15 game of golf. Many years ago the PGA
16 authorized the use of square groves,
17 particularly in wedges, and they thought
18 that was a good decision and for many years
19 it was. It enhanced the quality of play.
20 It made things more interesting.

21 Well, players got so good that they
22 felt like it was dampening the difference
23 in skill levels. That the average player
24 was hitting wedge shots just like Phil

1 Nicholson could, even though we all know
2 that Phil Nicholson is way better with that
3 particular. So they said we're not going
4 to allow that particular device, that
5 technology anymore because we think it's
6 harming the game.

7 I think that is a good analogy to
8 what should happen here is you should
9 evaluate tools as they come, make policy
10 decisions based on data and experience and
11 the consumer experience and leave it at
12 that.

13 CHAIRMAN CROSBY: You made this
14 point a couple of times, Kevin, and I think
15 Stephen Martino did too and I think it's
16 very relevant for what we're doing.

17 What you're saying repeatedly is the
18 technology is going to change so fast, the
19 games, the way they can be played, the aids
20 that are available that for a legislative
21 body to try to be prescriptive as to how to
22 deal with them is in the nature of
23 impossible.

24 But the legislative body needs to

1 figure out how to rationally empower a
2 regulatory agency which can be nimble
3 enough to move from time to time in the
4 change and move from issue to issue and
5 change and so on and so forth.

6 But, I think, that's a really
7 important point for us to remember is as
8 we're trying to put together some
9 recommendation for the legislature that
10 gives them a mechanism by which they can
11 set the values and set the standards and
12 set the parameters but leave the grunt
13 work, the day by day laudation to somebody
14 that is more nimble than the legislature
15 can possibly be.

16 MR. MULLALLY: Yes, absolutely. I
17 mean, we live it on a daily basis in the
18 lab and we don't allocate 100 percent of
19 our testing personnel to testing, because
20 somebody has to sit back and be a smart
21 person and say, okay, look at all the new
22 technology come in. How can we test more
23 efficiently? How can we handle this new
24 technology? What issues does this create

1 for our regulatory client so we can make
2 them aware of them so they can make policy
3 decisions because we don't make policy
4 decisions. We do things the way you want
5 them to be done.

6 But new technology comes and it says
7 this rule did not envision this technology
8 when it was written. So we need to let our
9 clients know so they can make a decision on
10 how to do that. And we need to start
11 thinking about how we can test it in an
12 efficient, cost-effective and consumer
13 friendly manner.

14 CHAIRMAN CROSBY: And if the
15 analysis has to be this law didn't
16 anticipate this new technology, that's a
17 much tougher proposition for the public
18 sector to respond to than if it's a reg.,
19 which doesn't respond, which is the whole
20 point here.

21 MR. STEMPECK: And just to keep us
22 moving here because we have a lot to talk
23 about and I see we're eating up our time
24 real fast is just pivoting on the fairness

1 issue to one I think a lot of people are
2 curious about is the idea of disclosure to
3 customers.

4 What type of disclosures to
5 customers in the DFS realm should there be?
6 What is the existing state of play? How
7 can it possibly be improved? What does a
8 customer need to know so they can be
9 educated enough going in?

10 I mean, is it disclosure of odds?
11 Are we talking disclosure of rules of the
12 road? Do they know experts may be using
13 bots? I mean, what should a customer know
14 when they are signing up?

15 MR. WALLACH: All of those.

16 MR. STEMPECK: That was an easy
17 answer.

18 MR. WALLACH: You know, I use a
19 materiality standard, not the materiality
20 standard that's in play in the New York
21 court case but a materiality standard in so
22 far as what would affect a consumer's
23 decision to whether or not to enter into
24 the contest and what can provide them with

1 the kind of information in which they can
2 make an informed decision and all of those
3 play into materiality.

4 It's like materiality in the stock
5 market. The mix of information that could
6 be made available to influence your
7 decision as to whether or not to join and
8 enter. And it seems to me that everything
9 that you delineated is something within the
10 control and ability of the DFS site to make
11 available to their consumers.

12 So we're basically talking full
13 disclosure of all material information that
14 could reasonably impact the decision as to
15 whether to play, how to play, who to play
16 against and odds of winning at a bare
17 minimum just go to the heart of that but
18 more could be done and whatever is
19 material.

20 And it would be up to the
21 legislative body to determine what
22 materiality is. But we can easily
23 identify, you know, a number of key
24 informational points that can really tell

1 you what the game is about. Do I have a
2 fair chance of winning? What are my
3 chances of winning? What am I up against?

4 MR. STEMPECK: Well, Dan, on that
5 point, can you actually -- in some DFS
6 contests, is it even possible to disclose
7 odds of winning? Because my understanding
8 and someone correct me if I am wrong here,
9 because a lot of these contests you might
10 be in a contest with 1,000 people and I
11 have my own individualized lineup so it's
12 all going to be -- we're going to have to
13 see what happens with the game.

