Revenue Sharing and the Salary Cap in the NFL: Perfecting the Balance Between NFL Socialism and Unrestrained Free-Trade

I. THE PRE-GAME SHOW: AN INTRODUCTION ......................... 642

II. FIRST AND TEN: THE EVOLUTION OF REVENUE SHARING IN THE NFL – FROM ITS ORIGINS TO THE LEAGUE’S CURRENT SYSTEM ................................................................. 647
   A. The Emergence of the “League Think” Philosophy ........ 647
   B. The Evolution of the Revenue Sharing System: Historical Challenges ................................................................. 649
   C. The Current Revenue Sharing System in the NFL .......... 651
      1. The Master Agreement’s Contribution to the Revenue Sharing System ......................................................... 652
      2. The Second Category of the Revenue Sharing System: Television Revenue and Gate Receipts ............. 656
      3. Television Revenue: The Foundation of the NFL Revenue Sharing System .............................................. 659

III. THIRD AND LONG: THE HARMFUL EFFECTS OF “LOCAL REVENUE” AND THE DESPERATE NEED FOR REVENUE SHARING REFORMS ................................................................. 660
   A. Unshared “Local Revenue” and the Erosion of the NFL’s Collective Mentality ................................................. 660
      1. “Local Revenue” as the Cause of “Franchise Free Agency” ........................................................................... 664
   B. The Widening Revenue Gap and the Salary Cap System .. 666
      1. The Failure of the Salary Cap System and the Resulting Competitive Inequalities on the Field ........... 669
   C. The NFL’s Current Reaction to the Problems Posed by “Local Revenue” and the Widening Revenue Gap ........ 671
   D. Labor Unrest: Why are Revenue Sharing Reforms so Crucial to the Successful Extension of the Current CBA and its Salary Cap System? ......................................................... 676
      1. The On-going Labor Negotiations: Recent Developments and Their Implications for Revenue Sharing Reforms................................................................................. 678
I. THE PRE-GAME SHOW: AN INTRODUCTION

Since its inception in 1961, the revenue sharing system utilized by The National Football League ("NFL") has been instrumental in propelling the League to the forefront of professional sports in America.1 In the early 1960s, Commissioner Pete Rozelle ushered in an era of collectivism among the individual team owners that came to define the NFL’s economic approach for the next four decades. Relying on the collective outlook that became known as the “League Think” philosophy, Rozelle convinced the individual owners that by pooling their resources and sharing their profits, they would be able to provide a product that, as a whole, was much more valuable than the sum of its parts.2

The idea took off in 1961 when Rozelle successfully persuaded the individual owners to give up their local television broadcasting rights and instead sell all broadcasting rights together as a national package; the proceeds were then split evenly among each NFL team.3 From 1961 onward, the League’s continued commitment to the equal sharing of television revenues has remained the foundation of the NFL’s revenue sharing system.4 Furthermore, the financial parity that resulted from this collective philosophy enhanced the competitiveness of the League as a whole, thereby fostering the massive popularity still enjoyed by the League today.5

For nearly forty years, the NFL’s revenue sharing system remained largely unchanged as NFL owners were content to rely on the success that revenue sharing brought to the League as a whole.6 During this period, the individual owners were completely satisfied with the revenue they received under the revenue sharing system, and they were largely unconcerned with trying to garner any type of

2. Id.
3. Id.
4. See Stefan Fatsis, Can Socialism Survive? The All-For-One, One-For-All Ethos of Pro Football Has Made It the Envy of Other Sports; The NFL Is Fighting To Make Sure It Stays That Way, WALL ST. J., Sept. 20, 2004, at R1 [hereinafter Fatsis, Can Socialism Survive?].
5. Mullick, supra note 1, at 12.
competitive financial advantage over their fellow owners. In recent years, however, there has been a significant erosion in the NFL’s collective mentality largely due to the development of sources of unshared revenue, known as “local revenue,” which enables certain teams to gain a competitive advantage by utilizing this unshared revenue that is unavailable to some of their less fortunate counterparts.

Although the NFL and its member-clubs shared more than eighty percent of the roughly $5.5 billion in total League revenue generated during the 2004 season, there has recently been a dramatic increase in unshared local revenue, which is threatening the future financial parity of the League. Furthermore, because most sources of local revenue are directly tied to a team’s stadium ownership and its market size, the League’s current revenue sharing system has created an environment in which the most profitable teams are better situated to capitalize on unshared local revenue, thereby exacerbating a widening revenue gap between those teams at the top and those at the bottom.

The current revenue sharing system utilizes a two pronged approach to distribute League revenue, but it also carves out an exception for sources of unshared local revenue. The two prongs of the revenue sharing system can be distinguished by the source of revenue and amount shared under each category, as well as the various documents that govern their existence. The first category comprises the sharing of revenue generated by licensing and sponsorship agreements, and this category is governed by a recently approved accord among NFL owners known as the “Master Agreement.” The second category covers the sharing of all revenue that is generated by the actual playing of games on the field, and this category is governed by a combination of provisions in the Collective Bargaining Agreement (“CBA”) and the NFL Constitution and Bylaws (“NFL Constitution”).

7. Id.
8. Id.
9. Id.; Mullick, supra note 1, at 1.
10. The Master Agreement is basically an extension of the NFL Trust, which was a virtually identical agreement among owners regarding the sharing of licensing revenue with origins dating back to the emergence of the “League Think” philosophy in the 1960s. See Stefan Fatsis, Dallas Owner Again Challenges NFL’s Licensing, WALL ST. J, Apr. 2, 2004, at B3 [hereinafter Fatsis, Dallas Owner]. Cf. Daniel Kaplan, Tagliabue: NFL Trust Survival ‘a Done Deal,’ STREET & SMITH’S SPORTS BUSINESS JOURNAL, Mar. 29, 2004, at 1 [hereinafter Kaplan, Tagliabue].
11. See NFL CONST. art. 10.3; see also NFL, NFL COLLECTIVE BARGAINING AGREEMENT 2002-2008 art. XXIV, §§ 1-4, available at http://www.nflpa.org/Agents/
This second category, which includes television broadcasting deals and gate receipts from stadium attendance, is responsible for a strong majority of the total revenue shared between the League and its individual franchises.12

Furthermore, while these categories can be viewed as two components in a greater revenue sharing system, it is important to note that they were not developed together, but instead are separate outgrowths of the NFL’s greater collective mentality. As a result, the system does not necessarily fit flawlessly together, which makes any comprehensive analysis of the overall system a somewhat difficult task. Nevertheless, under their respective governing documents, both categories treat League revenue in a similar fashion by distinguishing those revenue sources that are subject to sharing from those local revenue sources that remain unshared. While this distinction is not as readily apparent in the Master Agreement, the relevant provisions within the CBA clearly separate total League revenue into “Defined Gross Revenue” (“DGR”), which is subject to revenue sharing, and “Excluded DGR,” which is not.13

In addition to this comprehensive approach to revenue sharing, the NFL’s greater financial model also includes a salary cap system that is similarly intended to preserve the League’s financial equality and to guarantee the players their fair share of League profits. Although these two semi-socialist initiatives can arguably be differentiated as separate and distinct financial systems, revenue sharing and the salary cap are in many ways inseparably connected, and therefore any attempt at a complete analysis of one system necessarily requires a simultaneous examination of the other.

The salary cap system, which sets both a floor and a ceiling on what a team can (or must) spend on player salaries, is interrelated with the League’s revenue sharing system because each year the salary cap’s floor and ceiling are set at a percentage of DGR.14
Therefore, much like under the revenue sharing system, Excluded DGR is not considered when calculating the salary cap’s annual floor and ceiling. This characteristic of the salary cap system has recently attracted significant criticism from the NFL Players Association (“NFLPA”) because it essentially deprives the players of a portion of League revenue that they would otherwise be guaranteed by the salary cap’s floor. As a result, the treatment of local revenue has become a major hurdle in the on-going negotiations to extend the current CBA, which expires after the 2007 season. Finally, it is also important to examine how the growth in local revenue has contributed to the salary cap’s failure and to the widening revenue disparities, which together severally threaten the future financial viability of the lowest-revenue teams.

This note argues that the League must reform the current revenue sharing model in order to correct the widening revenue gap between the lowest and highest revenue teams, which if not adequately addressed soon could severely impair the future popularity and success of the NFL. Part II describes the emergence of revenue sharing in the NFL; its evolution due to past challenges initiated by profit-oriented owners; and the details of the current revenue sharing system in place today. Part III establishes how the emergence of unshared “local revenue” has eroded the NFL’s collective mentality, thereby causing a variety of problems for the League. Part IV proposes a solution intended to effectively alleviate the League’s growing financial inequalities while at the same time maintaining the important incentives created by a reasonable amount of unshared revenue. In particular, this section proposes a redistributive formula that allows for a healthy level of unshared local revenue, but simultaneously prevents extreme financial inequalities by redistributing excessive local revenue to those teams most in need.

On March 8, 2006, just before this note went to press, the NFL owners and the NFLPA reached a last-minute labor agreement, which included significant reforms to the revenue sharing system, and

considered as part of the NFL’s greater revenue sharing system. See discussion infra Part III.D explaining how revenue sharing and the salary cap are interrelated.

15. See Daniel Kaplan, NFL Impasse on CBA Likely to Reach 2006, STREET & SMITH’S SPORTS BUSINESS JOURNAL, Nov. 28, 2005, at 1 [hereinafter Kaplan, NFL Impasse]; Liz Mullen & Daniel Kaplan, NFL Sides Agree: Deal Must be Done March 1, STREET & SMITH’S SPORTS BUSINESS JOURNAL, Jan. 16, 2005, at 3 [hereinafter Mullen & Kaplan, NFL Sides Agree]; Jarrett Bell, NFL Tug-of-War, supra note 14, at 1C.

16. See discussion infra Part III.D describing the NFLPA’s position regarding the sharing of local revenue, and the tentative agreement recently achieved by the League and the NFLPA to share “total football revenue.”
therefore has important implications for much of the analysis presented in this note.¹⁷

With their backs against the wall, the owners were forced to postpone the official start of the 2006 season and extend the March 3rd free agency deadline in order to find a way to reach an agreement that now preserves the current salary cap system, which would have otherwise expired at the official start of the 2006 season.¹⁸ Largely surrendering to the demands of the players union, the owners not only approved a six-year collective bargaining agreement, but they also reached a corresponding revenue-sharing deal, which the NFLPA had astutely required as a condition of its final offer for reaching a new labor pact.¹⁹ Although the details of the new revenue sharing plan are still emerging, the owners appear to have adopted a plan that is extremely similar in its general approach to the redistributive formula that this note proposes as a solution to the various problems associated with local revenue and the widening revenue gap.²⁰

While portions of this note’s analysis may have been rendered somewhat moot by the League’s recent course of action, these developments also largely validate many of the arguments raised throughout the analysis. Furthermore, as a whole, this note remains pertinent in its comprehensive analysis of the NFL revenue sharing system. In particular, the League’s newly adopted plan appears to be somewhat of a quick-fix, which will still face many of the same issues raised in this note, and has already garnered criticism from both ends of the revenue sharing debate.²¹ Finally, it is worth noting that the new guard of profit-oriented owners, who strongly opposed the idea of increased revenue sharing, appear to have reluctantly embraced the “League Think” philosophy by putting the League ahead of


¹⁸  Before the new labor agreement was approved, the now-defunct CBA would have lasted through the 2007 season, but the current 2006 season would have been the last one subject to the salary cap, which would have therefore expired along with the start of the 2006 season.

¹⁹  Kaplan, NFL Owners, supra note 17, at 1; Kaplan, Chaos and Compromise, supra note 17, at 1; Mullen, Winding Road, supra note 17, at 1.

²⁰  See Kaplan, NFL Owners, supra note 17, for a detailed description of the new revenue sharing plan as of March 20, 2006.

