

SAUL EWING

Esports and the Law

News, case summaries, articles, and strategies concerning esports and the law

Trading the Score: Are Kalshi's Sports Event Contracts Markets or Mere Bets?

By Andres Castillo

What happens when an unstoppable force meets an immovable object? An answer to that question—at least pertaining to Kalshi and whether the sports event contracts it offers are governed by federal derivatives law or state gambling law—is steadily approaching.

Kalshi is a web-based prediction market platform that allows customers to trade contracts based on whether specific events will happen in the

future. As Kalshi puts it, customers can “trade on anything.” But the evidence shows that Kalshi customers are mostly interested in trading contracts based on whether certain sports events will occur. Since Kalshi's inception in 2021, customers have traded \$16.8 billion in sports event contracts, compared to \$4.9 billion in other contracts. Naturally, state gaming regulators came knocking and demanded that Kalshi comply with state gambling law or face civil and

Nintendo Wins Default Judgment Against Streamer “EveryGameGuru” in Switch Piracy and Pre-Release Livestreaming Case

By Robert J. Romano, JD, LL.M.,
of St. John's University

In a noteworthy intellectual property enforcement case, Nintendo, one of the country's leading developers and producers of video games and video game consoles, “succeeded” (more on that later) in its lawsuit against notorious streamer Jesse “EveryGameGuru” Keighin. Per Nintendo's five count complaint filed in U.S. District Court for the District of Colorado

on November 6, 2024, the gaming company claimed that Keighin not only infringed its copyrights by copying and publicly performing its games, but also “trafficked” in unlawful circumvention tools by promoting and linking to Switch emulators and by pointing users toward Nintendo's proprietary cryptographic keys or equivalent circumvention material.¹

¹ Case No. 1:24-cv-03101-STV Document 1 filed 11/06/24 USDC Colorado.

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By way of background, beginning in 2022, Keighin obtained leaked copies of Nintendo Switch games and livestreamed them ahead of their commercial release date. The list of games included: *The Legend of Zelda: Echoes of Wisdom*, *Super Mario Party Jamboree*, *Mario & Luigi, Brotherhood*, and *Pikmin*. Nintendo alleged that Keighin not only streamed these games on roughly fifty occasions before they

Esports and the Law

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Editor's Note

“Get Your Popcorn Ready”

As you may have seen during Super Bowl advertisements, former NFL great Terrell Owens (or “TO” as he’s widely known) is now a spokesperson for Kalshi. If you haven’t heard of Kalshi yet, it is a marketplace where you can bet on literally anything. One current offering is “Who will be on the cover of Madden NFL 27?,” with Caleb Williams and Jaxon Smith-Njigba being the top prospects. TO famously said “get your popcorn ready,” and I don’t think there is a more apt statement for the current battle between Kalshi and state gaming regulators. As my colleague Andres Castillo details, placing bets on whether a sporting event will occur or not

raises a host of legal and ethical concerns that impact various stakeholders.

Also in this issue, we chat with Michael Duffy, and take a look at how his legal practice in the private equity space has crossed over into esports and video games. As Michael points out, private equity investment in esports and video game organizations is not all that different from other investment, except that intellectual property is very often central in the due diligence.

We also examine the concept of unauthorized pre-release livestreams, specifically Nintendo’s injunction

against streamer ‘EveryGameGuru’ for streaming pirated versions of Switch games. While ‘EveryGameGuru’ claimed that he ‘ran the streets’ with “a thousand burner channels,” he apparently couldn’t afford legal counsel, and Nintendo wound up with a default judgment.

We also spotlight the upcoming Esports Travel Summit in June in Cincinnati, consider the need for

gambling regulations in collegiate esports, and dive in to the legal dispute between esports organization XSET and their Valorant players. Additionally, we highlight a fantastic new initiative from PlayVS and Urban One that “aims to expand opportunities for

HBCU students to compete in collegiate esports while also creating pathways into careers in gaming, media, and technology.”

Finally, we review the current row between New York’s Attorney General and Valve Corporation. It all centers around loot boxes in games like Counter-Strike 2, and the allegation that such offerings effectively comprise illegal gambling. An interesting case to keep an eye on for sure.

As always, Excelsior!

Darius C. Gambino, Editor-In Chief.



Darius C. Gambino

Saul Ewing's Michael Duffy on Venture Financing, Esports Investment Risks, and Building Legal Infrastructure for High-Growth Companies

As esports and gaming companies evolve from scrappy startups into sophisticated media and entertainment businesses, the legal and financial frameworks supporting the industry are evolving as well. Issues such as venture financing, intellectual property licensing, data regulation, and commercial partnerships have become central concerns for companies operating in the digital gaming ecosystem. Addressing these challenges requires lawyers who understand both traditional corporate law and the unique dynamics of IP-driven industries.

Michael Duffy, a partner at Saul Ewing, works at the intersection of venture capital, emerging technology, and digital media, advising startups, investors, and esports organizations as they launch and scale their businesses. His practice often involves guiding companies through seed and growth-stage financings, negotiating intellectual property licensing agreements, and helping digital-first businesses build the legal structures needed to manage their assets and withstand investor scrutiny over the long term.

