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NITI Aayog

GUIDING PRINCIPLES FOR THE UNIFORM NATIONAL-LEVEL REGULATION OF ONLINE FANTASY SPORTS PLATFORMS IN INDIA

Draft for Discussion



Foreword

The Government of India constantly endeavors to leverage technology and innovation towards maximizing country's potential & economic growth. With a targeted, outcome-based approach and government's support, emerging technologies are already causing largescale shift across several sectors driving innovation, entrepreneurship, and job creation. One such sector that has witnessed noticeable growth in recent years is **Fantasy Sports**.

In a recent market report¹, it was noted that the number of users participating in online fantasy sports in India has grown at a compounded annual growth rate (CAGR) of 212%, from 2 million users in June 2016 to 90 million users in December 2019. Further, the report estimates that the fantasy sports industry has the potential to attract Foreign Direct Investment of more than INR 10,000 crore over the next few years as well as generate 1.5 billion online transactions by 2023. A rapidly surging demand, a large market of sports fans and a complementing pool of software development talent makes India the ideal candidate to become a global hub for this fast-growing industry.

Recognizing this opportunity and in sync with NITI Aayog's mandate to identify potential of disruption in changing industrial landscape, a position paper has been prepared to address Fantasy Sports market. The motivation behind this paper, put together by the Frontier Technology Vertical at NITI Aayog, is to identify the landscape and potential for India to be the global leader in the Fantasy Sports sector. The discussion paper, incorporating a position paper and draft guiding principles, has been prepared after deliberations with experts from industry as well as the legal fraternity.

Pursuant to incorporation of the feedback received, we now seek comments on the draft guiding principles, from the larger stakeholder community on or before 19th December 2020, on email at adviserdma-niti@gov.in.

The content of the draft document is solely for the purposes of discussion with stakeholders on the proposed subject and does not necessarily reflect the views of NITI Aayog. The document was prepared based on extensive stakeholder consultations. The information contained herein is neither exhaustive nor final and is subject to change.

Finally, I would like to acknowledge the valuable contribution of Desh Gaurav Sekhri (Officer on Special Duty, NITI Aayog) in putting together this discussion paper for stakeholder review.



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¹ The Business of Fantasy Sports (July 2020), KPMG India

Executive Summary

Online Fantasy Sports Platforms

The Hon'ble Prime Minister of India, in his MannKiBaat address aired on August 30, 2020, recognised the vast potential of the Indian gaming industry, applauding the contributions of Indian innovators and application developers. The recent AatmaNirbhar App Challenge also recognised gaming as a category in which development of indigenous applications are to be encouraged and celebrated.

Leading the gaming industry's growth within India are Online Fantasy Sports Platforms (OFSPs) that offer fantasy sports contests. With a large market of Indian sports fans and availability of digital infrastructure and engineering talent in India, the OFSP industry can be an engine for growth, employment and innovation in fantasy sports across the world, and also become a global hub for fantasy sports.

Until being overtaken by India recently, the United States of America (US) had the largest online fantasy sports market by user base, with industry reports attesting to daily fantasy sports contests in the US generating USD 2.91 billion in revenue and valuing the market at USD 7.22 billion as of 2017.

KPMG India in its report: The Business of Fantasy Sports (July 2020), noted that the number of users participating in online fantasy sports in India has grown at a compounded annual growth rate of 212%, increasing to 90 million users in December 2019, from 2 million users in June 2016. The fantasy sports industry is estimated to have the potential to generate approximately 1.5 billion transactions by 2023 as well as the potential to attract FDI of more than INR 10,000 crore over the next few years.

A PricewaterhouseCoopers India's report has noted that the fantasy sports industry has the potential to generate an additional 5000+ direct and 7000+ indirect jobs in the next 2-3 years. It also estimates that the fantasy sports industry has the potential to contribute GST revenue of INR 3,000 crore to INR 3,500 crore over the next 5 years, with income tax on winnings and corporate tax paid by OFSP operators expected to contribute between INR 7,000 crore to INR 10,000 crore over the next 5 years.

While OFSPs operate through online media on a pan-India basis, their regulation proceeds under varied State-wise regulatory regimes. This could impact fantasy sports users' interests of transparency, OFSP operator integrity, and fairness may vary from state-to-state. There are instances also of unscrupulous operators who lure users with games of questionable legality in the guise of fantasy sports.