14 It's not like -- there's 52 cards in
15 a deck and I know that based on my
16 percentage that I have this and I have that
17 so you can actually do the math. So could
18 you really disclose the odds to someone who
19 signs up for one of these tournaments on
20 the DFS site?

21 MR. WALLACH: You can use past
22 performance as a guide. I mean,
23 understandably this is not a lottery where,
24 you know, the state lottery disclose odds

1 because that is purely chance-base, not
2 skill-base. You know, Kevin identified a
3 number of mathematical experts at his
4 company and anything, any kind of past
5 performance or past behavior, past results
6 can be quantified into a percentage likely
7 that may vary from contest to contest.

8 Certainly past results are not
9 indicative of future performance but
10 something is better than nothing. And that
11 something could be provided with the
12 caveats that mutual funds provide, that
13 other kinds of industries provide. But
14 certainly past performance is, you know,
15 historical results or would be important to
16 know. It's part of the mix of material
17 information.

18 MR. MULLALLY: I worry about
19 requirement disclosure of information that
20 can be manipulated. So, you know, the rule
21 first do no harm in regulation is an
22 important one, too. So that's why I say
23 when we look at data, we should have a very
24 specific purpose for why that data needs to

1 be revealed.

2 And I think more important than
3 disclosure, I think disclosure issues are
4 pretty easy. I think anything that
5 materially affects the outcome of the game
6 should be available to the player. I think
7 more important is let's prevent allowing
8 game parameters that could be considered
9 unfair or could be manipulated, for
10 instance.

11 I mean, I don't know about you but
12 on disclosure issues when I go -- when
13 you're downloading an update to a software,
14 they have the big, long agreement that you
15 have to agree to and pretty well know that
16 I am not getting a good benefit of that
17 bar. There's a lot of stuff in there that
18 is not in my best interest that I am
19 agreeing to and I know that, but I go ahead
20 and do it anyway. I think in this case
21 let's try to prevent having players --
22 having parameters that are not in their
23 best interest.

24 MR. STEMPECK: And another big topic

1 that we may not have the full amount time
2 to delve into but at least we can talk
3 about briefly before I turn the mike over
4 to Paul here is the player funds
5 protection. What is the status quo in the
6 industry now? Is that good enough? Are
7 there improvements that we should see?
8 What do we know about the money that I
9 deposit in one of these sites when I sign
10 up and create an e-wall? Where does it go?

11 MR. GROVE: Right. I think that's
12 one of the more troubling aspects of the
13 status quo is that there isn't a lot of
14 transparency on this particular issue, and
15 that is not to say that means that there's
16 an issue or that means there's a concern
17 regarding player funds. It's just to say
18 exactly what I said. There isn't a lot of
19 transparency on this issue.

20 So some of the things we don't know
21 include how this liability is calculated on
22 the part of operators. How do they arrive
23 at the total amount, the total number their
24 liability for player balances? Is that

1 something that only includes money that
2 players have deposited? Once a player
3 enters a contest that may not start for a
4 few days, is the operator then calculating
5 their new balance based on the money
6 entered in a contest that hasn't resolved
7 or their old balance?

8 If a player requests a withdrawal
9 and the withdrawal takes a day to process,
10 again, what's the impact on the liability?
11 What about bonuses or tickets in player
12 accounts that can amount to thousands of
13 dollars of value but are not cash? Are
14 those included in the liability? How often
15 is the liability calculated?

16 During the NFL season, you saw an
17 influx of tens of millions of deposits on
18 any given weekend, especially in the
19 earlier part of the season. So the
20 liability that a Daily Fantasy Sports'
21 operator had on a Thursday might be quite
22 different than the one that they had on a
23 Monday.

24 A clear definition of how the

1 liability is calculated is critical in any
2 regulatory approach to this product and,
3 frankly, should emerge in the absence of a
4 regulatory product. I think that is a
5 shame that it hasn't.

6 I think there is also this question
7 of how is the risk communicated to
8 customers? Are customers told how their
9 funds are protected? What various
10 scenarios under which their funds may not
11 be protected such as insolvency or a
12 similarly catastrophic event for the
13 company and what is the instrument used to
14 find out the actual financial instrument
15 used to protect their funds? How is it
16 separated from the operational accounts?

17 Right now we just get a line on the
18 website of the major operators that assure
19 us that the funds are segregated and not
20 co-mingled with operational funds and are
21 secured for people like myself who have
22 been in the online gambling industry for a
23 number of years. This is simply not
24 sufficient in terms of calming.

1 My concern is providing me either as
2 a consumer or someone who participates in
3 the industry with the assurance that these
4 funds are being handled in the most
5 responsible way possible, which frankly is
6 the primary charge of these sites. And
7 then it's fair games and then it's
8 basically everything else.

9 So I do think that definitionally
10 and then also in terms of articulating
11 policies to consumers there's a lot of room
12 for improvement on this front.

