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MORE THAN JUST SKIN(S) IN THE GAME: HOW ONE DIGITAL VIDEO  
GAME ITEM IS BEING USED FOR UNREGULATED GAMBLING PURPOSES  
ONLINE

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**I. Introduction**

*“The guy who invented poker was bright, but the guy who invented the chip was the genius.”*

-Julius Weintraub

On September 27, 2016, the Washington State Gambling Commission (“WSGC”) issued a cease and desist letter to the popular video game developer, the Valve Corporation (“Valve”).<sup>1</sup> Asserting that they are in violation of Washington State gambling law, the cease and desist letter emanates from Valve’s alleged involvement in a quickly evolving industry known throughout the world as “skin

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<sup>1</sup> See Letter from David E. Trujillo, Director, Wash. State Gambling Comm’n, to Gabe Newell, Valve Corp. (Sept. 27, 2016) (on file with Esports Betting Report) (ordering Valve to cease violating Washington State gambling laws). The letter goes on to order Valve to show the steps they have made to bring Valve into “full compliance” with Washington State Gambling Law by October 14, 2016. *Id.*

gambling” or “skin betting.”<sup>2</sup> As denoted by the letter, the WSGC sets forth that by turning a blind eye to the enforcement of its regulation against the usage of “bot” accounts, Valve knowingly permits their customers to use skins for illicit gambling purposes.<sup>3</sup>

Skins, as they are commonly referred to in the video game industry, are virtual decorations used in many modern day, online, multiplayer video games to change the appearance of a video game avatar’s weapons or appearance in-game.<sup>4</sup> Although originally intended as simply a cosmetic feature of the video games they are used in, entire marketplaces have developed around the skins in a number of popular, Valve developed, video games over approximately the past four years.<sup>5</sup> Similar to a casino chip, a skin can be used as a “de facto currency” that can be used to place bets on the outcome of electronic

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<sup>2</sup> See *id.* (demanding Valve’s compliance with Washington State gambling laws for their alleged involvement in the skin gambling industry); see also Evan Lahti, *CS:GO’s Controversial Skin Gambling, Explained*, PC GAMER (July 6, 2016), archived at <https://perma.cc/M4WC-QYZV> (equating Valve’s lack of interference in the skin gambling market to Valve’s implied condoning of the activity). *Contra* Joss Wood, *Valve Takes Another Swing at Closing Skin Betting: Team Fortress 2 is in the Firing Line*, ESPORTS BETTING REPORT (Jan. 31, 2017), archived at <https://perma.cc/466Y-DGJG> (providing an example of Valve’s attempt at shutting down skin betting in another one of their widely popular video games, Team Fortress 2).

<sup>3</sup> See Trujillo, *supra* note 1 (alleging that Valve has not strictly enforced its own user end agreements and thus has knowingly allowed gambling to commence via the use of its skins as consideration). *But cf.* Alice O’Connor, *Valve Responds to State’s Skin Gambling Complaint*, ROCK PAPER SHOTGUN (Oct. 19, 2016), archived at <https://perma.cc/8L5D-UPRW> (highlighting Valve’s response to the WGSC’s cease and desist letter which explains that tracking and shutting down “bot” accounts is often extremely challenging). “[W]e do not know all the skin gambling sites that may exist or may be newly created, and we are not always able to identify the ‘bot’ accounts that particular skin gambling sites may use to effectuate Steam trades.” *Id.*

<sup>4</sup> See CHRIS GROVE, UNDERSTANDING SKIN GAMBLING, 2 (Narus Advisors, 2016) (providing an overview of what skins are and their purpose in the video game industry).

<sup>5</sup> See *Id.* at 2 (reminding the reader that the original intent of a skin was strictly for cosmetic purposes). The author further goes on to point out that, although skin trading has been available via Valve’s online store platform, Steam, skin gambling did not begin to truly emerge on these third-party sites until 2014. *Id.*

sports (“eSports”) matches, roulette games, virtual coin flips, and other casino-style games, completely online.<sup>6</sup>

Unlike video games that simply have lottery or casino style features built into their user interfaces, skin gambling has almost entirely emanated out of third party websites.<sup>7</sup> Through Steam, the Valve Corporation’s digital distribution platform, these third-party websites have developed online casinos to facilitate gambling or wagering schemes using skins that are tradable in Valve video games like Counterstrike: Global Offensive (“CS: GO”).<sup>8</sup> As a result, from January 2016 to July 2016, one website, was able to facilitate the betting of approximately 103 million skins in over a period of 2,800 quasi-professional CS: GO matches, amounting to approximately \$1 billion in placed bets.<sup>9</sup> As skins presently remain an unregulated currency domestically, many questions arise as to the legality of using such a de facto currency for gambling purposes.

Part II of this note provides a brief overview of the evolution of the gambling industry in the United States.<sup>10</sup> Part II further goes on to address some of the most important federal statutes pertaining to gambling, particularly that of sports betting.<sup>11</sup> Part III of this note will outline how skin gambling came to be and how the gambling process generally is facilitated via Valve-produced video games that

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<sup>6</sup> See *Id.* at 2-3 (expounding on the similarity of a skin to a casino chip, and the many different types of casino-style games a skin can be used to place bets).

<sup>7</sup> See *Id.* at 2 (summarizing how skins are bet via the use of third party websites). “Like a casino chip, a CS: GO skin can be traded between the player and the house. That basic functionality allows skins to serve as a de facto currency that can power basically any type of gambling product you can imagine.” *Id.*

<sup>8</sup> See WILL GREEN, *SKINS IN THE GAME: THE SIZE OF ESPORTS SKIN BETTING IN 2016, ITS CONVOLUTED CLOSURE, AND HOW IT COULD SHAPE THE FUTURE OF ESPORTS WAGERING 1* (Narus Advisors, 2016) (citing Valve’s July 2016 cease and desist letter sent to skin gambling websites that use its API to trade and gamble skins). “Facing four skin gambling scandals in the span of a month as well as multiple lawsuits alleging it supported unregulated and underage gambling, game maker Valve ordered skin gambling sites to cease and desist using its API, Steam, to facilitate commercial gambling transactions.” *Id.*

<sup>9</sup> See GREEN, *supra* note 8, at 1 (quantifying CS: GO Lounge as the largest eSports book prior to its shut down in August of 2016).

<sup>10</sup> See *infra* pp. 128-37 (providing a brief history of relevant state and federal gambling regulation from the colonial era to the present day).

<sup>11</sup> See *infra* pp. 130-137 (introducing four important anti-gambling statutes).

provide players methods by which to buy, sell and trade skins.<sup>12</sup> Part IV will provide an analysis of the applicability of the relevant federal statutes and case law to skin gambling, a presently unregulated market.<sup>13</sup> Additionally, Part IV shall explore how attractive skin gambling is to children of young ages, and will compare foreign attempts to regulate the presently evolving industry.<sup>14</sup> For purposes of this note, as skin gambling and betting almost exclusively exists in games developed by Valve, the discussion will primarily revolve around games such as CS: GO, Defense of the Ancients 2 (“DoTA 2”), and Team Fortress 2 (“TF2”). Additionally, and to avoid confusion, the umbrella term “skin gambling” shall be used to encompass both the process by which skins are used as a de facto currency to place bets and used in gambling activities in this note.

## II. History:

Participation in lottery-style games has been a favored pastime in America since the early days of the colonial settlements.<sup>15</sup> State legislatures first enacted state-run lotteries to help raise supplementary revenue and as a method by which to assist in the construction and development of local infrastructure projects.<sup>16</sup> Although

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<sup>12</sup> See *infra* pp. 137-50 (describing the intricacies of the skin gambling industry, including its birth and potential market growth in the coming years).

<sup>13</sup> See *infra* pp. 150-57 (analyzing how the skin gambling industry could be in violation of four federal anti-gambling statutes).

<sup>14</sup> See *infra* pp. 157-59 (considering the growing need for more in-depth regulations on industries such as skin gambling to prevent underage participation).

<sup>15</sup> See G. Robert Blakey & Harold A. Kurland, *Development of the Federal Law of Gambling*, 63 CORNELL L. REV. 923, 927 (1978) (discussing the flourishing of lotteries from the colonial era to the 1830's). Generally condoned by states for many years, lotteries were both popular and respected activities to participate in. *Id.*

<sup>16</sup> See G. Robert Blakey, *Gaming, Lotteries and Wagering: The Pre-Revolutionary Roots of the Law of Gambling*, 16 RUTGERS L. J. 211, 229 (1985) (providing various reasons as to why early American colonists relied on lotteries); see also I. Nelson Rose, *Gambling and the Law: The Third Wave of Legal Gambling*, 17 JEFFERY S. MOORAD SPORTS L.J. 361, 368 (2010) (setting forth one reason as to why lotteries became so popular among the colonies). “[T]he colonies were awash in lotteries, licensed by both states and the newly formed federal government. In part this was

viewed as a respectable industry for nearly two centuries for their beneficial contributions to the community, by 1862, states that lacked anti-gambling legislation began to be in the minority.<sup>17</sup> While the crackdown on state lotteries issued a blow to citizen participation in state-sanctioned lottery games within their respective state's borders, those who participated in lotteries were soon able to take their business elsewhere, with the most prominent participation emanating out of the state of Louisiana.<sup>18</sup>

Founded by John A. Morris and Charles T. Howard, the Louisiana Lottery Company, nicknamed the "Serpent," was incorporated by the Louisiana state legislature in 1868.<sup>19</sup> Exempting the Louisiana Lottery Company from all taxes and prohibiting the sale of foreign lottery tickets within the state's boundaries, the Louisiana Legislature was promised \$1 million in profits from the Louisiana Lottery Company over a period of 25 years.<sup>20</sup> As nearly the only show in town, the Louisiana Lottery quickly gained a stranglehold on the market,

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because, during the colonial period and even after the American Revolution, America lacked a fiscal infrastructure." *Id.*

<sup>17</sup> See NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, UNITED STATES DEPARTMENT OF JUSTICE, *THE DEVELOPMENT OF THE LAW OF GAMBLING: 1776-1976* 672-73 (1977) [hereinafter NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE] (discussing the proliferation of anti-lottery laws at the state level in the mid-1800's); see also Rose, *supra* note 16, at 369 (summarizing the historical evolution and end of state lottery schemes). "By 1862 Missouri and Kentucky were the only states that had not banned lotteries altogether." *Id.*

<sup>18</sup> See NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, *supra* note 17, at 673-74 (introducing the rise of the Louisiana Lottery system).

<sup>19</sup> See NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, *supra* note 17, at 673 (citing the year in which the Louisiana Lottery Company was founded); see also Stephen Leacock, *Lotteries and Public Policy in American Law*, 46 J. MARSHALL L. REV. 37, 68 (2012) (explaining that the Louisiana Lottery was colloquially referred to as the "Serpent" because of the popularity and reach of the Louisiana Lottery through the interstate mail system).