NITI Aayog has initiated this discussion to examine the fantasy sports industry structure and consider evolving guiding principles that can help the industry to grow by adhering to guidelines which are consistent and based on well-recognised principles.

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GUIDING PRINCIPLES FOR THE UNIFORM NATIONAL-LEVEL REGULATION OF ONLINE FANTASY SPORTS PLATFORMS IN INDIA

Introduction

The Hon'ble Prime Minister of India, in his MannKiBaat address aired on August 30, 2020, recognised the vast potential of the Indian gaming industry, applauding the contributions of Indian innovators and application developers. The recent AatmaNirbhar App Challenge also recognised gaming as a category in which development of indigenous applications are encouraged and celebrated.

At the forefront of the gaming industry's growth within India are Online Fantasy Sports Platforms (OFSPs) that offer fantasy sports contests. In such contests, sports fans get the opportunity to engage actively with the sport of their choice and draft and compete with their virtual teams containing counterparts of real-life players from upcoming matches, score points based on such players' on-field performance and compete with other fans. The OFSP industry has a symbiotic relationship with sports, enabling fan engagement and interaction and increasing interest in a wide variety of sports events.

It has been observed that with increasing connectivity and access to the internet and online services, fantasy sports contests have gained in popularity and participation among sports fans across India. Fantasy sports provide an opportunity for sports fans to showcase their sports knowledge and be actively involved with the sports they follow.

With a large market of Indian sports fans and availability of digital infrastructure and engineering talent in India, India can be an engine for growth and innovation in fantasy sports across the world and become a global hub for fantasy sports and increase its influence in international sports development and commerce.

It is therefore perceived that fantasy sports benefit a number of stakeholders while also generating direct and indirect employment opportunities, driving investment, innovation in technology, entertainment and sports development. Considering its potential contribution to the Indian economy, and India's emergence as a hub for OFSPs, the fantasy sports industry has the potential to be a significant driver of economic and technological growth in India.

There is, therefore, an emergent need for this sector to be recognised and supported, to enable sustainable growth in a structured, governance-led manner.

US Fantasy Sports Industry and Regulation

Until being overtaken by India recently, the United States of America (US) had the largest online fantasy sports market by user base, with industry reports attesting to daily fantasy sports contests in the US generating USD 2.91 billion in revenue and valuing the market at USD 7.22 billion as of 2017².

Offline fantasy sports have enjoyed participation in the US since the 1950s, with organised fantasy sports leagues for American football and baseball emerging in the 1960s³. Fantasy sports moved online from 1995 onwards, starting with the operationalisation of OFSPs offering fantasy hockey contests⁴, and thereafter fantasy baseball, with internet groups such as Yahoo.com entering the space in 1999⁵. In 1998, a number of OFSPs in the US, such as CDM Fantasy Sports, Sportsline and Prime Sports Interactive came together to establish the Fantasy Sports Trade Association, now known as the Fantasy Sports and Gaming Association (FSGA), an industry body intended to represent the fantasy sports industry, secure its growth within the US, and support legal game-formats of fantasy sports games⁶.

In recognition of the skills involved in participation in fantasy sports, legislative action aimed at prohibiting internet gambling in the form of the Unlawful Internet Gambling Enforcement Act (UIGEA) created a safe-harbour for online fantasy sports⁷. This safe-harbour was premised on the standard of predominance of skill over chance, reflected as a condition in the safe-harbour that the winning outcome of fantasy sports games must reflect the relative knowledge and skill of the participants, among other associated requirements⁸.

With the benefit of the legislative safe-harbour and self-regulation through FSGA's charter for members, the OFSP industry in the US and Canada saw its user base grow from 18 million in 2006 to 59.3 million in 2017 as per the FSGA's records⁹. The FSGA has assisted with such growth by providing a platform for interaction and engagement amongst OFSPs through its events and conferences, engaging with State legislators in their regulatory initiatives for the fantasy sports industry, and engaging with OFSP operators to ensure lawful participation and protection of consumer rights¹⁰.

