

# esports & the Law

An overview of the esports industry and its impact on the legal profession.

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# e-What!?!



- Esports = competitive video gaming.
- Esports are not new - gamers have been competing against each other for over 30 years.
- Home consoles/PCs and access to faster internet allowed esports to take off.
- Esports involves individuals, or teams of players, competing against each other in certain video game titles.



# The NEXT Big Thing?

- Esports has had its ups and downs
- Waiting for it to be the NEXT Big Thing for years
- Why now?
  - Gameplay against anyone, anywhere at anytime
  - Games are far more social than they used to be
  - How we consume entertainment is changing
  - Explosion of mobile gaming
  - FORTNITE – the free-to-play, Battle Royal model
  - Access to esports players is unrivaled



# So...IS it the Next Big Thing?

- **NO. Because it already IS a BIG THING!**
  - Who here has not heard of FORTNITE?
  - Who here has actually played FORTNITE?
  - Who here has seen their child, neighbor, niece or nephew do a FORTNITE dance?
  - Who here can DO a FORTNITE dance?
  - **Competitive entertainment is the new norm for young consumers** – from streaming content to social interaction
  - Overtaking traditional sports viewership
  - When you add the organizational structure, you add sustainability.







# Why should YOU care?

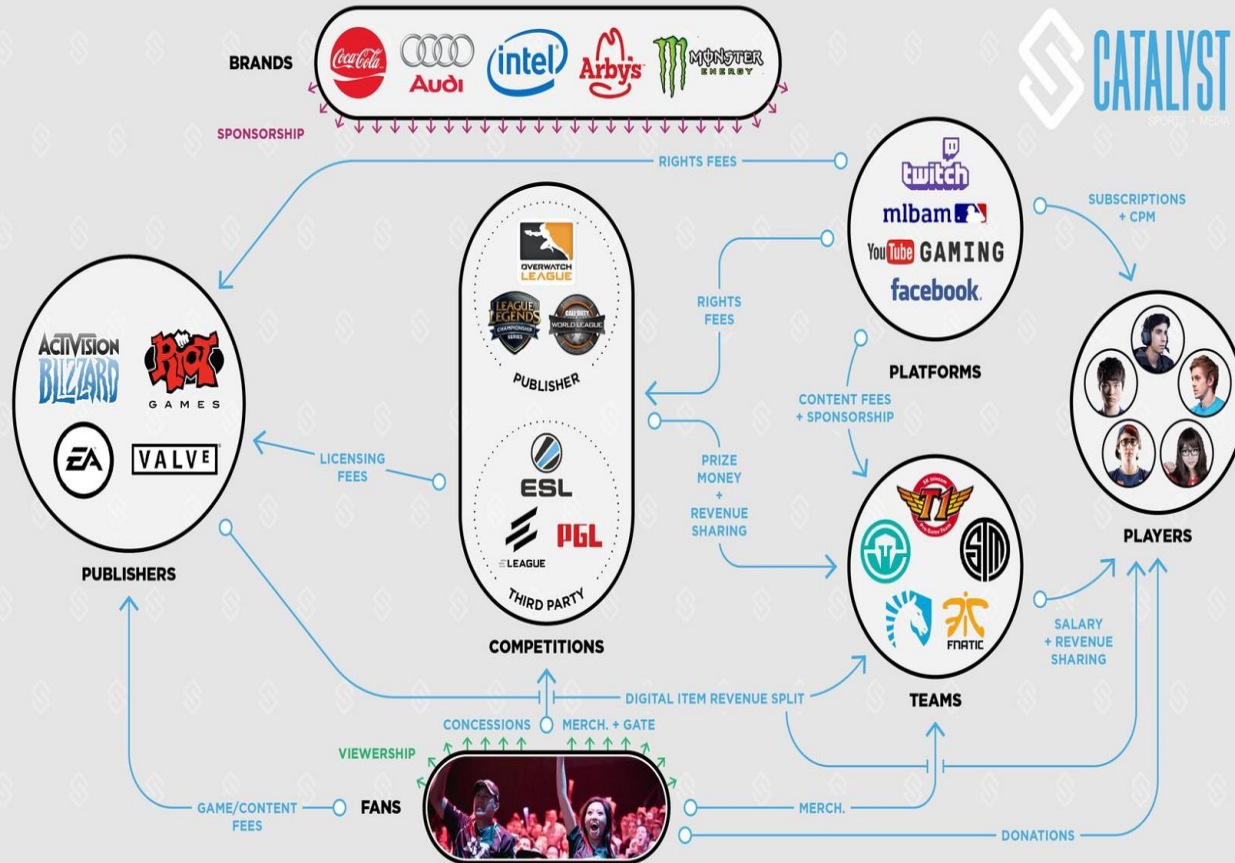
## ■ *Show me the money!*

### ■ *Corporate Success in a Millennial World*

- Audience: The marketing analytics firm Newzoo predicts the global esports audience will grow to 380.2 million this year, up from 335 million people in 2017.
- Demographic: Average age of fans and viewers is between 18-34, mostly male but that is changing.
- Big \$\$\$: Revenue estimates put global esports at \$905.6 million in 2018, with projections of \$1.4 billion by 2020.
- The US Market: 40% of that revenue estimate is projected to be here in North America!
- Local Impact: According to the CFO of the Philadelphia Fusion, a professional team in the Overwatch League, there are 40 million+ Overwatch gamers worldwide, and more than 300,000 of those gamers live in the Philadelphia region.



