



House Business & Labor Committee
Oregon State Capitol
Salem, OR 97301

Chair Hovey and members of the Committee,

Thank you for convening this hearing on various bills addressing certain gaming issues - in particular HB 2549 and HB 2761. My name is Daniel Haight, director of product management for fantasy sports at Yahoo. I appreciate the opportunity to submit written testimony on behalf of the company regarding legislation aimed at regulating paid fantasy sports products in the State of Oregon.

Yahoo fully supports the passage of House Bill 2549 which authorizes the Oregon State Lottery Commission to issue registrations to fantasy contest operators to organize and offer fantasy sports contests. We expressly recognize and thank Representative Hack for her introduction and sponsorship of the bill.

BACKGROUND

Yahoo was one of the early pioneers of the World Wide Web. It was created in 1994 as a simple listing of websites, and it has grown into an indispensable guide to the world's digital information that serves more than 1 billion users around the world today. You may be familiar with the company's consumer-based Internet offerings, such as Yahoo! Search, Yahoo! Mail, Yahoo! Weather, Flickr photo sharing, and Tumblr blogs. You may also be familiar with the company's media properties, such as Yahoo! News, Yahoo! Finance, and Yahoo! Sports.

You also may be familiar with our facilities in Oregon. Yahoo has long had an office in Hillsboro, Oregon, where we employ numerous individuals who work on vital areas of the company's business, including many members of our customer care and advertising teams. For example, customer care support for Yahoo! Sports is conducted from our Hillsboro office.

As part of Yahoo! Sports, the company has delivered fantasy sports games to users since 1999. From the beginning, our fantasy sports offerings have been designed and built with the goal of engaging and delighting our users. We want users to play on Yahoo with their friends and colleagues, enjoy their user experiences, and continue to use the Yahoo platform for these and other offerings. As of 2017, we have millions of people playing fantasy sports on Yahoo. The majority of our users participate in our free season-long games where they play against small private groups of friends, family, or co-workers. Only a small percentage of users participate in our paid offerings.

Yahoo is a beloved brand on the Internet and maintaining our users' confidence is of the utmost importance to us. We applied that philosophy to our paid fantasy sports offerings when we launched Daily Fantasy in July of 2015. We were one of the first companies to proactively adopt and implement many consumer protection features that are now being passed in many state regulations, such as labeling highly experienced players and implementing multi-entry limits. In our experience, users want to participate only if the fantasy sports offerings are fair, transparent, and secure ... otherwise, they will find alternative ways to spend their time. Because of that basic market reality, we have every incentive to make sure that our fantasy sports offerings are fair, safe, and secure so that users want to participate and spend time on our site.

HB 2549 IS A COMMON SENSE APPROACH

Given our experience, we fully understand the desire of state governments across the country to regulate the paid fantasy sports industry to ensure safety, security, and fairness. At this point, numerous state governments have passed common sense legislation regulating paid fantasy sports contests, and we urge Oregon to do the same. In our view, House Bill 2549 is consistent with the type of state regulation that Yahoo supports and has supported in other states.

In short, Yahoo supports common sense regulations that: (a) clearly differentiate between paid and free offerings; (b) create rules that are technologically feasible, commercially reasonable, and appropriate for the specific offering; and (c) promote a competitive environment so that users have choices. We also maintain that any regulations should focus on the persons who operate the day-to-day business or, in the case of entities that run multiple business lines unrelated to fantasy sports, the fantasy sports division of the company.

HB 2549 clearly distinguishes between free and paid offerings. The very definition of a “fantasy contest” that is regulated under the bill “requires an entry fee for participation.” As a result, the free fantasy sports products that Yahoo has been offering since 1999 would not suddenly be swept into the scope of the legislation.

HB 2549 takes a reasonable approach with respect to safeguards for users. Section 2(1)(c) of the bill sets forth seven different requirements for applicants to provide evidence of measures designed to ensure security, safety, and fairness. These measures include common-sense safeguards such as ensuring that fantasy contests players are at least 18 years of age, that applicants retain player moneys in separate accounts from operation moneys, that applicants maintain a reserve to pay awards and prizes, that applicants keep information confidential, and limiting the number of entries

each player may submit to a contest. These requirements are generally consistent with what we have seen in other states.

In order to ensure that applicants are not forced to implement procedures that are above and beyond what is commercially reasonable and technically feasible, we suggest that the introduction to Section 2(1)(c) be amended to read as follows:

“Submits evidence that the applicant will **implement commercially reasonable procedures to** [will]:

The addition of these bolded words will make clear to users, companies, and regulators the appropriate standard for regulating any activity in this industry.