²¹  See Kaplan, NFL Owners, supra note 17; Kaplan, Chaos and Compromise, supra note 17 (discussing unhappy owners, who are already expressing various criticisms of this new plan, including some of the lowest-revenue owners who have criticized its failure to include all local revenue within the revenue shared between teams).
themselves, and recognizing that the value of their individual franchise is directly tied to the overall health of the League.

II. FIRST AND TEN: THE EVOLUTION OF REVENUE SHARING IN THE NFL – FROM ITS ORIGINS TO THE LEAGUE’S CURRENT SYSTEM

A. The Emergence of the “League Think” Philosophy

The NFL’s collective “League Think” philosophy emerged in the early 1960’s as the brain child of then Commissioner, Pete Rozelle. Rozelle convinced the League’s founding owners, such as George Halas of the Chicago Bears and Wellington Mara of the New York Giants, to relinquish their control over local television broadcasting rights, and instead combine these rights into a national package. According to Rozelle’s plan, the League would then sell this national package to the television networks, and the proceeds of the sale would be split evenly among each NFL franchise. Rozelle argued that by pooling resources and sharing revenue, the “League Think” philosophy would stabilize the competitive balance within the League, thereby making its product more marketable over the long run; and as a result, ensuring the viability of the League as a whole. Explaining that the profitability of each individual team was necessarily tied to the success of the League as a whole, Rozelle convinced the owners that their individual profits would increase by putting the interests of the League ahead of their own.

The NFL owners ultimately agreed to sell their television rights to CBS as a national package, but the resulting contract between the NFL and CBS was voided by a 1961 federal circuit court decision finding that the contract violated antitrust laws.

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22. See Fatsis, Can Socialism Survive?, supra note 4, at R3; Mullick, supra note 1, at 1.
23. The author would like to pay his respect to the family of the late Giants owner Wellington Mara, who passed away on October 25, 2005 at the age of 89. In addition to being a wonderful person, Mara has been widely recognized as one of the NFL’s most influential and beloved owners, whose foresight helped pave the way for the League’s revenue sharing system and the resulting success still enjoyed by the NFL today. See Daniel Kaplan, Pro Football Loses a Giant Leader, STREET & SMITH’S SPORTS BUSINESS JOURNAL, Oct.31, 2005, at 4 [hereinafter Kaplan, Pro Football Loses].
25. Id.
26. Mullick, supra note 1, at 1.
27. Id. at 1-2.
28. See United States v. NFL, 196 F. Supp. 445, 446-47 (E.D. Pa. 1961); Fatsis, supra note 4, at R3; see also WTWV, Inc. v. NFL, 678 F.2d 142, 144 (11th Cir. 1982)
Responding to the circuit court’s decision, seventy-two days later Congress passed the Sports Broadcasting Act, which enabled professional sports leagues to negotiate television deals as single units, thereby creating an antitrust exemption that has revolutionized the sports industry.\(^{29}\) In 1962, armed with the recently enacted antitrust exemption, the NFL and CBS entered into a contract whereby CBS paid the NFL $4.65 million per year for two years in exchange for the exclusive rights to broadcast all NFL games played during that period.\(^{30}\) As a result, the popularity of the league exploded with television ratings soaring fifty percent in the second year of the contract.\(^{31}\) Furthermore, the NFL’s next contract with CBS reflected the League’s rapidly growing popularity through a payout of $14.1 million per year, more than triple its previous contract.\(^{32}\)

Over the next two decades, the NFL continued to grow, especially with the 1970 merger of the NFL and its upstart rival, the American Football League (“AFL”).\(^{33}\) Despite the League’s continued growth, however, the NFL’s business model and that of the individual teams changed very little.\(^{34}\) Throughout the 1980s, the NFL owners were content to sit back and collect their ever-increasing, equal shares of the national television deals,\(^{35}\) while also sharing the gate receipts generated by crowded stadiums.\(^{36}\) The profits accumulated by the individual teams were heavily dependent on the revenue generated by the league as a whole, and the individual owners were not overly concerned with gaining a competitive advantage by increasing their own team’s relative revenues.\(^{37}\) According to current Baltimore Ravens President Dick Cass, “‘There were not as many revenue opportunities . . .’ Most owners ‘didn’t control the stadiums, they didn’t control concessions, they didn’t control parking. Sports

\(^{29}\) WTWV, 678 F.2d at 144; Fatsis, Can Socialism Survive?, supra note 4, at R3.

\(^{30}\) Fatsis, Can Socialism Survive?, supra note 4, at R3.

\(^{31}\) Id.

\(^{32}\) Id.

\(^{33}\) Id.

\(^{34}\) Id.


\(^{36}\) Fatsis, Can Socialism Survive?, supra note 4, at R3.

\(^{37}\) See Mullick, supra note 1, at 12-13.
sponsorships weren’t a big deal.’ ”38 Under this business model, the opportunities for teams to generate their own revenue were virtually nonexistent, and the only way for teams to maximize their profitability relative to other teams was to cut costs—namely, player salaries.39

B. The Evolution of the Revenue Sharing System: Historical Challenges

While the general structure of the NFL’s cooperative approach remains an integral part of the League today, challenges to the League’s collective mentality, which began in the 1990s, have revolutionized the predominant business model currently utilized by the NFL and its owners. As current NFL Commissioner Paul Tagliabue explains, the NFL remains committed to maintaining its cooperative structure because “‘[c]learly, the attractiveness of the league is not dependent on any one team or small group of teams . . . . It’s a total league. That was the philosophy from the early ‘60s onward, and it’s continued.’ ”40 The business model followed by the NFL owners, on the other hand, has drastically evolved in recent years due largely to an emerging faction of owners who believe that teams should be given greater control over their revenue in order to better market themselves.41

One of the first and most influential owners to challenge the NFL’s “League Think” philosophy was Jerry Jones, an oil and gas tycoon who paid $140 million for the Dallas Cowboys franchise in 1989.42 Initially, Jones focused his confrontations with the League over the issue of national sponsorship and marketing deals, which at that time were exclusively controlled by the League’s profitable arm, NFL Properties.43 Jones criticized his take from the national sponsorship deals as inadequate for the marketing power of his particular franchise.44 Jones basically felt that he could do a better job of marketing his team by negotiating local deals, instead of relying

38. Fatsis, Can Socialism Survive?, supra note 4, at R3.
40. Fatsis, Can Socialism Survive?, supra note 4, at R3.
41. See id. at 3-6.
42. Id. at 3.
43. See Miller, Revenue-sharing Rates, supra note 11, at C2.
44. See Fatsis, Can Socialism Survive?, supra note 4, at R3-R4; Miller, Revenue-sharing Rates, supra note 11, at C2.
on the League to market his team as part of the total package of the League.\textsuperscript{45}

In 1995, Jones directly challenged the League by entering into local sponsorship deals with Pepsi and Nike, despite the League’s supposedly exclusive deals with Coke and Players Inc., the licensing arm of the NFLPA.\textsuperscript{46} The brash move by Jones prompted the NFL to file a law suit against the Cowboys for $300 million.\textsuperscript{47} The League labeled Jones’s conduct as “ambush marketing deals” and sought a ruling that would enjoin the Cowboys from violating their agreements with NFL Properties regarding the NFL’s exclusive control over team logos.\textsuperscript{48} Jones responded by filing a $700 million counterclaim against the League, accusing the NFL of preventing teams from marketing themselves.\textsuperscript{49} In late 1996, the two sides ultimately reached a settlement that allowed the Cowboys to keep their new sponsorship deals. More importantly, it opened the door for other NFL teams to secure their own local sponsorship deals.\textsuperscript{50}

Jones’s ability to successfully challenge the League in the area of local sponsorship not only created a new source of unshared revenue for individual teams, but more significantly, it marked the beginning of an erosion in the collective mentality that has dominated the League for so many years.\textsuperscript{51} The current ramifications of this settlement between Jones and the NFL are illustrated by the co-existing marketing deals currently held by both individual teams and the League as a whole. For example, Pepsi and Coors are now the “official” soft drink and beer of the NFL, giving each company the right to use the NFL logo and the logos of the 32 individual franchises in national advertising.\textsuperscript{52} Individual teams, however, now may arrange their own local deals with other vendors, such as Coke and Budweiser.\textsuperscript{53} While Jones’s victory over the NFL was limited to the area of sponsorship and marketing deals, his incentive-based arguments have gained some support from a few of the other owners, and the League has ultimately been forced to re-evaluate the two-prong current revenue sharing system.

\footnotesize
\begin{itemize}
\item \textsuperscript{46} Id.
\item \textsuperscript{47} Id.
\item \textsuperscript{48} Id.
\item \textsuperscript{49} Id.
\item \textsuperscript{50} Id.
\item \textsuperscript{51} Fatsis, \textit{Can Socialism Survive?}, supra note 4, at R4.
\item \textsuperscript{52} Id.; see Fatsis, \textit{Dallas Owner}, supra note 10, at B3.
\item \textsuperscript{53} Fatsis, \textit{Can Socialism Survive?}, supra note 4, at R4; Fatsis, \textit{Dallas Owner}, supra note 10, at B3 (stating that Coke is poured in 19 NFL stadiums whereas Pepsi is only poured in 12 stadiums).
\end{itemize}
C. The Current Revenue Sharing System in the NFL

The current revenue sharing system in place in the NFL today can be separated into two basic subsections or categories. The first category comprises the sharing of revenue generated by licensing agreements such as sponsorships and marketing deals, as well as League merchandise sales. This licensing element is governed by the recently enacted “Master Agreement,” which is an extension of the “NFL Trust,” an agreement between owners with origins dating back to the collective mentality that emerged in the 1960s. Under the Master Agreement, the NFL retains most of its control over the team logos used by the 32 individual franchises, and the League has reserved some of its power to determine how each individual franchise can use its own logo. The new agreement, however, does not simply preserve the status quo regarding local sponsorship deals, but instead also gives individual teams greater freedom to control their own local marketing revenue. Nevertheless, because the Master Agreement was not unanimously approved by all the team owners, there is some uncertainty about whether the agreement will be binding on those owners who voted against it.

The second more commonly known category of the revenue sharing system is comprised of all the revenue that is generated by the actual playing of the games on the field. Unlike the Master Agreement, this category is not governed by a single document, but instead by a combination of provisions from both the NFL Constitution and the CBA. This second category, which includes the television deals covering the rights to broadcast NFL games as well as the gate receipts generated by stadium attendance, comprises the strong majority of the total revenue shared among individual NFL franchises.

