

# What's the difference between online poker and daily fantasy sports?

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FanDuel and DraftKings have flooded commercial breaks of sporting events in recent months in a \$200 million advertising campaign telling fantasy sports fans to break out of their private pool play and join the big-time players pocketing six figures on a given weekend.

But the newfound popularity of daily fantasy sports — or DFS — has also attracted increased scrutiny of law enforcement, government regulators, media and the gaming industry of its business model, which allows participants to bet huge sums of money on the performance of a hand-picked team of star athletes.

Even anti-gambling activist Les Bernal has stepped into the breach created by news that DFS employees allegedly used inside information in placing wagers on competitors' websites. Bernal's Stop Predatory Gambling released a report this week arguing it's no coincidence that DFS' business model looks a lot like the online poker games of a few years ago.

"It wasn't until the Department of Justice shut down online poker rings in 2011 that these daily fantasy websites emerged," Bernal said. "They just applied the whole online poker model to fantasy sports."

Bernal contends that recent investigations into DFS by the Department of Justice and the FBI are further evidence that DFS websites are merely clever ploys to evade anti-gambling laws. But DFS websites say their contests are "games of skill" and contend the label of gambling is inaccurate.

"This is not a deck of cards. We're talking about sports," FanDuel spokeswoman Emily Bass said, asserting that FanDuel players generally play for fun, not money. "Just like Uber goes through regulatory issues, just like Airbnb goes through regulatory issues, so do we. We see ourselves more along the lines of those tech innovators more than online poker."

## **Rising from the ashes**

But according to media accounts, the ties are tight between DFS and online poker, which thrived outside the restrictions of gaming regulations for more than a decade.

Using a federal law targeting online poker, the Department of Justice shut down the industry's three major operators and indicted them on charges of fraud and money laundering. A U.S. market of \$2 billion came to a halt.

It also meant Jon Aguiar was out of a job. Aguiar, then 28, had spent the previous several years living off the profits he made playing online poker, according to Bluff magazine. Aguiar was a “shark” — the industry name for highly skilled players who won serious cash by dominating the thousands of more casual bettors.

After the demise of online poker, Aguiar switched to playing daily fantasy sports, whose online facilitators were a small group of companies flying under the regulatory radar. According to media reports, many other poker players made the jump to DFS.

"There's an army of smart 18-year-old kids in Siberia doing nothing all winter but getting better at poker. It's hard to squeak out a profit these days because the level of competition is very hard," games analyst Ed Miller told CNBC, explaining why DFS has such a draw for poker players. When Aguiar first started playing, he noticed that the websites for daily fantasy sports still were primitive compared to the ones for online poker.

“I just started playing a bunch, starting winning a bunch,” Aguiar told Bluff magazine. “I saw a few things that I’d like to have seen changed, so I shot an email to support.”

One of the recipients was DraftKings. Shortly after Aguiar gave its founders tips on how to refine its interface with players, the website hired him to be director of customer experience. Aguiar has helped build the business similar to the very websites federal government put out of business in 2011. Industry insiders told The New York Times that, along with Aguiar, the executives for DFS websites are typically “people with backgrounds in online poker or sports betting.”

Today, DraftKings and its main competitor, FanDuel, have several common types of contests that would be familiar to online poker players: head-to-heads, guaranteed prize pools, sit ’n’ gos, step tournaments, etc. Eilers Research — which publishes reports on gambling — said “DFS essentially has the same business model.”

### **Skill or chance**

When prosecutors shut down online poker in 2011, they were invoking the Unlawful Internet Gambling Enforcement Act of 2006, which prohibited gambling websites from taking bets through any major financial institutions on “a game subject to chance.”

That law was drafted to end online poker, and specifically exempted “participation in any fantasy or simulation sports game.”

The growing DFS business has used that to defend its legality, something the law's author contests. “It is sheer chutzpah for a fantasy sports company to cite the law as a legal basis for existing,” former Rep. Jim Leach, R-Iowa, told The Associated Press. “Quite precisely, UIGEA does not exempt fantasy sports companies from any other obligation to any other law.”

For example, he said fantasy sports businesses must comply with a 1992 law that bans gambling on “one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.”

FanDuel and DraftKings argue they're exempt from such gambling legislation because DFS is a skill game not subject to chance. The limited research on the issue indicates that skill is hugely important

to winning, but that could also deter growth as more players become aware of how unskilled they really are.

