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The Challenges of Implementing a Governing Body for Regulating ESports

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THE CHALLENGES OF IMPLEMENTING A GOVERNING BODY FOR REGULATING ESPORTS

This paper will discuss the recent growth in the esports industry and the challenges in developing a single regulatory model. Currently, there are multiple organizations that claim to govern the esports industry, but they all cover different areas of the sport which causes them to lack cohesion. These organizations lack the enforcement mechanism needed to back up the regulations that they propose. This creates a legitimacy issue at the same time that concerns over corruption continue to grow. These considerations make clear that there needs to be a single regulatory body to oversee the esports industry to preserve the legitimacy of the sport. There are great complexities in the international regulation of esports. Every country has different ways of tackling esports issues; to create one regulatory body is a task of great difficulty. Furthermore, individual countries are passing different sports gambling laws that affect the esports industry, which further complicates the issue, since it is often unclear which law applies to which country. This broad-spectrum approach to regulation is uncharted; there is not much precedent as to how to tackle regulation on a global level. Many different organizations are becoming involved in this growing enterprise making the industry a "free-for-all"; therefore, current regulations greatly depend on the country sponsoring the event. Thus, implementing a single regulatory body is a multidimensional issue with many players involved and, therefore, a large undertaking.

Jacqueline Martinelli

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I. INTRODUCTION

Esports are positioned to become a 1.4-billion-dollar industry by 2020.¹ The esports industry is high stakes, with winnings up to 25 million dollars from esports tournaments alone.² The International Olympics Committee (IOC) is currently exploring the idea of including an esports competition in the 2024 games and France recently hosted an esports forum of the IOC and the Global Association of International Sports Federations.³ The 2017 League of Legends world championship drew 106 million viewers, which is roughly on par with the 2018 Super Bowl Audience.⁴ The 2018 DOTA 3 championship audience was larger than the Tour De France, peak Wimbledon, Daytona 500, and the U.S. Open audiences.⁵

Despite this growth, however, there is no single governing body that regulates the esports industry. Without regulation, there is concern for legitimacy, corruption, and antitrust concerns. Complicating the issue further is that esports differ from sports betting and esports are not included

¹ Alex Gray, *The explosive growth of eSports*, WORLD ECONOMIC FORUM, (Nov. 19, 2018), <https://www.weforum.org/agenda/2018/07/the-explosive-growth-of-esports>.

² *Id.*

³ BBC, Paris 2024 Olympics: Esports 'in talks' to be included as demonstration sport, BBC, (Nov. 19, 2018), <https://www.bbc.com/sport/olympics/43893891>.

⁴ Christopher Ingraham, *The massive popularity of esports, in charts*, THE WASHINGTON POST, (Nov. 19, 2018), https://www.washingtonpost.com/business/2018/08/27/massive-popularity-esports-charts/?utm_term=.a5c15b61b12c.

⁵ *Id.*

in sports betting regulation in the United States.⁶ Given the unique aspects of this global enterprise, the establishment of a novel, global regulatory model for the esports industry is essential, given the unique aspects of this global enterprise. In the absence of formal, negotiated agreements by participating corporations and nations, with international organizational oversight, standardization and implementation of esports rules and penalties will not be achievable despite the best efforts of individual nations to supervise the esports enterprise.

II. WHAT ARE ESPORTS?

Esports are a form of competitive videogaming. The term “Esports” is short for electronic sports.⁷ “Competitors from different leagues or teams face off in the same games that are popular with at-home gamers: Fortnite, League of Legends, Counter-Strike, Call of Duty, Overwatch and Madden NFL, to name a few.”⁸ Millions of fans from all over the world watch the games either by attending live events or watching them online or on TV.⁹ “Streaming services like Twitch allow viewers to watch as their favorite gamers play in real time, and this is typically where popular gamers build up their fandoms.”¹⁰ “Audiences watch the games live, watch

⁶ *Id.*

⁷ BBC, *Guide: What are eSports?*, BBC, (Nov. 18, 2018), <https://www.bbc.co.uk/newsround/37773832>.

⁸ AJ Willingham, *What is eSports? A look at an explosive billion-dollar industry*, CNN, (Nov. 18, 2018), <https://www.cnn.com/2018/08/27/us/esports-what-is-video-game-professional-league-madden-trnd/index.html>.