13 MR. MULLALLY: Another thing to
14 consider, just to clarify on the issue of
15 data that is available, information about
16 other players is never going to be of value
17 after you enter the contest, right. So
18 people that enter after you you are never
19 going to have any data on.

20 So it almost by creating this whole
21 huge data warehouse, I'm trying to in the
22 vail of consumer protection, you almost
23 encourage people to enter late,
24 particularly the skilled players, and then

1 the other players would simply have no
2 visibility to that and now you almost have
3 a rush to the window at the end similarly
4 to what you have in a pari-mutuel wagering
5 situation. So which is what -- which these
6 are by definition pari-mutuel pools. And
7 so the concern I have is creating a lot of
8 activity for no real purpose.

9 MR. STEMPECK: Just in the interest
10 of time, I'm going to turn it over to Paul
11 to address some of the technical
12 requirements that are placed and the
13 concerns around those.

14 MR. CONNELLY: So we talked a lot
15 earlier in the day about technical
16 requirements, particularly around know your
17 customer, geo-location, age verification,
18 ID verification. What do you see as, two
19 things, one, some of the challenges in
20 that? Kevin, like you, I think, I'm a
21 believer in technology and there is a lot
22 of tools out there that can do this.

23 But just to the panel, what are some
24 of the challenges out there and what are

1 some of the existing solutions that could
2 be employed? And, also, if in your remarks
3 if you can identify where some are, not
4 that currently are being employed, that
5 could be.

6 MR. MULLALLY: Well, in an effort to
7 make light of the topic but this is really
8 kind of old hat for us. We have been
9 working with geo-location for six, seven,
10 eight years now. We have been working with
11 player age verification and identity
12 verification for over a decade, any of the
13 technologies relating to payment processing
14 over a decade. So these are really kind of
15 plug and play. They're tested and retested
16 in many markets according to many different
17 technical standards around the world.

18 So, I really don't see this as one
19 of the big rocks that you have. It's just
20 what are the requirements going to be and
21 what is the purpose to impose them? I
22 think, you know, in reviewing the draft
23 regulations, they are pretty well thought
24 out as to how they're deployed.

1 So from our perspective, if these
2 were to be imposed tomorrow we have, A,
3 already tested all of these technologies;
4 and, B, for some of these companies at
5 least, they voluntarily have already
6 submitted them for testing in a fantasy
7 deployment.

8 So, I think, the technology piece is
9 one that is probably one of the easier
10 issues that you have to face just because
11 it's something that has already been done
12 in many other areas.

13 MR. GROVE: I'd echo Kevin's
14 assessment with a big caveat. The tools
15 exist and their efficacy has been proven,
16 but there's space between the tools
17 existing and ensuring within a regulatory
18 framework or a policy framework that the
19 tools are actually being deployed, that
20 they are being deployed consistently and
21 that they're being deployed effectively.

22 So, I think those end up being some
23 of the harder questions around this
24 technology is not so much can the

1 technology solve a particular harm, prevent
2 a particular harm, ensure a particular
3 outcome. I do agree those questions are by
4 and large solved and have been proven
5 solved in a variety of markets, not just
6 gambling but, like you said, finance as
7 well.

8 The question is more how can
9 regulators approach the use of those tools
10 to ensure that operators are deploying them
11 consistently and effectively? And that's
12 where, I think, it becomes slightly more
13 complicated and also more a nuance and
14 in-depth discussion about auditing the
15 schedules that you wrap around that kind of
16 auditing, the benchmarks you're looking
17 for, you're expecting and then
18 understanding what data you're getting
19 coming in is violating those benchmarks are
20 raising red flags. So question not so much
21 about tools but just making sure they are
22 being used effectively and consistently by
23 operators.

24 MR. MULLALLY: I think if you look

1 at the testing model that has been used in
2 the internet space where you have, again, a
3 risk-based approach. So you look at the
4 technology, and as, Mr. Chairman, you
5 identified, it's dynamic, right, it's
6 change.

7 It's not like a slot machine where
8 you say, okay, here is a platform, tested
9 all the components that operate system.
10 Everything is static. Here is a bunch of
11 games. They are static. We put them on
12 the floor. We have tools to verify the
13 software periodically. It doesn't change,
14 and it just sits there.

15 Like in the internet world, it's
16 more dynamic so the internet world has
17 developed a set of criteria where we're
18 going to say green, yellow, red light.

19 So there is green light things where
20 they just say, look, you can go ahead and
21 implement these changes to the software on
22 your own without our review but here's the
23 documentation requirements for that. So,
24 if anything, it's a low risk. If anything

1 ever did run foul, we have documentation as
2 to what changes you made, who made them,
3 who was responsible so that we can do a
4 proper forensic investigation if anything
5 goes wrong.

6 Then there is a yellow light where
7 they say, these things are at moderate
8 level risk. We would like to desk them
9 before you implement them so send us this
10 level of documentation about what changes
11 you're going to make. We're going to
12 review it and we'll either say yes, go
13 ahead with just documenting it or no, this
14 is important. We want to send it to the
15 lab for review before you implement it.

