



January 22, 2016

The Commonwealth of Massachusetts  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Re: Draft 940 C.M.R. 34.00: Daily Fantasy Sports Contest Operators in Massachusetts

Dear General Healy:

On behalf of Yahoo, please accept our comments with regard to Draft regulations 940 C.M. R. 34:00 Daily Fantasy Sports Contents Operators in Massachusetts. We appreciate the opportunity to comment and look forward to continuing to work with your office on this issue.

We believe that it is in the interest of Yahoo and of the Fantasy Sports industry to ensure the trust of our users and we support many of the specific regulations you propose. We are concerned, however, that the regulations as drafted are overly broad. We believe consumer protection regulations should be focused on Daily Fantasy Sports contests requiring an entry fee without impeding traditional season-long fantasy sports offerings, including free games that offer prizes, and leagues where Yahoo is simply acting as host for the offering. Yahoo has offered free season-long games since 1999, including contests that have prizes, and has been one of our leading products enjoyed most by users.

In addition, the regulations as currently drafted have what we believe is the unintended effect of regulating all Fantasy Sports offerings (including free contests), and potentially other business offerings with no connection to Fantasy Sports if the company operating them offers Daily Fantasy Sports contests requiring an entry fee. Regulations should apply only to paid Daily Fantasy Sports contests and not to other activities of the companies that offer them.

Further, and as explained in greater detail below, regulations should be technologically feasible, appropriate for the specific offering, and should not create unwarranted and unnecessary risk to users.

#### Background

Yahoo was founded in 1995. Yahoo is a guide focused on informing, connecting and entertaining our users. By creating highly personalized experiences for our users, we keep people connected to what matters most to them, across devices and around the world. Yahoo provides a broad suite of product offerings including search, messaging, email, social networking, photo sharing, and a broad array of news and information offerings covering, among other subjects, news, sports, finance, weather, politics, fashion, tech and celebrity. In turn, we create value for advertisers by connecting them with the audiences that build their businesses.

Yahoo is headquartered in Sunnyvale, California, and has offices located throughout the Americas, Asia Pacific and the Europe, Middle East and Africa regions.

## Yahoo's Fantasy Sports Offerings

As part of its Sports offerings, Yahoo 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 offerings. As of 2015, we have millions of people playing fantasy sports on Yahoo. Only a small percentage of users participate in our paid offerings.

Our current offerings can be summarized as follows:

- Full Season Private leagues - These are "traditional" fantasy sports leagues. They are "invite-only" (comprised of family and friends), run by a player-commissioner and are predominantly free to play. The commissioner of a Private league may choose to require an entry fee for all players and set a payout structure for the winner(s). Yahoo does not require a fee for assisting with the handling and distribution of league funds. Yahoo offers games that cover football, baseball, basketball, hockey, NASCAR and golf.
- Full Season Public leagues - These are public leagues run by Yahoo that anyone may join. While the vast majority of public leagues are free, users may choose to pay a fee to enter a paid league for an opportunity to win a prize. Yahoo charges a management fee for each entry to run this type of league.
- Daily Fantasy - These contests may be free or paid, public or private, with a variety of payout structures and entry fees for the paid contests. All paid contests have a payout structure defined in advance and while most free contests offer no award for winning, some contests do.
- Other games - These include Tourney Pick 'em for the NCAA college basketball championship and World Cup Soccer, Pick 'em (choose the winner games) for college football and NFL, and Survival NFL (pick one team a week who won't lose). Some have a prize for winning or placing in the top spots, but there is no entry fee required.

Yahoo is a trusted brand on the internet, and maintaining our users' confidence is of the utmost importance to us. To that end, we have already taken numerous steps, similar to those in the proposed regulations, to protect users of our paid fantasy sports products. For example:

- We strictly control access to sensitive data such as ownership percentages, other player's line-ups and player "salaries" pricing. Only a very small set of employees have access to this data.
- Yahoo employees are restricted from playing public contests with prizes on Yahoo's fantasy sports site and any games on other daily fantasy sites, and Yahoo's code of conduct has long prohibited employees from using internal information for personal gain.

