

# The Rise of Esports: The Current State of Esports, Its Impacts on Contract Law, Gambling, and Intellectual Property

JUSTIN RONQUILLO\*

## I. INTRODUCTION

Gone are the days when playing video games meant booting up a game of Pong on the old Atari systems or going to the local laundromat to play a game of Ms. Pac-Man. Today, video games are played anywhere, at any time, all around the world. Video games are a multi-billion-dollar industry in the United States alone.<sup>1</sup> With streaming platforms like Twitch.tv and YouTube Gaming increasing concurrent viewership numbers annually,<sup>2</sup> it is evident that consuming video game content as entertainment is not just a fad, it is the norm. This is the driving force behind esports' rise.

“Esports” is the term for competitive video games. Participation includes both competing in a video game, as well as game viewership for entertainment purposes. At its core, esports draws similarities to traditional sports (i.e. basketball, football, baseball, etc.) where skilled competitors play against each other in live matches supported by devoted spectators, fans, and sponsors. Although the industry is still considered in its infancy, esports has already shown remarkable growth.<sup>3</sup> Global esports revenue was expected to reach \$905.6 million by the end of 2018.<sup>4</sup> The global esports audience is expected to have reached 380.2 million by 2018, while the number of people who are aware of esports is estimated around 1.6 billion.<sup>5</sup>

This article focuses on esports' rise and its impacts on the legal field. Part II will discuss the current state of esports, such as how it generates revenue

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\* Justin Ronquillo graduated with a degree in Political Science from University of Nevada Las Vegas in 2013, and completed law school with an Intellectual Property and Technology Law Certificate from University of San Francisco School of Law in 2018.

1. Kevin Anderton, *The Business Of Video Games: A Multi Billion Dollar Industry* [Infographic], FORBES (Apr. 29, 2017), <https://www.forbes.com/sites/kevinanderton/2017/04/29/the-business-of-video-games-a-multi-billion-dollar-industry-infographic/#63f727e96d27> [https://perma.cc/233M-V8JZ].

2. See Sarah Perez, *YouTube Gaming Grew its Streamer Base by 343% in 2017, Twitch by 197%*, TECHCRUNCH (Jan. 25, 2018), <https://techcrunch.com/2018/01/25/youtube-gaming-grew-its-streamer-base-by-343-in-2017-twitch-by-197/> [https://perma.cc/ZAPB-6M5Y].

3. See Luke Christou, *Esports Growth Continues As Total Industry Revenue Hits \$1.5bn in 2017*, VERDICT (Dec. 12, 2017), <https://www.verdict.co.uk/esports-growth-revenue/> [https://perma.cc/6JWB-LRZB].

4. Jurre Pannekeet, *NewZoo 2018 Global Esports Market Report*, 21 (2018), [https://asociacionem-presarialesports.es/wp-content/uploads/newzoo\\_2018\\_global\\_esports\\_market\\_report\\_excerpt.pdf](https://asociacionem-presarialesports.es/wp-content/uploads/newzoo_2018_global_esports_market_report_excerpt.pdf) [https://perma.cc/6FB9-77Q8].

5. *Id.* at 20.

and what regulations ensure a fair and balanced playing field. Part III discusses the impact contract laws have on player contracts, including issues players face signing contracts, issues between game developers/league coordinators and their player base, and the suggested solutions associated with each problem. Part IV explains the natural rise of gambling associated with esports and its impact on the gaming community landscape. Finally, Part V lays out the implications esports has on intellectual property as it gains global popularity.

## II. THE CURRENT STATE OF ESPORTS

### A. ESPORTS REVENUE GENERATION

The current structure of the esports industry is built around team marketability (i.e. Team SoloMid<sup>6</sup> and Tempo Storm<sup>7</sup>), professionally held events, (i.e. DreamHack<sup>8</sup> and the Evolution Championship Series<sup>9</sup>), and developer organized leagues (i.e. League of Legends and OWL).<sup>10</sup> Streaming platforms such as Twitch and YouTube support these revenue means by providing the industry a marketable audience. With this infrastructure in place, sponsors such as Red Bull, Intel, and Samsung bought into esports' growth looking to support and capitalize on the new market.<sup>11</sup> As with the rise of video game popularity, esports are expected to draw more from its millennial audience.<sup>12</sup> By the end of 2018, brands are projected to invest \$694 million in esports, making up 77% of the current market.<sup>13</sup> However, before companies ever began investing, the infrastructure had to be promising.<sup>14</sup>

#### 1. Platforms

Competitive video gaming dates to 1972 on the Stanford University campus, where competitors battled in the game *Spacewar*.<sup>15</sup> The tournament winner received a free subscription to Rolling Stone magazine, as well as being

6. See Team SoloMid, <https://tsm.gg/partners> [<https://perma.cc/A5GT-WYY5>] (last visited Mar. 23, 2018).

7. See Tempo Storm, <https://tempostorm.com/sponsors> [<https://perma.cc/6QSA-MDMT>] (last visited Mar. 23, 2018).

8. See Dream Hack, <http://www.dreamhack.se/DHS11/event-information/what-is-dreamhack/> [<https://perma.cc/JZ55-7SL3>] (last visited Mar. 23, 2018).

9. See Evolution Championship Series, <http://evo.shoryuken.com/> [<https://perma.cc/8S9F-S5T8>] (last visited Mar. 23, 2018).

10. Andrew Nixon et al., *An Overview of eSports Explosion and Legal Issues Arising from it*, VERDICT (Feb. 9, 2016), <https://www.lawinsport.com/content/features/item/an-overview-of-esports-explosion-and-legal-issues-arising-from-it> [<https://perma.cc/D3L3-M3NG>].

11. See *id.*

12. Jas Purewal & Isabel Davies, *The eSports Explosion: Legal Challenges and Opportunities*, 9 LANDSLIDE 24, 25 (2016).

13. Pannekeet, *supra* note 4, at 7.

14. See Jordan Fragen, *What Brands can Learn From the Dr. Pepper/Team SoloMid Sponsorship*, THE ESPORTS OBSERVER (Apr. 10, 2018), <https://esportsobserver.com/brands-takeaways-dr-pepper-tsm-sponsorship/> [<https://perma.cc/9RCH-DVKN>].

15. Chris Baker, *Stewart Brand Recalls First 'Spacewar' Video Game Tournament*, ROLLING STONE (May 25, 2016), <https://www.rollingstone.com/culture-news/stewart-brand-recalls-first-spacewar-video-game-tournament-187669/> [<https://perma.cc/FB7Y-24MG>].

published as the game's champion in print.<sup>16</sup> Today, the highest grossing esports competition payout was tallied at \$20,770,460.<sup>17</sup> The difference now is video game developers utilize new platforms.

