Making It Pay to be a Fan: The Political Economy of Digital Sports Fandom and the Sports Media Industry

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MAKING IT PAY TO BE A FAN: THE POLITICAL ECONOMY OF DIGITAL SPORTS FANDOM AND THE SPORTS MEDIA INDUSTRY

by

Andrew G McKinney

A dissertation submitted to the Graduate Faculty in Sociology in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York

2018
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Andrew G McKinney

This manuscript has been read and accepted for the Graduate Faculty in Sociology in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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ABSTRACT

Making it Pay to be a Fan: The Political Economy of Digital Sport Fandom and the Sports Media Industry

by

Andrew G McKinney

Advisor: William Kornblum

This dissertation is a series of case studies and sociological examinations of the role that the sports media industry and mediated sport fandom plays in the political economy of the Internet. The Internet has structurally changed the way that sport fans access sport and accelerated the processes through which the capitalist actors in the sports media industry have been able to subsume them. The three case studies examined in this dissertation are examples of how digital media technologies have both helped fans become more active producers and consumers of sports and made the sports media industry an integral and vanguard component of the cultural industry. The first case study is of Bleacher Report, a fan blogging platform turned major digital sports journalism company. Bleacher Report’s journey from an industry-reviled content farm to major player in digital sports journalism is traced to argue that Bleacher Report’s business model relied on the desperation of aspiring writers only as long as those writers were unpaid. The second case study is of DraftKings and Fanduel, the industry leaders in the fantasy sports genre of daily fantasy sports (DFS). These two companies have seemingly overnight taken over the new field but just as quickly thrust themselves into legal scrutiny that threatened to shut down the entire field of DFS. The proximity to gambling that threatened their legal status also, whoever, belies their relationship to the financialized understanding of that all of fantasy sports represents. The third and final case study is of ESPN. By far the oldest and most powerful of the three cases, ESPN, the self-proclaimed “Worldwide Leader in Sports,” has made the majority of its money off its innovation of the per subscriber fee, or the fee that ESPN charges cable companies to carry it that is then passed onto individual subscribers whether they watch ESPN or not. As digital technologies have revolutionized the delivery of visual images of sport and the cable bundle that ESPN is the most expensive part of loses market share, ESPN’s ability to monetize both attention and non-attention greatly decreases. The concluding chapter takes these case studies and attempts to synthesize them into a theory of what is termed “contentification,” or the tendency of digital technologies to take disparate forms of records (text, numbers, images) and treat them as “content” to be paid attention to. Sports are particularly prone to contentification and have helped drive the exponential expansion of content to be paid attention to that has resulted in a crisis of attention where the amount of content outstrips the human capacity to take it in. The reconfiguration of capital that finds its expression in the ending of net neutrality is the response to this crisis.
For my father: if only there had been enough time.
Acknowledgements

This project would have been impossible to complete without my wife, Danna. Thank you for your support, both physical and mental, and the inspiration. A dissertation is an ugly, needy thing and I cannot thank you enough for standing by me and encouraging me while I lobbed rocks at it. Our entire relationship has had this evil beast shadowing it, so here’s to finally living in the light.

I’d like to thank everyone that I met in both graduate school study and graduate school work that listened to me ramble on about sports, or Marxism, or the Internet, or politics, or whatever I happened to be wound up about that day. That’s nearly everyone I know but specifically I’d like to thank those who actually enjoyed, however begrudgingly, those rants enough to call themselves my friend and offered solidarity in the fight to not be totally subsumed by the academy. In no particular order: Tom Buechele, John Boy, Scott Henkle, Avra Spector, Jesse Goldstein, Bree Zuckerman, and Stephen Boatright.

Although it might have been unclear why exactly I was still on their plate, I’d like to thank Bill Kornblum and Stanley Aronowitz for acknowledging that nearly 6 years ago they agreed to be on my committee. I was neither the greatest student nor the most communicative, but they deserve thanks for sticking around even after they both retired. The generally thankless job of being the chair to someone who can barely navigate bureaucracy in a bureaucracy as deep as CUNY deserves special acknowledgement. Stanley calling me an “orthodox Marxist . . . in a good way” at my defense is a top 5 moment in my intellectual life. Bill and Stanley shaped my understanding of research, critique, and the role they both have in the academy and society. I am forever indebted to them for their intellects and pedagogies. I’d also like to thank Lynn Chancer for filling in at the last minute as my third member and giving me generous and incisive feedback that will inform and improve this work as it goes forward.

A special thank you goes to Rati Kashyap. Without her gentle scolding and bureaucratic mountain moving, I’d have dropped out years ago. The Sociology department would be adrift without her.

For more than a decade, CUNY has been my home. As much as I wish I had written this document sooner, I cherish the time I spent serving the students, faculty, and staff at this gloriously ramshackle institution while not writing. Here, I found a career and a community.

Finally, I’d like to thank my parents Larry and Carole McKinney. I can never thank them enough for the intellectual and moral rigor they raised me with. I thank my mother for the reminder that academia is always just a game to be played as much as you have the stomach for but that the indigestion is generally worth it for the lives you get to be a part of. I thank my father teaching me how to argue and the value of evidence. If only he were here to listen to one last argument.
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Chapter 1: Introduction

The development of sports as an industry in the United States has gone hand in hand with the development of media industries since the late 19th century. The early tabloids that ushered in the modern era of newspapers had sports sections with written recaps and box scores from their inception. The earliest uses of broadcast television included sporting events like baseball, boxing, and football. This is partly because sports as mass entertainment had already become important enough to help sell newspapers and television sets. However, without the technological developments in mass media, it is undeniable that the sports industry would never have been able to reach the level of profit and cultural ubiquity that it came to attain. Norbert Elias and Eric Dunning have argued that “sport” (as opposed to games and other less formal leisure activities) and industrial capitalism developed together. The rationalization of English folk games like football into formal associations with set rules and organizations, they argue, was a process “interdependent” with the industrialization of the English economy. (Elias and Dunning 1986:130) Rationalizations of the work process achieved by industrialization were mirrored in the rationalizations of non-work time in industrial society’s leisure time activities and, hence, organized “sports” were created from less formal folk games. The deeply intertwined relationship between cultural practices and industrialization was more generally and famously argued for by Max Horkheimer and Theodor Adorno, who showed how what they called the culture industry had shaped leisure time in the image of industrial production. (Horkheimer and Adorno 2007) The development of sports as a wing of the culture industry, as an example of the imposition of industrial capital logic into the arts and entertainment activities of humanity, is evidence of Horkheimer and Adorno’s argument that “the whole world is passed through the filter of the culture industry.” (99)
Of that whole world, sport has arguably come to compromise as prominent a wing as film and popular music, the fields more traditionally considered as culture industries. But it has come to this position much the same way all culture industries are born: through the introduction of new technologies. Both the production and distribution of cultural products are elementally changed by these new technologies. And just as with the other wings of the culture industry, these are often media technologies that record and recombine the events of culture so that they may be distributed on a mass scale in true industrial fashion. By thinking through sport as one of the primary outcomes of the industrialization of play and games and as the emergence of a wing of the culture industry, we are forced to consider the role that media technologies have played in sports industry’s rise to cultural, political, and economic importance.

What is the relationship of media to sport? This question is in effect two questions. Both deal with the economic structure of sport. The first question inquires into the role that mediation plays in the commodification of sport. How does the recording and broadcasting of sport shape the political economy of sport? What new commodities are produced when new technologies are introduced into the sports media production process? The second question looks into the resulting composition of the economics of sport. Professional sports franchise owners in the United States have enjoyed varying degrees of antitrust exemption since Major League Baseball’s victory in Federal Baseball Club of Baltimore v. National League which granted MLB full antitrust protection in 1922 and the Sports Broadcasting Act of 1961 which assured that leagues could negotiate media rights collectively without violating antitrust law. (Celler 1961; Holmes 1922). This monopoly position has allowed them significant power over the rest of the
players in the sports media industry. When we use the term “sports media industry,” we must be specific about the composition of that industry. “Sports media industry” describes the relationship between three groups: the sports leagues, media companies, and sports fans. The sports leagues consist of owners and the players, but in relationship to media companies and media technologies of production and distribution this functionally means the owners. When setting the terms of league relationships with the media, the owners are the decision makers and the ones who exchange the commodity of sport directly with their counterparts in the media. Media revenue does flow back to players through the collective bargaining agreements that the players unions have negotiated with the owners;¹ however, media rights themselves are dictated largely by the owners. The media companies that make up the sports media industry profit not just from the display of what they have the rights to (broadcasts, highlights) but from the production of experiences from the records of sports: accounts of games, opinions about games, interviews with participants, the resulting statistics from games, etc. These commodities are circulated to sports fans, which consume the live events of sport and the secondary material they produce. However, fans aren’t merely passive consumers, but also create experiences from the record of sports themselves. For example, fantasy sport began as a fan practice and was mostly a semi-formal network of hobbyists for many of its early years. However, once a fan practice that creates a new experience of sport becomes popular enough amongst fans, the sports leagues and the media companies generally attempt to control and make it profitable for themselves. This tripartite relationship involving the commodification of sports events and records, and the experiences made from both is what makes up the sports media industry. But, what makes the

¹ This refers only to professional sports in the United States. In the amateur sports that are widely televised in the US, the revenue generated from selling media rights is prohibited flowing back to the athletes in any direct way.
² The Wayback Machine is an archive of cached website pages operated by the Internet Archive
sports media industry so clearly an example of the culture industry is the fashion in which the capitalist actors in that relationship (the leagues and the media) actively shape and reincorporate the activities of the fans. As Adorno said, he and Horkheimer first used the more popular term “mass culture” before changing to the term culture industry in their writing to indicate that they were not talking about culture dictated by the masses: “The culture industry intentionally integrates its consumers from above. […] [T]he masses are not primary, but secondary, they are an object of calculation; an appendage of machinery.” (Adorno 1991:99) Under the centralized technologies of the era of industrial capitalism, this assertion is certainly true. However, what happens to the configurations of power and production in the sports media industry after the new technologies of the late 20th and early 21st century take ahold of the culture industry, technologies like the Internet and mobile, networked devices that have the capacity to decentralize production and consumption? When the masses begin to be able use the machinery instead of being a passive appendage of it, what changes in the composition of the sports as culture industry?

What follows is a series of case studies and sociological examinations of the role that sports media and sport fandom plays in the political economy of the Internet in an attempt to answer these questions. It is the argument of this dissertation that the Internet has structurally changed the way that fans access sport and accelerated the processes through which the capitalist actors in the sports media industry have been able to subsume those practices. Although incomplete and often unstable and contested, capital assumes sports fans as laborers who produce surplus value via the platforms through which sports fans access the events and accounts of sport. In other words, sports fans often can use the machinery of capital to rise above being mere appendages of
machinery, but the digital media technologies that they use to do this often lead them to be just as valuable if not more to sports industry capital then when fans were passive consumers. Further, it is my argument that the sport fan practices and the highly capital invested and profitable firms that shape them are informed by the hegemonic ideological currents of Internet enabled capitalism. Or, sport continues to be a leading culture industry but one that is no longer dominated by a centralized industrial order. Rather it is part of a new, digital order that is much more flexible and dynamic in its means of control. In order to understand the logic of these developments and their relationship to contemporary capitalism, this study addresses two concerns, one historical and one theoretical.

The historical question addresses the development of technological forms through which sports fans access their objects of passionate interest and how the desire for constant contact with these objects (from both fans and the sports industry) has driven a rapid development of new practices enabled by these technologies. This inquiry has a specific emphasis on the historicities of these new practices, these developing means of consumption and production. Therefore, investigation into the relationship to these means had by fans and capital and how these relationships have changed over time will be imperative. Over the last half of the 20th century and into the first decades of the 21st, professional sport fandom in America shifted from a place based and therefore centrally controlled social process that carried much of its social relevance through the symbolic relationship it held to that place, to an increasingly decentralized relation fully bound up with the workings of globalized capitalism wherein space and time became compressed and sport’s social relevance became inextricably linked to the ideologies of neoliberal capitalism. Although there is a burgeoning literature that understands this shift as a move towards sports as
always already mediatized and commodified (Crawford 2004; Elias and Dunning 1986; Giulianotti 2005; Horne 2006; Hutchins and David Rowe 2009; Rowe 2004), a historical account of the technological and economic changes in sport fandom in America remains a necessary project.

The theoretical program is to generate concepts adequate to a critical understanding of this historical account, situating the evolutions of mediated sport fan practices and their being-made-valuable in the larger context of a) the effect that technologies of digital mediation have had on the sports media industry and b) the role technologies of digital mediation play in the political economy of the internet. In other words, the goal is to develop a set of terms and concepts to use as tools of analysis in order to develop a critique of the current political economy of digitally mediated sport and explore whether that critique can be accurately applied to the political economy of digital capitalism writ large. To that end, I will engage with the tradition of Marxist critiques of political economy especially those that focus on the role of technology under the logic of capital, the developing sociological field that studies “digital labor,” critical sociologies of sport and sport media, and the business theories that have influenced the particular businesses studied herein. By placing my focus here, I seek to contribute to scholarship that understands digital technologies as enabling not only decentralized, non-hierarchical production, but also intensified forms of surplus value extraction and how this plays out specifically in digitally mediated sport.

Ultimately, this dissertation is an attempt to develop concepts that can come to terms with the wider political economic implications of the internet’s role in contemporary capitalism by
examining sports fan practices enabled by the internet and how they are presumed as surplus value producing labor by and ideologically compatible for capital. The organizing questions for that task are:

1. How does technology, generally, and the Internet, more specifically, affect the relations fans have to sport, their object of passionate interest? How was it changed over time? What is the historicity of those relations?

2. What is the logic of capital as it approaches mediated sport fan relations as sites of surplus value production? Can we locate the labor processes that produce this surplus value in those mediated relations?

3. What are the ideologies that inform the technological processes through which capital assumes sport fan as laborers? What are the origins of these ideologies and how are they articulated through the technological relationship that fans have to sport?

4. How do we understand these mediated sport fan relations as a part of contemporary capitalism? Are they indicative of trends to come in media industries writ large? How do they fit into more general theories of the political economy of the Internet?

5. Can we use these practices as ways to discuss the changing meaning of “labor” in contemporary capitalism?
I apply these questions to three forms of sports media that have faced ineluctable change from digitization and the network capacity of the Internet and the digitally constituted fan relations these media enable. These forms operate at the level of the textual, the numerical, and the visual: blogging, fantasy sports, and live broadcasts of sport. I will drill down into these forms by using case studies of three business enterprises that approach fans as surplus value producers in varying, sometimes contradictory ways. I choose these case studies because not only are these firms industry leaders, they have been at the forefront of the transmutation of fan practices into labor. It is the argument of this dissertation that the businesses in the case studies and the more general fields they belong to approach fan practice as labor in unique yet related ways that make sports media a vanguard of digitally mediated capitalism. The chapters progress from the textual to the numerical to the visual because the labor considered progresses from concrete to increasingly abstract. In other words, blogging can rather easily be understood as labor as it is merely work that was once paid now being done unwaged, fantasy sports follows the logic of work and “management” in practice but the manner in which it produces surplus value for capital is more obscured, and the practice of watching sports itself appears to be passive consumption therefore requiring a more abstract analysis of value production in order to consider it as labor. Proceeding in this way, from concrete to abstract as it were, I hope to come to a general theory of surplus value production in digitally mediated capitalism that can take into account the deep abstracting logic of sports media and capital writ large.

Although each chapter focuses on contemporary businesses and the practices they enable, they are placed in the historical continuum of their own development. For example, when discussing fan’s relationships to the statistical understanding of sports it is important to situate
contemporary practices like fantasy sports in relation to both the inherent statistical nature of sports (once we keep score, statistics are produced) and the development of fan counter narratives like that of baseball fan extraordinaire Bill James and his *Baseball Almanac*. It is only with a historical understanding of these fan relations that we can truly understand the impact that digital interfaces and the Internet have had on practices that build off of those relations.

Chapter 2 investigates the Internet’s effect on the textual relationship to sport. It begins with a history of sports writing in print and its relationship to the political economy of sports to contextualize the way that the Internet has altered not only the nature of the writing that worked so symbiotically with sport throughout its history but has also altered the nature of the labor that produces that writing. The political economy of sports writing is, of course, tied to the political economy of the medium that it inhabits and even a brief history of sports writing reveals that not only were sport and sports writing in a symbiotic relationship, but so, too, were sport with newspapers and magazines. After a consideration of the forms of writing that were prevalent during the print era of sports writing, a brief sketch of the figure of the columnist and their role in shaping the tone and ideological function of sports writing is utilized to show how opinion gained prominence as a form in the face of the increasing importance of radio and television in the sports media landscape. Finally, before moving on to the case study, an example of the vitriol of the sports writing establishment towards the figure of “the blogger” and an example of a particularly successful blogger are given to further contextualization the notion of the mass amateurization of the profession. The case study for this mass amateurization thesis is Bleacher Report, a website that from its inception in 2005 till a year before its Turner Sports buyout in 2012 was a much discussed (and much reviled) “content farm” know more for its use of slide
shows and questionable content (misogynistic language, unverifiable claims, general barroom argumentation styles) than as a journalistic outlet. However, as waves of venture capital rolled in, Bleacher Report made great strides to clean up their reputation and become a viable company worth acquiring. Bleacher Report’s business model, however, only changed slightly. Its method of growth always entailed maintaining the massive output of content regardless of quality. It did this by building and replenishing a massive roster of unpaid “fan” bloggers, many of which were young aspiring writers, pumping out content at an extremely high rate even while it made overtures toward legitimacy by hiring established sportswriters away from major outlets.

Utilizing a close reading of Bleacher Report’s promotional materials, their in-house blog, and the ever growing corpus of critiques from other outlets and former writers, I argue that Bleacher Report’s narrative about itself and its actual practices were an accumulation of value from exuberance in desperation wherein fans with aspirations toward making their passions their living became the digitized raw material of a content production empire. In the last analysis, what Bleacher Report accomplished was the mobilization of what can be called “disruptive labor” in a play on the business theory of “disruption.” (Bower and Christensen 1995; Christensen 2013)

Chapter 3 deals with the numerical relation to sport and its development into the game within the game of fantasy sports, or the development of what I call “statistical fandom.” Sports are inherently quantifiable once a winner and loser are determined. Indeed, part of what determines a game from a sport is this binary opposition, the 0 or the 1 of the loss or the win. This inherently quantified relationship is dependent, however, on the mediums and manners of data collection and a history of statistical fandom shows that these mediums and methods are sites of contention
between competing interests. Fans who value statistical experiences of sport and the capital interests who produce sport often have a contentious relationship. By examining the figure of Bill James, the baseball fan whose *Bill James Baseball Abstracts* and statistical innovations can be seen as the impetus for the rapid development of statistical fandom, this contentious relationship can be seen to be about not only who owns the numerical records of sport but what should be done with them. As James is often given credit for being the inspiration for the game of fantasy sports, understanding his approach to data is important. Once the history of statistical fandom in the pre-fantasy sports era is understood, the development of the game itself appears less like a strange obsession that becomes wildly popular and more like a logical extension of years of work and focus. The early years of fantasy sports, although burgeoning in popularity, could only create a minor industry out of intensive fan labor. Without the computerization and the network capacity of the Internet, the popularity of the game and the industry it would birth would not have been possible. The explosion of the fantasy sports industry made possible by computers and the Internet caused the contentious relationship between the stakeholders of statistical fandom to flair up again and numerous legal battles popped up around the question of who owns the numerical records of sport and who can determine how they are distributed. Ultimately, the courts decided that these records could be released and recombined at will and with the help of a new lobbying industry built up around fantasy sports, the game flourished and became even more popular. This need for state intervention in the production of a new market continues to be a major concern throughout the case studies in this chapter, DraftKings and FanDuel, the two leading purveyors of daily fantasy sports or DFS. While traditional fantasy sports brought together groups of people to play a statistical game that mapped onto an entire season, DFS contests are begun and resolved in the
course of either a day or a week depending on the sport. This new, faster form of fantasy sports, however, pressed at a crucial legal distinction between fantasy sports and gambling that the fantasy sports industry had fought long and hard for, culminating in the carving out of federal approval for the game in the 2006 Unlawful Internet Gambling Enforcement Act (UIGEA). UIGEA determined, albeit rather obliquely, that what differentiated fantasy sports from gambling was that it was a game of skill rather than a game of chance. As DFS was developed after the passage of UIGEA and in some ways was dependent on mobile telecommunications technology that didn’t exist before 2006, entrepreneurs who ran the DFS companies and the players who played the game were able to create a community around DFS before the regulatory apparatus could react. And it may not have reacted if not for DraftKings and FanDuel’s fall of 2015 ad blitz that blanketed the sports broadcasting airwaves during the beginning of that year’s NFL Season. After catapulting itself into the public consciousness with these ubiquitous ads, a wave of negative attention and legal scrutiny put the entire industry into question. By close reading these ads and examining the legal actions taken against DraftKings and FanDuel in New York State, the ideological function of statistical fandom in the age of the Internet becomes clear and the distinction of “skill” and “chance” can be seen as indicative of a financial logic taking over the numerical relationship to sport. Fantasy sports and DFS specifically are a form of the financialization of daily life, a process that seeks to imbue the relationships that people have with numerous aspects of their daily life to the logics of finance capital. (Martin 2002) Although not necessarily clearly understood as labor, the financialization of daily life is a way that capital can produce surplus value from the everyday and DFS is an example of how exploitative this process can be.
Chapter 4 examines the visual relationship to sports. In the history of the moving image, sport has always been present at moments of innovation. From Edison’s kinetoscope, to television broadcasts, to cable television, and Internet streaming, sports has been an early subject and driver of capital investment. The history of sport and the moving image makes a radical break, however, at the advent of television. Broadcast’s liveness marks the moment when the live event of sport is available in at least an approximation of full verisimilitude, thus expanding the space and time of the live event both auditorily and visually. Sport was an early subject for broadcast television not just for its popularity but also for the ease of its production. Early broadcasts were done with single cameras with no actors or writers to pay and no lighting production needed. Like textual accounts of sport, however, sport’s popularity did factor into the choosing of sporting events as early subjects. Broadcast stations that transmitted them were also the makers of television sets. By the post-war era and the television boom, sport had become a staple of television. However, this was not without significant pushback from the owners of sports franchises and the leagues that represented them. Many leagues instituted blackout policies or simply refused to show games in local markets without written policies, using the argument that broadcasting games would cause local fans to not attend games. These policies are in many cases still alive today even though these policies have been continuously challenged on both logical and legal grounds. However, as television became more and more a part of daily life in the United States, leagues began to understand the value of television broadcasts and sought to maximize their market power by negotiating the rights to these broadcasts collectively. This is, of course, a form of cartelization and this move required an exemption from anti-trust law. The eventually granted exemption laid the ground for the solidification of both the National Football League and the future of sports and sports media in the United States. Hence, a history of sport
and the moving image shows that television and sport are intertwined in a similar but even more powerfully symbiotic fashion as sport and the print media were. This relationship was, much like the print media, supported by sale of broadcast time during games to advertisers, creating a nexus between television broadcasters, sports, and capitalism writ large. However, the case study for this chapter shows that live, over the air, ad supported broadcasts could only produce so much value. ESPN, the self-proclaimed “world wide leader in sport,” shows again that sport is at the forefront of all developments of televisual transmission. Their pioneering of the per subscriber fee, or, in an inversion of the traditional broadcast model, the fee that carriers pay to programmers for their content that is then passed on to consumers, drove exponential growth and put them in a position to drive up the cost of live sports rights, subsequently infusing leagues with more and more capital and increasing the overall ubiquity of sports on the screens that proliferate in daily life. By tracing ESPN’s history from its inception in the late 1970s to its eventual dominance of the cable television ecosystem to its too big to fail status in the contemporary moment, the importance of live sports in the political economy of televisual media comes into full relief. However, without significant state intervention into the regulatory environment of both televisual transmission technology (specifically satellites) and cable television pricing and market control, ESPN’s rise would not have been possible. Just as with the statistical relationship to sport, the visual relationship to sport is dependent on the state to assure its stability. As ESPN became a dominant player in sports media, however, the development of the televisual capabilities of the Internet and the digitization of televisual transmission in general began to threaten its market position. Having built its empire off of the per subscriber fee, the destabilization of the cable television market created by internet delivered television represented an existential threat to ESPN’s attempt to subsume the attention of sports fans while making a
hefty profit from fees paid by cable television watchers who never watched ESPN in the first place. ESPN’s current problem with so called “cord cutters” and the changing ground of the television ecosystem can be seen as the limits of what has been called the attention economy. As cable television and ESPN go into crisis, the contradictions inherent to the subsumption of attention under capitalism can be seen.

The concluding chapter to this dissertation attempts to bring together these three case studies and understand what they mean for the political economy of the Internet as a whole. In each chapter, both the political economic and ideological functions of the technologically mediated relationship to sports have been considered as historical processes that underwent rapid and major change when forced to reckon with the Internet. These changes are indicative of what can be called contentification or the way that different Internet enabled activity and data is objectified into an articulated but homogenous substance known as “content” across the digital culture industries. By theorizing the effects of the Internet on the political economy of sports media as contentification, as the objectification and valorization of the knowledge and experience of sports, the hope is to grasp how the textual, numerical, and visual records of sport (and in fact of all cultural production) have not only produced so much value for capital but have done so to the point of a crisis of accumulation. This crisis is a crisis of the accumulation of attention. As more and more media objects, whether they be statistics or images or text or audio or video, are produced and distributed and observations of these objects produce more objects in an almost infinitely recursive chain, the attempts by capital to valorize them become less and less effective. Here the finite live event of sport has its analogue in the finite capacity for human attention. The finiteness of live sport presents a challenge to capital as it can only produce an
equally finite amount of surplus value. One possible strategy to overcome this challenge is the proliferation of live events but this has its own human and spatio-temporal limits. The other approach to the challenge of finiteness is the approach that has been catalogued in this dissertation, the technologically produced proliferation of ways to access the live event itself, records of that event, and methods of recombining and reconfiguring those records. These approaches can be seen as forms of Marx’s famous categories of absolute and relative surplus value and, following from that, examples of Marx’s related categories of formal and real subsumption. Absolute surplus value, the surplus value attained from extension of the workday, is seen in the proliferation of live events themselves, a process that does not elementally change the value producing process itself, as in how Marx describes the formal subsumption of the labor process by capital. Relative surplus value, the extraction of value from the intensification of the work process, is seen in the technological intensification of points of attention via more content and more screens. As the process of reaching the event and records of sport has been elementally changed in this process this qualifies as an example of real subsumption, or the stage of capital’s real control over the work process. (Endnotes 2010; Marx 1990) The general drift of sports media, especially in the age of the Internet, is this transition from formal subsumption, a reliance on the live event and its ad supported model, to the real subsumption of attention, the filtering of all experiences of sport through the platforms and interfaces of capital so as to shape them in capital’s image. Ultimately, this attempt to really subsume attention has its own absolute limits, as human attention is finite, increasing wage stagnation will prevent humans from being able to access that which produces value from attention labor, and machines cannot produce value on their own. (Caffentzis 2013) What comes at the end of this attempt to really subsume attention and what happens to all the speculative capital that has been invested in not just the
firms studied here but sports media and the digital culture industries writ large? The answer to that question is beyond this dissertation but it will be argued that the Internet has driven sports media into a crisis that requires, like all capitalist crises, a reconfiguration of capital.
Chapter 2

Disruptive Labor: Bleacher Report and the Monetization of Mass Amateurization

Introduction:

It is not a controversial assertion that the Internet has drastically affected print media. As we will see later in this chapter, print media circulation and the labor force necessary for that circulation have been in steady decline since the advent of the Internet. Of particular concern for the traditional print media industry was not just the move from paper to screens but the ease with which non-professionals could distribute their own thoughts and ideas to a mass audience once reserved for only the biggest papers and magazines. This development has been described as “mass amateurization” or the manner in which web 2.0 technologies like blogs and media sharing sites have opened the door for amateurs to threaten the relative monopoly that professionals have on knowledge and creative production and distribution. (Jenkins 2008; Shirky 2008) From perspectives outside of these professions, mass amateurization is part and parcel of the liberatory nature of the Internet itself. As “information wants to be free” (Wark 2006) how can the producers of that information be the professional gatekeepers of old who tax you on your way to that information? From within these professions, however, it would make logical sense that mass amateurization would be seen as delegitimizing both a profession’s quality and its economic stability. In addition, what many mass amateurization theses often miss is the tendency for amateurs to not only want to challenge professional authority, but to also desire that authority and the economic gains that stem from these professions.
In this chapter, I will use the case of Bleacher Report (shortened as B/R in this chapter and in their branding), a sports blogging site founded in 2006 and fully launched in 2008, to examine how this mass amateurization phenomenon took hold in the profession of sports writing. B/R entered the market at a ripe moment in the digitization of sports journalism. ESPN and Yahoo were pioneers digitally, but were still primarily national networks, unable to offer the focus on local teams that newspapers provided. Most major newspapers, however, had not been able to embrace a more digital format or reliably expand their national coverage beyond Associated Press and wire reports. Bleacher Report’s gambit was that providing the breadth of an ESPN with the team and region specific coverage of local news was a viable business model that could scale exponentially. Key to succeeding at this goal was the production of a crowdsourced workforce that could pump out content at an unprecedented clip while not being a part of a tightly funded startup’s payroll. Hence, from its origins as a small San Francisco based start-up in 2006 to its estimated $200 million acquisition by Turner Sports in 2012 to its current status as the fifth most popular sports website on the Internet (Alexa 2017), B/R has continued to utilize two interlocking narratives about itself. First, its founders and boosters proclaim it is a “disruptive” force in sports media and media in general because it harnesses the passion of fans to unseat the incumbent, professional class of sports media producers. Second, it has sold itself as a place where aspiring writers and sports media professionals could get a foot in the door, building a resume while getting the exposure the site afforded. Major competitors, independent sports journalists, and former writers have actively challenged both of these narratives. Utilizing a close reading of Bleacher Report’s promotional materials, their in-house blog, and the large corpus of critiques from other outlets and former writers, the analysis of these interlocking narratives is deepened to argue that they ultimately served to justify an accumulation of value.
from exuberance in desperation wherein fans with aspirations toward making their passions their living became the digitized raw material of a content production empire. In the last analysis, what Bleacher Report has accomplished is the mobilization of what can be called “disruptive labor.” However, in order to contextualize B/R in the larger movements of sports writing in the United States and the impact that the Internet has had on this, a brief overview of the history of sports writing in the US and its political economy will be necessary. B/R did not just occur from the uncontrollable effects of the Internet on print media writ large, but is a particular response to some consistent issues that have been a part of sports writing since its early moments.

