

Esports Law and Practice

Chapter 1 – The organization of esports tournaments: an overview

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1 Introduction

The esports industry is a global industry, which is reflected, *inter alia*, in the transnational nature of esports tournaments. While there are myriads of examples of country-specific esports events, particularly (but not merely) at the “grassroots” level, often with minimal intervention/participation of the publisher, some of the most popular esports competitions either have an origin, or at a later stage acquire, a transnational dimension. This means that they are open to, and see the participation – which may be physical, online or both, depending on the choices made by the organizer in respect of the structure and nature of its tournament - of, players and teams from all over the world.

While publishers organize their esports ecosystems as global phenomena, from a legal standpoint, their worldwide approach implies that the national laws of each country whose residents are allowed to participate in may be applicable and should in principle be taken into consideration for compliance purposes. This generates regulatory complexity, given the lack of harmonization of the laws applicable to this area.

Such lack of harmonization makes legal compliance costly and time consuming (and therefore, in principle, inefficient) for tournament organizers. Also, as it often happens with new phenomena, esports are largely unregulated at national law level and the legislative vacuum leaves the door open for inadequate, and sometimes obsolete, State-made rules that, albeit not specifically addressing esports, may nonetheless be applicable to them, with negative implications from a compliance (and risk) perspective.

This regulatory risk may easily, and it often does, in fact, translate into the exclusion of a “problematic” country from the list of eligible countries of a given competition or, more generally, into a disincentive to invest in the local industry altogether. In turn, this has negative repercussions on the local industry’s development and, therefore, on the development of the worldwide esports movement.

Tournament organization is an interesting, albeit somewhat challenging, area of legal practice. In addition to having to be familiar with the game itself (and its built-in game design rules) and with the web of contractual rules that are set by the publishers for their esports tournament ecosystems, practitioners operating in this space have to navigate themselves through a significant level of regulatory uncertainty. This regulatory uncertainty, and the compliance risk it generates, has historically caused significant anxiety to organizations operating in this industry and has served as a disincentive to invest on the part of potential new entrants. Thankfully, the perception of esports being a high regulatory risk industry is being progressively overcome, more rapidly in some countries (e.g., the UK) than in others (e.g., Italy). This result seems to be due primarily to national regulatory Authorities acquiring more familiarity with the esports phenomenon, accepting its socio-economic significance, and somehow supporting it, and has positively impacted on the growth of the industry.

While a legalistic approach may scare off clients and lead to projects being abandoned absent compelling reasons to do so, real risks must be represented and flagged by legal counsels to their clients. To strike a balance, a somewhat flexible and realistic approach to risk assessment and management is suggested in this area of legal practice. In particular, the regulatory risk analysis should be conducted and based not only on the hard letter of the law but also and, perhaps equally importantly, on other “soft” factors such as the actual enforcement levels of a certain (problematic) statutory provision, the general climate/sentiment vs. the esports industry in that country and so on. Also, a creative and out-of-the-box thinking may be required of practitioners to devise solutions that may allow to work around problematic regulatory provisions and identify tournament structures capable of mitigating risk.

This aims to provide an overview of some of the key aspects that are relevant to the organization of tournaments, and it is not intended to cover all the legal issues that come into play in the context of organizing and operating an esports tournament. Instead, it is meant to offer some essential information and some pointers, which may be useful

in particular to practitioners that have little familiarity with the esports industry, to help professionals put the topic of tournament organization into perspective.

In the first part of this chapter, some general considerations will be laid out in connection with the key factors that contribute to the shaping of esports tournament ecosystems, followed by an overview of the different approaches that some of the leading publishers have implemented in connection with the competitive dimension of their games.

In the second part of this chapter, a methodological approach, designed around some “must address” points/questions, is offered for use by practitioners to identify potential regulatory hurdles and restrictions. The national rules of some selected jurisdictions are then examined at a high level with a view to providing tangible examples of the regulatory hurdles that may arise in connection with esports tournament structures and the associated compliance implications.