Analyses of the fantasy sport business by publications like Bloomberg magazine have shown the odds of winning are next to nil as they go against professionals who use personalized algorithms to put together winning lineups. The fantasy "sharks" can quickly identify athletes the public is likely to pick, and know the upside odds for ignored players.

In the first half of the 2015 Major League Baseball season, 91 percent of daily fantasy sports player profits were won by just 1.3 percent of players, Sports Business Journal reported.

### **The future of DFS**

Despite the slim chances of winning for most players, the industry grew by over 300 percent in 2014, which brought major investors to the table. FanDuel and DraftKings are now valued at more than \$1 billion, and DraftKings has a contract with Disney that guarantees \$250 million on advertisements on ESPN, according to Sports Business Journal.

But that popularity came under a cloud in early October when allegations arose that a DraftKings employee used inside information to win \$350,000 on FanDuel in one week.

DraftKings hired a third-party law firm to investigate, led by John Pappalardo, a former Massachusetts deputy attorney general. DraftKings said in a statement that the probe found the employee could not and did not use information that was not publicly available before betting lines closed.

The incident launched a media storm and federal investigators are now looking at the business model of DFS sites. Pennsylvania, Nevada and New Jersey have all sought to regulate DFS like gambling, possibly taxing the websites at double-digit rates. On Tuesday, Eric Sniderman, attorney general of New York, issued a cease-and-desist order to FanDuel and DraftKings, stating that DFS is a "multibillion-dollar scheme intended to evade the law and fleece sports fans across the country.

Today we have sent a clear message: not in New York, and not on my watch."

That's the solution Bernal prefers. He fears regulating DFS as gambling could create a "backdoor way" for casino operators like MGM and Caesars to get a piece of the DFS action and other online gaming.

"They want to put Las Vegas-style gambling into every bedroom, every living room, every dorm room, and on every smartphone in the United States," Bernal said.

Jim Murren, CEO of MGM, has been lobbying to overturn laws that ban online gambling, and contends there's a double standard when it comes to DFS.

"Who in the world thinks that FanDuel or DraftKings — who's going to tell me that's not gambling? Of course it's gambling," Murren told Las Vegas' NBC affiliate.

In response to the recent media and legal attention, the Fantasy Sports Trade Association formed its own private regulatory agency last month to enforce "common-sense consumer protections," Bass said.

She said FanDuel will also work with states that also want to regulate DFS, but, she insists, "we won't be regulated like the gambling industry."

Meanwhile, Bernal plans to push for shutting down DFS. He calls government-regulated gambling "predatory," arguing that these practices are "the prime example of government being rigged against everyday people."

"Any public official who is serious about reducing inequality and unfairness in America — it runs through this issue," Bernal said. "We have a nation of small earners who could be small savers, but instead we're turning them into a nation of habitual bettors."

Read more at <http://national.deseretnews.com/article/6699/What7s-the-difference-between-online-poker-and-daily-fantasy-sports.html#Rv3PDkWr4Ac5Zm62.99>

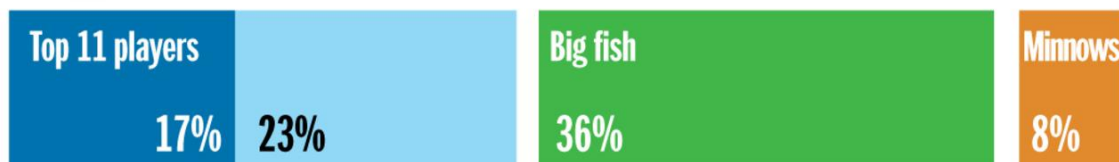
## A shark's tale

The daily fantasy sports economy depends on "minnow" and "big fish" players who make up the majority of DFS players. Minnow and big fish players generally lose the weekly contests, providing profit.