16 And then there's the red light
17 things. These are critical areas of the
18 software that definitely go to player
19 integrity and consumer protection. And
20 before you implement this type of a change
21 to your software, let's say it has to do
22 with the payment system or the security of
23 the site, we want to lab review that before
24 that gets implemented.

1 MR. CONNELLY: You mentioned earlier
2 in your comments that your opinion, Kevin,
3 that requiring suppliers, for example,
4 vendors to a DFS site seems outside the
5 bounds of what you consider prudent now.

6 How about third-party technology
7 providers who may provide some of these; is
8 lab analysis enough or do you think that
9 providers of that nature would fall into
10 some kind of regulatory schema?

11 MR. MULLALLY: I think just to
12 clarify what I meant before, I think, I was
13 referring to like background checks and
14 stuff like that. I think that any provider
15 of a service of the operating system, of
16 the system that operates the games needs to
17 be evaluated.

18 I mean, the product needs to be
19 evaluated regardless as to who is
20 developing it. I mean, whether FanDuel or
21 Draft Kings or whoever the operator is
22 develops it internally, probably unlikely,
23 or their third-party developer, that
24 product needs to be evaluated according to

1 technical criteria that is developed by the
2 regulator.

3 So you're going to have, just like
4 you have with all of your other areas that
5 you regulate, games that you regulate,
6 you're going to have technical requirements
7 that govern what the software has to do and
8 what it can't do. And that will set the
9 parameters for the review.

10 MR. CONNELLY: Great. We're running
11 towards the latter part of the panel, and I
12 wanted to make sure we had some experts on
13 responsible gaming we wanted to bring up.
14 We wanted to introduce that topic. And
15 just as a placeholder, I don't want to cut
16 into your time, but one of the areas I just
17 wanted to touch on in addition to that as
18 you guys make your way up to the podium is
19 consumer recourse because, I think, it's
20 one of the areas that we talked about in
21 the past but, I think, kind of folds in --
22 you may have to shift the panel down. So
23 while they are getting seated, I will
24 introduce them.

1 First we have Marlene Warner. Since
2 2011 Marlene Warner has led the Mass.
3 Council on Compulsive Gambling as the
4 Executive Director. She first joined the
5 council as program director in 2001.

6 In her role, Ms. Warner leads the
7 statewide organization to advocate for
8 policies and provisions to keep gambling
9 safe and healthy for the people of the
10 Commonwealth and to provide services for
11 those negatively impacted by gambling
12 disorders.

13 She builds connections to treatment
14 facilities and recovery-directed policies,
15 advocates on a state level for funding for
16 problem gaming monies and programs, as well
17 as the integration of gambling disorder
18 with public policy officials.

19 In addition, she trains hundreds of
20 casino and lottery individuals and has been
21 instrumental in the establishment and
22 operations of the First Responsible Gaming
23 Information Center in the United States and
24 the associated tools and staffing.

1 As program director, she offered a
2 range of training opportunities for
3 clinicians, worked within corrections to
4 build capacity of professionals and
5 developed services to serve high-risk
6 population such as youth, adolescents,
7 elderly and various racial and ethnic
8 populations. She also secured grant
9 funding and developed curricula to support
10 financial education programs.

11 Ms. Warner has contributed to
12 numerous articles in the field and conducts
13 dozens of interviews on an annual basis
14 with statewide media outlets.

15 To her right is Mark Vander Linden,
16 member of the Gaming Commission. Mark
17 Vander Linden currently serves as Director
18 of Research and Responsible Gaming for the
19 Massachusetts Gaming Commission. In this
20 role he manages the extensive MGC research
21 agenda to advance the understanding of
22 responsible gaming, gambling disorders and
23 impacts of casino-gambling in
24 Massachusetts.

1 Additionally, he works
2 collaboratively with casino operators and
3 other stakeholders on a range of casino in
4 community-based responsible gaming
5 initiatives. Prior to joining the MGC in
6 2013, Mark was the Executive Officer of the
7 Office of Problem Gambling Treatment and
8 Prevention with the Iowa Department of
9 Public Health. Mark serves on the Board of
10 Directors of the Association of Problem
11 Gaming Service Administrators and the
12 National Center for Responsible Gaming.
13 Welcome.

14 To dive into responsible gaming, we
15 touched on it a little bit from the
16 operator standpoint, they seemed willing to
17 engage. But I first wanted to start out
18 from the evidence that exists, what can be
19 said about the relationship between DFS and
20 problem gambling?

21 MR. VANDER LINDEN: This could be a
22 very short part of the presentation because
23 there's really not a lot that can be said
24 about Daily Fantasy Sports and its

1 relationship with problem gambling. In
2 fact, we have done a literature review and
3 identified two specific studies, neither of
4 which looked at specifically Daily Fantasy
5 Sports but looked at fantasy sports. Both
6 studies were then done within the last
7 couple of years focused on college
8 students.