⁹ *Id.*

¹⁰ *Id.*

pre- and post-game interviews with the players, view how-to guides made by the players discussing key strategic decisions (such as which abilities to level-up first, which items to buy, etc.), and, increasingly, watch unofficial casual matches involving their favorite players.”¹¹ “In many ways, the eSports industry is similar to the traditional sports from which it derives its name: it is an entertainment industry built around competition, fan loyalty, and spectatorship.”¹²

The United States began recognizing esports as a sport in 2013 when it categorized esports players as professional athletes.¹³ It was a lengthy process to reach this status in the United States and with this recognition came more legitimacy with the sport.¹⁴ Many countries also recognize esports as a sport including; Russia, Italy, Denmark, Nepal, China, Korea, South Africa, and Finland.¹⁵ Furthermore, in 2017, the IOC began to recognize video games as sports and released a statement declaring that "competitive eSports could be considered as a sporting activity, and the players involved

¹¹ Katherine E. Hollist, *Time to Br Grown-Ups about Video Gaming: The Rising eSports Industry and the Need for Regulation*, 57 Ariz. L. Rev. 823, 826 (2015).

¹² *Id.* at 826-27.

¹³ Paul Tassi, *The U.S. Now Recognizes eSports Players As Professional Athletes*, FORBES, (Nov. 18, 2018), <https://www.forbes.com/sites/insertcoin/2013/07/14/the-u-s-now-recognizes-esports-players-as-professional-athletes/#6aacc17e3ac9>.

¹⁴ *Id.*

¹⁵ Thiemo Brautigam, *Finland has recognized esports as sports*, DOT ESPORTS, (Nov. 18, 2018), <https://dotesports.com/business/news/finland-has-recognized-esports-as-sports-2-4079>.

prepare and train with an intensity which may be comparable to athletes in traditional sports.”¹⁶

Esports competitions take place all over the world. The first esports event took place at Stamford University in 1972, where students competed playing the video game, Spacewar.¹⁷ In 1980, the first competition took place which included 10,000 participants and gained press attention.¹⁸ In 2017, there were a total of 3,765 esports tournaments.¹⁹ Esports prize money amounted to \$110.6 million dollars with the biggest prize of \$24.6 million from The International 2017.²⁰

The growing popularity of esports is the highest among young people. For young Americans, a 2018 Washington Post-University of Massachusetts Lowell poll found that “fifty-eight percent of fourteen to twenty-one-year-olds said they watched live or recorded video of people playing competitive video games, with a similar percentage reporting that they played such games themselves.”²¹ The poll also found that thirty-eight percent of young Americans identified as fans of esports or competitive gaming, compared to the forty percent who said they were fans of the National

¹⁶ The Local, *Olympic committee recognizes video games as sports*, THE LOCAL, (Nov. 18, 2018), <https://www.thelocal.ch/20171030/olympic-committee-recognizes-video-games-as-sports>.

¹⁷ Bountie Gaming, *The History and Evolution of Esports*, MEDIUM, (Nov. 18, 2018), <https://medium.com/@BountieGaming/the-history-and-evolution-of-esports-8ab6c1cf3257>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Ingraham, *supra* note 4.

Football League.²² This younger population gap has been difficult to reach in broadcast because this age group is less likely to watch linear Television and are less interested in professional sports.²³ Therefore, esports is a new market to reach the younger demographic.

Russia has the biggest esports market in Europe which is worth roughly 38 million dollars.²⁴ Sweden comes in second place with its market worth roughly 31 million dollars due to tickets, products, sponsorships, and brand popularization activities.²⁵ In 2019, North America is projected to generate \$409 million dollars, which is 37% of the global projected esports revenues.²⁶ China is predicting to account for \$210.3 million dollars of revenue for 2019.²⁷ The total projected global esports revenue for 2019 is \$1.1 billion dollars with 82% of total revenue, or \$897.2M, coming from brand investments such as media rights, advertising, and sponsorships.²⁸

²² *Id.*

²³ Chris Arkenberg et al, *eSports graduates to the big leagues*, DELOITTE, (Nov. 19, 2018), <https://www2.deloitte.com/insights/us/en/industry/telecommunications/capitalizing-on-growth-of-esports-industry.html>.

²⁴ Dana Nikolic, *What other countries can learn from the new Swedish Law*, THRIVE GLOBAL, (Jan. 28, 2019), <https://thriveglobal.com/stories/what-other-countries-can-learn-from-the-new-swedish-law>.

