



# Esports

## A Whole Different Ball Game

BY AARON D. LOVAAS, ESQ.

**Boston Uprising, London Spitfire, San Francisco Shock, Shanghai Dragons: One might guess these were the doomed team monikers of some now-defunct, professional indoor soccer league. To the contrary, these are four of the 12 franchised, city-based teams of the Overwatch League (OWL). What is Overwatch? Overwatch is a team-based, multiplayer, first-person shooter video game published by Blizzard Entertainment. It is also one of the most popular gaming contests in all of esports. What is esports? Good question.**

### About Esports

Oversimplified, esports is competitive video game play. However, unlike going for the high score on a game like PacMan, esports involves head-to-head, real-time competition, in which players dedicate themselves to one particular game and one specific character or avatar, develop proficiency in utilizing the skill set programmed specifically to that avatar, assemble teams with complementary skill sets and develop fan bases through online broadcasts of the gaming action. Of course, esports is also about money.

To begin to appreciate the scope and popularity of esports today, consider the recent launch of the OWL. In 2016, when Blizzard Entertainment decided to push its wildly popular Overwatch title from amateur tournament status toward a franchised professional league, it announced a \$20 million price tag per franchise, with 12 city-based franchises available. First to the table with checkbook in hand, securing the Boston franchise, were Robert Kraft and The Kraft Group—collectively the owners of the New England Patriots. The parent companies of the Los Angeles Rams, Denver Nuggets and Philadelphia Flyers also own teams in the OWL. Among partial owners and investors in OWL teams are the likes of

Shaquille O’Neal, Joe Montana and the Wilpon family (think New York Mets).<sup>1</sup> Clearly, this is serious sports business.

If there are any lingering doubts, consider further that the NBA is now the first of the “big four” sports leagues to venture directly into esports. The NBA 2K League, a joint venture between the NBA and Take-Two Interactive Software, commenced its first season in May 2018, following scouting, a player combine and a full-blown draft at Madison Square Garden, presided over by NBA Commissioner Adam Silver. The NBA 2K League consists of 17 teams, each representing and owned by a real-life NBA counterpart (e.g. Mavs Gaming: Dallas Mavericks; Pistons GT: Detroit Pistons; Cavs Legion GC: Cleveland Cavaliers).<sup>2</sup>

Both the OWL and NBA 2K League award \$1 million to their respective champions at season’s end. Both leagues (and others in professional esports) set “league minimum” player salaries and provide the players with relocation, housing, medical and other benefits.<sup>3</sup> In such a rapidly developing and maturing landscape, it’s no wonder that the legal issues surrounding esports are rapidly evolving as well. While in no way a comprehensive analysis of those issues, the following highlights some of the more

prevalent ones, along with some of the open legal questions in esports today.

## Intellectual Property Issues

Video games and sports are rife with intellectual property issues. In the esports world, the video game publisher occupies the top spot in the intellectual property food chain, but also carries the most at risk if those rights are compromised.

Because the publisher owns the game, the publisher also owns the league constructed around that game. This structure begs the question, “what is the sport?” Indeed, the sport is not “video gaming.” The sport,

specifically, is Overwatch,

or NBA 2K, or League

of Legends or any

number of other

esports games

played professionally.

Players’ skills (and,

therefore, their value as players to their respective teams and leagues) exist specifically as applied to that particular video game. So, the publisher owns the entire environment.

The publisher also owns the rights to broadcast the images of game play and the images of the characters’ physical movements, reactions and other behaviors. While the human professional player has developed superior attention to detail and hand/eye coordination within the context of his/her chosen game, those superiorities manifest through depictions of the publisher’s character, behaving on a screen and within the game. The question of whether the professional player has any rights to the in-game results of his/her skilled command of the game controls appears to be legally untested as yet.