Although this second category generates the vast majority of the revenue shared by NFL teams, both aspects of the revenue

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54. See Fatsis, Dallas Owner, supra note 10, at B3.
55. Id. Under the NFL Trust, the League actually owned each team’s logo, and teams had to get League permission before entering into their own sponsorship deals. Kaplan, Tagliabue, supra note 10, at 1. Under the newly enacted Master Agreement, teams now legally own their own logo, which was intended to insulate the Master Agreement from any legal challenges by those owners who voted against it. Id. See, e.g., infra text accompanying notes 81-84.
56. See id.
57. See Farmer, supra note 45, at D1; Fatsis, Can Socialism Survive?, supra note 4, at R1.
58. See CBA, supra note 11, art. XXIV, §1(a)(i)(1).
59. See Miller, Revenue-sharing Rates, supra note 11, at C2.
sharing system represent the collective “League Think” philosophy that has played such a central role in the success of the NFL.\textsuperscript{60} Despite their common goal, however, the monetary disparity between these two categories cannot be ignored. For example, under the system in place at the end of the 2004 season, the licensing element only generated between $4 and $5 million for each team, whereas the national television deals alone generated $80 million per team.\textsuperscript{61} Notwithstanding the actual disparity in the contribution that each category makes to the overall revenue shared by the individual NFL teams, it is important that they be recognized as part of the same general system because they are inseparably connected by the League’s greater collective mentality. Furthermore, as a number of owners noted when voting in favor of the Master Agreement, its approval was a significant gesture in reaffirming the importance placed upon the League’s commitment to revenue sharing.\textsuperscript{62}

1. The Master Agreement’s Contribution to the Revenue Sharing System

The new Master Agreement determines which categories of licensing are exclusively controlled by the League and conversely, how individual franchises can supplement their income with unshared licensing and sponsorship agreements.\textsuperscript{63} Under the Master Agreement, the most significant sponsorship category exclusively controlled by the League is on-field sponsorship deals.\textsuperscript{64} The NFL currently has on-field deals with Gatorade, the Pepsi-owned sports drink, and Motorola Inc., which supplies head sets worn by NFL coaches.\textsuperscript{65} These two companies are the only corporate sponsors whose brands are allowed on NFL sidelines.\textsuperscript{66}

While the Master Agreement clearly restricts the ability of individual owners to enter into sponsorship deals that might conflict with League-wide sponsors, the agreement also recognizes the victory Jerry Jones achieved in 1996 by providing some flexibility for individual teams to negotiate their own local sponsorship deals.\textsuperscript{67}

\begin{itemize}
  \item \textsuperscript{60} Id.
  \item \textsuperscript{61} Farmer, \textit{supra} note 45, at D1; Miller, \textit{Revenue-sharing Rates, supra} note 11, at C2.
  \item \textsuperscript{62} See Miller, \textit{Revenue-sharing Rates, supra} note 11, at C2.
  \item \textsuperscript{63} See Fatsis, \textit{Dallas Owner, supra} note 10, at B3; Kaplan, \textit{Tagliabue, supra} note 10, at 1.
  \item \textsuperscript{64} Fatsis, \textit{Dallas Owner, supra} note 10, at B3.
  \item \textsuperscript{65} Id.
  \item \textsuperscript{66} Id.
  \item \textsuperscript{67} Id.
\end{itemize}
These local sponsorship deals serve as an important source of unshared revenue, which has increasingly drawn the attention of team owners seeking to obtain a competitive advantage over the rest of the League. According to the Master Agreement, the League can sell the rights to use the 32 team logos collectively only within an exclusively League-controlled sponsorship area.\(^{68}\) Otherwise, the individual teams legally own their own logos and are free to negotiate their own local marketing deals using their logos.\(^{69}\) Furthermore, teams can establish their own retail shops to sell team apparel, and unlike the massive quantity of merchandise sold by the League itself, any apparel sold at team stores generates unshared revenue streams.\(^{70}\) Therefore, teams that create their own retail shops can take advantage of their marketability by keeping all of the revenue generated by these stores.

Under the Master Agreement, the individual franchises and the NFL itself equally share all the revenue that is generated by League merchandise sales and exclusive League-wide sponsorship deals.\(^{71}\) In recent years, the individual teams received between four and five million dollars a year, but that figure is expected to at least double under contracts already signed by the League.\(^{72}\) The NFL agreed to extend its sponsorship agreement with Pepsi in 2002, under which Pepsi is obligated to pay $440 million in rights, fees, advertising, and marketing through 2011.\(^{73}\) Pepsi will pay the League an average of sixteen million dollars a year, which is about one-third more than under its previous contract; other advertising obligations could push the total value of the deal over $550 million.\(^{74}\) Furthermore, the League also recently extended its sponsorship deals

\(^{68}\) See id.

\(^{69}\) See id. As further explored below, this is a somewhat significant difference between the Master Agreement and its predecessor, the NFL Trust. See, e.g., infra text accompanying notes 81-84.


\(^{71}\) Kaplan, *Divide on Revenue Sharing*, supra note 70, at 1; Kaplan, *Tagliabue*, supra note 10, at 1.

\(^{72}\) Miller, *Revenue-sharing Rates*, supra note 11, at C3; see Jeff Duncan, *Licensing Deal to Continue As Is*, TIMES-PICAYUNE, Mar. 31, 2004, at 2. The statistics used above to illustrate the monetary value of licensing revenue shared in recent years were calculated under the NFL Trust not the Master Agreement, but overall numbers should not be significantly different under the Master Agreement.

\(^{73}\) Fatsis, *Dallas Owner*, supra note 10, at B3.

\(^{74}\) Id.
with Gatorade and Visa, which should further contribute to the increasing amount of shared licensing revenue.\textsuperscript{75}

Despite mounting concern that there should have been an overhaul of the entire revenue sharing system before proceeding with the Master Agreement, in the spring of 2004 the owners passed the fifteen-year-long agreement by a vote of twenty-six to three (with three abstentions).\textsuperscript{76} Prior to the vote, the Raiders, Redskins and Cowboys, which at the time were the three teams expected to vote against the agreement, all expressed their belief that they would be bound only if they voted in favor of the agreement.\textsuperscript{77}

Following the vote, however, the question still remains whether the agreement is binding on those owners who voted against it. Jerry Jones has publicly maintained that he is not bound by the Master Agreement because he voted against it.\textsuperscript{78} The League, on the other hand, expressed the converse view that any vote on matters of League policy requires a three-quarters majority, or twenty-four team owners, at which point the policy takes effect and becomes binding on all NFL teams.\textsuperscript{79} Other team owners have supported the League’s position. As Cleveland Browns President Carmen Policy explained, “[a]nybody who feels a league, a partnership, cannot bind itself by a three-fourths vote is calling for anarchy.”\textsuperscript{80}

Furthermore, the League specifically structured the Master Agreement to inoculate its ultimate approval from any legal challenges by owners like Jerry Jones.\textsuperscript{81} In particular, the Master Agreement gives individual franchises ownership of their own logos, and teams no longer need League approval before entering local sponsorship deals.\textsuperscript{82} Additionally, the League also tried to placate owners like Jones by expanding the geographic constraints placed on each team’s marketing territory, an area within which a given team is

\begin{itemize}
  \item \textsuperscript{75} Id.
  \item \textsuperscript{76} Id.; see Miller, Revenue-sharing Rates, supra note 11, at C2.
  \item \textsuperscript{77} Miller, Revenue-sharing Rates, supra note 11, at C2. Oakland Raiders President Amy Trask articulated the Raiders’ position when she said, “[o]ur general counsel has advised the league that on April 1 [2004] the right to our marks and logos reverts to us.” Kaplan, Tagliabue, supra note 10, at 1.
  \item \textsuperscript{78} Fatsis, Dallas Owner, supra note 10, at B3 (mentioning that Jones said that turning over marketing rights to the League has been an individual club decision in the past, and quoting Jones as saying, “[l]eague-wide deals are well and good as long as each club, of its own volition, participates in those deals . . . . I’m saying I have my logos and marks and can do what I want with them.”).
  \item \textsuperscript{79} Id.
  \item \textsuperscript{80} Miller, Revenue-sharing Rates, supra note 11, at C2.
  \item \textsuperscript{81} Kaplan, Tagliabue, supra note 10, at 1.
  \item \textsuperscript{82} Id.
\end{itemize}
free to enter into their own local sponsorship deals.\textsuperscript{83} Previously, teams were prevented from marketing beyond a seventy-five mile radius around their home city, but the Master Agreement now allows teams to market throughout their entire state, provided they do not reach within a seventy-five mile radius around an in-state competitor’s city.\textsuperscript{84} When considering these characteristics of the Master Agreement, it would seem that there is not an especially great probability of an owner challenging the Agreement. It is impossible, however, to predict whether an owner like Jerry Jones might be offered a deal attractive enough to entice him into challenging the Master Agreement.

In the end, the question of whether the Master Agreement is binding on those owners who voted against it remains unanswered, but if the conflict were to come to a head, there could be major ramifications throughout the League. The likelihood that Jones would prevail on such a challenge is relatively slim because the argument articulated by the League and owners like Policy has plenty of merit. Furthermore, there are policy reasons why Jones’ argument should fail, such as preventing an increase in significant economic inequalities, which threaten the competitive balance that has been so instrumental to the NFL’s success.\textsuperscript{85}

Although there is no clear answer regarding what would happen if Jones challenges the Master Agreement, League sources have speculated that Jones might initiate a challenge by seeking a Cowboys sponsor which conflicts with an exclusive category reserved for League-wide action under the Master Agreement.\textsuperscript{86} A likely scenario would be for Jones to negotiate a local on-field sponsor that conflicts with the League-wide on-field sponsorship deals already negotiated with companies like Gatorade and Motorola.\textsuperscript{87} If Jones indeed decides to challenge the Master Agreement, the League would most likely respond by filing a lawsuit against Jones for violating the terms of the Agreement. The question would then become whether a three-quarters vote by the team owners is in fact binding on every team regardless of whether a specific team voted against the Master Agreement.

\textsuperscript{83} Id.; Daniel Kaplan, \textit{Texans Lead The NFL in Marketing Statewide}, STREET & SMITH’S SPORTS BUSINESS JOURNAL, Sept. 13, 2004, at 3 [hereinafter Kaplan, \textit{Texans Lead}].

\textsuperscript{84} Kaplan, \textit{Tagliabue, supra note 10}, at 1; Kaplan, \textit{Texans Lead, supra note 83}, at 3.

\textsuperscript{85} See discussion infra Part III.B for a description of the widening revenue gap in the NFL and its potential consequences for the success of the League.

\textsuperscript{86} Fatsis, \textit{Dallas Owner, supra note 10}, at B3.

\textsuperscript{87} Id.
Agreement. Finally, in the event that Jones successfully challenges the limitations of the Master Agreement, there would not only be a substantial monetary loss for the NFL’s revenue sharing system, but more importantly, it would create a symbolic rift in the foundation of the League’s revenue sharing philosophy.

2. The Second Category of the Revenue Sharing System: Television Revenue and Gate Receipts.

The second category of the revenue sharing system, which comprises the vast majority of the total amount of revenue shared each year, consists of all the revenue generated by the actual games on the field. This general subsection of the revenue sharing system is governed by a series of provisions in both the CBA and the NFL Constitution. The CBA establishes “Defined Gross Revenue” (“DGR”), as revenue composed of “all sources, whether known or unknown, derived from, relating to or arising out of the performance of players in NFL football games.”

Furthermore, in defining DGR, the CBA identifies those sources of revenue that are explicitly included and excluded in DGR. This distinction between DGR and Excluded DGR plays an extremely important role in the revenue sharing system because those sources of revenue that fall within the definition of DGR are shared among the 32 NFL franchises, whereas the individual franchise generating the Excluded DGR keeps all of that revenue.

The two major revenue sources that are explicitly set forth in the definition of DGR are: (1) the proceeds from the sale of television broadcasting rights and (2) “gate receipts . . . including ticket revenue from ‘luxury boxes,’ suites[,] and premium seating subject to gate receipt sharing among NFL Teams.”

88. CBA, supra note 11, art. XXIV, § 1(a).
89. See id., art. XXIV, § 1(a)(i)-(iii).
90. While the CBA does not explicitly state that DGR is meant to establish the revenue sources subject to the revenue sharing system, that implication may be inferred when the provisions of the CBA relating to DGR are considered in relation to the CBA as a whole and to the applicable provisions of the NFL Constitution. Nor does the CBA expressly state that Excluded DGR is not subject to the revenue sharing system, but that assertion may similarly be inferred by considering the CBA as a whole. DGR also plays an important role in establishing the NFL’s salary cap, which has had a huge impact on the ability of low-revenue teams to compete with their wealthier counterparts. Despite the salary cap’s intention of helping to level the playing field for lower-revenue teams, the cap has actually allowed an increase in the inequalities that exist for lower-revenue teams. See discussion infra Part III.B.
91. CBA, supra note 11, art. XXIV, § 1(a)(i)-(2) (emphasis added); see NFL Const. art. 10.3 (stating, “[a]ll regular season (and preseason network) television income will be divided equally among all member clubs of the League”); Fatsis, Can Socialism Survive?, supra note 4, at R2.
While the equal sharing of television broadcasting rights is relatively straightforward, the sharing of gate receipts is more complex and deserves further explanation. First, it is imperative to distinguish between “ticket revenue” from luxury boxes, which is “subject to gate receipt sharing among NFL teams,” and non-ticket luxury box revenue, which is not subject to revenue sharing, and is therefore coveted by owners as a source of supplemental unshared revenue. This distinction is based on the idea that luxury boxes can be sold in such a way that they are not considered part of normal ticket sales, and thus are not considered gate receipts subject to revenue sharing.