The introduction of broadband services links to the commercial success of modern day esports.<sup>18</sup> The ability to play competitive games around the world via the Internet fueled the creation of *League of Legends* ("LoL"), the most played free-to-play competitive computer game.<sup>19</sup> Riot Games, LoL's video game developer, created their game with esports in mind and invested millions of dollars into their intellectual property.<sup>20</sup> Once Riot Games came to the conclusion that the world cared about global esports competition, it created the *League of Legends Championship Series* ("LCS").<sup>21</sup> Much akin to traditional sports, Riot Games began to hold the LCS in sporting arenas such as Madison Square Garden in New York and the Mercedes-Benz arena in Berlin.<sup>22</sup> The transition from live-streamed esports to sold-out arena venues helped create \$59 million in ticket revenues in 2017 — an increase from \$32 million in 2016.<sup>23</sup> Although the LCS' popularity has attracted big name sponsors such as Coca-Cola and American Express, Dustin Beck, the vice president of esports at Riot Games, claims that their company does not make money from the LCS.<sup>24</sup> Instead, Beck suggests the investment into esports focuses primarily on what the fans of the game want.<sup>25</sup> When game developers establish online server platforms, competitive leagues, streamed media content, and in-person sporting events, revenue naturally increases in other facets of the industry.

## 2. Teams and Sponsorships

From the conception of LoL, in late 2009, rose the western powerhouse known as Team SoloMid ("TSM").<sup>26</sup> TSM's rise illustrates professional gamers' roles in the esports industry and the significance of their team brand.<sup>27</sup>

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16. *Id*

17. Rachel Swatman, *Chinese Dota 2 Gaming Team Wins Largest Prize for an eSports Competition Ever*, GUINNESS WORLD RECORDS (Oct. 28, 2016), <https://www.guinnessworldrecords.com/news/2016/10/chinese-gaming-team-wins-largest-prize-for-an-esports-competition-ever-448932> [<https://perma.cc/CT6R-CGBT>].

18. Bob Woods, *Video Gaming Levels Up into a Sport*, STRATEGY+BUSINESS (Apr. 23, 2018), <https://www.strategy-business.com/article/Video-Gaming-Levels-Up-into-a-Sport?gko=d0a6c> [<https://perma.cc/P7E4-3TZR>].

19. John Gaudiosi, *How Riot Games Created the Most Popular Game in the World*, FORTUNE (Jul. 10, 2013), <https://fortune.com/2013/07/10/how-riot-games-created-the-most-popular-game-in-the-world/> [<https://perma.cc/3Y2C-5V2U>].

20. *See id*

21. John Gaudiosi, *This Company is Hosting the First Ever eSports Event at Madison Square Garden*, FORTUNE (Jun. 9, 2015), <https://fortune.com/2015/06/09/riot-games-esports/> [<https://perma.cc/2ASU-AN64>].

22. *Id*

23. Pannekeet, *supra* note 4, at 7.

24. Gaudiosi, *supra* note 21.

25. *Id*

26. *See* Stephen Draper, *A Brief History of TSM's League of Legends Team*, ESPORTS EDITION (Feb. 8, 2018), [https://www.lolesports.com/en\\_US/articles/brief-history-tsm](https://www.lolesports.com/en_US/articles/brief-history-tsm) [<https://perma.cc/B49R-G7HD>].

27. *See id*

Andy Dinh, TSM founder, was a core member of the team's original LoL roster.<sup>28</sup> TSM originated from the website Dinh created, SoloMid.net, a site dedicated to help players improve.<sup>29</sup> Since then, the team's popularity and success has attracted partnerships with notable sponsors such as Gillette,<sup>30</sup> GEICO,<sup>31</sup> and Dr. Pepper.<sup>32</sup> Investment decisions are difficult for brands to make.<sup>33</sup> Since the esports industry is so massive, sponsors must carefully review options and goals when signing a partnership.<sup>34</sup> Unlike sponsoring the developer's game, a specific event, or the league the competitive game is structured by, companies such as Dr. Pepper have opted to sponsor an esports team.<sup>35</sup> By sticking to a specific IP or a particular game, a sponsor potentially limits its reach to their target audience.<sup>36</sup> For the TSM sponsorship, Dr. Pepper hired esports analytics firm *FanAI* to analyze which esports team targeted the soda company's target demographic.<sup>37</sup>

Even with the success of both TSM and Dr. Pepper's partnership, Dr. Pepper still opted to sponsor TSM for just a year.<sup>38</sup> Because areas of the esports industry are uncertain, investing in new esports teams can be a gamble.<sup>39</sup> The volatility of revenue generation during the early stages of new team's formation is often linked to a team's performance.<sup>40</sup> When many competitive esports do not have well-established leagues, sponsors find it difficult to determine whether the Return on Investment ("ROI") is certain enough to invest.<sup>41</sup> Moreover, esports teams often consist of multiple teams within the organization that play in different games, communities, and tournaments.<sup>42</sup>

A legal issue for investors is knowing what kind of corporate structure the "teams within the esports team" are comprised of.<sup>43</sup> However, this uncertainty and lack of oversight is what appeals to investors.<sup>44</sup> The chance for a positive ROI causes many investors to flock to the capitalizing opportunity on such an

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28. *Id*

29. *Id*

30. Graham Ashton, *Gillette Sponsors TSM in Its First NA LCS Deal*, THE ESPORTS OBSERVER (Sept. 4, 2017) <https://esportsobserver.com/gillette-tsm-sponsorship/> [<https://perma.cc/WZ4S-BVZN>].

31. Government Employees Insurance Company, <https://www.geico.com/landingpage/go418/?soa=88920> [<https://perma.cc/Z5YF-F9PC>] (last visited Mar. 2, 2018).

32. Fragen, *supra* note 14.

33. *See id*

34. *Id*

35. *Id*

36. *Id*

37. *Id*

38. *See* Fragen, *supra* note 14.

39. Alex Knapp, *Three Things You Need to Know Before Investing in eSports*, FORBES (Feb. 24, 2017) <https://www.forbes.com/sites/alexknapp/2017/02/24/three-things-you-need-to-know-before-investing-in-esports/#a821b6a63613> [<https://perma.cc/F598-MJMY>].