As private equity firms and institutional investors have shown increasing interest in esports teams, gaming platforms, and related media ventures in recent years, Duffy has helped clients navigate the legal complexities behind the industry's rapid growth. His work often involves evaluating the sustainability of sponsorship-driven revenue models, addressing cross-border data compliance issues, and ensuring that intellectual property rights are properly protected.

In this interview, Duffy discusses the legal pitfalls founders often overlook during venture financings, the key due diligence issues investors should consider in esports deals, and how companies can build the legal infrastructure necessary to support sustainable growth.



Michael Duffy

Question: Given your work with venture capital funds and early-stage companies, what legal pitfalls do founders most often overlook during seed and growth-phase financings?

Answer: In seed and growth rounds, the focus is typically on the preference rights, control, dilution, vesting and other big-ticket items that are the highlights of the term sheet stage, and can be analyzed ad nauseam by the parties. What is often overlooked by founders is the due diligence that starts immediately after the term sheet is signed, by failing to make appropriate preparations to

endure the scrutiny of savvy investors and undertake some basic corporate hygiene.

Startups frequently arose from lawyer-free beginnings, with founder trying to put their business together themselves on a shoestring. Legal requirements can easily be misapplied or overlooked. There may be “side” arrangements (advisors, influencers, strategic partners) that only live in email chains. There may have been one or more friends-and-family SAFE rounds that were treated as casual transactions with bare papering, but even “simple” rounds need a functional final agreement and clean exemption story (e.g., Rule 506(b) vs. 506(c), general solicitation limits, and accredited investor diligence). Once institutional money arrives, all this and more must be disclosed to the investors. The startups will need to demonstrate pre-money cap table integrity. It is universally better to review and address such matters prior to the start of a transaction,

rather than making them into due diligence revelations that can scare away investors, provide ammo for imposing more investor-friendly terms and require last-minute remediation attempts.

Q: As esports organizations increasingly pursue private equity investment and M&A activity, what unique due diligence or valuation issues should investors be watching closely?

A: Esports looks like traditional sports on the surface, but the asset investors are underwriting is typically a bundle of contracts wrapped around publisher-owned IP. A focus

of diligence can be the durability of the revenue stack: sponsorship and advertising often drive the economics. Those often have short terms that are category-restricted and performance-dependent, which investors need to be comfortable with. There are risks to consider on the publisher/league side as well, which can involve looking into participation rights, content monetization, and media/streaming rights, which may be left in the hands of third parties.

A current flashpoint is sports betting sponsorships. That can be meaningful new money, but it brings integrity, regulatory, and reputational risks. Anything related to that will show up in diligence and in post-close compliance obligations.

On valuation, I have been seeing more focus on “quality of earnings” (revenue concentration, renewal rates, rights actually owned vs. licensed) and less appetite for projection- and hype-based multiples.

Q: Your practice includes intellectual property licensing and commercial agreements—how do these capabilities position you to support esports teams, game developers, or platforms built on digital IP?

A: In esports, IP is quite literally the playing field. A team, developer, or platform’s value is typically tied to rights to use game footage, trademark,

player handles, creator content, music, likenesses, etc. I’m constantly coordinating with outstanding specialized IP and regulatory colleagues at my firm, so the contract says what the company can actually do. We aim for licenses with clear scope/term, exclusivity and territory that match the business model, and revenue mechanics that survive later investor diligence. Because these are digital-first businesses, we’re also blending classic licensing with creator and platform terms, disclosures, content approvals, and brand-safety controls.

Q: Many esports and gaming startups operate globally from day one. Based on your international business experience, what cross-border risks or structuring challenges should these companies anticipate?

A: The IP component remains a major consideration when there is any international presence. If there is any meaningful value in a given international jurisdiction, esports and gaming companies should take the steps necessary to secure and defend their intellectual property there. On the corporate side, esports and gaming startups with cross-border components face the same issues as any other company when it comes to tax structuring, parent/subsidiary setup, inter-group finances, immigration issues, etc. On data, global reach can

trigger global rules. One of the ongoing scary dragons of privacy compliance remains the GDPR. The GDPR can apply when you offer services to people in the EU or monitor their behavior, even if you’re U.S.-based. On structure, companies should think early about where IP sits, how cross-border royalties will flow, and whether they need local entities for hiring, tax, or regulatory reasons.

Q: When serving as outside general counsel to high-growth companies, how do you help clients balance rapid scaling opportunities with the legal and operational discipline needed for long-term success?

A: I enjoy a simple and scalable approach toward reliable legal infrastructure. Some frequent fliers in that space are to tighten the cap table, build a simple contract intake/approval process, and create playbooks for the company’s highest-volume deals (publisher/platform agreements, sponsorships, creator deals, and key vendors). It can help to have good templates, known fallback positions, and escalation triggers tied to basic metrics. That should be built on crisp historical corporate governance memorialized by disciplined record-keeping, so when a strategic buyer or PE partner shows up, diligence is a non-event instead of a fire drill.