In the third and last part of this chapter, the present esports landscape will be looked at from a governance standpoint, with a view to putting into perspective some of the factors that may bring about changes to the current model centered around the pivotal role of the publisher.

2 Open tournaments, closed tournaments and franchise-based leagues

Perhaps the two factors that are most impactful on the shaping of an esports ecosystem are (i) the level of involvement of the publisher in connection with, and the degree of control it exerts over, its game competitive environment (also considering possible publisher’s open licensing programs), and (ii) whether the publisher chooses to implement a franchise model.

2.1 The level of publisher’s involvement in, and control over, its ecosystem

Since the publisher owns the IP rights to its game title, the involvement of any third-party in respect of the organization of an esports tournament event requires, in principle, the authorization of the relevant publisher.

The structure of the relationship between the publisher and third-party tournament organizers has a profound impact on the shaping of the ecosystem.

The publisher may decide to retain a complete or high degree of control over its videogame title by organizing tournaments directly (at least the most important ones). In this scenario, if any third-party tournament organizer is involved, its role is that of a mere service provider acting in the name and on behalf of the publisher, which will formally be the (sole) organizer of the tournament event and impart instructions to its outsourcing partner.

As one could imagine, this may be a viable option only for publishers that have the expertise, and possess the organizational means, that are necessary to run tournaments (which publishers may not necessarily have).

Also, since the organizational efforts involved are very significant, even the most structured publishers apply this model only to key international competitions (e.g., Riot Games uses it for its League of Legends World Championship).

Alternatively, and quite commonly, publishers who do not possess the specific expertise and adequate organizational means required to manage tournaments themselves (or do not simply have an appetite to do it) may decide to outsource tournament activities to one or more third parties. In this scenario, an agreement between the publisher and the third-party service provider will specify in some details the parties’ respective rights and obligations and will ultimately ensure that the publisher will maintain a sufficient level of control on – and receive a fair share of the revenues generated by – the tournaments (this is, for instance, the model being used by Valve in respect of its Counter Strike: Global Offensive title).

The publisher's willingness to retain a higher degree of control over its esports title and to leave little or no maneuvering space to its outsourcing partner, as well as the publisher's looking to limit its commitment to a title or to the relationship with the third-party party, may turn out to be factors disincentivizing investments by the latter. In fact, organizations may see these factors as an indication of the risk that the publisher may decide to disinvest in a title (or simply in one country/region), or to "go direct" once it's acquired the necessary expertise and organizational infrastructure, thus preventing the partner from recouping the investment made.

Even when a third-party organizer may be able to obtain a certain level of commitment from the publisher (e.g., in respect of the minimum duration of the relationship, the publisher's support including financial/marketing support etc.), its position seems to be affected by a significant (albeit varying from one case to another) degree of inherent precarity and therefore be somehow vulnerable. The vulnerability of the position of third-party organizers due to the publisher's decisions may, in turn, reflect on (the vulnerability of) the entire ecosystem, which may appear less appealing/investable to other potential stakeholders (e.g., teams, players and sponsors).

2.2 The franchise model

On a general and preliminary note, tournaments may be divided into two categories: open and closed tournaments.

Open tournaments are tournaments to which the participation is open to anyone who meets the requirements set by the organizer (be it the publisher or a third-party). Some of these requirements may be related to a player/team performance track record. Conversely, closed tournaments are open only to players/team who are picked or invited to participate by the organizer¹.

In principle, open and closed tournaments involving the same title may co-exist in the same geography (i.e., a region, a state, a city etc.).

When a publisher wants to ring-fence the game's professional scene in a certain geography, it will create a (franchise-based) "league", which is a series of closed tournament events that are part of a same championship/competition.

The franchise-based league model in esports is derived from the traditional sports industry and, in particular, from the North American professional scene.