A Brief History of the Textual Accounts of Sports

Although print media and sport in the United States don’t have quite the intertwined relationship as television and sports do, sport has been an important part of print media since at least the middle part of the 19th century. Print media in the early US republic were generally directed towards the upper tiers of society and sports were a lower class concern for much of the pre-Civil War era. However, by the late 1830s, magazines such as American Farmer, American Turf Register, and Spirit of the Times had begun to focus on sports like horse racing, cricket, hunting, and yachting. Boxing was generally left out as it was associated with working class, saloon style events that these magazines’ upper class readership were uninterested in. By the 1850s, New York Clipper had become the premier sports magazine. (McChesney 1989) New York Clipper did much to establish specifically baseball in the American consciousness, employing the “Father of the Game” Henry Chadwick, an Englishman who after reporting on cricket for the New York Times became the leading advocate for baseball in the United States. Chadwick’s nickname stemmed not only from his success as an early baseball promoter but from his efforts
to rationalize the game by promoting more consistent scorekeeping (he is sometimes credited with inventing the box score) and his involvement with the National League’s rules committee. (Schiff 2008) By the 1880s the National Police Gazette, a predecessor to the men’s magazines of the 20th century, had become a mostly sports periodical with circulations numbers over 100,000 and a publisher, Richard Kyle Fox, who became invested in the popularization of sport via the mail order sporting equipment business that was run in the back pages of the magazine. (McChesney 1989; Reel 2006)

While these magazines had begun to flourish and produce the first notable sportswriters like Chadwick, newspapers took slightly longer to warm to sports as a topic. However, as innovations in printing and the rapid growth in cities created a mass market for newspapers in the late 19th century, sports took hold in the major metropolitan newspapers of the country. Joseph Pulitzer’s New York World established the first ever sports department in 1883, reporting on mostly boxing and horse racing, and William Randolph Hearst, in an attempt to cut into Pulitzer’s circulation, created the first dedicated sports section in his New York Journal in 1895. (Betts 1953) The general uptake of sports in the major newspapers and the explosion of sports as popular entertainment in the early 20th century was a codetermining process that allowed both to become increasingly lucrative businesses. By the 1920s, sports writing had become a legitimate and lucrative wing of an increasingly conglomerating but flourishing industry. Sports, as mass entertainment, were a perfect fit for newspapers as they entered their era of mass production and circulation. The argument that the 1920s were the golden age of sports has been supplemented by the argument that the 1920s were also the golden age of sports writing (Lipsyte 1977; McChesney 1989) as it was in this era that sport writing truly developed its symbiotic
relationship with both the newspapers and the burgeoning sports industry. Newspapers, having
gone through an era of conglomeration and a shift into being more and more ad revenue
dependent, required a large enough readership to both justify the capital investment in
conglomeration and be attractive to potential ad buyers. An emphasis on sports was a quick way
to a larger audience as it shied away from the partisanship that characterized the yellow
journalism era of the late 19th and early 20th century and provided entertainment value that has
always sold more than hard news. By the end of the 1920s, sports writing and reporting had
become a staple of the newspaper industry, having increased to 12%-20% of newspaper content
from .04% in 1880. (McChesney 1989) This era, like the late 19th century influence of Henry
Chadwick, led to the rise of the sports writer as both literary figure (Grantland Rice, Ring
Lardner) and influencer of sport itself. For example, Arch Ward, sports editor at the Chicago
Tribune, helped introduce such staples as the Golden Gloves amateur boxing competition, the
baseball All-Star Game and the college football all-star game.

Even with the subsequent introductions of radio and television into the media landscape from the
1920s into the 1950s, print media’s emphasis on sports remained. In the post-war era, magazines
like The Sporting News and Sports Illustrated became major parts of the magazine industry and
newspapers continued to rely on sports coverage as revenue leaders. But the dominance of the
print media in the sports media landscape had been usurped and was subsequently was forced to
change its general approach. As will be discussed more in chapter 4, the importance of radio and
television to sports media has been its ability to expand the space and time of live sporting events,
offering the experience of the sporting event to those who could not attend the event themselves
for whatever reason. Print media has obviously never been able to match this attribute of radio
and television but had been able to offer a diminished version of this experience by offering after the fact recaps. Although the recap was often handled by wire services, the vivid storytelling of the more famous sports writers of the early 20th century like Grantland Rice was born out of attempts to bring fans closer to games they had no ability to attend. This form remained important to the print media but mainly as record. Generally print media came to rely on two particular types of content to fill pages: records of the events themselves or analysis. The record of the event, whether that be written recap of the game, a box score, photos, or interviews after the game, continued to have a role in the print media into the modern digital era. The Gannet Company’s (a massive multi-media empire of print, radio, outdoor advertising, and television companies) USA Today, a national daily newspaper oft compared to television for its sound bite like stories, was deeply criticized by the newspaper industry upon its arrival in 1982. However, its extremely thorough sports page, a full 25% of the paper, was generally well received by the sports world as it became the first national newspaper to publish box scores and recaps of all the major professional and collegiate sports leagues. Once again, sports were a major factor in the continuing success and changing functions of the print media.

The other content type that came to dominate print media sports coverage after radio and television was analysis or feature length writing. Feature length, mainly a magazine format, drove the careers of numerous sports writing figures like Frank DeFord, George Plimpton, David Halberstam, and W.C. Heinz. These longer, more literary pieces often attracted writers from outside the sports writing genre, most notably Plimpton, Halberstam, and Hunter S. Thompson. However, this format was not as popular nor as ubiquitous as the other analytical format: the column. The figure of the newspaper columnist looms large in the history of the writing about
sports. They wrote general interest columns, generally appearing less than daily, and were mostly mid career writers who had often been junior beat reporters before they came to the columnist position. (McCleneghan 1997) As newspaper conglomeration continued apace from the pre-war era, columnists were often syndicated across papers, an even more prestigious position. The nature of a sports columnist’s writing style and subject matter varies across columnists but their position as pundits is nearly universal. Their job is not to report records or write deeply reported features but to offer authoritative opinions based on their experience and viewpoints. This can, of course, go in a variety of ways, from leftist political leanings (take for example Lester Rodney, famed writer for the CPUSA’s *Daily Worker*) to moralizing, reactionary musings. However, regardless of the political or moral subject matter, the columnist is often attempting to draw attention to their work by generating controversy. (McCleneghan 2006) The use of the op-ed form, one based more in argumentation than in the reporting of fact, is what makes the columnist generally unique in the news media but very typical of common fan practices. It is with the advent of the Internet that this situation became particularly apparent and a business model in and of itself.

The developing world of Internet news publishing has both drastically changed the political economy of traditional news organizations and created a flourishing new media ecosystem (Andrejevic 2013; Berkowitz 2010; Shirky 2011; Tapscott and Williams 2010) The Internet’s effect on print media by the mid 2000s had been well documented (Jenkins 2008; Shirky 2008; Smolkin 2006; Sullivan 2006) and the sports pages of these newspapers were also suffering the same effects. According to data from the Pew Research Center, circulation amongst daily newspapers was in steady decline all throughout the 00s (Barthel 2016). This general downturn
in the business of the industry was matched by a downturn in the labor force over that same period. The Bureau of Labor Statistics reports that newspaper industry employment was down 38.4% over that decade. Much was said about the impact of internet publishing on that decline and the amount of jobs counted in those BLS statistics as “Internet publishing and broadcasting” did increase from its bottom following the after affects of the dot com bubble crash to the end of the decade by 29.4%. However, in terms of the overall numbers for these two categories newspapers still employed nearly 3x as many people by 2010. (Bureau of Labor Statistics 2016) However, the vitriol against Internet based publishing was extremely strong, particularly amongst sports writers.

The quintessential example of this was an argument in 2008 on sports writer and broadcaster Bob Costas’s HBO show Costas Now between noted sports writer and former Philadelphia Inquirer investigative reporter Buzz Bissinger (most famous for his book on Texas high school football Friday Night Lights) and Will Leitch, founder and at the time editor in chief of Deadspin.com, a sports oriented website whose tagline “Sports news without access, favor, or discretion” was the object of much derision on the show. Costas’s framing of the debate belied his own biases by setting up what had become known by then as the “blogosphere” in his opening comments toward Leitch. Costas first praised the Internet for its speed and ease of access to sports content but argued that “the reasonable criticism is of the tone of gratuitous potshots and mean spirited abuse.” Given sport writing’s history in the early 20th century as comingled with sports business so much as to have been charged with promoting it in the public culture, one can understand Costas’s accusation about the blogosphere as particularly damning. Sports writing was used to elevate and promote sports not bring it down to earth like the yellow
journalism of the same era. After Leitch was given a moment to fumble on his words, Bissinger interjected: “I feel very strongly about this. I really think you’re full of shit. Because I think blogs are dedicated to cruelty. They’re dedicated to journalistic dishonesty. They’re dedicated to speed.” The segment went for another nearly 15 minutes, most of which was Bissinger cursing at and browbeating Leitch while Costas sat in approval. (Anon 2008; Sandomir 2008) Although extreme, this was indicative of print sports media’s view of their newer, younger rivals.

The “blog,” a truncation of the term weblog, had by that Bissinger outburst become a regular part of the media world. It’s a slippery term that only really denotes a certain practice of regular updating (or “posting”) and a lack of institutional backing (at first, at least, as we will see) rather than any kind of genre or stylistic form, contrary to Bissinger’s assertion. (boyd 2006) Sports blogging had also by that 2008 interview already been in practice for at least a decade. The most famous sports bloggers, who would go on to become both a model of success and general punching bag for other bloggers, was Bill Simmons. “The Boston Sports Guy”, Simmons went from an unsuccessful and unfulfilling stint at the Boston Herald after getting a master’s degree in print journalism from Boston University to bartending to a sports writing job for Digital City Boston, one of America Online ‘s (AOL) city specific sites accessible only to AOL subscribers, in 1998. Although not fitting to a “blog” definition in most senses of the term, Simmons’s style of long winded and winding prose was of a distinctly digital variety as he had no concern for print inches, only the amount of scrolling a reader was willing to do. As Simmons gained in popularity he was offered a job at ESPN’s new “Page 2,” its attempt to offer both left of center commentary (Hunter S. Thompson was early writer for the site, as was Ralph Wiley, a well respected black sports writer who focused on the politics of race) and adapt to a kind of blog
style of writing that Simmons embodies. Shortening his “Boston Sports Guy” moniker to “The Sports Guy”, Simmons’s unabashed Boston sports fandom and deep love of 80s popular culture set him apart from “journalists” and embodied a great deal of what the sports blog ethos of that era advocated for, namely “sports news, without access, favor, or discretion.” Simmons, *Deadspin*, and others relished in their “outsider” status, setting themselves apart from the professional journalists whose objectivity and authority they saw as granted from and beholden to the leagues themselves. (Cohan 2013) And given the history of sports writing and its general boosterism, the bloggers were not entirely incorrect. This outsider fan position, however, in the form of both *Deadspin*, which had become by the end of the 00s one most heavily trafficked sports sites on the web, and Simmons, who by the end of 00s had written two *New York Times* best sellers, was a bit of misnomer. What it denoted more than anything was that they were not journalists in the traditional sense but a new breed of digitally native writers. It was into this environment, both reviled by traditional print media, but sought after by the major players in sports media industry, that Bleacher Report would enter.

**History of BleacherReport.com and Its In-House Blog**

Founded and launched in beta in 2006 and “formally” launched in 2008 by four “lifelong friends who were not satisfied by local coverage of their favorite sports teams,” B/R began its life as a bare bones publishing platform with the intent of becoming a crowd-sourced content farm. The website’s “About” page (bleacherreport.com/about) and co-Founders Bryan Goldberg, Dave Nemetz, Zander Freund, and Dave Finocchio have stated the original vision of the site variously, but their business model was to attempt to solve a very specific problem: how to cover as many
teams as possible with as little paid staff as possible. Their initial proposition was to produce a platform that was entirely open. In beta they referred to themselves as “the web's first Open Source Sports Network” (Bleacher Report 2007; Google Developers 2007). By this they did not particularly mean what is traditionally understood by the term “open source.” As it commonly applies to software and licensing, “open source” denotes a piece of software that allows for a) access to its source code, b) its free distribution c) works derived from its source code and d) an open license system that fights against proprietary intellectual property amongst other more contested traits (Open Source Initiative 2015). By “Open Source Sports Network,” however, B/R meant to describe a platform that was open to submission by writers with no prior vetting or application process. The labeling of this as “open source” and later as “an open platform” will be discussed in greater detail later in this chapter, but note here that access to source code and open licensing were not a part of B/R’s version of “open source.”

Their “open platform” was framed as a means towards giving fans with undervalued expertise a voice in sports media. It is certainly true that sports media at the time (and to this day) is largely dominated by professionals whose expertise is understood by media companies to be very valuable, but by 2006 Simmons was already working at ESPN.com and would soon become one of the dominant faces of ESPN on multiple platforms. B/R competitor SBNation, also explicitly catering to fans and their opinions, beat B/R to launch by a solid year, as well. However, no one argued as combatively as B/R for the importance of the fan voice. In an early version of their “About” page from late 2006 they write:

At BleacherReport.com, we know that the real experts aren’t the stiffs with the journalism degrees and the empty catch phrases...they’re the fans who’ve been following their teams since age four, painting their faces since age five, and
holding onto their old Topps cards for longer than they care to admit. (Anon 2006)

This oppositional stance combined with a deep reverence for the fan is typical of this era. On a page recruiting writers from the beta version of the site they state:

In a marketplace dominated by corporate outlets, the site aims to provide something different, an alternative to the stifled funk of the mainstream. Too often, great editorial work never sees the light of the day, either because it's too edgy or because its creator doesn't have the right credentials. That's where we come in. (Bleacher Report 2006)

As displayed here, the Open Source Sports Network’s openness was primarily an openness towards submissions and to the fan experience as a valid form of writing. “Openness” also functions as a kind of code word, like many contemporary terms for activity on the Internet, for unpaid labor.

Bolstering the sense of openness and community was integral to B/R’s strategy of encouraging their writers to continue to create content at a continuous clip. To that end, from August of 2007 till 2017, B/R operated an in-house blog that was publically accessible but generally aimed inward at their writers’ community. In the early era of B/R, from the 2006 launch till the June 2010 hiring of Brian Grey and early 2011 hire of former Salon.com editor King Kaufman as Manager of Writer Development, the blog focused on a kind of cheerleading for the identity of the site. Co-founder Zander Freund characterized B/R users who “live on the site” as “Bleacher Creatures” in such a rah-rah post in 2007:

The Bleacher Creatures are the lifeblood of the Bleacher Report network. Without them, the community would collapse at the seams. The Creatures set the tone for the network at large. They spark the debates that make Bleacher Report the
thriving community that it is. They engage the network’s user base with their thoughts and opinions. Overall, they make Bleacher Report the place where internet users seeking fan-driven sports journalism want to be. (Freund 2007)

This kind of incitement to act via praise is typical of the early rhetoric of the blog, as is the rather shaky writing (“collapse at the seams”). It is important to note that the primary blog authors in the pre-Brian Grey and King Kaufman era were the co-Founders themselves Freund, Goldberg, Nemetz, and Finocchio (accounting for 51% of all blog posts between 2007 and 2010, not individuals trained as writers but rather as entrepreneurs. Hence, their emphasis towards building the morale of the platform and its business goals is understandable. Other posts by writers and editors from the site also did the work of morale building and positive PR for the platform by promoting new site features, showcasing particular writers, and writing more general posts meant to pump up the writer base.

Brian Grey’s hire in 2010 and King Kaufman’s in early 2011 marked a very important new stage for B/R, the company and site. Grey’s background at Yahoo and Fox Sports had positioned him well to take Bleacher Report into more of a money making direction (Swisher 2010), important because B/R had gone through two rounds of venture capital funding by mid 2010 reaching a valuation of $8 million, but was looking to raise a significantly larger sum in their series C round (Kafka 2010). Also of particular interest was Grey’s position at Silicon Valley VC firm Polaris Venture Partners. Sports media industry writer Ben Koo wrote of the hire at the time that the “Bleacher Report team is in great hands and their investors must be ecstatic that they have someone very well suited to steer the company to a lucrative exit.” Koo also correctly pointed out at that this hire was nearly coterminous with a drastic change in the editorial policy of the site. (Koo 2010) Although not available on the site any longer and not available through the Wayback
a summary of the policy was posted to the blog by co-Founder and then VP of Content Finocchio in early June before the Grey hiring was announced. In the post Finocchio lays out the basics of the change: writers must now apply to be writers; once they become writers, they must “have a cogent writing style, provide detailed analysis, and display solid sentence structure and command of the English language”; publishing unsubstantiated rumors, not citing sources properly, and crasser forms of aggregation would not be tolerated. (Finocchio 2010) In two interviews given around the time of his hire, Grey made special care to mention the new “editorial layer” that B/R had installed. (DVorkin 2011; Swisher 2010) After all of these changes and Grey’s hire, B/R raised $10.5 million in series C funding on December 20th, 2011. (Crunchbase 2015). Also, as Grey mentions in his interview with Lewis DVorkin on the Forbes Magazine website, 7000 contributors were going through that “editorial layer,” 1% of which were paid (DVorkin 2011). Even more reason for venture capital to fund the site.

With that new money in hand B/R made another major move by hiring Kaufman. Kaufman’s introductory post on the site itself, “Bleacher Report: I Don’t Give a Damn About Our Bad Reputation”, laid out his bonafides, his goals for the site, and even poked fun at public perception of Bleacher Report. After sharing a story about how a writer friend had asked him if there was a way he could make his browser refuse to go to B/R, he pledged to spend some time just writing like all the other writers at B/R and ended on this note: “If you do know me, you

The Wayback Machine is an archive of cached website pages operated by the Internet Archive that has been in existence since 1996. Pages are crawled by the Wayback Machine and snapshots are taken at semi-regular intervals depending on the traffic on each individual page. It is important to note that these cached pages will not necessarily show a website exactly how it appeared when a snapshot was taken. Some sites block web crawling and some elements of the page may be reliant dynamic Javascript that requires a live server that an archived page has been disconnected from.
might guess that I'm excited to be working on one of the frontiers of what a year or two ago we were calling the future of journalism, at a startup, a disruptive business that's trying to rethink how things are done. I’m hoping this is the start of great conversation” (Kaufman 2011a). He continued that conversation on the company blog. Kaufman posted a statement of purpose for the blog: “One of the main jobs of the Bleacher Report Blog is going to be to serve as a kind of classroom. I’m hoping it’ll be the good kind. You won’t have to sit still or be quiet and you can bring candy” (Kaufman 2011b). This would inaugurate the blog as Kaufman’s podium from which to lecture as writing instructor. In the sample of the blog, Kaufman’s posts total 641 of the 1074 in the sample, 59.79% of all posts, even though his posts come nearly 4 years after the inception of the blog. Kaufman’s posts followed a couple of different templates. His most used form was the “Quote of the Day” posts (14.95% of total posts), followed by “How It’s Done” (14.71 %) that were more functional and pedagogical in nature, and “Shoutouts” (8.66%) which highlighted other writers on the site That the most popular category of all posts on the blog was “Writing Tips,” only appearing after Kaufman started in 2011 (32.68% ) is generally indicative beyond any specific examples. Kaufman represented the public face of B/R’s “editorial layer” and he meant to make that face a professorial, mentoring one.

By the time of their buyout by Turner Sports on August 3rd, 2012 (Kafka 2012), B/R had taken major steps to revamp their reputation. These steps were rewarded with a final funding round in August of 2011 totaling $22 million (making a total of $40.5 million in venture capital raised) (Crunchbase 2015), a year before the eventual buyout of somewhere between $175 and $200 million. (Bercovici 2012) Clearly, venture capital and Turner were assured by these steps that any content quality questions that might scare off potential advertisers had been dealt with
thoroughly. However, B/R’s self characterization and VC’s confidence did not go unchallenged. In fact, that challenge has a history almost as long as B/R itself.

The Changing Critiques of B/R

It is undeniable that until throughout much of its pre-and post-buyout existence, B/R was one of the most reviled sites in the sports blogosphere. Frequent targets of other blogs like the Gawker Media sports site *Deadspin*, USA Today/MLB Advanced Media property Sports on Earth (run by *Deadspin* Founder Will Leitch) and sports media focused blog Awful Announcing (now part of the larger Bloguin network run by Awful Announcing founder Ben Koo), B/R was cited for its schlocky content, its over use of the slideshow and list formats or “listicles,” the search engine optimization (SEO) gaming often associated with the over use of slideshows and listicles, the rampant misogyny of such slideshows like “The 20 Most Boobtastic Athletes of All Time” (McD 2010), and the argumentative yet poorly argued style of many of its writers. This style, like a good deal of other “bad” internet based opinion writing has been generally referred to in the past few years as the “hot take” (Reeve 2015). Much of that criticism, according to even King Kaufman and B/R’s co-founders was justified. Although it is unclear just how much the criticism pushed B/R to change and how much was the expressed concern of investors, in the start-up world, however, public relations are of paramount importance when seeking to be acquired or IPO (Crain 2014). B/R’s shifting standards over the years have often followed on the heels of continual negative coverage by other new media sports outlets.
Deadspin, whose content model includes a heavy dose of sport media criticism, has written the most consistently negative coverage of B/R. As of mid-2017 there were 39 articles tagged “Bleacher Report” on Deadspin.com, nearly all of them harsh critiques. Deadspin is known for its profane editorial stance, but some of its more brutal headlines were reserved for B/R. For instance: “Bleacher Report Editors Demand Bleacher Report Writers Be Less Retarded” from the Fall of 2010, after the housekeeping of the new editorial standards and Brian Grey’s hire, details an anonymous former B/R writer’s tip about the changing editorial policy. At the time Deadspin editor-in-chief A.J. Daulerio’s lede was indicative of the general tone:

If you are one of those unlucky sports fans who has to slog through Bleacher Report's Google-raping SEO "stories" when you do a general news search for a topic about an athlete, team, or topseventeensidelineportersthechileancoalminersshouldhavesexwith, this is great news. (Daulerio 2010)

Daulerio hits several of the major critiques in the same sentence (SEO gaming, sexism, and listicles) and does it with a sort of gleeful disgust. After B/R’s final venture funding round won them $22 million in late 2011 future Deadspin editor-in-chief Tommy Craggs posted the gleefully dismissive “The 27 Hottest Employees of the Venture Capital Firm That’s Investing $22 Million in Bleacher Report: a Slideshow.” Deadspin, as a competitor, had a very clear reason for attacking B/R along content quality lines, arguing implicitly that their readers are discerning enough to never sully their days with the pablum being spewed from B/R’s writers. The concern was less for the future of sports journalism, since Deadspin as a competitor could hold itself up as a more shining example, and more for the state of readers and investors who would consider such a thing to be worthwhile. The mockery comes from a place of assumed
superiority, specifically that of content and intellect. So in the face of B/R’s meteoric rise and continued monetary success, *Deadspin* chose to mock the people bankrolling that success.

Interestingly, the publicly available record of B/R critiques is relatively blank until 2010. Before that most mentions of B/R in the media press are merely accounts of press releases (Koo 2009) or hiring moves (Swisher 2010). Other than *Deadspin*’s coverage, the public critique of B/R doesn’t really take off until after the buyout. First amongst this wave was a long, heavily reported piece that made the cover of San Francisco Weekly (Eskenazi 2012). Generally characterized as a “hit piece” by several aggregating outlets who picked up the story, the early October publishing date makes it clear that most of the reporting for the story happened before the buyout and therefore acts as a kind of snapshot of the general displeasure with which a majority of the media world viewed B/R during its rise to prominence. However, the piece spends ample time where others had not yet, on the gamified and unpaid nature of writing for B/R. Eskenazi writes that “some [writers] earn a monthly stipend many told us was in the ballpark of $600” and further quotes a former editor that “estimates that, even with continued editorial hiring, at least 90 percent of Bleacher Report's gargantuan writing roster remains unpaid.” Or course, contrast that with Brian Grey’s much bleaker figure quoted at nearly the same time as 1% of 7,000. Eskenazi’s primary concern, however, is less the low pay or total lack thereof, but the lack of autonomy for even writers who have worked their way up the chain. He quotes a Featured Columnist who laments about learning that “his new job largely consisted of providing copy for his editors' pre-written headlines” and points out that even the higher profile writers hired from outside the system (the first of which, baseball writer Rob Neyer, arrived shortly after King Kaufman’s hire) were subject to the same issues (Eskenazi 2012). This
concern is still in the vein of the *Deadspin* critique, however. It does start to approach the issue as a problem of labor, but still from a position of assumed superiority of content, a pearl clutching at the lack of “real” writing going on.

Starting in 2013, the year after the buyout, criticism of B/R shifted further towards arguments about shady labor practices, written without the condescension of the earlier critiques. In early 2013 Nick Bond, writing for the left of center, more literary style sports outlet The Classical (founded in part by the writer Nathaniel Friedman, who wrote under the nom de plume Bethlehem Shoals and would briefly be one of B/R’s major outside hires) wrote about his experience enrolling in Bleacher Report University, a tutorial program that was the entry point for writers going through B/R’s new “editorial layer.” The piece breaks down the “assignments” that each new writer has to complete in order to be allowed to start working at B/R and the writer highlights specifically the sections of it related to the planning of headlines, keyword focusing, and the imperative to have a “take.” Bond’s detailed and immersive (essentially ethnographic) approach allows for a sense of empathy with the person who actually creates the content that *Deadspin* and others so gleefully denounced (Bond 2013).

Secondly, The Bleacher Report Report, an anonymously written blog on Gawker Media’s Kinja platform (which experimented itself with the kind of gamified ranking system that B/R used) carried a mission statement to “exist solely as an answer B/R’s very powerful PR Machine.” The B/R Report is written by “Bleach” who does not disclose his relationship to B/R but structures the blog as a place to fact check and critique their PR. Bleach also highlights critical pieces from other outlets about B/R. Much of the blog was devoted to this kind of secondary reporting and
analysis although it is clear that Bleach has contacts within B/R. Again, like Bond’s piece for The Classical, the focus is on the interior of the institution with several posts devoted to internally faced documents like 2013’s e-book *Playbook: The Basics of Writing for Bleacher Report* by the Bleacher Report Quality Control Team and BR’s confidentiality clause (Bleach 2013b, 2013a). Bleach reports with a generally woeful air of disgusted resignation at B/R milestones and achievements. Bleach’s angle is a critique of B/R’s business model, one whose disruptive model had filtered up into the mainstream media, making millions of dollars for its founders while it continued paying a miniscule fraction of its content producers. This anger at their labor practices stems not just from a lack of payment (payment for writing on the Internet in general is in a deeply degraded state) but because Bleacher Report positioned itself as a gateway to the world of sports journalism. Bleach argues that this pedagogical rhetoric to be just, in fact, rhetoric; a university brick and mortar façade over a factory of aspiring laborers.