Next, it is important to establish the precise manner in which gate receipts subject to revenue sharing are actually shared among the individual franchises. The NFL Constitution provides, “The home club shall deliver to the League office the greater of $30,000 for each regular season and preseason game, or [forty percent] of the gross receipts after the following deductions . . . .” While this provision establishes a floor of $30,000 that must be shared by the home team for every game, in today’s market, forty percent of gross receipts will invariably exceed $30,000, thereby automatically triggering the forty percent option. Under the old system of gate receipt sharing, the ticket revenue for a particular game was shared roughly sixty-forty between the home and visiting team respectively with none of the ticket revenue reaching beyond the two teams participating in that particular game.

Although it would appear that gate receipts should be shared according to the sixty-forty split, certain deductions afforded to the home team cause the visiting team’s share to diminish to thirty-four percent of gross receipts. The NFL Constitution establishes that in addition to deductions for federal, state, and municipal taxes on ticket sales, the home team is allowed a significant deduction for “stadium rental allowance equal to fifteen percent (15%) of the gross receipts

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92. See CBA, supra note 11, art. XXIV, § 1(a)(i), (iii); Mullick, supra note 1, at 15-17.

93. See discussion infra Part III.A explaining the role that unshared non-ticket luxury box revenue plays in the revenue sharing system.

94. NFL Const. art. 19.1(A).

95. See Alan Ostfield, Seat License Revenue in the National Football League: Shareable or Not?, 5 SETON HALL J. SPORT L. 599, 604 n.22 (1995) (stating that for the $30,000 option to kick in, gross receipts would have to be less than approximately $89,000, which is extremely unlikely considering that the average gross receipts for 1990-1995 was around $1.5 million).

96. Id. at 603-04.
after deducting the taxes.” As a result of these deductions, the home team ends up giving the League thirty-four percent of the gross receipts for each home game (forty percent of the eighty-five percent remaining after the deduction for the stadium rental allowance).

Under the old system of gate receipt sharing, which was in place through the 2001 season, the League would then remit the thirty-four percent directly to the visiting team that played in that particular game.

In 2001, however, the NFL adopted a resolution amending its Constitution with the following language, “beginning with the 2002 NFL season, all regular season and preseason game visiting team shares shall be pooled and shared equally among the 32 Member Clubs.” This amendment to the revenue sharing of gate receipts should increase the redistributive effect of the League’s revenue sharing system, and serves as a further indication of the NFL’s commitment to the “League Think” philosophy. Under the old system, a popular team like the Dallas Cowboys could take advantage of the sellout crowds that it helped draw to opposing stadiums by keeping the entire thirty-four percent of gate receipts for itself. Conversely, perennial cellar-dwellers like the Arizona Cardinals, who drew far smaller crowds while on the road, experienced a competitive disadvantage because their visiting team share (“VTS”) was undoubtedly smaller than that of the Cowboys. By pooling each team’s VTS, and then redistributing the total amount equally among the individual franchises, the 2001 modification of gate receipt revenue sharing should help ensure greater financial equality throughout the league.

In opposition to this redistributive effect, financially-minded owners like Jerry Jones would argue that individual teams should be able to take advantage of their marketability, and should not be forced to carry the burden of less marketable teams. Despite the apparent justification for such an argument, the redistribution of revenue from teams at the top to teams at the bottom has become necessary for the continued economic success of the League; especially because the current economic inequality in the NFL has reached such critical

97. NFL Const. art. 19.1(A)(1)-(2).
98. See Ostfield, supra note 95, at 603-04.
99. Id.
100. NFL, NFL Res. G-1 (2001) (stating that “the term ‘visiting team share’ shall mean the portion of gross receipts currently required (in the absence of a waiver) to be paid to visiting clubs under Article 19.1(A) of the NFL Constitution and By-Laws in respect of regular season games”).
levels that the future viability of lower-revenue teams is in serious doubt.101

3. Television Revenue: The Foundation of the NFL Revenue Sharing System

The two major revenue sources explicitly identified in DGR, television revenue and gate receipts, compose the entire second category of the revenue sharing system. As previously noted, these two revenue streams generate the vast majority of the League’s shared revenue, which amounted to a total sharing of more than eighty percent of the approximately $5.5 billion in total League revenue from the 2004 season.102 While gate receipts undoubtedly play a critical role in the League’s revenue sharing system, it is the national television deals that operate as the heart and soul of revenue sharing in the NFL.

From the first equally shared national television deal arranged in 1961 to the current national television package, the equally shared proceeds generated by the NFL’s television broadcasting rights have always been the single largest contributor to the League’s revenue sharing system.103 Furthermore, the League’s television revenue has grown exponentially over the years, starting at $4.6 million for the two year contract signed in 1961, and climbing all the way to $17.6 billion for the recent eight year package that expired after the 2005 season.104 This tremendous growth in the NFL’s equally shared television revenue represents a self perpetuating indication of the League’s success as a whole. The competitive parity resulting from the League’s revenue sharing system in general has unquestionably bolstered the success and popularity of the NFL by ensuring that in any given year almost every team has a chance to make the playoffs.105 As a result of the League’s immense popularity, television networks have been willing to pay endlessly increasing sums of money to secure NFL broadcasting rights, which in turn has ensured the sustainability of the League’s revenue sharing system, and thereby the continued success of the League as a whole.

101. See discussion infra Part III.B for a detailed analysis of the NFL’s current economic inequality.
102. Fatsis, Can Socialism Survive?, supra note 4, at R1.
103. Farmer, supra note 45, at D1; Miller, Revenue-Sharing Rates, supra note 11, at C3; Mullick, supra note 1, at 12.
104. Jarrett Bell, NFL Tug-of-War, supra note 14, at C1.
105. Fatsis, Can Socialism Survive?, supra note 4, at R1.
The equal sharing of television revenue has become a symbol of the League's unparalleled success, and its commitment to the “League Think” philosophy. Under the NFL's current television package, the League will get more revenue in one year than Major League Baseball will get in six.\textsuperscript{106} In contrast to the extreme financial and competitive inequalities that have plagued other professional sports leagues like Major League Baseball, the NFL's ability to maintain its unmatched popularity has largely been the result of the League's commitment to revenue sharing.\textsuperscript{107} The recent emergence of new sources of unshared revenue, on the other hand, which fall within the definition of Excluded DGR, have completely transformed the financial realities of the League by enabling individual franchises to gain a competitive advantage through the exploitation of unshared revenue.\textsuperscript{108} Furthermore, the drastic increase of these sources of unshared revenue has led to extreme levels of financial inequality throughout the League, which now threaten the continued viability of the NFL's current economic system.

III. THIRD AND LONG: THE HARMFUL EFFECTS OF “LOCAL REVENUE” AND THE DESPERATE NEED FOR REVENUE SHARING REFORMS

A. Unshared “Local Revenue” and the Erosion of the NFL’s Collective Mentality

The advent of these unshared revenue sources enumerated in Excluded DGR has not only drastically altered the landscape of the revenue sharing system in the NFL, but has also revolutionized the business model followed by team owners throughout the League.\textsuperscript{109} Abandoning the old passive business model where owners promoted equality and were content to rely on revenue sharing as their primary source of income, teams have increasingly sought to maximize their competitive advantage by exploiting as many sources of unshared revenue as possible. Art Model, who joined the League in 1961 as the majority owner of the Cleveland Browns and left this past April after selling his share of the Baltimore Ravens, articulated this change in the League's mentality when he said, “The values have changed. We

\textsuperscript{106} Id. at R2.
\textsuperscript{107} Mullick, \textit{supra} note 1, at 12.
\textsuperscript{108} See Fatsis, \textit{Can Socialism Survive?}, \textit{supra} note 4, at R1-R2.
\textsuperscript{109} See Mullick, \textit{supra} note 1, at 14-18.
were comrades in arms. We were partners. That doesn’t happen now. Everything is revenues and profits.”

With the growing emphasis on profits, teams have increasingly turned to Excluded DGR, which contains the following list of unshared revenue sources: “revenues derived from concessions, parking, local advertising and promotion, signage, magazine advertising, local sponsorship agreements, stadium clubs, luxury box income other than that included in subsection 1(a)(i)(1).” Aptly labeled “local revenue,” these unshared revenue sources have been harnessed by expedient owners to supplement their income, and they have had a profound impact on multiple facets of the NFL with mixed results for the League as a whole. While the incentives created by these sources of unshared revenue have helped the League grow by promoting the construction of new stadiums, the drastically increasing nature of local revenue, which is generally more easily utilized by larger market teams, has led to a widening revenue gap between the League’s rich and poor teams.

Following the lead of business-driven owners like Jerry Jones, owners throughout the league have recognized that most of the major sources of local revenue stem directly from the ability of individual franchises to gain control over the stadiums in which they play. With owners drooling over the unshared revenue streams generated by controlling stadium parking, concessions, signage, and luxury box income, the League has experienced a significant trend with regard to the construction of new stadiums and the renovation of old ones. Since 1995, sixteen new NFL stadiums have opened throughout the League, and a seventeenth is due to open by the 2006 season. Furthermore, the League has contributed $650 million to eight

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110. Fatsis, Can Socialism Survive?, supra note 4, at R2.
111. CBA, supra note 11, art. XXIV, § 1(a)(ii). The language “other than that included in subsection 1(a)(i)(1)” is referring to “ticket revenue from ‗luxury boxes’ . . . subject to gate receipt sharing.” Id.
112. See discussion infra Part III.B explaining that unshared local revenue has been a major cause of the widening revenue gap.
113. See Fatsis, Can Socialism Survive?, supra note 4, at R6-7; Mullick, supra note 1, at 14-18.
114. See Fatsis, Can Socialism Survive?, supra note 4, at R4; Mullick, supra note 1, at 14-18. See discussion infra Part III.C describing the League’s efforts to facilitate the construction of new stadiums.
115. Fatsis, Can Socialism Survive?, supra note 4, at R4. The new stadium set to open by the 2006 season is being constructed in Mesa for the Arizona Cardinals.
stadium projects that are being funded by a combination of public and private sources.116

In their relentless pursuit of local revenue, profit-hungry owners have discovered creative ways to not only help finance stadium projects, but to make the completed stadiums even more lucrative with regard to unshared local revenue. It is in this context that the distinction between luxury box “ticket revenue” and non-ticket revenue becomes extremely significant. Luxury boxes, which provide first class amenities like catering and a private bar, are usually leased to a corporate customer for extended periods of time (usually at least an entire season), typically giving the lessee access to the luxury box for all stadium events including those performances unrelated to the NFL, such as rock concerts or other professional sporting events.117 Therefore, any franchise that owns its own stadium can keep most of the substantial revenue generated by these expensive luxury box lease arrangements.118 Conversely, teams that have unfavorable leases with a municipality or other entity that owns the stadium are at a competitive disadvantage because they are missing out on enormous streams of unshared revenue.119

The importance of luxury box revenue is illustrated by the desire of the New York Giants to build a new $700 million stadium next to its current twenty-nine year old venue.120 In addition to sharing their stadium with their cross-town rivals, the New York Jets, the Giants do not own their stadium, and therefore are forced to split the luxury box revenue three ways.121 However, were the Giants to build their own stadium they would not have to share that revenue with anyone, giving them at least two-thirds more than they currently receive. Back in 1995, when the boom in new stadiums was reaching

116. Id. See discussion infra Part III.C concerning the League’s plan to help facilitate the construction of new stadiums under what has become known as the NFL’s G-3 Program.
118. See Mullick, supra note 1, at 16-17.
120. Id. Explaining that the Giants need to keep up with Dallas, Washington, and Philadelphia, all of which own their own stadiums, John Mara, the executive vice president of the Giants said, “The three teams in our division are all in the top quartile.” Id. Blaming their unfavorable lease for the Giants’ competitive disadvantage, Mara stressed the importance of luxury box revenue explaining, “Right now we have 112 boxes, but we have a three-way split with the Jets and the sports authority. We would contemplate having 200 boxes.” Id. On April 14, 2005, the Giants signed an agreement with the state of New Jersey to build their new stadium. Kaplan, Pro Football Loses, supra note 23, at 4.
121. See Amenities, N.Y. TIMES, supra note 119, at 1.
its height, Leigh Steinberg, a sports attorney, speculated that a popular NFL team playing in a stadium with 150 luxury boxes could easily earn an additional twelve million dollars per year from luxury box income alone.\footnote{Mullick, supra note 1, at 4-5; Power, supra note 117, at D1.} This figure has undoubtedly increased dramatically over the last ten years as luxury boxes have become more and more opulent, commanding higher prices.