In a franchise-based league, a certain (limited) number of teams (so called "franchises"), which have previously bought the right to participate in the league (the so called "slot"), may have access to the competition. Unlike in an unfranchised league, where teams earn access to the competition by winning games through promotion-based mechanisms, but equally may lose their participation rights through relegation in the event of unsuccessful results, in a franchise-based league there is no risk of relegation, which gives stability to the ecosystem and allows the franchises to potentially work their business strategies over the medium and long term. Also, franchises normally benefit from financial/marketing support from the leagues, while pro players are guaranteed by certain minimum standards (e.g., minimum salaries and a minimum contract duration), which are also factors that contribute to making the ecosystem of franchise-based leagues, in principle, more stable.

In general, as franchise-based leagues require significant investment from the franchises, this model tends to be a viable choice only for those videogames/regions that can count on a well-established competitive scene, somehow supported by a favorable regulatory framework and public sentiment.

¹ The definitions of open and closed tournaments used here is not universally accepted and different meanings may be given to these terms (e.g., sometimes open tournaments are intended to include only tournaments which do not have any qualification requirement).

Because of these requirements, it is possible that publishers may decide to set up a franchise-based league in a certain country or region, while keeping tournaments open in other countries/region(s), where they believe the competitive scene is not yet ready for that model.

Franchise-based leagues are often operated directly by the publisher (e.g., Activision with its Call of Duty League, Blizzard Entertainment with its Overwatch League or Riot Games with its League of Legends Championship Series), even though there are instances where leagues are actually operated by third party organizers or by a joint venture between the publisher and a third-party tournament organizer (e.g., the NBA 2K League which is operated by joint venture between the National Basketball Association and Take-Two Interactive).

The publisher's choice between the franchise-based and the unfranchised models has a great impact on the ecosystem. Since franchise-based leagues tend to be administered directly the publisher, the room left for third-party tournament organizers to play a meaningful role may be little. Equally, in franchise-based leagues the role and weight of teams (other than franchise teams) within the ecosystem will be more limited as all major events/tournaments relating to the title will be managed by the league organizer and open only to those who bought a slot.

2.3 Open licenses

Even though the publisher has chosen to embrace the franchise model and perhaps is willing to retain a high level of control over its ecosystems, the focus of the publisher will normally be on the high-end pro scene. This does leave room for interested third-party tournament organizers to get involved in the semi-pro and grassroots scenes, and therefore play a role within the ecosystem, since publishers will normally have an interest that players' and community's engagement is cultivated also below the pro level.

In order to incentivize third-party involvement, most publishers embrace a system of open licensing, making available licenses (often on their website) that allow interested third parties to legally organize events, in accordance with the terms of the applicable license.

The structure, extent, and content of these licenses, which are commonly referred to as "community licenses", vary significantly from one publisher to another and so does the process laid down by publishers for entering such licenses.

In essence, community licenses are standard license agreements that may be entered into between the publisher and a third-party without the need for individual negotiations. Publishers often require that a process is followed by the interested party with a view to ensuring that the publisher has visibility over the community tournaments taking place in a certain territory (e.g., the publisher may require the tournament organizer to fill in a module and/or submit a specific request and possibly wait for the publisher's express confirmation that the license has been granted).

The most common terms and limitations imposed by publishers as part of their community licenses relate to (i) the value of the tournament prize pools and the amount of the revenues tournament organizers are allowed to make (as publishers will generally be willing to limit the economic relevance of tournaments bringing no direct revenues to them); (ii) the possibility of requiring an entry fee for the players/teams, as this feature may entail some regulatory risk in certain countries (refer to paragraph 3), and publishers want to avoid bad PR risks associated with non-compliance; (iii) the possibility of using tournament media content including the publisher's IP (as publishers may want to retain a certain level of control over its use, especially when the use may be economically relevant, as in relation to TV broadcasting), and (iv) brands sponsoring the tournament, as publishers may want to avoid their game to be associated with certain brands or products.