<sup>20</sup> See NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, *supra* note 17, at 673 (delineating the circumstances of the creation of the Louisiana Lottery Company).

with daily drawings for winning tickets held in major cities throughout the United States.<sup>21</sup> Much like its predecessors, however, regulation eventually crippled the Louisiana Lottery Company.<sup>22</sup> Banning all advertisements and other media regarding lottery schemes from being sent by mail, the United States federal government dealt a fatal blow to all state lotteries with the Anti-Lottery Act of 1890.<sup>23</sup> With the American lottery industry in shambles, the nation would not again see a state-sanctioned lottery until 1964.<sup>24</sup>

Though nearly all forms of gambling remained illegal in the United States until 1931, with the fall of the state-run lottery schemes, social gambling began to take a new form as the many Americans began to place their hard-earned dollars on sports betting in the early 1900s.<sup>25</sup> While baseball was one of the most popular sports to bet on, betting on other professional and college sports grew

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<sup>21</sup> See NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, *supra* note 17, at 674 (discussing the meteoric rise of the Louisiana Lottery and its following throughout the several states).

<sup>22</sup> See NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, *supra* note 17, at 675-77 (addressing the fall of the Louisiana Lottery and other state lotteries).

<sup>23</sup> See 18 U.S.C. § 1302 (1890) (outlining the penalties for sending or delivering by mail any contraband related to a lottery or game of chance); 18 U.S.C. § 1953 (1890) (defining lottery or “wagering” contraband deemed to be “paraphernalia” for purposes of conducting a state lottery); see also NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, *supra* note 17, at 676-77 (discussing the fall of the state run lotteries as a result of the Anti-Lottery Act of 1890).

<sup>24</sup> See Deborah S. Hyden, *Will Tennessee Take a Chance on a Lottery? A Look at the Issues Around the Constitutional Vote*, 38 TENN. B. J. 12, 13, 14 (May 2002) (referencing the first resurgence of a state-run lottery in 1964 in New Hampshire); cf. Christine Hurt, *Regulating Public Morals and Private Markets: Online Securities Trading, Internet Gambling, and the Speculation Paradox*, 86 B.U. L. REV. 371, 398 (2006) (noting that presently, forty states and the District of Columbia actively conduct individual lotteries or participate in state lottery pools).

<sup>25</sup> See Hurt, *supra* note 24, at 397 (discussing the illegality of gambling until 1931 in the United States, whereupon Nevada became the first state to legalize casino gambling); see also Daniel J. Larson, *Can Daily Fantasy Sports Overcome The Odds?*, 17 J. HIGH TECH. L. 451, 454 (2017) (noting the United States’ new infatuation with sports betting, particularly that of baseball).

in popularity throughout the 1920's.<sup>26</sup> During this time however, sports betting was illegal at the federal level, until 1951, whereupon Congress effectively legalized sports betting by imposing a ten percent excise tax on any and all wagers placed on the outcome of a sports match or game and an annual stamp tax on any person liable for the excise tax.<sup>27</sup>

Following the federal tax regulations of 1951, in 1961, Congress began to take further steps to regulate sports betting, beginning with Interstate Wire Act of 1961 ("Federal Wire Act").<sup>28</sup> Introduced before the House of Representatives Judiciary Committee on May 17, 1961 by then Attorney General, Robert F. Kennedy, the purpose of the Federal Wire Act was to provide assistance to the several States

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<sup>26</sup> See Larson, *supra* note 25, at 454-55 (providing examples of other sports gamblers routinely placed bets on during the 1920's, such as "boxing, college football, and basketball").

<sup>27</sup> See John E. Coons, *The Federal Gambling Tax and the Constitution*, 43 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 637, 637 (1953) (discussing the new tax provisions imposed onto all persons "engaged in the business of accepting wagers or in a wagering pool or lottery conducted for profit"); see also *id.* at 637-38 (reviewing one large issue gamblers and gambling facilitators faced as a result of the federal tax regulations of 1951).

It is fairly apparent that the purpose of these taxes is to discourage gambling and to facilitate the enforcement of state criminal laws against gambling. Thus, the act places professional gamblers in a dilemma. If they register and provide the information required by the act, they may be subject to prosecution as violators of the state anti-gambling laws. On the other hand, if they refuse to register, the sanctions of the wagering statute become operative.

*Id.* at 637-38.

<sup>28</sup> See Larson, *supra* note 25, at 459 (discussing the necessity of the wire act as a means of the regulation of sports wagering).

in enforcement of their laws regarding illegal gambling.<sup>29</sup> As arguably one of the most important federal statutes related to gambling and sports betting,<sup>30</sup> the most relevant part of the statute states:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.<sup>31</sup>

As defined under the Federal Wire Act, a “‘wire communication facility’ means any and all instrumentalities, personnel and services . . . used or useful in the transmission of signs, pictures and sounds of all kinds by aid of wire, cable or other like connection between the points of origin and reception of such transmission.”<sup>32</sup>

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<sup>29</sup> See Michelle Minton, *The Original Intent of the Wire Act and Its Implications for State-Based Legalization of Internet Gambling*, 29 U.N.L.V. CTR. FOR GAMING RES. OCCASIONAL PAPER SERIES 4 (David G. Schwartz ed., 2014) (explaining that the law would “prohibit the use of wire communication facilities for the transmission of *certain gambling information* in interstate and foreign commerce”); see also Robert F. Kennedy, Attorney General of the United States, Statement of the Honorable Robert F. Kennedy Attorney General of the United States, Before Subcommittee No. 5 of the House Committee on the Judiciary, in *Support of Legislation to Curb Organized Crime and Racketeering* (May 17, 1961) (providing Robert F. Kennedy’s statement in support of the Federal Wire Act).

<sup>30</sup> See I. Nelson Rose & Rebecca Bolin, *Game on for Internet Gambling: With Federal Approval States Line up to Place Their Bets*, 45 CONN. L. REV. 653, 659-60 (2012) (addressing the impact the Wire Act had on both traditional and sports gambling).

<sup>31</sup> 18 U.S.C. § 1084 (2016) (stating the penalties for the transmission of bets or wagers through wire communications).

<sup>32</sup> 18 U.S.C. § 1081 (2016) (defining the terms, “gambling ship,” “gambling establishment,” “vessel,” “American vessel,” and “wire communication facility,” for purposes of the statute).



Thus, the Wire Act, rather expansively, covers all forms of modern-day communications that can be used to transmit and receive sporting bets, including but not limited to: wireless phones and the internet, as both use some form of “wire communication facility.”<sup>33</sup>

Shortly following the Wire Act, in 1970, the Illegal Gambling Business Act (“IGBA”), a vital part on the war on organized crime, was enacted as a section of the Organized Crime Control Act.<sup>34</sup> Although somewhat limited by less-expansive terms, unlike the Wire Act, as to what illegal gambling activities expressly fall under the IGBA, the statute, in short, targeted the financiers, managers, supervisors and directors of illegal gambling businesses.<sup>35</sup> However, to satisfy the statutory requirements of the IGBA, the purported illegal gambling business in question must involve at least five or more persons, and have remained in operation for over thirty days or experienced a profit greater than \$2,000 any day during the venture.<sup>36</sup> Although originally intended to target organized crime, it has since been

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<sup>33</sup> See *United States v. Cohen*, 260 F.3d 68, 70 (2d Cir. 2001) (affirming the defendant’s conviction for knowingly collecting approximately \$5.3 million in funds wired from customers in the United States in violation of the Wire Transfer Act); Matthew R. Tsai, Note, *Fantasy (E)Sports: The Future Prospect of Fantasy Sports Betting Amongst Organized Multiplayer Video Game Competitions*, 6 U. NEV. L.V. GAMING L.J. 393, 404 (2016) (explaining the history of the Wire Act and its application to the internet and wireless phones); GROVE, *supra* note 4, at 5 (indicating the specific applicability of the Wire Act as to betting on sporting events); Rose & Bolin, *supra* note 30, at 661 (discussing the applicability of the Wire Act to more modern forms of communication).

<sup>34</sup> See IAN J. IMRICH, ANALYSIS OF THE ILLEGAL GAMBLING BUSINESSES ACT 2 (2009) (analyzing the IGBA and stating its importance as a component of the Organized Crime Control Act of 1970); See also GROVE, *supra* note 4, at 5 (discussing the original purpose of the IGBA).

<sup>35</sup> See IMRICH, *supra* note 34 (noting the lack of necessity for organized crime involvement for the IGBA to apply to an illegal gambling business); see also *United States v. Clements*, 588 F.2d 1030, 1039 (5th Cir. 1979) (clarifying that the term “conducts,” as used in U.S.C. §1955, applies to “[A]nyone who performs a necessary function” in the purported illegal gambling business); *United States v. McHale*, 495 F.2d 15, 18 (7th Cir. 1974) (specifying that the customers of purported illegal gambling businesses are excluded from 18 U.S.C. §1955’s reach).

<sup>36</sup> See 18 U.S.C. §1955 (1970) (delineating the defining characteristics of an illegal gambling business for purposes of the statute). The statute reads in part:

(b) As used in this section --  
“illegal gambling business” means a gambling business which—

held that the IGBA prohibits the operation of illegal gambling businesses, “regardless of whether there is organized crime involvement.”<sup>37</sup> By adding another layer of regulation, the IGBA and the Wire Act together expanded Congress’s ability to target illegal gambling businesses with the help of state legislatures.<sup>38</sup>

Trailing the Wire Act nearly 30 years later, the Professional and Amateur Sports Protection Act (“PASPA”) was passed in 1992.<sup>39</sup>

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- (i) Is a violation of the law of a State or political subdivision in which it is conducted;
  - (ii) Involves five or more persons who conduct, finance, manage, supervise, direct or own all or part of such business; and
  - (iii) Has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

*Id.*

<sup>37</sup> See *id.* See *United States v. Farris*, 624 F.2d 890, 897 (9th Cir. 1980) (opining that being involved with organized crime is not a prerequisite to a conviction under 18 U.S.C. § 1955); see also *IMRICH*, *supra* note 34, at 5 (comparing the IGBA against the Wire Act and the UIGEA). “Unlike the Wire Act, which only applies to sportsbooks and unlike the Unlawful Internet Gambling Enforcement Act, which like the Wire Act only applies to parties ‘engaged in the business of betting or wagering,’ the IGBA applies to all gambling businesses, sportsbooks, casinos and cardrooms alike.” *Id.*

<sup>38</sup> See Kaitlyn Dunphy, *Following Suit with the Second Circuit: Defining Gambling in the Illegal Gambling Bus. Act*, 79 *BROOK. L. REV.* 1295, 1320 (2014) (discussing the legislative intent Congress had in implementing the IGBA). “The law fulfills its legislative purpose of aiding the states in enforcing their anti-gambling laws, without interfering with the rights of the other states to legalize gambling.” *Id.*

<sup>39</sup> See 28 U.S.C. §§ 3701-3704 (1992) (codifying the illegality of sports betting federally and among the several states). PASPA provides that:

- It shall be unlawful for—
- A governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or
- A person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity,
- A lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games

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Expressly forbidding states to sanction sports betting, PASPA was by far and away the most direct action by the Federal Government in an attempt to regulate or do away with a gambling scheme that was quickly growing out of hand since the Anti-Lottery Act of 1890.<sup>40</sup> When signed into law, the act itself had three important goals in mind: “(1) to stop the spread of state-sponsored sports gambling, (2) to maintain sports’ integrity and (3) to reduce the promotion of sports gambling among America’s youth.”<sup>41</sup> To promote these goals, Congress cracked down on the several states, preventing any government entity from advertising or sponsoring a wagering opportunity or scheme based on the outcome of a professional or amateur sports match or game.<sup>42</sup> However, Congress provided some leeway for states that had already had these state sanctioned schemes in place prior to 1992.<sup>43</sup> Those states that had previously operated sports betting schemes between January 1, 1976 and August 31, were granted blanket immunity from the statute.<sup>44</sup> An important distinguishing

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in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

*Id.*; see also Larson, *supra* note 25, at 463 (outlining the importance of PASPA to regulate gambling amongst professional and amateur sports in the United States).