- Our Terms of Service for Daily Fantasy Sports (the “DFS TOS”) prohibits athletes, team owners, and others who could influence gameplay in the real world game from playing relevant paid daily fantasy games.<sup>1</sup>
- Our DFS TOS prohibits, and we restrict access to, users who are under the age of 18 (or the age of majority in their state) and we block players from restricted states on both phone and PC.<sup>2</sup>
- We initially limit deposits to \$2,000 per day. We monitor user deposit behavior for excessive play or fraud and actively intervene when either is detected.
- When users request to be blocked from playing we lock their accounts from being able to play paid fantasy sports on our site.
- Our paid games are PCI3 compliant, protecting users credit card information. Our games use the same proprietary systems used across Yahoo with built-in fraud protection and security protocols.

In addition, we believe that it inures to the overall benefit of the industry if companies take reasonable steps to mitigate the impact of highly experienced players. To that end, we support steps such as limiting the number of entries that can be permitted in individual contests and incorporating features in paid product offerings to help users be aware of the skill level of their fellow competitors.

## Comments on Proposed Regulations

### 34.02/34.03 Scope/Definitions

As drafted, we are concerned that the scope of the regulation is overly broad. Specifically, the regulations as written apply to both paid and free offerings, and may even extend to other non-fantasy products and services offered by Yahoo. We believe the regulations should only apply to Daily Fantasy Sports offerings requiring an entry fee. Moreover, the regulations that apply to Daily Fantasy Sports Operators should apply solely to their Daily Fantasy Sports contests requiring an entry fee and should not apply to free or friends and family games or other parts of the corporate entity, because they offer Daily Fantasy Sports contests requiring an entry fee.

The regulations as drafted state that “940 CMR 34.00 applies to acts or practices of Daily Fantasy Sports Operators doing business in Massachusetts.” 34.03 defines a “daily sports operator” as “[a]ny Enterprise that engages in the business of offering, by means of the Internet or smart phone application (or via other similar electronic or digital media or communication

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<sup>1</sup> <https://sports.yahoo.com/dailyfantasy/help/terms>—“Athletes, coaches, and other team management, team support personnel, and team owners are not eligible for any Yahoo Contests in the sport or sports in which their team competes. Team owners, referees, league employees, sports commissioners and other individuals who, through an ownership interest or game-related employment, can influence gameplay in the real world game are also ineligible.”

<sup>2</sup> Customers in georestricted states cannot do the following: (1) deposit money or (2) spend any money in their account. They can play for free in contests with no prize and they can withdraw money. The site itself is not blocked from them viewing it.

technologies), multiple Daily Fantasy Sports contests to persons who include residents of Massachusetts," subject to "offer[ing] only DFS contests that meet one of the following criteria."

Because Yahoo offers Daily Fantasy Sports contests requiring an entry fee, all of Yahoo's fantasy sports offerings and potentially our business as a whole would not clearly meet the requirements of the exclusion. Finally, the proposed definition may also have an anti-competitive impact preventing any company from having both a season long game and a daily one, limiting the other businesses in which a competitor in the Daily Fantasy Sports space may engage.

#### 34.04 Gameplay by Minors: Restriction on Games Based on Student Sporting Events

We currently restrict Daily Fantasy contests requiring an entry fee to those over 18 or the legal age of majority, and agree that protections are appropriate for minors. However, we believe that the age based restrictions contained in the regulations<sup>3</sup>, as applied to Daily Fantasy Sports Operators, (including our free games and broader offerings), present significant challenges that could create additional security risks for our users--particularly if DFSOs are required to verify the age of users when playing games without requiring an entry fee.

There are agreed upon industry standards to determine whether someone is over 18, such as through the credit card and PayPal application process, and payment instruments that are required to engage in paid contests. Second, performing accurate age verification for users of our free offerings would necessarily require Yahoo to begin collecting more data from its users--something that we believe increases the risk of harm resulting from a data intrusion incident. These issues become particularly acute if we now must age verify anyone under 21 for our free games. As such, we look forward to discussing with your office ways to address concerns regarding access to games by underage players.