# THE 2017 ESPORTS ECOSYSTEM



Ecosystem Credit: Catalyst Sports



## ■ **PUBLISHERS**

- Game publishers create and distribute video games. Major publishers include Blizzard Entertainment, Riot Games, EA Games, and Valve.

## ■ **GAMES**

- Multi-Player thematic video games, ranging in maturity from Everyone Mature/Adults Only which may feature first person shooter. Top 5 most popular games are DOTA 2, League of Legends, Counter Strike: Global Offensive, and Hearthstone

## ■ **LEAGUES**

- Usually organized by the Publisher, Leagues are named for the Game and consist of recognized Teams, but can be organized by third parties.





## ■ PLAYERS

- Any player of a Game/s who belongs to a Team and who plays or has played or attempts to play against another Player in a Tournament.
- Celebrity Players Ninja and Marshmello play Fortnite



## ■ TEAMS

- Esports teams are organizations which typically oversee multiple esports rosters/players under one unified brand.



## ■ TOURNAMENTS

- Tournaments are created and hosted by event organizers. Competitions are run either directly by game publishers, such as Riot's 'League of Legends Championship Series' (LCS) and Activision-Blizzard's 'Overwatch League' (OWL), or by third parties, such as Turner's 'ELEAGUE', and Electronic Sports League's (ESL) 'ESL One'.

## ■ VENUES

- Existing large venues, like MSG and Staples center have hosted tournaments, but there has been an increase in purpose built esports venues like the Luxor in Las Vegas. Locally, the Whitaker Center will host Harrisburg University college tournament.



## ■ **BROADCASTING**

- Streaming networks and social media platforms. Twitch has dominated this marketplace since it was founded, but YouTube Gaming and Facebook are now streaming.

## ■ **SPONSORS**

- Companies that sponsor within the esports ecosystem. These include Bud Light, Geico, Coca Cola, Razer, Intel, T-Mobile. Sponsorship takes the form of team sponsorships, jerseys, ad runs, individual player partnerships, league/competition sponsorships.