<sup>40</sup> See Rose & Bolin, *supra* note 30, at 663 (noting the implementation of PASPA in 1992). For the first time in almost a century, Congress sought to restrict state governments from implementing or expanding gambling schemes legal under state law. *Id.*

<sup>41</sup> See Eric Meer, *The Professional and Amateur Sports Protection Act (PASPA): A Bad Bet for the States*, 2 U.N.L.V. L.J. 281, 288 (2011) (delineating PASPA’s legislative intent and goals).

<sup>42</sup> See *Id.* at 287 (quoting the language of PASPA).

<sup>43</sup> See *Id.* at 288 (recognizing the exemptions made by Congress to four individual states from requiring their state legislature’s full adherence to PASPA).

<sup>44</sup> See *Id.* at 287 (addressing the grandfathering in of sports betting in Nevada, Oregon, Delaware and Montana after the Act was passed). New Jersey was provided a one-year grace period to implement sports betting, but it failed to do so in time. *Id.* at 289; see also SARA FRIEDMAN, BEYOND NEVADA, E-SPORTS MAY CHALLENGE PASPA RULES 1 (Gambling Compliance, 2016) (discussing the legality of express, legal sports betting in Nevada, whilst comparing the other types of sports betting permitted in other, grandfathered-in states after the imposition of PASPA).

“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.” *Id.*

factor of PASPA to note, additionally, is that the statute is applicable regardless of whether the betting opportunity is based on “chance or skill, or on a combination thereof.”<sup>45</sup>

Beginning in the early 1990’s, one online industry quickly became a household name throughout the world—online poker.<sup>46</sup> Passed by the Nation of Antigua and Barbuda in 1994, the Free Trade & Processing Act (FTPA) allowed the small island nation to grant licenses to companies applying to open these quasi-casinos, online.<sup>47</sup> Quickly exploding in popularity in the United States, online poker quickly experienced approximately twelve years of nearly unfettered freedom until the passage of the Unlawful Internet Gambling Enforcement Act of 2006 (“UIGEA”).<sup>48</sup> Preventing gambling businesses from “knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the internet,” the UIGEA outlawed the transferring of funds to and

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<sup>45</sup> See S. REP. NO. 102-248, at 9 (1991), as reprinted in 1991 U.S.C.C.A.N. 3553, 3560 (reinforcing the applicability of PASPA as to any and all betting schemes both federally or at the state level, regardless of whether they are based on chance or skill).

<sup>46</sup> See *The History of Online Gambling*, ONLINEGAMBLING.COM (Oct. 21, 2016), archived at <https://perma.cc/KKA6-MFAK> (noting the emergence of internet gambling sites in the mid-1990’s).

<sup>47</sup> See Alex, *The Evolution of the Online Casino World*, CREATINGPASSIVEINCOME.COM (Apr. 26, 2016), archived at <https://perma.cc/K7DQ-J72T> (providing a brief history of the evolution of online casinos both foreign and domestically).

<sup>48</sup> See 31 U.S.C. §§ 5361-5367 (2006) (outlining the prohibition of acceptance of any financial instrument for unlawful internet gambling and its penalties). The purpose of the UIGEA was to help further enforce gambling law “because traditional law enforcement mechanisms were often inadequate for enforcing gambling regulations on the internet, especially where such gambling crosses State or national borders.” 31 U.S.C. § 5361; Martin Harris, *Black Friday: Reliving Poker’s Darkest Day Five Years Later*, POKERNEWS (Apr. 12, 2016), archived at <https://perma.cc/79M7-FCXN> (summarizing the rapid downfall of online poker in the United States). But see Jeff Ifrah et al., *The Definitive Guide to iGaming in the United States*, IFRAH LAW 10 (Fall 2016 Update) [hereinafter Ifrah Law] (alleging the UIGEA provided little in the way of actual substance in clarifying current gambling law in the age of internet gambling). “The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) ... was meant to provide clarity as to the legality of gaming transactions, but in some ways only served to muddy the waters.” *Id.*

from gambling websites.<sup>49</sup> Providing an exception for intrastate internet gambling, the UIGEA allows residents of individual states that permit online gambling to place bets online.<sup>50</sup> Unlike the Interstate Horseracing Act<sup>51</sup>, however, residents of a state that legalizes online gambling are only permitted to place bets within the borders of their respective states.<sup>52</sup>

### III. Facts

Considering the exponential growth of the skin gambling industry since 2012, industry experts and video game developers are left with a crucial question to answer—does skin gambling truly constitute traditional gambling?<sup>53</sup> In determining this question, traditionally, the activity must involve “consideration, chance, and prize” to qualify as gambling.<sup>54</sup> Furthermore, the persons wagering the bet

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<sup>49</sup> See FEDERAL DEPOSIT INSURANCE CORPORATION: UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT OF 2006 OVERVIEW (2010) (providing a brief overview of the legislative provisions of the UIGEA); *but see* Gerd Alexander, *The U.S. on Tilt: Why the Unlawful Internet Gambling Enforcement Act is a Bad Bet*, 2008 DUKE L. & TECH. REV. 6, 29 (2008) (commenting on various shortcomings of the UIGEA). “The Act also fails to impose criminal liability on the banks, credit card companies, and e-wallets that transmit wagered funds from the bettor to the e-casino.” *Id.*

<sup>50</sup> See Ronald J. Rychlak, *The Legal Answer to Cyber-Gambling*, 80 MISS. L. J. 1229, 1240 (2011) (outlining the exception for intrastate internet gambling under the UIGEA).

<sup>51</sup> See 15 U.S.C. §§ 3001-3007 (1978) (granting the state’s primary responsibility for deciding what forms of gambling may legally take place within their borders); *see also* Rose & Bolin, *supra* note 30, at 665-66 (noting that states may allow residents to place bets on horse races by phone or computer and across state lines).

<sup>52</sup> See Rose & Bolin, *supra* note 30, at 665-66 (comparing the UIGEA’s intrastate exception with the IHA’s interstate exception). The provisions of the UIGEA would not allow any attempt by a state resident to place a bet with another state internet casino, even if the type of online gambling were legal in both states. *Id.*

<sup>53</sup> See Lahti, *supra* note 2 (explaining the potential legal ramifications of skin gambling being considered traditional gambling).

<sup>54</sup> See I. NELSON ROSE & MARTIN D. OWENS, INTERNET GAMING LAW 1-2 (2005) (presenting a traditional definition of gambling). For an activity to constitute gambling, both parties placing a wager must have a “chance of gain and stand a risk of loss.” *Id.* See CML, *After Valve Clamps Down on Skin Betting, Industry Experts Disagree on the Industry’s Future*, DOT ESPORTS (July 21, 2016), *archived at* <https://perma.cc/FW9E-9VNQ> (recognizing the inherent difficulty in arguing that

must ultimately risk an item of value.<sup>55</sup> As one industry expert has noted, should skins ultimately be deemed “things of value,” skin gambling could then be subject to regulation in the United States.<sup>56</sup>

However, as no case law, nor statutes have yet to be deemed applicable to skin gambling, the industry presently remains in a “legal gray area.”<sup>57</sup> In recognition of this inherent issue, this industry that has flown under the radar since 2012 faces numerous issues, including the targeting and solicitation of minors, deceptive practices, and a general lack of compliance with the applicable U.S. federal and state statutes relevant to gambling and wagering.<sup>58</sup> Furthermore, out-

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skins are not “things of value”). When a skin gambling bet is won, a dollar amount—the value of the skin(s) is reported to the player. *Id.*

<sup>55</sup> See ROSE & OWENS, *supra* note 54, at 2 (juxtaposing gambling with something of value against gambling with something without). The author further goes on to note that the legal definition of undertaking a venture where there is no risk of losing something valuable should be defined as the opportunity to win a gift. *Id.*

<sup>56</sup> See Ifrah Law., *supra* note 48, at 35 (expounding on the present legality of skin gambling websites). Should skins ultimately be deemed things of value, the author notes, many skin betting sites would not be able to operate in the United States. *Id.* But see Wood, *supra* note 2 (citing the United Kingdom Gambling Commission’s regulations that have been updated to encompass virtual currencies and other similar items). “Where ‘skins’ are traded or are tradeable and can therefore act as a de facto virtual currency and facilities for gambling with those items are being offered, we consider that a license is required.” *Id.*

<sup>57</sup> See GROVE, *supra* note 4, at 5 (discussing the present uncertainty on the legality of skin gambling); see Ifrah Law., *supra* note 48, at 35 (describing skin gambling as the “wild west” of online gaming). Gamblers who place bets eSports matches strictly win and lose nothing but skins until those skins are subsequently traded to real money via secondary marketplaces. *Id.* But see Lionel Iruk, *Legality of CS:GO Skin Gambling*, CALVINAYRE (Feb. 23, 2017), archived at <https://perma.cc/R8EJ-Q4CM> (concluding that it is unlikely that the United States would regulate the skin gambling industry federally). The author compares this “unrealistic expectation” to an approach taken by some casinos in Las Vegas, state-regulated entities, who recently have begun to accept eSports wagers. *Id.*

<sup>58</sup> See GROVE, *supra* note 4, at 5 (noting the various hurdles the skin gambling industry must face prior to determining its legality nationally); see also Philip Kollar, *Valve Deserves More of the Blame for Counter-Strike’s Disgraceful Gambling Scene*, POLYGON (July 7, 2016), archived at <https://perma.cc/T4C9-BTDQ> (advocating for recognition and regulation of skin gambling, especially due to the easy access of children to the facets of online gambling via games like CS: GO).