40. *See id*

41. *Id*

42. *Id*

43. *See id*

44. Michael Long, *Playing the Game: An Insider's Take on eSports Representation*, SPORTS PRO (Jul. 27, 2017), <http://www.sportspromedia.com/analysis/playing-the-game-an-insiders-take-on-esports-representation> [<https://perma.cc/TR8T-TQWX>].

unregulated industry.<sup>45</sup> One method of determining positive ROI for investors is honing in on a team member's individual successes.<sup>46</sup> Often, the individual's success can be traced back to his or her concurrent viewership on any of the various streaming platforms.<sup>47</sup>

### 3. Streams and Broadcasts

If "traditional broadcast" revenue was used to measure the success of esports, sponsors would not be keen on investing.<sup>48</sup> However, with the rise of digital platforms such as Twitch, online gamers are becoming celebrities in their respective gaming communities.<sup>49</sup> Twitch streamers' appeal range from competitive players, variety streamers, entertainers, musicians, and most recently news broadcasters.<sup>50</sup>

Many fans follow professional players through competitive tournaments much like traditional sports.<sup>51</sup> Other streamers have found success by being variety streamers – switching video game titles freely as opposed to exclusively playing a single game.<sup>52</sup> The broadcast viewers show up not to watch particular games, but because they like the person playing the game.<sup>53</sup> This dynamic has resulted in some streamers making between six to seven figure salaries.<sup>54</sup>

Some gamers build their community followings through audience interaction by generating a public persona. Guy Beahm, also known by his streamer persona "Dr Disrespect," acknowledges that he needs to maintain his on-stage personality to keep his viewers entertained.<sup>55</sup> Tyler Steinkamp, also known as "Tyler1" on the Twitch platform, plays to his fan base by providing them with absurdist content, such as making a forty-five minute long, poorly edited video that he played to his audience on stream as an April fool's joke.<sup>56</sup> The interactivity between viewers and streamers creates appeal and sponsors see an untapped digital entertainment market.<sup>57</sup> For Tyler1's audience, the stream is often juvenile and offensive to compete with other entertainment streamers.<sup>58</sup>

45. *Id*

46. *See* Knapp, *supra* note 39.

47. Maya E. Schwayder, *A New Kind of Celebrity - Twitch Gamers*, DW AKADEMIE (Sept. 1, 2015), <https://www.dw.com/en/a-new-kind-of-celebrity-twitch-gamers/a-18672652> [<https://perma.cc/R8WC-UCS3>].

48. *See* Purewal, *supra* note 12, at 27.

49. Schwayder, *supra* note 47.

50. *See* Seth Stevenson, *Why Would Anyone Watch Twitch? The Strange Allure of the Video Game Streaming Site*, SLATE (Aug. 26, 2014), <https://slate.com/technology/2014/08/why-would-anyone-watch-twitch-the-allure-of-the-video-game-streaming-site-explained.html> [<https://perma.cc/CB9X-HBGK>].

51. *Id*

52. Taylor Clark, *How To Get Rich Playing Video Games Online*, THE NEW YORKER (Nov. 20, 2017), <https://www.newyorker.com/magazine/2017/11/20/how-to-get-rich-playing-video-games-online> [<https://perma.cc/NNF8-SDJ7>].

53. *Id*

54. *Id*

55. Julia Alexander, *League of Legends' Most Notorious Streamer Host Eccentric 45-minute Movie on Twitch*, POLYGON (Apr. 2, 2018), <https://www.polygon.com/2018/4/2/17188794/tyler1-movie-april-fools-day-twitch> [<https://perma.cc/JA39-AHYY>].

56. *Id*

57. *See* Fragen, *supra* note 14.

58. Alexander, *supra* note 55.

Streaming has also stepped into the “mainstream media” after Richard Tyler Blevins, also known by his gamer handle “Ninja,” broke Twitch’s peak concurrent viewership record, peaking with 630,000 concurrent viewers when hip-hop icon Drake, rapper Travis Scott, and NFL rookie JuJu Smith-Schuster joined the streamer for rounds of the co-op sandbox survival game *Fortnite*.<sup>59</sup> Because Internet celebrities are often confined to their online platforms, the bridge between gamers and non-gamers has shrunk through broadcasting.<sup>60</sup> Pop icons, such as EDM musician DeadMau5 and rapper Snoop Dogg, have expanded their following by playing games for new audiences.<sup>61</sup>

Overall, streaming platforms such as Twitch and YouTube have become more than just a broadcasting means. Community immersion has turned streaming into a social network for the gaming age.<sup>62</sup>

#### 4. Franchises

Video game developers Blizzard Entertainment and Riot Games have implemented franchising in their respective leagues, the Overwatch League (“OWL”) and the North American LCS.<sup>63</sup> Prior to franchising, competitive leagues often applied a seasonal promotion and relegation system towards the teams participating.<sup>64</sup> Franchising allows teams to benefit by holding permanent spots for members, ensuring fans that their team will not disappear after a relegation period.<sup>65</sup> Franchised teams are also more marketable because they can grow historic rivalries that keep audiences invested.<sup>66</sup> Much akin to franchises under the NBA and NFL, sponsors and advertisers become more comfortable with investing in a proven system.<sup>67</sup>

High capital amounts from team franchises in competitive leagues creates a sustainable structure. This is evident from the OWL’s city-based franchise model hosting teams in the United States (i.e. the San Francisco Shock, the Philadelphia Fusion, the New York Excelsior, etc.) as well as internationally (i.e. the London Spitfire, the Seoul Dynasty, Shanghai Dragons, etc.).<sup>68</sup> Franchised teams give the professional players more power in making important decisions within the league.<sup>69</sup> When Riot Games released its plans to introduce franchises to the North American LCS, they focused on greater financial stability and investment certainty by improving revenue sharing among teams

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59. Steven Asarch, *Ninja and Drake ‘Fortnite’ Stream Has Made Twitch Celebrity A Thing Officially*, NEWSWEEK (Mar. 15, 2018), <https://www.newsweek.com/ninja-drake-fortnite-846378> [<https://perma.cc/FUZ6-355H>].

60. *Id.*

61. *Id.*

62. Clark, *supra* note 52.

63. Pannekeet, *supra* note 4, at 15.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. See Darren Heitner, *Full 12 Franchises Announced For Initial Overwatch League Season*, SPORTSPRO (Sept. 20, 2017), <https://www.forbes.com/sites/darrenheitner/2017/09/20/full-12-franchises-announced-for-initial-overwatch-league-season/#7d72c35f2c65> [<https://perma.cc/TD7U-C9RQ>].

69. Long, *supra* note 44.

and players, as well as guaranteeing minimum salaries of \$75,000 guaranteed through contracts.<sup>70</sup>

Another benefit from franchising is the incentive for game developers to invest in players. Riot Games conducted an evaluation to determine how teams could support professional players, not only by improving their skills, but also their “career opportunities and education, once their playing careers [have] ended.”<sup>71</sup> Because a majority of these professional players are young adults, many begin their careers while still in high school.<sup>72</sup> Riot Games is also guaranteeing that thirty-five percent of overall revenue is distributed to participating teams in the North American LCS.<sup>73</sup>

An unanswered issue is whether a franchise is promised rights to a team for the developer’s future titles.<sup>74</sup> The future of video games is uncertain; unknown future iterations of current titles or viewer loss of interest make it difficult to compare the esports future franchises to the future of traditional sports.<sup>75</sup> Contracting can be somewhat dangerous when a game’s fame can last a few short years.<sup>76</sup> Yet, the unexplored potential capital is ultimately too enticing for investors to ignore.

