

COVID-19: ESPORTS MAY BE THE BEST PLAY DURING THE COVID-19 PANDEMIC

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With a global audience on track to reach roughly 495 million people in 2020 prior to the COVID-19 pandemic, and annual revenues estimated to exceed \$1 billion, esports was already one of the fastest growing industries in the world¹. COVID-19 social distancing protocols and stay-at-home orders may actually *increase* that growth exponentially. This immediate and unforeseen growth opportunity highlights the importance for existing and novice esports stakeholders to address key legal considerations.

I. INDUSTRY BACKDROP

Mostly simply defined, esports is organized and competitive video game playing. Over the past few years, the esports industry has experienced rapid growth, punctuated by the development of purpose-built venues and training facilities, the launch of many professional leagues and teams, valuable sponsorship and other strategic partnerships, and the creation and distribution of high quality content across a multitude of media. For a stunning illustration of the broad reach of the esports industry, consider the contrast between these two anecdotes from 2019: (1) a 16 year-old professional esports player won \$3 million in prize money playing Fortnite in front of a sold-out crowd at New York's Arthur Ashe Stadium;² and (2) players on the Swedish Silver Snipers esports team with an average age of 70 won the 2019 Counter Strike Seniors World Cup.³ If that wasn't enough, the 2019 League of Legends World Championship Grand Finals had *more viewers than this year's Super Bowl!*

II. CAN ESPORTS FILL SOME OF THE VOID LEFT BY THE CANCELLATION OF TRADITIONAL SPORTS EVENTS?

Ongoing cancellation and postponement of traditional sporting events due to COVID-19 creates space for additional growth of esports. Formula 1, IndyCar, and NASCAR have all cancelled or postponed their "in-person" seasons but have kept fans and sponsors engaged by streaming races with professional drivers behind virtual wheels.⁵ NASCAR, through its eNASCAR iRacing Pro Invitational Series, broadcasted its inaugural event to more than 900,000 fans worldwide on Fox.⁶

With NBA games postponed and the remainder of the 2019-2020 season in jeopardy, headline players like DeMarcus Cousins and Ben Simmons have signed with various professional esports teams, either to create original content themselves or to compete in existing gaming tournaments.⁷ As of the date of this article, at least 16 of the NBA's marquee players are playing NBA 2K (the NBA simulation video game) in a COVID-19 charity tournament, broadcast live on ESPN.⁸ Increased participation in esports by teams, leagues, well-known athletes, and celebrities has helped introduce esports to new audiences who might otherwise be tuned in to more traditional sports, further elevating the industry's overall profile and attracting new investment.

III. ESPORTS IS NOT COMPLETELY IMMUNE TO COVID-19

Despite the online format's compatibility with social distancing and stay-at-home orders, esports is not completely resistant to the disruptions caused by COVID-19. Global travel restrictions have affected esports teams, many of which have rosters of players from multiple countries. There is continued uncertainty as to whether players can return home while their teams are unable to hold in-person practices or attend events. Traveling (or lack thereof) could also have an impact on players' immigration statuses and visa qualifications.

Many esports stakeholders (including gamers, sponsors, teams, game developers, and venues) may be struggling to determine their legal rights and obligations with respect to performance, payment, or termination under their existing agreements. For example, the immensely popular Overwatch and Call of Duty leagues, both in their breakout seasons, have cancelled all in-person events, including their respective versions of "home games" — critical events for gauging the success of a new city-based esports franchise model (mirroring traditional sports teams and leagues). This raises many questions concerning esports player and coaching contracts, such as the responsibility of teams to continue covering the living expenses and salaries of players and coaches during this time. Finding solutions amicable to all parties may be particularly challenging if agreements do not clearly address the parties' rights and obligations in the event of major unforeseen disruptions (e.g., in force majeure and other clauses).

Difficulties and confusion that may have arisen in a *non*-COVID-19 environment for stakeholders operating under agreements that are ambiguous or non-existent will be even more troublesome to work through during this pandemic. Examples of such arrangements include player or coach contracts with unclear terms surrounding compensation, vague endorsement deals that provide little clarity regarding a player's obligation to perform certain services and/or produce certain content, and venue use agreements with uncertainty as to which party is on the hook for losses that materialize as a result of cancelled live events.