Confronting Gambling Governance Gaps in Collegiate Esports

By Bradyn Rogers, University of North Alabama

Esports, or a form of competitive activities in which gameplay, player input, and performance are mediated through electronic and human-computer interface systems, continue to expand in mainstream consciousness globally (Hamari & Sjöblom, 2017).

As the esports industry grows in the United States, collegiate esports has experienced rapid growth, with universities launching varsity teams, academic programs, and competitive infrastructures. Despite this growth, collegiate esports remains in its formative stage and faces a diverse range of governance challenges. These

problems range from pressing issues affecting the space such as monetization, doping, E-doping, and more. Among these challenges, gambling represents a particularly pressing concern that warrants proactive governance before integrity failures emerge.

The normalization and accessibility of gambling, driven by mobile bet-

ting applications, loot-box mechanics, sportsbook integrations within streaming platforms, and broader cultural acceptance of wagering, have contributed to a surge in gambling participation in younger demographics. Esports fans, and particularly esports athletes, have been identified as disproportionately at risk for problem gambling, with a 2025 study finding elevated rates of gambling involvement and associated psychological vulnerabilities in this population (Nguyen et al., 2025). Collegiate players, staff, and spectators therefore fall within a demographic uniquely susceptible to gambling-related harms. These concerns extend beyond individual behavior; the intersection of esports and gambling raises additional risks related to intellectual property conflicts between game publishers and third-party betting platforms, the prevalence of underage participants, and heightened incentives for match fixing in environments lacking strong regulatory oversight.

Understanding the governance landscape requires attention to the major collegiate esports bodies responsible for structuring competition. Two of the most established organizations are the National Association for Collegiate Esports (NACE) and the National Esports Collegiate Conference (NECC). Both serve as leading frameworks for institutional competition, competitive integrity, and the external legitimacy of collegiate esports. These organizations must navigate stakeholder expectations that include protecting student participants, strengthening relationships with game developers who maintain ultimate control over esports titles, and positioning collegiate esports as a credible counterpart to traditional collegiate athletics. As gambling continues to influence both professional

sports and NCAA-governed competition, collegiate esports must take deliberate steps to recognize and regulate gambling before widespread issues arise.

Currently, gambling-specific regulation in collegiate esports is sparse. The NECC rulebook does not directly address gambling, referencing only collusive behavior such as intentionally losing matches for compensation. While this acknowledges one manifestation of gambling-related misconduct, the absence of explicit gambling policies leaves considerable ambiguity regarding acceptable behavior. NACE provides slightly clearer restrictions in its code of conduct by prohibiting gambling-related names or brands from appearing on players, teams, or uniforms, yet it does not outline standards for gambling participation, reporting obligations, or educational requirements. In contrast, the NCAA maintains stringent prohibitions that bar student-athletes and athletics personnel from wagering on any NCAA-sanctioned sport, regardless of legality. The NCAA's rigor underscores the comparatively underdeveloped regulatory landscape in collegiate esports.

Although collegiate esports has not yet experienced publicly documented gambling scandals or match-fixing incidents, both professional sports and professional esports offer clear warnings of the risks. The National Basketball Association (NBA) recently uncovered a widespread gambling ring involving former players Chauncey Billups and Terry Rozier, prompting ongoing investigations into professional and collegiate basketball. Similarly, an entire professional League of Legends region, the Vietnam Championship Series, was halted due to a large-scale match-fixing scandal involving 32 players across eight teams,

ultimately forcing the cancellation of half the competitive season. These cases illustrate that gambling-related misconduct can escalate rapidly and jeopardize the legitimacy of competition when robust governance mechanisms are absent.

Given the current policy gaps, collegiate esports governing bodies have a critical opportunity to establish preventative structures before the ecosystem experiences similar crises. Updating rulebooks to include comprehensive gambling regulations is a necessary first step. Such regulations should clearly define prohibited behaviors, reporting procedures, conflict-of-interest standards, and disciplinary measures. Additionally, governing bodies should implement mandatory education initiatives modeled after the NCAA's "Draw the Line" program, ensuring that players, coaches, administrators, and fans understand the risks, legal implications, and integrity consequences associated with gambling. Anonymous reporting platforms, integrity hotlines, and partnerships with esports integrity organizations would further strengthen prevention and detection efforts. These measures, taken collectively, position collegiate esports to adopt a proactive rather than reactive stance.

The broader future of collegiate esports governance, including any potential alignment with NCAA standards, depends on the development of credible, enforceable policies that protect competitive integrity and participant welfare. By addressing gambling concerns early and comprehensively, collegiate esports can serve as a model for responsible governance within the global esports ecosystem. Proactive regulation not only safeguards student-athletes and institutional reputations but also contributes to the long-term legitimacy,

sustainability, and professionalization of collegiate esports.

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EsportsTravel Summit Set for June 23-25 in Cincinnati

Since its debut, the EsportsTravel Summit has served as a key meeting point for tournament organizers, festival producers, tourism officials, venue operators, and service providers seeking to grow the live esports event industry. The conference combines business development, education, and networking opportunities designed to help stakeholders better understand and participate in the evolving esports landscape.

