

Betting on a New Industry: The Meteoric Rise of Online Sports Betting

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Until 2018, the U.S. Professional and Amateur Sports Protection Act (PASPA) prohibited states from passing bills that would legalize sports betting. However, in May of that year, the United States Supreme Court struck down PASPA, clearing the way for sports betting in states that chose to legalize it.

New Jersey was the first state to launch sports betting (other than Nevada, which was excluded from PASPA), and the first online sports book in New Jersey went live in June 2018. Now, there are 21 states plus Washington, D.C. that have legalized sports betting. As for the remaining states, most have introduced sports betting legislation.

Morgan Stanley estimates that the legal sports betting market generated \$833 million of revenue in 2019, and projects that it will be a nearly \$8 billion industry by 2025. In addition to traditional casinos and sports books, big names in fantasy sports — most prominently FanDuel and DraftKings — have jumped into the mix and launched online betting services in states where it has been legalized.

The launch of such a sizeable industry, virtually overnight, has created a whole new segment for marketers, agencies, media companies and nearly everyone involved in the advertising ecosystem. But the regulatory scheme in place is complicated, and there are many pitfalls to keep in mind before working with gaming companies.

For now, sports betting continues to be illegal in the majority of states. Moreover, federal law prohibits sports books in states where betting is legal from accepting bets placed in states where it is illegal. Although legitimate betting operations have technical measures in place to help prevent illegal bets from being placed, advertising should make clear that bets can only be placed from certain states. In addition, digital advertising should be geotargeted only to states where sports betting is legal, in order to prevent any implication that users can place bets by clicking an ad online. To complicate things further, federal and state law also restrict the transmission of betting odds in furtherance of wagering, so caution is needed to ensure that advertisements refrain from advertising odds for individual bets.

For states where sports betting is legal, regulations will still come into play for anyone looking to accept advertising for sports books. For example, most states require gambling advertisements to include a toll-free number to call for help with gambling addictions. In addition, certain states require that vendors for licensed sports books be registered with state regulators, and this may include marketing agencies and media companies. And, in line with alcohol, cigarette and marijuana advertising, advertisements should be targeted to viewers and users who are of age, including by using demographic data (if available) to ensure that ads are targeted to users who are legally allowed to gamble and using creative that is not designed to appeal primarily to underage audiences. To establish best practices in the marketplace, the American Gaming Association (AGA) has also issued Advertising Guidelines for Sports Betting which provide more in-depth guidance on compliance.

Key Takeaways

- As with any new industry, sports betting faces a complicated and rapidly changing regulatory scheme.
 - Since the patchwork of state and federal regulations will continue to evolve, care should be taken to ensure that advertisements are geotargeted to markets where betting is legal and in compliance with the law.
 - All participants in the marketing of sports betting should ensure that their partners abide by the AGA Advertising Guidelines.
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