**Implications of B/R For a Theory of Disruptive Labor**

In an article published by *Deadspin* entitled “The 200 Ways Bleacher Report Screwed Me Over,” former Bleacher Report Featured Columnist Tom Schreier explained how the Featured Columnists, the top tier in the gamified ranking system for B/R writers, are themselves tiered:

> You were a FCI, FCII, FCIII, or FCIV. On a page titled "Writer Rankings," Bleacher Report wrote that the Featured Columnist I got "Featured placement on B/R Team pages; Eligibility for media interviews and credentials for major events." At FCII, writers got "a free B/R Featured Columnist hooded sweatshirt." Level III Featured Columnists got "an interview for a B/R staff job," and FCIVs received "access to a custom-built, author-specific publishing template for all articles." (Schreier 2014)
In this system based almost entirely on page views (not coincidentally the most common metric of value that websites use to sell ad space), any mention of payment is missing entirely. Schreier detailed the manner in which B/R’s business model systematically worked to short writers on pay while keeping the carrot of possible full time employment in play until the very end. Comments on the article were predictably harsh, but a comment from a fellow former BR writer posting as “mets31” mirrored Schreier’s experience (this comment was also highlighted on the B/R Report). Of note was his very clear distillation of the young writer’s lack of expectation for payment and the importance of attention: “I was getting big read counts. I had several articles top the 50,000 mark and a couple over 100,000. I could go tell my friends, "Yeah 100,000 people just read what I wrote today." That was almost, in my eyes, as good as being paid, and it would assuredly lead to me getting a job” (Mets31 2014).

It’s no wonder that companies like B/R either publicly report their writer’s analytics or give them to their writers so as to fully cement the notion that the recognition that a writer receives is in fact “something.” The quantitative nature of this “something” allows for the hope that after accumulating enough of this “something” a tipping point will be reached that leads to paying, full time employment. The speculative nature of this labor is akin to what Gina Neff has referred to as “venture labor” in her ethnography of late 90s Silicon Alley (Neff 2012), only in the intervening 10 years of start-up culture, the stakes have changed. Crowdsourced labor, or what Trebor Scholz has evocatively referred to as crowd-milking (Scholz 2014), combined with the declining prospects for entry level positions in the fields best suited to crowdsourcing (journalism, publishing in general, media production in general), has created a massive surplus army of venture laborers. Bleacher Report built a structure to scoop up this labor. They
benefitted from a saturated labor market and squeezed it like a sponge. Young people raised on lowered expectations, both from the medium and the economic reality were utilized in order to run a “lean” start-up, meaning one with as little fixed capital and labor costs as possible (Ries 2011). B/R’s internally and externally facing discourse normalized the radical extraction of value from workers by selling the work experience as both valuable as education and as recognition of having been published, a kind of credential resulting from that education. By utilizing a pedagogical tone in its in house blog and ranking its writers via a page view metric, they hammered home the connection of between gaining experience and gaining attention. B/R was also able to apply the model of experience and attention to sports fandom by capitalizing on the devaluation of writing about objects of fandom and by selling itself as a platform where fans had a voice that could be noticed, where both the fan experience and fan attention could be seen as valuable (if not monetized for fans themselves). Schreier noted that he wrote for B/R initially since it positioned itself as locally focused in a way that other large sites wouldn’t or couldn’t. This is fitting as B/R’s original stated content model aimed towards depth of localized coverage. The reward for the writer here is recognition, not just for them but also for the relevance of their team or sport or university or city or region. In addition, B/R leveraged a sense of “community” in these fandoms. This community rhetoric folded into the recognition system, allowing writers to build prominence within their own niches. All of that activity was in some way valuable to all those who participated in it, just only monetarily valuable to a scant few. Recognition does not necessarily and in fact rarely equals payment for writers at B/R.

This is a publisher scraping off the top of an excess of desiring subjects whose desire is for recognition, a recognition that works as a credit system (an IOU) for a eventual payment, a desire
that makes their labor particularly easy to exploit. That the Featured Columnist’s in-house recognition does not culminate in payment is illustrative of this situation. There, in a seeming paradox, the taint of having written for Bleacher Report (of having helped build the brand) decreases your ability to be paid for writing at Bleacher Report. The Bleacher Report stigma must be overcome by both the writers and management. B/R’s management strategically moved towards outside hires and a rebranding made possible by the buyout and entrance into the upper echelons of sports media industry. However, daily uniques and page views could not maintain their steady growth without a consistent influx of new content. Hence, some kind of work force had to be retained that could cover local teams and produce the slideshow page view juggernauts. The community centered Newsletter that beat writers like Schreier manually assembled was replaced by Teamstream, a mobile app that aggregates AP, ESPN and major newspaper beat writer content. The Writer’s Program and B/R blog continued to exist, as did their rhetoric of uplift and resume building without an increase in paid positions.

B/R representatives have made numerous attempts to address the issues of payment and in-house promotion. The founders generally argue that B/R’s model has been adjusted numerous times, an agile business model quick to adapt to changing conditions. Both Bryan Goldberg and Dave Finocchio have made references to the “old Bleacher Report” of 2008-2009. (Klimk 2014; The Street 2013) Goldberg theorized one such adjustment: “At launch, it was an open platform. Today, it functions much more as a true media company, while still opening the door to some talented contributors.” (Goldberg 2013a) This of course is an echo of the old tagline “The Open Source Sports Network” from the early days of the site, but following the clearer logic of “open platform” that Goldberg lays out here is worthwhile. By using the terminology of “open” and
“platform,” Goldberg means to describe a website and content management system that is owned privately and funded by venture capital with the aim to monetize the content (platform) but takes submission from unpaid (and possibly unvetted) content producers (open). Goldberg’s use of “open” is akin to what Evgeny Morozov has identified as the Trojan horse of a neoliberal regime on the Internet, and what in the 90s Langdon Winner and more recently David Golumbia have identified under the term “cyberlibertarianism” (Golumbia 2013; Morozov 2014; Winner 1997). By claiming “openness” as a value, the radical accumulation of wealth from the activity of unpaid labor appears as the fostering of opportunity, the “open platform” is the space from which a career can be launched and to curtail that openness would be akin to curtailing freedom.

Tiziana Terranova’s influential “free labor” argument also applies here (Terranova 2000). As she defines it, “free labor” is “voluntarily given and unwaged, enjoyed and exploited” (33) and “a fundamental moment in the creation of value in digital communities” (36). Both exploited and given, one can also look to an earlier era’s distinction between free labor and slave labor, free labor being that which had freedom of movement and opportunity but only “free” when it was set into motion by being circulated as waged labor. In that sense, Terranova’s “free labor” is that labor which has the ability to be circulated and the role of the “open platform” is to ensure the free circulation of that free and creative labor. By maintaining an emphasis on “openness” B/R linked itself to the cyberlibertarian, open source labor regime that Morozov, Winner, Golumbia, and Terranova all cite as being integral to the understanding of the ideology of capital in the digital era. In more practical terms, however, beginning as an “open platform” was necessary because the funds were not available to pay writers, a point that Goldberg makes in a column ironically titled “Writers Should Be Paid” (Goldberg 2013b). The money that they had was spent
on things like the platform itself and putting together an ad sales team. That is, on an infrastructure that allowed for the “openness” of the platform.

When he was hired, King Kaufman said he wanted to work for a “disruptive business.” And he did. The “open” platform stage of BR is the first stage of the disruptive technology model, one constantly evolving and slowing only when a stable, paid workforce emerges (Christensen 2013). In this first, disruptive phase, Bleacher Report built a “product” that allowed for the publication of “content” without the need for the official employment of the “content producer.” This element of the content management system (CMS), the product, is a very common issue in contemporary media organizations as they adjust to the dominant employment policy of precarious freelance contracts. The New York Times, legacy print company of all legacy print companies, has said as much about its new CMS Scoop that it rolled out in mid 2014 (Vnenchak 2014). Bleacher Report’s platform, like a lot CMSs with strong role control and user friendly interfaces that restrict access to only the most basic of functions, can swiftly collect a mass of content that can be pushed out continuously, again and again, without having to have every author in office or have any direct contact with the editorial staff. However, one of the primary indicators of a “disruptive technology” in the literature (Bower and Christensen 1995; McQuivey and Bernoff 2013) is the lower quality of the technology itself. It offers fewer features or services, and is, at least at first, of far less quality than the product it seeks to disrupt. The technology could often be described as aiming down market, at a group of consumers who do not offer enough profitability to warrant attention and R&D outlays from the larger incumbent firms in the industry. The lower-quality, down market character that disruption theory’s

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3 Kaufman was laid off, along with 50 other employees, in February of 2017. B/R stated it was going to pivot to more video and social media. (Casselberry 2017)
founding father Clayton Christensen outlines as the necessary marker of the disruptive technology in this instance is less the platform itself, but the labor and content it affords. This is what could be called “disruptive labor” or the marshaling of lower quality workers who can produce a lower quality product that will appeal to a nascent audience afforded by a digital platform. This is the monetization of mass amateurization built upon a formula: enough people who produce out of “hobby” or “passionate interest” or just a desire for recognition would be enticed by an “open platform” that the open platform itself can be the site of monetization. Once that platform is shown to be possibly profitable, venture capital continues to invest in order to recruit and train better writers and launch a public relations campaign. This is indicative of the second phase of disruption in the literature, a period of swift increase in quality of the product due to the influx of capital from sales and investment. In the disruptive labor case, the new influx of capital is not spent on wages, but on the infrastructure (the training apparatus and PR). The labor is disruptive here because it does more with less as it gets more and more popular. It stays “lean.” And what is disrupted is not sports journalism or sports media industry, but sports journalists and media workers themselves.

In this way, it is my argument that this model should be distinguished from broader concepts of “digital labor” (Fuchs 2014a; Scholz 2012) and Terranova’s “free labor” which are influenced at least in part by the Autonomist Marxist conception of the “social factory” (Gill and Pratt 2008) and have been mobilized as a way to understand how the “social” of “social media” has been made to produce value. The labor of disruptive labor is certainly digitally enabled and is itself a form of the monetization of everyday life, just as the sports media industry in general represents the colonization of non-work time by capital as outlined in the introduction to this dissertation.
However, what distinguishes the disruptive labor of B/R writers is the promise of recognition and the possibility of the making of passionate interest into a viable career. The pedagogical nature of the B/R writer’s blog and its gamified ranking system serves to pull potential writers into the system and keep them producing with a future in mind. One of disruption theory’s most important theorems is the s-curve of development (Bower and Christensen 1995) in which the quality of the technology itself is at first poor, slowly increases, and then rapidly increases (ideally surpassing the quality of the technology or service it seeks to disrupt). In the case of B/R’s disruptive labor, the pedagogical approach of the B/R Writer’s blog and the “editorial layer” put in place were the vehicles through which the initial incremental growth up the developmental s-curve was made. With the carrot of possible employment in front of them, unpaid content producers produced enough content properly formatted to pull in the page views necessary for the second phase of the disruptive labor of B/R: the series of outside hires that B/R made starting in 2011 with the hiring of Rob Neyer, a former ESPN baseball columnist. With the venture capital they had secured by the end of their series C round in August of 2011 ($40.5 million) and the money from the Turner buyout in 2012 ($175-200 million), B/R now had the money to available to hire more and more outside, established professional writers and to develop the product that would automate content aggregation from outside the disruptive labor pool. This allowed them to reach the exponential growth in quality that is indicative of the second phase of the s-curve. The disruptive laborers themselves, however, are, like the technologies produced in the earlier phases of the disruptive technology s-curve, cast aside and forgotten. Instead of “free labor” the disruptive laborers of B/R are more akin to the manner in which Christian Fuchs has theorized “digital labor” (Fuchs 2014a). Fuchs argues that digital labor is more than the social factory made digital via social media but should be thought as a way
to include all of the labor that produces the conditions for that social factory to exist. Disruptive labor does not exist solely as “voluntarily given and unwaged, enjoyed and exploited” but is part of a chain of labor and its circulation that capital call into existence and then discards when it is unneeded.
Chapter 3

Making It Pay to be a Fan: Statistical Fandom, Daily Fantasy Sports, and the Financialization of Everyday Life

In this chapter, I’ll argue that what I call “statistical fandom,” the fan activity that abstracts the material accomplishment of sports into numbers, has undergone a trajectory from amateur obsession into a quasi-professional field. After some further explication of what I mean by “statistical fandom” I’ll trace the outline of its history in the 20th century as it went from the stuff of baseball cards and box scores to the obsession of an outsider class of mathematically inclined intellectuals to a multi-billion dollar industry fueled by a game within a game. That game, fantasy sports, has become by far the most popular form of statistical fandom. Its most recent incarnation, however, has burst onto the scene and quickly become a lightning rod for criticism. Much the same way that Bleacher Report represented a new iteration of an increasingly popular form of digitally enabled sport fandom, daily fantasy sports (DFS) is a new form of fantasy sports that compresses the timeframe of the game, normally mapped onto the majority of the season, and ties it to single days or weeks (depending on the sport). DFS comes under a lot of the same criticisms that content farms like Bleacher Report did. In theory, they offer excitement and opportunity for the participant. In reality, they are often exploitive and operate under terms of service that by nature value the interests of the platform over that of the user. Like Bleacher Report relied on speed and volume to grab precious eyeballs, DFS relies on the speed and volume of its model to leverage statistical understanding of sport into profit. Just as Bleacher Report and the discursive fan labor it made profitable could be understood through the business ideology of disruption, DFS and the statistical fan labor it calls forth can be understood through
the lens of what many scholars have identified as financialization. Financialization, or the inclusion of financial logics into the fabric of social life, is not as much a clearly stated theory of business as disruption. Rather, it is a description of the manner in which an activity or time or knowledge that was once thought to be unproductive or unprofitable is reframed and reformatted as always already potentially valuable. Just as disruption tries to predict what will undo a stable market and then invests in order to profit from that prediction, financialization supposes the measurability of all things and attempts to take those measures and profit from them.

My case studies for this chapter are the daily fantasy sports companies DraftKings and their main competitor and oft-rumored merger partner FanDuel. There are numerous other DFS companies in operation and many of the major season long platforms have dabbled in DFS, but DraftKings and FanDuel are the acknowledged leaders, both in market share and in general public consciousness. This is primarily due to their status both as first to market (which greatly affected the amount of capital they could raise) and their ad blitz at the beginning of the 2015 NFL season. This ad blitz, in particular its ubiquity during nearly every NFL broadcast during the first four weeks of the season, would garner unwanted attention for the companies from many state regulatory and legal bodies across the country. This ubiquity paired with a coterminous scandal involving employees from the competing companies engaging in play on each others platforms with what seemed like insider knowledge combined to bring the full scrutiny of state governments down on DFS. Through a visual discourse analysis of those ads and an examination of the legal reaction to DFS, I’ll show that the DFS providers and their government foils’ argument around whether DFS constitutes a game of skill or a game of chance reveals a deeper relationship between fantasy sports and statistical fandom writ large’s financialized logic.
Following from that debate, I’ll investigate what the stakes for both the state and the players themselves are in this distinction between what Roger Caillois referred to as *agon* and *alea*. The importance of this debate is not just one of regulation but of the very ideological underpinnings of fantasy sports itself. Ultimately, I’ll argue that statistical fandom and the advent of DFS both represent the financialization of everyday life.

**A Brief History of Statistical Fandom**

It is important to situate the statistical relationship to sport in the general push towards quantification that thinkers like Michel Foucault and Ian Hacking have identified as the one of the defining characteristics of modernity. (Foucault 1995; Foucault et al. 2009; Hacking 1990) Either by measuring individual bodies and their performances against a statistical norm or using that statistical norm to manage populations at a distance, statistical thinking is essential to both the individualizing and the generalizing tendencies of modernity’s drive towards the objectification of human activity. As Hacking points out, however, the marked increase in quantification in the 19th century had a practical, material basis: an “avalanche of printed numbers. […] Before the Napoleonic era most official counting had been kept privy to administrators. After it, a vast amount was printed and published.” (Hacking 1990:2) The physical keeping of records and the sharing of those records with the public combined with the growing bureaucratic apparatuses of burgeoning new nation states that crafted new categories with which to classify and observe their populations to fully push the ideas of probability and social norms into the mainstream of Western thought by the early 20th century. It is in this context of the prediction of outcomes and the management of populations that statistical sport fandom is born.
Statistical fandom, like all statistical thinking, is a process of abstracting quantities from qualities for the purposes of evaluation. Sports lends itself particularly well to this as the qualitative aspects of sports are so easily quantified. Results occur after finite actions, all of which can, ostensibly, be recorded and quantified. In simpler terms, once we start keeping score, statistical fandom is born. The box score and then later the baseball card are the earliest forms of publicly available statistics, printed numbers as Hacking would say, functioning as analog databases with which to access sporting events either unseen or remembered. The Elias Bureau, the venerable institution of sports statistics founded in 1913 by Al and Water Elias, sold baseball scorecards with player and team statistics directly to fans and then to the *New York Telegram* before becoming the official statisticians for most professional baseball leagues by 1919. By mid-century, Elias was the official record keeper for all the major sports leagues in the United States. (International Jewish Sports Hall of Fame n.d.; Jennings 1996; Kaufman 2009) But by the 1970s, Elias’s stranglehold on how the data of sport was circulated would be challenged from an unlikely outsider source.

As Elias grew its monopoly on statistical sports knowledge, the nature of its monopoly became apparent to a man named Bill James. Freshly out of the Army and working as a night shift security guard in Lawrence, Kansas, James published his first article in *Baseball Digest*, “Winning Margins: A New Way to Rate Baseball Excellence” in 1975 and began what would be one of the most influential careers in sports. (Gray 2006:25-26) However, even in his early days, before he began publishing the popular *Bill James Baseball Abstract* series, before he began consulting on salary arbitration hearings, before he became the mascot of a statistical fandom
movement known as Sabermetrics, James found himself at odds with Elias. When James began researching work that would be come the original 1977 *Bill James Baseball Abstract* (the first of 12), he reached out to Elias: “At first I couldn’t get an answer from them, and when I did, it was along the lines of ‘We don’t deal with people like you.’” (Gray 2006:30) James trudged on, getting his statistics from directly calling baseball teams and self-calculating from newspaper box scores. As he wrote in an early *Abstract* “the answers that I arrive at - and thus the methods I have chosen – are never wholly satisfactory, almost never wholly disappointing. The most consistent problems that I have arise from the limitations on my information sources. All I have is the boxscores.” James’s primary complaint with Elias, however, was economic: “The problem with the Elias Bureau is that the Elias Bureau never turns loose of a statistic unless they get a dollar for it.” (quoted in Lewis 2011:82)

Data collection is a time consuming business and James’s only recourse was to leverage the community of amateur scholars of baseball statistics that had coalesced around himself and the Society for Baseball Research (SABR est. 1971) to help further the quest for what James referred to as “objective knowledge about baseball.” (McGrath 2003) As a network of baseball scholars, they set out to solve the problems of data that Elias refused to elucidate. As James’s profile began to get larger (national coverage of the *Abstracts* had started by 1981) his feud with Elias even elicited an on the record response from Elias CEO Seymour Siwoff who told the St. Petersburg Independent’s Glenn Miller “Bill James needs an education” and that the painstaking detail that James believed Elias had the power to record was actually beyond their scope. (Miller 1984:5-C) Siwoff was responding to the James helmed Project Scoresheet, a grassroots volunteer network created to collect more advanced baseball statistics. The project’s participants would go
to games or watch them on television and keep score with custom score sheets. James saw the enforced scarcity of statistics as an illogical attempt to limit objective knowledge and envisioned that upon Project Scoresheet’s birth “all previous measure of performance in baseball [would] immediately become obsolete, and an entire universe of research options [would] open up in front of us” further arguing that “there is no need for the next generation to be as ignorant as we are.” (Quoted in Miller 1984:5-C) For James, this was a benevolent process that furthered baseball knowledge for fans, players, teams, broadcasters, or anyone who had an interest in the optimization of the game. To be sure, Elias’s relationship with MLB (and other leagues) and the leagues’ relationships with amateur and competing professional statistical operations was less than friendly, but Siwoff was correct in that James’s major issue with both MLB and Elias was less about a lack of sharing and more about their method. Project Scoresheet wasn’t so much liberating records from a money hungry partnership as it was creating a whole new approach to the understanding of the game. That method, however plagued by the disorganization that was sure to stem from a pre-Internet volunteer network of amateur statisticians, was able to collect data systematically and innovate enough that many of its network volunteers went on to help propel Sports Team Analysis and Tracking Systems (STATS) into a major competitor for Elias’s market share and a partner with leagues themselves. As will become clear later, STATS, aside from its association with the godfather of statistical fandom and one of the major inspirations for fantasy sports, has a major role in the development of fantasy sports because of a legal precedent it set in the mid 1990s. However, for now it is important to recognize that James, Project Scoresheet, and STATS’s shared goals were to challenge what they saw as a paucity of data, data that could deepen the understanding of sports in general. This effort to increase the amount and types of statistical categories in order to proliferate the number of possible analyses of sport is
made much easier once the computer is introduced to that effort, and is made infinitely easier when the internet is introduced. As that proliferation is made available at a mass level, it influences other statistical forms of fandom, one in particular that became a major industry: fantasy sports.

The use of statistics and probabilities to create epiphenomenal sports based games is not unique to fantasy sports nor does it require computerization. Baseball board games, known collectively as “tabletop baseball games” in the industry, date back to the 19th century. However, the first game to really simulate game play was released in 1930 as “National Pastime.” National Pastime began the tradition of using actual statistics from real players to weight the probabilities of certain game outcomes as determined ultimately by a dice throw. In the post war era, these games gained more popularity with more famous names like All-Star Baseball and Strat-o-matic Baseball appearing in the 50s and 60s and selling well. (Baseball Games 2017) James himself played Ball Park (Gray 2006:30), a version that took the dimensions of stadiums into account. All these games have a common basic structure where past season(s) statistics are used as probabilities from which an element of chance like a wheel spin or a dice roll determines an outcome, generally a single game and all its events. However, an early Bill James acolyte and journalist would in 1980 establish what was the first form of what would later become know as fantasy sports.

The Development of Fantasy Sports

4 According to tabletopbaseball.org Sports Illustrated Pennant Race (debuted in 1981, discontinued in 1984) was the only tabletop game that dealt with simulating game outcomes in relatively few dice rolls and was geared more towards simulating entire seasons. (Tabletop Baseball n.d.)
The history of fantasy sports is generally traced to a game called “The Baseball Seminar” run by sociologist William Gamson where participants would choose a roster of players who “scored points based on their final standing in batting average, RBIs (runs batted in), wins, and ERA (earned run average). When Gamson taught at the University of Michigan, one of the seminar’s participants, a professor named Bob Sklar, taught a young student named Daniel Okrent who would go on to found what would become a multi-billion dollar industry. (Schwarz 2005:175)

The Rotisserie Baseball League, so named in homage to La Rotisserie Francais a defunct eatery in Manhattan where the league was first formed over lunch, held its first draft in the spring of 1980. Okrent, the self-appointed commissioner of the league, had been one of the 75 buyers of the original 1977 Bill James Baseball Abstract, purchasing it after seeing an ad in the classified sections of The Sporting News. (Lewis 2011:81) He had also written what would have been the first national feature on James in 1979 until Sports Illustrated killed the story because its statistical narrative was rejected by the fact checkers because, according to Okrent, James’s analysis was counter to too much received baseball wisdom. (Lewis 2011:86) The structure of the first league resembles most modern day season long fantasy leagues regardless of sport: a group of people come together and “draft” a group of available players (mostly all players in a certain league in a certain sport), those players would fill out a league member’s team, and then those teams would compete against each other by dint of the aggregate statistics of each team. In some formats, there is a win/loss record from weekly matchups, in some others year long statistical aggregates of a team is the measure of success. The first league was the latter. In the book that the Rotisserie League members would write that would begin the popularization of the game, they laid out an “Official Constitution.” 20 pages long, it had rules for roster composition, trade regulations, dues fees, imaginary player salaries, and most importantly required statistical
categories. One of those statistics was Okrent's own creation: WH/IP or Walks and Hits over Innings Pitched, a different methodology for assessing pitcher effectiveness than the standard earned run average (ERA) that is effectively runs allowed per nine innings pitched. (Waggoner 1990) WH/IP continues to be used to this day.

*Rotisserie League Baseball: The Greatest Game For Baseball Fans Since Baseball*, published in 1984, makes it clear that roster management and statistical intrigue were both the most exciting and challenging aspects of their newly created game. Okrent writes in his introduction to the book: “It wasn’t enough to watch baseball, or to study it in the boxscore and leaders lists: we all wished, in some way, to possess it, to control it.” (Waggoner 1990:4) This desire to possess the game is roughly translated into two related major themes throughout the book, subsequent interviews and profiles of the league, and the ESPN produced documentary *Silly Little Game.* First, the league was intended to mirror the structure of the business of baseball, ie. by turning each member into what in most sports is the position of the general manager. Second, in order to perform this general manager position all those involved had to be obsessed, willing to withdraw from all social niceties and obligations in order to maximize their baseball knowledge. To wit, from the book: “As a Rotisserie League owner, you begin each day with the morning paper, much like a normal person. But while more stable readers causally scan the news and go about their business, you turn straight to the sports page to confront the facts that will make or break your day.” (Waggoner 1990:107) This professional roleplaying combined with obsessive fan attachment found a natural common ground with statistics. The management of bodies at a distance, even at the level of simulation, is made possible by the statistic and the abstraction from
the original events whose records make up the statistic. Like all management since Taylorism, the Rotisserie League broke up the labor of baseball into individual, measureable chunks

That provenance of fantasy sports seems so clear cut and has such a specific origin story owes less to a provable “first to market” record and more to the fact that Okrent and his group were very well connected journalists and editors. By early 1981, Okrent had written about the league for *Inside Sports* (run by John Walsh, who would go on to be the architect of ESPN’s flagship show *Sportscenter*) and *the New York Times* (Ferretti 1980) and the NBC’s *Today Show* had already reported on the league in its inaugural season. (Jansen and Kurland 2010) With the publication of *Rotisserie League Baseball* in 1984, they had solidified their place in the canon. However, they were never ever able to solidify their place in the market. By the late 80s, the game had taken off nationwide and cease and desist letters from the original group in defense of the name “Rotisserie League Baseball” were met with the simple solution of calling the new game something different: fantasy baseball. (Jansen and Kurland 2010) As publications like *USA Today* and the *Sporting News* put out daily and weekly compilations of box scores and statistics for all of MLB, there was nothing stopping other enterprising individuals from offering advice and analysis for the obsessive fans of fantasy baseball. By the late 1980s, fantasy had expanded into football and numerous writers and publishers had gotten into the game, even 1-900 lines had opened up shop to sell advice for $2 a minute. (Schwarz 2005:176)

As the late 80s and early 90s were coterminous with a major boom in personal computing and the mid 90s would bring the Word Wide Web, fantasy’s relationship to computing and the Internet would become very important. The major labors of the early fantasy league participants,
compiling their own stats, served as a significant barrier to entry for most potential players. The level of time commitment was just too much for average fans. Fantasy sports would remain a relatively niche interest even if that niche was by the early 90s over a million players strong. Internet access would change this forever. The access to easily sortable stats and self-published advice made the game even easier to play and the Internet’s ability to bring people together from all over the world made it easier to find other participants. As Internet access increased exponentially beginning in the late 90s, so too did fantasy’s uptake resulting in a fantasy sports player base of nearly 15 million by the beginning of the new millennium. (Fantasy Sports Trade Association n.d.)

This explosion brought about changes and challenges to the burgeoning industry. The first legal challenge was centered around the statistics themselves. In *NBA v. Motorola*, (United States Court of Appeal for the Second Circuit 1997) the NBA sued Motorola and STATS, Inc for making its Sportstrax paging device which offered real times stats and game results straight to mobile phones. The crux of the league’s argument was that statistics represented the league’s intellectual property, making Motorola and STATS, Inc’s use of them a violation of copyright. Had the NBA won the case, this would have spelled doom for the fantasy sports industry writ large. If leagues owned the rights to the stats and could sell them at prices that they determined, they could effectively push out any competitors. The NBA lost the case, however, in the federal appellate courts in 1997 as the court found that only the broadcast of the games were eligible for copyright and that the statistics were, like written reports from the games themselves, merely
facts of the game. A ruling that found that statistics were the intellectual property of leagues would have crippled the burgeoning fantasy sports industry. This narrow miss of a death blow by established sport capital woke the fantasy sports industry up.