With some approximation, it may be noted that when a publisher retains a lower level of control over its game ecosystem and/or adopt an open/unfranchised tournament system, the publisher will tend to make available broader scoped/more permissible community licenses to interested third-party tournament organizers.

Conversely, a publisher willing to remain firmly in control of the competitive scene is much more likely to impose tight limitations vis-à-vis tournaments falling outside the franchised league environment. This may be done either by making available very narrow-scoped community licenses or by making available no community licenses at all. For instance, Activision is not currently offering any community licenses in relation to its Call of Duty game, which means that potentially interested third-party tournament organizers have to engage directly with the publisher in individual negotiations in order to obtain a license authorizing their Call of Duty tournaments.

This said, the terms of a license – whether a standard community license or a license individually negotiated – will most likely require that the tournament organizer give certain guarantees, including assuming the responsibility that all its tournaments will be compliant with applicable legislation. Moreover, the terms of the license generally bind tournament organizers to also comply with the publisher’s terms of service and associated policies (e.g., the code of conduct applicable to players), which means that the tournaments organized by them will have to meet the publisher’s requirements and that the participating players will have to conform to terms set by the publisher.

2.4 Overview of some leading publishers’ approach to tournaments

This paragraph will briefly describe the different approaches adopted by some of the leading publishers vis-à-vis the competitive environment related to their games and will illustrate some key aspects and limitations of the community licenses currently available to external tournament organizers (see also Table 1, at page 12).

2.4.1 Valve

Publisher’s degree of control: Valve Corporation (Valve) is considered an example of a publisher exercising a lesser degree of control over its game ecosystems and giving third-party tournament organizers plenty of space to operate.

For the videogame Counter Strike Global Offensive – CS-GO, Valve has been cooperating for years with major tournament organizers and, in particular, with ESL (now ESL-Faceit Group), which is operating the main international tournaments relating to this title.

Franchise vs. unfranchised models: The Valve fan base has been very vocal about its opposition to the implementation of measures limiting the participation of teams to its tournaments, and the publisher, which has always claimed to put the community’s will first, seems to have listened. Therefore, Valve has not yet embraced the franchise model in respect of its game, whose ecosystem remains totally open.

Community license structure: Valve offers a centralized procedure for interested parties to apply for a license².

Each license needs to be specifically granted by Valve upon request from the applicant. The application is made via the submission of a standard form and requires acceptance of the publisher’s license terms³.

Valve’s community licenses have a very simple structure; perhaps the simplest within the esports tournament scene. It contains a few (standard) limitations. For example, a size limitation is applicable to the tournaments (which currently cannot exceed 1000 players), as well as a duration limit (the license covers tournaments that last up to 180 days); there is a frequency limit tournament organizers must observe (the same tournament organizer

² The application related to Dota2 and CS-GO can be submitted online using the standard form made available at <https://store.steampowered.com/tourney/signup> (last accessed on May 22nd, 2023)

³ Valve’s set of terms applicable to community licenses is available at https://store.steampowered.com/tourney/limited_license (last accessed on May 22nd, 2023).

cannot organize more than 4 tournaments per month) and a maximum duration limit for the broadcasting of gameplay on TV (which is 4 minutes, unless authorized by Valve).

Surprisingly, Valve's community licenses do not currently impose limitations on the value of the tournament's prize pools nor on the value of the revenues received by the tournament organizer and are, therefore, suitable for larger-scale events.

2.4.2 *Riot Games*

Publisher's degree of control: historically, Riot Games has been seen as a publisher retaining a high level of control over the esports tournament scene of its videogames. The "hands on" approach taken by the publisher vis-à-vis its League of Legends – LOL title is still one of the best examples in the industry of how the direct involvement of the publisher can benefit the growth of a healthy and sustainable ecosystem. Despite the know-how Riot Games has gained with LOL, when it comes to its latest esports title, Valorant, the publisher seems to have chosen to leave more room for meaningful involvement by third-party tournament organizers, which different approach may perhaps be explained in terms of it being instrumental to the wider promotion of the new title via tournaments.

