

PLAYER 1 VS. PLAYER 2: LEGAL FACE OFFS IN ESPORTS (THE BILLION-DOLLAR GLOBAL INDUSTRY YOU NEVER KNEW EXISTED)

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WHAT ARE ESPORTS?

- Competitive video gaming as a spectator sport
- Yes, there are video games played at the professional level

Madison Square Garden



Staples Center



World Cup Stadium



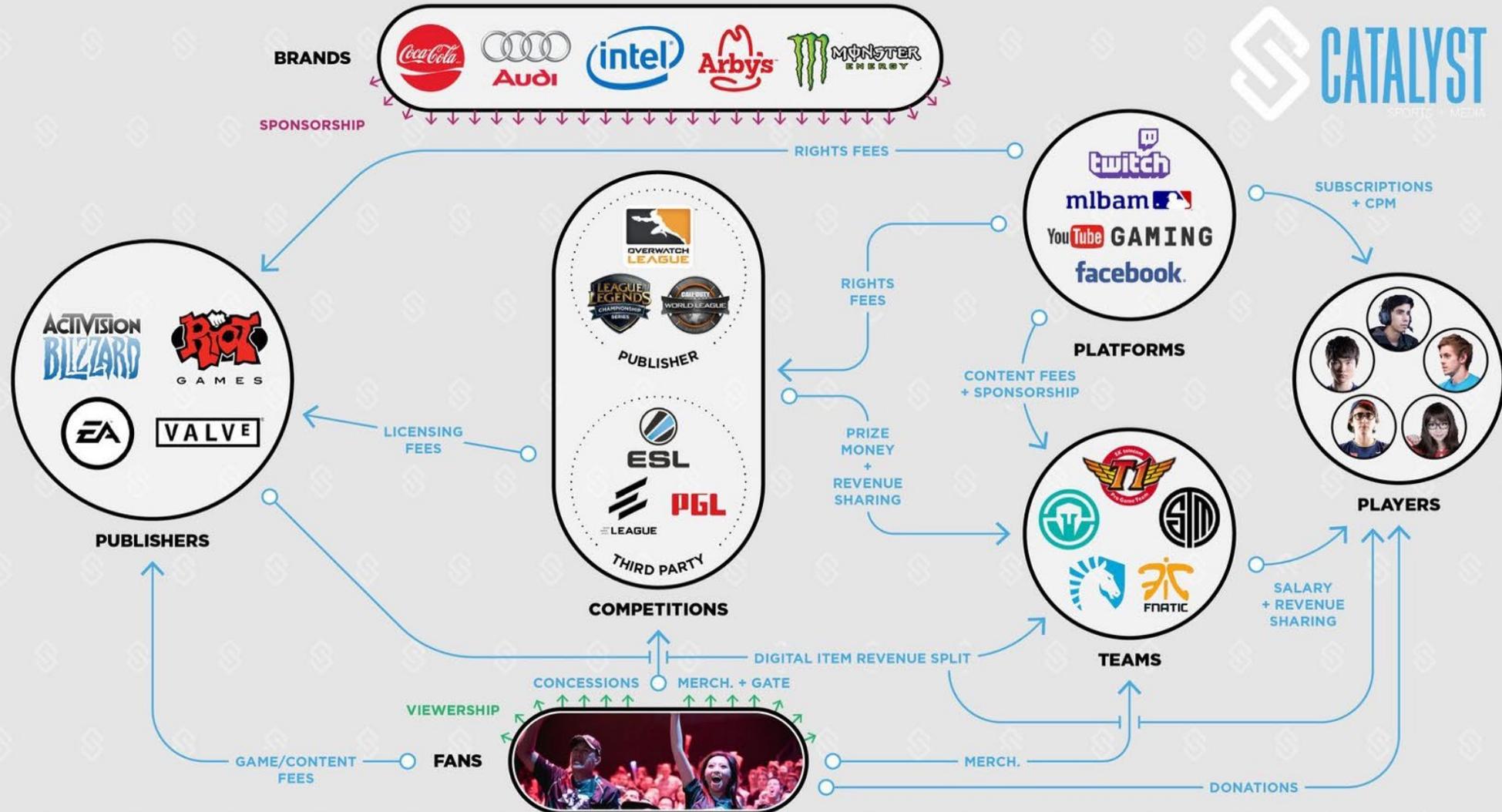
Wembley Arena



ESPORTS INDUSTRY

[insert stats, numbers, figures]