Partly in response to *NBA v. Motorola* and partly due to concerns about state legislative efforts to associate fantasy sports with gambling, the Fantasy Sports Trade Association was founded in 1998 at the Fantasy Insights Convention during a meeting amongst major stakeholders in the industry ([Fantasy Sports Trade Association n.d.](https://www.fanta.com)). The FSTA functions as an industry lobby, “the voice for the companies that provides services, news, information, and competition to support the growing fantasy sports industry.” ([Fantasy Sports Trade Association 2017](https://www.fanta.com)) As lobbies generally do, this voice generally speaks to lawmakers and seeks to secure beneficial legislation. The FSTA’s most prominent win in this regard was the provisions for the legalization of fantasy sports at the federal level written into the Unlawful Internet Gambling Enforcement Act (or UIGEA) of 2006. ([31 U.S.C. §5362 2006](https://www.gpo.gov/fdsys/pkg/BILLS-110publ355/pdf/BILLS-110publ355.pdf))

UIGEA’s primary focus was on the regulation of online gambling, specifically online poker which was booming during the early 00s. However, as fantasy sports had been subject to legislative attempts to lump it in with more traditional sports gambling, the FSTA saw the act as a moment in which to put into federal legislation a clear distinction between fantasy sports and

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5 Litigation of this nature would continue, however, as *C.B.C Distribution and Marketing, Inc v. Major League Baseball Advanced Media* (November 2007) shows. The case, in which MLBAM, a subsidiary of MLB, was given an exclusive contract by MLB to carry statistics and subsequently sent cease and desist letters to all companies providing statistics to fantasy baseball providers. The court found in favor of CBC, arguing that like in *NBA v. Motorola* the statistics were publicly available information, and extended *NBA v. Motorola* to call this a first amendment issue. The FSTA filed an amicus brief in the case on behalf of CBC. ([United States Court of Appeals for the Eighth Circuit 2007](https://www.cadcirc.uscourts.gov/opinionspdf/07-2507.pdf))
sports gambling. To that end, they were able lobby for what has been known as “carve out” (Fantasy Sports Trade Association n.d.) language that exempted fantasy sports from regulation and allowed providers and participants to argue against new state regulation. Under section 101.6.ix, the act exempts from regulation “participation in any fantasy or simulation sports game” as long “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.” (31 U.S.C. §5362) This crucial distinction between the game of chance (gambling) and the game of skill (fantasy sports) and the intellectual property cases decided in the FTSA and the industry’s favor by 2007 combined with a rapidly expanding mobile market to ensure a relatively stable industry that overcame a mid-2000s decline (estimated 15.2 million players in 2003 and 12.6 million by 2005) to achieve explosive growth in the latter part of the decade (18 million in 2006 and 32 million in 2010). (Fantasy Sports Trade Association n.d.) By the end of the 00s, fantasy sports had become a part of the public consciousness. Every major sports media outlet devoted at least some print space or TV time to fantasy related content. The major digital sports media players like ESPN, Yahoo, CBS Sports, and the leagues themselves had set up fantasy platforms that managed millions of leagues for football, baseball, basketball, hockey, and even sports like racing and golf. Secondary advice sites were popping up and a scripted cable television show centered a group of friends and their fantasy football league (fittingly if not blandly called The League) ran for seven seasons. Fantasy sports were now part of mainstream American sporting and popular culture.

Daily Fantasy Sports Enters the Market
After growing its participant base by 30% in the first 5 years of the 2010s, 2015 saw a dramatic increase in fantasy player activity with a one year 37% increase from 2014 (41.5 million players) to 2015 (56.8 million players). (Fantasy Sports Trade Association n.d.) This increase can be directly attributed to the development of a new type of fantasy sports game, daily fantasy sports or DFS, and the aggressive entry into the market DFS companies executed in the early fall of 2015. This aggressive entry, characterized by the ubiquitous ad blitz that leading DFS companies DraftKings and Fanduel unleashed on the sports watching world during the first four weeks of the 2015 NFL season, drew enormous attention to an already fast growing sector of fantasy sports industry. The differences between traditional, season long fantasy and DFS are many and go beyond the self-explanatory difference in temporality wherein a contest cycle in DFS is either a single day of games (baseball, basketball, hockey) or a week’s worth of games (football). Season long and DFS also differ in the amount and kinds of game types. In season long, there is some variation in how the scoring is set and how rosters are assembled but generally there is a certain quorum of teams in a league (generally 8) and contests are won either as a season long measure of aggregate stats or a season long wins and losses tally of weekly head to head matchups. In DFS, however, there are multiple different kinds of games to be had. Both DraftKings and Fanduel offer head to head matchups that users are either assigned at random or choose themselves (allowing for users who know each other to matchup), slightly larger pools of players like in season long, or large contests of more than 100 and often over 1000 or 10,000 participant entries. The latter game type exists for season long as well, but are generally large sponsored events, not embedded in the basic gameplay itself. Although both season long and DFS are played for money, the handling of money is a major difference between season long providers and DFS providers. Major season long platforms like those run by Yahoo! and ESPN
do not generally offer dues paying services. DFS providers, however, generally allow for money processing in app, as the money for contest entry is the basis of the profit model for DFS. This aspect of the DFS business model will be discussed more at length below, but all of the above differences combined to give early entrants into the DFS market Draftkings and Fanduel significant enough points of distinction to convince venture capital to invest over $1.1 billion in the two companies even in an already crowded fantasy sports marketplace. Before we look at the controversies that erupted around DFS in 2015 and 2016, a brief summation of Fanduel and Draftkings history up to those points will be useful as a way to further situate DFS in the broader history of the political economy of fantasy sports. By examining why Draftkings and Fanduel came to dominate the DFS industry, specifically who contributed that $1.1 billion and why, we can get a clearer picture of how the relatively stable and lucrative fantasy sports industry became such a flashpoint of controversy and legislative interest.

The founders of FanDuel were initially not interested in DFS. Their original business was called Hubdub, an “online parlor for playful betting on the news.” Betting on non-sports outcomes is a relatively common occurrence in the United Kingdom (Fanduel’s founders are Scottish), as odds on presidential elections in the US in the large UK betting houses are regularly reported in the US press. However, Hubdub used “Hubdub US dollars,” a fake currency that had no real world value and merely served a social ranking function for the users of the site. However, as Hubdub had no discernible business model, CEO Nigel Eccles pivoted towards fantasy sports, specifically mobile fantasy sport as the market wasn’t “particularly mobile friendly as at time [2008-9] when the smartphone and accompanying app ecosystems were starting to snowball.” (Sawers 2016) After a time running both Hubdub and Fanduel as a joint business, Eccles and his
team dropped Hubdub altogether, shuttering the site in 2010. Although FanDuel was not the first
daily fantasy sports site, the focus on mobile gave them an early advantage. Virtually unknown
at this time in the US, doing the vast majority of its business in the UK, its Series A (2009) and B
(2011) venture capital rounds where funded by entirely UK firms. This is not necessarily
strange as online gambling is not illegal in the UK. It was not until late 2012/early 2013 and its
Series C round ($11 million) that it found investors state side. Leading this round was Comcast
Ventures, the venture capital wing of the Comcast Corporation, the world’s largest media
corporation and cable service and internet provider, owner of national cable television stations
including the NBC Sports Network, the Comcast Sportsnet regional cable sports network (now
called the NBC Regional Sports Networks), broadcast giant NBC, the NHL’s Philadelphia Flyers,
and until 2011 the NBA’s 76ers. Comcast’s deep presence in sports media capital made their
interest in this new form of fantasy sports unsurprising, but it would mark just the first of many
investments that firms with ties to sport and sport media capital would make. As discussed above,
however, this relationship to fantasy sports is a marked reversal from the previous stance. Instead
of trying to sue FanDuel after they had built a successful business (in CBC v. MLBAM, the
plaintiff had waited till a third contract with the defendant had expired to sue under copyright
grounds), Comcast engaged with DFS at a very early point. Instead of watching profits leak out
from under its grasp, they chose to invest and guarantee a share of those potential profits going
forward. In the fall of 2014 Series D round of $70 million Comcast once again invested along
with NBC Sports Ventures (a subsidiary of Comcast). That same fall, the NBA announced a four
year deal with Fanduel that would make the company the exclusive daily fantasy partner of the

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6 All venture capital round information for both Fanduel and Draftkings comes from each companies Crunchbase profile. Crunchbase.com is database of startups and the venture capital firms who invest in them run by technology industry publisher Techcrunch, which is owned by AOL. (Crunchbase 2017a, 2017b)
league and would give the NBA an undisclosed equity stake in Fanuel. (Lombardo 2014) This further legitimating move from the sports media industry would lead to the July 2015 Series E round of $275 million that would fuel Fanuel’s side of the NFL ad blitz. In that round, Comcast and NBC Sports increased their investments and Time Warner Investments joined the fray. Another investor of note in this round were Tusk Ventures, a firm that “strategically invests in high-growth technology startups operating in highly-regulated industries” (Cruncbase 2017), revealing an understanding already that DFS was dangerously close to gambling, a highly-regulated industry. By the 2015 ad blitz, FanDuel had raised $361.2 million in capital and signed a strategic partnership with the NBA and multiyear sponsorship deals with 15 NFL and 13 NBA teams. These were both announced on the heels of the $275 million dollar round. Eccles noted in an interview with USA Today that any trepidation that leagues had about DFS’s relationship to gambling (an early admission of problems to come) had been quickly and surprisingly eased: “It’s amazing. It’s surprised us how quickly everything moved.” (Atkins 2015; Schrontenboer 2015) The impact of the sports media industry’s investment into Fanuel was surely a factor here and coming into the 2015 NFL season, FanDuel was riding high even with the murky nature of its legal outlook looming.

Draftkings entered into the DFS market three years after Fanuel in 2012. By then there were already at least 15 different daily fantasy providers, so Draftkings was entering at time where venture capital was open to the idea of DFS being profitable. In an early interview cofounder Matthew Kalish argued, “Estimates are that there are something like 30 million fantasy sports players, and only about 50,000 of them have tried daily so far. That’s a huge opportunity.” (Kirsner 2012) Starting out as only baseball but moving quickly onto other sports by 2013, by
early 2014 they had raised $76.4 million and had established themselves in the market, reporting 50,000 daily users. At this point, it trailed only FanDuel in daily users. Attempting to catch up, it later that year acquired competitor DraftStreet reportedly increasing its user base by 50%.

(Business Wire 2014) As FanDuel had in 2014 with the NBA, DraftKings also signed an exclusive deal with the NHL and followed that deal up with a similar 2015 deal with MLB.

(Schrontenboer 2015) Also like FanDuel, their summer 2015 venture capital round was a blockbuster full of sports media industry companies and their venture capital wings. Leading that round was Fox Sports who invested $150 million for an 11 percent stake. Fox Sports was half of the $300 million round while other sport media capital investors were MLB Ventures (MLB’s venture capital arm), the NHL, New England Patriot owner Bob Kraft’s The Kraft Group, Major League Soccer (the top tier North American soccer league), and Melo7 Tech Partners LLC, a small venture firm founded by then New York Knicks small forward Carmelo Anthony. An owner, three leagues, a big 4 broadcaster and an athlete. A very complete round. However, reports earlier that July had linked DraftKings and Disney (parent company of ESPN) in a $250 million dollar investment deal. In exchange for this deal DraftKings would commit to $500 million worth of advertising. (Ramachandran and Sharma 2015) ESPN backed out of their end of the deal at the last minute, however, and DraftKings only committed to a $250 million ad spend starting in 2016 (this deal also fell through before it was set to start in 2016, as well, with ESPN agreeing to DraftKings request likely put forth because of the increased scrutiny discussed below). (Wagner 2015b) In less than month Fox Sports had stepped in. (Wagner 2015a) Neither ESPN nor DraftKings have not commented on why the initial deal fell through but it is likely that Disney was spooked by the relative uncertainty of DFS’s legal footing or it was skeptical of the business model in general.
Regardless, DraftKings now had a venture war chest as large as FanDuel’s and both would enter into the last days of the summer of 2015 with official stamps from some of the largest players in sports, ready to spend $200 million dollars combined on television ads alone to grow their business. (Kang 2016) Generating as much attention as possible was not just the goal but also an urgent necessity. DraftKings and FanDuel’s business models are dependent on massive scale. The need for attention at scale is of course not unique to DFS as this is a requirement across the sports media landscape. However, DraftKings and FanDuel’s reliance on the large payout contests where an unlimited number of participants pay an entry fee (somewhere generally from $5-$25) to compete against each other for large cash prizes (total payouts per contest often around $1 million) makes it particularly dependent on scale. If the payouts are guaranteed, then for $20 entry fee $1 million cash payout contest, at least 50,000 entries are needed to break even. If scale is achieved, however, the real profit for DFS lies in the spread between what’s paid into the house and what’s paid out. DFS providers do pull in transactions fees for head to head games, but the spread between total entry fee and total payouts is the bread and butter of the industry. And these flashy payouts increased at very rapid rates. For example, in 2013 DraftKings paid out $50 million in prizes (Dyal 2014) and another $200 million in 2014. (Lawler 2014) Given that only 50,000-75,000 players were on the platform in 2014, that spread was more than likely deeply in the negative. Hence, the need to drum up attention and bring in new players was a survival necessity. Also, it is clear that the cash infusions that venture capital provided were necessary for both Fanduel and Draftkings to stay afloat. With the 2015 NFL season approaching and fantasy football having far outstripped fantasy baseball as the most popular
Hence, coinciding with the start of the 2015 NFL season, both Draftkings and Fanduel blanketed CBS, FOX, NBC, and ESPN during game broadcast times with a seemingly endless barrage of 30 and 60 second spots. These ads were intended to produce a new market, one that required both playing fast and loose with verifiable claims and taking a comradely, reassuring tone. Draftkings and Fanduel required both in order to entice new users into its higher stakes game but also to reassure this potential new market that its resemblance to gambling and all the social ills that brings were but mere appearances. All the while, representing as diverse as possible a potential user base (diversity is good business when it comes to scale) with the need to deeply reinforce gender roles and the masculine presentation of heavily invested sports fandom. This ad blitz pushed statistical fandom not as statistical per se but as superior knowledge, good natured, homosocial domination, and the ecstatic release of victory.

When numbers appear there are always dollar signs in front of them. A string of ads from Fanduel took a talking head approach, where actual Fanduel players give short 2-5 second testimonials with their names and winnings as captions. (Fig 1) The number amounts vary from the $100s to over $2 million. All the winners are men who speak in similar platitudes about “If you think it can’t be you, it can be you” and “every single week I can make money on Fanduel.” The idea here is a soft “anyone can do it” sell that looks to entice users onto the platform. In
“Beat Your Buddies” (Anon 2015d) Arman K. (Winnings: $22,298) says “Even a novice can come in and spend $1 and win $10,000 or $20,000” directly followed by Chris P. (Winnings: $762.388) who says, with a head nod for emphasis “Little bit of time, and a little bit knowledge.”

Figure 1: “Beat Your Buddies”

This emphasis on how little knowledge it takes to make a small investment grow big is tied to a related theme in these spots (most of which use the same interviewees like Arman K. and Chris P.). the excitement of the playing the game. Once again, Armand K. says “It’s like the best adrenaline rush ever.” The excitement and ease are the reasons you should download the free app and starting winning immediately. FanDuel also, much more than DraftKings, emphasizes the ease of the money transfer. Quick payouts are a common theme, pointing out that money

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7 All FanDuel and DraftKings ads were viewed and archived from iSpot.tv, a website that catalogues television commercials. Information on directors and ad agencies was not available for FanDuel, but agencies for the DraftKings was.
wagered on Sunday morning will be deposited to your account on Monday morning. Again, speed and ease.

These testimonials are almost entirely men, and when women do appear they appear as the partners of men (Fig 2). One ad featuring Scott H. (Anon 2015c), who appears in other ads and has won over $2 million on the app, and his wife Danielle H., Danielle introduces Scott as the ad opens and praises him for his winnings. “He turned $35 into over $2 million on FanDuel. Good job, baby.”

Figure 2: “Scott and Danielle”

The praise reassures, followed up in the next shot by Danielle sharing that “You don’t have to make a huge investment to get started and I think that’s what gave me comfort. And it worked out great.” Explicitly addressing the risk of the game and the idea that wives will be worried about money going out the door on sports betting, Danielle and Scott give us a feel
good story of domestic happiness built off the husband’s instant success. This ad ends, like many of this blitz, with the idea that by not playing you’re missing out.

FanDuel’s informative campaign was supplemented by a more narrative style documentary ad called “Gameday in America.” (Anon n.d.) Opening with shots of highways, cows at pasture, and a public park with the caption “Filmed over one Sunday in the United States” the ad plays as a day in the life of average American football fans. There is no mention of money here and the emphasis is on collectivity, “We join a league, we pick a team, and we compete like never before.” Shots of groups (Fig 3) are the norm. This is in direct contrast to the talking head mode of the other ads.

![Figure 3: “Gameday in America”](image)

The benevolence of this particular ad came with a promo code (a fixture of all the ads from both companies) that promises the refund of the entry fee if you don’t win. The collective, feel good
tone of this ad makes us forget about the money, even if we need to be reminded by small print that “This is not a gambling website.”

DraftKings ran two distinctly different campaigns in the same manner that FanDuel did. The more informative, cash heavy ads are shots of large cash game tournaments, mostly in hotels or bars and focused on several individuals were are to understand by their at first nervous motions and then exuberant joy as contestants in the large cash games. In the aptly named “Giant Check,” (Anon 2015b) nervous contestants are interspersed with jubilant ones (Fig 4)

Figure 4: “Giant Check”

while a voiceover says “At DraftKings we play for glory, for bragging rights, for fantasy football supremacy. But we also play for this: the giant check. The giant check is no myth, no mirage no fools gold, it’s our trophy. And many hoist it playing our one week games.” The voice over then lists out the names of actual winners, one assumes the same individuals featured in the ad. This nod to the “glory, bragging rights, and supremacy” pits the money ($10 million total prizes a
week) against the more social prizes, foreground the reality of the winners and their joy and their giant checks. Whereas the Fanduel informative ads worked as a kind of soothing, smoothing agent to ease entry, this ad functioned in the same register as a movie trailer, hyping the potential players up for the excitement and profit ahead.

The other more information based Draftkings ads were decidedly more stylized, although also focused on the large payout winners. Structured around a spokesman type actor, dressed in a “DraftKings” blazer, vest and tie, seated in a large wingback chair in a marbled hall (Fig. 5), the

![Image]

Figure 5: “Milking a Two-Legged Goat

“Hall of Fame” series has the actor speak in a smirking style about the legendary winnings of Draftkings players. In “Milking a Two-Legged Goat” (Butler, Shine, Stern & Partners 2014) our spokesperson assures that “Fantasy football isn’t over, in fact the winnings are still legendary. At least they are if you still play at DraftKings.com.” No mention of actual numbers just “giant cash
prizes every week” and “a shot to win millions.” The over the top preppiness of the spokesperson evokes a confident, fraternity type of atmosphere that implores the viewer to be as crassly erudite as the spokesman and play DFS at Draftkings and start making money. To miss out would be stupid.

The “Hall of Fame” series functioned as a kind of halfway point between the more informative, large contest focused games and the most narrativized of the 2015 ads, a series of four 30 second spots (three voiced by actor Ed Norton) that focus not on money but the sociality of DFS. In “Only One Bull,” (Figure 6) (Butler, Shine, Stern & Partners 2015b) four friends (3 white, 1 black) are watching a game at local sports bar while the background music plays flamenco guitar.

![Figure 6: “Only One Bull”](image)

“Food, football, and fantasy. What it’s all about. This is a Draftkings league among friends, but there’s room for only one bull in this ring.” While the others celebrate one man remains stoic
while another (the man on the far right) quickly becomes unsure. Then these two make eye contact. The stoic man shows the uncertain man his phone and it is clear that he has beaten the unsure man. He nods and then takes the french fries away from the unsure man, squeezing ketchup on them and maintaining eye contact. This kind of friendly homosocial domination and the dogged focus of the stoic man is typical of this run of ads.

In “The Sleeper” (Figure 7) our protagonist walks through a suburban backyard party, focused on only his phone.

![Figure 7: “The Sleeper”](image)

Ignoring everyone at the party walking through a volleyball game, stopping only to consult his “Uncle Vito” (a seemingly bizarre nod to Italian mobster bookie knowledge), the narrative concept of the ad is that the “Sleeper”, the player no one else chooses but you and that becomes the difference that makes you win. The ad closes with our protagonist in a respectful moment of
eye contact with a man holding his phone in one hand and his infant baby strapped to him, each man trying to find their sleeper pick. Wordless camaraderie in the quest to win. In both ads, the men are silent, focused not on their surroundings but with the game itself.

In “Welcome to the Big Time,” (Butler, Shine, Stern & Partners 2015a) a more group narrative is used. Like “The Sleeper” the focus is on the addition of DFS into the everyday. This time however we see not individual scenes but scenes of everyday life in aggregate. The fanatical focus remains however, a man is sprayed in the crotch by a child with a water gun at backyard child’s party while he looks at his phone, a man at a wedding pauses behind the wedding party to check his phone, a woman checks her phone while jogging, and so on. In the first half of the ad, everyone is tense, anticipating. In the second part of the ad, the release comes as people celebrate their wins, still oblivious to their surrounds. The man at the child’s party raises his hands, still ignoring the child spraying him. A man on the bus celebrates and spills his coffee while screaming with delight (Figure 8). The voiceover says, “There’s a game within the game that requires a different set of skills. There’s no offseason. This is a play as much as you want whenever you want fantasy league. And we don’t just play, we are players. We train. And we win.” The tension in the beginning is the “training,” the preparation. Playing as much as we
want whenever we want is the entrance into the quotidian that the ad shows. The rhetoric of the “game within the game that requires a different set of skills” functions to equate the DFS participant as on par with the athlete, “‘We don’t just play, we are players.’” This mirroring of the athlete lends both a bit of tongue-in-cheek hyperbole that is indicative of the Draftkings ads in general but also hints at the idea that DFS is a kind of profession that like much work in the 21st century is mediated by one’s digital devices and never ends.

Picking up on that tendency is “Week One,” (Butler, Shine, Stern & Partners 2015c) which opens with man getting out of bed, walking down the hall and slapping framed footballs over the door entry (a reference to athletes walking out of the locker room on the way to the field),
opening his laptop and focusing on picking his team (Figure 9).

Figure 9: “Week One”

The narrator implores us to “showcase your skill and exploit the matchup . . . . You like football, you like winning. How about you like them both at the same time and make this week the week you get it done.” The second half of ad is the same man on his coach between his friends celebrating and taunting one of his friends who it is implied he has beaten head to head. Again, the money is only mentioned not as “money” but as “winning” and the structure of the ad has the same preparation-success model that nearly everyone of the ads catalogued here have used. In this one, however, the preparation feels like work. Get up, slap your alarm, open your computer and fill out the spreadsheet. As in “Welcome to the Big Time,” our protagonist isn’t just playing, he’s a player. But instead of being a player, he’s almost like a worker making “this week the week [he] gets it done.” The get it done rhetoric has the same tone as home improvement ads that are fixtures during sporting events, as well, a hallmark of weekend hegemonic masculinity. But
our protagonist is working not on home improvement, in manual labor, but in intellectual labor. Halfway through the ad, he spins in his desk chair and dramatically clicks a button on his computer, leaning back to take in the action afterwards. This move is a stereotypical dramatic “working at a computer” gesture that evokes in this particular instance the execution of a stock market trade.

All these ads taken together drive home several points that are crucial to both the cultural understanding of fantasy sports and the trouble that DFS specifically would get itself into subsequently. The interplay between the two is instructive, however, as to how DFS understood its potential problems with regulators. On the first point, the comradely domination amongst obsessive men who become so focused on leveraging their sports knowledge, generally coded as either frivolous or useless, against one another is essentially the normative understanding of fantasy sports. The tongue-in-cheek, narrative of the Draftkings ads play this up to absurd levels, where absent the mention of the actual money that DFS players stood to gain the prevailing tenor is similar to comedic movies whose male leads are lovable idiots who succeed despite themselves. This aspect, combined with the emphasis on collectivity, even if there is agonism with that collective, makes for a benevolent experience where fans can congregate and decide whose sports knowledge reigns supreme. This is an old trope as Daniel Okrent and the Rotisserie League players talk about wasted time and pointlessness. That this kind of activity mirrors the work done by executives in sports is eschewed, however, for an identification with the players themselves: “We don’t just play, we are players. We train and we win.” This equating of statistical fandom with the athleticism itself serves to legitimize DFS as competition, even if it is done with a bit of self-conscious hyperbole. The drive of the narrative ads towards friendly
agonism and collective experience combined with their general lack of emphasis on money is supplemented by the more informative ads that show actual DFS players and their winnings. By assuring the potential new DFS participant that with “a little bit of time” and “a little bit knowledge” they, too, can be winners, the ads enjoin us to a collective experience of competition that is low stakes and fun. The risks involved are low, recall Danielle H’s reassurances, and the rewards are so high that we would be foolish to not participate. What is better than the nerves of preparation and anticipation and their release in victory? The testimonial structure of the FanDuel ads give an extra credibility to these claims and by giving the viewer a wide range of possible winnings totals (David won $579, Bradley won $349, Arman won $22,298, Chris P. won $762,388) we see that there are multiple different levels of success in DFS. The bottom line for all of these ads is, as FanDuel’s “Win Big” ad tells us, “it can really pay to be a fan.”

However, even before this ad blitz, this assertion was already coming into question. In fact, just as news was breaking that ESPN had pulled out from its funding pledge with DraftKings in late July of 2015, prominent poker player Ed Miller and senior adviser to McKinsey & Company’s division on Sports and Gaming Daniel Singer published an op-ed in the *Sports Business Daily* that pointed out what would be understood by both the general public and state regulators as the fatal flaw in DFS’s business model. (Miller and Singer 2015) Titled “For Daily Fantasy Sports Operators, The Curse of Too Much Skill” and later expanded into a report on McKinsey’s website, the article laid out the damning evidence that many DFS players had no doubt already understood. Crucial to the legality of DFS under UIGEA is the distinction of fantasy sports as a game of skill (“all winning outcomes reflect the relative knowledge and skill of the participants”) and not of chance. However, according to Miller and Singer, the essential problem for DFS is
“the risk that the skill element of daily fantasy is so high that DFS pros will wipe out recreational players in short order.” Or in other words, there is a need for too much skill. They argue that for “real-money contests” to catch on and remain sustainable a balance must be struck between skill and chance and this balance is absent from DFS. To wit, they offer some rather damning statistics: by the writing of the op-ed 91% of player profits from MLB contests had been won by 1.3% of players. Of that 1.3%, described in gambling parlance in the article as “the sharks,” the top 11 players (those who had won the most cash) paid an average $2 million in entry fees” ($22 million total or 17% of the $129.4 million in total entry fees in that MLB sample) and won an average $135,000, a 7% return on investment. The second tier of sharks spent an average of $9,100 (23% of entry fees) and won on average of $2,400, a 27% ROI. That the sharks were only 1.3% of players and accounted for 40% of entry fees necessarily reveals another secret of DFS. Although it is arguably humanly possible for 11 players to enter in 17% of total entries manually if a sample size was relatively small, in this case, the sample was not. Given that average entry fees are relatively low (large guaranteed prize pools, the lifeblood of the industry, have entry fees of around $25) and only half a baseball season is represented in the sample (roughly 3 months of game days) then the amount of entries to reach an average per person total of $2 million at $25 per entry is 80,000. Hence, some automation must be involved, meaning that these sharks are using algorithms to enter in varying entries. In fact, automation is even more important as the nature of lineup arrangement in multiple entry cash pools requires subtle variations. The difference between winning and losing in large pool games is the unknown, obscure player, “the sleeper.”

Algorithms must be written to find the players that maximize the value of the team

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8 Rosters are constructed with players who are assigned values in dollars by the platform and each roster has a consistent but arbitrary value, say $20,000. Each roster has to fill out a certain set of players or positions (like season long fantasy always has) and the assorted players cannot
and then code must be written to send entries as batches to the DFS platform. Batching these entries requires third party API\(^9\) access, which is by no means a web based industry standard. API access is only allowed when it is profitable to the platform. So, FanDuel and DraftKings are making a conscious decision to allow the sharks to write scripts that interact with the app, that give them a clear knowledge and volume advantage over the smaller players or fish, because the big sharks are putting the most money into the pot.

The fish, on the other hand, are getting taken. According to Miller and Singer they are getting negative ROIs. In their typology, the big fish represent 5% of total players and contributed 36% of entry fees in the sample at average of $3,600 in and a -31% ROI. The small fish represent 80% of total players and only 5% of total entry fees with an average spend of only $49 dollars and $25 loss, a -51% ROI but not all that much money in the long run. Hence the bottom 85% of total players are getting taken by the sharks at an alarming rate. In Miller and Singer’s analysis the issue here is with the big fish, “They had a staggering loss rate . . . and accounted for 75% of losses. […] The entire DFS economy depends on these few players.” When phrased in this way, of losses and ROIs and big fish and minnows and sharks, DFS starts to look like one of two things. First, it could be construed as a financial market. Miller and Singer suggest adjusting the go over that $20,000 limit. In the dominant daily fantasy game structure, there is no draft of available players amongst the pooled participants where each participant has sole possession of a player. In large pools, that’s not possible because there aren’t enough players to go around. It’s also entirely possible that a participant would have entered the same team as you, especially if several sharks are entering in lineups in automated batches. There is even some debate as to whether or not sharks might do this as a strategy to maximize winnings across head to head and large pool contests. (jshilling09 2016)

\(^9\) Application programming interfaces or APIs are software protocols that allow one application, like a DFS app, to speak to another, in the case here an algorithm built to feed entries into another program.
pricing system to fix some of the “inefficiencies,” making a direct link between DFS and a financialized market. Also, the way that “skill” appears in their analysis is primarily a technological advantage, one where the data processing skill of the sharks far outweigh the skill of the fish. This is not dissimilar to the difference between large investment houses or hedge funds and average individual investors or between the high frequency trader and the day trader. All of the larger traders have technological advantages both of speed and of knowledge, just as the sharks do.