side of legal regulation, many of these gambling facilitators have already been found to have been in violation with both the Steam Subscriber Agreement (“SSA”) and Application Program Interface (“API”) agreements of Steam.<sup>59</sup>

A. *What is a Skin?*

Skins are virtual items used in games such as CS: GO that change the aesthetic features of a video game’s character avatar or a weapon used in-game.<sup>60</sup> Some of the most widely used skins include different colored patterns on a video game avatar’s weapons, clothing, or vehicles.<sup>61</sup> Traditionally, skins have existed as a method by

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<sup>59</sup> See Class Action Complaint at 4, *Reed v. Valve Corp.*, No. 2:33-av-00001, 2016 WL 3672054 (D.N.J. 2016) [hereinafter *Reed Complaint*] (describing the methods and mannerisms by which CSGOLotto facilitated multiple styles of betting on their third-party skin betting website); *McLeod v. Valve Corp.*, No. C16-1226-JCC, 2016 WL 5792695, at \*1 (W.D. Wash. Oct. 4, 2016) (summarizing the plaintiff’s allegations that Valve “allowed an illegal online gambling market” to exist through CS: GO); Erik Johnson, *In-Game Item Trading Update*, STEAM (July 13, 2016), archived at <https://perma.cc/2BAV-CLXC> (addressing various violations skin gambling sites are in violation of, including Steam’s API and user end agreements); Letter from Karl Quackenbush, Gen. Counsel, Valve Corp., to 23 Skin Betting Sites (2016) (ordering twenty-three separate skin gambling sites to cease and desist from commercial use of steam). The letter further goes on to note that all commercial use of steam’s services is in violation of the Steam Subscriber Agreement (“SSA”). *Id.* But see Will Green, *Seven Questions Raised by Valve’s Skin Betting Announcement*, LEGAL SPORTS REPORT (July 16, 2016), archived at <https://perma.cc/WU7P-TVZ2> [hereinafter *Seven Questions Raised*] (providing a list of potential solutions Valve could implement to tackle the growing concern of generally unregulated skin gambling practices).

<sup>60</sup> See *Valve Ordered to Tackle ‘Skin Betting’*, BBC NEWS: TECHNOLOGY (Oct. 6, 2016), archived at <https://perma.cc/MTX6-DQQ4> (defining skins as “collectable, virtual items in video games that change the appearance of [sic] weapons.”). For example, changing a weapon’s skin in a game could transfer the gun from a regular, black colored pistol to a golden colored pistol. *Id.* See Katie Barlowe, *CSGO Lounge Shuts Down Skin Betting Operations*, CASNIO.ORG (Aug. 18, 2016), archived at <https://perma.cc/JGY5-PXMF> (describing a skin as “collectable designer weapons”). The degree of rarity of the skin can make it more desirable to players of games such as CS: GO. *Id.*

<sup>61</sup> See GROVE, *supra* note 4, at 2 (providing the origin of the term “skin” as it is used in reference to video games). “The term ‘skin’ is derived from the typical

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which to help give players a sense of individuality in their online video game communities.<sup>62</sup> Aside from individuality, however, skins usually provide no advantage to one player or another, as they do not change the individual characteristics of the video game's character or weapon.<sup>63</sup> Additionally, although skins are usable in-game and tradeable from player to player via user interfaces such as Steam, they presently and wholeheartedly remain the intellectual property of the game developer.<sup>64</sup>

To collect skins in a game such as CS: GO or DoTA 2, typically, a player receives an in game "crate" containing random skins periodically whilst he or she plays the game or purchases such a crate.<sup>65</sup> To unlock a crate, a player can purchase a "key" on the Steam store for a cash amount "or acquire one via a trade."<sup>66</sup> Once the crate is unlocked, the new skins are thereby transferred to the player's

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function of these virtual items: changing the appearance of a player's in-game avatar, weapons or equipment." *Id.* Further, the author goes on to compare an image of an "original" video game knife to the same knife with skins applied. *Id.*

<sup>62</sup> See GROVE, *supra* note 4, at 2 (discussing how skins can change the virtual appearance of a video game character's appearance in-game).

<sup>63</sup> See Andrew Breiner, *Online Gambling's Weird New Frontier: The \$2.3 Billion Business of Garishly Painted Virtual Assault Rifles*, SALON (July 9, 2016), archived at <https://perma.cc/8665-53BE> (describing the effect of changing a weapon's skin on a player's in-game performance).

<sup>64</sup> See Jas Purewal & Isabel Davis, *The eSports Explosion: Legal Challenges and Opportunities*, 9 LANDSLIDE NO. 2 (Nov.-Dec., 2016), archived at <https://perma.cc/E7F7-TV52> (stating that virtual items, such as skins are the intellectual property of the game developer). The author further goes on to note that although they remain the intellectual property of the game developer, users are given "limited licenses for their use." *Id.*

<sup>65</sup> See Breiner, *supra* note 63 (observing that by opening a crate, a player has an opportunity to receive a skin). "It only takes a couple of clicks to get from a game of CS:GO to buying what's known as a 'crate,' a \$3 shot at finding a rare weapon skin." *Id.* See also Lahti, *supra* note 2 (equating a CS: GO crate to that of a "tiny slot machine").

<sup>66</sup> See Lahti, *supra* note 2 (stipulating that one method of collecting skins is by opening a CS: GO case; whereby a player must pay \$2.50 of real world money to "unlock" it). Additionally, a player may acquire a key to unlock a case via a trade with another player on Steam. *Id.*



game-inventory.<sup>67</sup> Additionally, a player may collect an individual skin via a trade with another player via a player to player (“P2P”) trade, or by purchasing an individual item in the Steam store for its given market value at the time.<sup>68</sup> In a game such as CS:GO, a skin has a real-world dollar value set by the player community, determined by how rare the item is in the game at any given time.<sup>69</sup> Some common items, for example, will have a dollar value as low as \$2, whereas others on the more rare side, can be worth thousands of dollars.<sup>70</sup> Upon purchasing any item from the Steam store, Valve retains 5% of the transaction cost.<sup>71</sup> However, when in-game items (such as skins) are sold that stem from Valve-developed games, such as CS:GO, Valve earns a 15% cut of the transaction.<sup>72</sup>

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<sup>67</sup> See Tom Lewis, *The Skin Betting Controversy Explained*, GAMBLING INSIDER (Nov. 11, 2016), archived at <https://perma.cc/CSA3-ZSEQ> (explaining what skins are and how a player collects them in games such as CS:GO).

<sup>68</sup> See Shaun Assael, *Skin in the Game*, ESPN (Jan. 20, 2017), archived at <https://perma.cc/P5YQ-SDSU> (listing the various ways players can receive, sell, and trade skins); see also Little Panda, *So You Want to Make Money on the Skins Market*, STEAM COMMUNITY COUNTER STRIKE: GLOBAL OFFENSIVE (Sept. 21, 2017), archived at <https://perma.cc/ZLY9-X3LG> (setting forth a walkthrough on how to buy and sell skins on the steam marketplace).

<sup>69</sup> See Lahti, *supra* note 2 (explaining how the monetary value of skins is determined by an open digital marketplace operated by Valve).

<sup>70</sup> See Kollar, *supra* note 58 (addressing the price range some skins sell for based on their market rarity); Norman Hermant & Mark Doman, *Counter-Strike Skins Gambling: Australian Teens Risking Thousands Through Video Game*, ABC NEWS AUSTRALIA (May 30, 2016), archived at <https://perma.cc/4F4F-X2LC> (acknowledging the price range of skins determined by their rarity). “Prices range from less than a dollar up to more than \$2,000”. *Id.*

<sup>71</sup> See Lahti, *supra* note 2 (noting the 5% kick back the Valve Corporation receives from every transaction on the Steam Store).

<sup>72</sup> See Lahti, *supra* note 2 (contrasting the 15% return the Valve Corporation receives from the sales of in-game items from the games they develop with that of the typical 5% return from games they merely sell and do not develop); Kollar, *supra* note 58 (proposing that it is reasonable to assume that in the \$2.3 billion exchanged during 2015 via skin gambling, Valve likely made significant monetary gain); see Joshua Brustein & Eben Novy-Williams, *Virtual Weapons are Turning Teen Gamers into Serious Gamblers*, BLOOMBERG BUSINESSWEEK (Apr. 20, 2016), archived at <https://perma.cc/A935-9AFF> (recognizing that whenever CS: GO skins are sold, Valve receives 15% of the transaction); see also Letter from Liam Lavery, Legal Couns. to the Valve Corp., to David E. Trujillo, Wash. St. Gambling Comm’n (Oc-

### B. How Skin Gambling Works

Albeit not all video games that use skins allow for the free transfer of skins or similar items, the ease in transferability of CS:GO skins has been exploited by these aforementioned lottery websites, such as the formerly existent CSGOLotto.<sup>73</sup> These casino-style websites employ games that include eSport match wagers, lotteries, coin flips, roulette games, and many others.<sup>74</sup> Used in lieu of a traditional casino chip, when a person places a bet using a skin, the procedural methods are relatively the same across the board.<sup>75</sup> In placing his or her bet, the gambler's skin is transferred to a third-party website's "bot" account.<sup>76</sup> When the wager ends, should the player win, she is paid back the skins she used to place the original wager, plus any additional winnings (other skins).<sup>77</sup> Should the player choose to "cash out" her winnings, the player therein makes a request to the third-party gambling site requesting that the site transfer the player's

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tober 17, 2016) (on file with author) (acknowledging the transaction fee Valve receives when a skin is sold in a "marketplace transaction," but maintaining that Valve receives no compensation when a skin is merely traded).

<sup>73</sup> See GROVE, *supra* note 4, at 3 (tracing the growth of skin gambling sites from a small number of sites when the industry first began to over one hundred in approximately one year); see also Assael, *supra* note 68 (recognizing the popularity of CSGOLotto during its operation as a for-profit corporation run by two popular YouTube Stars); see also OFFICE OF THE FLORIDA STATE DEPARTMENT, ELECTRONIC ARTICLES OF INCORPORATION FOR CSGOLOTTO INC. (Filed Dec. 3, 2015), archived at <https://perma.cc/WW63-C2LE> (enumerating the articles of incorporation for CSGOLotto).

<sup>74</sup> See GROVE, *supra* note 4, at 3 (introducing the various types of quasi-gambling games that a skin may be used to place a wager with).

<sup>75</sup> See GROVE, *supra* note 4, at 2 (setting forth the proposition that a skin is used as a "de facto" currency and outlying the procedural methods by which a player makes a bet using a skin). "Like nearly all other skin gambling websites, CSGO Lounge uses Steam bot accounts... Users receive an invitation to trade items from a Steam account controlled by CSGO Lounge's automated system, which offers their winnings as a one-sided trade." *Id.*

<sup>76</sup> See Brustein & Novy-Williams, *supra* note 72 (discussing third party websites and the various gambling opportunities that reward gamers with skins).