At the core of the summit is a structured marketplace that allows esports event organizers to meet in pre-arranged one-to-one meetings with destinations, venues, and suppliers interested in hosting or supporting competitions, festivals, and other gaming events.

This marketplace model has become a central feature of the summit, giving cities and event producers a practical platform to develop partner-

ships and bring esports tournaments, fan festivals, and gaming conventions to new markets. As live fan events have become increasingly important to esports engagement strategies, tourism and economic development organizations have shown growing interest in attracting esports events to their communities.

The 2026 summit will also feature educational sessions aimed at helping attendees better understand esports audiences. New research from Nicole Pike, Global Head of Sports and Gaming at YouGov, will examine esports fan behavior and their willingness to travel to attend live competitions.

Attendees will also hear case studies highlighting how communities are building esports ecosystems through partnerships with event organizers. Cities such as Marshalltown, Iowa, and Peoria, Illinois, will share insights into how local governments and ven-

ues have worked together to launch events and grow gaming communities.

In addition to programming at the convention center, participants will have the opportunity to visit the University of Cincinnati Innovation Hub and Esports Center. The facility is home to the university's esports program and reflects the increasing role colleges and universities play in the broader esports development pipeline.

As the esports industry continues to grow, live events remain a vital link connecting players, fans, and host communities. The summit's 10th anniversary reflects both the maturation of the esports events market and the growing recognition among municipalities that competitive gaming represents both a cultural and economic opportunity.

More information about the event is available at www.EsportsTravelSummit.com.

2022 Valorant Players' Contract Disputes with XSET

By Ian Gonzales

As the esports industry continues to expand, legal disputes involving contracts between organizations and players have become more common. In 2023, esports organization XSET faced five lawsuits filed by four former professional players and one coach connected to its Valorant roster. The lawsuits alleged breaches of contract

and disputes over revenue-sharing related to the 2022 Valorant Champions skin bundle.

According to the complaints, the disputes centered on the distribution of revenue generated by the 2022 Valorant Champions skin bundle, an in-game cosmetic package associated with the global Valorant Champions tournament. Valorant is a free-to-play

tactical first-person shooter developed by Riot Games and released in 2020.

The skin bundle consists of digital cosmetic items that modify the appearance or sound of weapons and other in-game elements. These cosmetic items do not affect gameplay performance but are purchased by players for visual customization. Limited-edition bundles tied to esports events are one

of several monetization mechanisms used in the game.

The plaintiffs alleged that their contracts with XSET provided for the distribution of a portion of the revenue generated by the Champions skin bundle. According to the complaints, the agreement specified that 50% of the team's in-game product revenue would be shared with the players. The players and coach alleged that each individual would receive approximately 8.33% of the final skin-bundle revenue.

The lawsuits alleged that XSET failed to distribute the revenue as outlined in the contracts and did

not respond to requests to negotiate payment of the alleged amounts owed. The plaintiffs also alleged that the contracts contained arbitration provisions that required disputes to be resolved through arbitration rather than litigation.

According to the filings, the arbitration process was delayed after XSET allegedly declined to pay a \$2,000 filing fee required to initiate arbitration with Judicial Arbitration and Mediation Services. The plaintiffs subsequently filed lawsuits seeking court orders to compel arbitration and address the alleged contractual violations.

XSET publicly disputed the allega-

tions and denied wrongdoing.

Court filings indicate that the disputes were ultimately directed toward arbitration rather than proceeding through a traditional trial. Public court records do not show a final judicial ruling resolving the claims. The outcome of the arbitration proceedings has not been publicly disclosed.

The case reflects contractual disputes that can arise in esports organizations regarding revenue-sharing arrangements and the enforcement of arbitration clauses in player agreements.

Attorney General Sues Video Game Company, Claiming It Promotes Illegal Gambling to 'Young People'

By Holt Hackney

New York Attorney General Letitia James filed a lawsuit in early February against Valve Corporation, alleging the company promotes illegal gambling through popular video games that include slot machine-like features and attract millions of young users.

The complaint, announced Feb. 25, targets Valve's widely played titles, including Counter-Strike 2, Team Fortress 2, and Dota 2. According to the Office of the Attorney General (OAG), these games allow players to pay for the chance to win rare virtual items through in-game "loot boxes," a system the lawsuit claims violates New York gambling laws.

"Illegal gambling can be harmful and lead to serious addiction problems, especially for our young people," James said in a statement. "Valve has made billions of dollars by letting children and adults alike illegally gamble for the chance to win valuable virtual

prizes. These features are addictive, harmful, and illegal, and my office is suing to stop Valve's illegal conduct and protect New Yorkers."

Valve, a developer, publisher, and distributor of video games, also operates the Steam platform, which allows users to download and play its titles. The lawsuit alleges that Valve's loot box system mirrors gambling mechanics by charging users for randomized rewards, with odds set by the company.