And this was, in fact, the vision of DFS that started to catch on by October of 2015, that of an imbalanced, possibly fraudulent market that didn’t deliver on its claims of big cash prizes available to anyone with a “little bit of time” and a “little bit of knowledge.” This burgeoning realization about Draftkings and FanDuel operating as a shark/fish operation that was possibly exploiting the UIGEA loophole too liberally was only reinforced by a scandal that the New York Times broke on October 5th of 2015. (Drape and Williams 2015) In their story, they detailed the activity of one DraftKings employee who had been engaged in what the Times found “amounted to allegations of insider trading.” The accusations revolved around a leak of lineup data for a “Millionaire Maker” guaranteed prize pool before the contest had officially started. This leak would have given an unfair advantage to anyone who had spotted it before the relevant football games had started that Sunday. The employee claimed that this leak had happened after lineups were locked (lineup changes are not possible after the first game of a night or week starts), so it was little more than a harmless, after the fact data security breach. However, it was later revealed that this employee had been an active player on FanDuel and had won a similar guaranteed prize pool contest that same week and taken home $385,000. The employee was a
“written content manager” meaning that he had access to lineup data on a regular basis before lineups were locked in order to write up trends and advice for players on DraftKings. To go back to our sharks/fish dichotomy, the employee was a shark exercising his knowledge advantage over the fish at FanDuel.

As the scandal moved from the pages of the *Times* and rippled throughout the DFS community and beyond, it led to an inquiry being filed by New York State Attorney General Eric Schneiderman’s office on October 6th, the day after the *Times* story broke, indicating that DFS was already on the office’s radar before the official inquiry began. And it would only get worse for DFS, as this knowledge imbalance and concentration of skill at the very top of the food chain profoundly troubled the “skill” clause of UIGEA. Hence, the second of the two possible visions painted by the shark/fish dichotomy came into view, that DFS had become just another form of gambling. While Schneiderman’s office conducted its inquiry, a little over a week later the *Wall Street Journal* reported that the FBI and the Justice Department had opened their own inquiry into not the scandal but whether or not DFS writ large was in violation of UIGEA. (Reagan and Barrett 2015) On the same day as this report, the Nevada Gaming Control Board determined that DFS operators would have to file for gaming licenses in Nevada, in effect labeling DFS as gambling. (Draper 2015) As Nevada is one of four states where sports betting is legal with a license and is the state with the most prominent gambling industry, the Gaming Control Board’s decision sent shock waves throughout the DFS industry. If Nevada thought it was gambling and therefore needed to be regulated, than the unregulated era of DFS was more than likely over. Whether a fraudulent financial market or, as AG Schneiderman would call DFS “totally
unregulated gambling venues” (CBS interview), the industry would have to submit to a wave of legal scrutiny.

The New York case progressed from a cease and desist order from AG Schneiderman in November of 2015 (Anon 2015a), to a temporary stay on this order shortly thereafter, then to a lift of that stay in December (Patten 2015), then to an agreement by DraftKings and FanDuel to cease operations in New York until legislation was passed (Terlep 2016), and finally to legislation that legalized DFS by late summer 2016. (Gouker 2016a) A rather stunningly rapid turn of events that was seemingly set off by the ad blitz, one of AG Schneiderman’s primary complaints. The Attorney General argued that regardless of whether or not DFS was gambling and therefore illegal, the claims made in the ads about how easy it is to win (“make it pay to be a fan”) could meet the legal standard of fraud. The insider trading scandal (almost uniformly referred to as such) had peaked Schneiderman’s interest and picking up on the argument in Miller and Singer’s report for McKinsey about the vulnerability to shark behavior skewing the winning percentages towards the very few, the Attorney General’s office focused on the knowledge deficit or what Schneiderman called “no guarantee of no data advantage.” (CBS News 2015) Without a reasonable guarantee of a level playing field, the unregulated market of DFS was ripe for abuse. So, regulation was needed to curb the advantage of the sharks, but the focus of much the AG’s ire was on the ads. The AG’s office called out the false advertising of the ad blitz for promoting “DFS like a lottery, representing the game to New Yorkers as an easy path to riches that anyone can win.” (McGee 2015) Even in the settlement, wherein the Attorney General and DraftKings and FanDuel agreed to cease litigation and wait for legislation that had been written to be approved or voted down, the Attorney General did not relinquish it’s right to
initiate new false advertising charges. In fact, after the legalization bill was passed in 2016, both DraftKings and FanDuel settled the false advertising charges for with the state for $6 million each, the “highest New York penalty awards for deceptive advertising in recent memory.” (Gouker 2016b)

Also in the New York case was the crucial UIGEA distinction between the game of chance and the game of skill and therefore the essential question of gambling. By remaining so vague about the difference between chance and skill, UIGEA had left this up to individual states to hammer out. The Attorney General’s office laid out its case on the basic grounds of chance consisting in a lack of player control. In *The People v. FanDuel (Supreme Court of New York, New York County 2015)*, the individual cease and desist cases and its subsequent appeals, the NYAG argued that DFS contests are “‘contests of chance’ because although the skill of the contestants is a factor, the outcome depends substantially on chance and factors not within the DFS player’s control, including whether the athletes chosen are injured, or the game is ‘rained out.’” (McGee 2015) The DFS industry and the state were at odds over what was and wasn’t “within the DFS player’s control” as the basic rhetoric of DFS is that because anyone can control line-ups while the state argued that line-up control didn’t take into account enough factors of chance. In the resolution of this debate, New York Senate Bill S8153 (Bonacic 2016), the DFS industry won out. The bill declares DFS not a game of chance because a) “simulation sports teams are selected based upon the skill and knowledge of the participants” (essentially the UIGEA skill provision) and b) because “contestants have control over which players they choose and the outcome of each contest is not dependent upon the performance of any one player or any one actual team.” It is in the disaggregation and recombination of teams that participants have “control.”
But as everyone involved in the process knew, this “control” meant little for average players if there was no attendant regulation of the sharks. What is control when the (non-gambling) deck is stacked against you? New York’s legislation took this problem on by prohibiting employees of DFS operators from playing DFS at all (1401.14.A), requiring the identification of “highly experienced players” (1404.1.G), disclosing the number of entries that a single player can submit per contest (1404.1.H-I), and ending automated scripts that used third-party API access to the platforms (1404.7). By November of 2015, DraftKings had already adjusted to pending legislation in Massachusetts that demanded caps on entry volume and capped the amount of single player entries into the guaranteed prize pools at 3% of total entries. (Gouker 2016c) On its face this sounds like a major regulatory win, but if we notice there is no restriction on how many entries globally a shark can enter and remember that the top 11 players in the Miller and Singer sample were submitting 17% of entry fees and taking an average of $135,000 of profit then we can assume those 11 players are in almost all the guaranteed prize pools on any given day and therefore each pool is at least 33% sharks. And regardless of API access, a technical knowledge advantage still exists for the sharks versus smaller fish as roster composition via algorithmic analysis of probabilities and statistical patterns is a time intensive process only really practiced by DFS pros or “grinders” (hence, RotoGrinders, the popular DFS website). This situation combines with the aforementioned business model reliance on the high volume sharks makes this regulation rather toothless for the protection of the smaller players. In fact, the only thing it might do is accelerate what Miller and Singer had already warned of, ie. the growth potential for this kind of model was limited from the start. The platforms need the sharks and the sharks need the fish but the sharks will inevitably deplete the available stock of fish unless the platforms take
action that limit the amount of sharks, which would limit their amount of entries which would make the major contests, the real money makers for the platforms, into loss leaders. Of course, one solution would be to merge the two oceans, cut overhead costs, and consolidate all the available sharks and fish. And by late 2016 this was already being discussed and by May 2017 was in the review process at the FTC. The boom and bust cycled reached its final conclusion, the concentration of wealth.

The turbulence in the DFS market that culminated in this concentration is quite similar to that of the various financial crises, scandals, and controversies of high finance in the 21st century. These problems were often problems of new, unregulated markets, the speed with which they could move and scale, and the rising dominance of technologically enabled quantitative and algorithmic practice. The financial crisis of 2008’s basis in the proliferation of mortgage backed securities was born out of the deregulation of the banking industries much the same way DFS was born out of UIGEA. The forms of speculation that were created in response to these regulatory changes were more intensified versions of their predecessors. High finance speculation was alive and well before the abolition of Glass-Steagall, but the methods of speculation intensified and multiplied after. Speculative wagers on the statistical competition between simulated sports teams had been going on for two and half decades before UIGEA, but the response of sport media capital was to fund its drive towards new methods that intensified the pace and volume of these wagers. Over leveraged banks making enormous bets and mathematician and computer scientist designed quantitative methods have their analogues in the sharks of DFS, flooding the market with advantages of volume and technologically enabled knowledge. And just as the deregulation of finance led to new, more intensive forms of capital
accumulation that were so successful that they actually overleveraged themselves into crisis, UIGEA led to a financialized fandom that was so good at concentrating knowledge at the top of the food chain that it led itself into its own crisis.

Financialization is often posited as a purely political economic form, the securitization of assets that are made to flow in the exchange of markets. (Hudson 2010; Lapavitsas 2014) The logic of DFS’s expansion, its need to become a part of the daily life both to normalize itself as an reputable industry and it’s dependence on sociality to make that possible, shows how it works as an ideological form as well, weaving its way into the logics of our everyday interests and thought patterns, producing a form of mastery that is determined by the financial imaginary. Ultimately, statistical fandom and especially fantasy sports, the management of the ebbs and flows of records of sport, is financialized not just when it becomes about the amassing of wealth, but also when, as Randy Martin says of finance itself, “it presents itself as a merger of business and life cycles, as a means for the acquisition of self.” When we make it pay to be a fan, as the commercial says. And financialized fandom, as the evolution of statistical fandom that reaches its apotheosis in DFS, fits the definition of what Martin calls the “financialization of daily life”: “a proposal for how to get ahead but also a medium for the expansive movement of body and soul.” (Martin 2002:3) Recall the intense focus on display in the commercials, the tension and release of preparation and victory, the theme of collective excitement, and the more intense social bonds created. As a game embedded into the daily life of sports fans, fantasy sports financialized the relationship of sports fans to numbers by making it into a game that played the line between games of agon and games of alea, of skill and chance, between domination in play through competition and games of surrender to the uncontrollable odds of the physical world.
In Roger Caillios's *Man, Play, Games*, he creates a taxonomy of the games of human society in four categories: *agon* (competition between individuals or teams), *alea* (chance), *mimicry* (becoming someone else), and *ilinx* (fear based or perception changing games). Although it is should be clear that fantasy sports and particularly DFS might fall into all of these categories (elements of all of these are played at in the DFS ad blitz commercial), it is *agon* and *alea* that neatly map onto the distinction of skill and chance so crucial to fantasy sports as an industry Games of *agon* require control, what Caillios refers to as “sustained attention, appropriate training, assiduous application, and the desire to win. It implies discipline and perseverance.” (Caillios 2001:15) The ads often featured an extremely focused protagonist, ignoring all of daily life around them. “We train, we win.” For defenders of DFS, the requirement of a deep knowledge of the players and sport on which their game is based meets the standard of “sustained attention, appropriate training, assiduous application.” Through this expertise, the player attains superiority over their foe. However, DFS detractors argue that the sheer volume of factors beyond the players control (head coaching decisions, player injury, weather conditions, etc) put DFS into the realm of *alea* or “games that are based on a decisions independent of the player, an outcome over which he has no control, and in which winning is the result of fate rather than triumphing over an adversary.” (17) This language is extremely similar to the language of UIGEA and all the legislation that sought to determine just was “control” meant. As the ads feature tremendous moments of nervousness and anticipation before the victorious result, Caillios, too, adds that the player in the game of alea only waits “in hope and trembling, the cast of the die.”
The separation between agon and alea embedded in the games of chance or skill dichotomy is further seen in this passage from Caillois: “In contrast to agon, alea negates work, patience, experience and qualifications. Professionalization, application, and training are eliminated.” (17)

Here is the definition of the game of chance before the professionalization of the gambler and his direct comparison and commingling with the world of finance. The math of the event of gambling and the mathematicians who masters that event (the card counter, the quant, the writer of algorithms) have become not only the dominant whales of the worlds of alea but also cultural icons. However, Caillois points out that the player in a game of alea is a lucky one granted “infinitely more than he could procure by a lifetime of labor, discipline, and fatigue. It seems an insolent and sovereign insult to merit. It supposes on the player’s part an attitude exactly opposite to that reflected in agon. In the latter, his only reliance is upon himself, in the former, he counts on everything, even the vaguest sign, the slightest outside occurrence, which he immediately takes to be an omen or token - in short, he depends on everything except himself.” (17-18) This insult to merit that is embedded in chance is at the root of the objection to the game of chance from both sides. For the state, the role of chance cannot be allowed to undermine a technico-rational ideology that remains hegemonic. For the fantasy industry and both its minor players (the majority) and its whales (the mathematicians) to lump the game itself in with alea is an insult to their own merit. The companies need the players to believe that merit is what wins, this is the ideological function of any emphasis on the knowledge or expertise of the everyman sports fan. However, it should be telling that the vast majority of their advertisements emphasize the agonistic aspects of the game. Win against your friends, there will be no sharing of french fries, you will dominate your friend and celebrate in their face. The players need to be connected to the personal, to the dependence on one’s own expertise or will (and the similarity between
their own expertise or will with those who have won, to the athlete) in order to enter. If it were pure chance, the attachment to “fantasy sports” and their fantasy of managerial control would evaporate and the possibility for winning at the “sport” would evaporate with it. Who wants to play a game that portends to be about knowledge that is itself not winnable? This divining of the outside world is also a part of what states have identified as part of the game of chance rubric, a lack of control over factors that impact the games outcomes. However, the position of both players and companies in relation to this is what truly ties it to financialization. The world out of the player’s control can be speculated about. The very nature of fantasy sports has always already been a speculative relation. Events are as equally out of the control of the broker (and if they become in control then we have a violation of the game of finance) as they are out of the fantasy sports player. Risk must be managed but to manage it into absence ruins the profit of system.

DFS smooths the process of statistical fandom out, making all of your fantasy transactions happen within the app. Computerization and then the internet took statistical fandom and simplified the labor of rotisserie, handling the database and score keeping problems, increasing the speed and ease by which new players and new leagues could form, and making it much easier for players to be in multiple leagues. In the end, the rapid growth in statistical fandom into the mid 00s was thanks to computerization and the network effects of the Internet. DFS, as part of the mobile app explosion in the digital economy, only picked up on the process and amplified it by simplifying the process of payments while also accelerating the game. Like every introduction of machinery into the work process, this acceleration is an increase in relative surplus value. As we will see in the next chapter and in the conclusion, this relative surplus value created in the
technological intensification of the work process will ultimately meet its limit in crisis of the attention economy.
Chapter 4

The Limits of Liveness: ESPN, Cable Television, and Attention

Labor

Introduction

In the two industries developing around written and numerical accounts of sports that were considered in the last two chapters, we saw two processes where fan communities and their practices were captured and made profitable by businesses striving for ever larger shares of the sports media market. When blogging presented a challenge to the dominance of established sports news media, firms with more capital and larger market share either employed the most popular bloggers or monetized and bought out platforms that were built with largely unpaid labor. When fantasy sports represented a new site of value produced from numerical records, sports leagues and older and larger purveyors of statistics attacked it in the courts before attempting to invest in and profit from it. The story in this chapter, however, is a slightly less straightforward tale than creative and passionate amateurs crafting a new way to relate to sport getting taken over by corporate interests. The industries that bring images into the homes of spectators have been less susceptible to amateur threats as their sports media brethren. The first four decades of sports broadcast television saw an extremely capital intensive and highly regulated industry lead to a concentrated market where the big 3 networks emerged to dominate the scene by the late 70s. The emergence of a true challenger to that big 3 (by the 80s a big four with Fox’s entry into the over the air network game) could only happen with the help of a shift in regulatory policies around new telecommunications technologies and major capital investment from the last vestiges
of an industrial empire. Even then that challenger’s independence from the broadcast giants was a short-lived affair.

It is the story of that challenger that is the focus of this chapter. ESPN, the self-proclaimed “World Wide Leader in Sport,” fundamentally changed the economics of the sports media industry. This change was not, like the changes described in the last two chapters, a change from below. Even now, as ESPN struggles to maintain its perch atop the sports media industry, the challenges don’t come from below, either. As web 2.0 and the participatory platforms it engendered put power in the hands of fans to remix and rebroadcast images of sport at levels never before seen, the actual value built from these practices has been minuscule or has been folded seamlessly into the practice of the capital interests of the sports media industry. For example, leagues have largely tolerated short video loops native to social media sites as they increase interest in the sport and all the major sports league franchises and major sports media outlets have social media managers who regularly post such video. Attempts to deter teams and outlets from using this video have been criticized and quickly abandoned. In a recent case, the NFL targeted their own franchises’ social media accounts for posting .gifs (short looping video files native to the Internet) during games but were criticized so intensely that the policy was abandoned after half a season. (Fingas 2016)

Challenges from below have been quickly recuperated at a speed that far outstrips the rate of assimilation and corporatization of blogging and fantasy sports. Recuperation is Henri Lefebvre’s term for the process though which something that introduces a discontinuity in the accepted or enforced ways of a system is brought back into that system, sometimes making that
system stronger. (Lefebvre 2006) Although perhaps not fitting to the more political or explicitly anti-capitalist contexts in which Lefebvre and others have used the term, fan practices that create new relationships to their objects of passionate interest create both dissenting interpretations that trouble official wisdom about the object of fandom and become reincorporated into mainstream, commercialized relationships. In the cases of blogging and fantasy sports, the length of time that they existed outside of the mainstream of the going system allowed the dissent they fostered to force change in the system. Newspapers and other more traditional writing and news outlets mocked and derided blogging as a form for so long that they only realized how much change blogging had wrought in the industry after it was too late to save many companies. Leagues unsuccessfully fought fantasy sports through the courts for years throughout the 1980s and 90s only to acquiesce and try to profit from it in the 21st century. The speed with which visual styles were recuperated cut down their ability to challenge the mainstream, not allowing an alternative market to really bloom around user generated visual styles the way that it did around blogging and fantasy sports. The reasons for this are many, most of which will be dealt with in this chapter, but in the main they revolve around the importance of liveness to the political economy of visual fandom and the prohibitively high fixed capital costs requirement to produce liveness. This infrastructural need effectively blocked challenges from below. However, challenges from other capital interests with access to this infrastructure loom large. As noted in the introduction, the sports media industry is generally a tripartite relationship between fans, media companies, and leagues. In the case of visual sports media, the relationship skews heavily towards the players with the most capital. In addition, the neat triangular scheme is troubled in visual sports media by the importance of infrastructure companies, in this case the telecommunication giants whose drift towards monopoly has given them increasing power in the culture industry.
So, rather than look to fan remediation practices that account for very little of the total revenues generated in visual sports media and have already been folded back into sport media capital’s repertoire, the focus here will be on ESPN as one of the dominant players in visual fandom. I will trace the history of the relationship between sport and the moving image through the pre- and early television era, showing the interconnected although often-contentious relationship between sports leagues and the moving image. Of particular importance is the interplay between leagues and broadcasters had around granting and refusing rights to live broadcast. From there, I’ll move onto the history of ESPN, its relationship to the cable television industry writ large, and its dependence on state deregulation and this deregulation’s underwriting of ESPN’s key innovation: the per subscriber fee that passes on to the cost of its live rights contracts onto each cable subscriber regardless of whether they tune into ESPN or not. In the conclusion, I will argue that what the political economy of visual fandom and visual sports media follows is not the logic of recuperation but the logic of what Marx called subsumption, or the process through which capital subordinates the labor process to its own ends. In the case of blogging and fantasy sports, capital approached fan practices and subordinated them technologically by building platforms that collected the activity of fans and made it valuable. For Bleacher Report, their custom CMS smoothed the labor process of unpaid bloggers and the attention that their posts gained was used to build capital for B/R’s investors and founders. For fantasy sports after the Internet in general, the digitized versions of the game similarly smoothed the labor of the game itself by allowing it to obtain a scale and speed that made it vastly more profitable than before. By analyzing ESPN’s rise to dominance and its current problems adjusting to the shifting technological ground beneath its feet with subsumption in mind, we can greater understand how the empire that ESPN has built
and the industry it influences has subsumed sports spectatorship so well that it belies its essential contradictions and limits. Ultimately, visual sports media offers examples of the successes and failures of capital to really subsume attention.

**A Short History of Visual Sports Media Before Cable Television**

The development of motion picture technology always leaned on sport and the body in motion as an early subject. Quoted in the *New York Sun* in 1891, Thomas Edison was very clear about what his new invention, the kinetoscope, could be used for: “To the sporting fraternity I can say that before long it will be possible to apply this system to prize fights and boxing exhibitions. The whole scene with comments of the spectators, the talk of the seconds, the noise of the blows, and so will be faithfully transferred.” (Streible and Musser 2008:22) The kinetoscope would never achieve this goal and it would be several more decades before Edison’s dream of audio and image syncing up to achieve full verisimilitude, but this use of sport to gain interest in a new motion picture technology is a theme that is repeated throughout the history of moving images. However, before the advent of broadcast television, all moving images of sport were after the fact records, lagging behind print and later radio as mediums for getting information about the result of a sporting contest. Although telegraphic transmission of fight results were a common practice in the 19th century (Sowell 2008) and live radio broadcasts began in 1921, liveness with the full access to the visuals of the game was only an option for those in physical attendance until the advent of television. As Raymond Williams noted, the dominance of radio throughout the second two decades of the 20th century made the development of motion picture broadcast a less pressing concern. (Williams 2003:10-11) Although being developed throughout the 1920s and
30s by individual inventors and then RCA (the largest maker of radios and through their subsidiary NBC, the leading broadcaster), the capacity for live transmission of visuals would not arrive until the end of the 1930s and commercial broadcast television would not achieve any kind of relevant scale in the country until several years after the war ended. But at the very beginning, sports were there.

The first television sports broadcasts coincided with some of the earliest programming available. The nature of certain sports was both technologically convenient and economical for TV producers. Early cameras required strong lighting to get a decent picture so boxing and wrestling (in centrally lit locations) and football and baseball (occurring during the day) were perfect subjects. In a New York Times article in 1937 headlined “The Radio Eye Favors Baseball” RCA engineers were quoted as saying that for broadcasting of outdoor events, baseball was by far the best subject as it was played during the afternoon in the brightest summer months and in generally fair weather. (Anon 1937) Also, boxing and wrestling were especially perfect for early broadcasts because their action occurs within a very small, fixed space not requiring multiple or moving cameras. Production costs were also kept at a bare minimum since there were no writers or actors to pay. Profit from the broadcast was, however, not the primary goal of the first few years of televised sports. NBC, CBS, and the Dumont Corporation (holders of the first NFL TV contract) were all manufacturers and sellers of television sets and demand for sports viewership is generally understood to have played a major role in the remarkable explosion of television’s uptake in American society. (Walker and Bellamy Jr. 2008) The first broadcast of a sporting
event in the United States was a Columbia/Princeton baseball game shown on NBC’s experimental station W2XBS, broadcast to less than 400 TV sets in the New York area on May 17th, 1939. (Koppett 1999) The first MLB game, also on W2XBS, was the afternoon game of a doubleheader between the Brooklyn Dodgers and the Cincinnati Reds on August 24th, 1939. (Walker and Bellamy Jr. 2008:12) The first NFL broadcast would follow later that year, a Brooklyn Dodger/Philadelphia Eagles game from Ebbets Field October 22nd on that same NBC experimental station. (Cressman and Swenson 2007:480) However, the first network broadcast (ie. not on experimental station) of a sporting event was NBC’s *Gillette’s Cavalcade of Sports*, which featured a featherweight championship bout between Willie Pep and Chalky White in 1943. (The Museum of Broadcast Communications n.d.) In the period before the post war boom and the explosion of television set sales in the late 40s, sports dominated the airways by some estimates accounting for 1/3 of television programming. (The Museum of Broadcast Communications n.d.)

There was, however, no live coast-to-coast signal until 1951. Televised sport in the decade and a half before was thoroughly confined to local broadcasts, expanding out from the under 400 sets figure of 1939 (Koppett 1999) significantly but nowhere near the scale it would reach by the peak of the post war boom in the 1950s. Sponsorship of events by single advertisers was the

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10 The BBC had been able to televise Wimbledon matches two years previous and the 1936 Olympics in Berlin had been telecast to public viewing theaters in Berlin and Potsdam.
11 Although this fact is repeated in numerous contexts, it appears that this is an inaccurate representation, as a) there is no boxer named Chalky White, rather his name is Albert “Chalky” Wright and b) although he did fight Willie Pep four times (1942, 1944 twice, and 1946), he did not fight Pep in 1943. This telecast was either of the 11/20/42 fight or the 9/29/44 fight as these were both at Madison Square Garden and it would have been much more likely to have been broadcast from New York than any other American city. (Fight data from boxrec.com, an extremely thorough database of fights in the US dating back to the 19th century) (BoxRec n.d.) (BoxRec n.d.)
norm and business was good. By the TV boom of the ‘50s, televised sports had begun its move towards nationwide scale but the nature of its economics had not yet evolved. For example, when MLB and the NFL sold the rights to televise games, these deals were made between individual team owners and networks and affiliates. It was not until the mid-60s that this changed, but not without significant governmental scrutiny and compromises that would alter the political economy of the sports media industry forever. That the early days of the image’s path to dominance over the political economy of sport fandom were localized and often contentious was a reflection of the limitations of early television as a technology. When the only fans who could access the broadcast of your game were fans within traveling distance of the game itself and when the cost of a television makes it the type of semi-luxury affordable by the same consumers who have the disposable income to attend games, it is unsurprising that the those who stand to profit from the event itself would be occasionally hostile to something they couldn’t monetize at such a high rate of profit. The argument that in-person attendance would be effected by television became a prominent aspect of team owners’ arguments amongst themselves and with television providers, fans, and regulators.

Several MLB baseball teams, especially in small markets (most notoriously the Pittsburgh Pirates) went through large chunks of the 1950s without televising any games at all. However, most major metropolitan (the New York Yankees, the Brooklyn Dodgers, the Chicago White Sox, the Chicago Cubs) and some smaller market teams (the St. Louis Cardinals, the Cincinnati Reds) embraced television, although both the Reds and the Cardinals went through lean periods in the mid-50s where they drastically reduced the amount of broadcast. The Cardinals, for example, televised 30 games in the inaugural televised season in 1949 but reduced that number
to 5 till 1953 when the team was sold to Anheuser-Busch who subsequently began regular broadcasts but only of road games. Another important group were the teams that moved west in the 50s (the Giants, the Dodgers, the Athletics) who ceased almost all television broadcast upon their moves. These varying approaches to television are partly born out of the extremely local focus that baseball owners took. This approach continued into the end of century as over half of broadcast revenues came from local and regional broadcast, far more than any other league. (all figures here come from James Walker and Robert Bellamy, Jr.’s excellent *Center Field Shot: A History of Baseball on Television* in their very useful appendix, pgs. 323-334).

Professional football was also intertwined with the development of television as both a medium and an industry. In contrast to baseball, however, it could be argued that football’s approaches to sports rights and contracts changed the political economy of sports and eventually of television all together. Throughout the 1950s, the NFL had a similar relationship to television that MLB had with individual teams: signing individual contracts for widely varying levels of revenue. Having large disparities in revenues between teams hurt competition and threatened less earning teams with closure creating a threat of instability, a less than ideal situation for a league trying to establish itself and surpass college football, boxing, horse racing, and professional baseball. In order to maintain this competitive balance and league stability, new NFL Commissioner Pete Rozelle convinced NFL owners to negotiate as a group, giving them more leverage, and to share those revenues equally amongst themselves. (Fortunato 2006) This profit sharing was subject to government scrutiny and took another two years to be approved. The passing of the Sports Broadcasting Act of 1961, a landmark piece of legislation that legalized joint broadcasting

12 It should be noted that Cardinals continued this practice until 1981, joining only the Houston Colt .45s/Astros franchise and the Pirates as the only teams to enforce an only road game policy.
contracts for the major sports league in the United States, guaranteed the NFL an extremely lucrative advantage upon which the political economy of sports media still relies.