Industry Potential

KPMG India in its report: The Business of Fantasy Sports (July 2020), noted that the number of users participating in online fantasy sports in India has grown at a compounded annual growth rate of 212%, from 2 million users in June 2016 to 90 million users in December 2019. The number of OFSP companies has also exponentially risen from around 10 in 2016 to more than 140 in 2019.

As per the report, this growth in users has translated into the tripling of the growth of revenues of the online fantasy sports industry, i.e., from around INR 920 crore in the financial year 2018-2019 to INR 2470 crore in the financial year 2019-2020.

² Press Release: Fantasy Sports Now a \$7 Billion Industry, available at <https://thefsga.org/press-release-fantasy-sports-now-a-7-billion-industry/>

³ Richard Tacon & Stephen Vainker (2017) Fantasy sport: a systematic review and new research directions, *European Sport Management Quarterly*, 17:5, 558-589, DOI: 10.1080/16184742.2017.1347192

⁴ Janet Eagleson, The History of Fantasy Hockey, at <https://www.rotowire.com/hockey/advice/history.php>

⁵ Tim Marcin, How fantasy sports football exploded online and kept Yahoo relevant, at <https://mashable.com/article/fantasy-football-yahoo/>

⁶ Fantasy Sports & Gaming Association, History, at <https://thefsga.org/history/>

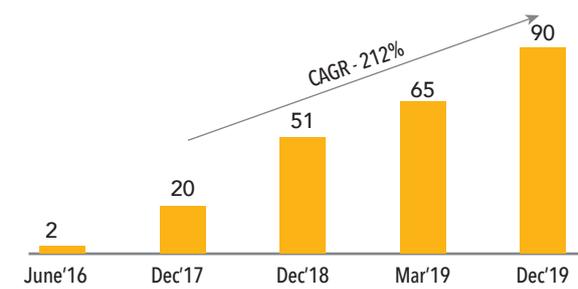
⁷ 31 U.S. Code §5362

⁸ "All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events." 31 U.S. Code §5362 (1)(E)(ix)(II).

⁹ Fantasy Sports & Gaming Association, Industry Demographics, at <https://thefsga.org/industry-demographics/>

¹⁰ Fantasy Sports & Gaming Association, at <https://thefsga.org/>

Online Fantasy Sports Users in India (million)



Source: KPMG India's Report: The Business of Fantasy Sports (July 2020)

PricewaterhouseCoopers India's report: *Federation of Sports Gaming – Report on Taxation of Online Fantasy Sports Gaming Market in India* (May 2019), noted that the fantasy sports industry has generated over 3000-3400 jobs directly and indirectly through 100-200 ancillary companies that provide research, tutoring, and analytics services to fantasy sports users and coach them to draft their teams. The fantasy sports industry has the potential to generate an additional 5000+ direct and 7000+ indirect jobs in the next 2-3 years.

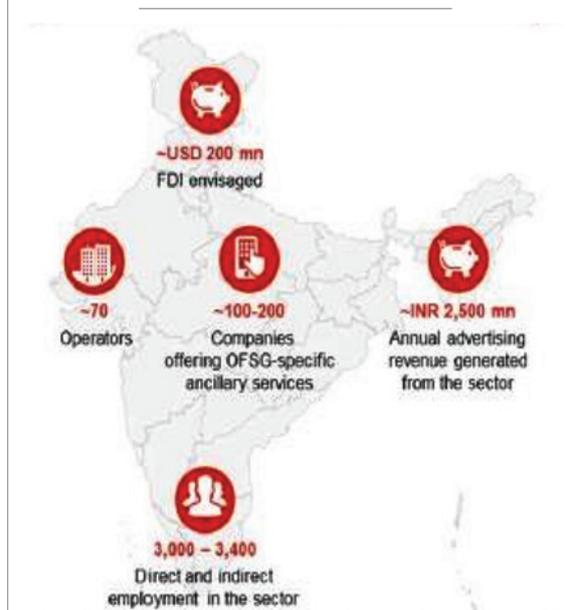
The PWC India Report also notes that the OFSP industry has generated more than INR 250 crore of revenue for the advertising industry and estimates this figure to rise to INR 2000 crore over the next few years.