Not surprisingly, the New York Jets had a new stadium proposal of their own to build a $1.4 billion stadium on the lower west side of Manhattan.\footnote{Steven Zeitchik, The Jets and Steelers: A Tale of Two Stadium Plans and Their Cities, N.Y. SUN, Feb. 3, 2005, at 3. Since the first draft of this paper was completed, the Jets’ stadium proposal, which was also part of New York City’s bid to host the 2012 Summer Olympics, was rejected by the State of New York, which denied the public funding needed for the stadium’s construction.} Their proposal illustrates how luxury box income can serve as an important source of funding to finance the construction of new stadiums. The Jets promised that if their new stadium was built, there would be no increase in regular ticket prices during the stadium’s first season because they knew that they could rely on luxury box income to offset the need for any hike in ticket prices that might otherwise be necessary to help fund the construction of their new stadium.\footnote{Id.} Therefore, unshared luxury box revenue has not only become an integral element in the financial success of an individual franchise, but also serves as an important way for NFL teams to partially finance their new stadiums.

Jerry Jones is quick to proffer his view that these stadium-related sources of unshared revenue are good for the League. Stressing his incentive based arguments, Jones explained, “If you don’t have some unshared revenues, those stadiums never get built because of all the debt. You think people are going to build those stadiums if they were sharing the revenue 32 ways? No. Why did they get built? Because of the incentive.”\footnote{Bell, NFL Tug-of-War, supra note 14, at 2-3C.} While it is hard to argue that unshared local revenue has not had some positive effects on the current state of the NFL, it is important to weigh the positives and negatives associated with unshared revenue in determining what is best for the future of the League. There is no doubt that in today’s economy there is a need for some unshared revenue in order to provide incentives for teams to market themselves and to help generate beneficial externalities like stadium construction. Too much unshared revenue, on the other hand, is detrimental to the League because it will inevitably lead to a widening gap between revenue-rich teams
with favorable stadium situations and revenue-poor teams with unfavorable stadium situations.

1. “Local Revenue” as the Cause of “Franchise Free Agency”

At first glance, all this additional revenue and all these new stadiums might appear to be nothing but a good thing for the League, but upon closer inspection it becomes clear that there are some significant concerns lurking just behind the glare of the bright new stadium lights. The incessant quest for unshared revenue by NFL owners has been largely responsible for a phenomenon known as “Franchise Free Agency.”126 This phenomenon, which is characterized by the recent relocation of numerous franchises seeking more lucrative stadiums in which to play, has not only drawn the attention of significant scholarly analysis, but has also prompted Congress to propose numerous bills attempting to prevent franchises from arbitrarily abandoning their home city simply to secure a more profitable venue.127

This string of proposed bills was largely the result of lobbying on the part of the NFL in response to two Ninth Circuit decisions in the 1980s involving the relocation of the Raiders franchise from Oakland to Los Angeles.128 In the first decision, the court held that the NFL violated the Sherman Antitrust Act when the NFL owners unanimously voted against approving the relocation.129 At that time, any team relocation required a three-quarters majority approval by team owners, as provided for in Article 4.3 of the NFL Constitution.130 Despite recognizing that territorial allocations were necessary for the viability of the NFL, the court concluded that the restraints necessary for the NFL to survive could have been achieved through a less restrictive rule.131 The court explained that there might be a reasonable basis for preventing a team’s relocation if the League properly considered “objective factors . . . such as population, economic projections, facilities, regional balance . . . [f]an loyalty and location

126. See Mullick, supra note 1.
128. L.A. Mem’l Coliseum Comm’n v. NFL (Raiders II), 791 F.2d 1356 (9th Cir. 1986); L.A. Mem’l Coliseum Comm’n v. NFL (Raiders I), 726 F.2d 1381 (9th Cir. 1984); Nottingham, supra note 127, at 1075-76.
129. Raiders I, 726 F.2d at 1401; Nottingham, supra note 127, at 1075-76.
130. Raiders I, 726 F.2d at 1401; NFL CONST. art. 4.3; Nottingham, supra note 127, at 1075-76.
131. Nottingham, supra note 127, at 1075.
continuity.” In the second suit, the court awarded treble damages to the Raiders and to the Los Angeles Coliseum, which was the proposed venue for the Raiders’ relocation, based on the projected disparity in the team’s profits and the Coliseum’s loss of lease income.

The combination of these two Ninth Circuit decisions has proved to be a serious deterrent to the League in its decisions whether to oppose subsequent franchise relocations because of the League’s fear of costly antitrust litigation and the possible liability that would result from any decision rendered against the NFL. As a result, the League has turned to Congress in an attempt to gain an antitrust exemption. Since 1985, Congress has considered seven different bills that have taken various forms in their common attempts to protect fans and communities from losing their home teams, but none of these bills have passed.

Some of these bills support an antitrust exemption that would enable the NFL to veto any proposed franchise relocation without any threat of antitrust litigation, while others rely on the dictum in the first Ninth Circuit decision that suggested the NFL could avoid future antitrust liability by using objective guidelines when considering the approval of a franchise relocation. Despite Congress’ inability to enact any of these bills into law, the prevalence of the proposed legislation indicates that “Franchise Free Agency” is a legitimate concern for the nation as a whole. Furthermore, the large scale of this political response is undoubtedly driven by significant unrest among NFL fans, which poses a direct threat to the future popularity and success of the League.

In addition to the negative reaction that franchise relocation has on the NFL’s fan base, the lure of unshared local revenue generated by favorable stadium deals has eroded the NFL’s “League Think” philosophy, and, in certain circumstances, has hurt the League as a whole. The relocation of the Rams from Los Angeles to St. Louis serves as a perfect example of the detrimental effect that an individual team’s pursuit of local revenue can have on the League. The advent of unshared local revenue has created a situation where an individual owner’s best interests are no longer necessarily aligned with the best interests of the League. In the case of the Rams, the franchise moved from the much larger market of Los Angeles to the

132. Id. at 1076-77 (quoting Raiders I, 726 F.2d at 1397).
133. Id. at 1076.
134. See id.
135. Id. at 1077-79.
136. Id.
137. See id. at 1070.
much smaller market of St. Louis mainly because St. Louis offered a better stadium situation that would generate more unshared local revenue for the team. While the team itself benefited from the move, the League as a whole suffered because St. Louis's smaller market means that fewer people watch the Rams on television, and this reduced audience thereby generates smaller television ratings when compared to the ratings that could have been achieved had the Rams remained in Los Angeles.

Since the Rams only absorbed a small portion of that decrease due to the revenue sharing system, the increase in local revenue made the move worthwhile for the team, but the aggregate effect for the rest of the owners made the move more costly for the League as a whole. Consequently, the emergence of local revenue has indirectly prevented the League from capitalizing on the Los Angeles area fan base and the enormous revenue opportunities presented by the nation's second largest market. As a result, the League cannot maximize its evenly shared television revenues, which thereby hurts the revenue sharing system, and more importantly the League as a whole.

B. The Widening Revenue Gap and the Salary Cap System

The most detrimental consequence resulting from the emergence of unshared local revenue has been the widening gap between the League's revenue-rich teams and its less prosperous counterparts. While the teams at the top like the Washington Redskins and the New England Patriots can generate upwards of $250 million in annual revenue, teams at the bottom like the Arizona Cardinals and Indianapolis Colts struggle to produce just over half the annual revenue enjoyed by their wealthier brethren. Furthermore, this revenue gap is about twelve times what it was in 1990, and the increasing nature of these revenue disparities illustrates a disturbing

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138. Id.
139. Id.
140. Id.
141. From speaking with Steve Underwood, the Executive Vice President, General Counsel and Executive Assistant to the Owner of the Tennessee Titans, the author has gained first hand knowledge of the significance that NFL insiders place on the current financial void left by the League's inability to place a franchise in the nation's second largest market, Los Angeles.
142. Fatis, Can Socialism Survive?, supra note 4, at R2.
143. Bell, NFL Tug-of-War, supra note 14, at 1C; Fatis, Can Socialism Survive?, supra note 4, at R2.
144. Fatis, Can Socialism Survive?, supra note 4, at R2.
trend that must be addressed by the League before it inflicts permanent damage on the popularity of NFL.

The major source of this widening revenue gap, much like “Franchise Free Agency,” is the increasing need for owners to secure beneficial stadium deals in order to capitalize on unshared local revenue. As in the case of the New York Giants, teams that are stuck in unfavorable stadium arrangements cannot take advantage of local revenue, and therefore experience a significant competitive disadvantage. This point is illustrated by the situation of the Indianapolis Colts, who according to a Forbes report published in 2003, ranked twenty-ninth in franchise value ($547 million) the previous year, while leasing the NFL’s smallest stadium (the RCA Dome with 56,127 seat capacity) in the twenty-fifth largest market. Furthermore, the Indianapolis market lacks the number of corporate supporters that enable other franchises to flourish through the use of premium seating and luxury boxes, both of which are important sources of unshared local revenue.

Conversely, the NFL’s most valuable franchise, the Washington Redskins, was valued by the Forbes report at an astounding $952 million in 2002. Along with Jerry Jones, Redskins owner Daniel Snyder is one of the largest proponents of increasing unshared revenues in order to encourage teams to capitalize on savvy management techniques that are more readily available in a less restricted market. Under Snyder’s leadership, the Redskins, who own their own stadium and play in the NFL’s largest venue (FedEx Field with 86,484 seat capacity), have utilized a vast array of local revenue sources to become the first NFL team to surpass $200 million in annual revenue. In addition to their exploitation of the more obvious sources of local revenue like luxury box sales, concessions, and parking, the Redskins have also capitalized on their marketability, which not only enabled Snyder to negotiate a thirty year, $205 million stadium naming-rights deal, but has also facilitated the creation of a dozen “Redskins Store” outlets, which also generate significant unshared revenue. By comparing the enormous local revenue

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145. Bell, NFL Tug-of-War, supra note 14, at 1C
146. Id. at 3C. For a detailed discussion of the Giants stadium situation see supra text accompanying notes 120-121.
147. Id.
148. Id.
149. Id.
150. See Fatsis, Can Socialism Survive?, supra note 4, at R4-R6.
151. Bell, NFL Tug-of-War, supra note 14, at 3C.
152. Id.
opportunities of a larger market team like the Redskins, who own their own stadium, and the limited local revenue possibilities for a smaller market team like the Colts, who do not control their stadium, the source of the NFL's current revenue gap becomes readily apparent.