## ■ FANS/AUDIENCE EXPERIENCE



# Pennsylvania

- **Professional Teams:**
  - Philadelphia Fusion
  - Pittsburgh Knights
- **Higher Education:**
  - Harrisburg University, Lebanon Valley College, Lackawanna College
- **Venue:**
  - Whitaker Center
- **Trade Association:**
  - PA Esports Coalition





# Esports Revenue

- Media Rights
  - Advertising
  - Sponsorship
  - Merchandise
  - Ticket Sales
- Traditional sports model doesn't necessarily fit
- There is no one area that consists of the bulk of revenue since the industry is growing rapidly



# Media Rights

- *“The battle for media rights in esports has global ramifications, and billions are in the balance,” said Jason Lake, founder of compLexity Gaming, a franchise with teams in “Overwatch,” “Counter-Strike: Global Offensive” and other titles.*
- **Publishers have entered into contracts with broadcasters such as ESPN, TBS, Disney.**
- **Most still prefer to stream on Twitch, Facebook, and YouTube.**



# Adverstising

- *"If you are a CMO and you are not in esports in 2017, you are going to risk getting fired," said Tobias Sherman, global head of esports at talent agency powerhouse WME-IMG.*
- **Non-traditional in that it is streaming content online and sometimes difficult to measure returns and fair pricing.**
- **Different demographics for each game.**



# Sponsorship

- **Most of the revenue in esports comes from Sponsorship.**
- *A league's health --and its accessibility to outsiders - can be measured by how many sponsors it has that are nonendemic, meaning from categories that do not sell products directly related to video game playing. E.J. Schultz. Published in AdAge on June 01, 2017.*
- **Intel, Coca-Cola, Comcast Xfinity, Red Bull, Mountain Dew, T-Mobile.**



# Merchandise and Ticket Sales

- Most teams lack a home arena, so events are held at neutral locations. This results in teams and organizers sharing in ticket revenue.
- Jerseys, thunder sticks, other branded items like computer equipment.





# Legal Issues

- **Governance and Regulation**
- **Intellectual Property**
- **Contract Issues**
- **Labor and Employment**
- **Immigration**
- **Gambling**



# Governance and Regulation

- **Tournament Model for esports has little to no uniform structure.**
- **Each Tournament varies as to Rules and Integrity Standards depending on the League or the Game, some stricter than others.**
- **Top Integrity Issues include cheating, corruption, and doping. Esports Integrity Coalition is promoting standards.**
- **Due process issues exist for ineligibility determinations.**
  - Example: In 2016 Harvard University's Team Ambush was disqualified from a Heroes from the Storm Tournament run by Blizzard Entertainment for using an unregistered substitute in play. Hundreds of teams had competed to enter the tournament, which had a prize of \$75,000 in tuition money. Harvard accepted disqualification and publicly apologized.



# Intellectual Property

- Unlike traditional sports, game developers and publishers own the underlying intellectual property, not the teams or players.
- Organizers of esports events have to ensure that they obtain the necessary usage rights to make the games publicly available at their events or through other means.
- For players and teams to make money, they can register trademarks for team names, nicknames, gamer handles, logos.



# Contract Issues

- **Contracts made between parties in the esports ecosystems often include multiple international jurisdictions.**
- **Traditional contracts for venue rental, land purchase and development, and other tangible items play a significant part in this industry.**
- **Player Contracts: Employment, Winnings, Merchandising, Streaming, and Sponsorship.**



# Labor and Employment

- **Player rights and player representation**
  - Free agency, player eligibility.
  - Unions and collective bargaining.
  - Independent contractors are outside the ambit of most employment laws, such as the federal Fair Labor Standards Act.
    - **FLSA, the favored test for determining employee status is the “economic realities test.” This test requires an assessment of various factors, such as: the nature and degree of the owner’s control over the manner and means of work, the player’s opportunity for profit or loss, the player’s investment in equipment or materials, the specialization of skill involved, the permanency of the relationship, the extent to which the services provided are an integral part of the owner’s business, and the circumstances of the relationship as a whole. Ultimately, the test inquires whether the worker is economically dependent on the putative employer. If so, the worker is an employee.**
- **International HR issues for companies.**





# Sample Esports Player Contract Excerpt

## COMPENSATION

The Team agrees to pay the Player for rendering the services and performing the obligations described herein an amount of \_\_\_\_\_ per month, pro rata, less all amounts required to be withheld by any governmental authority.