The act itself functioned as exoneration from several different allegations of antitrust violations against the NFL beginning with a 1953 Justice Department’s investigation into the NFL’s blackout policy. (Mitten and Hernandez 2013) The NFL’s original blackout policy required that games could not be televised coterminously with games being played in local markets, applying to both games in other cities as well as the game being played in that market. Hence, a fan’s only option for football watching was in-game attendance anytime a game was being played with 75 miles of their televisions. (Fortunato 2006:58-59) Owners felt that any televised game would take away from box office sales. This included playoff games and, after the 1964 AFL-NFL merger, the Super Bowl. In fact, the AFL, which had filed several antitrust suits against the NFL including one arguing that the NFL had conspired against them by negotiating rival television contracts, had been able to come to such prominence because the NFL’s blackout rule did not apply to them, letting them poach viewers who otherwise would not be able to watch football on a Sunday. However, after the 1966 merger, this new source of televised football would be put under the same restrictions. It would not be until 1973 that the blackout policy would be revised in order allow for home games to be televised if games were sold out with 72 hours before game time. (Fortunato 2006:87-88) Selling out the game then becomes de rigeuer and an almost threat to the rest of the fan base. With that carrot and stick in place, the profit guaranteed, the owners were able to fully embrace television.
By the late seventies and early eighties, television contract antitrust exemption in place, major leagues once again were able to capitalize on a new format to expand both the reach of their product and the profit they took from it. With the advent of pay cable, new networks like TBS and ESPN were desperate for first run content that could draw in new subscribers. Just as NBC, CBS and Dumont’s vertical integration drove them to sports as a means to increase TV sales, pay cable television used sports to increase subscription rates and normalize their business model. Heavy competition for broadcast rights contracts in the early eighties from both traditional networks and pay cable networks saw enormous increases in revenue streams for both collegiate and professional sports in the US. Pay cable’s entrance into the sports media ecosystem accelerated revenue growth exponentially and began a relationship between cable companies and sports ownership that would accelerate the changes in the political economy of sports media that television had begun.

Cable television, however, had been a part of the television industry for decades before it really began to take off in the late 1970s and early 1980s. In its inception, cable television was “cable” television because it was a system in which a central antenna was the hub from which coaxial cable ran into individual homes. The television signal itself was still broadcast over the air and was hence was subject to geographic limitations. (Parsons 2008) Regulations pertaining to cable television reflect this history as the majority of them prior to deregulation in the late seventies were aimed at preventing the delivery of “outside of area” channels into a given broadcast area via cable. This emphasis on local broadcast monopoly gave way in a deregulatory regime that lifted restrictions on the importing of distant signals combined with the impact of developing satellite technology that had come about since the deregulation of that industry in the early 1970s.
The collapse of time and space made possible by satellite technology far outstripped anything that had been possible before. And just as sports were instrumental in the transformation of television into a mass-market phenomenon, ESPN was there at the beginning of what would become cable as we know it.

**Early History of ESPN**

According to the many accounts of its origins, Bill Rasmussen and his son, Scott, birthed ESPN as an idea in May of 1978. (Miller and Shales 2011; Rasmussen 2010) The Rasmussens, both recently fired from the World Hockey Association’s New England Whalers, conceived of a cable channel that combined both regional Connecticut sports and movies (“ESPN” stands for Entertainment and Sports Programming Networks). However, the majority of cable distribution business models in 1978 were still tied to the old model of increasing access to locally broadcasted programming. AT&T, the primary provider of cable lines, charged by the mile. This had the effect of making anything other than very limited regional networks not economically feasible. This situation had been largely created by a series of regulations that benefitted the broadcast system of the post-war era. In an FCC ruling in 1966, the burgeoning Community Antenna Television (CATV) industry, the precursor to what would become the contemporary cable industry, was hit with two regulations: a) any CATV system would have to carry local programming and was forbidden from duplicating programming (i.e. a non-local affiliate of a major broadcaster that was already served in the area) and b) there would be no importing of signals from outside the top 100 urban areas at all. These regulations effectively choked off the growth of the cable industry in anything but rural areas as long as the coaxial cable distribution
system was used. (Parsons 2008:229) However, by the late 1970s, deregulation of the previously tightly regulated commercial satellite industry combined with a number of deregulatory moves in the mid 70s aimed at saving what had been a stagnant industry, creating a situation that greatly expanded the realm of possibility for cable programming. (Corrigan 2015) Chief amongst these deregulations was a D.C. Circuit Court of Appeals finding in favor of HBO in a series of suits it filed against the FCC and other defendants (including NBC and Paramount Pictures) which allowed HBO to broadcast recent run movies and sporting events (Anon 1977) and the subsequent decision by the FCC to remove the urban expansion ban. (Corrigan 2015:41) These moves along with the Nixon administration’s “Open Skies” policy towards commercial development of satellite communication laid the ground for ESPN to exists in the first place.

This situation was, according to the Rasmussens, unbeknownst to them. Bill Rasmussen has admitted to having no real knowledge of the cable industry, having done local broadcasting of high school games in Hartford and PR for the Whalers. Their initial idea was to broadcast Connecticut collegiate sports\textsuperscript{13} via AT&T’s coaxial system. However, after being introduced to an RCA representative in charge of selling cable programmers on the twofold benefits of satellite broadcast over terrestrial wires (much cheaper and almost instant nationwide distribution), the Rasmussens were suddenly at the forefront of what would lead to the full blown cable boom of the mid 1980s. As Scott Rasmussen said, “All of a sudden we had this distribution technology, but we had no idea about anything else.” (Miller and Shales 2011:9) What was left for the Rasmussens was to find the money to actually pay for all of it. As with the other case studies in

\textsuperscript{13} Also unbeknownst to the Rasmussens was the fact that signing an individual broadcast contract with an NCAA participating school was prohibited until the \textit{NCAA v. Board of Regents} decision of 1984 which will be discussed more below.
this analysis, this meant finding investors who would exert varying amounts of control on the vision and future of the original idea. In the case of the Rasmussens, however, their original idea was usurped even before they could cash out, not entirely unlike Daniel Okrent and his Rotisserie league co-owners. Instead of others capitalizing on your idea before you could figure out a way to monetize it, their primary investor, Getty Oil, actively pushed out them out. There were petty rivalries involved, to be sure. Getty’s man in charge, Stuart Evey, was notoriously fickle and vindictive. However, most of what got them exiled from their own kingdom shortly after ESPN’s launch was the basic concern of investors who wanted seasoned hands to steer the business into profit. But even the likes of broadcast sports legends like Chet Simmons (first sports programming director at NBC) and his NBC colleague Scotty Connal could not make ESPN profitable. Although they were able to legitimize the ESPN brand through their network pedigrees and bring in new ideas that would do much to revolutionize visual sports media, they were unable put the network in the black.

In the first three years of ESPN’s existence (1979-81), the growth in the cable market was neither fast enough nor reliable enough to bring in consistent ad revenue. Furthermore, total costs of production (technology, on air and production talent, broadcast contracts with leagues, etc) couldn’t be fully offset by advertising revenue only. 6 million subscribers just weren’t large enough of a market. (Miller and Shales 2011:91) Something had to be done and Getty representatives called on omnipresent consulting firm McKinsey & Company to advise them as to how to move towards profitability. The company assigned Roger Werner, only 29 at the time, to take the project on as a bellwether of the cable industry writ large. Werner recognized that the ad revenue model from over the air broadcast wasn’t the model that would work for cable. By
1983, Getty’s consistent flow of cash into the company was beginning to dry up, although the incurring debt had been diffracted by a sale of a 10% stake to ABC. Contracts with many cable providers were up and Werner’s brought his new business plan on the road to cable providers nationwide. He approached the market with what he called a “survival pitch,” in order to survive ESPN was going to need providers to start paying for their content. This would become known as the per subscriber fee, or the amount of a cable bill that each patron paid for privilege of having ESPN in their package (whether they watched it or not). ESPN believed in itself enough to offer a kind of threat to the provider “If you come in voluntarily and do a new deal with us, we’ll start your rate to four cents in 1983 or ’84 and then we’ll go to six cents the next year, then eight cents. Either rip up your old contract and have some protection for whatever the term of your new affiliation agreement is going to be, or pay the prevailing rate when your old deal expires. There was the specter that if were still around – and we intended to be – we’d be a much more expensive service.” (Miller and Shales 2011:111-112) And the threat worked. According to Werner, part of what opened up the door for the per subscriber fee to even be considered by cable operators was the general instability of the industry circa 1983. “The failure of CBS cable was one of those watershed dates that opened a big window of opportunity for us. Cable stock fell dramatically within one or two weeks. It was an obvious reaction and the press was almost universally negative and predicting bad things for the cable industry. If CBS can’t make it as a programmer, how could anybody else like ESPN hope to succeed? So a number of our affiliates, I think, were worried that another failure by another leading cable programming network in 1983 or ’84 would be a terrible thing.”(Miller and Shales 2011:110-111) Even in 1983, ESPN had argued and proved that cable needed it as much as it needed cable. Leveraging their importance to their clients, ESPN started out with nominal fees between 4 and 8 cents a month, which for
small providers across the country with less than a 1000 subscribers added up to less than $10,000 dollars a year. However, this established the precedent of the subscriber fee.

The first major carrier to pay the fee was Long Island’s Cablevision (owned by the Dolan family who now, of course, owns the New York Knicks, New York Rangers, and Madison Square Garden as well as Cablevision). ESPN used a classic tactic of sports broadcasting, the blackout, in order to get Cablevision to relent. Getting one of the largest providers in the country to relent was huge and pushed some of the more recalcitrant holdouts around the country into new deals. In the self-mythology of former ESPN executives, this win was the moment that ESPN’s solvency was assured. Former ESPN CEO Steve Bornstein: [First ESPN CEO] Bill [Grimes] recognized we needed to make the change in order to survive, and Roger [Werner] had the balls to roll up his sleeves and take on the cable operators. I’m telling you right now, it was these guys who figured out the business. There were no ifs, ands, or buts. ‘Cause nobody else was doing it. Nickelodeon wasn’t doing it. MTV wasn’t doing it. Nor was CNN.” (Miller and Shales 2011:113) Werner himself gives the per subscriber fee/ad sales dual revenue system even more credit: “The cable-programming business wouldn’t be what it is without the development of the two-revenue-stream business model. Because of it ESPN has fueled growth of sports overall, the inflation of player salaries, the cost of thirty-second spots, and the cost of tickets to games. Its all interlinked. We in some ways opened a Pandora’s box. We certainly aggravated an inflationary situation that was already there.” (Miller and Shales 2011:114-115) ESPN’s new solvency allowed it to spend more freely on TV deals and as the size of these TV deals has had significant impact on the growth of sports leagues professional, collegiate, and Olympic. Those deals have grown exponentially because of the revenues that companies like ESPN bring in. And so, Werner
is certainly correct. However, this inflationary aspect is not limited to the world of sports, but very directly impacted the business of cable.

A half year into the full institution of the per subscriber fee and fresh off a successful airing of the early rounds of the NCAA men’s basketball tournament, ESPN was the largest cable network in the country, reaching 28.5 million homes by October 1983 with ad revenue reaching $40 million. (Miller and Shales 2011:117) However, this was still not enough to make the network profitable. By the time that ABC increased its 15% stake and bought ESPN outright for $230 million from the Getty Corporation in 1985 (then selling a 20% stake to RJR Nabisco), ESPN had still yet to break even. However, a legal battle that began in 1981 and was settled in 1984 notably increased the potential outlook for the company. In 1981, a sixty-two member group of major college football programs formed the College Football Association and began negotiating their own television deals as protest against the National Collegiate Athletics Association (NCAA) policy that all TV revenue would be shared equally amongst the member groups and negotiated for as a block. This policy resembled the same policy that major professional leagues had had in effect since Pete Rozelle’s grand deal with Congress. This attempt by the CFA was akin to two of six NFL divisions attempting to make their own contracts with major networks. After the NCAA threatened to sanction the CFA for negotiating independently of the NCAA with NBC, the board of regents of two CFA member schools (the University of Oklahoma and the University of Georgia) filed an injunction to prevent the NCAA from enforcing sanctions. The Supreme Court’s opinion in NCAA v. Board of Regents of Univ. Okla. affirmed the lower courts’ ruling that the NCAA violated the Sherman Antitrust Act by restraining the market of
“live college football television.”¹⁴ The decision found that the NCAA couldn’t “limit the number of games that are broadcast on television” and barred it from creating a “noncompetitive price structure.” With the NCAA’s omnibus contract with major networks coming up in 1985 and the CFA schools able to sell packages of games not already committed to that contract, ESPN was able to scoop up 48 games, a full four games every Saturday for a 12 week season. Previous to this, ESPN played football only on tape delay, a much less desirable product. Tape delay, like the highlights that made up Sportscenter, lacked the pull of live television even in this era when there was no meaningful competition for the reporting of nationwide results before the next day or perhaps for particularly important games on local TV news that night. There was nothing that could pull in viewers and new subscribers like fully live sporting events. Now with these new live rights and a pre-existing deal with the NCAA that included college basketball, ESPN had put together a legitimate roster of live sports, one they would continue to meticulously build upon as they gained more and more viewers.

Armed with its dual revenue stream and a burgeoning set of contracts, ESPN (and the cable industry writ large) was further aided by the 1984 Cable Act. A legislative compromise between the cable industry and local governments, the Act removed rate regulations that existed at a city by city basis and set up a system by which rate regulation only occurred “in localities without ‘effective competition’; however, ‘effective competition’ defined broadly enough to prohibit rate regulation for roughly 97% of U.S. cable systems.” (Corrigan 2015:43) By removing rate

¹⁴ Of particular note, is the Court’s rejection of the NCAA’s argument that their way of doing TV deals preserved ticket sales and its assertion that “by seeking to insulate live ticket sales from the full spectrum of competition because of its assumption that the product itself is insufficiently attractive to draw live attendance when faced with competition from televised games” (Anon 1984) was a tacit admission of their own violation. This legal precedent against justifications for blackout policies would continue to be important going forward.
restrictions, cable television became a very popular investment for capital and the entertainment industry, which set productive forces to work and produced the cable boom of the 1980s. (Parsons 2008) This lack of regulatory power to control rate increases gave ESPN the ability to raise per subscriber rates as high as this unregulated market would allow. Hence, the deregulation of supply (contracts with college sports) combined with the deregulation of the means of distribution (cable itself) allowed ESPN to aggressively pursue new rights contracts, confident that they could increase revenues via per subscriber fees to offset any new right fees in the short term. In addition, they wagered that advertisement revenue would increase with the new audiences brought in by their expanding rights packages. So, it is certainly fair to give Roger Werner and his ESPN executive colleagues credit for creating a viable business model for the cable industry, but it would never have attracted the capital investment it needed for growth without the state clearing the regulatory ground. This relationship between the dual revenue stream and a friendly, deregulation happy government was the blueprint for ESPN’s rapid expansion in the late 80s and early 90s. To wit, after signing a new contract with the NFL in 1986 for half of the Sunday night football telecasts from 1987 to 1997, ESPN was able to increase their subscriber fees by 29-33% or from 27 cents to between 35 and 36 cents over the course of one year. (Miller and Shales 2011:150)

Part of the justification of the 1984 Cable Act’s deregulation was that technological change in the form of new methods of video delivery (VCRs, satellite communication, etc.) would produce competition that would keep prices in check.\textsuperscript{15} These retardants on price increases never

\textsuperscript{15} This is a recurring claim of FCC and legislative deregulation that has rarely, if ever, materialized. See Susan Crawford’s excellent overview of monopolization in the communications industries Captive Audience: The Telecom Industry and Monopoly Power in
materialized and prices skyrocketed throughout the late 80s and early 90s, leading to another attempt at legislative intervention, the Cable Television Consumer Protection and Competition Act of 1992. The 1992 Act actually required real price restriction and even required 10% roll backs of prices in markets deemed “uncompetitive.” (Parsons 2008:594-598) The cable companies responded by hollowing out their basic cable packages (the only packages subject to the regulation) and created new tiered packages which now housed some of the more popular cable programming like ESPN. (Corrigan 2015:45) In other words, to get ESPN, cable customers had to pay for an extra package. This created a way for profits to be sustained so that new costs, in ESPN’s case from new rights that became higher fees to carries, were once again passed onto the consumer. This removal of things from view without further payment is merely a continuation of the blackout tactic discussed earlier, only now it has passed from teams (production) to cable programmers (retailers) to cable providers (distributors). And even though the 1996 Telecommunications Act did away with the ’92 Act’s regulations, tiering did not significantly decrease as a tactic. In addition to the tiering tactic, the 1992 Act’s had provisions that ESPN was also able to exploit. The Must Carry and Retransmission Consent provisions combined to allow broadcasters (i.e. over the air networks), covered under the long standing cable industry policy to be default included in packages, to waive their must carry privileges “and demand payment from a cable provider for carrying its signal.” (Corrigan 2015:45) The carrier had the right to turn down the broadcaster but the leverage was squarely in the broadcasters favor if they had a significant enough ratings share. This interaction between the two clauses effectively normalized the per subscriber fee (retransmission fees, as fees for content

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*the New Gilded Age*. Below we will see that introduction of new technologies into the market, when they do occur, do nothing to control prices from cable providers and in fact may have in certain case contributed to even higher prices.
were essentially the same thing as per subscriber fees) and also allowed ESPN’s parent
companies (ABC, Capital Cities, and the Hearst corporation) to pool their leverage together and
negotiate with carriers for either increased fees or to carry new channels produced by the
conglomerate. With this increased leverage for future negotiations, ESPN’s expansion into extra
channels, the web, print, and new forms of entertainment was all but secured. In the heart of all
this business maneuvering and deregulation, ESPN and ABC become so obviously profitable
that Disney bought them for roughly $19 Billion in 1995. (Miller and Shales 2011:357) Former
Disney CEO Michael Eisner thanked the legislation quite clearly in 2004: “Without ABC in our
own stations, we would not have been able to achieve the major growth we have realized at
ESPN and our other cable holding, because ABC offers the highly valued programming that
cable operators need, i.e. Retransmission consent.” (Corrigan 2015:47)

So, with price restrictions out of the way and leverage created from their parent companies
(Capital Cities Communications/ABC and the Hearst Corporation, and then Disney after its 1995
purchase of CapCities/ABC) ESPN continued to buy up rights contracts throughout the 1990s
and into the 2000s. This, in turn, forced their per subscriber fee up and up and up. In order to be
able to the sign the 1998-2005 $8.8 billion NFL contract for both Sunday Night Football for
ESPN and a renewal of ABC Monday Night Football, ESPN fought its cable providers tooth and
nail to attain a 20% compounded annual increase of the per subscriber fee. According to Hearst
CEO Vic Ganzi this was an exceptional deal for ESPN: “A 20 percent increase for the cable fees
doubles in about three and half years, so if the number is one in the first year, it’s two just three
and half years after that! So if I remember correctly, we were around forty cents at the beginning
and the numbers just compounded up dramatically. All of a sudden you’re at $3.20.” (Miller and
With that contract, ESPN had become a live sports juggernaut, steamrolling its way into the public consciousness and making Disney’s assets in ABC and ESPN the only places to see the most popular sport in the US on Sunday and Monday nights. Although CBS and FOX also had NFL contracts and access to more games (both the 1 pm and 4 pm Sunday start times), ESPN and ABC were the only channels to watch professional football during primetime. By guaranteeing the per subscriber increase at compounding levels across a growing industry, cable subscriptions increased from 51.7 million in 1990 to 66.7 million in mid 1999 (Federal Communications Comission 2000), and increasing ad revenue by gaining sustained access to primetime ad rates, the 1998 NFL rights deal thrust ESPN into the new millennium flush with rapidly increasing revenues to take on new formats and mediums, convinced of its dominance in sports not just on cable but in television writ large.

**ESPN in the 21st Century**

This dominance would continue throughout the 2000s as no real competition for sports rights existed beyond the 4 major networks (one of which was, of course, owned by its parent company and whose sports division had been dissolved into ESPN’s). Furthermore, these networks were at a distinct revenue disadvantage as they had only one source of revenue. Former CEO Steve Bornstein expressed that advantage: “By 1997 it was game, set, match. For every dollar I’m taking in, sixty five cents is coming from a subscription fee, thirty-five is coming from advertising, and the shmoe next door to me is getting everything from advertising. It’s over.” (Miller and Shales 2011:382) It might not have been “over” by 1997 as most sports rights in the late 90s and early 2000s still comfortably sat with broadcast incumbents. The NFL changed
hands between FOX, CBS, and NBC for Sunday afternoon coverage. MLB baseball signed a $2.5 billion 6 year deal with FOX in 2000. (Raissman 2000) Major college sports events like the men’s NCAA basketball tournament and the New Year’s Day college football bowls remained on network television. However, the NBA contract starting in 2001 was split between ESPN, ABC, and TNT for a total of $4.6 billion for 6 years, the vast majority of these games airing on cable. (Inside Hoops n.d.) So, Bornstein was partly correct, in that cable sports, with its dual revenue stream, had a revenue advantage on the broadcast incumbents. If by his comments he meant that the beginning of a long end for the dominance of broadcast networks could be located in the late 1990s, he is also largely correct. But, as most CEO functions are often more ideological than practical, he may have overestimated his own firm’s role in that demise. By the late 90s and the early 2000s, new technologies and evolving league relationships to this technology had begun to enter the marketplace and changed two separate but intimately related fields that ESPN had come to lead in the sports media industry. First, new technological forms came into the market starting in the late 1990s and proliferating greatly in the past 15 years that would both accelerate the value of live sports and push ESPN into rapidly escalating bidding wars for sports rights. Second, new technologies would also threaten ESPN’s other, long standing advantage as the singular place for sports fans to get access to the broadest range of asynchronous, renarrativized segments of video: highlights. In the following, the latter will be dealt with first as the erosion of ESPN’s dominance over the highlight has pushed it to adopt an all-in strategy for live sports.

The role of ESPN as cultural phenomenon is often credited to its flagship program *Sportscenter*. Much intriguing work has been done in varying academic fields as to its cultural importance.
However, for the study of the political economy of the visual mediation of sport being conducted here, the aspect of *Sportscenter* that makes it of note is not unique to *Sportscenter* per se. Live rights were not the only reason that viewers tuned into ESPN and were only a part of the ESPN brand that had become synonymous with sports. The other, arguably equally important video form that built the ESPN brand was asynchronous and short, non-linear and renarrativized: the highlight. Any study of ESPN as a cultural phenomenon would be incomplete without a mention of the highlight and ESPN’s flagship shows *Sportscenter*, the first show the network ever ran. The show has been until recently primarily structured around reporting game results and highlights. However, early in its run it had no highlights as even pre-recorded snippets of games are subject to the same strict rights contracts as live broadcasts. ESPN cobbled together varying sets of highlight rights as secondary contracts from original rights holders like NBC, CBS, and ABC for their first years. Although rights for highlights were not nearly as expensive as live rights, they were still a significant and separate cost. (Gamache 2010:194) *Sportscenter*, although of a distinctly lower budget than live sports production, still required capital investment to draw the ratings and cultural power that it gained. However, beginning in the late 1980s, leagues started to experiment with new deals that packaged live rights and highlights rights together. In the 1987 deal with the NFL, the one that several ESPN executives credit with making ESPN a truly legitimate household name, the NFL agreed to a new contract term: ESPN was granted unlimited usage of highlights. (Miller and Shales 2011:150) Although the buying of live rights entailed the capacity for retransmission of game content, they most often had restrictions that limited their use in certain timeframes (like several hours after the game had ended) and in certain quantities (like how long the highlight could be). This was a new and very important development.
ESPN took their new bounty and not only strengthened *Sportscenter*, but built *NFL Primetime* which aired between the end of the late Sunday afternoon NFL games and the beginning of the Sunday night primetime game (half of which in this contract were slated to be on ESPN and then all of which were on ESPN from 1998-2005). *NFL Primetime* was consistently one of ESPN’s top rated shows, and in the context of late 1980s ESPN, this made a significant difference for a company still struggling to stay in the black. Not only is this a new step in the evolution of the political economy of the highlight, it in some ways makes up for the gap in the subscriber fee revenue stream as these highlight shows became more popular timeslots and could increase potential ad rates. At a more abstract level, the lifting of the highlight restriction allows for a deeper engagement with the game itself as being able to see plays slowed down and the parts separated from the whole brought a deeper understanding of the game in a similar way as the disaggregation of statistical knowledge. As VP of Production Bob Rauscher says of the creation of NFL Primetime: “We were showing there, four, five minutes of highlights! The conceit was, don’t just show me Emmitt Smith’s touchdown, show me the key block that sprang Emmitt’s run as well.” (Miller and Shales 2011:151) This depth of game knowledge strengthened the bond between fans and ESPN, as for the duration of the 1987 contract ESPN was the only place where one could access this kind of video.

This situation lasted until the end of the 2006 NFL contract when the NFL gave both the highlight show length highlight package to NBC (which took over Sunday night games) and began an aggressive campaign to take control of highlights in general. The first action crippled ESPN’s *NFL Primetime*, forcing it to move towards a talk and analysis format on Monday nights,
a much less rated format and timeslot. This loss was compounded by the NFL’s move to put restrictive limits on networks and websites for how much highlight footage they could use. (McCarthy 2007) This move was to signal a growing effort by all the major leagues to serve their own highlights on multiple platforms including their websites and league owned cable television stations (by 2009 all of the big four sports leagues had their own networks and many college sports conferences followed in the 2010s). Leagues saw the value in serving highlights on their own platforms as a) driving uptake of their stations with cable providers and b) ad revenue generators on their websites, the broad power that ESPN had built out of the highlight had begun to wane. This would only be worsened by the emergence of web 2.0 which allowed for easy user generated highlights to spread almost instantaneously around the web via social platforms and the explosion of mobile technologies that could serve short snippets of video wherever the fan happened to be. This dual movement of league enclosure and technologically enabled fan behavior hollowed out ESPN’s highlight empire, greatly troubling the Sportscenter franchise and drove ESPN into its “Embrace Debate” era of talking heads punditry a la cable news. With its rating powerhouses weakened, it is no wonder that by the 2010s, ESPN had to double down on its commitment to live sports in order to maintain ad revenue. However, as we have seen, this comes with increased costs which would by the middle of the 2010s start to cause serious problems for the network.

ESPN’s dominance over nationally broadcasted\textsuperscript{16} live sports on pay TV was virtually unchecked for most of its first 20 years. Early in the 1980s, the USA Network (originally co-owned by the

\textsuperscript{16} Unfortunately the very lively and turbulent history of regional cable sports networks is beyond the scope of the study at hand. They contribute much to the political economy of sports and to the general ubiquity of synchronous and asynchronous sports video. Of
Dolan family and Cablevision) had a similar portfolio of sports as ESPN but with less funding and a tumultuous ownership group, it pivoted out of sports programming by the mid 1980s. Ted Turner’s TNT and TBS were the only real competition as Turner pushed his Atlanta Braves on a national level and they had and continue to have NBA contracts. However, no cable channel had the NFL and no cable channel had the array of college sports that ESPN had. In essence, then, when rights contracts came up for bidding, ESPN was bidding against networks who, as Steve Bornstein pointed out, were at a distinct revenue disadvantage. This kept overall growth in live sports rights relatively consistent with inflation. This began to change in the new millennium for a variety of reasons. First, the nature of television viewing had begun to change with the move to digital cable and satellite. Once digitized, the technological possibility of user-controlled asynchrononicity emerged and by the early 2000s several different digital video recording (DVR) devices were on the market. The innovation of the DVR and the subsequent iterations of digital video delivery systems that allowed for asynchronous viewing created a rather obvious problem for television. When viewers can control the flow of what they are watching then why would they watch ads? By 2010, advertising industry analysis indicated that 86% of television ads were skipped by users watching via DVRs or other time shifting technology. (Plunkett 2010) Hence, when it comes to ad revenues, television that is more likely to be watched live (sports, awards shows, special events in general) becomes much more valuable and the competition amongst media outlets capable of paying for live rights intensified.