Although the increasing economic inequalities in the NFL seem relatively clear, it is also important to recognize some of the arguments against revenue sharing made by those owners who have financed some or all of their stadium acquisitions through private debt. These owners argue that one must think in terms of net profits, not total annual revenue, because the large amount of debt incurred to buy the stadium initially negates much of the apparent advantage. 153 For example, the Philadelphia Eagles, who in 2003 moved into a new $512 million stadium, must allocate more than thirty million dollars a year to service their debt. 154 This argument criticizing too much revenue sharing is adeptly characterized by a statement attributed to Daniel Snyder of the Redskins. Snyder reportedly said, “I'll share my revenue whenever they're ready to share my debt.” 155 Owners like Snyder, who has roughly $300 million in debt left from his $800 million acquisition of the Redskins and their stadium in 1999, argue that since they were the ones who put up the initial capital, they are entitled to reap the benefits of stadium ownership. 156

While there is undoubtedly some merit to these arguments, it is important to note that in the context of acquiring a large market NFL stadium or franchise, there is little in the way of the risk that would normally be associated with a leveraged investment, largely because of the current economic state of the League as a whole. In 2003, every single franchise experienced a net profit; furthermore, the revenue of the League as a whole has increased by a factor of greater than five over the past fifteen years. 157 The strength of the League's current economic outlook is illustrated by the fact that traffic on the NFL's Internet site surpasses that of other pro leagues, its television broadcasts outpace prime-time averages, and its especially devoted fans buy more than ninety percent of available tickets. 158 Furthermore, the League generated somewhere around $5.5 billion in

153. See Fatsis, Can Socialism Survive?, supra note 4, at R6; Bell, NFL Tug-of-War, supra note 14, at 4C.
155. Id.
156. Id.
157. Id. at R1-R3.
158. Id. at R3.
total revenue last year, which is the most income produced by any of the four major U.S. professional sports leagues.159

When one considers these astounding statistics in relation to the structural reality of the League, it is impossible to ignore that the value of an individual franchise is completely dependent on the success of the League as a whole because without the League, each individual franchise would be worthless. Although the owners who financed their own stadiums would argue that they deserve greater returns because they bore the risk of their leveraged investment, this argument is largely mitigated by considering the minimal amount of risk actually incurred. Therefore, since an individual owner does not bear much financial risk when his franchise leverages its investment in stadium infrastructure, asking the more profitable teams to share a small portion of local revenue with their less prosperous counterparts is not an unreasonable request, especially because the value of an individual franchise is necessarily tied to the success of the League as a whole.

1. The Failure of the Salary Cap System and the Resulting Competitive Inequalities on the Field

While the competitive advantage gained through stadium ownership serves as the largest catalyst for the widening revenue gap, the economic disparities that exist between the individual teams also adversely affect the ability of lower-revenue teams to remain competitive on the field. Significantly, the revenue-strapped Colts paid more than seventy percent of their revenues to player salaries in 2003, whereas richer teams spent only thirty-eight percent on salaries.160 The discrepancy in the percentage of income that a given team can spend on player salaries has a huge impact on the ability of lower-revenue teams to compete with higher revenue teams in the high-priced free agent market.161 As Colts President Bill Polian explains, “We can’t keep as many people as some teams can . . . . The issue is cash. If you have cash that your stadium is generating every year, you can commit that to bonuses to retain or get players in the free agent market. That’s the name of the game.”162

Despite the League’s adoption of a salary cap, which was meant to help level the playing field, the statistics seem to support

159. Id. at R1. The four major leagues are baseball, basketball, football, and hockey.
160. Bell, NFL Tug-of-War, supra note 14, at 1.
161. See Fatsis, Can Socialism Survive?, supra note 4, at R5; Bell, NFL Tug-of-War, supra note 14, at 1C-2C.
162. Bell, NFL Tug-of-War, supra note 14, at 1C-2C.
Polian’s claim that lower-revenue teams cannot compete with higher revenue teams in the free agent market. According to data supplied by the players union, the Redskins committed more than seventy-seven million dollars in signing bonuses between the 2003 and 2004 seasons, whereas the Arizona Cardinals spent only twenty-two million dollars during that same period. Owners critical of too much revenue sharing have been quick to point out that those teams in a superior financial position have not necessarily experienced a competitive advantage on the field, as evidenced by the fact that teams like the Cowboys have not made the playoffs for a number of years. Notwithstanding the inability of the Cowboys to “buy” their success, it would be completely ridiculous to argue with the statement made by Atlanta Falcons owner Arthur Blank, that “[a]t some point there is a correlation between what you’re paying your players and your ability to compete.”

In order to fully understand the competitive inequalities that exist in the free agent market, it is important to explain how the salary cap works, and how revenue rich teams can take advantage of a system that ironically was intended to help the lower-revenue teams remain competitive. The salary cap, which sets both a floor and a ceiling on what a team can (or must) spend on player salaries in a given year, is calculated as a percentage of DGR. Therefore, as the League’s revenues have steadily increased, fueled largely by the construction of new stadiums, so too has the salary cap. Last year’s salary cap was set at $80.6 million with a $67.3 million floor, which is a significant increase from the $34.6 million cap set in 1994, the year of its inception. Instead of helping lower-revenue teams remain competitive, this dramatic increase in the salary cap has actually hurt the lower-revenue teams stuck in unfavorable stadium situations.
because their revenue has not increased proportionally. Therefore, these lower-revenue teams have been unable to keep pace with their wealthier counterparts, who have experienced a significant competitive advantage through the use of unshared local revenue.

Further exacerbating the inequalities that exist under the salary cap are the loopholes in the system that allow teams to amortize the cost of signing bonuses over the life of the contract, which basically means that for accounting purposes, a team can spread out how much the bonus counts against the cap for each individual year of the contract. Under this system, teams can spend well above the cap by giving free agents larger signing bonuses and smaller annual salaries. Therefore, teams with more local revenue are in a position to spend much more on signing bonuses, which in turn gives them a significant advantage in attracting talented free agents. As mentioned above, this system allowed the Redskins to offer seventy-seven million dollars in signing bonuses during the same period in which the Cardinals could only offer twenty-two million dollars. The glaring nature of this loophole is further illustrated by the comments of Michael Duberstein, a research director with the NFLPA, who indicated that teams have been able to spend two billion dollars above the cap over the past decade by amortizing costs.

C. The NFL’s Current Reaction to the Problems Posed by “Local Revenue” and the Widening Revenue Gap

The widening revenue gap created by both the emergence of local revenue and the salary cap system has sparked considerable debate amongst the NFL owners. The owners of lower-revenue teams like the Colts and Cardinals have expressed their belief that under the League’s current economic model these less prosperous teams cannot compete with their revenue-rich counterparts who are better equipped to capitalize on the local revenue opportunities created by stadium

169. Bell, NFL Tug-of-War, supra 14, at 5C; Fatsis, Can Socialism Survive?, supra note 4, at R5.
170. Fatsis, Can Socialism Survive?, supra note 4, at R5.
171. See id.
172. Id. Signing bonuses are also attractive to potential free agents because the money is guaranteed, whereas the annual salary offered by a player-contract is not guaranteed to the player, and the team can decide to release that player without being responsible for the remaining value of the contract.
173. Fatsis Can Socialism Survive?, supra note 4, at R5; see supra text accompanying note 163.
According to lower-revenue teams, the revenue gap is reaching such a critical level that their future economic viability will soon be in serious doubt, and therefore the League must find a way to better redistribute some of the local revenue that has created this economic discrepancy.176

Conversely, the owners of high-revenue teams like the Redskins and Cowboys argue that if teams are forced to include their local revenue in the total amount of revenue shared by the League, it will eliminate any incentive for less prosperous teams to market themselves.177 As Cowboys owner Jerry Jones explains, “The big concern I have is not how to equalize the disparity in revenue[,] but how to get the clubs that are not generating the revenue to see the light.”178

There is some merit to Jones’s argument since poor management decisions by lower-revenue teams might be partially to blame for their inferior economic position. However, in deciding whether to reform the current revenue sharing system, the NFL must also consider some of the economic factors that are beyond the control of the lower-revenue owners, such as stadium ownership and market size. Since a team’s potential marketability is directly tied to the size of its local market, teams like the Cowboys and Redskins can take advantage of their larger markets to increase their unshared local revenue through both local sponsorship deals and local stadium revenue.179 At the same time, playing in a large market does not necessarily guarantee that a team will be able to capitalize on sources of local revenue, because that team might be stuck in an unfavorable stadium situation, as illustrated by the experience of the New York Giants.180 Therefore, when evaluating the need for revenue sharing reforms, the NFL should not only consider the inherent economic disparities that exist between small and large market teams; it must also factor in the realities surrounding every team’s ability to secure a beneficial stadium deal.

The NFL has taken a variety of steps to help address some of the problems that have been created by the emergence of local revenue and the resulting increase in the revenue gap. Some of these League

175. See discussion supra Part III.B.1.
176. See Miller, Revenue-Sharing Rates, supra note 11, at C2. As Colts owner, Jim Irsay argued, “There are many teams that realize they cannot go forward like this. It’s become that big of an issue.” Fatsis, Can Socialism Survive?, supra note 4, at R2-R3.
178. Id.
179. See discussion supra Part III.B.
180. See supra text accompanying notes 121-122.
initiatives are specifically designed to combat the increasing economic inequalities within the NFL, while others focus more on addressing some of the indirect effects of local revenue, such as “Franchise Free Agency.” In order to facilitate the construction of new stadiums, the League adopted a program set forth in Resolution G-3 of 1999 (“G-3 Program”), which has loaned $650 million in League money to help eight different stadium projects, all of which were funded by a combination of public and private financing.\(^{181}\) This G-3 Program is meant to promote stadium construction, which could potentially benefit lower-revenue teams by enabling them to build new stadiums and thereby better capitalize on local revenue. Although the program does seek to eliminate some of the local revenue-related incentives that contributed to the emergence of “Franchise Free Agency,” this program may actually reduce the overall amount of shared revenue, and is therefore not well suited to address the overarching problems created by the widening revenue gap.

In order to qualify for G-3 financial assistance from the League, a stadium project must be financed by public-private funding, and the amount that the League will contribute is directly tied to the amount of the individual franchise’s private contribution (“Private Contribution”) to its own stadium project.\(^{182}\) The allocation of League funds to the financing of a G-3 stadium is technically in the form of a loan, but it is repaid directly out of the visiting team’s share (“VTS”) of the luxury box and club seat revenue.\(^{183}\) Similarly, in the context of a non-G-3 stadium, luxury box and club seat revenue can also be exempted from VTS, provided it is used for the direct financing of the non-G-3 stadium’s construction.\(^{184}\) However, notwithstanding this similar treatment of certain luxury box revenues, there are additional benefits that accrue to those owners who qualify for the G-3 Program. In particular, the G-3 Program should reduce a team’s cost of capital by eliminating some of the transaction costs that would otherwise be


\(^{182}\) NFL RES. G-3, supra note 181; NFL RES. JC-1 (1) (2003) [hereinafter NFL RES. JC-1] (stating “the League shall make a loan to the affected Club to support such project based on the amount that the affected Club has committed to such project as a private contribution (the ‘Private Contribution’)”).

\(^{183}\) NFL RES. G-3, supra note 181; NFL RES. JC-1, supra note 182; Dickey, supra note 181, at C1.

\(^{184}\) NFL RES. G-3, supra note 181; NFL RES. JC-1, supra note 182; Dickey, supra note 181, at C1.
required to secure financing from a private institution. Therefore, under the G-3 Program, the League is in essence simply making private loans easier for the individual owners to obtain by exempting ticket revenue that would otherwise be shared with the visiting club, and instead using that revenue to pay off the loan. This arrangement promotes stadium construction because owners can partially finance the building of their new stadium with revenue that they otherwise would have been forced to share with the visiting teams had they remained in their old stadium.185

One of the principle intentions of the NFL’s G-3 Program is to encourage large market teams to stay in their home city (instead of moving to a smaller market) by offering favorable loans that help the teams finance their public-private stadium projects.186 This is implied by the language establishing the precise amounts that the League will loan to a participating franchise under the G-3 Program. The exact provision is enumerated in the subsequent Resolution JC-1 adopted in 2003, which extended the life of the G-3 Program, and provides in part:

That the amount of such League loan shall be either 34% or 50% of the Private Contribution, determined by the size of the television market in which the stadium involved is being constructed, with League loans at the 50% level to be made available to facilitate stadium construction projects for NFL clubs currently operating in the six largest national television markets, and with the League loans in all other television markets limited to 34% of the Private Contribution.187

While the G-3 Program helps both small and large market teams finance public-private stadium construction, the program favors large market teams by providing them with much larger loans. This favorable treatment given to the largest market teams is meant to provide incentives for those teams to remain in their home cities, which benefits the entire NFL by enabling the League to capitalize on the increased television revenue generated by these larger markets.