#### 5. Introduction of New Competitive Titles

The rise of new video game franchises, such as the 2017 release of PlayerUnknown’s Battlegrounds (“PUBG”), becomes an important global growth factor in the esports industry.<sup>77</sup> The release of future titles introduces younger generations to the esports market, providing video game publishers a new audience to target.<sup>78</sup> The importance of developing newer titles to the industry is amplified with new technology adoption.<sup>79</sup>

Mobile esports are a growing trend in Asian audiences. With over \$50 billion in global revenue in 2017, “casual” competitive mobile games promise to show popularity at an even larger scale than previous esports giants.<sup>80</sup> For example, *Vainglory*, a Multi Online Battle Arena (“MOBA”) that likens its play style to LoL and *Defense of the Ancients 2* (“Dota 2”), is a mobile hit.<sup>81</sup> The selling point for a mobile esports game to a newer audience is the game’s

70. *Id*

71. Jessica Conditt, *How ‘League of Legends’ Can Shape the Future of eSports*, ENGADGET (Jul. 4, 2017), <https://www.engadget.com/2017/07/04/league-legends-esports-lcs-changes-dignitas-liquid-immortals/> [https://perma.cc/2L59-VPH4].

72. *Id*

73. *Id*

74. Irwin A. Kushner, *Esports Leagues Set To Level Up With Permanent Franchises*, FORBES (Oct. 3, 2017), <https://www.forbes.com/sites/kurtbadenhausen/2017/10/03/esports-leagues-grow-up-with-permanent-franchises/#7835e6b521d6> [https://perma.cc/96VC-CW8J].

75. *Id*

76. *See id*

77. Pannekeet, *supra* note 4, at 20.

78. *Id*

79. *Id*

80. *Id*

81. Wyatt Lyles, *The Rise of Mobile Esports*, DEXERTO (May 17, 2017), <https://www.dexerto.com/news/the-rise-of-mobile-esports-vainglory-clash-royale/30510> [https://perma.cc/C85V-F63G].

accessibility. First, the game can be played on an inexpensive mobile device.<sup>82</sup> Second, the learning curve for the game is simplified, because the core mechanics must be playable on such a small screen.<sup>83</sup> With the opportunity to become the dominant team in the newly established title, veteran esports organizations such as TSM, Tempo Storm, Cloud9, and Fnatic have all recruited or developed top players to represent them.<sup>84</sup> The introduction of new competitive titles is an integral part of esports growth that teams, sponsors, and franchises all must learn to balance to ensure their position in the volatile industry.

#### B. REGULATIONS AND GOVERNANCE

One of the greatest hurdles esports faces is the lack of formal regulation and governance.<sup>85</sup> Regulation and governance are necessary for keeping pace with the commercial growth of esports.<sup>86</sup> However, partly because esports lacks regulation and governance, investors are hesitant to place capital in the industry.<sup>87</sup> Although some national organizations such as the World eSports Association<sup>88</sup> (“WESA”) exist, there have been no global authorities established to address industry commercial developments.<sup>89</sup> Game developers and tournament event organizers currently regulate esports competitions for their respective titles.<sup>90</sup> There is currently no universal consensus amongst leagues when dealing with cheating, match fixing, and doping.<sup>91</sup>

A major issue that arises from the lack of regulations is cheating. Most professional esports are played on computers that are often highly isolated on a local network, with extra USB ports disabled, and have specifically tailored hard drives supplied by the tournament organizers.<sup>92</sup> However, due to the nature of personal preference and sponsorship opportunities, players are allowed to supply their own mice and keyboards.<sup>93</sup> During the 2017 DEF CON hacker convention in Las Vegas, a demonstration showed players how to exploit a mouse to auto-run code, giving the user an unfair advantage.<sup>94</sup> Although

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82. *Id*

83. *Id*

84. *Id*

85. Long, *supra* note 44.

86. Nixon, ET AL., *supra* note 10.

87. *Id*

88. See World eSports Association Website, <http://www.wesa.gg/rr/> [<https://perma.cc/M6C2-GKXT>] (“WESA’s vision is to create an authentic framework to support and amplify sustainable growth of esports, based on the shared values of fairness, transparency, and integrity and sharing that growth between the players, teams and leagues.”).

89. Brian Hall, *Top 4 Legal Issues In Esports*, TRAVERSE LEGAL (Nov. 21, 2017), <https://www.traverselegal.com/blog/top-4-legal-issues-in-esports/> [<https://perma.cc/S5TM-66YU>].

90. *Id*

91. *Id*

92. William Turton, *How to Hack a Mouse to Win Millions at eSports*, THE OUTLINE (Aug. 1, 2017), <https://theoutline.com/post/2032/how-to-hack-a-mouse-to-win-millions-at-esports?zd=2&zi=eoxyg3et> [<https://perma.cc/Y8QK-67ER>].

93. *Id*

94. *Id*



exploits as advanced as this have yet to happen, regulatory standards on computer peripherals and hardware are invited by the enormous prize pots such as the 2017 \$20,770,460 Dota 2 prize pool.<sup>95</sup>

More plausible cheating in esports are exploits found in games, which can sometimes be used to give competitors an unfair advantage.<sup>96</sup> In the short lived esports title *For Honor*, a player abused a bug in the game that caused the user's attacks to be essentially invincible.<sup>97</sup> After the player was awarded his trophy and \$12,000, the game's creative director hinted the exploit would be fixed in the future.<sup>98</sup> Despite being able to "patch" exploits, many publishers for modern consoles cannot easily release a game update without cost.<sup>99</sup> Approvals for console patches need to jump through several legal hoops, often requiring review by publishers, as game developers are also hesitant to release patches at a punctual time.<sup>100</sup>

In 2010, the first match-fixing scandal in esports occurred when South Korean players threw professional matches for commercial gain.<sup>101</sup> Professional player Lee Seung-hyun who competed under the name "Life," was convicted for a series of match-fixings in Blizzard Entertainment's game *Starcraft 2*.<sup>102</sup> He was banned from competing in esports for life in South Korea, after an investigation uncovered illegal gambling.<sup>103</sup> The Esports Integrity Coalition ("ESIC") was created to combat these issues.<sup>104</sup> The association, comprised of the industry's leading players, was meant to combat corruption and ethical threats in esports.<sup>105</sup>

ESIC called for providing support against performance enhancing drugs in esports.<sup>106</sup> Where traditional sports have set regulations and governance to enforce banned substances, such as steroids and growth hormones, esports has only recently begun to take action on using drugs that provide professional

95. Swatman, *supra* note 17.

96. Hans Oelschlägel, *ESL aligns with ESIC's Recommendation on Sanctions for Cheating in eSports*, ESL (Jul. 24, 2017), <https://www.eslgaming.com/article/esl-aligns-esic-s-recommendation-sanctions-cheating-esports-3641> [<https://perma.cc/92UL-NABD>].

97. Cecilia D'Anastasio, *For Honor Player Wins Official Tournament, \$12,000 Using Exploit*, KOTAKU (Aug. 16, 2017), <https://www.kotaku.com.au/2017/08/for-honor-player-wins-official-tournament-12000-using-exploit/> [<https://perma.cc/F46B-K4ZU>].