<sup>77</sup> See GROVE, *supra* note 4, at 2 (describing the methods by which a player is paid out their winnings in a skin gambling wager).

won skins back to her Steam inventory.<sup>78</sup> Once the player is returned her skins, she may then use the skins for their original purpose, trade those skins with other players in the Steam community, sell the skins on the Steam store for store credit, or sell the skins via a third-party website.<sup>79</sup>

### C. *The Market for Skin Gambling*

Throughout 2015, approximately \$2.3 billion in CS: GO skins were used to place wagers on eSports matches across the entire industry.<sup>80</sup> However, from January 1 to August 1 of 2016, the skin gambling industry saw its largest handle in years facilitated by one website alone.<sup>81</sup> In a recent study done by two leading industry analysts, E-Sports Betting Report (“ESBR”) and Narus Advisors (“Narus”), the two experts expounded on one website’s previously unforeseen betting handle.<sup>82</sup> A handle, in gambling terms, is the “total amount of money wagered on bets” in an event.<sup>83</sup> During the eight-month period, one of the most popular skin gambling websites, CSGOLounge, took in nearly 103 million skins in handle.<sup>84</sup> Equating

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<sup>78</sup> See GROVE, *supra* note 4, at 2 (providing the procedural methods by which a player may request the skins she has won, back from the gambling site). “If they win, they’re paid in additional skins, which they ‘cash out’ by requesting that the skin betting site transfer skins back to the player.” *Id.*

<sup>79</sup> See GROVE, *supra* note 4, at 2 (listing the various courses of action a player may take with their skins once they have earned them). Where a player sells their skins on Steam, they can only receive store credit which can be used to purchase more items such as skins or new video games. *Id.* Conversely, where a player sells a skin via third-party site, they receive cash. *Id.*

<sup>80</sup> See Brustein & Novy-Williams, *supra* note 72 (expounding on the \$2.3 billion worth of skins used in 2015 to place online bets in eSports matches).

<sup>81</sup> See GREEN, *supra* note 8, at 2 (identifying CS: GO Lounge’s facilitation of approximately \$1 billion in skin gambling bets over a 7-month period in 2016).

<sup>82</sup> See GREEN, *supra* note 8, at 2 (highlighting CS: GO Lounge’s presence in the skin betting industry).

<sup>83</sup> See Ed Grabianowski, *How Sports Betting Works*, HOWSTUFFWORKS (Nov. 16, 2005), archived at <https://perma.cc/G9FZ-5WGP> (defining the term “handle” as it is used in sports betting).

<sup>84</sup> See GREEN, *supra* note 8, at 2 (introducing CSGO Lounge’s largest skin betting handle over the first seven months of 2016). As real-world currencies are not used in the traditional sense for skin gambling, a handle refers to the total value of the skin’s that are used for bets and their value in USD. *Id.*

to roughly \$1 billion in bets placed, this betting handle was made over approximately 2,800 matches, which amounts approximately to \$358,000 placed in wagers per match.<sup>85</sup> Shortly following CSGOLotto's billion-dollar run, however, Valve issued twenty-three separate cease and desist letters to CSGOLotto and other similar skin gambling websites.<sup>86</sup> The letter asserted that by facilitating these bets, the websites were in violation of Steam's SSA.<sup>87</sup>

Prior to Valve's decision to crack down on the CS: GO skin gambling market, it had been estimated by Eilers & Krejick Gaming ("E&J") and Narus that the skin gambling market size was projected to be worth approximately \$7.4 billion in 2016 alone.<sup>88</sup> Extending this forecast through the remainder of 2016, the report further went on to estimate that by 2020, the market would have effectively been

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<sup>85</sup> See GREEN, *supra* note 8, at 2 (analyzing how CSGO Lounge's \$1 billion handle was reached in a matter of only 7 months). At an average value of \$9.75 per skin, the per match handle of skins bet was approximately 37,000. *Id.*

<sup>86</sup> See Quackenbush, *supra* note 59 (summarizing the twenty-three separate gambling sites in violation of the Steam Subscriber Agreement). Most notably, this letter individually named CSGOLotto, the site that handled over a \$1 billion handle that same year, as a violator of Steam's SSA. *Id.*

<sup>87</sup> See Quackenbush, *supra* note 59 (delineating the various violations of Steam's user end agreements by which the gambling facilitators were ordered to cease their operations for). The companies were ordered to cease all commercial use of Steam within ten days of the cease and desist order. *Id.* But see Will Green, *How One eSports Gambling Site Still Offers Skin Betting Despite Order to Stop*, ESPORTS BETTING REPORT (Aug. 29, 2016), archived at <https://perma.cc/EF2B-UF7X> [hereinafter *How One eSports Gambling Site Still Offers Skin*] (describing how one skin gambling website, CSGOFast continues to process skin gambling transactions). "While US users are unable to fully access the site without using a virtual private network that masks their geographic location, gamblers in most other countries... can access... sportsbook-style bets using a variety of payment options." *Id.* See also Nick Pearson, *Can Commercial VPN's Really Protect Your Privacy?*, TECH DIRT (Apr. 3, 2013), archived at <https://perma.cc/MNJ3-XXKM> (expounding on the privacy protections VPN's offer consumers).

<sup>88</sup> See CHRIS GROVE, ESPORTS & GAMBLING: WHERE'S THE ACTION? 8 (Eilers & Krejick Gaming & Narus Advisors 2016) [hereinafter *Esports & Gambling*] (reconsidering their position the estimated worth of the skin gambling industry would be approximately \$7 billion in 2016).

worth approximately \$20 billion.<sup>89</sup> Since Valve's cease and desist letter<sup>90</sup>, however, these figures have been drastically reduced.<sup>91</sup> In a recent market survey on skin gambling, it was estimated that, in a "best case" scenario, the market would wager roughly \$5,128,000 in skins throughout the remainder of 2016.<sup>92</sup> Extending their projection out to 2020, the same report noted that the industry could still be wagering roughly \$1 million yearly, so long as players are still able to trade skins via Steam.<sup>93</sup>

#### D. Are eSports Truly Sports?

When one closes their eyes, and imagines the prototypical athlete, they likely imagine some Adonis-like figure, capable of great

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<sup>89</sup> See *Id.* (dismissing their original projections that the skin gambling market would generate approximately \$20 billion by 2020); see also Joshua Brustein & Eben Novy-Williams, *Bellevue Game-Maker Valve Moves to Choke off \$7.4 Billion Gambling Market*, BLOOMBERG TECHNOLOGY (July 13, 2016), archived at <https://perma.cc/8MXF-LBT5> (expounding on Eilers and Krejick Gaming and Narus Advisor's original projections that the skin gambling market could be worth as much as \$22.6 billion by 2020).

<sup>90</sup> See Quackenbush, *supra* note 59 (ordering 23 skin gambling websites to cease and desist from commercial use of the steam platform).

<sup>91</sup> See *Esports & Gambling*, *supra* note 88, at 8 (decreasing their original projections of the size of the skin gambling market between the years of 2016 to 2020).

<sup>92</sup> See *Esports & Gambling*, *supra* note 88, at 8 (predicting the size of the skin gambling market by the end of 2016 under a best-case scenario). The author juxtaposes this projection with a worst-case scenario projection that estimated the skin gambling market's net worth to be approximately \$3,907,000 by the end of 2016. *Id.*

<sup>93</sup> See *Esports & Gambling*, *supra* note 88, at 8 (setting forth the proposition that under a best-case scenario, the skin gambling market could still generate approximately \$1 million a year by 2020). Under such a scenario, the author goes on to note that this dollar amount will be achievable so long as players are still freely able to trade skins via Steam. *Id.* See also Lavery, *supra* note 72 (maintaining Valve's position on what they wish to do in light of the pending claims of their involvement in skin gambling). "We do not want to turn off the steam services...that skin gambling sites have taken advantage of." *Id.* "In-game items, Steam trading, and OpenID have substantial benefits for Steam customers and Steam game-making partners." *Id.*

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physical feats, and not a person, sitting in a chair clicking and clacking as simulated explosions fly in their face in front of a screen.<sup>94</sup> However, in the last few years, quasi-professional video game leagues, known as eSports leagues and their competitors, sometimes referred to as athletes, have become household names throughout the world.<sup>95</sup> Although not as popular as in some countries like South Korea, where the popular Blizzard Entertainment videogame, StarCraft II, is practically the official sport of the peninsula nation, these

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<sup>94</sup> See Imad Khan, *How eSports Are Going From Laughingstock to Phenomenon*, DIGITAL TRENDS (June 16, 2016), archived at <https://perma.cc/ZT4Z-LD74> (acknowledging a traditional sentiment that many critics often hold towards eSports, arguing that they are not real, athletic competitions); see also, Eric Johnson, *Video Games on ESPN? It's Time to Stop Pretending eSports are 'Real' Sports*, RECODE (Apr. 27, 2015), archived at <https://perma.cc/5FYA-35RJ> [hereinafter *Video Games on ESPN?*] (quoting ESPN President John Skipper). “It’s not a sport—it’s a competition. Chess is a competition. Checkers is a competition. Mostly. I’m interested in doing real sports.” *Id.* Paul Tassi, *The U.S. Now Recognizes eSports Players as Professional Athletes*, FORBES, (July 14, 2013), archived at <https://perma.cc/34HJ-FFM5> (commenting on a majority of the general public’s attitude towards professional video game “athletes”); *But see* Martin Schütz, *Science Shows That eSports Professionals Are Real Athletes*, DEUTSCHE WELLE (Dec. 3, 2016), archived at <https://perma.cc/3PHG-SQMZ> (citing a study done by Professor Ingo Froböse, a Professor in injury prevention and rehabilitation at the German Sports University). “[I]n my opinion, eSports are just as demanding as most other types of sports, if not more demanding.” *Id.*

<sup>95</sup> See John Partridge, *Genetically Engineered: How MOBAs Invaded eSports*, REDBULL.COM (Mar. 17, 2014), archived at <https://perma.cc/54P9-W7XV> (providing a brief history of the rise of MOBAs as one of the most popular types of video game competitions among eSports competitors and viewers). “The MOBA genre is responsible for over five billion minutes watched on Twitch every month—that’s about 10,000 years of MOBA content viewed per month.” *Id.* See also Mike Stubbsy, *These Are the CS: GO Teams to Watch in 2017*, REDBULL.COM (Jan. 17, 2017), archived at <https://perma.cc/C9WH-SP8W> (listing the top seven CS: GO teams projected to have a “stand out year” in 2017); see also Henry Young, *Seven-Figure Salaries, Sold-out Stadiums: Is Pro Video Gaming A Sport?*, CNN (May 31, 2016), archived at <https://perma.cc/WK5P-79WS> (discussing the size of the global eSports market).