ESPORTS ECOSYSTEM



ROUND 1: CONTRACT NEGOTIATIONS

Issues and provisions heavily negotiated in a player contract between the:

- Team
- Player

Issues and provisions heavily negotiated in sponsorship contract between the:

- Sponsor
- League
- Platform

ROUND 2: COLLECTIVE BARGAINING

What are the risks and benefits of a player association from the perspective of the:

- Player
- League/Team

Who should bear the responsibility of the player's well being?

- Publisher
- Team

ROUND 3: CONTENT OWNERSHIP

Content ownership of streamed tournaments between the:

- Publisher
- League
- Sponsor

Content ownership of streamed practice gameplay between the:

- Publisher
- Platform
- Player

ROUND 4: RISK ALLOCATION

Who should bear the responsibility to ensuring complete integrity?

- Publisher
- League

Who should bear the responsibility of community management and chat moderation?

- Publisher
- Platform

ROUND 5: [TBD]

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THANK YOU!

Session 505: Player 1 vs. Player 2: Legal Face Offs in Esports - the Billion-Dollar Global Industry You Never Knew Existed

This panel of in-house counsel and experts representing varied perspectives in the esports ecosystem will face off in a series of legal and policy battle rounds:

Round 1: Content ownership of streamed tournaments.

Round 2: Collective bargaining on revenue sharing and player mobility.

Round 3: Risk allocation for liability arising from legal noncompliance.

Round 4: Streaming, sponsorships, and gamers-as-social-influencers.

Round 5: Match fixing, skins betting, and sports gambling.

The following list of articles help introduce and educate the reader on these and other novel and interesting topics that are cropping up in the ever evolving esports industry as it approaches full maturity.

Adam Levy, *PWND or Owned? The Right of Publicity and Identity Ownership in League of Legends*, 6 Pace. Intell. Prop. Sports & Ent. L.F. 163 (2016). Available at:

<http://digitalcommons.pace.edu/pipself/vol6/iss1/7>. Esports is a new and growing form of entertainment, where gamers at the peak level of their skill not only compete for prestige and prizes, but also become celebrities and influencers. This article discusses the protections that should be in place for gamers who want to license their right of publicity, protect their privacy, and control their identity.

Bryce Blum, *An esports lawyer breaks down everything you need to know about the SpectateFaker case*, DOT Esports (February 2015). Available at:

<https://dotesports.com/league-of-legends/news/dmca-faker-azubu-twitch-riot-1361>. In the esports industry, Internet broadcasting/livestreaming is often utilized in lieu of traditional media. Therefore, it was not surprising when an unexpected collision of intellectual property broadcasting rights occurred in 2015. This dispute centered around a famous professional esports player, Lee “Faker” Sang-hyeok, and the article discusses the copyright ownership rights between the streaming platform, the video game publisher, and the player.

Bryce Blum, *The NCAA and esports don’t mix – but soon, they might have to*, ESPN (October 2017). Available at: http://www.espn.com/college-sports/story/_/id/21121852/the-ncaa-esports-mix-soon-to.

Professional sports teams and private investors have flocked to esports in order to capitalize on a young and rapidly expanding industry. Naturally, collegiate esports has begun to draw similar attention. This article looks into the various issues surrounding the

increasing number of scholarship-sponsored competitive gaming teams throughout the country, as the NCAA board of directors formally analyzed the state of collegiate esports and considers regulation and/or support of varsity esports competitions.

Jas Purewal & Irene Davies, *The eSports Explosion: Legal Challenges and Opportunities, Landslide* (A Publication of the ABA Section of Intell. Prop. L.) Vol. 9 No. 2 (Nov/Dec 2016).