In games such as Counter-Strike 2, players can purchase virtual containers that, when opened, reveal cosmetic items such as weapon skins or character accessories. The selection process is randomized and presented through animations that resemble slot machines, the complaint states. While the items do not affect gameplay, their rarity can give them substantial real-world value.

State investigators allege that Valve intentionally makes certain items difficult to obtain, increasing their scarcity and market value. Some of the rarest

items have sold online for thousands of dollars, with at least one reportedly exceeding \$1 million.

The lawsuit further claims that a thriving secondary market has developed around these virtual goods. According to the OAG, users can sell items through Valve's Steam Community Market, where proceeds can be used to purchase games and other digital content. Additionally, players can link their accounts to third-party marketplaces that allow items to be exchanged for real currency.

The attorney general's office alleges that Valve facilitates these third-party transactions, effectively enabling users to convert virtual rewards into cash. This, the lawsuit argues, transforms loot boxes into a form of gambling under New York law.

The value of these digital assets has grown significantly in recent years. In 2025, the market for Counter-Strike skins reportedly surpassed \$4.3 billion, drawing interest not only from players but also from investors and

speculators.

The complaint also raises concerns about security risks tied to the system. Investigators found that Valve has received hundreds of thousands of support requests from users reporting hacked accounts or fraudulent transfers of valuable items. The high monetary value of rare skins has made them attractive targets for theft, according to the OAG.

Attorney General James emphasized the potential harm to younger users, arguing that loot box systems can introduce minors to gambling-like behavior. The lawsuit cites research indicating that children exposed to gambling are four times more likely to develop gambling problems later in life.

The complaint further asserts that young players may feel pressure to spend money in pursuit of rare items

that enhance their status within virtual communities. The OAG contends that this dynamic can lead to compulsive spending and financial harm, particularly among users with limited resources.

In addition to its gambling-related claims, the lawsuit references broader concerns about the content of some of Valve's games, including depictions of violence. The filing argues that exposure to such content, combined with gambling-like mechanics, may contribute to negative developmental outcomes among younger players.

The state is seeking a court order to permanently prohibit Valve from offering loot box features that violate New York law. The lawsuit also requests disgorgement of profits allegedly obtained through the system, along with civil penalties and fines.

The case marks the latest action

by James aimed at regulating online platforms and protecting minors. Earlier this month, the attorney general issued warnings about risks associated with sports betting and prediction markets ahead of the Super Bowl. She has also joined a bipartisan coalition of attorneys general urging Congress to pass the Kids Online Safety Act.

In recent years, James has pursued enforcement actions against major technology companies, including lawsuits involving Meta and TikTok, alleging harm to young users' mental health. Her office has also taken steps to shut down online casinos operating illegally in New York.

The case against Valve is being handled by attorneys and analysts within the Bureau of Internet and Technology, part of the state's Division of Economic Justice.

...Valve Responds to the New York AG Lawsuit

Dear New York customers of Counter-Strike 2, Dota 2, and Team Fortress 2:

You may have seen the New York Attorney General recently filed a lawsuit against Valve claiming mystery boxes (like crates, cases, and chests) in some of our games violate New York gambling laws. We don't believe that they do, and were disappointed to see the NYAG make that claim after working to educate them about our virtual items and mystery boxes since they first reached out to us in early 2023. We rarely talk about litigation, but we felt we should explain the situation to you.

We shared with the NYAG that these types of boxes in our games are widely used, not just in video games but in the tangible world as well, where generations have grown up opening

baseball card packs and blind boxes and bags, and then trading and selling the items they receive. On the physical side, popular products used in this way include baseball cards, Pokemon, Magic the Gathering, and Labubu. In the game space, digital packs similar to our boxes date back to 2004 and are in widespread use. Players don't have to open mystery boxes to play Valve games. In fact, most of you don't open any boxes at all and just play the games—because the items in the boxes are purely cosmetic, there is no disadvantage to a player not spending money.

In the process of cooperating with the NYAG's investigation, we shared with them our efforts over many years to shut down accounts found to be using Valve game items on gambling sites in violation of the Steam Subscriber

Agreement. We also shared with them our efforts to combat fraud and theft of users' items and our extraordinary measures to stop gambling sites from taking advantage of Steam accounts and Valve game items. Valve does not cooperate with gambling sites. To date we've locked over one million Steam accounts that were being misused by third parties in connection with gambling, fraud, and theft. We've also shipped features (like trade reversal and trade cooldown) to discourage gambling sites' ability to operate and protect Steam users from fraud. And we forbid any gambling-related business to participate in or sponsor tournaments for our games.

We have serious concerns with many of the alterations the NYAG claims are necessary to make to our games. First, the NYAG seems to be-

lieve boxes and their contents should not be transferable. They appear to assume digital mystery boxes and items in our games are different from tangible items like baseball card packs (which contain random cards), and to take issue with the fact that users have the ability to transfer the items they receive through Steam Trading or user-to-user sales on the Community Market. We think the transferability of a digital game item is good for consumers—it gives a user the ability to sell or trade an old or unwanted item for something else, in the same way an owner can sell or trade a tangible item like a Pokemon or baseball card. NYAG proposes to take away users' ability to transfer their digital items from Valve games. Transferability is a right we believe should not be taken away, and we refuse to do that.