The G-3 Program undoubtedly provides universal benefits that help all franchises looking to utilize public-private financing in the construction of a new stadium. Furthermore, by encouraging teams to remain in the largest markets, this program should help to increase the League’s television revenue, which is shared equally, and therefore should benefit the League as a whole. However, an increase

185. This arrangement provides the incentives for stadium construction at the expense of the revenue sharing system by funneling revenue away from the sharing system, and into the pockets of individual clubs.
186. NFL Res. G-3, supra note 181; NFL Res. JC-1, supra note 182; Dickey, supra note 181, at C1.
187. NFL Res. JC-1, supra note 182 (emphasis added).
in equally shared television revenue confers the same benefit upon every team notwithstanding their relative financial positions. This program therefore does not help to alleviate any of the inherent economic inequalities that exist in smaller market cities. In fact, this program might actually exacerbate the economic disparities that currently exist in the League today by helping large market teams better capitalize on local revenue at the expense of smaller market teams who, under this program, do not enjoy the same level of League subsidies. Instead of redistributing some of the advantages enjoyed by large market teams that can more easily utilize their marketability to generate more local revenue, the G-3 Program actually has the effect of giving the large market teams an additional leg up on their smaller market counterparts.

In addition to the G-3 Program, the NFL has also created a “supplemental” revenue sharing pool, which would appear far better suited to combat the widening revenue gap that threatens the League’s current competitive balance. The so-called “supplemental” revenue sharing pool, created under the salary cap system, redistributes roughly forty million dollars a year in local revenue to a small number of lower-revenue teams.\(^1\) Typically, each year six to nine teams draw from the “supplemental” pool, which has grown from eighteen million dollars to its current mark of forty million dollars.\(^2\) Despite its potential to help alleviate the League’s widening revenue gap, the “supplemental” revenue sharing pool has proven insufficient to keep pace with the dramatically increasing nature of the economic disparities in the NFL.\(^3\) For example, $8.5 million is the most that any team has drawn from the pool in a single year.\(^4\) Moreover, when this figure is considered in relation to the gap in annual revenue between the NFL’s richest and poorest teams, which has well exceeded the $100 million mark, the “supplemental” pool’s inadequacy in dealing with the exponentially increasing economic disparity becomes apparent.\(^5\)

Notwithstanding the League’s marginal attempts to counteract the various harmful effects that stem from the recent growth in local

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1. Bell, NFL Tug-of-War, supra note 14, at 4C; Fatsis, Can Socialism Survive?, supra note 4, at R6; Miller, Revenue-Sharing Rates, supra note 11, at C2.
2. These statistics are derived from the observations of Harold Henderson, who is the NFL’s Executive Vice President for Labor Relations. See Bell, NFL Tug-of-War, supra note 14, at 4C.
3. Id. Since 1990, the size of the revenue gap has increased by a factor of about twelve. Fatsis, Can Socialism Survive?, supra note 4, at R6.
4. Bell, NFL Tug-of-War, supra note 14, at 4C.
5. Id.
revenue, these emerging unshared revenue streams no longer simply threaten to bend the rules of the NFL’s collective philosophy. Instead, the revenue sharing system itself appears to be on the brink of a complete fracture. In response to the current economic realities of the League, Commissioner Tagliabue has appointed a twelve member special committee to examine a wide array of financial concerns, with one of the focuses being revenue discrepancies and the issue of whether teams should share more of their local revenue. Nevertheless, despite these clear indications that the current revenue sharing system requires significant reform, when establishing the special committee, Tagliabue claimed that revenue sharing is only one of many topics, and that the bigger concern of the committee and that of the League as a whole is extending the NFL’s current CBA, which is set to expire after the 2007 season, with the salary cap component expiring after the 2006 season. As further explored below, failing to extend the current CBA could cause irreparable damage to the success of the NFL, and therefore the on-going labor negotiations undoubtedly deserve the League’s undivided attention. The NFL, however, would be well advised to simultaneously consider revenue sharing reforms because any progress in reaching a labor agreement will necessarily require the League to address the same central issue behind the revenue sharing debate—namely, the manner in which local revenue will be treated.

D. Labor Unrest: Why are Revenue Sharing Reforms so Crucial to the Successful Extension of the Current CBA and its Salary Cap System?

Commissioner Tagliabue is completely warranted in his concern about extending the CBA, but contrary to his opinion, the issues surrounding the extension of the labor agreement cannot be completely divorced from the debate over what to do about local

193. Id.; Fatsis, Can Socialism Survive?, supra note 4, at R6.
195. Portions of the analysis in this section may have been rendered somewhat moot by the last-minute extension of the CBA, and the corresponding revenue sharing reforms. Nevertheless, the overall analysis remains extremely significant because it sets the stage under which the new deal was struck. In particular, it establishes how the hostile negotiations created leverage for the NFLPA, and ultimately forced the owners to concede to the demands of the union instead of facing the daunting possibility of moving forward without a new labor deal or salary cap in place.
Gene Upshaw, executive director of the NFLPA, has indicated that there is a slight distinction between the debate among owners over how revenue should be shared between teams and the issues presented by the CBA negotiations regarding how overall League revenue should be shared with players. In particular, Upshaw remarked, “I don’t care if their revenues are shared or unshared... I just want our share.” While the labor union does not appear to be concerned with the resulting inequality in the competitive balance of the League, the NFLPA is very concerned with the dramatically increasing nature of unshared local revenue.

Under the current CBA’s salary cap system, each year players are guaranteed around sixty-five percent of the League’s total DGR, but since local revenue is part of Excluded DGR, it is outside the reach of the salary cap system. The players argue that they deserve some of the exponentially increasing local revenue currently shielded from their reach by the Excluded DGR provision, and Gene Upshaw has made it clear that the NFLPA will not agree to an extension of the current CBA with its definition of DGR still intact. Furthermore, in describing the revenue sharing model that is currently in place under the CBA, Upshaw explained, “[w]e’ve outgrown that model to a model that to us looks like it should [include] all revenue.” Thus, the sharing of local revenue is in fact a labor issue, and because the CBA expires in two years, the issue must be addressed soon, otherwise the NFL could experience a work stoppage that would unquestionably damage the profitability of the League and that of each individual franchise.

196.  Bell, NFL Tug-of-War, supra note 14, at 4C.
197.  See id., at 5C; Kaplan, NFL Impasse, supra note 15, at 1; Mullen & Kaplan, NFL Sides Agree, supra note 15, at 3.
198.  Bell, NFL Tug-of-War, supra note 14, at 5C.
199.  Id.; Fatsis, Can Socialism Survive?, supra note 4, at R7. In the recent negotiations that ultimately produced a new last-minute CBA and revenue sharing plan just before this note went to print, the NFLPA took a much more proactive role in forcing the owners to address the issue of revenue sharing between teams. See Kaplan, Chaos and Compromise, supra note 17, at 1. In particular, the union was concerned that the widening revenue gap could inflict such damage on the overall League that the players might lose out on revenues under any new labor agreement that did not include revenue sharing reforms. Id. The NFLPA actually conditioned its final offer for a new labor deal on the owners’ ability to approve adequate revenue sharing reforms. Id.
200.  CBA, supra note 11, art. XXIV, §§ 1-6; Bell NFL Tug-of-War, supra note 14, at 2C; Fatsis, Can Socialism Survive?, supra note 4, at R7.
201.  Bell, NFL Tug-of-War, supra note 14, at 5C; Fatsis, Can Socialism Survive?, supra note 4, at R7.
202.  Fatsis, Can Socialism Survive?, supra note 4, at R7 (emphasis added).
203.  As indicated by the recent developments and the current direction of the ongoing labor negotiations, the League could theoretically address the sharing of local...
1. The On-going Labor Negotiations: Recent Developments and Their Implications for Revenue Sharing Reforms

The League and the players’ union initially made some progress in their negotiations to extend the current CBA, but as of fall 2005 the negotiations appeared to have reached a stalemate.\textsuperscript{204} Significantly, at some point during the labor talks, the owners and the players union tentatively agreed that local revenue will no longer be excluded from the revenue that is shared with players.\textsuperscript{205} Instead, both parties have agreed that any new labor agreement will guarantee that the players receive a percentage of “total football revenue” as opposed to a percentage of DGR.\textsuperscript{206} If this agreement does in fact come to fruition, players would be entitled to a portion of those previously unshared revenue sources currently shielded from their reach by the existing CBA’s Excluded DGR provision. Despite this initial progress, however, the future outlook of these on-going negotiations appears far less promising.\textsuperscript{207}

After initial negotiations yielded a consensus on the sharing of total football revenue with players, subsequent talks have hit a major stumbling block that now threatens to preclude any possibility of reaching a new labor pact before the current CBA expires. In particular, both sides have been unable to agree upon the exact percentage of total football revenue that should be reserved for the players. While the union is currently asking for sixty-four percent of total football revenue, the League has refused to relinquish more than fifty-seven percent, and with total revenues estimated to reach $5.7 billion this year, these opposing positions correspond to a monetary difference of nearly $400 million, or $12.5 million per team.\textsuperscript{208}

\begin{itemize}
\item \textsuperscript{205} This tentative agreement to include local revenue only applies to the sharing of revenue with players, and the question of how exactly local revenue will be treated for purposes of revenue sharing between owners remains an unanswered.
\item \textsuperscript{206} Kaplan, \textit{NFL Impasse}, supra note 15, at 1.
\item \textsuperscript{207} Id.; Daniel Kaplan & Liz Mullen, \textit{NFL Owners to Hear Same Old Story on Stalled Labor Talks}, STREET & SMITH’S SPORTS BUSINESS JOURNAL, Nov. 14, 2005, at 4 [hereinafter Kaplan & Mullen, NFL Owners to Hear]; Mullen & Kaplan, \textit{NFL Sides Agree}, supra note 15, at 3.
\item \textsuperscript{208} Kaplan, \textit{NFL Impasse}, supra note 15, at 1.
\end{itemize}
Furthermore, multiple NFL insiders have begun to express their frustrations with the current standoff, and there is little optimism that a deal will be completed before teams start making off-season moves in anticipation of the 2006 season, which officially begins on March 3, 2006.\footnote{Mullen & Kaplan, NFL Sides Agree, supra note 15, at 3. The official start of the 2006 season and its corresponding free agency deadline was actually March 3, not March 1 as was reported in the above source. See Kaplan, NFL Owners to Set Revenue-Sharing Plan, supra note 17, at 1; Kaplan, Chaos and Compromise, supra note 17, at 1; Mullen, Winding Road, supra note 17, at 1. Furthermore, the owners and the NFLPA agreed to extend the March 3 deadline just before its expiration, in hopes that the two sides could reach a suitable compromise within a reasonable amount of time. Kaplan, NFL Owners to Set Revenue-Sharing Plan, supra note 17, at 1; Kaplan, Chaos and Compromise, supra note 17, at 1; Mullen, Winding Road, supra note 17, at 1. When faced with the very real and daunting possibility of realizing the various negative consequences outlined in the text below, the owners ultimately conceded to the demands of the union by agreeing to guarantee that under the new CBA, the players will receive the extra percentage points, which had previously been so adamantly rejected by the owners. See Kaplan, NFL Owners to Set Revenue-Sharing Plan, supra note 17, at 1; Kaplan, Chaos and Compromise, supra note 17, at 1; Mullen, Winding Road, supra note 17, at 1.}

Despite a mounting sense of urgency, both sides have recently confirmed their unwillingness to compromise, while at the same time recognizing the need to reach an agreement before the March deadline.\footnote{Mullen & Kaplan, NFL Sides Agree, supra note 15, at 3.} Specifically, the League attempted to break the stalemate by offering a nominal increase over its original offer of fifty-seven percent, but the NFLPA rejected the League’s revised offer claiming it was so inadequate that it did not deserve a counteroffer.\footnote{Id. (stating that the exact amount of the League’s revised offer was never released).} The League has been similarly resistant to the idea of any significant concessions to the players union, and has specifically refused to even consider meeting the union halfway.\footnote{Kaplan & Mullen, NFL Owners to Hear, supra note 207, at 4; Daniel Kaplan & Liz Mullen, Two Issues and Little Progress for NFL, STREET & SMITH’S SPORTS BUSINESS JOURNAL, Oct. 3, 2005, at 4 [hereinafter Kaplan & Mullen, Two Issues].} Therefore, despite recognizing the importance of reaching an agreement in the near future, both sides remain so sharply divided that it appears unlikely that they will be capable of reaching an agreement before the salary cap expires on the third day of March.