9 That said, what can we say about the
10 relationship between fantasy sports and
11 college students was that there was indeed
12 a heightened risk for problem gambling
13 among college students who did participate
14 in fantasy sports. You know, you need to
15 take a look at this with extreme caution.

16 If you take a look at the
17 methodology and the results, you will see
18 that there are a number of limitations
19 within those two studies, not least of
20 which because it's a very narrow and
21 targeted population of study.

22 I'd also like to point out our own
23 gambling -- problem gambling in
24 Massachusetts, the baseline population

1 survey that we did. We did not take a look
2 or ask specific questions regarding fantasy
3 sports or daily fantasy sports. We are
4 looking at a construct to questions that we
5 would integrate into future studies right
6 now, and I am excited about the possibility
7 of including those.

8 You know, there was a discussion
9 earlier this morning about kind of the
10 correlation of Daily Fantasy Sports and
11 sports betting. So I will point to the
12 data that I was able to extract from there
13 specifically about sports betting.

14 In Massachusetts that 13.2 percent
15 of respondents to this survey, and, again,
16 it's an adult population survey in
17 Massachusetts, reported that they had bet
18 on sporting events within the last year and
19 1.7 percent had bet on sporting events at
20 least weekly. Not surprisingly males are
21 twice as likely than females to engage in
22 sports betting and that the age group that
23 was predominantly doing this was age 25 to
24 54.

1 This group also was at higher risk
2 or at risk for problem gambling. Of those
3 individuals that reported sports betting,
4 17.5 percent were at risk and 5.7 percent
5 problem compared to the overall population
6 where 1.7 percent met that criteria for
7 problem and 7.5 percent for at risk.

8 Again, a word of caution with
9 interpreting this data is that you need to
10 take a look at the sample sizes and
11 understand that there is a risk of -- that
12 this isn't entirely reliable.

13 Another thing that you need to take
14 into consideration is that there tends to
15 be an overemphasis on looking at game
16 specific risks. So if I were to say sports
17 betting in general and narrowly look at
18 that, that is not nearly as accurate as
19 saying what other types of games are being
20 played by the individual and parallel. So
21 that the more games that an individual
22 plays, the higher the level of risk and
23 that's really how this should be taken a
24 look at.

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So, for example, for sports betting the average was they were playing in parallel 2.4 other game types within the past year.

CHAIRMAN CROSBY: Other betting?

MR. VANDER LINDEN: Other types of betting, whether it be casino or lottery games or Bingo that they were identifying that they were playing 2.4 other types of games within that same time period. And that, in fact, is the better way to begin assess risk and problem gambling.

You know, we need to do more research on this without a doubt. And, I think, that if we think where do we need to go with this in terms of the whole realm of responsible gaming, problem gambling, that would be one of the top items on my list.

MR. CONNELLY: In practice, Marlene, this question is to you, has the council actually worked with anyone who has expressed a problem with Daily Fantasy Sports?

MS. WARNER: Thank you for the

1 question. You know, I think that we should
2 be really careful about recognizing how the
3 helpline works. The helpline is the
4 primary way. We have a 24 hour 7 day a
5 week helpline and a small portion of the
6 folks we know that even struggle with
7 gambling disorders here in the Commonwealth
8 will end up calling our hotline or using
9 our chat or text function.

10 Having said that, we do have some
11 anecdotal stories of folks who have
12 struggled with Daily Fantasy Sports. And I
13 do want to make that distinction, because I
14 think it's important that we are not
15 hearing from folks that are struggling with
16 fantasy sports. And I think a lot of it
17 has been alluded to earlier in terms of the
18 technology that is speeding up and
19 expediting the play is that's the action,
20 right, and that is the part where some
21 folks will get into trouble. It's now
22 always about the money. Sometimes that is
23 where it starts, but it's often about the
24 action.

1 So, yes, we certainly have heard
2 from both individuals who struggled on
3 their own but also from family members.
4 Just I think two weeks ago we had a phone
5 call from a mom calling about her 20
6 something year-old son who was struggling
7 related to this.

8 We also, as you alluded to in my
9 bio, we are working with the gaming
10 commission and running the on-site center
11 down at Plainridge Park Casino and there
12 are game sensor advisers down there, and
13 they also have some anecdotal stories and
14 we're talking handfuls of stories, not a
15 ton, handfuls of stories of folks who have
16 talked and alluded to sort of their play
17 being problematic. But evidenced by what
18 Mark was saying and these stories, they're
19 at the casino playing those games as well
20 as being Daily Fantasy Sport players.

21 MR. CONNELLY: There's obviously
22 seeing it at a ground level there's a lot
23 of research that needs to be done. I think
24 was it yesterday that the National Council

1 put out some rules in concert with one of
2 the operators? Was it draft --

3 MS. WARNER: Draft Day, yes.

4 MR. CONNELLY: Draft Day, yes. Very
5 interesting. Actually, it really addressed
6 basically all the topics on this panel not
7 only responsible gaming but also a lot of
8 these technology issues. Is there
9 anything -- can you kind of speak to that
10 and also any other reference that you're
11 aware of at the national level to think
12 about and address the issue?