For many of the reasons already discussed, we have concerns regarding the advertising restrictions contained in section 34.08 (2) and (3). Specifically, that "DFSOs will not advertise or run promotional activities at schools or on college campuses, and, that "DFSOs will not advertise or run promotional activities at amateur, school or college sporting events unless such sporting event is conducted in a venue that is not primarily used for amateur, school or college events." The regulations seem to prohibit Yahoo from advertising Yahoo product offerings that have nothing to do with DFS or traditional fantasy sports. For example, Yahoo runs a business called "Rivals" that provides news for and information about high school athletes moving to college teams. We run a series of camps for young athletes around the country to help them as they make the transition to college sports. We market these camps and our news and information services directly to students. Those offerings should not be captured by these regulations.

Finally, we also believe that parental controls are not necessary. The regulations currently require paid players to be 21 years of age or older. This seems either to require DFSO's to offer tools that allow parents to exercise control over their adult children or to allow for play by

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<sup>3</sup> 34.04(1), (3) "No DFSO will allow a Minor to participate in any contest, whether or not a Prize is offered in that contest," and, that "DFSOs shall not offer DFS contests that include college, high school or student sporting events." .

underage users which must be subject to parental control. We think the regulations have accounted for this already, by setting age requirements and requiring self-exclusion tools.

#### 34.06-Limitation to One Account Per DFS Player: 34.10 Protection for Problem Gamers

Yahoo already takes significant care in protecting our customer base from fraudulent activity and data security vulnerabilities. Since before the advent of our DFS offering, we have had policies in place that restrict employees from accessing the sensitive data of our users for monetary gain. And recently, we have implemented policies prohibiting our employees from playing on other DFS platforms, and prohibiting athletes and others who have the ability to influence real world games, from playing our service. We also limit DFS Players to access a contest entry from a single account and monitor user activity by payment type (credit card, PayPal), in order to flag any instance where multiple accounts have the same payment method. This allows us to investigate contest and account behavior to determine if there are any violations of our terms of service.

Although we share your concern that it is important to "know your customer" in order to limit fraud, we have concerns with some of the provisions of this specific proposal. Section 34.06 (5) prohibits a DFSO from "allow[ing] simultaneous log-ins on a single account." Given that we are a large company with many lines of business, efforts to restrict our users to a single log-in across all Yahoo properties are inconsistent with our long standing business model and would be onerous to our users. We want to ensure that people can be logged in on their mobile devices and laptops at the same time, as many of our customers use the same ID for multiple accounts, i.e. fantasy account and mail account. As such, it would create an unwieldy user experience if users would now be forced to log on every time they switch devices.

Section 34.06 (3), also prohibits DFSOs from allowing "any DFS player . . . [from] us[ing] a proxy server to enter any DFS Contest Platform." While we share the goal of knowing the location of people playing the game, we believe the term as defined is too broad and includes technologies that are used for routine operating procedures, such as corporate VPNs and home routers. The better course--which we believe is consistent with your intention--would be to require DFSOs to use technologically and commercially viable systems to prevent users from misrepresenting their true location.

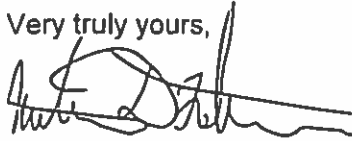
Finally, Section 34.10 (6) also places limits on consumer deposits unless a DFSO adopts procedures to "include evaluation of information, including income or asset information, sufficient to establish that the DFS Consumer can afford losses that might result from gameplay at the deposit limit level requested." Unfortunately, this provision would require DFSOs to collect vast amounts of financial and personal information, thereby creating additional risks for those customers. Furthermore, most DFSOs are in no position to accurately determine whether "a participant can afford losses that might result from gameplay at the deposit limit level required."

## Conclusion

The comments we have provided herein are designed to help limit unintended consequences of important consumer protections, which we believe are in the best interests of the Fantasy Sports industry, as they will insure a more enjoyable and trustworthy experience for our users. That trust will, in turn, allow our offerings to grow and bring more users to our service.

We look forward to working closely with your office on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Michael La Guardia', with a long horizontal flourish extending to the right.

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