98. *Id.*

99. See Tim Schafer, *Wait, it Costs \$40,000 to PATCH a Console Game?*, KOTAKU (Feb. 14, 2012), <https://kotaku.com/wait-it-costs-40-000-to-patch-a-console-game-5884842> [<https://perma.cc/D6E7-V5PC>].

100. *Id.*

101. The Economist, *Match-Fixing Goes Digital* (Sept. 21, 2017), <https://www.economist.com/international/2017/09/21/match-fixing-goes-digital> [<https://perma.cc/XG45-KAB5>].

102. *Id.*

103. *Id.*

104. See The Esports Integrity Coalition, <http://www.esportsintegrity.com/about-us/> [<https://perma.cc/5XDC-GHCP>] ("The Esports Integrity Coalition is a not for profit members' association established in 2015 by key esports stakeholders to deal with issues of common interest – in particular the threat that match manipulation and betting fraud and other integrity challenges pose to esports.").

105. *Id.*

106. Ed McCambridge, *Anti-doping efforts still in their infancy in eSports*, DW AKADEMIE (Jul 21, 2017), <https://www.dw.com/en/anti-doping-efforts-still-in-their-infancy-in-esports/a-39783790> [<https://perma.cc/2EW3-XPJK>].

players with a competitive advantage.<sup>107</sup> Other organizations such as the World Anti-Doping Agency (“WADA”), have been asked to review and administer a policy against substances like Ritalin and Adderall, which boost esports players performances.<sup>108</sup> Although there are no official regulations, gaming organizations such as the Electronic Sports League (“ESL”) have taken steps to work with WADA to assist in the creation, enforcement, and dissemination of the substance abuse policy in the United States, Australia, and Asia.<sup>109</sup> Overall, the esports industry is difficult to regulate when so many actors are frequently moving in and out of the space. Esports’ future will likely need professionals to draft guidelines and policies to protect competition integrity.

### III. PLAYER’S CONTRACTS

#### A. ABUSE IN PLAYER’S CONTRACT SIGNINGS

In traditional sports, managers are hired by players to help make sophisticated business decisions, as well as navigate through legal situations. Esports players are starting to reach out for professional assistance.<sup>110</sup> Most professional players begin their esports career self-represented, leaving them fairly exposed to abuse.<sup>111</sup> As a result, players are not paid what their talents are valued at, despite sponsorships at an all-time high.<sup>112</sup> Formal representation would provide players the compensation opportunities appropriate for their talents and the ability to leverage their talents when negotiating contracts with bigger sponsors.<sup>113</sup> The natural pecking order of the esports industry places the player at the very bottom; the intellectual property creator, the event promoters and event operators, the team owners, and the media distributors all require payment first.<sup>114</sup> Many players are naïve when negotiating contracts because, for many of them, this is the first business opportunity they are provided. Just the thought of playing video games for any amount of money is already a dream come true. Whereas, professional gamers who seek out appropriate representation have seen returns of around six figures.<sup>115</sup>

Professional player abuse in contracts are counterintuitive to the growth of esports, because industry product success rests on the players’ shoulders.<sup>116</sup> Unfortunately, because the growth of an untapped market is so appealing,

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107. *Id*

108. Bryan Armen Graham, *Anti-Doping in eSports: World’s Largest Gaming Organization will Test for PEDs*, THE GUARDIAN (Jul 23, 2015), <https://www.theguardian.com/technology/2015/jul/23/anti-doping-in-e-sports-worlds-largest-gaming-organization-will-test-for-peds> [https://perma.cc/KVZ8-E3AL].

109. *Id*

110. Hall, *supra* note 89.

111. *Id*

112. *Id*

113. Long, *supra* note 44.

114. *Id*

115. *See id*

116. Roger Quilles, *The Intersection of Esports and the Law*, THE LEGAL GEEKS (Sept. 5, 2015), <http://thelegalgeeks.com/2015/09/03/the-intersection-of-esports-and-the-law/> [https://perma.cc/C7J8-FZCL].

opportunistic investors look to make a quick buck at the players' expenses.<sup>117</sup> A common esports occurrence is the inability of team owners or tournament organizers to pay their players adequately.<sup>118</sup> In some instances, esports teams have gone as far as running competitive teams while in debt, seeking merger and acquisitions to pay off debts.<sup>119</sup>

To make matters worse, esports teams competing in relegation leagues have used their power of contract to coerce players into playing under non-ideal situations. In 2015, the European esports team Meet Your Makers ("MYM") allegedly threatened a player by stating that if the player refused to play, the esports team would take away his mother's house.<sup>120</sup> Further, esports player Marcin Wolski, who goes by the moniker "Kori" in LoL and played for the MYM team, left MYM under unclear circumstances.<sup>121</sup> After acquiring the former team Supa Hot Crew, MYM failed to deliver payments to Kori, upsetting his livelihood as a player.<sup>122</sup> However, because of an enforceable contract, Kori was obligated to stay with MYM even after other teams showed interest in his talents.<sup>123</sup> Keeping Kori on the team was in the best interest of MYM, because his exciting style attracted sponsors to the team.<sup>124</sup> Esports teams rely heavily on sponsors for income, so the risk of upsetting investors places a responsibility on the team organizers to maintain team stability.<sup>125</sup>

When the esports industry does not require team organizations to make their contractual obligations transparent, the players suffer the consequences.<sup>126</sup> A selling point for some professional players joining an esports team is the promise of housing with other teammates as a pseudo training facility for their players.<sup>127</sup> During the Oceanic Premiere LoL season, the esports organization Tainted Minds failed to deliver a proper working environment for their team when they did not provide gaming PCs, suitable internet, or air conditioning for the house.<sup>128</sup> Because these are often the minimal requirements for an esports training facility, the players of Team Tainted Minds

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117. *See id*

118. *See* Ardien Auxent, *Mega Camr Brasil and Other Tournaments that Fail to Pay Out Prizes are Dragging Esports Down*, THE ESPORTS OBSERVER (Jan. 22, 2019), <https://esportsobserver.com/dragging-esports-down/> [<https://perma.cc/WE8U-4N27>].

119. Kevin Hitt, *Denial Esports Seeks Bailout of Debts Owed to Players*, BREAK THE GAME (Oct. 4, 2017), <http://www.breakthegame.net/denial-esports-seeks-bailout-of-debts-owed-to-players/> [<https://perma.cc/4QQ2-NBBZ>].

120. Richard Lewis, *MYM Threatened Kori with Taking his Mother's House*, DOT ESPORTS (Feb. 8, 2015), <https://dotesports.com/league-of-legends/news/mym-kori-threatened-unpaid-wages-1434#list-1> [<https://perma.cc/KKL3-3UWC>].

121. *Id*

122. *Id*

123. *Id*

124. *See id*

125. *Id*

126. Austin Goslin, *Tainted Minds Scandal: What We Know and What's Disputed*, RIFT HERALD (Apr. 13, 2017), <https://www.riftherald.com/2017/3/30/15042300/tainted-minds-scandal-occe-lol-opl> [<https://perma.cc/KRR6-F6RZ>].