13 MS. WARNER: Yes, I'm happy to. And
14 actually part of my life is that I'm vice
15 president of the National Council on
16 Problem Gambling Board of Directors. So,
17 yes, the guidelines go kind of far and wide
18 very much based off internet gaming
19 standards and guidelines. So, again, we're
20 not talking about an entirely different
21 beast here. We're talking about a fairly
22 similar model. Looking at staffs training.

23 So we talked about being in, you
24 know, players on being able to stop their

1 play but then what, what do staff know
2 about and are they able to respond
3 appropriately to some of the concerns that
4 are brought up?

5 Informed decision-making, you know,
6 one of the things that the Gaming
7 Commission already has available to them is
8 this very advanced responsible gaming
9 framework and that that is a great tool on
10 the talks to a great extent about making
11 sure that the player knows what they're
12 getting into and, again, all those topics
13 were raised today. How do you assist a
14 customer?

15 And, so, it goes back to that step
16 training piece but also do you have the
17 tools available to them? Are you pointing
18 them to the right website, to the right
19 helplines, to the right information? And
20 kind of in conjunction with that, one of
21 the things the guidelines talked about were
22 timeouts. And are they able to stop
23 playing right then and there when they're
24 feeling like I'm feeling very overwhelmed

1 with this?

2 You know, to me this is a really big
3 piece, which is the self-exclusion piece
4 and doing that right, making sure the right
5 tools are available. Again, the Mass.
6 Gaming Commission and Mark have gone beyond
7 a lot of other jurisdictions to make sure
8 that they are doing it right. And so I
9 would certainly ask that it be done in a
10 similar fashion.

11 And then advertising, and General
12 Coakley spoke about this earlier, but, you
13 know, talking about the advertising piece,
14 you know, I for different circumstances
15 have my son here today but I have another
16 son in addition who, you know, everywhere
17 they go they are looking at and engaged in
18 the overwhelming amount of advertisement is
19 coming forward.

20 So there's a lot of pieces in play
21 there, right, making sure that you're
22 providing accurate information and making
23 sure that you are providing the education
24 to make sure that the folks are making

1 informed decisions. Making sure that if
2 whatever the age is going to be whether
3 it's 18 or 21 or so forth but that is
4 really advertised. It's not chronically in
5 advertisement.

6 And it's tough when kids are kind of
7 being bombarded with that. If they are
8 interested in sports to make sure that that
9 is being accurately represented and
10 whether, again, whether the websites are
11 advertising that is out in public.

12 And with the website, I would go a
13 little bit further and talk about practice
14 sites. I will say that we get a lot of
15 calls around internet gaming where people
16 thought they were winners. They thought
17 they were really good, skilled players. We
18 talked a lot about skilled players today.
19 And they figure that out via practice sites
20 and then get on to the real sites with real
21 money and lo-and-behold they are not doing
22 as well. And so putting a lot more thought
23 and attention to that piece specifically.

24 MR. CONNELLY: One of the things

1 that we spoke about on the panel just a few
2 minutes ago at length, and we could
3 probably spend the rest of the afternoon on
4 it, is the amount of information that is
5 gathered not only on players but on conduct
6 of games. In that vain, what information
7 do you think is necessary from a problem
8 gaming standpoint to have available?

9 MR. VANDER LINDEN: Yes, I can take
10 that. So there is a, I think, it's the
11 power of the internet that really provides
12 us with just pretty much as much
13 information as we want to do some pretty
14 amazing research on this specific issue and
15 trying to begin building some constructs to
16 identify problem gambling behavior.

17 So, I think in terms of what would
18 we need, you know, we want to begin looking
19 at patterns of play if that information
20 already exists. We want to begin seeing
21 how those patterns of play change overtime.
22 We would want to begin to take a look at
23 what are the risk markers of players who
24 continue down that continuum of problem

1 gambling.

2 What would be really helpful is we
3 get to know more information about those
4 players so that we know what those risk
5 markers are not only in their actual play
6 but what is happening outside in their
7 life.

8 And so, you know, our current
9 research agenda, specifically a large
10 cohort study we're doing does a great job
11 of that. It would be great to be able to
12 harness the information that exists through
13 Daily Fantasy Sports and begin coupling it
14 and get a clearer picture of individuals.

15 MR. CONNELLY: Excellent. And
16 obviously through the conversation, you
17 identified a lot of these issues have to be
18 self-identified where someone says, look, I
19 either recognize that I'm not playing in a
20 responsible manner or I started on this
21 site that was, you know, made me believe I
22 was a high-skilled player and I went to the
23 real-world and it's not.