²⁵ *Id.*

²⁶ Trent Murray, *Newzoo Report Projects Global Esports Revenue to Reach \$1.1B in 2019*, THE ESPORTS OBSERVER, (Feb. 12, 2019), <https://esportsobserver.com/newzoo-2019-report>.

²⁷ *Id.*

²⁸ *Id.*

III. CURRENT REGULATION OF ESPORTS

There are multiple oversight groups that have been created to help regulate the esports industry. However, none have been successful in reaching their goals to regulate the esports industry. Having multiple regulatory organizations creates confusion and lacks cohesion. The Esports Integrity Coalition (ESIC) was established in 2015 as an antifraud group.²⁹ The group's goal is to identify and prosecute match-fixing, in-game cheating, and doping.³⁰ ESIC plans to implement an anti-corruption code in the terms of conditions of its members and tournaments.³¹ To this end, ESIC has published an anti-corruption code specifically applied to CS:GO, Dota 2, League of Legends and Starcraft.³² To date, ESIC struggles to monitor match-fixing.³³ Its scope appears far too limiting to regulate the hugely burgeoning esports industry.³⁴

Another attempt to regulate the esports industry is The World Esports Association (WESA), established in 2016.³⁵ The

²⁹ Will Green, *Establishing Esports Oversight: The Groups, Issues, And Potential Challenges*, THE LINES, (Nov. 19, 2018), <https://www.thelines.com/esports-oversight-overview-and-challenges>.

³⁰ *Id.*

³¹ Mike Stubbs, *Everything you need to know about the Esports Integrity Coalition*, MCV, (Nov. 19, 2018), <https://www.mcvuk.com/esports/everything-you-need-to-know-about-the-esports-integrity-coalition>.

³² Sam Bishop, *Match fixing, doping, and the dark side of esports*, GAMEREACTOR, (Feb. 12, 2019), <https://www.gamereactor.eu/articles/436103/Match+fixing+doping+and+the+dark+side+of+esports>.

³³ *Id.*

³⁴ *Id.*

³⁵ Green, *supra* note 15.

top 8 multi-gaming corporations worldwide helped to establish this regulatory agency with the goal of expanding to include more members.³⁶ WESA created a Player Council to be elected by players to represent gamers in a wide range of areas, including players transfers, policy and rules.³⁷ An important goal of WESA is to establish players' rights and influence in esports policies. The ESL pro league for *GS:GO* was the first to become part of the WESA regulatory network.³⁸

"WESA aims to gain legitimacy by being an organization founded and run by major esports brands."³⁹ However, WESA still is not viewed as legitimate and does not have regulation enforcement powers.⁴⁰ Despite this, WESA still hopes to become the FIFA of esports.⁴¹ However, WESA differs from FIFA like sports organizations because it only represents certain competitions and it allows its members to participate in rival leagues in the esports arena.⁴² Although WESA's goal is to achieve FIFA- like status, there are areas in WESA's regulatory model that need to be addressed before it can be seen as a legitimate regulatory governing body.

³⁶ Joost, *Esports Governance and its Failures*, MEDIUM (Oct. 21, 2018), <https://medium.com/@heyimJoost/esports-governance-and-its-failures-9ac7b3ec37ea>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Colin Campbell, *The who, what and why of the World Esports Association*, POLYGON (Oct. 21, 2018), <https://www.polygon.com/2016/5/13/11668182/what-is-wesa>.

The International E-Sports Federation (IeSF) was founded in 2008 with its mission to have esports recognized as a legitimate sport.⁴³ This organization is a rival group of WESA.⁴⁴ A major concern with IeSF is that its organization structure is not well suited for esports because its members are national esports federations but the most prominent esports competitions are not national but international.⁴⁵ Thus, it has been unsuccessful in regulating esports on a wholly international level.

The World eSports Council (WeSC) launched in 2015 with a goal to form a global governing body to stabilize the industry through organization and regulation.⁴⁶ The British eSports Association (BEA) aims to represent player interests at all levels of esports.⁴⁷ France eSports, launched in 2016, is another aim to regulate esports, is a federation that will advise the French government on how to best regulate esports.⁴⁸ In 2017, the Russian Esports Federation was given the same rights of a national sport federation.⁴⁹ Finally, in 2018, the Middle East has a new regulatory body for esports with the merge of The Arab Esports Federation (AEF) and the Global

⁴³ Duncan Mackay, *International eSports Federation Accepts United States as Latest Member*, THE SPORT DIGEST, (Nov. 19, 2018), <http://thesportdigest.com/2018/11/international-esports-federation-accepts-united-states-as-latest-member>.