If the two parties are unable to reach a deal before March 3, 2006, which marks the start of the 2006 season and the upcoming draft and free agency period, this failure will have an immediate impact on the ability of teams to sign both their draft picks and current free agents because teams will not be able to amortize signing bonuses over the life of the contract for purposes of complying with the
Instead, teams will only be able to amortize bonuses over the two remaining years of the current labor agreement plus an additional two years, as provided for in the current CBA, which would make the total amortization period only four years. Such a shortened amortization period could wreak havoc for teams trying to comply with the cap, especially because bonuses play such a big role in signing draft picks and free agents. This result could be extremely detrimental to the popularity of the League because in order to comply with the 2006 salary cap, teams might be forced to either release their highly paid players or allow their draft picks to go unsigned, and either option will lead to widespread unrest among fans. Furthermore, Denver Broncos owner Pat Bowlen, who is one of the League's lead negotiators, has expressed his concern that once the salary cap expires on March 3, 2006, the entire salary cap system could be lost forever.

Although both parties have apparently agreed to use total football revenue in calculating the players' guaranteed share of League income, recent press coverage of the on-going negotiations has not specified how League revenue will be treated for the purposes of revenue sharing between teams. In fact, the NFL and Commissioner Tagliabue are apparently maintaining their previous position that revenue sharing reforms can wait until after a new labor agreement has been reached. The NFLPA, however, has taken the opposite position, and general counsel Richard Berthelsen, has emphasized...
that the League must reach a revenue sharing deal before committing to a new labor agreement. The union’s rationale for this position is based on the belief that low-revenue teams are unlikely to approve any new CBA if they are unsure about whether the owners’ own revenue sharing structure will address the financial inequalities that currently plague the NFL. Moreover, the players union is further complicating negotiations by insisting that it should have some input in the revenue sharing debate because the players have a stake in maintaining the League’s overall competitive parity.

Therefore, despite reaching an apparent compromise to share total football revenue with players, both sides of the labor negotiations remain sharply divided over exactly how much total revenue should be guaranteed to players. While this tentative agreement would resolve the NFLPA’s concerns regarding the sharing of local revenue, the current dispute over percentages appears serious enough that it might preclude both parties from ultimately achieving their tentative arrangement. Furthermore, despite some disagreement among owners, there has been no indication that the League is seriously considering any immediate reforms to the sharing of revenue between teams.

Instead, the League has placed an emphasis on accomplishing a new labor agreement before addressing any reforms to the revenue sharing model. This approach by the League, however, could potentially have devastating consequences for lower-revenue teams. In particular, if the League relents to the NFLPA’s demands and ultimately guarantees the players sixty-one percent of “total football revenue” for the 2006 season, the salary cap would jump from its current level of $85.5 million per team to slightly more than $100 million. Therefore, if the League reaches a new labor agreement without implementing any reforms to the current revenue sharing system, such a dramatic increase in the salary cap would be devastating for lower-revenue teams because they are already struggling to keep pace with the annual increases to the current salary cap. Furthermore, if this scenario becomes a reality, higher-

218. Kaplan, NFL Owners Told, supra note 204, at 34.
219. Id.
221. The new last-minute CBA and revenue sharing reforms, which were approved just before this note went to press, indicate that the owners were ultimately forced to agree upon revenue sharing reforms in order to placate the NFLPA and thereby reach a new CBA that maintains the current salary cap system.
222. King, supra note 204, at 86.
223. See discussion supra Part III.B.1 describing the failure of the salary cap, and the inability of lower-revenue teams to keep pace with the increases in the cap, and further
revenue teams will enjoy an even greater advantage because they will be able to directly utilize their unshared local revenue to corner the market for talented free agents, which would thereby destroy the League’s competitive parity.

IV. FOURTH AND GOAL: SUPPLEMENTAL REDISTRIBUTION - A PROPOSED REFORM TO THE NFL’S REVENUE SHARING SYSTEM

On the one hand, there is no doubt that the NFL’s collective approach to its revenue sharing system played an integral part in the continually growing success and popularity of the League as a whole. On the other hand, the existence of some unshared revenue is also undeniably important in today’s economy because it provides incentives for teams to market themselves. Forcing the individual teams to share all of their local revenue would not be beneficial for the League as a whole because it would completely eliminate any incentive for teams to seek a competitive advantage, thereby enabling some teams to simply coast on the coattails of their more committed brethren.

Maintaining the status quo, however, is also not an option because the extreme economic disparities that exist between high and low revenue teams will soon render the future economic viability of the lowest-revenue teams untenable. Furthermore, the owners cannot avoid reforming the current revenue sharing system because the NFLPA demands a portion of unshared revenues. If the NFL does not accede to these demands, it could face a player strike, thereby devastating the League’s popularity and success. Therefore, in order to maintain the incentives provided by unshared local revenue while at the same time preserving the basic revenue sharing structure that has so adequately proved the test of time, the NFL and its owners should consider an economic formula that redistributes some portion of the unshared local revenue from those teams on top to those at the bottom.

Although the League has been largely unsuccessful in the few attempts that it has made to neutralize some of the harmful effects associated with the growth in unshared local revenue, it is important to carefully consider the limited action that the NFL has taken because it is helpful in providing guidelines for a more comprehensive reform of the revenue sharing system as a whole. First, it is important to identify the two major competing interests that must be balanced recognizing that some lower-revenue teams are already forced to spend as much as seventy percent of their revenue on player salaries under the current salary cap.
by any attempt at reform, namely: (1) the need for some unshared revenue to provide incentives for teams to market themselves; and (2) the need to preserve the basic revenue sharing structure that has fostered the success and popularity of the League by ensuring enough parity to establish the correct competitive balance among the individual NFL teams.

Analyzing the G-3 Program adopted by the NFL to help finance the construction of new stadiums provides valuable insights that help to identify a number of different issues that must be addressed by any reform. First, it illustrates the importance that stadium ownership plays in the ability of an individual franchise to capitalize on sources of local revenue, and it indicates that stadium ownership will have to play a role in any future attempt at reforming the revenue sharing system. Second, the G-3 Program demonstrates both the inefficient effect that “Franchise Free Agency” can have on the League as a whole, and it indicates that those members of the League in a decision-making position clearly place significant value on maintaining franchises in all of the major television markets. Furthermore, the program’s favorable treatment of the largest-market teams also indicates that the League has not been overly concerned with addressing the widening revenue gap, and instead has focused more of its attention on maximizing total League revenue regardless of the potential effect on revenue disparities. Finally, by relying on financial incentives to keep teams in all of the major television markets, the G-3 Program highlights the League’s perception of its own inability to prevent individual franchises from relocating without an antitrust exemption from Congress.

The lessons to be learned from the League’s “supplemental” revenue sharing pool are much more straightforward, and can be simply characterized as a lesson in the current inequalities that exist between those teams on the top and those at the bottom. The basic idea behind the NFL’s “supplemental” revenue sharing pool is to redistribute income so as to funnel the necessary funds to those teams that cannot keep pace with their wealthier counterparts. If it were not for the enormous revenue discrepancies between NFL teams, this basic approach would be very effective in eliminating the economic inequalities that currently exist in the NFL. However, because the growth in local revenue has far outpaced the amount of funds allocated to the “supplemental” pool each year, the effectiveness of this approach is seriously compromised. Therefore, in order to adequately address the large scale of the inequalities that have resulted from the growth of unshared local revenue, the League should redistribute some of the unshared revenue from those teams on top directly to
those teams at the bottom. By taking a sufficient portion of local revenue from revenue-rich teams and directly redistributing that money to the teams with the greatest needs, the League can effectively shrink the revenue gap, and thereby help to ensure the relative competitiveness of less profitable teams.

By adopting the basic redistributive approach of the "supplemental" revenue sharing pool, the League can efficiently shrink the current revenue gap while at the same time minimizing the impact that it will have on the incentives created by the existence of sources of unshared revenue. Furthermore, one minor addition to the basic approach of the "supplemental" revenue sharing pool will enable the League to minimize the revenue gap in a way that is even more consistent with the incentives provided by local revenue. This would be a benchmark limit on the total amount of local revenue that can be freely retained by an individual team in any given year. Instead of placing a firm limit on the total amount of local revenue that a team can utilize in that year, the benchmark will serve as a trigger in the redistributive formula. When a team’s annual local revenue exceeds the benchmark limit, it will trigger a percentage that will be applied against all of the local revenue in excess of the benchmark limit. For example, if a team exceeds the benchmark limit by ten million dollars, then a percentage of that ten million dollars will be allocated to the "supplemental" revenue sharing pool, which will then be redistributed to those teams with the greatest needs. Additionally, the "supplemental" pool can also be used to allocate funds to the players union, which will appease the concerns expressed by the NFLPA regarding their demands for an increased share of local revenue.224 Finally, this approach will allow the League to engage in the necessary amount of redistribution without significantly impairing the incentives that are created by unshared local revenue.

V. THE POST-GAME SHOW: A CONCLUDING SUMMARY

For over forty years, the NFL’s collective “League Think” philosophy has played a central role in establishing and maintaining the competitive balance that fostered the massive popularity and

224. Recent CBA negotiations have yielded a tentative agreement between the League and the NFLPA to share “total league revenue” with the players, which would include local revenue when calculating the percentage of League revenue guaranteed to players. If the next CBA does in fact share “total league revenue” with the players, it will render this issue moot. See discussion supra Part III.D.1 describing the recent developments in the on-going labor negotiations, and the implications that these developments will have on revenue sharing reform.
success still enjoyed by the League today. In particular, the League’s two-pronged revenue sharing system has proven the test of time by adapting to the prevailing economic forces that have helped shape the course of the NFL’s financial model. While the emergence of too much unshared local revenue currently poses a variety of threats to the League’s continued financial and competitive stability, local revenue is not by nature a corrosive force. If properly harnessed, local revenue can help the League’s financial model evolve by incorporating the increased incentives that should enhance the League’s overall product as individual owners strive to improve the marketability of each individual franchise. However, when unchecked, the lure of unshared local revenue can entice an individual owner to maximize his own benefits at the expense of the League as a whole. Under these circumstances, the individual owners benefiting from local revenue are often blinded by their own success, and they fail to recognize that the success of their individual franchise necessarily depends on the success of the League as a whole.

The League’s revenue sharing system was originally designed to ensure that the League’s success always came before that of an individual franchise. However, when the development of new economic forces threatened the sustainability of this collective principle, the League’s financial system was forced to evolve. For example, the salary cap was adopted in 1994 to help sustain the competitiveness of the League’s overall product by combating market inequalities that revenue sharing alone could no longer control. Similarly, the NFL’s current financial system, which includes both revenue sharing and the salary cap, is not adequately suited to address the threats posed by the excessive growth of local revenue. This enormous growth of local revenue has now combined with natural market inequalities like market size and stadium ownership to create a widening revenue gap between the richest and poorest teams. The expanding nature of this revenue gap now threatens the competitive balance that has previously ensured the sustained success of the League’s overall product, and must therefore be addressed before inflicting irreparable harm upon the popularity and success of the League. In order to adequately address these growing revenue disparities, the League’s financial system must once again evolve by incorporating a redistributive formula that maintains a proper level of unshared local revenue, and redistributes excessive local revenue to those teams most in need. Much like the creation of the salary cap, the adoption of this formula will help the NFL’s financial system improve by simultaneously capturing the positive incentives associated with a
healthy level of local revenue, while also preventing the corrosive effects of excessive local revenue.

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