24 And that kind of leads me into a

1 little bit into one of the other topics I
2 want to make sure we touched on is consumer
3 recourse. So when someone feels that the
4 playing field was not level or that they
5 were somehow there's a bait-and-switch or
6 whatever, what do we need to be doing about
7 that? Dan, I will ask Dan because I know
8 you've been thinking a lot about this.

9 MR. WALLACH: Well, consumer
10 protection, if we're going to talk about
11 consumer protection, we also have to talk
12 about recourse. And it is inconceivable to
13 me that a resident of the Commonwealth
14 would have to resolve their dispute via
15 arbitration in another state. And that's
16 the way so much of this is set up like all
17 online or internet companies, whether it's
18 Draft Kings, FanDuel, they all have
19 arbitration provisions.

20 It's not a problem with Draft Kings.
21 They are here in the Commonwealth. They
22 want you to arbitrate disputes in the
23 Commonwealth. But if you're a resident of
24 the Commonwealth, you have a right with no

1 remedy if you're forced to arbitrate a
2 dispute in North Dakota that had no nexus
3 to your contest. And that's the problem
4 with a lot of these terms of use. They are
5 not necessarily disclosed up front.

6 You have to click on a link rather
7 than scroll through the terms and
8 conditions before you can accept them and
9 quite a few of them, fortunately, out of
10 state to resolve a dispute, number one, it
11 raises the question of whether that is a
12 reasonable, you know, recourse.

13 And part of these arbitration
14 provisions also include explicit waivers of
15 class-action. If you have a dispute of a
16 de minimis amount or even a material amount
17 that might be 1,000 dollars, 5,000, you are
18 not going to ever find an attorney to
19 handle a case like that on a contingency
20 and you certainly wouldn't be able to
21 afford the hourly rate.

22 So first and foremost, we need an
23 adequate in-state dispute resolution
24 process. I mean, the New Jersey online

1 gaming regulations have that built in. The
2 proposed regulations, not the proposed, the
3 actual regulations from the Massachusetts
4 Attorney General's office made tremendous
5 in roads at requiring in-state dispute
6 resolution.

7 But this goes well beyond just Draft
8 Kings and FanDuel. Residents of the
9 Commonwealth should be able to resolve
10 their disputes within the Commonwealth and
11 not be forced to go or travel out-of-state,
12 hire a lawyer out-of-state. Because guess
13 what's going to happen if you're required
14 to arbitrate out-of-state, you're going to
15 say good-bye to the claim. You're never
16 going to be able to find an attorney to
17 represent you. The claims are small
18 relative to the hourly fee that an attorney
19 would charge you.

20 So we need a robust, meaningful
21 in-state dispute resolution procedure. If
22 that means all the companies that do
23 business in Massachusetts should allow
24 their customers to resolve disputes by way

1 of either arbitration or a judicial form in
2 the Commonwealth. Anything else you are
3 leaving it solely to the Attorney General's
4 enforcement mechanism.

5 The Attorney General has only so
6 much resources at its disposal. Private
7 consumers should have the ability to
8 obtain, you know, recourse whether it's in
9 an arbitration form or in a court in the
10 Commonwealth. Anything short of that, you
11 will end up having rights without remedies.

12 COMMISSIONER ZUNIGA: What about
13 class-action waiver exclusions? You
14 mentioned that quickly. Is that something
15 that the industry is just never going to
16 allow or agree? Does that become a barrier
17 for the actual industry?

18 MR. WALLACH: Well, it depends on
19 how you feel about the class-action
20 process.

21 COMMISSIONER ZUNIGA: I'm asking a
22 lawyer.

23 MR. WALLACH: If you're corporate
24 America, the class-action mechanism is the

1 bane of your existence. You point to oh,
2 plaintiff's lawyers, you know they are just
3 out for a payday. They are opportunists
4 but class-actions are properly also viewed
5 as a consumer protection mechanism and
6 enforces accountability and it holds
7 corporate America's feet to the fire, so
8 you have to have a balance there.

9 And when we're talking about the
10 daily fantasy or any kind of, you know,
11 fantasy sport industry, the amount of the
12 claims that could be in dispute might be
13 small relative to your ability to find an
14 attorney, ready, willing and able to
15 represent you, you know.

16 If you're forced as a consumer to go
17 the pro se route because a 1,000 dollar
18 dispute is not worth a lawyer's time, you
19 are on an unlevel playing field when it
20 comes to legal representation going pro se
21 versus a company that's going to have
22 outside counsel.

23 So I have some very strong views
24 about the importance of the class-action

1 mechanism, and maybe that is not our job or
2 the prerogative of the Gaming Commission to
3 resolve. But, I believe, the class-action
4 mechanism plays a very important role in
5 consumer protection. But my focus was more
6 on having a nexus between the dispute and
7 the forum.

8 And so many of these companies, and
9 I'm not going to name names, I mean,
10 certainly every company wants to resolve or
11 arbitrate disputes in their home forum.
12 Well, what good is that going to do a
13 resident of California or New Mexico?