⁴⁴ *Id.*

⁴⁵ Joost, *supra* note 19.

⁴⁶ Green, *supra* note 15.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Russia, *Russian e-Sports Federation, accreditation in the Ministry of Sport*, IESF, (Nov. 19, 2018), <https://www.ie-sf.org/news/russian-e-sports-federation-accreditation-in-the-ministry-of-sport>.

Esports Resources (GER).⁵⁰ This partnership will serve the federation's eleven member countries with its goal to strategize, develop, and operate all esports and gaming activities.⁵¹

Law firms are beginning to address the need to regulate the esports industry as well. In December 2018, Global law firm Greenberg Traurig, LLP announced that they have created a new team to address the regulatory needs of the esports industry.⁵² The Video Game and Esports Group will "leverage the firm's deep industry knowledge in several areas, including emerging technology, intellectual property, corporate and securities, stadium development, media rights, and litigation."⁵³ Moreover, the group will represent esports teams and game developers in government regulation, antitrust and employment concerns, and policy initiatives.⁵⁴

IV. ISSUES FACING ESPORTS REGULATION

Legitimacy is one of the major issues affecting esports regulatory organizations. The current regulation landscape is crowded with many different organizations claiming to

⁵⁰ Esports, *Arab Esports Federation and Global Esport Resources partner for esports in the Middle-East*, FOX SPORTS, (Nov. 19, 2018), <https://www.foxsports.ph/esports/860308/arab-esports-federation-global-esport-resources-partner-esports-middle-east>.

⁵¹ *Id.*

⁵² Greenberg Traurig, *Group: Team To Address Legal Needs of Clients in Billion-Dollar+ Industry*, PR NEWswire, (Feb. 13, 2019), <https://www.prnewswire.com/news-releases/greenberg-traurig-forms-video-game-and-esports-group-team-to-address-legal-needs-of-clients-in-billion-dollar-industry-300762680.html>.

⁵³ *Id.*

⁵⁴ *Id.*

regulate the esports industry. However, these groups do not have clear rules and regulation that force players and teams to follow during competitions.⁵⁵ The groups lack the enforcement mechanisms necessary to enforce rules and regulations in the esports industry.⁵⁶ Furthermore, these groups are independent coalitions are not government-backed and are not viewed as legitimate.⁵⁷ Another complication is that esports is not one sport, but multiple sports in different regions of the world, so there are multiple shareholders and owners involved in esports competitions. Stakeholders do not view the groups formed as authorities; thus, there is not consensus on what rules apply to competitions.⁵⁸ Finally, many countries do not recognize esports as a sport, which causes complications while trying to regulate them.⁵⁹

Another issue facing the regulation of esports is antitrust concerns. Esports audiences and businesses are expanding and Sherman Act intervention is likely to happen, and it is “not difficult to extrapolate what such a case might look like based on the robust antitrust jurisprudence with

⁵⁵ Green, *supra* note 15.

⁵⁶ American Bar Association, *The eSports Explosion: Legal Challenges and Opportunities*, AMERICAN BAR, (Nov. 19, 2018), https://www.americanbar.org/publications/landslide/2016-17/november-december/the_esports_explosion_legal_challenges_and_opportunities.

⁵⁷ Green, *supra* note 15.

⁵⁸ *Id.*

⁵⁹ Gillian Linscott, *Esports, Sports Recognition, and Visas*, ESPORTS EDITION, (Nov. 18, 2018), <https://esportsedition.com/dota-2/esports-sports-recognition-visas>.

respect to traditional professional sports.”⁶⁰ There are two thresholds a plaintiff must meet to bring a case under section one of the Sherman Act.⁶¹ The first is when the Supreme Court explained in *Klor's, Inc. v. Broadway-Hale Stores, Inc.*, “to present a case under section one of the Sherman Act the plaintiff must first show that the defendant organization is operating commercially, either as a for-profit or not-for-profit institution.”⁶² Thus, the regulatory organizations of esports qualify as a commercial action because they impose regulation on their members.⁶³