The NYAG also proposed to gather additional information (beyond what we normally collect in the course of processing payments) about each game user on the off-chance someone in New York was anonymizing their location to appear outside of New

York, such as by using a VPN. This would have involved implementing invasive technologies for every user worldwide. Similarly, the NYAG demanded that Valve collect more personal data about our users to do additional age verification—even though most payment methods used by New York Steam users already have age verification built-in. Valve knows our users care about the security of their personal information, and we believe it's in our and their interest to only collect the information necessary to operate the business and comply with law.

We respect New York's right to determine the laws governing behavior in the state. We will of course comply if the New York legislature passes laws governing mystery boxes—something it has not done despite considering the issue a few times. Such laws would be the result of a public process, presumably with input from the industry and New York gamers. The type of commitments the NYAG demanded from Valve went far beyond what existing New York law requires and even

beyond New York itself. It may have been easier and cheaper for Valve to make a deal with the NYAG, but we believed the type of deal that would satisfy the NYAG would have been bad for users and other game developers, and impacted our ability to innovate in game design.

In addition, although this case is about mystery boxes, we feel the need to address comments made by the NYAG about games, real world violence, and children. Those extraneous comments are a distraction and a mischaracterization we've all heard before. Numerous studies throughout the years have concluded there is no link between media (movies, TV, books, comics, music, and games) and real world violence. Indeed, many studies highlight the beneficial impact of games to users.

Ultimately, a court will decide whose position—ours or NYAG's—is correct. In the meantime, we wanted to make sure you were aware of the potential impact to users in New York and elsewhere.

Companies Launch National HBCU Esports Initiative to Increase Diversity in Competitive Gaming

In an effort to address longstanding representation gaps in the esports industry, PlayVS and Urban One have announced last month a three-year partnership to develop a national competitive gaming initiative for Historically Black Colleges and Universities (HBCUs). The collaboration aims to expand opportunities for HBCU students to compete in collegiate esports while also creating pathways into careers in gaming, media, and technology.

The program will establish a dedi-

cated HBCU competition ecosystem within the PlayVS College League. Participating institutions will gain access to organized leagues, media exposure, and the infrastructure needed to build and grow esports programs on their campuses. Through Urban One's sponsorship, HBCU schools will be able to participate in the competitions without paying membership fees, removing a financial barrier that has historically limited participation in competitive gaming.

The partnership combines Urban

One's cultural influence and media reach—more than 80 million monthly users—with PlayVS's nationwide esports competition platform used by schools across the United States. Together, the organizations aim to build a more inclusive pipeline connecting K-12 esports participation with opportunities in higher education and the broader gaming industry.

The initiative also highlights a continuing representation challenge within esports. While Black gamers are among the most influential audiences

in gaming culture, Black professionals represent only about five percent of the industry's workforce.

"The gap isn't talent – it's access," said Tiffany Nasralla, chief revenue officer at Urban One. "Through our partnership with PlayVS, we are building a national platform for HBCU students that expands visibility and creates real career pathways in industries they have long helped shape."

A key feature of the initiative is its accessibility. The league will be open to any HBCU interested in participating, whether or not the school already has an established esports program. Organizers say the goal is to provide the infrastructure, standards, and

competitive opportunities needed to support both emerging and established programs.

Students and program leaders view the initiative as an important step in linking gaming with education and professional development.

"For our students, esports is more than competition—it's a gateway to technology, media, and leadership," said Jaden Roberts, president of the Esports Association at Howard University.

The initiative will roll out in phases. PlayVS will begin outreach to HBCUs in spring and summer 2026 while also introducing collegiate opportunities to its national K–12 esports network.

Invitational competitions and PlayVS College League events are expected to begin in fall 2026, with the official launch of a national HBCU esports league scheduled for spring 2027.

Urban One will amplify the initiative through its media platforms, highlighting not only competition but also the campus culture, academic excellence, and leadership that define the HBCU experience.

For the esports industry, the initiative reflects a broader effort to ensure that the cultural diversity of gaming is matched by expanded educational and professional opportunities.

TRADING

Continued from page 1

criminal liability.

Rather than comply with state gambling law, Kalshi has vigorously argued that its sports event contracts are "swaps" under the Commodity Exchange Act (CEA) and therefore subject to the exclusive federal jurisdiction of the Commodity Futures Trading Commission ("CFTC"). The CFTC publicly supported Kalshi's position and warned state regulators that it would defend this position. State gaming regulators disagree, arguing that the CEA does not apply to transactions like Kalshi's sports events contracts because they involve "gaming" under state law.

Kalshi and state regulators are now involved in various lawsuits across the country. Both have federal courts that agreed with their position, creating a circuit split on whether Kalshi's sports event contracts are subject to the CFTC's exclusive jurisdiction. Federal judges in Tennessee and New Jersey held that the sports event contracts

are "swaps" under the CEA, while judges in Ohio and Maryland held that they are not "swaps" and that the CEA was not intended to preempt state gambling law.