127. *See* Mark Register, *Why Esports Teams Live in Gaming Houses, and How They Can Evolve*, BLITZ ESPORTS (Apr. 18, 2017), <https://blitzesports.com/lol/video/848/why-esports-teams-live-gaming-houses-evolve> [<https://perma.cc/6G8T-57CB>].

128. Goslin, *supra* note 126.

left the gaming house and declared free agency via twitter over breach of contract.<sup>129</sup> Here, dispute resolution was required by the esports organization, its recently departed players, and Riot Games to decide whether a breach of contract occurred.<sup>130</sup>

Without industry regulation, only recently have developers, such as Riot Games, addressed the issues with players' associations.<sup>131</sup> For example, Riot Games has imposed sanctions on esports organizations for failing to fulfill player contracts.<sup>132</sup> Upon investigation of poor business etiquette, like failure to draft contracts for their players, Riot Games will ban esports organizations from participating in their league.<sup>133</sup> Unfortunately, the ban does not prevent esports organizations from running away from their payment obligations to players.<sup>134</sup>

#### B. IMPACT OF A PLAYER'S ACTION ON LEAGUES

Although player abuse runs rampant throughout esports contracts, game developers and the leagues also suffer from poorly written contracts. Because a majority of the professional esports industry players are young and immersed in a social community, their antics threaten the leagues' images.<sup>135</sup> In Blizzard Entertainment's OWL, players have been caught displaying repugnant behavior, tarnishing the league's reputation.<sup>136</sup> Blizzard Entertainment fined Timo Kettunen of the OWL's Dallas Fuel \$1,000 for using anti-gay slurs on his personal stream.<sup>137</sup> Unlike "traditional sports" contracts, that include morality clauses for their players, esports game developers often take matters into their own hands. Without proper contracts including performance expectation on and off the digital arena, investors will be deterred from the high risk of a public relations nightmare.<sup>138</sup>

The leagues are aware of this. The Boston Uprising recently terminated Jonathan Sanchez's player contract, who goes by DreamKazper in game, for allegedly pursuing a sexual relationship with a 14 year-old fan of the team.<sup>139</sup> Although Blizzard Entertainment started investigations to better enlighten the

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129. *Id*

130. *Id*

131. Long, *supra* note 44.

132. See Alex Walker, *Riot Drops a Massive Banhammer on Three League of Legends Teams*, KOTAKU (May 9, 2016), <https://www.kotaku.com.au/2016/05/riot-drops-a-massive-banhammer-on-three-league-of-legends-teams/> [https://perma.cc/JT7C-X5QE].

133. *Id*

134. *See id*

135. Alexander, *supra* note 55.

136. Andrew Webster, *The Overwatch League Keeps Having to Punish Players for Toxic Behavior*, THE VERGE (Mar. 9, 2018), <https://www.theverge.com/2018/3/9/17102224/overwatch-league-player-punishment-toxic-behavior> [https://perma.cc/6EJF-TV6E].

137. *Id*

138. See Scarinci Hollenbeck, *What You Should Know When Negotiating Esports Contracts*, SCARINCI HOLLENBECK (Jun. 16, 2017), <https://scarincihollenbeck.com/law-firm-insights/entertainment-and-sports/esports-contracts/> [https://perma.cc/TGU9-9HNB].

139. Brian Crecente, *Overwatch League Team Boots Player Over Sexual Misconduct Obligations*, VARIETY (Apr. 9, 2018), <https://variety.com/2018/gaming/news/overwatch-league-boston-uprising-suspends-player-sexual-misconduct-allegations-1202747542/> [https://perma.cc/AT3L-ZTN3].

community of the situation, the Boston Uprising franchise owners opted to terminate Sanchez's contract.<sup>140</sup> Overall, game developers and league organizers are taking appropriate actions, but regulations need to be developed and established to create a stable, professional environment.

### C. SOLUTIONS

As the esports industry progresses, proper legal counsel from all parties involved in the business will be required to maintain a stable industry. Proper frameworks and institutions will be necessary to facilitate fair and proper business growth. Below are listed suggestions that esports community members can implement to further grow the industry.

#### 1. Hiring of More Lawyers

Esports needs more lawyers. Contract breaches should be an easy fix; legal counsel and entertainment lawyers alike can pave the way for an organized industry, like they have for traditional sports. Unfortunately, certain efforts made by sports, media, and entertainment lawyers to establish a new legal landscape fall short due to their unfamiliarity with the industry.<sup>141</sup> Because esports has been and will be, for the foreseeable future, an evolving marketplace, specialists with a better grasp of the video game culture will need to take the lead.

#### 2. Morality Clauses

Game publishers can take note from how traditional sports contracts enforce proper etiquette. In the past, codes of conduct were set in player contracts to ensure that when players misrepresent the league, they are punished.<sup>142</sup> Although game publishers have taken the liberty of imposing punishments on certain actions, morality clauses in contracts for league participants would eliminate any legal gray area.

#### 3. Unionization

One suggestion is player unionization. A union would provide players a vehicle to bargain with game developers over issues with their respective leagues. Riot Games has laid the foundation of what may someday be a union by creating player associations.<sup>143</sup> The issue with that, unlike traditional sports player associations, is that league organizers participate in overseeing the collective decision-making.<sup>144</sup> However, Riot Game's involvement in the player's association formation comes with additional funding provided by the North American LCS.<sup>145</sup>

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140. *Id*

141. Long, *supra* note 44.

142. Hollenbeck, *supra* note 138.

143. See Kieran Darcy, *Riot's Player's Association Lays Groundwork for Unionization*, ESPN (Jun. 15, 2017), [https://www.espn.com/esports/story/\\_/id/19617991/riot-players-association-lays-groundwork-unionization](https://www.espn.com/esports/story/_/id/19617991/riot-players-association-lays-groundwork-unionization) [<https://perma.cc/8ZYP-QYRL>].