The second threshold that needs to be met to bring a claim under the Sherman Act is that the conduct at issue must “govern more than just the rules of the game.”⁶⁴ The rules of the game is harder to define in esports due to its unique nature, but since these organizations are goals to regulate player aspects of the sport, like compensation and player transfers, then these would meet the outside of the rule threshold and the organizations are subject to the Sherman Act.⁶⁵

Corruption is a major concern in the regulation of the esports industry. This was highlighted by a recent case in South Korea in 2016, when a highly successful and prominent South Korean participant was convicted of throwing two

⁶⁰ Andrew Thiery, *Antitrust Law and the Internet: The Case Study of eSports*, CYBERBEAR, (Nov. 6, 2018), <https://cyberbeartracks.wordpress.com/2018/04/19/antitrust-law-and-the-internet-the-case-study-of-esports>.

⁶¹ *Id.*

⁶² *Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1959).

⁶³ Thiery, *supra* note 35.

⁶⁴ *Id.*

⁶⁵ *Id.*

StarCraft II games- fined, imprisoned, and banned for life from engaging in South Korean sponsored games by the South Korean judicial system.⁶⁶ According to the ESIC, match-fixing, hacking, and betting fraud are top priority issues in esports.⁶⁷ The ESIC has estimated that illegal betting in esports is currently at the annual level of \$2 billion.⁶⁸ However, preventing corruption is a difficult task because there are so many different esports leagues and tournaments and no single governing body with jurisdiction over the industry.

Another issue surrounding esports is the ownership of intellectual property. "Historically, game publishers were considered the ultimate guardians of eSports created around their game because those publishers could use their IP rights and practical control over the relevant game to assert control."⁶⁹ However, the broadcasting of an eSports event takes place predominantly online and though the game publishers own the copyright on the game, they often are not

⁶⁶ Owen S. Good, *Top StarCraft 2 champion indicted in second match-fixing probe*, POLYGON, (Feb. 12, 2019), <https://www.polygon.com/2016/4/24/11497810/starcraft-2-match-fixing-life-arrested>.

⁶⁷ Adam Thanos, *ESIC Statement on Appropriate Sanction for Cheating in Esports*, ESPORTS INTEGRITY, (Feb. 12, 2019), <https://www.esportsintegrity.com/2017/07/esic-statement-on-appropriate-sanction-for-cheating-in-esports>.

⁶⁸ Patrick Marshall, *Esports Boom*, CQ RESEARCHER, (Feb. 12, 2019), <https://library.cqpress.com/cqresearcher/document.php?id=cqresrr2019010400>.

⁶⁹ American Bar Association, *supra* note 40.

involved in the organization of tournaments.⁷⁰ Thus, the contracts deals between the publisher and the tournament organizer make it unclear who own the intellectual property rights among the publisher, stakeholders, organizers, clubs, broadcasters, and players.⁷¹ Furthermore, there is a lack of consistency regarding “how, where, and in what classes these trademarks should be obtained.”⁷² Therefore, the current system creates confusion and problems regarding the ownership of intellectual property.

An important issue related to IP involves the videogame publishers, who are generally unwilling to subject themselves to imposed rules and regulations legislated from external governing bodies. The publishing companies are extremely powerful and control the IP; therefore, this will be a very difficult regulatory challenge to overcome.⁷³ Thus, video game publishers are encouraged to introduce and enforce regulations to maintain the integrity of the sport.⁷⁴

Gambling is another major issue affecting the esports industry. The majority of esports betting derives from the use of in-game items like betting currency.⁷⁵ Countries have

⁷⁰ Lexology, *Top 3 predictions for eSports in 2019*, LEXOLOGY, (Jan. 28, 2019), <https://www.lexology.com/library/detail.aspx?g=dc292793-0d2a-402d-85bd-5761dea3d5c2>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Sam Cooke, *Lack of regulation in esports gambling remains a burden*, TOTALLY GAMING, (Feb. 12, 2019), <https://totallygaming.com/news/betting/lack-regulation-esports-gambling-remains-burden>.