In addition to the technological pressure on the market that increased the value of liveness, the aforementioned entrance into the picture of league owned media outlets reduced the amount of

particular importance is that many of them are part of larger media conglomerates like the Fox Sports Networks, Comcast Sports Networks, and Charter’s LA Sportsnet.
possible games available to the other television networks. With less supply and an even demand, prices are bound to increase. This situation was exacerbated by the creation of sports only cable channels by the major broadcast networks. Comcast, after merging with NBCUniversal in 2009, took their Versus channel and turned it into the NBC Sports Network in 2012 (renamed NBCSN in 2013). CBS purchased College Sports Television (an independent DirectTV only channel) and eventually renamed it the CBS Sports Network in 2011. Fox Sports, although already in charge of a large regional sports network (RSN) since its purchase of 50% stake in the Prime Ticket RSN in 1994 (renamed Fox Sports Network in 1996), was relatively late to the nationally distributed cable channel market. Generally content to syndicate centrally produced content like talk shows across its network, Fox didn’t introduce Fox Sports 1 until 2013. In addition to these new competitors, college sports conferences like the Southeastern Conference (SEC), the Big Ten, the Atlantic Coast Conference (ACC), the Pacific 12 (Pac 12), and individual schools like the University of Texas’s Longhorn Network took control of their live rights much in the same way that the professional leagues had, although several of them were in cooperative production deals with the likes of ESPN, Fox, and CBS. So, not only was their less supply after the leagues and collegiate conferences exercised their muscle to remove some available games from the networks’ supply, the networks also operated more channels themselves thereby increasing demand. Given that price controls had been removed from the regulatory field and the demand for pay TV had not shown signs by the late ‘00s of weakening, it should come at no surprise that live sports rights contracts rose astronomically. The NFL’s 2006 deal with FOX, NBC, CBS, and ESPN represented a 27% increase over the 1998 deal (not that far off the rate of inflation in the US during the same period), (Sports Business Daily 2007) but the 2011 extensions of the 2006 deal, which extended the deal an extra nine years, represented a 114% increase. (Badenhausen
The NBA’s 2008 deal with ESPN/ABC and TNT represented a 60.9% increase over the 2002 deal, a significant increase that probably owes to the slightly later date than the NFL’s 1998 deal. (Gough 2001) However, the 2016 deal, negotiated in 2014 during the rapid increase in demand and decrease in supply represented by the introduction of NBA TV, was a whopping 224% increase over the 2008 deal. (Terlep and Sharma 2014)

As these deals all had heavy ESPN involvement, the ESPN per subscriber fee rose apace during the early 2010s. And as this increase was passed onto cable subscribers, total cable bills continued to increase. ESPN’s share of this increase was becoming more and more notable. From 2012-2014, ESPN accounted for 13.3 percent of the increase in cable bill price calculated by taking the reported increase in ESPN per subscriber fees as a percentage of the increase in the FCC’s reported average “expanded basic” cable package fees. Overall per channel costs by the end of 2014 were .46 cents per channel. This is the average cost per channel (the mean) as determined by the total cost divided total number of channels in a “expanded basic” package. (Federal Communications Comission 2016) So, as ESPN’s per subscriber fee in 2014 was $6.04 (Molla 2014) that means that ESPN’s cost per cable bill was 1400% greater than the mean. However, the median cost per channel was $0.14. The next closest channel was TNT (which owns several sports right contracts including MLB regular season and playoff games and NBA regular season and playoff games) which charged $1.48. That means that ESPN’s per subscriber fee was over 400% higher than its nearest competitor and over 4300% more than the median fee. ESPN’s “dominance” in cable television takes on a different character when considered in this fashion. It should be noted that although industry wide data does not exist yet for 2017, the reported average per subscriber fee for ESPN had topped $9 per month (Gaines 2017), a roughly
50% increase in over a three year period necessitated by the new NBA television deal that went into effect for the 2016-17 NBA season.

All of these increases also happened when cable subscriptions themselves were stagnant or mildly decreasing during the same time period. In 2012, total cable subscriptions in the US were 97.4 million. By 2016, total cable subscriptions were at 96.8 million. A small decrease, to be sure, but steady growth is a prerequisite for continued capital investment and shareholder confidence and the growth of the cable industry until the end of the first decade of the millennium was reliably strong. (Schwindt 2016) What had been a growth industry at the time of the signing of the major NFL deal in 2008, had now significantly cooled off. On top of that decrease in total subscriptions, ESPN’s subscriptions decreased even more. Recall that through tiering, some cable providers were putting ESPN in premium tiers beyond basic cable; subscribers who didn’t cut the cable cord entirely could simply tier down. Hence while total cable subscriptions were down by 900,000 or a .92% change over a 5 period, ESPN subscriptions went down 4% in 2014, 3.2% in 2015, and 2.2% in 2016. (Lieberman 2016) As the per subscriber fee was by 2014 60% of ESPN’s total revenue at $6.9 billion ($3 billion more than their total, across platform ad revenue) (Gaines 2015), it is not surprising that the per subscriber fee would either need to go up significantly to defray the losses in subscriptions or that ESPN’s revenue would take a significant hit. In addition, as the per subscriber fee became more and more public knowledge (reporting on this has taken a noted increase since 2014) and cable fees became higher and higher, the open secret of the per subscriber fee dual revenue model became more and more apparent: even if you don’t watch ESPN and have no interest in sports, if ESPN is your cable bundle, you are paying for it. It is with this as a backdrop that the problem of cord cutting took center stage.
Cord cutting, or cord shaving to denote a less drastic procedure or cord never to describe those who never signed up for cable, is the process by which former cable subscribers “cut the cord” and re-allocate their spending on entertainment programming to so called “Over The Top” (OTT) services like Netflix, Hulu, HBONow, AmazonPrime, Youtube, and Sling TV. OTT is the industry term that denotes video that is served via streaming technologies over the Internet, not a set-top box or a satellite. OTT services generally require either watching on different screens (laptops, phones, tablets) or the purchase of streaming device like a Roku, AppleTV, or Google Chromecast, Amazon Fire, Microsoft Xbox, Sony Playstation, or the purchase of an Internet connected Smart TV. These services have been wildly popular, Netflix counted 47.7 million paying subscribers (Dunn 2016) in the US in 2016, and have had notable negative impact on the cable industry writ large. However, this negative impact has been felt particularly intensely by ESPN as it reveals the aforementioned conundrum of the cable bundle. When consumers are given the option to stop paying for sports they don’t watch, they jump at the chance. This situation has raised the specter of the end of the cable bundle for cable providers. If subscribers are leaving cable because they incur costs that they don’t feel they should take on, then the solution for cable providers would be to offer custom bundles that allow subscribers to choose what they pay for. The so called “skinny bundle,” basically tiering by another name, is a attempt at giving consumers that option. However, for ESPN, having built their empire on the backs of non-watchers, the threat to the cable bundle is an existential threat to the dual revenue stream business model. The only way for them to combat this entirely would be explore their own OTT a la carte option. However, cable native channels who have begun to offer this can be counted on one hand: HBO and Showtime. These two, of course, are premium channels whose subscriber
base has always existed outside of the general cable bundle, so their per subscriber fees are based in consumers who actively want to pay for it. Not so for ESPN, hence making the OTT option seem less appealing both as a development level cost and for the implication that potential cable subscribers could circumvent the cable system, therefore making ESPN’s industry leading per subscriber fee seem less and less appealing to cable providers. ESPN understands the precarious position that its reliance on the subscriber fee has put it in. Any indication that they can and even might go OTT could only deepen the demand for an ala carte option and raise the general animosity towards the brand that already exists. For cable, the loss of a significant fraction of ESPN subscribers would be an enormous loss of revenue. For an industry that has gone stagnant and is slowing bleeding consumers, any extra exodus would seem particularly onerous and the willingness to take on any increase (or even a maintenance) in per subscriber fees would be zero. Relatedly, for ESPN the potential of a standalone app could easily be biting the hands that feeds you that second revenue stream. So, the standalone app would only further upset the already disturbed balance of power between the cable companies and ESPN. In a more direct way, the calculus of the system requires ESPN to maintain its highly expensive roster of sports rights within the existing cable infrastructure because the OTT option is a) not yet profitable enough or in demand enough and b) too damaging immediately to the already decreasing revenue stream coming from the per subscriber fee.

In addition, in order to make a similar profit from their cable deal, an ESPN OTT ala carte option has been estimated to cost between as much as $36 month. (Pomerantz 2015) Compare to the most prominent OTT ala carte options of HBO Now ($15 month), Netflix ($10 a month), and Hulu ($7.99 a month) and we can see how this how cost might come with some sticker shock. If
we consider that average expanded basic cable package was $69.03 ((Federal Communications Comission 2016) then the upper end of the estimate actually equals nearly half of that same package. Also consider that internet access is required for an OTT option to function so the total cost of ala carte streaming ESPN would have to include the nearly $50 average cost of an internet connection (Seward 2014) effectively costing more for the cost of internet access and ESPN than it would for a full cable package and ESPN. Cord cutting for sports fans would seem to be a losing proposition. In this way, ESPN sits atop cable television, an industry it dominates, but an industry in a crisis of its own making. It has created a product whose cost of production requires it to be subsidized by a toll paid by everyone who desires access to the media infrastructure on which it resides. This business model is by nature threatened by the political economy of the Internet, cable television’s competing media infrastructure, which for its entire duration has refused a business model where the owners of the distribution infrastructure pay for content.

**From Formal to Real Subsumption**

And why would Internet service providers (ISPs) pay for content? The Internet as it is constructed, as nodes of uploading and downloading information, is built for the decentralized production and display of content from as many users as possible. As a great deal of this content

17 Also important to this discussion is the fact that the current state of the infrastructure of streaming is not built for mass market live viewing. Speaking at Recode.net’s Code/Media conference, BAMTech (Baseball Advanced Media’s streaming spinoff company that handles streaming for MLB, the NHL, and HBO) CEO Bob Bowman made it very clear that major event live streaming as the primary option is still very far away. At the February 2016 event, Bowman explained that BAMTech run HBONow’s concurrent viewer capacity is at 2 million.(Kafka 2016)
is produced outside of wage relations (Terranova 2004), the advantage of ISPs over content providers is clear. In the cable model, the viewer is simply that, a relatively passive consumer who pays for access to the flow of television. As was shown in the history of the per subscriber fee, the political economy of cable television became stable only when both Roger Werner understood that the cable industry could be made to pay for content out of desperation and when the federal government lifted restrictions on prices allowing cable providers to pass that new cost onto consumers. However, ESPN’s business innovation has been leveraged possibly too far, becoming a burden on the cable industry as it struggles to deal with new competition from both within and without that industry.

The contemporary sports fan (both casual and fanatic) has access to more sports video than ever before. The sports media industry that ESPN came to shape and rule has been altered, just as every media industry has, by the Internet. The Internet’s archival qualities combined with its exponential capacities for the production of content both corporate and user generated has altered every media industry. These two qualities of digital production under capitalism produce a kind of overproduction of content that disperses the attention of spectatorship into an ever-expanding array of objects. In this overcrowded market, ESPN is but one provider of sports content and although liveness still provides great value for capital and has lately become a site of platform capital investment (Facebook Live, for example), ESPN’s oft stated emphasis on the live event (Kulwin 2016; Sharma and Ramachandran 2016; The Aspen Institute 2013) is no longer the statement of strength it used to be. As much as liveness breaks through the static of the archive, the overwhelming noise of all those records, the ad revenue produced by it will never make up for the 60% of revenue that the per subscriber fee created for ESPN. Hence, 60% of ESPN’s
revenue is tied to one access point and ultimately one kind of video experience, an interface and experience that have now become two amongst many. As cable television loses its market share to the proliferation of internet connected screens and ESPN loses its dual stream revenue produced advantage in live sports rights, the balance of power in the political economy of sports media has begun to shift. Hence, ESPN faces the aforementioned problem of the ISPs unwillingness to pay for content, a situation born out of deregulation enabled monopoly power in the telecommunications industry.

As Susan Crawford’s work has chronicled through a skillful telling of the conditions that led to the Comcast-NBCUniversal merger (approved by the FCC in 2011 and fully consummated in 2013 when Comcast bought out General Electric’s remaining stake in NBCUniversal), Comcast is both the nation’s largest provider of cable television and internet access which gives it near monopoly leverage on content providers. (Crawford 2014) Through its ownership of sports franchises (the NHL’s Philadelphia Flyers and until 2011 the NBA’s Philadelphia 76ers), its large regional sports network CSN (which broadcasts in 9 major markets including New York, Chicago, Boston, San Francisco, Philadelphia, and Washington DC), and its national cable sports channel NBCSN, Comcast presents a significant challenge to ESPN in the cable ecosystem. On top of that challenge, Comcast’s horizontal integration of infrastructure and content allows it to pool its capital in order to challenge ESPN’s negotiating position for live sports rights. And this is only the tip of the iceberg. If Comcast and the ISPs with whom it competes are successful in their long attempts to remove FCC regulations that ensure net neutrality, the policy that assures that content providers have equal access to the infrastructure of the internet regardless of the nature of their content, then the specter of flipping cable television’s per subscriber model
appears. If net neutrality is removed as a policy, what is to stop Comcast from protecting its horizontally integrated interest by charging rival content providers extra in order to be accessed via Comcast’s infrastructure? What is to stop them from creating their own dual income stream, one this time from both consumers and producers? In this instance, it should be no surprise that Verizon CEO Lowell McAdam was by the middle of 2017 floating the idea of a Disney/Verizon merger to combat the market power that Comcast has developed. (Moritz 2017) If Comcast can regulate the flows of information by creating fast lanes for its content and snarled heavy traffic for everyone else, even the attention advantage that a premium live event could bring would be lost. The advantage of liveness is in its synchronicity, its live connection between two places in the same time. Breaking this synchronicity by throttling the flow of information from live broadcast could only make the object being accessed less desirable. Making monopoly capital’s commodities easier to access than commodities not made by monopoly capital is a basic tactic of power consolidation. To create this inequality in access, these differential speeds of access to the present, is to attempt to really subsume the attention of fans under monopoly capital’s logic. To submit attention to the logic of capital, to make the tools through which attention is able to work on its object vary in their quality depending on the fee that the laborer has paid to work.

Throughout the history of the visual mediation of sport fandom the act of sports spectatorship was both expanded in space-time and subsumed through the progressive introduction of technological and political economic innovations creating both a greater amount of time that could be spent watching and an intensified degree of contact.

Marx’s concept of subsumption is broken out into two related yet separate processes in the subordination of the labor process to capital: formal and real subsumption. (Marx 1990:1019-
First, in formal subsumption, the labor process must be made to serve the capitalist’s valorization process, ie. the production of surplus value from the labor power that capital has purchased. Second and following from the first, real subsumption is when capital subsumes the labor process by taking hold of it, managing and directing it, reshaping it, as the Endnotes Collective says (Endnotes 2010), in its own image. These two moments also closely reflect Marx’s twin concepts of absolute and relative surplus value, forms of value extraction from labor that rely on the extension of the work day (absolute) and intensification of the work process itself (relative). (Marx 1990) It is here that the real analytic power of subsumption becomes clear for an analysis of the political economy of sports spectatorship. Leisure time, of which sports spectatorship is an extremely prevalent aspect, has been understood since the Frankfurt School as a grounds for the extension of absolute surplus value outside of the factory, formally subsuming it by making it valuable to capital. (Horkheimer and Adorno 2007) For visually mediated sports fandom, the formal subsumption into capital logics does not necessarily change the process of watching. Yes, it is constrained by the television’s frame but the continuous broadcast feed merely resembles the linear experience of being at the event itself. Before the advent of pay TV and ESPN, this formal subsumption was valorized the networks by selling the attention power of fans to advertisers. The argument here for attention as productive of value, as Dallas Smythe and later Sut Jhally and Bill Livant argued in the 1970s and 1980s when attempting to identify the processes of value production in the dominant ad supported media of their era, is particularly valid for this formally subsumed era of visually mediated sport fandom. (Jhally and Livant 1986; Smythe 1977) When formally subsumed, the fan watches the live event through a single interface, the television set. Sport media capital offers the fan the object, the event, the raw material to be worked on with attention and then sells that attention as a valorized commodity to
advertisers. As Jhally and Livant referred to it, the fan’s “watching-time” is the commodity and the wage that comes back to the worker is the event itself.

Cable television adds an extra surcharge onto this process, valorizing the access to the event itself. In this way it resembles the ticket to the actual event, only if you had to pay for a ticket to the event even if you weren’t going. But this ticket gave you access to the very possibility of utilizing your attention-time to create further value for capital. The fan consumes a commodity, access, and then becomes a commodity themselves. Capital has begun the process of real subsumption then, reshaping and redirecting, grabbing hold of the work process and valorizing it in new ways. The dual revenue stream is but the first step in the intensification of the valorization process, the multiplication of moments of valorization that indicates the onset of a regime of relative surplus value. The next step towards real subsumption and the dominance of relative surplus value in the political economy of sports media is the proliferation of screens and access points. By creating new moments of contact, capital is pulling the attention of fans into as many places as possible. By proliferating interfaces from both hardware (our phones, tablets, streaming devices, etc.) and software (the mobile apps, websites, and platforms that serve us the images), capital has new ways to measure and therefore valorize attention. Christian Fuchs, building from Smythe, Jhally and Livant, and in a nod to the Italian Autonomists, has invoked a “social worker” (which builds on the Autonomist Marxist concept of the “social factory” (Cleaver 2000)) who goes online and creates value by generating data that is then sold to advertisers. This sale is what justifies the user’s status as a worker; it is the sale of attention power.
As Fuchs says, echoing Horkheimer and Adorno, this results in a “liquefaction of boundaries” between work time and non-work time, an expansion of absolute surplus value. (Fuchs 2014a, 2014b) However, in order for real subsumption to occur their needs to be an attended acceleration of the work process, a new strategy must be enacted to increase relative surplus value. This is accomplished through the multiplication and intensification of possible moments of attention, moments that are logged and turned into rich data objects that become commodities. The process of the liquefaction of the boundaries between a labor time and a non-labor time, or time that produces value for capital or time that does not, is accomplished by proliferating the moments where attention power is valorized, moments that become these data objects as traces of attention paid. However, the problem for ESPN is that the cable model they passes on the cost of their content (that which is to be paid attention to) onto the infrastructure who in turn passes that cost onto the social worker. This presents a cost that many are unwilling (the cord cutter) or unable (the cord never) to pay for. Hence their ability to increase and therefore really subsume the process of sports spectatorship hits a limit as it can only intensify the work process for a limited number of workers who will never represent the whole workforce. The sports media industry is but one element of the culture industry. Ultimately, the history of ESPN represents one of the culture industry’s many attempt to transition from the formal subsumption of attention to its real subsumption. In the next chapter, we will discover that the limits of this process stretch far beyond the sports industry wing of the culture industry. The crisis at the end of the real subsumption of attention is forcing a reconfiguration of capital across the culture industry and the companies that own the infrastructure are leading.
Chapter 5

All That is Solid Melts Into Content: Contentification and the Real Subsumption of Sport Fan Attention

In the previous chapters, a clear, technologically produced pattern has emerged. As all of the fan practices and business case studies examined here have shown, the introduction of the Internet has drastically altered the political economy of sport fandom and, hence, the sports media industries that serve it. The Internet made blogging possible, upsetting the established field of newspaper sports reporting and punditry, but in the transition between the early, freewheeling blogosphere and the streamlined businesses of Bleacher Report that came to dominate, the logics of scale and attention inherent to the commercial internet created a semi-professionalized field rife with exploitation. When fantasy sports reached the Internet, it was only a matter of time before the speed and scale made possible by the Internet birthed something like DFS, shaping fantasy sports in the image of capitalism’s hegemonic statistical field and its risk management logics. The Internet has posed an existential threat to ESPN’s dominance of the cable sports ecosystem, diffusing irreparably the attention it had once laid claim to and laying bare the attention that it had valorized yet never actually held. Although these changes have played out in different ways, a consistent logic exists across them, a logic that drives a process inherent to the structure of the Internet. I call this process “contentification”: the manner in which heterogeneous and disparate media objects, through their production, distribution and use, are rendered homogenous in order to produce value as objects that are worked on by users. This process and its internal logic has swept through not just the sports media industries but the digital
culture industries writ large, resulting in the exponential production of content. This exponential quantity, however, outstrips the capacity for human attention to take it in, resulting in a crisis of overproduction that threatens to force a reconfiguration of capital. As we have seen in the case studies of Bleacher Report, DFS, and ESPN, this reconfiguration is already underway.

To grasp the nature of contentification, an investigation into the implications of using the term “content” to describe a vast array of media, no matter its provenance, is required. What does this term, so rampant in the digital cultural industries denote and what is its ideological function? Leaning on Matthew Fuller and Andrew Goffey’s work on workflow, and Christian Fuchs work on the audience commodity, I’ll attempt to answer those two questions. I’ll also compare the contemporary, digital use of the word “content” to the other definitions of the word, particularly in the classic dichotomy between content and form, in order to get further at the ideological underpinnings of what drives “contentification.” Another binary split of particular importance in this discussion is that between “product” and “content.” In the digital publishing industries, software produced in-house is known as “product” while “content” is generally understood to be any media that is shaped and distributed by “product.” The largest, most well funded digital media companies (like B/R) have invested significant amounts of capital into their “product teams,” knowing that “content” need not necessarily be produced in-house. Product in these companies is a way to describe software interfaces that are used to both create and interact with content. Product acts as the two-way tool that facilitates contentification. But as the management of content has been streamlined and regularized, as product has become the site of capital investment, product’s ability to collect and serve content has raised the threat of a bubble.
By theorizing the changes in sports fandom and sports media caused by the Internet as contentification, we can examine the mechanics of how capital and sport fans attempt to deal with the essential finiteness of the time and space of the sporting event itself. In order to expand profits and maintain growth, sports media’s reliance on the live event of sport requires the proliferation of contact points, new moments of interaction with the sport fan’s object of passionate interest. These contact points are “content” served to fans through a multitude of interfaces. The problem of the finiteness of the event can only be partially solved by more events, a strategy with clear spatio-temporal limits. These limits are also not just spatio-temporal as the production of more events from sport also requires agreements between athletes and owners which are ruled by collective bargaining agreements and even then follow a law of diminishing returns as creating more events bumps up against a fandom’s ability to pay for attendance to extra events in an era of widespread wage stagnation. To submit the event of sport to contentification is to attempt to overcome these limits. This process creates a form of relative surplus value moving past the limits of the absolute surplus value of the event. As discussed in the conclusion of Chapter 4 in regards to live broadcast but argued more generally here, this shift from absolute surplus value to relative surplus value can also be understood as the shift from the formal subsumption of the live event of sport to the real subsumption of the experience of sport.

But, first let us return to word itself. What does it mean to use the term content to signify an extremely disparate array of media objects? First, it connotes a process of abstraction that can turn pieces of video, still images, text, and numbers into simply different iterations of the same substance. This squares partly with many different definitions of “content” itself. From the OED: “that which is contained in anything, a thing contained, the amount contained” or a
psychological definition: “the totality of the constituents of a person’s experience at any particular moment” or in regards to piece of writing: “the things contained or treated of in a writing or document” or finally, in the philosophical sense: “the sum of qualities, notions, ideal elements given in or composing a conception; the substance or matter (of cognition, or art, etc.) as opposed to form.” (Anon n.d.) Returning to the last portion more later, we first see that the elements of content are abstracted as similar once they are “contained” within something else. When “contained or treated of” they become elements that express the larger whole. There may be elements that dominate the character of the whole, that determine the experience of the container itself, but in the last analysis, the “contents” are still the contents of something else. What this points to in contentification is the need to determine the nature of the container of the content. What is this form through which this content is expressed? And what is the nature of this form’s relationship to its content?

In the digital cultural industries, content is a modular, iterable, constantly growing archive of media objects expressed through digital interfaces. But, what do we mean by “interface.” At one level, we mean both the screens we access content through and the software that makes that content intelligible. Matthew Fuller and Florian Cramer define the interface as “the point of juncture between different bodies, hardware, software, users, and what they connect to or are a part of. Interfaces describe, hide, and condition the asymmetry between the elements conjoined.” (Fuller and Cramer 2008:149) This definition points to the inherent power imbalance that this asymmetry creates. The records produced from sport are expressed through interfaces, the points of juncture, and accessed by fans via those interfaces. When a fan came to Bleacher Report in its pre-TNT buyout form, the nature of the labor that produced the article they read was hidden. At
first glance, there was no way to know if the writer who produced the content being read was paid or trained or qualified. What users could see were a writers profile page which listed basic statistics like number of articles written, number of pageviews, and various “achievements” medals which indicated articles that had reached certain page view milestones. Hence, the interface of Bleacher Report showed what had been determined as the most important aspect of a writer’s profile: pageviews. The asymmetry of this interaction, “between the elements conjoined” is a function of the interfaces ability to reify the relations of both its own production and the commodities that are served by it. For DFS, in its dependence on the high frequency players (the sharks), the interface initially hid the advantage that the sharks had over less experienced players. It was only after legislation and legal pressure that DraftKings and Fanduel began to reveal the experience level of players. The interface can describe or choose not to describe the asymmetry between parties that meet through its logic. ESPN’s life as a lucrative cable television channel is dependent on the interface between cable and television. Breaking that juncture, a juncture that attaches ESPN to the larger bundle of channels that make up the cable model, would reconfigure the asymmetries built into the bundle and reveal the asymmetries that it relied on to build such a robust company. In all these cases, the interface’s power asymmetry was able to occlude the nature of the content being accessed by users. The media objects that the Bleacher Report reader, DFS players, and ESPN watchers accessed via their interfaces, the experiences that they were able to have with these media objects, were structured

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18 These pages are now essentially unreachable in their previous form. Urls for individual pages now generate errors pages and writer profile pages archived by the Internet Archive’s Wayback Machine don’t share the statistics as those statistics were being pulled live from a server that is no longer connected to the Internet. For reference, see https://web.archive.org/web/20120518112826/http://bleacherreport.com/users/117701-mike-mcd
by knowledge deficits that allowed the companies that owned the interfaces (the means of interaction) to profit.

The interface not only creates profit through knowledge deficits born of its power asymmetry, it also structures the content itself as value producing. Media objects become content through the form of the interface which expresses it through its own logic. Matthew Fuller and Andrew Goffey, in their book _Evil Media_, argue that “the *regularization* of expression is . . . a . . . tendency evident in practices of the organization of people and things *as* and *for* data in computational culture, following the general principle that structured data are more tractable to processing than unstructured data.” (2012:111) Tractable and therefore abstractable data are organized (curated, as they) and put into circulation, expressed machinically. Bleacher Report’s reliance on the slide show (a reliance not exclusive to them but rampant across the internet publishing industry) is an example of how the structure of an argument (Top 10 Reasons Why) can be made tractable to capital. The slideshow structure, which Bleacher Report became infamous for, is so popular a form for content because each click of the slideshow to the next element generates a data point of attention, as each slide has its own unique URL, marking the movement through the slideshow is easily traceable. Basic analytic software can track where you stopped for longer, which slide you came back to, how far into the slideshow you got. The content here has been structured “as and for data.” These data points are then packaged and sold as commodities to advertisers who use it to build advertising campaigns that sell your attention back to you. Hence, the interface collects the user’s interactions with content and reforms it as valuable to capital. Furthermore, Goffey and Fuller point out “what you can machinically enunciate must correspond with the arrangement of the data structure.” (112) In other words, you
can only speak in the same language as the machine. Hence, the interfaces (screens, platforms, websites, streaming devices, software) through which we access content always already “contain” it. And as all of the interfaces through which sport fans access content are capitalist enterprises which seek to subsume this entire process under capitalist forms of relations, the nature of this making tractable is a process of subsumption, making the content not only valuable to capital but managing and directing it towards the real subsumption that is contentification.

The interface accomplishes this subsumption through controlling the means of creating content. Fuller and Goffey, in their discussion of regularization of expression, go on to argue that “the event of communication – the fact that one speaks, that signs are emitted – is traduced and remains hidden behind what the software parse of what is said. In point of fact, the user need not really say much, since it is the form of expression, not its content, that satisfies.” Here Fuller and Goffey are describing the manner in which interfaces translate human action into tractable data “a rescripting of enunciation wherein speech or writing can be translated into scrolling, pointing, clicking, and data entry.” (112) Coming from a humanities tradition that analyzes software and the digital as language, however, they stop short of investigating what this act of translation does when it is submitted to capital’s logic. Although it is certainly true that technology shapes the labor process no matter if it is capital that owns it or not, a reckoning with the way that capital puts technology to use is essential to any analysis of how interfaces transform the social. With that in mind, a certain amount of translation is necessary in order to apply Fuller and Goffey’s thoughtful work to the task at hand. Following from the idea that the interface is a two-way tool, we can take their “event of communication” and replace the software that parses the speaker’s content and the user’s data with the product. We can replace the
speaker/user with the content producer who uses the product by giving over expression to it and the audience who accesses the content through the product. The product contains the content for both the content producer and the audience, regularizing expression and its reception to the point of formalism. In the content formalism of contentification, the function from which form follows is the regularization of expression, the making tractable of media objects, requiring content to submit to the form. In Bleacher Report’s rapid venture capital fueled rise before its Turner buyout, several high profile writers hired to help clean up the site’s reputation and elevate the quality of the content it produced promptly left within the first 6 months. (Bucholtz 2013) The primary complaint from these writers centered around having to use Bleacher Report’s custom CMS which forced much of their work into slideshow and other formalized formats that diminished their creative control. This places content creators in a familiar position, that of the worker being deskillled. Control over the knowledge of the labor process once alienated into machines represents the impoverishment, in multiple ways, of the worker and the alienation from the product of their labor.