leagues and players have amassed great followings in the United States among America's youth.<sup>96</sup>

Though not expressly recognized or defined as "athletes" by the United States federal government, work visas have recently been granted to some players of professional video game tournaments who oftentimes compete in quasi-professional teams.<sup>97</sup> Recognition of this practice ultimately bears the question as to whether these competitors may in fact be considered professional or amateur athletes for purposes of enforcing PASPA in relation to skin gambling.<sup>98</sup> Should eSports ultimately be defined as sports, and their controller and keyboard-wielding gladiators defined as athletes for purposes of PASPA, those who facilitate the betting schemes of skin gambling could be in violation of PASPA.<sup>99</sup>

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<sup>96</sup> See Chris Gayomali, *Korea's National Sport*, THE ATLANTIC (July 5, 2010), archived at <https://perma.cc/5ZV7-NS5R> (referring to StarCraft as the "national pastime of South Korea."); see also Ben Casselman, *Resistance is Futile: eSports is Massive ... and Growing*, ESPN MAGAZINE (May 22, 2015), archived at <https://perma.cc/MBX3-QZS9> (citing the market research firm, Newzoo's calculations that approximately 205 million persons either watched or played eSports in 2014). "Meaning that if the eSports nation were actually a nation, it would be the fifth largest in the world." *Id.*

<sup>97</sup> See Tsai, *supra* note 33, at 407-08 (acknowledging instances where foreign gamers have been granted P-1 visas based on their status as "professional players"). "Many foreign gamers have been granted P-1 Visas, which are given to aliens who 'perform as an athlete, individually or as part of a group or team, at an internationally recognized level of performance.'" *Id.* See also, 8 U.S.C. § 1184 (c)(4)(a)(II) (2015) (defining the term "alien" for purposes of the statute).

<sup>98</sup> See Ifrah Law, *supra* note 48, at 35 (explaining how PASPA is only applicable to skin gambling if eSports are considered a "sport", in which case, betting on them is illegal).

<sup>99</sup> See Ifrah Law, *supra* note 48, at 35 (contending that if eSports are ultimately and officially declared a sport, betting on them would be a violation of PASPA). However, alternatively, if eSports were deemed games of chance and not legitimate sports, gambling on them would be a violation of the UIGEA. *Id.* The author further goes on to note that some casinos in the U.S. "classify eSports as games of skill (but not a sport) and thus exempt eSports from regulation under either federal law." *Id.*

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*E. Player Identification . . . or Lack Thereof*

In its current state, the skin gambling industry faces many issues in terms of compliance, should regulation ever be implemented.<sup>100</sup> As noted above, some industry experts appear to agree that Valve has unjustly been enriched via the third-party sales of skins in that they receive a 15% kickback from the sale of any and all skins.<sup>101</sup> Additionally, many skin gambling sites do not follow online gambling industry standards, particularly that of player identification systems.<sup>102</sup> Furthermore, a number of these sites do not use age verification systems to require that their customers are of legal gambling age, one of the most stringent requirements in those states or countries in which gambling activities are legal.<sup>103</sup> Moreover, due to this lack of age verification, skin gambling sites can provide easily accessible opportunities for children to participate in online gambling from

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<sup>100</sup> See Ifrah Law, *supra* note 48, at 35-37 (pointing out several non-compliant aspects of the skin gambling industry, should it become regulated by state and federal legislatures). These issues include but are not limited to possible violations of the PASPA, UIGEA, and numerous state gambling laws. *Id.*

<sup>101</sup> See *McLeod*, 2016 WL 5792695, at \*1 (citing that that Valve Corp receives a 15% fee on the sale of each skin in its Steam marketplace); see also Ifrah Law, *supra* note 48, at 36 (highlighting how Valve indirectly profits by trading in the secondary market); see also Assael, *supra* note 68 (highlighting the 15% stake in the transaction Valve receives whenever a skin is bought and/or sold via the Steam store).

<sup>102</sup> See Ifrah Law, *supra* note 48, at 35 (noting that many skin gambling websites have laid back player identification systems). Specifically, many websites allow players to sign up by using only an email address. *Id.* See GROVE, *supra* note 4, at 3 (pointing to the lack of player verification systems).

<sup>103</sup> See Ifrah Law, *supra* note 48, at 35 (addressing the general lack of age verification systems put into place by several these sites, effectively amounting to these third-party sites condoning underage gambling); see also Hermant & Doman, *supra* note 70 (discussing a general lack of age limits, age verification, or notifications to gamble responsibly, as is required by Australian gambling laws); see also GROVE, *supra* note 4, at 3 (indicating that although there presently is no hard data regarding these sites facilitating underage gambling, it is reasonably foreseeable that some skin gamblers are not of legal age).



a young age.<sup>104</sup> As a result of the popularity of CS: GO and similar games among the world's youth, some children are developing internet gambling addictions or problems from a young age.<sup>105</sup>

Should the direct facilitators of the skin gambling industry wish to survive for the long haul, it would be wise for their websites and businesses to implement more stringent player and age verification systems.<sup>106</sup> To do so, these skin gambling websites and businesses could take a page out of what some Daily Fantasy Sports ("DFS") businesses have done to ensure appropriate age verification amongst their customer bases.<sup>107</sup> For example, "to comply with government regulations, prevent fraud and make [DFS] safe and fun," in 2015, one popular DFS company, FanDuel, implemented a rather

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<sup>104</sup> See *New ESPAD Results: Teenage Drinking and Smoking Down, but Concerns Posed by New Drugs and New Addictive Behaviors*, ESPAD (Sept. 20, 2016), archived at <https://perma.cc/4AFG-UFH9> (reporting an increase in online gambling in 35 European countries in a study done of 96,043 high school age students). The report goes on to note that amongst the 96,043 students surveyed, 23% percent of high school aged boys reported that they had experience in gambling in several forms in the last year. *Id.* Of that 23% of boys, 12% reported that they gambled "frequently." *Id.*

<sup>105</sup> See Gary Crossing, *Online Gambling and Young People: A Growing Concern*, PARENT ZONE (Mar. 3, 2017), archived at <https://perma.cc/GT88-8U2T> (cautioning the reader that the lack of an age limit on many of these sites should be extremely concerning to parents of children who play games that involve skins). "We are very concerned about these types of websites because they represent a hidden form of gambling—parents could be giving money to their child thinking that they are simply playing a computer when in fact they are gambling." *Id.* See also Assael, *supra* note 68 (providing the story of a 16-year-old gamer who had made over \$8,000 in purchases related to CS: GO and skins since 2012). "Elijah blames Valve for many of his problems. At rock bottom, he was so hopeless that he called a gambling hotline for help with suicidal thoughts." *Id.* See also Kollar, *supra* note 58 (citing a recent Reddit survey of over 10,000 CS: GO players). "In a poll of over 10,000 players in Reddit's *Global Offensive* community last year, 42 percent of respondents said they were under the age of 18, while 63 percent said they were under 21." *Id.*

<sup>106</sup> See Larson, *supra* note 25, at 473-74 (highlighting the purpose of one Massachusetts regulation, Mass Code Regs. §34.00, which aims to protect DFS gamers from unfair and deceptive practices).

<sup>107</sup> See Dustin Gouker, *FanDuel Now Asking Some Players to Verify Identity on Front End, Provide Social Security Number, Birthday*, LEGAL SPORTS REPORT (Nov. 13, 2015), archived at <https://perma.cc/3HE7-XWFA> (introducing a new form of age verification being used by one popular DFS business).

stringent identity and age verification system to ensure the participants of their online fantasy sports games were of legal gambling age.<sup>108</sup> Such player verification systems could include age verification through both online forms and social security verification systems, similar to that used by businesses like FanDuel.<sup>109</sup> Alternatively, one such bulwark Valve could impose on the free transferability of skins would be to require Steam subscribers to link or register their steam accounts to their mobile phone numbers.<sup>110</sup> Like their recently implemented restrictions imposed on DoTA 2, in order to prevent DoTA 2 players from using multiple bot accounts for what is referred to as “smurfing,” similar restrictions could be placed on CS: GO players to prevent the free and unregulated transfer of skins.<sup>111</sup>

#### IV. Analysis

##### A. *The Present Legality of Skin Gambling*

Presently, as noted above, skin gambling remains in a “legal gray area.”<sup>112</sup> As no specific case law, nor statutes have been applied to this relatively new industry, there are four primary sources of statutory law one must look to retain a rough idea on the legality of skin

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<sup>108</sup> See Gouker, *supra* note 107 (citing a section in FanDuel’s website clarifying the need for players to verify their age and identity prior to using the FanDuel service).

<sup>109</sup> See Gouker, *supra* note 107 (referencing the age verification systems put in place by FanDuel). Upon requesting a withdrawal of any funds won through using the FanDuel services, players are required to verify their identity and that they are of legal gambling age via the input into an online form of both their date of birth and their Social Security Number (“SSN”). *Id.* Such verification process takes approximately 24-36 hours on FanDuel prior to any participant receiving their requested funds. *Id.*

<sup>110</sup> See Owen Good, *Dota 2 Will Require a Phone Number For Ranked Matches*, POLYGON (Apr. 22, 2017), archived at <https://perma.cc/2N7Y-6WKN> (explaining Valve’s new restriction on DoTA 2’s player base).

<sup>111</sup> See *id.* (citing Valve’s new usage of this account restriction feature as a check on DoTA player’s normal, unfettered freedom to use multiple accounts for ranked, online, matchmaking sessions).

<sup>112</sup> See GROVE, *supra* note 4, at 5 (introducing the legal industry’s present uncertainty on the legality of skin gambling).

gambling.<sup>113</sup> Additionally, as skins themselves are not presently considered a “thing of value,” in the United States, skins themselves do not expressly fall under traditional gambling regulation.<sup>114</sup> However, for purposes of this note, as skins have a present, real-world, dollar value that is tracked on a marketplace similar to a stock exchange, they will be considered a “thing of value” for purposes of this analysis.<sup>115</sup> Should skin gambling ultimately be deemed illegal, the owners and operators of these third-party websites and businesses could run the risk of having claims filed against them for the violation of multiple federal anti-gambling statutes.<sup>116</sup>

### 1. The Wire Act

Federally, the Wire Act outlaws the transfer of betting or wagering information for the purposes of facilitating or placing bets or wagers on any sporting event, bet, or wager.<sup>117</sup> Considering this,

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<sup>113</sup> See GROVE, *supra* note 4, at 5 (referring the reader to the Wire Act, the UIGEA, and the IGBA for legal guidance when attempting to determine the present legality of skin gambling). “Each statute, in its own way, prohibits interstate online gambling. These statutes were created long ago, but can and will be applied to any legal challenge involving skin gambling.” *Id.* See also Ifrah Law, *supra* note 48, at 35 (highlighting PASPA’s potential applicability to skin gambling).