According to the KPMG India Report, the fantasy sports industry is estimated to have paid GST to the tune of INR 166 crore, which is estimated to increase to INR 445 crore. The PWC India Report estimates that the fantasy sports industry has the potential to contribute GST revenue of INR 3,000 crore to INR 3,500 crore over the next 5 years.

Additionally, income tax on winnings and corporate tax paid by OFSP operators is expected to contribute significant revenue to the exchequer, with the combined industry contribution estimated to be between INR 7,000 crore and INR 10,000 crore over the next 5 years.

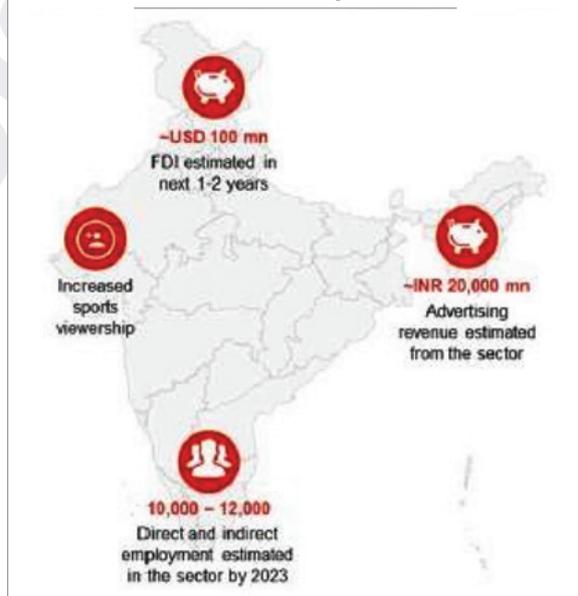
As noted in the PWC India Report, the fantasy sports industry has received around INR 1,000 crore in foreign direct investment (FDI). As per publicly available reports, the OFSP industry in India has seen investment from venture capital and private equity funds such as Kalaari Capital, Tiger Global Management, Think Investments, Kae Capital, Multiples Alternate Asset Management, and Steadview Capital Management and technology and gaming conglomerates such as Nazara Technologies and

Current Industry status



Source: PWC India Report on Taxation of Online Fantasy Sports Gaming Market in India (May 2019)

Estimated Industry Scenario



Source: PWC India Report on Taxation of Online Fantasy Sports Gaming Market in India (May 2019)

Delta Corp. The industry estimates that the fantasy sports industry has the potential to attract FDI of more than INR 10,000 crore over the next few years.

As per industry estimates, the fantasy sports industry has the potential to generate 1.5 billion online transactions by 2023.

Barriers to Industry Growth and Innovation in India

As noted by the Sports Law and Policy Centre (SLPC) in its Report: *Games of Skill in India - A proposal for reform (March 2017) (SLPC Report)*, there is no objectively definable test or regulatory guideline or administrative forum to assess and determine if a game will be characterised as a game of skill or game of chance. This determination relied entirely upon a dispute arising and being adjudicated on by the judiciary, with an adverse holding leading to potential criminal consequences for the operator. This state of affairs places the onus on the operator to ensure that a game format offered is a game of skill, without having the benefit of any bright-lines, objective measures or administrative fora to approach to evaluate and conclusively determine this. Such lack of rule clarity and the attendant risks were found by the SLPC Report to have a chilling effect on innovation and product development within the fantasy sports industry.

Additionally, Companies operating OFSPs are required to engage with State regulators who advocate State-specific regulations. Differential State regulations may lead to variation and uncertainty, raising the compliance burden on OFSPs and adversely impacting their ease of doing business and their ability to innovate and scale, and consequently adversely affect their growth potential. This has the potential to negatively impact returns on investment, reducing the ability of the industry to attract foreign direct investment, generate employment opportunities and contribute revenue to the public exchequer.

Despite such impediments, the fantasy sports industry has displayed growth and resilience, but remains at a nascent stage of development, with significant potential for innovation, growth and broader economic and social impact. Accountability, transparency and a ready-to-enforce platform for comprehensive governance is crucial for this sector to expand sustainably and benefit the economy and citizens of India optimally.