⁷⁴ *Id.*

⁷⁵ Bryce Blum, *How the U.S. gambling decision will affect esports*, ESPN, (Nov. 19, 2018), http://www.espn.com/esports/story/_/id/23507383/how-us-supreme-court-gambling-decision-affect-esports.

different approaches towards gambling in esports. For example, Italy requires a general remote gambling license for offering bets on esports with cash winnings.⁷⁶ Moreover, France requires an *ad hoc* license to bet on esports.⁷⁷ Furthermore, in January 2019, Sweden passed a new gambling law which regulates Sweden's esports market.⁷⁸ "As the law just recently went into effect, it is unclear what the impacts will have on Sweden and outside of Sweden."⁷⁹ "It is possible other countries might want to follow suit to increase revenues and see the positive influences."⁸⁰

In 2018, U.S. Supreme Court struck down the Professional and Amateur Sports Protection Act (PAPSA), which prohibited states from authorizing sports gambling.⁸¹ "Each state must decide whether to allow eSports betting and establish its own regulatory framework."⁸² Now that esports betting is legal in the United States, there is an increased threat to competitive integrity, addiction, and underage betting.⁸³ Therefore, esports regulation needs to address these threats and develop a plan on how to combat gambling and enforce sanctions in esports.

V. PROPOSED REGULATION OF ESPORTS

⁷⁶ Lexology, *supra* note 53.

⁷⁷ *Id.*

⁷⁸ Nikolic, *supra* note 24.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Blum, *supra* note at 58.

⁸² Lexology, *supra* note 53.

⁸³ *Id.*

To address this regulatory problem in esports, there needs to be one organization that oversees the industry. The Fédération Internationale de Football Association (“FIFA”) is the international organization responsible for the World Cup specific bodies.⁸⁴ An organization, like FIFA, needs to be created and can then delegate powers to national bodies to regulate the sport in different territories throughout the world. “The standard of regulation should be defined by an overreaching parent organization who delegate regulation to smaller more ‘game specific’ bodies.”⁸⁵ The creation of this regulatory body needs to be sophisticated and forge its own path because of the uniqueness of esports and broad range of legal and business issues.⁸⁶

FIFA is football’s global governing body and was established in 1904 and includes 209 national football associations, which make up six continental confederations.⁸⁷ FIFA’s congress is its supreme and legislative body, which made up of representatives of the national member associations.⁸⁸ The Congress adopts and amends the FIFA

⁸⁴ Debra Mountford et al., *Local Development Benefits from Staging Global Events: Achieving the Local Development Legacy from 2012*, 1, 16 (Org. Econ. Coop. Dev. 2010), <https://www.oecd.org/cfe/leed/46207013.pdf>.

⁸⁵ James Dickinson et al, *What is eSports and how should it be regulated?*, HARRISON DRURY (Nov. 19, 2018), <https://www.harrison-drury.com/business-law/sectors/sports/what-is-esports-and-how-should-it-be-regulated>.

⁸⁶ American Bar Association, *supra* note 40.

⁸⁷ John G. Ruggie, *For the Game. For the World. FIFA and Human Rights*, 1, 6 (Harv. Univ. 2016).

https://www.hks.harvard.edu/sites/default/files/Ruggie_humanright_sFIFA_reportApril2016.pdf.

⁸⁸ *Id.* at 15.

Statutes, which are its constitution.⁸⁹ FIFA's President chairs the council, and together with Congress, are FIFA's political bodies.⁹⁰ FIFA also has a dispute resolution system, which deals with disputes involving confederations, member associations, leagues, clubs, players, officials, licensed match agents or players.⁹¹ Intermediaries must be submitted to arbitration and appeals against a final FIFA decision may be taken to the Court of Arbitration for Sport (CAS), an independent institution based in Switzerland.⁹²

FIFA is subject to Swiss law and can be extradited to other countries if found to have broken the law. FIFA is a private organizations the adopts rules that have a legal impact in a legal framework imposed by the state.⁹³ At national level, the legal autonomy is under the scope of civil law for organizational construct, fiscal law for tax exemptions, and corporation law for contractual issues.⁹⁴ These organizations fall under the provision of the Swiss Civil Code which provides minimum requirements for an association to be

⁸⁹ FIFA Statutes, *Regulations Governing the Application of the Statutes Standing Orders of the Congress*, 24 (2015), <https://img.fifa.com/image/upload/qcpshqziazmmikh6tk5.pdf>.

⁹⁰ Ruggie, *supra* note 42, at 6.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Michael Mrkonjic, *Sports organisations, autonomy and good governance*, Danish Inst. for Sport Stud. 133, 135 (Action of Good Governance in Int'l Sports Organisations, Working Paper), www.playthegame.org/fileadmin/documents/Good_governance_reports/AGGIS-report_-_13Sports_organisations__autonomy_and_good_governance__p_133-150_.pdf.