<sup>114</sup> See Ifrah Law, *supra* note 48, at 35 (clarifying that presently, skins are not considered a “thing of value” and are thus not presently subject to regulation under traditional gambling laws in the United States).

<sup>115</sup> See Ifrah Law, *supra* note 48, at 34 (inferring skins are a “thing of value” based upon their potential sale value in dollar currency); see also GROVE, *supra* note 4, at 2 (referring to a skin as a “de facto currency”); see also *Advanced Search: Rifles, LOOT MARKET* (Apr. 7, 2017), *archived at* <https://perma.cc/DRL2-8AQJ> (providing the dollar values of many popular CS: GO skins that can be bought and sold outside of the Steam Marketplace). For example, for one “AWP Dragon Lore” covert sniper rifle skin, as of April 7, 2017, the sale price was \$1, 9880.00 USD. *Id.*

<sup>116</sup> See GROVE, *supra* note 4, at 5 (reminding the reader of the immense regulations put into place in the gambling industry). “Online skin gambling operators will need to navigate the significant number of federal and state laws and federal and state agencies that monitor the industry.” *Id.* But see Iruk, *supra* note 57 (noting that the likelihood of regulation for skin gambling in the United States is an “unrealistic expectation at least in the short term.”)

<sup>117</sup> See 18 U.S.C. § 1084 (highlighting the penalties for violation of the Wire Act):

those who facilitate, collect and transfer bets on eSports matches using skins could be in violation of the Wire Act.<sup>118</sup> Although the facilitators and creators of these third-party skin gambling websites would primarily be the target of any and all action at the federal level, an important player in the skin gambling community is also Valve.<sup>119</sup> By providing the methods by which players and gambling facilitators can trade skins nearly openly, through their API, and in providing a live tracker of the going dollar value of a skin in a game such as CS: GO, it has been argued that Valve, themselves are indirectly contributing to the illicit marketplace, and receive compensation through the sale of each gambled skin on the steam marketplace.<sup>120</sup> Should Valve continue to allow the nearly-free transferability of skins via their API,

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Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

*Id.*

<sup>118</sup> See Ifrah Law, *supra* note 48, at 10 (noting the Wire Act's applicability to enforcing online gambling violations). "Legislative history reveals that Congress's overriding goal in implementing the Wire Act was to stop the use of wire communications for sports gambling. Over the years, however, it has been used to combat other forms on online gaming." *Id.* Additionally, "courts have found a person guilty merely for receiving bets or payments on bets." *Id.*

<sup>119</sup> See Kollar, *supra* note 58 (outlining how easy Valve's API makes it to access skin gambling sites via your Steam account).

<sup>120</sup> See Assael, *supra* note 68 (citing Valve's "stock tickers" that provide information on the going rate of a skin's dollar value at any given time); see also Lahti, *supra* note 2 (observing the 15% return Valve receives when an in-game item, such as a skin, is sold on the Steam online store); see also Lavery, *supra* note 72 (acknowledging that Valve does receive compensation for transactions in which items are sold in the Steam online store).

further claims alleging violations of the Wire Act could be filed against them.<sup>121</sup>

## 2. The Illegal Gambling Business Act

When the IGBA was passed, the legislative intent of Congress was to target organized crime, however, as noted above, it has since been held that the IGBA prohibits the operation of illegal gambling businesses, regardless of any organized crime involvement.<sup>122</sup> Thus, a violation of the IGBA may be found where five or more persons operate a gambling business for a period greater than thirty days or have a gross revenue greater than \$2,000 on one day at any point during the venture.<sup>123</sup> Although no longer an active corporate entity in the wake of Valve's attempts at cracking down on the skin gambling market, one of the most popular and well-known businesses to come out of the skin gambling industry has been CSGOLotto.<sup>124</sup> Founded by two popular YouTube stars, Trevor Martin and Thomas Cassell, commonly referred to respectively by their YouTube handles of "TmarTN" and "Syndicate," CSGOLotto provided opportunities for those wishing to test their luck placing bets using their hard-earned skins.<sup>125</sup>

Although gambling businesses and websites like CSGOLotto still do continue to exist, one inherent problem that arises when dis-

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<sup>121</sup> See Assael, *supra* note 68 (citing one lawsuit as the "beginning" of skin gambling lawsuits against Valve); see also Reed Complaint, *supra* note 59 (dismissed Aug. 4, 2016); see also McLeod, 2016 WL 5792695, at \*4 (dismissed with prejudice).

<sup>122</sup> See *United States v. Farris*, 624 F.2d 890, 896 (9th Cir. 1980) (clarifying that organized crime involvement is not a prerequisite to finding a violation under the IGBA); See also GROVE, *supra* note 4, at 5 (introducing the origins of the IGBA).

<sup>123</sup> See 18 U.S.C. § 1955 (1970) (defining what constitutes an "illegal gambling business").

<sup>124</sup> See Assael, *supra* note 68 (summarizing Trevor Martin and Thomas Cassell's involvement in CSGOLotto).

<sup>125</sup> See Reed Complaint, *supra* note 59 (describing the methods and mannerisms by which CSGOLotto facilitated multiple styles of betting on their third-party skin betting website).

cussing enforcement of the IGBA is the five-or-more-person requirement.<sup>126</sup> Under this standard, five or more persons who “conduct, finance, manage, supervise, direct or own all or part of such business” are members of an illegal gambling business.<sup>127</sup> However, to target these illegal gambling businesses, the members of the gambling venture must perform “a ‘necessary function’ in the operation of the enterprise,”<sup>128</sup> and cannot merely be gamblers utilizing the services of the business to place bets or wagers.<sup>129</sup> Using CSGOLotto as an example, in their for-profit certificate of incorporation as filed in Florida, the corporation lists only four officers and directors.<sup>130</sup> Unless it could be shown that CSGOLotto had other employees who “perform a necessary function in the operation of the enterprise,” such businesses could easily escape liability under the IGBA, particularly because of the ease and cheap cost of establishing these gambling sites.<sup>131</sup> Should the federal government decide to crack down on these

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<sup>126</sup> See 18 U.S.C. § 1955 (1970) (defining an “illegal gambling business”); see also *How One eSports Gambling Site Still Offers Skin*, *supra* note 87 (discussing CSGOFast and its continued operation for facilitating skin gambling).

<sup>127</sup> See 18 U.S.C. § 1955 (expounding on the definition of an “illegal gambling business”). “Illegal gambling business’ means a gambling business which—involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business.” *Id.*

<sup>128</sup> See *United States v. Clements*, 588 F.2d 1030, 1039 (5th Cir. 1979) (stressing the level of involvement necessary in the operation of an illegal gambling business for the statute to be applicable).

<sup>129</sup> See *United States v. McHale*, 495 F.2d 15, 18 (7th Cir. 1974) (citing *United States v. Becker*, 461 F.2d 230, 232 (2d Cir. 1972)). “Thus, Congress’ intent was to include all those who participate in the operation of a gambling business, regardless [of] how minor their roles and whether or not they (are) labeled as agents, runners, independent contractors or the like, and to exclude only customers of the business.” *Id.*

<sup>130</sup> See Electronic Articles of Incorporation for CSGOLotto Inc., *supra* note 70 (listing Trevor A. Martin, Thomas Cassell, Benjamin Davis, and Josh Beaver as the officers and directors of CSGOLotto, Inc.).

<sup>131</sup> See *Clements*, 588 F.2d at 1039 (requiring a proscribed level of involvement for an employee in a purported illegal gambling business as a prerequisite to determining liability); see also Assael, *supra* note 68 (quoting Ryan Morrison, a “New York Attorney whose firm specializes in digital media and video games”). “The cost of opening a skins gambling site is so low—in some cases just a few hundred dollars—and the potential returns are so high that Morrison says he knows developers

sites and businesses that facilitate skin gambling, the IGBA could be an effective enforcement tool in regulating businesses like CSGOLotto in the future.<sup>132</sup>

### 3. The Unlawful Internet Gambling Enforcement Act

Under the UIGEA, “liability is only triggered when the gambling activity has violated underlying state law.”<sup>133</sup> Thus, the UIGEA is unenforceable unless there has been an individual violation of a state’s gambling laws via the internet, by an online gambling site, within the state’s borders.<sup>134</sup> However, a problematic issue arises for the facilitators of these bets is that “U.S. gamblers primarily use off-shore e-wallets to transfer their bets.”<sup>135</sup> Analogous to the hard-to-trace e-wallet, those consumers who bet using skins can place their bets via virtual private networks (“VPN’s”).<sup>136</sup> Like the offshore account, most VPN services only store traceable user activity for a short period, unless the VPN service was expressly tracking a user’s internet logs by government order.<sup>137</sup> Were such a scenario to become a reality, claims could be raised against the operators of skin gambling websites for “knowingly accepting” a bet made in a state that outlaws internet gambling.<sup>138</sup>

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‘who’ve spent a fortune in marketing because they know they’ll make it back in the first day.’” *Id.*

<sup>132</sup> See IMRICH, *supra* note 34, at 2 (introducing the scope and intention of IGBA and how it could be used to crack down on crimes).

<sup>133</sup> See Ifrah Law, *supra* note 48, at 11 (discussing the applicability of the UIGEA at the state level to target illegal gambling businesses); GROVE, *supra* note 4, at 5 (highlighting that where an “gambling operator operates in a state that does recognize that particular form of gambling, that operator may violate UIGEA.”).

<sup>134</sup> See Ifrah Law, *supra* note 48, at 11 (noting the limited application of the UIGEA’s criminal sanctions to “the online casino”).

<sup>135</sup> See Alexander, *supra* note 49, at 6 (highlighting the preferred method for funding one’s online gambling habit in the U.S.).

<sup>136</sup> See *How One eSports Gambling Site Still Offers Skin*, *supra* note 87 (addressing one skin betting website that remains in operation, CSGOFast). CSGOFast still utilizes virtual private networks to place bets following Valve’s issuance of cease and desist letters. *Id.*

<sup>137</sup> See Pearson, *supra* note 87 (demonstrating the extreme unlikelihood of having one’s internet history logged if she were to utilize a VPN).

<sup>138</sup> See Ifrah Law, *supra* note 48, at 11 (contrasting the liability of the receiver of the bet with that of the placer of the bet). “UIGEA’s criminal provision applies

#### 4. The Professional and Amateur Sports Protection Act

Federally restricting all forms of lawful sports betting to just four states, presently, those who facilitate eSports betting via skins on the outcome of eSports matches could be in violation of PASPA.<sup>139</sup> To begin, when PASPA was signed into law in 1992, it outlawed all forms of sports betting on both amateur and professional sports organizations amongst the several states, except in four states,--Nevada, Delaware, Montana and Oregon.<sup>140</sup> Although when PASPA was implemented in 1992, the idea of organized competitions based around video games and legitimate or quasi legitimate “athletes” who play video games may have been silly, the fact remains today that these leagues do in fact now exist and are generating massive revenues every year.<sup>141</sup>

With the meteoric rise of eSports competitors, teams and leagues, one question remains, are eSports to be considered a legitimate sport?<sup>142</sup> To many, that answer is a resounding “yes.”<sup>143</sup> Although the federal government has not expressly deemed eSports to be

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only to one who “knowingly accepts” a bet, i.e. the online casino. It does not apply to a player who places a bet.” *Id.*

<sup>139</sup> See Ifrah Law, *supra* note 48, at 28 (contrasting two alternative theories of liability under both PASPA and the UIGEA).

