

Beyond Nevada, E-Sports May Challenge PASPA Rules

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As more states ponder legalizing e-sports betting, the federal ban on sports betting, also known as the Professional and Amateur Sports Protection Act of 1992 (PASPA), could present state lawmakers and regulators with problems, attorneys and academics have told GamblingCompliance.

PASPA restricts lawful sports betting to Nevada, while lotteries are legally allowed to offer sports-betting parlay cards and other games in Oregon, Montana and Delaware.

In November, the Nevada Gaming Policy Committee is expected to approve [new rules](#) allowing casinos to begin accepting bets on e-sports tournaments, as long as they receive a sports pool license before they begin taking bets.

"We already allow people to bet on the World Series of Poker, which isn't much different from e-sports," said Greg Gemignani, a gaming attorney with Dickinson Wright in Las Vegas.

"Instead of playing Counter-Strike: Global Offensive (CS:GO) or Defense of the Ancients, you are betting on someone who is playing another game from a third-party standpoint," Gemignani told GamblingCompliance.

"I think the Nevada regulations permit betting on e-sports but there is a process for getting other events approved for wagering where you have to show that there's integrity in the event and there's an objective way to determining the outcome," Greg Gemignani of Dickinson Wright said.

Brett Abarbanel, director of research at the University of Nevada, Las Vegas International Gambling Institute, agreed that the committee already sees e-sports as a component of the gaming industry that exists worldwide.

"As a result, the committee sees it as a topic that they should push further on whether it be classifying it as sports wagering in scope that already exists here, event wagering or creating an approval board for sporting events," Abarbanel told GamblingCompliance.

E-sports involve video game competitions between individuals or teams, with various genres of games from battle arenas to fighting and shooting.

If Nevada regulators legalize e-sports wagering it could be a PASPA violation, said Benham Dayanim, a gaming attorney in Washington, D.C. with law firm Paul Hastings.

"Although Nevada is exempted from most aspects of PASPA, it's only permitted to offer sports betting that's of a kind that was lawful when the statute was enacted and there really weren't e-sports at the time that it was enacted," Dayanim told GamblingCompliance.

"I'm not sure if they could authorize it if it really was sports betting, but I don't think they view it as sports betting and I don't view it as sports betting so they should be okay," Dayanim added.

Most of the attorneys who spoke with GamblingCompliance agreed that e-sports should not be considered a sport, per say, because the players are not athletes.

PASPA covers competition involving professional and amateur athletes, but Dayanim believes e-sports are different because the video games used do not make the events athletic competitions.

The University of California, Irvine was the first public university to offer a scholarship program and arena for e-sports players in March.

"I recognize that some colleges now have e-sports teams, but colleges also have debate teams, model (United Nations) teams and other kinds of teams that I don't think anyone would contend are covered by PASPA if someone were to wager on it," said Dayanim. "It doesn't mean that wagering isn't gambling, but I don't think that it falls within the scope of PASPA."

Although PASPA does not define what an athlete is, it does give the federal government authority over illegal betting on games involving professional leagues and amateurs, according to Kevin Braig, a partner with Shumaker, Loop & Kendrick in Columbus, Ohio.

"There's no reason to believe that the federal government would take any interest in using PASPA to shut down betting on e-sports," Braig told GamblingCompliance. "I don't think PASPA would block e-sports because I don't think that it applies to it."

However, the biggest indication of what the federal government thinks of e-sports players could come from the U.S. Citizenship and Immigration Services, an agency within the U.S. Department of Homeland Security, which approves visas, also known as P-1 visas, for professional players.

"PASPA only comes into play if it is sports betting that is government operated, licensed or authorized by law, as it is in Nevada," said Mark Hichar, a partner with law firm Hinckley Allen in Providence, Rhode Island. "But of course the PASPA grandfathered in the sports betting that already existed in Nevada and three other states."

"If a non-grandfathered state were to authorize betting on e-sports, and the applicable e-sports league wanted to challenge it under the PASPA, it likely would point to the decision of the U.S. Department of Homeland Security to issue 'professional athlete' visas to e-sports players to support an argument that PASPA applies," Hichar told GamblingCompliance.

"However," Hichar said, "an e-sports league might be reluctant to bring such a challenge, because fan interest, television and other media coverage would probably increase if betting were involved in the activity."

When it comes to monitoring the integrity of e-sports competitions and betting, Gemignani said Nevada regulators have an advantage over other states.

"In Nevada, we have a system set up with hundreds of agents that monitor gambling and gaming," said Gemignani. "In a lot of states, gambling is regulated by the state police and I don't if it is best regulatory environment if you want to legitimize a nascent industry."

Match-fixing does exist in e-sports especially over the last few years in South Korea where there have been a number of [arrests and indictments](#) over professional gamers who threw games.

As for expanding e-sports betting beyond the border of Nevada, John Holden, a visiting scholar at Florida State University, believes online e-sports wagering will take hold in the U.S., with each state determining if the activity is legal.

Online e-sports betting would most likely be illegal in the original five states that declared fantasy sports games to be illegal gambling. They are Arizona, Iowa, Louisiana, Montana and Washington.

"There are definitely the no-go states with daily fantasy sports that were outlawed so I think any gaming operator would be very cognizant of those states," Holden told GamblingCompliance. "The Washington State Gambling Commission appears to be the lead with e-sports, but we don't know what is going on behind the scenes in other states."

On Tuesday, Valve legal counsel Liam Lavery issued a response to the Washington State Gambling Commission's call for the company to block CS:GO [skin gambling](#), saying that it does not facilitate gambling through its Steam platform.

Lavery said Valve is "happy to cooperate" with the commission if it is able to identify more skins gambling sites since the company issued cease and desist letters to third party sites in July.

"We welcome the chance for further communication with the commission, if it would like to clarify the legal allegations against Valve, or alternatively work with Valve to identify offending Steam accounts of gambling sites," Valve said in [a letter](#) to the Washington State Gambling Commission.

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