Franchise vs. unfranchised models: Riot Games has embraced a franchise-based model for LOL since 2018 and has announced that this model will be applied also to Valorant starting in 2023. However, in an initial phase, Valorant teams will not be asked to buy a slot, which allows teams to grow and establish their position via sponsorship agreements and to have more financial resources to invest on players.

Community license structure: the strongly felt presence of Riot Games within the competitive scene of its games is somehow balanced by the availability of a set of community licenses covering tournaments of different scales. Community licenses are available for small tournaments, medium tournaments and academic tournaments⁴. Some indications on standard limitations applicable to major tournaments licenses are also made available on Riot Games' website, although it's assumed that most of the relevant license terms related to larger scale tournaments will have to be individually negotiated between the tournament organizer and the publisher.

The terms of these licenses are substantially the same for both LOL and Valorant.

In general, all these community licenses, irrespective of the scale of the event, (i) are not intended for brands and are not meant to cover promotional activations; (ii) are only applicable to national events taking place in some countries as listed by Riot Games; and (iii) are not applicable to tournaments which are open to pro players; (iv) impose some standard limitations on sponsorship agreements (including that brands must not be included as part of the tournament name; esports associations/federations or similar entities involved at governmental level and/or binding their members under a common policy cannot participate as sponsors; sponsors are never granted any of Riot Games' intellectual property rights).

The procedure to obtain a license in connection with medium, major and academic tournaments requires the applicant to complete an online form providing information on the tournament so that the publisher can review the application and decide on the grant of the license or its refusal⁵. The terms of community licenses for medium and

⁴ Riot's guidelines for organizing small, medium, multi-school and major tournaments related to League of Legends are available at <https://riot.eurcommunitycompetition.com/games/league-of-legends/guidelines> and related to Valorant are available at <https://riot.eurcommunitycompetition.com/games/valorant/guidelines> (last accessed on May 22nd, 2023).

⁵ The application can be submitted online using the standard form made available for League of Legends at <https://riot.eurcommunitycompetition.com/tournament-form?game=lol> and for Valorant at <https://riot.eurcommunitycompetition.com/tournament-form?game=valorant> (last accessed on May 22nd, 2023)

major tournaments are standardized only in part while most (for major events) or some (for medium event) of the terms will be individually negotiated with the publisher.

As for the key elements/limitations included in the community licenses, they vary significantly depending on the scale of the event.

Small tournaments are reserved to non-commercial organizations and there is no formal requirement for the organizer to fill in a license request if the tournament complies with the strict limitations imposed by the license. However, on its website Riot Games makes available a questionnaire, which the organizer can complete in order to check with the publisher that the tournament qualifies for a small tournament community license.

The limitations included as part of this type of license cover, for example: the prize pool (which cannot exceed EUR 2.000,00 in cash - or EUR 2.2500 in non-cash prizes – for each event, and EUR 20.000,00 in aggregate for all the tournaments throughout the year); the entry fees (which may only cover the tournament costs and/or contribute to the prize pool); sponsorship opportunities (the tournament organizer may only have one partner; the sponsor contribution for the tournament cannot exceed EUR 10.000,00 and the tournament organizer cannot receive more than EUR 50.000,00 in sponsorship contributions for any tournament relating to the same game in a calendar year); gameplay broadcasting (only online broadcasting is allowed), and to the tournament's duration (the tournament is required to be a standalone event lasting a maximum of 4 weeks).