⁹⁴ *Id.*

created, such as writing and adopting statutes, having an ideal objective.⁹⁵

An organization similar to FIFA needs to be created to oversee the esports industry. To this end, the FIFA esports Major League soccer was recently launched by this international organization, thereby extending its reach into the esports industry.⁹⁶ The eMLS leagues are rapidly increasing in number, and will compete for the eMLS cup, which is scheduled to take place in July/ August 2019.⁹⁷ These developments may poise FIFA to become a model for esports industry oversight internationally.

Its organizational structure should delegate power to national bodies to regulate the sport in different territories throughout the world. Individual countries participating in eFIFA events could establish governing bodies to interface national rules and regulations with FIFA requirements. To this end, individual countries are beginning to organize governing bodies to launch esports teams for the eFIFA tournaments. For example, The Football Association of Norway (NFF) will sponsor a team for the esports FIFA tournament.⁹⁸ Another example of regulation at the national level is the Korean

⁹⁵ *Id.*

⁹⁶ Ian Thomas, *MLS plans esports efforts for new game*, SPORTS BUSINESS JOURNAL, (Feb. 12, 2019), <https://www.sportsbusinessdaily.com/Journal/Issues/2018/08/13/Esports/MLS-esports.aspx>.

⁹⁷ AJ Dellinger, *'FIFA' eSports league eMLS expands to 22 teams*, ENGADGET, (Feb. 12, 2019), <https://www.engadget.com/2018/11/19/fifa-emls-2019-league>.

⁹⁸ Joe Lemire, *Norway's Soccer Federation Launches FIFA Esports Team*, SPORTTECHIE, (Feb. 12, 2019), <https://www.sporttechie.com/norways-soccer-federation-launches-fifa-esports-team>.

esports Association (KeSPA). Among the games it monitors are League of legends, Dota 2, Starcraft II and Counter-Strike Global Offensive (GS:GO). In addition, smaller regulatory agencies could be organized to supervise individual esports that, taken together, fall under the umbrella of an eFIFA-like organization

As a role model for esports regulation, FIFA is not without its own controversies. There have been accusations of corruption and bribery associated with the bidding process to host FIFA's international sporting events. For example, FIFA has been in the spotlight for numerous accusations regarding its bidding process. The United States Department of Justice extradited nine FIFA officials from Switzerland to be tried in the United States under United States law.⁹⁹ They were charged with bribery for allegedly accepting more than USD 150 million in kickbacks and bribes in exchange for the rights to sell television and marketing contracts.¹⁰⁰

Furthermore, FIFA's bidding process has been accused of corruption. FIFA is accused of corruption in both Russia and Qatar's winning bids to host the World Cup. Due to these allegations, FIFA was sued by a group of trade unions for labor abuses in Qatar, who was chosen to host the World Cup in 2022.¹⁰¹ However, the Commercial Court of Zurich rejected

⁹⁹ Matt Apuzza et. al., *FIFA Officials Arrested on Corruption Charges; Blatter Isn't Among Them*, N.Y. TIMES (Apr. 25, 2018), <https://www.nytimes.com/2015/05/27/sports/soccer/fifa-officials-face-corruption-charges-in-us.html>.

¹⁰⁰ *Id.*

¹⁰¹ Peter Walker, *Dutch union suing Fifa over 'modern slavery' at Qatar 2022 World Cup sites in landmark case*, THE INDEP. (Apr. 25, 2018), <https://www.independent.co.uk/news/world/middle-east/fifa-qatar->

the claim against FIFA.¹⁰² Therefore, FIFA has issues with corruption and bribery that must be addressed while developing a regulatory body for esports.

VI. MECHANICS OF REGULATORY BODY

Viewing esports regulation as legitimate is a major problem for the industry because it is unclear what laws apply and there are multiple organizations that claim to regulate the industry. It appears that the best approach to developing a successful esports regulatory model is for the esports industry to adopt the FIFA model and follow Swiss law. Following Swiss law will give every country and organization involved clear direction on what is tolerated in the industry. Furthermore, since extradition in Swiss law exists, there would be an enforcement mechanism available for countries and organizations that do not follow the rules. Thus, following Swiss law would address both confusion and enforcement issues in the esports industry.

Esports regulation should also follow FIFA's model by designating subordinate organizations responsible for different territories that still fall under the single regulatory body. Since, currently, there is such a crowded regulatory environment for the esports industry, the existing organizations could act under the main regulatory body in their respected regions and territories. This is based on the

world-cup-2022-migrants-dutch-union-slavery-fnv-bangladesh-court-legal-action-a7356191.html.