144. *Id*

145. *Id*

Other players from different games have also taken steps to put together player's associations.<sup>146</sup> Organizations such as the WESA established a governing body that focuses solely on Valve's *Counterstrike: Global Offensive* ("CS:GO") and the ESL advocating for player's interests.<sup>147</sup> Still, unionization is lagging due to esports' industry infancy and the capital required to establish players unions. The uncertainty of any game's longevity also raises questions about whether establishing a union is worth the time and effort. These issues are innate to esports and require tackling for it to become a legitimized professional industry

## IV. GAMBLING

### A. NATURAL RISE OF GAMBLING IN RELATION TO ESPORTS

Gambling is an opportunistic market in esports. From a legal perspective, esports gambling needs oversight by gambling regulators to follow the same rules traditional sports gambling follow.<sup>148</sup> Like in traditional sports, the U.S. Unlawful Internet Gambling Enforcement Act would claim jurisdiction over the acts.<sup>149</sup> Because the gambling space is so new, commercial gambling services remain largely unexplored in the esports ecosystem.<sup>150</sup>

Professional esports gambling operators, such as the startup Unikrn, have launched an initial coin offering ("ICO") that looks to sell cryptocurrency on its platform to allow betting on esports matches.<sup>151</sup> Entrepreneur Mark Cuban invested \$10 million into Unikrn to step into the esports gambling market.<sup>152</sup> As more esports leagues are created, the ability to track the odds for gambling on games significantly increases.<sup>153</sup>

### B. LOOT CRATES AND THE GAMBLING IMPLICATIONS

Video game publishers are under great scrutiny when releasing their "microtransaction" business models.<sup>154</sup> Microtransactions allow players to buy in-game advantages to help ease game progression.<sup>155</sup> Many microtransaction models, however, use luck-based algorithms and are sold to players as "loot

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146. Mallory Locklear, *Two Major eSports Player Associations are in the Works*, ENGADGET (Mar. 15, 2018), <https://www.engadget.com/2018/03/15/overwatch-counter-strike-players-associations-in-the-works/> [<https://perma.cc/W5UZ-EZ23>].

147. Long, *supra* note 44.

148. Purewal, *supra* note 12, at 28.

149. *Id.*

150. *Id.*

151. Taylor Soper, *Ethereum Co-Founder and Mark Cuban Put \$25M Toward Unikrn Esports Betting Platform's Digital Token Sale*, CNBC (Sept. 25, 2017), <https://www.cnbc.com/2017/09/25/ethereum-co-founder-and-mark-cuban-put-25m-toward-unikrn-esports-betting-platforms-digital-token-sale.html> [<https://perma.cc/KS49-AQG6>].

152. *Id.*

153. *Id.*

154. Kellen Beck, *After spending \$10,000 on microtransactions, a gambling addicted teen speaks out*, MASHABLE, <https://mashable.com/2017/12/01/19-gaming-gambling-addict/#9BnzDgR.NkqV> [<https://perma.cc/73HE-54KY>].

155. *Id.*

crates,” which are an appealing cover for the gambling that is actually taking place.<sup>156</sup> Unfortunately, this can be predatory of children.

The most notorious example was weapon skin in-game trading in the game CS:GO.<sup>157</sup> Opportunists abused the loot-crate system by eventually creating a CS:GO gambling website that allowed for players to buy and sell rare weapon skins.<sup>158</sup> With lack of regulation, in game gambling controversies have yet to be addressed in courts. Regulations and infrastructure for video game publishers is necessary to overcome abuse of electronic gambling models.

### C. INTRODUCTION OF GAMING ARENAS AND VENUES

The introduction of esports gambling has also been strengthened by investments into esports facilities around the United States. Most notably, the company Esports Arena has opened locations in Orange County, Oakland, and Las Vegas.<sup>159</sup> The company behind Esports Arena, Allied Esports, chose the locations, such as the Las Vegas facility, to attract both committed esports participants and passersby who otherwise have little or no exposure to esports.<sup>160</sup> Its goal is to host multi-player gaming events at the same quality as traditional sporting event arenas.<sup>161</sup>

Gaming venues aimed at mature gamers created the popularity of gaming bars that also hold competitive esports events. The Folsom Street Foundry in San Francisco, which hosts ShowDownGG’s gaming entertainment services,<sup>162</sup> altered the esports landscape by providing a venue for esports competition while still serving as a distributor of alcohol to its patrons.<sup>163</sup> The MGM Grand in Las Vegas has also promoted its nightlife attractions with the addition of the Level-Up Bar.<sup>164</sup> The Level-Up Bar is another esports venue that hosts local esports competitions.<sup>165</sup> With the rise in gaming venue popularity, booking

156. *Id*

157. Evan Lahti, *CS:GO’s Controversial Skin Gambling Explained*, PC GAMER (Jul. 6, 2016), <https://www.pcgamer.com/csgo-skin-gambling/> [<https://perma.cc/ETP2-H88Y>].

158. *See Id*

159. *See generally* Esports Arena, <https://www.esportsarena.com/> [<https://perma.cc/A587-BCG2>] (“Esports Arena is capable of building and sustaining audiences over an extended period of time allowing the esports world to have consistent national events and competitions on any title – any time. These Arenas will be fusing lifestyle brands, music, and art with the esports demographic. Esports Arena is set to be the bridge for esports into the mainstream entertainment ecosystem.”).

160. Richard N. Velotta, *‘First of its kind’ esports arena open on the Las Vegas Strip*, Las Vegas Review-Journal (March 23, 2018), <https://www.reviewjournal.com/business/casinos-gaming/first-of-its-kind-esports-arena-opens-on-the-las-vegas-strip/> [<https://perma.cc/6P8Z-F7X3>].

161. *Id*

162. *See generally* ShowDownGG, <http://www.showdown.gg/> [<https://perma.cc/R8GC-GAAF>] (last visited April 15, 2018) (“Showdown Entertainment hosts and offers services for video game themed experiences.”).

163. Melia Robinson, *This San Francisco Bar is a Gamer’s Paradise*, BUSINESS INSIDER (Feb. 27, 2015), <https://www.businessinsider.com/game-night-at-showdown-2015-2> [<https://perma.cc/K4M6-QFUU>].

164. Abby Messick, *MGM Grand’s LEVEL UP Raises the Bar for Modern Gaming*, THE CASINO CITY TIMES (Jan. 16, 2017), <http://www.casinocitytimes.com/article/mgm-grands-level-up-raises-the-bar-for-modern-gaming-65714> [<https://perma.cc/CFL6-K3U4>].

165. *See generally* Level Up by MGM Grand, <https://leveluplv.com/> [<https://perma.cc/8DFX-7W8B>] (“LEVEL UP, a new and exciting ‘place to play’ concept in MGM Grand. Changing the way Las Vegas views lounge entertainment, LEVEL UP presents a new era in interactive, skill-based fun. Located

companies are better able to assess odds when administering their establishment practices.

## V. INTELLECTUAL PROPERTY IMPLICATIONS

### A. COPYRIGHT

Copyright issues are perpetually an issue since esports are played, shared, and broadcasted on so many mediums. The World Intellectual Property Organization (“WIPO”) has described the complexity of video game Intellectual Property rights by stating that “[v]ideo games are complex works of authorship – containing multiple art forms, such as music, scripts, plots, video, paintings and characters – that involve human interaction while executing the game with a computer program on a specific hardware. Therefore, video games are not created as a single, simple works, but are an amalgamation of individual elements that can each individually be copyrighted.”<sup>166</sup>

#### 1. Game Developer Protection

Copyright law protects video game developers if their authorship is tied to the game’s original expression of ideas.<sup>167</sup> The issue is when the computer code is tampered with to cheat or hack the system to give players unfair advantages.<sup>168</sup> Because players who are affected by cheating in games will be less motivated to participate in these games, game developers are motivated to protect their property.<sup>169</sup> Copyright is the best avenue for developers to protect their work. For example, the Digital Millennium Copyright Act (“DMCA”) grants copyright owners the power to promptly remove improperly used content from the Internet.<sup>170</sup> When third parties create hacking programs, game developers can issue DMCA notices to the program creators for legal protection of their intellectual property.<sup>171</sup>

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between Hakkasan Nightclub and the MGM Grand Race and Sports Book, the tech savvy, adult playground features pay-to-play offerings in a social atmosphere, designed to not only attract the next generation of players, but existing players seeking innovation.”).