IV. KEY LEGAL CONSIDERATIONS FOR ESPORTS STAKEHOLDERS

With more eyeballs turning to esports, teams and other businesses affiliated with esports properties should expect to face industry-wide expansion that demands additional legal expertise. Matters such as structuring financing arrangements and capitalizing team/franchise ownership groups, securing licensing deals and media/content distribution rights, and properly protecting intellectual property will become even more important and serve as necessary safeguards for increasingly large investment into this sector. And esports players and coaches should pay close attention to the structure of representation, endorsement, or performance agreements and be particularly mindful of onerous exclusivity provisions or overly burdensome requirements for content creation and the ownership thereof.

Additionally, all industry participants need to be mindful of a growing body of law surrounding esports in various jurisdictions across the globe. New legal and regulatory requirements are emerging that players, teams, venues, agents, and brands must follow to avoid strict and costly penalties.

The recent increase in esports viewership online⁹ may serve as the catalyst for re-negotiation of broadcast rights or adjustments to streaming-based profit sharing arrangements. In light of competition activations shifting from in-person to strictly online for the foreseeable future, and in order to effectively activate key assets, brands will also need to review and analyze their existing contractual rights and obligations as sponsors of various esports

properties, and work to modify as necessary to align with new COVID-19 realities facing the broader sports industry.

V. FINAL THOUGHTS

Now more than ever, it is vital for stakeholders in the rapidly growing and increasingly popular esports industry to be fully aware of the legal landscape of their evolving industry, in addition to the unique and underlying culture, tradition, and nuance of the broader esports community. All industry participants must consider and remain compliant with existing contractual and regulatory obligations, while simultaneously looking for new and creative legal solutions to enhance their esports business and capitalize on the unprecedented growth of this emerging industry during the COVID-19 pandemic and beyond.

NOTES:

[1] Newzoo's 2020 Report Estimates \$1.1 Billion in Revenues, <https://esportsinsider.com/2020/02/newzoo-2020-esports-market-report/> (February 26, 2020).

[2] This is how much time a day the \$3 million 'Fortnite' winner spends playing the game, <https://www.marketwatch.com/story/one-way-the-3-million-fortnite-tournament-winner-blows-away-the-competition-2019-07-29> (August 3, 2019).

[3] Silver Snipers: Never Too Old to Crush It in Competitive Gaming, <https://news.lenovo.com/never-too-old-to-crush-it-in-competitive-gaming-silver-snipers/> (September 3, 2019).

[4] This esports giant draws in more viewers than the Super Bowl, and it's expected to get even bigger, <https://www.cnbc.com/2019/04/14/league-of-legends-gets-more-viewers-than-super-bowlwhats-coming-next.html> (April 14, 2019)

[5] Pro Drivers are Competing with Gamers after F1 and NASCAR Canceled Races, <https://www.theverge.com/2020/3/22/21184192/sim-racing-coronavirus-f1-nascar-iracing-veloce-esports-max-verstappen-lando-norris> (March 22, 2020).

[6] FOX Sports to Air Complete eNASCAR iRacing Pro Invitational Series, <https://www.foxsports.com/presspass/latest-news/2020/03/24/fox-sports-air-complete-enascar-iracing-pro-invitational-series> (March 24, 2020).

[7] Ex-Laker DeMarcus Cousins Reveals He's Joined NRG Esports amid Injury Rehab, <https://bleacherreport.com/articles/2882395> (March 22, 2020).

[8] 16 players, including Kevin Durant, Donovan Mitchell, will play in NBA 2K tournament on ESPN, <https://www.usatoday.com/story/sports/nba/2020/04/01/espn-air-nba-2-k-tournament-coronavirus-aid-weekend/5101758002/> (April 1, 2020).

[9] Esports Titles Are Thriving As Players Hunker Down And Aim To Get Good, <https://www.forbes.com/sites/maxthielmeyer/2020/03/25/esports-titles-are-thriving-as-players-hunker-down-and-aim-to-get-good/#72d252ea219c> (March 25, 2020).

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