Insert the following compensation sections below if applicable:

[Signing Bonus]

[Performance Bonus]

[Equipment Provided to Player]

[Housing Stipend]

[Health Insurance or any other benefits]

[Trade Payments]

[Advertising and Intellectual Property Compensation]

## SERVICES

The services to be rendered by the Player pursuant to this Contract shall include:

A. Attending \_\_\_\_ hours of team practices and meetings per week, with a regular schedule to be determined ~~at a later date.~~

B. Attendance at team "boot camps" before all major tournaments, all travel expenses to be covered by the Team.

C. Participation at all major tournaments [as determined by the esports game at issue], and at minimum \_\_\_\_ minor tournaments per month. This includes participation with "media events" at these tournaments, including, but not limited to, signings, interviews, and panels.

D. \_\_\_\_ hours of streaming content on Twitch/YouTube/Facebook per month.

<http://www.lawsofesports.com>



# Esports Players Associations and Unions

- **Riot Games to launch Player's Association**
  - Union LITE
- **Recent efforts to form a union in Blizzard Entertainment's Overwatch League**
  - A union is a group of employees working collectively and certified by the National Labor Relations Board (NLRB).
  - Can be recognized by the NLRB and/or the Employer
- **Esports Leagues are based on Games, which fluctuate in popularity, the static terms of an NFL or MLB contract don't fit as well in esports.**



# Immigration

- **Major esports competitions are held across North America, Europe, South Korea, and China.**
- **Are esports players “athletes” for purposed of the P1 visa?**
  - The P-1 visa category is designated for internationally recognized athletes and teams coming to the U.S. to participate in athletic competitions.
  - Immigration regulations do not define the term “athlete,” or “internationally recognized” so this is a case by case subjective determination by U.S. Citizenship and Immigration Services (USCIS).
- **Riot Games successfully facilitated the first P-1 visa for an esports competitor in 2013.**
- **Attendance at U.S. Universities.**



# Gambling

- In October 2017, Governor Wolf signed Act 42 into law. Act 42 authorized significant gambling expansion in the Commonwealth and included preemptive authorization of sports betting.
- On May 15, 2018, in *Murphy v. National Collegiate Athletic Association*, the Supreme Court struck down the Professional and Amateur Sports Protection Act of 1992 (PASPA). PASPA specifically prohibited any government or individual from operating, sponsoring or licensing a gambling or wagering scheme.



# Esports Wagering

- The esports betting site Unikrn estimates that legal wagering, done outside the US, has amounted to about \$2 billion in wagers, and illegal sports betting is bringing about \$8 billion in wagers.
  - Tournament wagering, skin betting, loot boxes.
- Various sites offered esports wagering using crypto-currency for those in jurisdictions where it is illegal.
- The databases to support the esports sportsbooks have been cultivated over the last few years.





# What is happening in the United States?

- In Nevada, individuals can wager on esports through pari-mutuel bets.
- In New Jersey, the legislature seemed to explicitly ban esports wagering. However, regulations were issued to clarify that this ban pertained to high school esports events.
  - A 'prohibited sports event' includes all high school sports events, including high school electronic sports events and high school competitive video game events, and any electronic sports event in which any participant is 17 years old or younger.
- States that permit sports wagering can add esports to their Sportsbooks.



# Pennsylvania and Esports Wagering

- There is no statutory ban on esports wagering, it is under the discretion of the Pennsylvania Gaming Control Board.
- Temporary regulations released last week did not specifically ban esports.
- The Board will continue to issue regulations pertaining to sports betting and it will be those regulations which will prescribe whether and in what manner esports wagering may be conducted in the Commonwealth.





Any Questions?



# ESPORTS SEMINAR

September 7, 2018

**Whitaker Center**

222 Market Street  
Harrisburg, PA 17101

McNees Wallace & Nurick LLC in partnership with  
Harrisburg University and Whitaker Center for Science and the Arts



Lunch sponsored by the Pennsylvania Esports Coalition