166. Andy Ramos et al., *The Legal Status of Video Games: Comparative Analysis in National Approaches*, WORLD INTELLECTUAL PROPERTY ORGANIZATION [WIPO] (Jul. 29, 2013), [https://www.wipo.int/export/sites/www/copyright/en/activities/pdf/comparative\\_analysis\\_on\\_video\\_games.pdf](https://www.wipo.int/export/sites/www/copyright/en/activities/pdf/comparative_analysis_on_video_games.pdf) [https://perma.cc/K6LS-STK8].

167. Jordan Greenberger, *Young Lawyer’s Corner: Video Games, Apps, and the Copyright Act*, AM. B. ASS’N SEC. LITIG. (Feb. 19, 2013), <http://apps.americanbar.org/litigation/committees/businessstorts/articles/winter2013-0213-young-lawyers-corner-video-games-apps-copyright-act.html> [https://perma.cc/6T9S-DZRA].

168. Joseph Rothberg, *Cheating in Gaming: Will Copyright Laws Level Up?*, FORBES (Sept. 1, 2016), <https://www.forbes.com/sites/legalentertainment/2016/09/01/cheating-in-gaming-will-copyright-laws-level-up/#523579cd5ccd> [https://perma.cc/V4VE-WRT3].

169. *Id.*

170. 17 U.S.C. § 512 (2012).

171. David Lumb, *‘Fortnite’ Studio Epic Games Sues Two Alleged Cheaters*, ENGADGET (Oct. 12, 2017), <https://www.engadget.com/2017/10/12/fortnite-studio-epic-games-sues-two-alleged-cheaters/> [https://perma.cc/KZZ9-FRP4].



## 2. Player Protection

A big revenue source for players, streamers, and entertainers are the use of video games in the content creation. Because game publishers have the ultimate say in the use of their property, “Let’s Plays,” a video genre that showcases broadcasters playing video game titles in front of an online audience, belongs to the companies.<sup>172</sup> Although many content creators have argued that their added commentary transforms the work and thus enables their monetization, transformation needs to be taken as a whole. The Second Circuit Court has decided that the analysis for fair use needs to measure the nature of the work used.<sup>173</sup>

Gamers argue that the company Nintendo has implemented strict policies in an effort to protect its intellectual property as it relates to gamers using the company’s games for Let’s Plays.<sup>174</sup> In a response to community backlash, Nintendo launched a new policy called the “Creators Program” allowing content creators to monetize off of Nintendo video games so long as Nintendo receives forty percent of the profits made from the video and approves the video.<sup>175</sup>

Ultimately, the safest protection content creators and players can receive are from the game developers themselves. In the competitive gaming scene, companies like Riot Games have instituted less strict policies for using their copyrighted material.<sup>176</sup> Moreover, game developers are accepting the abuse, since broadcasting the game creates publicity.<sup>177</sup> This co-existence model drives esports.

## B. MERGERS AND ACQUISITIONS

Mergers and acquisitions (“M&A”) are commonplace in the growing esports industry.<sup>178</sup> Because video games provide opportunities to investors, many find that acquiring well established esports teams or buying a controlling stake of an esports company is the easiest gateway into the market.<sup>179</sup> In August

172. Stephen Carlisle, *The Strange World of “Let’s Play” Videos and the Copyright Problems They Create*, NOVA SOUTHEASTERN UNIVERSITY (Apr. 2, 2015), <http://copyright.nova.edu/lets-play-videos/> [https://perma.cc/P4PF-ZG3S].

173. *Cariou v. Prince*, 714 F.3d 694, 710. (2d Cir. 2013).

174. *See Why YouTubers like Angry Joe Are Boycotting Nintendo Game*, TWINFINITE (Apr. 6, 2015), <https://twinfinite.net/2015/04/why-youtubers-like-angry-joe-are-boycotting-nintendo-games/> [https://perma.cc/7J8X-P4AU].

175. NINTENDO CREATORS PROGRAM, [https://en-americas-support.nintendo.com/app/answers/detail/a\\_id/14034/~nintendo-creators-program—overview](https://en-americas-support.nintendo.com/app/answers/detail/a_id/14034/~nintendo-creators-program—overview) [https://perma.cc/3FMN-EXWE] (last visited Apr. 10, 2018).

176. Nathan Grayson, *Why Riot Is Pissed Off at a League of Legends Streamer*, KOTAKU (Feb. 23, 2015), <https://kotaku.com/why-riot-is-pissed-off-at-a-league-of-legends-streamer-1687538838> [https://perma.cc/SJH7-J87W].

177. Clark, *supra* note 52.

178. Nate Nead, *ESPORTS - VC & M&A TRENDS, VALUATIONS AND INVESTMENTS*, INVESTMENT BANK, <https://investmentbank.com/esports-mergers-acquisitions-investments/> [https://perma.cc/5A6X-6TW8] (last visited Apr. 10, 2018).

179. Ethan Chiel, *Why NBA Team Owners are Buying Esports Teams*, SPLINTER NEWS (Oct. 4, 2016), <https://splinternews.com/why-nba-team-owners-are-buying-esports-teams-1793862405> [https://perma.cc/RC2X-KDG8].

2014, Amazon.com acquired Twitch.tv for \$970 million.<sup>180</sup> M&As like this help both the investor and the player base; the investors receive exposure to younger demographics, while the participants receive a wealth injection, allowing them to invest in better production value, player contracts, and stable careers. Since M&As occur often, companies are required to keep track of intellectual property assets while transitioning from one company to another.

The intellectual property implications that come along with M&As include, but are not limited to: the transfer of confidentiality agreements, trademarks and service marks, domain names, social media accounts, and representation and warranties. The market will naturally become more sophisticated, requiring more legal counsel to maintain and review company assets.

## VI. CONCLUSION

In conclusion esports are a new and lucrative means of entertainment that require thorough business analysis and legal structure reform in the near future. When the market finally sees esports as a mainstay, like traditional sports, the industry will need to learn and adapt. But investors need to understand the differences from traditional sports to flourish. Understanding the multiple parties involved in the esports process (game developers, event organizers, players, the audience consuming content, etc.) will be key to developing better protection through contract law, better protection from abusive gambling, and intellectual property regulation.

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180. Eugene Kim, *Amazon Buys Twitch For \$970 Million In Cash*, BUSINESS INSIDER (Aug. 25, 2014), <https://www.businessinsider.com/amazon-buys-twitch-2014-8> [<https://perma.cc/9VKD-2ZAP>].d