¹⁰² FIFA, *Swiss court rejects labour unions' claim against FIFA concerning Qatar 2022*, FIFA (Apr. 25, 2018),

www.fifa.com/governance/news/y=2017/m=1/news=swiss-court-rejects-labour-unions-claim-against-fifa-concerning-qatar--2862363.html.

FIFA model; for example, CONACAF oversees North America and acts as a branch under FIFA. In this way, the branches of the organizations can be the eyes and ears in their respected markets and can have a hands-on approach to issues that are directly affecting their region. Since there are major cultural differences across the esports industry, this approach will address some of those concerns and make each region more personal to the climate of the region in which it operates, while still falling under the oversight of a single regulatory body. Moreover, some of the current organizations that claim regulatory authority could be incorporated into this structure in their respected regions which will help with their current legitimacy and enforcement issues.

Utilizing the CAS is another way to tackle legitimacy concerns in the esports industry. Having a designated court to review claims in the industry supports a legitimate view that there will be an independent body reviewing claims of misconduct. Thus, companies and players will have an outlet and resource for misconduct, and it would also act as a deterrent for misconduct. CAS has experience hearing all different types of sport misconduct claims and is equipped with the resources to deal with the esports industry. Thus, the CAS can be a great mechanism in reinforcing legitimacy in the esports industry.

VII. CORRUPTION

Corruption is a major concern in the esports industry. Because esports are primarily an online competition, there is a greater risk of hacking concerns than with more traditional sports that are more tangible in nature. It is unclear on what will work best to stop interference during games. FIFA has had its own issues with corruption, so it is important to learn from its mistakes and to put bribery as a focus in the

regulation of esports as well. Because the winnings are extensive for these competitions, some corruption will be inevitable, which is why all claims should go through the CAS system to reinforce awareness that this type of behavior will not be tolerated and that everyone involved will be pursued legally.

VIII. ANTITRUST

Creating a single entity could trigger antitrust concerns. Sports in general can be viewed as a violation of the Sherman Act due to the anticompetitive effects. Different sports have different antitrust exemption. For example, the business of baseball is exempt from antitrust concerns. Statutory labor exemptions exist to allow for collective bargaining in unions. However, esports is a unique entity and since it is international, many different laws and interpretations apply.

Furthermore, intellectual property owners can be viewed as a monopoly because of their substantial control over the behavior of entities which rely on their intellectual property. This control can be viewed as a monopoly and thus, trigger antitrust concerns. Thus, the establishment of a union is necessary to give players in this industry collective bargaining power to tackle antitrust concerns. Major companies are involved in esports and players will need some outlet and support system when attempting to challenge any conduct that is deemed as anticompetitive.

IX. INTELLECTUAL PROPERTY

Intellectual property is a major revenue source in the esports industry, but it is unclear which organizations own which rights. To tackle in intellectual property concerns, the

regulation must have clear rules intellectual property ownership criteria. The current system creates great confusion as to whether the publishers or the tournament organizers own the intellectual property rights. As the growing popularity of esports increase, it is inevitable that disputes in intellectual property will arise as well. If these claims go through CAS, then the industry will receive some precedent on how intellectual property rights should be handled in this complex industry. Therefore, both clear intellectual property rules established by a single regulatory body and precedent from CAS claims resolution are essential to develop a working model to address this complex issue of intellectual property ownership.

X. GAMBLING

Every country addresses sports gambling in different ways. It will be very difficult to get everyone on the same page. That is why it is important to have clear rules regarding gambling during tournaments. Each county can tackle gambling in general how they see fit, but if the conduct appears during a tournament, that conduct should be subject to CAS to reinforce the legitimacy of the game.

XI. CONCLUSION

The establishment of a novel, global regulatory model for the esports industry is essential, given the unique aspects of this global enterprise. Regulatory requirements, while monitored by a globally recognized enforcement agency, must take in to account the diversity of esports elements that must be individually negotiated. These include, but are not limited to, the nature of the sport and associated player rules, the venue, private versus public events, betting and prize

allocations. In the absence of formal, negotiated agreements by participating corporations and nations with international organizational oversight, standardization and implementation of esports rules and penalties will not be achievable despite the best effort of individual nations to supervise the esports enterprise.