14 Conversely, a Massachusetts resident
15 should be able to have disputes resolved
16 inside this forum, whether it means you
17 impose several levels of requirement to
18 maybe resolve it through the company first.
19 And then if you don't receive the
20 satisfaction to your liking, then the next
21 level is you can file a petition for
22 arbitration or a complaint in a superior
23 court. But at a bare minimum, disputes
24 need to be resolved in the Commonwealth.

1 If these companies are going to do
2 business and avail themselves of the
3 benefits of the Commonwealth, they also
4 have to subject themselves to the
5 jurisdiction of the Commonwealth for
6 purposes of resolving disputes. They can't
7 have it both ways.

8 And this is not a Draft Kings'
9 problem, because they are based here. But
10 it is something that all the other
11 companies in the industry are going to have
12 to address if they are going to put their
13 money where their mouth is and be, you
14 know, genuine and not disingenuous about
15 consumer protection and treating your
16 customers fairly have disputes resolved
17 here.

18 MR. MULLALLY: I think there's an
19 extremely high degree of likelihood that
20 all or almost all of those disputes are
21 going to be resolved at a regulatory level.
22 You know, the good aspect of having
23 technology like that is that you have total
24 recall of all game play, all participants,

1 all transactions leading up to, where the
2 money came from, where the money went, who
3 the players were involved, where they were
4 when it happened.

5 And, so, your ability to do a proper
6 investigation and a forensic and to get the
7 facts before the regulatory body should
8 preclude any need for arbitration or a
9 court action for that matter. I think a
10 good regulatory dispute process takes care
11 of all those issues.

12 MR. GROVE: And what you want to
13 focus on when you're thinking about this
14 issue is making sure that you're opening a
15 window into the experience that the
16 consumer is having that you, as
17 policymakers, have a better appreciation of
18 what common disputes are, what common
19 issues that players are raising with sites
20 are and, therefore, are in a better
21 position to engage what a proper regulatory
22 action would be.

23 I think in a status quo you don't
24 have that level of visibility. So, you

1 know, Dan's questions are larger than mine.
2 Mine are pretty pedestrian, and they are
3 just around this issue of what problems are
4 consumers having with sites and what kind
5 of visibility do regulars and the
6 policymakers have into the nature of those
7 complaints and the volume of those
8 complaints because that information is the
9 starting point for crafting better policy
10 for handling these products.

11 COMMISSIONER CAMERON: Chris, do you
12 have any information on that?

13 MR. GROVE: No. I mean, right now
14 my understanding is basically it's a black
15 box. Information would be released at the
16 company's pleasure basically, and they are
17 not really under any obligation to release
18 individually or aggregate the issues that
19 consumers have.

20 Obviously we see the broad strokes
21 outlined in the onslaught of class-action
22 lawsuits, but it's very difficult to parse
23 those between opportunism and genuine
24 complaint and genuine issue.

1 And, I think, that that point of
2 view is a difficult one to make a policy
3 from a direct understanding of the problems
4 that consumers are having as expressed by
5 the wide body of consumers themselves is a
6 better place for understanding what the
7 true issues are.

8 MR. CONNELLY: Excellent. Well, I
9 want to thank the panel for what really was
10 an excellent discussion. You know, I think
11 it's safe to say we expected it and didn't
12 really bore out to be true. Any one of
13 these issues probably could have warranted
14 a panel on its own, and we are only
15 restricted by our time.

16 We are going to be breaking for
17 lunch until 2:00. We will reconvene here
18 at 2:00 with the panel regarding Existing
19 Regulatory Frameworks and can they work for
20 DFS. It will be back here. We will start
21 at 2:00 sharp. Thank you.

22
23 (Forum in recess at 1:15 p.m.)
24

1 GUEST SPEAKERS:

2

3 Kevin Mullally, Gaming Laboratories International

4 Chris Grove, Legal Sports Report

5 Dan Wallach, Becker & Poliakoff

6 Zakary Cutler, Draft Kings

7 Martha Coakley, Foley Hoag

8 Cory Fox, FanDuel

9 Stephen Martino, Duane Morris

10 Mark Vander Linden, Massachusetts Gaming

11 Commission

12 Marlene Warner, Massachusetts Council on

13 Compulsive Gambling

14

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16

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18 Commissioner Gail Cameron

19 Commissioner Lloyd Macdonald

20 Commissioner Bruce Stebbins

21 Commissioner Enrique Zuniga

22 Karen Wells, Massachusetts Gaming Commission

23 Paul Connelly, Director of Licensing

24 Justin Stempeck, Staff Attorney

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COMMONWEALTH OF MASSACHUSETTS

I, KRISTEN M. EDWARDS, COURT REPORTER,
do hereby certify that the foregoing is a true and
accurate transcription of my stenographic notes,
to the best of my knowledge and ability.

WITNESS MY HAND, this 15th day of
December, 2015.




Kristen M. Edwards