Barriers to Ensuring Uniform National-Level Consumer Protection in India

While OFSPs operate through online media on a pan-India basis, their regulation proceeds under varied State-wise regulatory regimes. This means that fantasy sports users' interests of transparency, OFSP operator integrity, and fairness may vary from state-to-state, resulting in an inconsistent experience and the risk of forum/jurisdiction shopping. This may even deprive sports fans in some states of their right to engage actively on these OFSPs.

With an OFSP operator located in one State and participating users on such OFSP located in multiple States, differential regulation also results in consumers having differential rights and remedies against OFSP operators, adding complexity and ambiguity to operators' compliance burdens and causing anxiety in dispute resolution.

With the absence of regulation and lack of policy clarity, there is an imperative need for uniform operating standards, based on sound principles and best global practices, and the monitoring of adherence to these principles and practices to protect fantasy sports users' interests.

Industry Recognition and Support

Thus far, certain formats of fantasy sports formats have received judicial recognition in various High Courts and with the Hon'ble Supreme Court of India also having endorsed certain of these judgments. However, fantasy sports contests do not have independent legal recognition, having to shelter under an undefined exception to the state gambling and public order laws.

Formal recognition of the fantasy sports industry and providing for principle-led governance would enable Indian OFSP operators to focus on innovation and achieve scale and expand their operations in a clear and principle-based regulatory environment, achieving the mission of the AatmaNirbhar Bharat Initiative and the Prime Minister's vision of Indian-made and developed applications flourishing and succeeding in India and outside India as well.

Further, independent and cost-effective grievance redressal mechanisms within the fantasy sports industry must be considered. These can meet the twin objectives of (i) providing accessible and uniform dispute resolution to consumers and (ii) not repeatedly exposing compliant OFSP operators to repeated legality challenges that come from consumer disputes reaching the courts.

It is worthwhile to add that with the recognition of fantasy sports as a game of skill, it is equally imperative to secure the industry and the users of OFSPs from unscrupulous operators who lure users with games of questionable legality in the guise of fantasy sports, and thereby tarnish the image and potential of the industry as well as the consumer's trust and expectation that the outcome of a fantasy sports contest will be determined by the superior exhibition of skill relative to participating users.

As part of its call for reforms in support of the above, the SLPC Report suggested the institution of clear guidelines and the creation of a centrally administered and nationally available safe-harbour for games of skill adhering to these guidelines.

The NITI Aayog agrees with this suggestion and believes that a principle-based policy implementation for the fantasy sports industry may in fact be necessary to promote growth and innovation while securing consumer interest. Such an approach could help ensure that the fantasy sports industry operates in a manner that continues to benefit and protect the interests of consumers while maintaining an environment that is supportive of innovative operators that follow good governance practices and protocols on responsible conduct with their users.

Next Steps

In furtherance of the aforesaid, the NITI Aayog organised a consultation on September 14, 2020 involving the participation of eminent persons from the industry and the legal fraternity to discuss and deliberate on the impediments to growth for the industry and the measures that may be considered to best support the industry with a focus on compliance with the rule of law, good governance, fostering

innovation and growth, and allowing the benefit of market forces to help India become a global leader for OFSPs.

The consultation also considered the need for consumer protection and the public interest in the institution of a grievance redressal mechanism that addressed consumer disputes in an adequate, efficient, and affordable manner.

The participants in the consultation unanimously agreed and achieved consensus on the following principles and recommendations:

- There is a public interest in the fantasy sports industry receiving Government recognition as an industry and having its own identity. This identity is distinct from other games of skill and legally differentiated from betting and gambling.
- The extant legal ambiguity and differential treatment faced by fantasy sports games across the Indian States must be addressed through the creation of a uniform national-level safe-harbour for fantasy sports games. This safe-harbour must provide for defined parameters and mechanisms to define and determinate fantasy sports game formats that are games of skill.
- Principle-based guidelines that are agreed and issued must be recognised by relevant national and state-level institutions and organisations. This will enable the implementation of a single national policy on fantasy sports and bring clarity to regulators, operators and consumers alike.
- The Government must consider a light-touch regulatory framework for the fantasy sports industry given the dynamic and technical nature of the activities. This approach will be facilitative of market-creation and market-growth. Self-regulation must also be the preferred mode of governance to ensure ongoing transparency, consumer protection, and accountability.
- A single self-regulatory organisation for the fantasy sports industry should be recognised by the Government. Such self-regulatory body should be a single- purpose fantasy sports industry body and have membership of OFSP operators who, in aggregate, have as their registered users at least 66% of the registered fantasy sports users in India.
- The governance of the self-regulatory organisation should be undertaken by an independent oversight board comprising of reputed persons with experience in governance, law and administration, who may be elected or appointed by members of the self-regulatory organisation for fixed terms.
- The independent oversight board should be responsible for the implementation of the uniform guidelines and principles and ensuring OFSPs' continued adherence and compliance therewith, including through periodic review of member operations.
- All OFSPs that are members of the self-regulatory organisation should enjoy the benefit of the safe- harbour exemption, subject to their adherence with the norms and procedures laid down.