Sharks make up **1.3 percent** of total players



**BUT sharks make up 40 percent of entry fees**

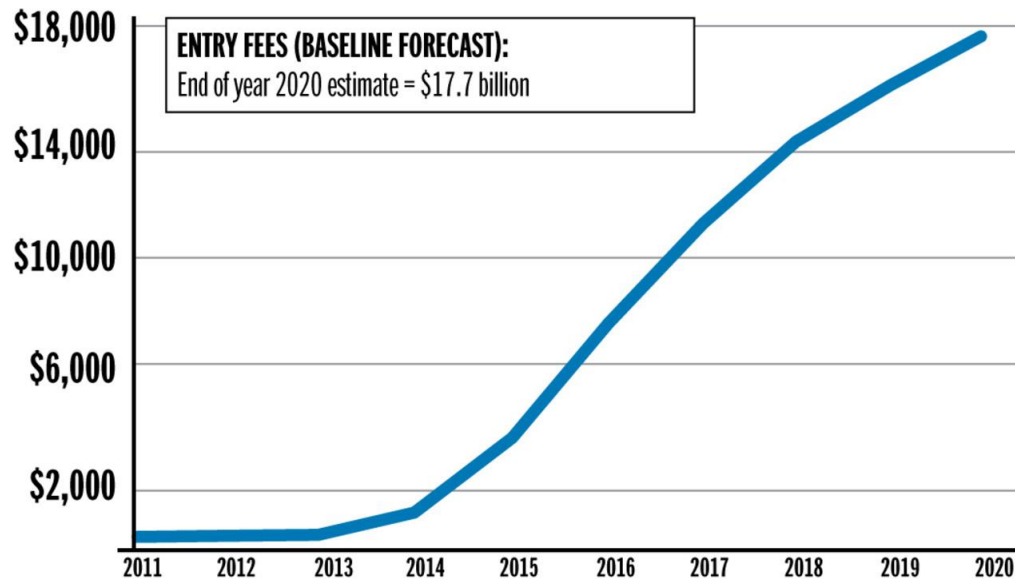


SOURCE: Sports Business Daily

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# Daily fantasy sports market size forecast

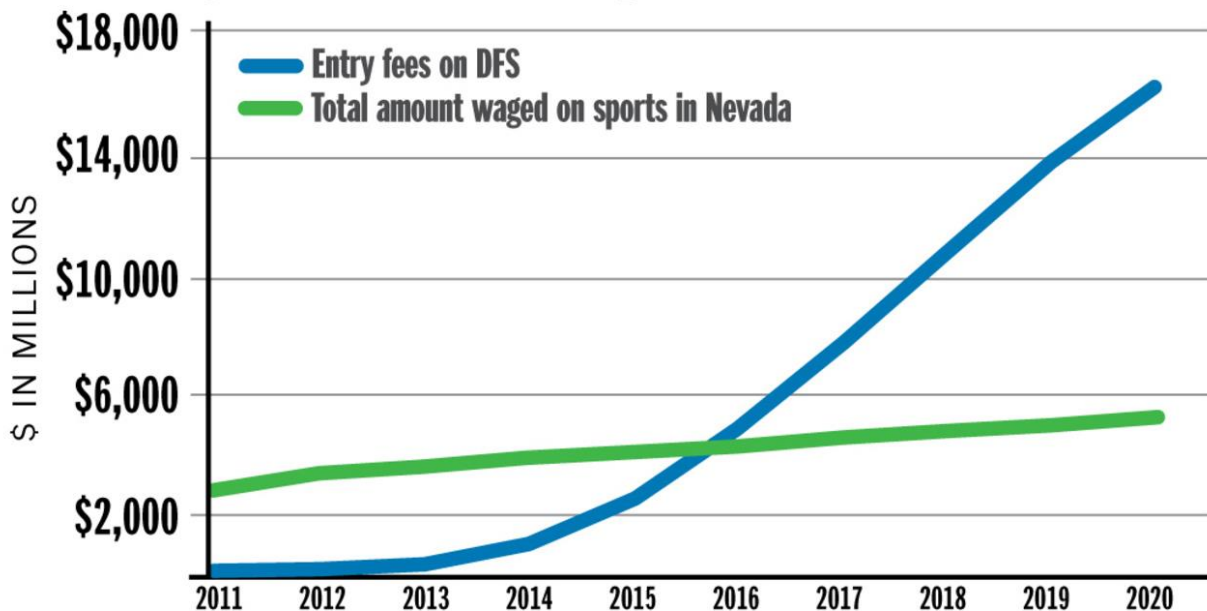
Based on entry fees (in millions of dollars)



SOURCE: Eilers Research, LLC

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# DFS entry fees vs. total sports wagers in Nevada



SOURCES: Nevada Gaming Control Board; Eilers Research, LLC

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