<sup>140</sup> See Meer, *supra* note 41, at 287 (juxtaposing the general illegality of sports betting within the several states under PASPA with that of those grandfathered-in states who are permitted to have some or all forms of legal sports betting under PASPA); see also Friedman, *supra* note 44 (discussing the parameters of legal sports betting in Nevada and comparing it those sports betting lottery schemes allowed in Montana, Nebraska and Delaware).

<sup>141</sup> See Tassi, *supra* note 94 (acknowledging the public sentiment that the idea of professional video game athletes may seem humorous to some); see also Brustein & Novy-Williams, *supra* note 72 (citing the billions of dollars wagered in skins in 2015).

<sup>142</sup> See Tassi, *supra* note 94 (noting the public sentiment that video game competitors cannot be deemed as professional athletes).

<sup>143</sup> See Tassi, *supra* note 94 (citing an interview with Riot Games’ eSports Manager, Nick Allen). “According to Riot Games eSports Manager Nick Allen (speaking with Gamespot), after a long back and forth with the government, the U.S. finally now recognizes eSports players as professional athletes.” *Id.* But see *Video*



a traditional sport as defined under gambling laws, by issuing foreign video game competitors visas for those who come to the United States to participate in video game competitions and tournaments, some believe that they have thus “implicitly recognized eSports gamers as professional athletes.”<sup>144</sup> Furthermore, as a legal industry, the global eSports market is projected to produce over \$1 billion in revenue by 2019, as compared to its approximate \$500 million in 2016.<sup>145</sup> Thus, should eSports ultimately be deemed a real sport, those who facilitate any forms of bets on eSport matches could be in violation of PASPA, unless sports betting is legal in that state.<sup>146</sup>

### B. *Dare to Keep Kids off Gambling*

Since 2012, the growing rise of skin gambling amongst CS:GO players has skyrocketed.<sup>147</sup> Although it cannot be said that Valve expected these third-party gambling websites to emerge from their tradable skin bazaar, the fact remains that the marketplaces are still in

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*Games on ESPN?*, *supra* note 94 (citing an interview with the president of ESPN, John Skipper, arguing that sports news giant, ESPN, is only interested in covering “real” sports).

<sup>144</sup> See Tsai, *supra* note 33 at 407-08 (discussing the federal government’s issuance of P-1 Visas to foreign video game competitors); *see also* 8 U.S.C. § 1184(c)(4)(A) (2012) (defining what constitutes as a foreign athlete for purposes of the admission of a non-immigrant to the United States); Tassi, *supra* note 94 (quoting Nick Allen, eSports manager of Riot Games on the Federal Government’s recognition of eSports players as professional athletes). “This was a lengthy process; we had a lot of people fighting for this and it wasn’t something that happened overnight. This was a constant back and forth of ‘show us more proof... is this realistic?’ and that sort of thing. Eventually it got to the point where they were like ‘we have no reason to say no... okay this is legitimate.’” *Id.*

<sup>145</sup> See Young, *supra* note 95 (citing a 2016 NewZoo report on the total audience and revenue projections for the global eSports market through 2019). “Global revenue in the eSports industry rose from \$194 million [in 2014] to \$463 million [between 2014 and 2016]... and is expected to smash \$1 billion by 2019.” *Id.*

<sup>146</sup> See Ifrah Law, *supra* note 48, at 35 (recognizing two legal alternatives based on the determination of whether eSports are deemed a real sport). “Either eSports are a sport, in which case gambling on them is prohibited under the Professional and Amateur Sports Protection Act, or (although less likely) they are a game of chance, and betting is illegal under the Unlawful Internet Gaming Enforcement Act.” *Id.*

<sup>147</sup> See Brustein & Novy-Williams, *supra* note 72 (referencing the \$2.3 billion that was facilitated in skin gambling transactions in 2015 alone).

existence in light of Valve's attempts at enforcement, and provide easily accessible gambling opportunities that are attracting the world's youth at an alarming rate.<sup>148</sup> As noted by Timothy Wayne Fong, co-director of gambling studies at UCLA, one of the primary reasons skins may be so popular amongst the youth and those prone to addictive tendencies are because they are "available and affordable, and they're part of a highly rewarding activity."<sup>149</sup>

As of this moment, and light of no present regulation of skin gambling at both the state and federal levels, the most appropriate thing for Valve to do is to change or restrict their API to prevent skin gambling from continuing as an industry.<sup>150</sup> By altering the terms of the API or restricting the free tradability of these skins, Valve could help to prevent skin gambling sites from being so attractive to young persons, thus helping prevent underage participation in gambling activities.<sup>151</sup> Additionally, another preventative step that could be taken by Valve would be to require skin gambling websites to institute heightened age verification prior and other similar requirements as a

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<sup>148</sup> See Assael, *supra* note 68 (quoting Ryan Morrison, a New York Attorney "whose firm specializes in digital media and video games."). "Kids are 'becoming gambling addicts at 13, trying to get [the rarest] skins.'" *Id.* See also *How One eSports Gambling Site Still Offers Skin*, *supra* note 87 (discussing one currently up and running skin betting site, CSGOFast, outright ignoring Valve's cease and desist letter); see also *Crossing*, *supra* note 105 (criticizing the lack of age verification systems implemented on skin gambling websites).

<sup>149</sup> See Assael, *supra* note 68 (quoting Timothy Wayne Fong, Co-Director of Gambling Studies at UCLA).

<sup>150</sup> See Assael, *supra* note 68 (indicating Valve's current stance on the practice of skin betting). "Valve's position is that its hands are tied—it can't shut down gambling sites without fundamentally changing its API in a way that disables customer-friendly features it solutions." *Id.* The author further goes on to cite an article by industry expert, Chris Grove, who offers a multitude of possible interim solutions and patchworks to help Valve better regulate the skin betting practice. *Id.* See also *Seven Questions Raised*, *supra* note 59 (offering potential regulations Valve could implement to assist in preventing underage gambling on third-party sites that utilize its API). "Valve could... require sites using its API to comply with all relevant local laws, and perhaps taking a page out of the daily fantasy sports industry's book: institute stricter age verification and geolocation requirements, as well as other safeguards." *Id.*

<sup>151</sup> See *Seven Questions Raised*, *supra* note 59 (suggesting ways in which Valve could internally police skin gambling websites).

prerequisite to using their API to facilitate these gambling activities, similar to those preventative steps taken by DFS companies like FanDuel.<sup>152</sup> Furthermore, like their recent restriction on having multiple DoTA 2 character accounts, Valve could impose limits on the number of skins transferred by a player at any given time as a preventive restriction on potential bot accounts facilitating skin gambling bets.<sup>153</sup> By requiring CS: GO players to register their phone numbers to their Steam Accounts prior to effectuating a CS: GO skin trade, the potential risk for bot accounts used by third party gambling sites could be greatly diminished.<sup>154</sup>

The future of this industry, however, is uncertain.<sup>155</sup> As the skin gambling market is entirely dependent on Valve to survive, and because the openness of Valve's API in and of itself is one of the main reasons why the industry is still in existence, regulation at the federal level seems unlikely.<sup>156</sup> Although some foreign nations have begun to take steps to recognize and begin to regulate skin gambling, presently, it seems that federally, the United States is not considering regulating the newly minted gambling industry.<sup>157</sup>

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<sup>152</sup> See *Seven Questions Raised*, *supra* note 59 (suggesting steps Valve could take to help prevent the underage participation in skin gambling in CS: GO and other Valve-developed video games); see also Gouker, *supra* note 107 (referencing the new age and identity verification systems put into place by FanDuel in 2015); but see Quackenbush, *supra* note 59 (denoting Valve's lack of desire to work with skin gambling websites to continue their unregulated operation).

<sup>153</sup> See Good, *supra* note 110 (referencing the new Valve restriction on "smurfing" in DoTA 2).

<sup>154</sup> See Good, *supra* note 110 (highlighting Valve's hope that this new restriction will have a positive effect on the DoTA 2 community).

<sup>155</sup> See *Esports & Gambling*, *supra* note 88, at 7 (acknowledging for skin gambling to continue, Valve would have to continue to allow the free or nearly free transferability of skins).

<sup>156</sup> See Assael, *supra* note 68 (discussing the dependence of skin gambling in CS: GO entirely on Valve's API); see also Iruk, *supra* note 57 (referring to any potential regulation of skin gambling in the United States as an "unrealistic expectation at least in the short term."). The author further goes on to note that other nations, including the Netherlands, have flatly prohibited skin gambling within their national borders. *Id.*

<sup>157</sup> See Iruk, *supra* note 57 (discussing the unlikelihood of the United States regulating skin gambling federally).

## V. Conclusion

The purpose of this note was to provide a brief synopsis on the new legal issue of skins as they are used as de facto currency for illicit gambling purposes and provide an analysis of the applicable federal statutes that the facilitators of skin gambling could potentially be in violation of. Additionally, this note addressed skin gambling's general lack of player identification systems as used to confirm their users are of legal gambling age within their respective states. Although the practice of skin gambling has been cracked down on by Valve shutting down the bot accounts of many skin gambling websites, the fact remains that the practice is still occurring in 2017. As no successful claims have been brought as of the date of this note was written to prosecute the facilitators of these skin gambling websites and businesses, affirmative steps could be taken to both curtail the practice internally, by Valve, as well as legislatively at the Federal and State levels.

Internally, to prevent additional claims being filed against Valve, the most appropriate thing for Valve to do at this point would be to restrict its API to prevent the free, unchecked transferability of skins. One suggestion to do so would be to verify that the account is being used by an actual player, and not a bot account. Although potentially time consuming, were this to be implemented, the practice of skin gambling would be even more restricted, and would prevent Valve from having to individually track down and ban the bot accounts used by skin gambling websites. In addition, legislatively, one such control would be to recognize eSports and their competitors as legitimate sports and athletes. Were such a recognition imposed, the applicability of PASPA as a federal statute to combat skin gambling practices would be another powerful tool in the Federal government's arsenal. Although skin gambling may be just a fad, and could cease to exist in the coming years, affirmative changes both inside video game development and legislatively could help to serve as powerful protections against such an unregulated industry emerging and flying under the radar for so long again.