This is, of course, not a new argument. Harry Braverman’s famous discussion of deskillling in Labor and Monopoly Capital extends Marx’s understanding of the role of machinery in the production process from Capital Vol. 1. (Braverman 1998; Marx 1990) A contemporary take on this that applies to the discussion of interfaces here is Michael B. McNally’s “Enterprise Content Management Systems and Application of Taylorism and Fordism to Intellectual Labor.” McNally’s analysis centers specifically on business workflow software and the rhetoric employed by the companies that produce them, using a relatively straightforward deskillling argument that leans heavily on Braverman. In short, McNally makes a claim for the continuing
relevance of Braverman in the age of “immaterial labor” or “cognitive capitalism” and foregrounds the negative impact on the worker control of the labor process by technology. (McNally 2010) To be sure, management as a technology of labor organization is certainly still alive and as obsessed with the efficiency of movement (both human and non-human) as ever. However, arguing about this through the lens of “labor” in the sense of labor in an office covers an increasingly small amount of value production in contemporary capitalism. The interface extends far beyond the office. However, scholars of labor have in essence taken up the question of the interface whenever they discuss the role of technology in the changing labor process, specifically when they discuss the role of computerization. Aronowitz and DeFazio implicitly describe the role of the digital interface’s ability to abstract heterogenous labor and make it homogenous, a process that closely resembles contentification: “Knowledge itself, once firmly tied to specific labor processes such as steelmaking, now becomes a relatively free-floating commodity to the extent that it is transformed into information that requires no productive object. This is the real significance of the passage from industry-specific labor processes to computer mediated work as a new universal technology” (Aronowitz and DiFazio 1994:17). A similar approach to the informationalization of labor has been espoused by Antonio Negri and Michael Hardt in their trilogy of books Empire, Multitude, and Commonwealth (2001, 2005, 2011) and Negri’s Autonomist Marxist colleagues like Maurizio Lazzarato (1996) and Christian Marazzi (2008) with again the emphasis being on both the radical break in the production process that the computer interface requires and the way that it homogenizes the heterogeneous activities that flow through it. This latter point is essential to Hardt and Negri’s theory of the multitude in that the multitude is produced by the universalization of all labor and therefore, in a
slightly simplistic Marxian teleology, creates a 21st century version of Marx’s industrial proletariat that can be led to revolutionary consciousness.\textsuperscript{19}

In contrast, Aronowitz and DeFazio foreground the idea that this universalization creates the loss of human knowledge: “Knowledge becomes ineluctably intertwined with, even dependent on, technology . . . . “ (17). This is similar to arguments made by Bernard Stiegler in his work on hypomnësis and discretization. For Stiegler, the evolution of technology, or more broadly “technics” which includes not just tools but also practices, leads to the alienation of knowledge through its exteriorization into these tools and practices. This making-technical of memory is what he refers to as hypomnësis. Stiegler argues that in the Industrial Revolution the articulation of the motions of workers into machines, or what he calls the “discretizing of production,” was a process of proletarianization or in his terminology a loss of know-how. (Stiegler 2011, 2010)

Similar to Aronowitz and DeFazio’s argument about the dependence of knowledge upon technology, Stiegler’s vision of the intertwining of technology with the production process is not best characterized by the homogenization of heterogeneous labors leading to revolutionary class like in Hardt and Negri’s formulation, but rather as a function of capital’s control over the process of production. For Stiegler, technology’s role in human society (not just under capitalism) is to supplement the finite memory of the human. As the retentional capacity of the human is limited, the knowledge that is required to build civilization is impossible without technology. However, under capitalism this “tertiary memory” in technology is alienated from the rest of society and put to work for surplus value production rather than greater societal ends.

\textsuperscript{19} Katie Vann offers an important critique of Hardt and Negri’s argument about the universalization of labor created by computerization in her article “On the Valorization of Informatic Labor” where she argues that far from a break from modernist managerial practices, computerization is merely an intensification of those practices. (2004)
As argued above, the interface, as power/knowledge imbalance fits this description quite well. The interface and the work it does in the process of contentification creates a knowledge dependency (and sometimes an engineered deficiency) for the user. The loss of know how inherent to corporate, closed interfaces, where the process of retention is black boxed off from the user and the process of work is alienated from the worker, fits Stiegler’s vision. The effect of contentification on the cultural object creators of the digital cultural industries is in effect the same as the dehumanization of all deskilling processes.

However, deskilling and the attendant intensification of the labor process does not necessarily lead to a crisis, let alone one of overproduction. How does contentification lead to a crisis of overproduction? It is here that the other portion of the “event of communication” must be considered: the receiver. In the “event of communication” “the user need not really say much since it is the form of expression, not its content, that satisifices.” (Fuller and Goffey 2012:112)

The user of the interface in the process of contentification is not only the content producer because the interface is a two way tool used by both content producer and the audience for access to the content. The term audience is preferable to “consumer” to denote the position of the receiver primarily because content is not “consumed” in the sense that it is used up in the way one consumes food or fire consumes something. (Williams 1985:78) There is no destruction at the point of “consumption,” no taking out of circulation even. This is part of what contributes to the glut of content in the current moment. Instead, using the term audience follows through on the sender/receiver model of the event of communication and centers the audience as a source of value. Advertisers have long conflated audiences and consumers and as mentioned in Chapter 4, advertising supported media was fertile ground for Marxist communication scholars to argue for
the act of being an audience as productive of surplus value. Christian Fuchs, in his book *Culture and Economy in the Age of Social Media*, points out that wherever there is culture to be paid attention to there must be cultural labor that produces the conditions of its performance. In the case of digitally mediated cultural practices like the ones examined in this dissertation, cultural objects require physical workers who make the cultural technology and “information workers” who use the cultural technology to produce the information that makes up the cultural product. This is essentially an argument for including a whole chain of workers into the cultural production process (particularly the digital cultural production process) from the miners in the Democratic Republic of Congo who mine the tantalum that fill capacitors on mobile devices, to Foxconn workers in Shenzhen who produce iPhones, to software engineers in Cupertino who design the operating systems on those iPhones. In the case of sports media, this chain would also include athletes, camera operators, web server administrators, trainers, statisticians, lawyers, and on and on. (Fuchs 2015) For example, for a site like B/R in its earlier incarnations you would also include the web developers in charge of their CMS and the TeamStream app, the editorial layer employees managing the bloggers, and the bloggers themselves.

Fuchs then introduces Smythe’s concept of the audience commodity into this chain to include the users of the cultural objects, accessed through interfaces, which are often left out of accounts of the political economy of culture. (Smythe 1977) As these interfaces are increasingly parts of our everyday life both in and outside of the home, in and outside of the workplace, the terrain of everyday life is now subject to capital’s attempts to subsume it at a maximum level. As mentioned in Chapter 4, this is the liquefaction of boundaries between work time and non-work time. As formal subsumption, also a question of time, the only competition would seem to be
sleep, an argument that both art historian Jonathan Crary makes in his book *24/7* and Netflix CEO Reed Hastings made in a 2017 earnings call: “We’re competing with sleep, on the margin. And so, it’s a very large pool of time.” (Crary 2014; Kafka 2017) Real subsumption in the digital culture industries and the process of contentification intensifies the experience of the audience by the multiplication of interfaces through which the exponentially increasing content can be accessed. The function of product, or what Fuchs calls “cultural technologies” is to make both the sender and receiver of the event of communication readable to capital, commensurate to its M-C-M¹ logic. The fan-writer cum blogger laboring through the B/R “open network” CMS has their fandom mobilized to draw attention from a reader whose interest in the content the blogger creates is also logged by the CMS as data to be sold to an advertiser. The product (in)forms the content and produces surplus value from both the content producer and the audience worker. But what is the nature of what the product, the form, functionalizes from the audience? What does it transmute into labor?

Fuchs has argued that at times Marxists are guilty of a “wage-labour fetishism” that refuses to give the honorary “labor” to anything unwaged. (Fuchs 2014a) By including all the activity contained in the cultural technology (waged or not, extracted under free conditions or not) and placing it in the chain of labor (that activity that produces surplus value), we can see the audience not just as “commodity” as Smythe puts it but as unwaged labor that produces surplus value, the move that Sut Jhally and Bill Livant make when they refer to “watching as working.” (1986) The audience’s labor power is the labor of attention. Or, as Marx insists that what the worker exchanges for wages is not the act of labor but labor power, the capacity for work, we can call it attention power, the capacity to have your presence with a cultural object recorded and directed.
That is what is sold. The labor of attention is alienated via its recording by the vast analytic (product) infrastructure of the interfaces of the culture industry and this process, the process of recording the presence of attention power was totally revolutionized by the Internet and digital technology. The Internet offers an infinitely more precise and detailed measure of attention power than was ever possible before. Print always had the purchase of itself, the circulation numbers to prove to advertisers that someone was seeing the space they were buying. Television required the development of a broad research apparatus (primarily by the famed Nielsen Media Research company) that was nonetheless reliant on sampling methodology that could never offer more than probabilities. The Internet, however, can constantly produce archives of presence, of proximities to cultural objects and interactions with them. The result of this process is a precise set of quantities abstracted from an ever-increasing list of qualities: the who, what, when, where and how of each piece of content was accessed. These data points are content in and of themselves that become the commodities sold to advertisers that are then sold as a service to producers of other commodities.

However, as a content of the commodity form of contentification, attention is different from the labor of the cultural content producer. Attention once contained is circulated and recombined, like the media object, placed next to other traces of attention that are associated with other bodies that are associated with other commodities, populations of bodies imbricated with the circulation of commodities. Elements of your presence (your demographics, for example) are combined with traces of the places that you’ve been (geolocation data) and the websites that you’ve visited to tailor ads to you, to take elements of your attention, recombine them and sell a commodity based on a semblance of that attention back to you. However, attention is a finite human capacity and
no matter the increase in the intensity of attention time to as many screens and platforms as possible and new ways of recording attention (relative surplus value), and no matter the amount of “screentime” we allow ourselves in a day (absolute surplus value), there are limits. While the media objects of contentification proliferate at a seemingly endless pace, our physical selves limit our capacity as audience workers to receive and interact with these objects. The inherent contradiction of the sender/receiver communicative event contained by the cultural technologies of contentification is how the exponential increase in sent messages would always outstrip the available time with which to attend to them. The dead labor of the product seeks to contain the living labor of attention, but so much product will remain incomplete in its contents. As much as the formal subsumption of attention has limits for growth, so to does its real subsumption.

So where does that leave the sports media industries considered here? Sports are inherently recursive, repetitive at both the micro and marco levels. As finite as games and seasons are, there’s always next year as the saying goes. But at the more micro level, each game has a series of small events that are repeated. For example, in any given baseball game there at least 49 instances where a pitcher throws to a batter. In a given baseball season a team plays at least 162 games, so a fan following that team has at least 7,938 chances to see their team in action at a micro level. There are 30 teams in Major League Baseball making for 2430 games in a regular season (not including the playoffs). Hence, there are at least 119,070 plays that fans can witness a year. That number is, of course, the absolute lowest possible amount of potential events. In reality the number is exponentially higher, not to mention that within each play are each pitch and each swing or non-swing pushing the available number of moments exponentially further. Regardless of the actual number, each of these moments is potentially witnessed in person by
ticket paying fans and witnessed live via broadcast. Witnessed events, whether paid for via the sale of the ticket directly to fans or the sale of broadcast rights to networks or platforms who then either transfer that cost to viewers (like ESPN’s per subscriber fee) and/or advertisers (as in all ad-supported broadcast), are exceptionally lucrative, as ESPN’s dominant role in the sports media industry attests to. Events witnessed live are obviously not, however, the only source of value and are also not necessarily effected by the process of contentification as they are the occupation of large blocs of time sold as large blocs of time, and hence, not necessarily the intensification of that time. ESPN’s mission of a 24 hour sports network never included a constant slate of live sporting events. This is largely because the cost of the raw material (live sports) worked on by fans (through attention labor) never matched the amount of money that could be made from the sale of the attention commodity (to advertisers) and the per subscriber fee had to make up the difference. Liveness is lucrative, but the profits don’t necessarily belong to the distributor who must rely on the records of sport to make up the gap.

Hence, to see the full impact of contentification on the sports media industry we have to move beyond the basic recursive liveness of sports and go back to what was dealt with explicitly in the discussion of statistical fandom and implicitly in the discussion of sports blogging and visually mediated fandom: the immanence of record keeping to organized sport. Because records are always already a part of sport, contentification can take hold in sport as soon as the technological means are available, ie. a fully mature commercialized Internet. The records produced by these technological means, however, are of generally the same nature as they have always been, essentially forms of observation: qualitative and quantitative, textual, numerical, and visual. These observations beget more observations: new statistical measures, new arguments, and new
visual forms. These new forms of observation contribute to an ever-growing archive accessible through the interfaces of the Internet by an audience whose attention is recorded (observations themselves, of course) and then sold to advertisers. The observations of sports, the exponential records of liveness, are generally available for free as the ad-based revenue model continues to reign. This free availability drives the contentification of the sports media industry towards two poles, instantaneous feeds that update on the heels of liveness and vast databases of records with which to compare and contrast the minutiae of sports history of the 20th and 21st centuries. Each game and each play is nearly instantaneously accessed via the interfaces of contentification. Use Bleacher Report’s TeamStream app to access all the latest updates for your favorite team, updates that are almost entirely syndicated from other sources. Go to any number of websites (ESPN’s, CBS’s, Yahoo’s, MLB’s) and get a live updating box score. Follow the reporters from your favorite outlets on social media to get live updates from the game as it happens and the locker room after it ends. Go to your fantasy sports app of choice to see how the players on your fantasy team’s performances of the day match up with the players on your opponent’s team. Once a play is over for long enough to be uploaded to social media or a website, watch the homerun or the dunk or the touchdown or the goal that just happened even if you didn’t witness it live. Any major play is with little delay available to billions of eyeballs. After every game and every season, the archive built from these records can then be put into conversation with past season’s archives and new records are created. New arguments can be had about whether Aaron Judge’s rookie season compares favorably to Lou Gherig’s rookie season or Derek Jeter’s or Don Mattingly’s, all readily available and comparable from baseball-reference.com (which operates extensive database sites for all the major sports). The records of a sport exist across space and time and can be recombined to produce more and more attention that exists far beyond the event
of the game. The happenings of a mid-summer night in Yankee Stadium extend far beyond the South Bronx almost infinitely. This is the process of the recursive becoming-content of sport.

Whole industries like the one’s examined in this dissertation have arose because of this recursive nature and its capacity to be distributed (to be expressed, as Fuller and Goffey might put it) as recombined elements, always creating new content in the process. Fantasy sports and the industry built around it (the advice sites, the statistical modeling packages that predict which player will be the most valuable, the batch processing software that allows DFS sharks to load hundreds of entries at a time) is the recombination of statistical observations of sport into a competitive game that due to its popularity now supports a whole secondary industry aimed at optimizing participant success. Users of the interfaces of the sports media industry create not just attention metrics but whole new records themselves, creating almost infinitely recursive data sets on the level of a Mandlebrot fractal. As the sports media industry and sports fans revolve around the events of sport, spinning out records, which are then observed and become new records being observed and becoming the ground for even more records, the affinity for sports and sports media to contentification becomes clear.

At the limit case of infinite recursion, all of these records outstrip the human capacity to attend to them. However, one need not go that far to understand that the proliferation of contact points with the live events of sport have reached economic and legal limits on their asymptotic march to the real subsumption of sport fan experience. In early 2017, Bleacher Report laid off almost all of its editorial staff and made a full break from King Kaufman and their Writer’s Program. (Casselberry 2017) Their stated reasoning was pivoting to video. This is not a unique move, as
many news organizations in the last 2-3 years have made similar moves. The economic reasoning for this is relatively clear: ad revenue from text (from banner ads and other ad forms that wrap around text) is notoriously low as the ad tech attached to these forms has shown them to be extremely ineffective. Ad companies much prefer to place ads on video and audio, formats that are both harder to avoid and harder to track, making them an easier sell to the industries buying the ads. (Trimble 2015) As attention to text has become easier and easier to track, the lack of attention paid has become more and more apparent. As ESPN’s share of the total cable bill was driven higher and higher by its dependence on live sports rights, the limit of this strategy was evidenced by the cord cutters and cord nevers who refused to pay for access to a thing they never paid attention to in the first place. Walling their content within the interface of the cable television bundle was lucrative, until audiences were given the ability to disaggregate that content from the bundle. Hence, ESPN found that the threat of not seeing live sports was effective for a far smaller group then they thought. DraftKings and Fanduel have found that their acceleration of the record keeping of fantasy sports has pushed at the edges of what the state is willing to accept. Even if financial firms are able to push the social logic of the derivative into everyday life (Martin 2015), DFS’s attempts to push its ideology of financialized fandom was not nearly as successful primarily because of its relationship to live sports and the specter of sports gambling (or perhaps because their lobbyists are not as successful or connected as those in finance). And if recent movements towards the legalization of sports gambling nationwide succeed, 20 states (including Nevada) now have either legalized sports betting in some form or have pending legislation in their state legislatures (Rodenberg 2018), then DFS might not even survive as the loophole they exploited would be blown wide open.
The various limits to achieving the real subsumption of sport fandom into the logic of contemporary capitalism have clearly different origins. For some it is a technological problem, for others it is a political problem, for others a combination of both. However, the failures to really subsume sport fandom studied here have all been reacted to in similar ways: by conglomereration and movement towards vertical integration. As discussed in Chapter 2, Bleacher Report is now a part of Turner Sports, which is part of the Turner Broadcasting System, itself the subsidiary of Time Warner, who is in turn attempting to merge with AT&T. (Greve 2017) AT&T owns DirectTV, the satellite TV company generally understood to be the only real competition to the major cable companies for pay television distribution. Turner Sports also operates the NBA’s dedicated cable channel NBATV and their Internet streaming package NBA League Pass. The “open source sports network” of unpaid labor that Bleacher Report began from has now been fully subsumed as a minor wing of a sports media industry mega-corporation. As mentioned in chapter 4, ESPN is a major part of the Disney Corporation’s portfolio, and Disney has been rumored to be discussing a merger with Verizon, but this has yet to materialize. Disney hasn’t been bought out by a larger infrastructure company like NBC was by Comcast, but it has, however, bought into a smaller infrastructure company itself. In August of 2017, Disney bought a 75% controlling stake ($2.81 billion of a total $3.75 billion valuation) in BAMTECH, the streaming infrastructure company spun out from Major League Baseball’s digital production and distribution wing MLB Advanced Media (Perez 2017) BAMTECH specializes in streaming video, especially live video, and handles the technical side of the streaming operations for MLB, the NHL, Worldwide Wrestling Entertainment (WWE), Riot Games (the popular eSports league), HBO (for it’s popular HBO Now and HBO Go applications), and Sony’s over the top (OTT) television streaming service Playstation VUE. Disney’s play into the streaming business
opens the door for a true ESPN OTT option as they now have the infrastructure and experience in BAMTECH to develop an app but their new technology company also acts as a check on Comcast and AT&T’s vertical integration moves. As discussed in Chapter 3, DraftKings and FanDuel have been attempting to merge since 2016 although the FTC, in a decision marked as a surprise to many industry analysts, blocked the merger in June of 2017. (Heitner 2017) The FTC’s decision was based largely on the 90% market share that the merged companies would have had in the DFS industry. Later that summer, Draft Kings and FanDuel called off the merger entirely, bowing to the FTC’s ruling. (Kirkham and Minaya 2017) The two companies’ duopoly would remain intact. However, as mentioned above, 20 states are considering the legalization of sports gambling. This development stabilizes DFS, as the legalization of sports gambling obviates the troubles that the industry faced when being lumped in with gambling, but through that legitimization could cause a flood of capital to enter the industry. Hence a larger gambling industry player could attempt to buy either company or a more traditional sports media industry player could make a bid, not a far-fetched concept as the venture capital rounds for both Draft Kings and FanDuel were full of players from leagues, ownership groups, sports media companies, and even players.

These movements towards conglomeration and vertical integration described above are clear reactions to the political economic conditions of their wings of the sports media industry, and in the case of B/R and ESPN, reactions to the current situation in the telecommunications industry writ large. The mega-corporations that make up the sports media industry have increasingly come under the control of companies who stand to be deeply impacted by developing events in the telecommunications regulatory environment. There are indications that the FCC will fully
waive the longstanding policy of net neutrality, which opens the door for a massive advantage to these monopoly capital interests. Net neutrality is the policy that requires Internet service providers (ISPs) to treat all content that travels along their lines equally, a version of common carriage laws that governed the railroads and the telephone lines. Hence, ending net neutrality means the ISPs no longer have to give all content equal access to their infrastructure and would incentivize ISPs like Comcast to give content from within their own conglomerates favored status while content from other origins would be harder to access. For Comcast, which along with Charter (now rebranded as Spectrum after its purchase of Time Warner Cable, which had been spun out as an independent entity from Time Warner in 2009\textsuperscript{20}) has a near duopoly on cable television and Internet access in the United States, this would mean making it much easier to get to Sunday night NFL highlights, nationally broadcast NHL highlights, and MLB, NHL, and NBA highlights from teams who broadcast on the NBC Sports Network affiliates in their markets than it would be for any other sports content (not to mention any other content not sports related).

This presents a direct challenge to ESPN’s market position and a way for Comcast and its media empire to cut into Disney’s market share writ large. Even worse for ESPN/Disney would be if a Time Warner/AT&T merger were to go through. This would integrate DIRECTV and AT&T’s mobile network with Time Warner’s content empire (which includes HBO, Turner, and Warner

\textsuperscript{20} Spectrum Sports, a division of the Time Warner Cable/Charter merged company, is prominent regional sports network of some ill repute, primarily for its purchase of the exclusive live rights to LA Dodgers games that because of the abnormally high per subscriber fee spectrum wanted from rival cable providers in the Los Angeles area, has effectively blacked out over half the Los Angeles area from watching the team. (Shaikin and James 2017) See also the short documentary \textit{MoneyBall, Too} about the Dodgers blackout. (Wilson 2016)
Brothers), making it a clear rival to Comcast. DIRECTV owns the exclusive rights to NFL Sunday Ticket, the package that allows DIRECTV subscribers to watch all the NFL games of any given Sunday on any device (as long as they are also AT&T subscribers).21 Were a Disney and Verizon merger to happen, this would create a massively contracted ecosystem of vertically integrated companies, carving up the cable, satellite, broadband, fiber, and content industries amongst themselves. However, we can see that Disney’s controlling stake in BAMTECH gives them a chokepoint to pressure at least the Time Warner/AT&T conglomerate as BAMTECH maintains the servers used to stream HBO’s immensely popular streaming platforms. Were DIRECTV or AT&T to attempt to throttle ESPN/Disney’s content or demand a decrease in a carriage fee, then Disney could throttle the speed with which HBO’s content is streamed through the servers that BAMTECH operates. Hence, what we are seeing is a reconfiguration of capital in the attempt to align infrastructure with content. Returning to the discussion of contentification and the difference between “product” and “content” from earlier in this chapter can help us to understand this reconfiguration as infrastructure’s role as interface becomes increasingly important.

“Product” need no longer mean just “software,” as the relevant interfaces now become the interface between the cable and Internet lines and individual homes or cell phone towers and individual phones. However, this is not all that different from the software and user interfaces of contentification already considered, in that they are still a relationship to the means of distribution and production, dictating through the inherent power imbalance of the interface what

21 The ability to watch live television on any device connected to a telecommunications network (generally the Internet) is referred to by Spectrum (formerly Time Warner) as TV Everywhere, a rather irony-free state of the attempts at the real subsumption of attention by the telecommunications monopoly firms.
can and cannot be spoken. Something is always hidden or disallowed to occur, you can only machinically enunciate what corresponds to the data structure, as Fuller and Goffey say. The data structure of the contemporary culture industries, specifically all of it that happens through consumer devices, is being restructured rapidly, so the power imbalances of the interfaces between that data structure and the content it structures are rapidly changing as well. This imbalance inherent to the interfaces between infrastructure and content is different than that of the software and user in two important ways. First, the amount of capital required to build and maintain infrastructure far outstrips that required to build and maintain software. A drive towards the concentration of capital here makes sense as the need to guarantee the massive investment in the material infrastructure of the Internet creates the incentive to vertically integrate the contents of what flows through that infrastructure. The more fluid, lower cost process of distributed content production must offset the infrastructure’s high fixed capital costs. Hence, the drive towards the vertical integration of infrastructure with content is evidence of capital’s want to control both sides of this particular interface. Second, the power imbalance between infrastructure and content is more nakedly political than the power imbalance between software and user. Software is generally black boxed from the user, meaning that the processes of hiding and disallowing are hidden to the user, often making the user’s lack of agency seem more like user error than a non-democratic choice made by the software. The process by which the infrastructure allows and blocks certain content is more obvious. One notices when streaming video seems to degrade in quality, when content disappears from a database. And this choice must be sanctioned by the regulatory environment, hence the push by major telecommunications conglomerates to waive net neutrality and the protests from web companies like Netflix and
Google who do not own infrastructure but depend on Comcast and AT&T to continue to carry their content without discrimination.

Netflix’s case for net neutrality is obvious. As a major distributor of high quality video streaming content, they represent one of the major clients of the infrastructure companies. A very simple outcome of the waiving of net neutrality could be a toll on companies who occupy large amounts of bandwidth on the cable lines and mobile networks. This could be disastrous to Netflix’s bottom line. Google’s case, however, is slightly more opaque unless you consider that Google owns 50% of the online advertising market. (Ingram 2017) ISPs can begin to charge companies like Google that run ad technologies on their infrastructure and in the massively growing mobile ad market, Verizon and AT&T, the virtual mobile carrier duopoly, each have their own ad divisions which incentivizes them to put tolls on Google’s ad tech. Verizon also owns Yahoo and AOL, both former stiff competitors to Google’s ad dominance. All of this, both the complaints of the content distributors and the ad companies, highlight how the essential problem is what will and won’t be paid attention to and how that attention can then be recorded and sold. By creating fast lanes for less content or making their content just generally easier to find and access, the telecommunications conglomerates could assure that their content is much easier to access and therefore much more likely to be paid attention to. There would no longer be any reason to be concerned with the “long tail,” or the tendency for the small amounts of attention given to an infinite amount of objects to equal the amount of attention give to the most popular objects. (Anderson 2008) The subtitle of the book that made the long tail thesis famous was “why the future of business is selling less of more.” If the reconfiguration of capital in the crisis of
attention is allowed to proceed as capital clearly wants, the future of business will be selling more of less.

This contraction of the archive of content would be an attempt to reconfigure around the crisis of attention brought on by contentification. The labor of attention, diffused by a burgeoning commons of digital content production, must be brought into the major houses of the culture industry so that the surplus value from this labor can support the massive expenditures that both the infrastructure and the content require. Even though content can be produced and distributed for marginal costs (as seen throughout Chapters 2 and 3) the cost of the originary commodity of sports, the live event, has consistently increased (as seen in Chapter 4, particularly in the cost of live rights). Hence, as costs for the mega-corporations who buy these live rights increase, the need to maximize profit on the usage of these rights and on their in-house content that sits adjacent to these the usage of those rights is paramount. In the sports media industry wing of the culture industry, this movement likely means forcing eyeballs to the most lucrative platforms (cable television and streaming apps) and the continued purchase of and investment in new outlets that can monetize sport fan attention. The infinite recursion of sports and records of sport pushed at the limits of both what the human body could allow (attention is finite) and what the political economy of the sports media industry and the culture industry writ large could allow (the regulatory framework). Capital’s reaction is to rewrite the regulatory framework so as to be able to constrict the access to that recursion in an attempt to control the attention labor market that arises from it. This is their attempt at the real subsumption of sport fandom, to make sport fandom and the value it produces adhere to the logic of capital.
However, this dissertation has shown that the generative activity of non-subsumed sport fan activity, like that which spawned the blogging revolution of the early ‘00s and fantasy sports in the 1980s, is essential to the sports media industry’s health. This contradiction between the need for the infinite recursion of sports to spawn new forms of observation and record and the need to constrict that creativity so as to concentrate attention is the dialectical dilemma of the sports media industry. The reconfiguration of capital occurring now in both the sports media industry and all of the culture industry is the attempt to maneuver through that contradiction. As contentification has caused the records of sport to flow at such a rate as to outstrip human capacity to take them in, the sports media industry will struggle to dam that flow while maintaining growth. Capital’s obliteration of the boundaries between work and leisure that Horkheimer and Adorno pinpointed in the middle of the 20th century has become so prevalent in early stages of the 21st that it has produced a crisis. The reconfiguration in the face of that crisis discussed here is unfinished and the third term that will resolve the dialectical tension between the constant need for more content and finite nature of attention remains to be seen. However, it is clear that capital’s tactic for resolving this crisis is vertical integration and near monopolization no matter the impediments.
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