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- The self-regulatory organisation should establish an independent grievance redressal mechanism to handle consumer/user complaints against OFSPs as well as any disputes that arise between or relating to OFSPs.
 - While always deferring to the wisdom of the Hon'ble Supreme Court of India in all respects, the creation of a cogent and effectively implemented uniform framework has the potential to support the judicial determinations, reduce the burden on the courts and concurrently achieve the objectives of public interest and consumer protection.

Pursuant to the deliberations at the consultation and in furtherance of the recommendations received, NITI Aayog has taken the initiative to compile a list of guiding principles for the fantasy sports industry, which are listed in Annexure 1 hereto. These guiding principles may be treated as a uniform "regulatory sandbox" and may be recalibrated based on ongoing innovations and developments in the sector.

[Draft] Guiding Principles for Online Fantasy Sports Platforms in India

The following guiding principles, to be implemented and overseen by the recognised self-regulatory organisation for the fantasy sports industry, may be considered for supporting the fantasy sports sector in a structured manner:

1. OFSP operators should remain in compliance with all applicable laws, regulations and rules in force in India.
2. All formats of fantasy sports contests offered by OFSPs should remain skill- predominant. In case an OFSP operator wishes to offer a pay-to-play variant of contest that varies from the fantasy sports format judicially determined to constitute a game of skill, it should first obtain approval from an independent evaluation committee, constituted by the recognised self-regulatory organisation, that will undertake statistical and legal evaluation of such format to ascertain and confirm that such format is skill-predominant in determining the winning outcome. Such independent evaluation committee shall have the power to set rules or recommend changes to formats that will be binding on OFSPs. OFSP operators will be required to keep statistical data to track player/user performance on their platforms and submit the same to the self-regulatory organisation periodically to demonstrate that the formats deployed by the operator are skill predominant.
3. Pay-to-play formats of fantasy sports contests should not be offered by an OFSP operator to users who are less than 18 years old. All necessary safeguards to protect minors must be instituted.
4. A fantasy sports contest should generally relate to and emulate an entire real world officially sanctioned sports contest as closely as possible and not infuse elements of chance that are not present in the real-world contest, provided that this requirement may be waived by the independent evaluation committee in cases it deems fit.
5. The terms of participation in fantasy sports contests should be fair and transparent, and all users should be offered the same pre-declared rules, platform, opportunities and prizes as the other users they compete against and should be provided a grievance redressal mechanism for the redressal of their complaints.
6. OFSP operators should not offer or advertise gambling services or games of chance on their OFSPs and should put in place industry standard policies and measures to prohibit and prevent use of their OFSP for illegal purposes.
7. Advertising and promotion of fantasy sports contests, including any endorsement or participant comments used by the operator for advertisements or promotions, (a) should be fair and truthful, (b) should remain in compliance with the existing advertising standard of the Advertising Standards Council of India and any other relevant body, (c) should neither represent or imply that winnings in a contest are 'assured' or 'guaranteed' nor project fantasy

sports as anything other than an amusement and fan engagement activity, and (d) should not represent that the participation in fantasy sports is a source of sustenance, a means of earning a livelihood, a lottery, a jackpot or an investment opportunity. In the same spirit, vigilance should be exercised over claims made by third parties involved with training or offering other services to users and organizing promotional events relating to fantasy sports contests.

8. The self-regulatory organisation should send a communication to all the States requesting them to consider granting to OFSPs immunity from criminal prosecution or sanction in respect of such formats of fantasy sports contests that are compliant with these guiding principles.



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