Available at: <https://www.americanbar.org/publications/landslide/2016-17/november-december/>

[the esports explosion legal challenges and opportunities.html](https://www.americanbar.org/publications/landslide/2016-17/november-december/the-esports-explosion-legal-challenges-and-opportunities.html). This article succinctly explains what esports are and summarizes the history of esports and the elements of the modern esports ecosystem. The article also highlights the legal challenges and opportunities that modern esports faces, including topics that will be touched upon by the panelist, including: esports governance, commercialization and revenue drivers, intellectual property ownership and control, labor law, and real money and skins gambling.

Jeff Ifrah, *The Ifrah Guide to eSports Law*. Available at:

[https://www.kisacoresearch.com/sites/](https://www.kisacoresearch.com/sites/default/files/documents/esports-download_ifrah.pdf)

[default/files/documents/esports-download_ifrah.pdf](https://www.kisacoresearch.com/sites/default/files/documents/esports-download_ifrah.pdf). Esports brings competition to video gaming and have turned traditional video gaming into a spectator sport. The growing popularity of esports has led to international tournaments, team sponsorships, and, inevitably, to gambling. Just as esports were in the process of being defined in the US, the gambling and betting aspects of esports game are also in the process of being defined. This article walks the reader through the emergence of esportsbooks, skins betting, lawsuits, and real world casino entering into the esports business. The article also touches upon other esports legal issues such as the contract concerns for players, team, sponsorships as well as player organization and regulation.

John T. Holden, Anastasios Kaburakis, & Ryan Rodenberg. *The Future is Now: Esports Policy Considerations and Potential Litigation*, 27 J. LEGAL ASPECTS OF SPORT 46 (2017).

Available at: <https://doi.org/10.1123/jlas.2016-0018>. The term esports has been assigned to the practice of competitive video gaming, but it remains to be seen whether lawmakers and regulators agree that the contests are indeed sports. This article provides a comprehensive analysis and application of the tests that have previously been used to determine whether an activity is a sport. The article also illustrates potential streams of litigation, some of which are specific to activities classified as sports.

Jonathan Kogel, *State of the Esports Player Union: Drawbacks and Legal Challenges*, *The Esports Observer* (May 2018).

Available at: <https://esportsobserver.com/state-of-the-esports-union/>. The industry standard is shifting towards treating players as employees. This article provides the recent efforts by various organizations to form organized associations of

players formed to protect and further their rights and interests in the esports arena, as well as the varying positions on the dynamics, pros, and cons of sports unions and players associations.

Laura Chao, “You Must Construct Additional Pylons”: Building a Better Framework for Esports Governance, 86 Fordham L. Rev. 737 (2017). Available at: <http://ir.lawnet.fordham.edu/flr/vol86/iss2/15>. Esports has become a serious contender to traditional sports. While esports regulation emulates many aspects of traditional sports governance, the esports industry has unique challenges that inhibit sophisticated ownership and capital investment. This article analyzes how the professional sports industry and foreign esports markets have addressed governance challenges that arise from differences between traditional sports and competitive video gaming.

Matt Dobill, *Leveling (Up) The Playing Field: A Policy-Based Case for Legalizing and Regulating Esports Gambling*, 37 Loyola Entertainment Law Review, 2:139-173 (May, 2017). One hotly contested issue is the legality of direct gambling on the outcome of esports matches. This article advocates for the legalization of esports gambling as part of the larger arc of sports gambling law development in the US.

Stephen D. Fisher, *Collective Bargaining, League of Legends Article Series*, Foster Pepper (March/April 2014). Available at: <https://www.foster.com/documents/foster-pepper-white-paper/collectivebargainingwhitepaper-fosterpepper.pdf>. League of Legends was a trailblazer in its prominence as a spectator sport. This article outlines the bargaining opportunities available to the essential parties in a ecosystem like the professional League of Legends community. It then compares the two primary bargaining alternatives, analyzing how the different paths have the potential to affect the sport and the legal relationships between the game’s creator, the teams, and professional players.

Stephen Townley & Annie Townley, *eSports: everything to play for*, WIPO Magazine (January 2018). Available at: http://www.wipo.int/wipo_magazine/en/2018/01/article_0004.html. The International Olympic Committee has declared that esports could become a sporting activity. This article discusses whether esports are really sports, evaluates the potential benefits and challenges for the sports industry recognizing esports, and considers the intellectual property implications of esports as a sport.