Third-party broadcasting involves intellectual property rights as well. One example of this issue cropped up at the ESL One Genting 2018 DOTA2 tournament in Malaysia. Tournament organizers provided a free online broadcast without objection from the game publisher. However, when the organizers discovered that some individuals were also broadcasting the tournament through their own online streaming accounts, they issued takedown notices, pursuant to the U.S. Digital Millennium Copyright Act, Pub. L. 105-304 (DMCA). While the DMCA takedown notices effectively terminated

the unauthorized streaming and banned the streamers from those platforms, the situation caused a dispute between the game publisher and tournament organizers regarding which party had standing to issue DMCA takedown notices in the first place. After all, the tournament organizers did not own the images or game play footage they sought to prevent from being streamed.<sup>4</sup> Open then, are questions regarding the rights, if any, of tournament organizers regarding the images of game play emanating from their own tournaments, especially *vis a vis* tournament sponsors and other parties with whom tournament organizers likely have contractual obligations.

## Team/Player Issues

Although esports is a young industry, there are myriad legal issues involving the teams and individual players that demand attention. First, there have been a number of instances, primarily outside of the U.S., in which minors have been signed to teams, only later discovering the disadvantageous nature of their contracts’ terms.<sup>4</sup> These situations demonstrate the need for strong player representation and advocacy.

Labor law issues are also emerging, as at least two separate efforts are underway to organize esports players’ unions or associations.<sup>5</sup> Finally, legal issues involving amateur vs. professional status and collegiate eligibility will undoubtedly arise in esports as universities incorporate the games into their athletic departments or extracurricular offerings. Indeed, this process is already well underway: University of Nevada Las Vegas and Boise State University challenged each other in the inaugural Mountain West Esports Showdown that took place in March 2018;<sup>6</sup> Harrisburg University hosted international varsity esports tryouts in April 2018, granting full-ride academic scholarships to the 16 best players in League of Legends, Hearthstone and Overwatch;<sup>7</sup> and the National Association of Collegiate Esports (NACE) was formed to promote and advance varsity esports at the collegiate level ([www.nacesports.org](http://www.nacesports.org)).

## Wagering Issues

In light of the U.S. Supreme Court’s recent decision in *Murphy v. National Collegiate Athletic Association*, legal issues regarding sports wagering will

certainly emerge as individual states grapple with the decision of whether to allow sports betting. Esports is not unaffected. In fact, as of 2017, Nevada is the only jurisdiction that specifically allows wagering on esports.<sup>8</sup> Citing to unregulated black market wagering on esports in most other jurisdictions, the commissioner of the Esports Integrity Coalition (ESIC) has recently urged states, in light of *Murphy*, to look to Nevada as a regulatory model for esports wagering.<sup>9</sup> As esports and the sports wagering landscape in the U.S. continue to evolve, the legal issues will no doubt do the same.

## Anti-Corruption/Regulation/Enforcement Issues

Finally, the ESIC is attempting to rein in the various esports leagues, games and teams, in order to generate some cohesive regulations and enforcement procedures within the explosively expanding industry. Membership in the ESIC is voluntary, but more and more participants are aligning themselves with the organization’s regulatory scheme and code of conduct ([www.esportsintegrity.com](http://www.esportsintegrity.com)).

A major issue within esports is “e-doping:” the manipulation of the game to grant an unfair advantage to a certain player or team. E-doping may take the form of running surreptitious script within the game code, allowing players to advance at an otherwise impossible pace.<sup>10</sup> Other e-doping tactics utilize no infiltration of the game code at all; for example, a player can watch a simultaneous stream of his or her own game play in order to obtain a third-party view that gives the player an advantage over his or her opponent. The fact that each game in esports, along with its respective teams and players, exist entirely separate and apart from any other creates difficulties when it comes to the enforcement of player punishments across game lines. Indeed, a player banned from the OWL for e-doping could theoretically enter a Hearthstone tournament with no reciprocal enforcement.<sup>4</sup> It is clear that the legal issues surrounding esports regulation, integrity and enforcement will require ongoing attention as the field continues to develop.

Opinions may differ as to whether esports is truly “sports,” or something else entirely, but what is clear is that it is already big business. The Luxor resort in

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Las Vegas now boasts a 30,000 square foot Esports Arena. Conglomerates are paying \$20 million per franchise to field esports teams. The NBA has an esports alter ego of itself. Universities recruit and offer full scholarships to those with strong esports skills. Whatever esports is, its growth is undeniable, and its unique legal issues are growing right along with it. **NL**

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