Finally, if implemented, we believe that HB 2549 would ultimately lead to a predictable and stable environment for companies to offer paid fantasy sports products in the State of Oregon. The simple fact that the State will have passed legislation authorizing paid fantasy sports contests is going to encourage companies to spend the necessary money to develop fantasy products and make them available in the State. Of course, much will depend on the rules adopted by the Oregon State Lottery Commission, but we would be happy to work with the Commission to develop rules that promote competition in the industry, to ensure regulations are commercially reasonable and technically feasible and properly scoped, and to provide safe, secure, and fair products for users.

With respect to scope of any resulting regulations, we believe that both the statute and any rules should recognize that there are different types of corporations offering fantasy sports products. For example, there are companies, such as DraftKings and FanDuel, whose sole business is paid fantasy sports offerings. In contrast, Yahoo is a larger, multi-faceted corporation that has a diverse product line. Paid fantasy sports products

are only a very small part of our overall business, and the team that manages the product is a business division of Yahoo rather than a separate corporate entity. In order to ensure that the rules adopted by the Oregon State Lottery Commission are sufficiently flexible to recognize different commercial realities, we suggest that the definition of “Fantasy contest operator” in Section 1(2) be broadened to include the “person or entity **or division of an entity** that organizes and offers fantasy contests.”

A GAME OF SKILL

We recognize that one of the central issues for this Committee during this hearing is whether fantasy sports games are a contest of chance or a game of skill.

Yahoo respectfully submits that fantasy sports contests are games of skill because they reflect the knowledge and relative judgment of users and those users can influence the results of the contests. In our experience, users who skillfully apply their knowledge to make picks will have more success compared with users who simply make random choices. Users need to research leagues, games, players and other variables before making choices. Users need to think about things like match-ups, weather conditions, injuries, and other variables that factor into a decision-making process for establishing player picks and line-ups.

Furthermore, the way that contests are organized *require* users to exercise their knowledge and judgment. On our platform, the contests are not based on the current membership of a real-world team. Rather, players must use their knowledge and judgment to select the best individual athletes and to anticipate the games in which the athletes will perform their best. Players must exercise judgment in selecting a limited number of athletes using a limited salary cap. We utilize a salary cap mechanism that forces choices and ensures that contestants must identify a variety of athletes that represent a good value relative to the salary cap. In addition, the result of any contest is determined predominantly by the collected statistical

performance of the selected athletes in multiple sporting events in which those athletes participate. By combining the performance of many athletes across multiple games, the results are determined by accumulated statistical results rather than individual performances of any single real world team or a single athlete's performance.

Moreover, Yahoo's prizes are established and made known to players before the contests begin and their value is not based on the fees paid. Yahoo announces the prizes for each contest in advance and the prizes do not vary based on how many participants join a game. While the prizes for contests with higher entry fees and more players are often greater, prizes are predetermined and do not vary. Players cannot use the Yahoo platform to define their own entry fees or vary the prize pool. Instead, they must select from different contests which have differing entry fees and prize amounts. Similarly, players cannot collect bigger prizes than announced if more players enter the contest.

Importantly, for the very reasons discussed above, Yahoo's paid fantasy contests are in compliance with the only federal law to address fantasy sports and the precise question that the Committee is set to address in this hearing. The Unlawful Internet Gambling Enforcement Act (UIGEA) expressly prohibits the business of "betting or wagering" and accepting credit, funds, check, drafts, or similar instruments, or the proceeds of any transaction in connection with unlawful Internet gambling. 31 U.S.C. § 5363. The statute defines "bet or wager" and expressly excludes from that definition the "participation in any fantasy or simulation sports game" under the following conditions:

- (I) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.

(II) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.

(III) No winning outcome is based—

(aa) on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams; or

(bb) solely on any single performance of an individual athlete in any single real-world sporting or other event.

31 U.S.C. § 5362(1)(E)(ix). In so doing, the UIGEA spells out the conditions under which fantasy sports contests can be excluded from “bets or wagers” and “unlawful Internet gambling.” In our view, these same conditions provide the basis for determining that fantasy sports contests are not “contests of chance” for purposes of state law. And as discussed above, Yahoo’s fantasy contests satisfy these conditions.

CONCLUSION

In summary, because Yahoo’s paid fantasy sports contests require the exercise of knowledge and skill, and because those contests do not involve a “bet or wager” as defined under relevant federal law, Yahoo respectfully submits that those contests are games of skill and should be authorized under Oregon law. For these reasons, Yahoo supports House Bill 2549. We encourage its enactment into law and look forward to working with you as the bill moves through the legislative process and we look forward to working with the Commission on any rules promulgated pursuant to the law.

Sincerely,
Daniel Haight
Product Director
Yahoo Fantasy Sports