Because of this circuit split, Kalshi can offer its platform in some states without having to comply with state gambling law and in other states, Kalshi must comply with state gambling law in order to offer its platform. This creates uncertainty for all involved—Kalshi, state regulators, the CFTC, and Kalshi customers. The question now is whether Congress or the United State Supreme Court will be the unstoppable force that bursts the immovable object that is Kalshi's status under the law when offering sports event contracts.

How Did We Get Here?

In 2020, Kalshi applied for and was approved by the CFTC as a "Designated Contract Maker" (DCM), which allows Kalshi to create and offer

event contracts to the public—that is, contracts based on whether specific events will happen in the future. The CFTC can review and prohibit certain types of event contracts that are contrary to the public interest, including those that involve "gaming" under state law. In late January 2025, Kalshi created and offered sports event contracts for the first time. And since then, the CFTC has not taken any action against Kalshi for its sports event contracts.

In April 2025, several states, including Nevada, New Jersey, and Maryland, sent cease-and-desist letters to Kalshi, demanding that the platform comply with state gambling law or face civil and criminal liability. In response, Kalshi sued Nevada, New Jersey, and Maryland and requested a preliminary injunction, arguing that as an approved DCM, it is subject to the CFTC's exclusive jurisdiction. The states argued that the CEA does not apply to sports events contracts

because they involve “gaming” under state law, and was not intended to preempt state gambling law.

The Nevada and New Jersey federal courts sided with Kalshi. The Nevada court held that the CEA granted the CFTC exclusive jurisdiction over transactions involving DCMs, and the New Jersey court held that sports events contracts fall within the CFTC’s exclusive jurisdiction. On the other hand, the Maryland federal court sided with state regulators, holding that the CEA was not intended to preempt state gambling law and that compliance with federal derivatives law and state gambling law was possible.

The New Jersey and Maryland decisions are currently on appeal to the Third Circuit and Fourth Circuit, respectively. Interestingly, the Nevada court reversed course and sided with state regulators. The court held that the CEA was not intended to preempt state gambling law and that Kalshi’s sports event contracts closely resembled traditional sportsbook bets and are an attempt to evade state gambling law. Kalshi appealed this decision to the Ninth Circuit and was denied.

Kalshi and state regulators are also involved in similar lawsuits in Ohio, Tennessee, Massachusetts, Utah, and Iowa. The Ohio federal court and Massachusetts state court sided with state regulators, while the Tennessee federal court agreed with Kalshi. The Ohio and Massachusetts courts held that Kalshi’s sports event contracts are not “swaps” under the CEA and that the CEA was not intended to preempt state gambling law. On the other hand, the Tennessee court held that the sports event contracts are “swaps”

and that compliance with federal derivatives law and state gambling law was impossible. The Utah and Iowa federal courts have not issued a decision yet given that Kalshi recently sued each state on February 23 and March 11, respectively.

What is Next?

Assuming that neither Kalshi nor state regulators surrender, Kalshi’s status under the law when offering sports event contracts can be settled



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in one of two ways. First, federal and state courts will continue to issue decisions until the United States Supreme Court grants certiorari and settles the matter. Or second, federal and state courts will continue to issue decisions until Congress adopts legislation that settles the matter. Until either happens, Kalshi would be offered only in states that have not opined on the matter or where the courts sided with Kalshi’s position, and the current cases between Kalshi and state regulators would proceed.

If history tells us anything though,

it is that the Supreme Court or Congress will likely not settle the matter anytime soon. Therefore, Kalshi and state regulators must decide whether, and to what extent, they should continue to litigate the matter. Current cases will likely proceed in order for Kalshi and state regulators to obtain their requested relief and force the Supreme Court or Congress to take action. Meanwhile, Kalshi or other state regulators not involved in litigation with Kalshi could file a lawsuit in a state that has not opined on the matter in order for the federal or state court to decide on the matter and the Supreme Court or Congress to take action swiftly.

The cases between Kalshi and state regulators present five issues that must be resolved in order to fully settle the matter: (1) whether the CEA granted the CFTC exclusive jurisdiction over transactions involving DCMs; (2) whether Kalshi’s sports event contracts are “swaps” under the CEA and therefore subject to the CFTC’s exclusive jurisdiction; (3) whether the sports events contracts involve “gaming” under state law and are therefore excluded under the CEA; (4) whether the CEA intended to preempt state gambling law; and (5) whether compliance with federal derivatives law and state gambling law is possible. Whoever the unstoppable force is, these questions must be answered to settle Kalshi’s status under the law when offering sports event contracts.

Who Should be Paying Attention?

As a general matter, anyone who could be affected by or included as part of a Kalshi sports event contract

or anyone who trades a sports event contract should pay attention to the cases between Kalshi and state regulators. The following three groups should pay especially close attention:

1. Professional, Collegiate, eSports, and Video Game Leagues or Competitions

Professional, collegiate, eSports, and video game leagues or competitions should consider how the cases between Kalshi and state regulators affect their (i) integrity rules, (ii) data licensing, (iii) revenue models, and (iv) player monetization and adapt accordingly. First and foremost, leagues or competitions must ensure that athletes and participants are strictly prohibited from using platforms like Kalshi to trade sports events contracts. Even if these contracts are not considered gambling in the legal sense, they are based on whether certain sports events will occur. And to ensure and maintain competitive integrity, leagues and competitions must view such conduct as gambling and prohibit use of it by athletes and participants.

Second, leagues or competitions should partner with platforms like Kalshi to maximize revenue and increase fan engagement. Unless these platforms are financially crippled by the application of state gambling laws, they will likely still operate and continue to attract high trade volume, regardless of whether sports event contracts are governed by federal derivatives law or state gambling law. Leagues or competitions therefore cannot remain on the bench and must get in the game and capitalize on a tremendous opportunity to maximize revenue and increase fan engagement. Athletes and participants would in turn benefit significantly.

2. Other Prediction Market Platforms

Other prediction market platforms like Kalshi should review the court holdings in the cases between Kalshi and state regulators and adapt accordingly. In fact, Polymarket and Robinhood also offer sports event contracts and are parties to current lawsuits in Michigan, California, and Wisconsin. These platforms must decide whether they want to join the fight or not offer sports events contracts. The former option would allow a platform to operate without uncertainty and force the Supreme Court or Congress to take action. The latter option would allow a platform to altogether avoid the matter and continue operation without state intervention.

3. Prediction Market Customers

Customers that use prediction markets to trade sports event contracts should understand that in states that have not opined on the matter or where the courts sided with Kalshi's position, state gambling law is inapplicable. Compared to federal derivatives law (which focuses more on market efficiency), state gambling law provides a comprehensive regulatory scheme designed to protect consumers from improper and illegal betting practices. State gambling laws typically require entities to obtain a license with the state and abide by certain restrictions, such as age, location, and payment type limitations. Therefore, Kalshi would have to comply with the state gambling law of any state it wished to offer sports event contracts in. Under federal derivatives law however, Kalshi could offer sports event contracts anywhere in the country regardless of state gambling laws.

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were available to the public but that he also directed others on how to make similar infringements possible.

Despite Nintendo's dozens of take-down notices, as required by Section 512 of the Copyright Act, Keighin continued to stream its copyrighted works and, as alleged, *thumb his nose* at Nintendo and the law.² For example, on October 24, 2024, after several platforms had taken down Keighin's unlawful streams due to Nintendo's enforcement actions, Keighin sent Nintendo a letter claiming that he has "a thousand burner channels" to stream from, that he "can do this all day" and that "you might run a corporation, I run the streets."³ Additionally, after Keighin's monetized YouTube account was shut down, he began adding a CashApp handle to his streams, seeking an alternative way to monetize his unauthorized streaming of Nintendo's games. Keighin also posted links to repositories of pirated games encouraging his followers to unlawfully reproduce Nintendo's games. What Keighin didn't do, however, is defend himself in court because the case ultimately ended with a default judgment being issued against him rather than a contested trial.⁴

As Judge Gordon P. Gollagher outlined in said default judgment, he awarded Nintendo damages in the amount \$17,500.00 dollars and issued an injunction barring future infringement and prohibiting Keighin from streaming Nintendo's works or trafficking in tools that circumvent Switch security measures.⁵ The court declined, however, to grant Nintendo's broader request that all alleged circumvention devices in Keighin's possession be confiscated and destroyed, characterizing that demand as overly vague and unsupported by concrete evidence about the specific tools used to obtain the leaked games.

What is important about this case is that even though it resulted in a default judgment, it illustrates the evolving intersection between content creation culture and traditional intellectual property law. In this era where livestreaming is an integral component of the gaming culture, with many publishers actively encouraging streamers to broadcast gameplay as a form of marketing and community engagement, this informal balance operates within a set of boundaries.

The court's ruling in this matter reflects a balancing of those boundar-

ies in that it supports what copyright law is designed to protect: rewarding creativity and investment by granting exclusive control, while at the same time noting that the accessibility of digital files or content does not equate to legal permission. Pre-release leaks, even if widely circulated online, remain protected by copyright. Broadcasting those materials potentially exposes individuals to lawsuits, financial damages, and reputational harm. Compliance with release dates, platform policies, and publisher guidelines is not merely a matter of courtesy but of legal necessity.

With that, however, Nintendo has filed lawsuit against a second streamer alleging that he engaged in a series of copyright violations. This time Nintendo claims that James C. Williams, also known as 'Archbox', "has been, and continues to be, damaged as a direct and proximate result of Williams' conduct," which it claims includes pirating Switch games, promoting distribution across the internet, and trafficking circumvention software. Nintendo is seeking \$4.5 million in damages.⁶

² Id at page 2.

³ Id.

⁴ Case No. 1:24-cv-03101-GPG-STV Docu-

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⁵ Id.

⁶ <https://www.gamesindustry.biz/nintendo-wins-lawsuit-against-streamer-who-livestreamed-pirated-games-before-release>