Medium and academic tournaments can be operated also by commercial organizers that, having completed the application process, have received confirmation from the publisher that the license has been granted. These licenses are still subject to significant limitations also due to the high level of control that Riot Games exerts over its games' competitive environment. These limitations apply to: entry fees (which are prohibited for academic tournaments and may only cover the tournament costs and/or contribute the prize pool in medium tournaments); the prize pool (which in medium tournament must not exceed EUR 50.000,00 for each event and EUR 200.000,00 in aggregate for all the tournaments operated by the licensee throughout the year); the possibility of charging a fee to spectators (no fee can be charged for online spectators). Moreover, this type of licenses – in the same way as the small tournament license - contain the prohibition for the tournament organizer to distribute sums received as entry fees, in the absence of a specific agreement with the publisher.

As for licenses relating to *major tournaments*, as already noted, these should be individually negotiated between interested third parties and Riot Games directly.

2.4.3 Activision and Blizzard Entertainment

Level of control: Activision and Blizzard Entertainment both retain a high level of control over the competitive ecosystem involving their main esports titles: Call of Duty – COD and Overwatch. While some major tournaments are organized by third-party tournament organizers, most of the main international events are operated by the publishers directly.

Franchise vs. unfranchised models: The Call of Duty League and the Overwatch League are both structured as franchises.

Community license structure: to date, Activision has not made available standard community licenses and therefore, any tournament organizer interested in the organization of a Call of Duty tournament should in principle reach out to the publisher directly to ask for a license.

Conversely, Blizzard Entertainment offers a detailed community license for Overwatch tournaments, which is available on its website⁶.

To enter a community license, the tournament organizer is asked to fill in an online form with some basic information about the envisaged tournament and submit it to the publisher for consideration⁷.

The Overwatch community license is available only for standalone events (and not for a series of events) and are precluded to a number of tournament organizers as broadcast platforms; multinational consumer brands or retailers or manufacturers of products or services related to the video game industry; publicly-traded companies, or organizations with annual revenues exceeding 250.000,00 USD, or subsidiaries or affiliates of such companies (this restriction does not apply to colleges, universities or an Internet gaming room, Internet café, or similar venues).

Moreover, these community licenses are subject to significant limitations, such as those, by way of example, in relation to: the value of the total compensation pool, including prizes, salaries and appearances cachets, fees paid by organizers and sponsors (which must not exceed 10.000,00 USD for each event and 50.000,00 USD in aggregate for all the tournaments operated by the applicant during a 12 months period); sponsorship opportunities (the organizer can accept up a 1.000,00 USD from each sponsor and up to a maximum of 25,000 USD in revenues from all sources, including from sponsors and online broadcast/streaming platforms, and 200.000,00 USD in revenues from all sources for all the tournaments operated by the applicant throughout a 12 month period; also, a lot of sponsors' categories are excluded); funding opportunities (no fees can be charged to spectators for live events; no compensation can be received from betting and compensation from crowdfunding cannot be retained by the organizer but can contribute to the prize pool); broadcasting opportunities (the broadcasting must never have a commercial purpose; organizers are not allowed to broadcast their events simultaneously to any Overwatch League event or other branded event promoted by Blizzard Entertainment or combined with competitions relating to other games, nor are they allowed to charge spectators a fee; they should not broadcast the gameplay on TV; they must undertake to broadcast on any platform as requested by the publisher; they have to comply with the rating requirements and with any obligations as included in Blizzard Entertainment policies, under which – they must *inter alia* moderate any chat that may be made available by the platform); side business (no merchandising is allowed).

2.4.4 *Epic Games and Psyonix*

Publisher's degree of control: Fortnite and Rocket League are two game titles that have come on to the esports scene relatively recently. Being somehow newcomers, Epic and Psyonix (which belong to the same group) seem to have chosen to exert, in an initial phase, a moderate level of control over their games' competitive ecosystems. This left the door open for virtuous collaborations, also in connection big major events, with very few carefully selected third party tournament organizers (for instance, ESL – now, ESL-Faceit Group - or Blast). For Rocket League, the approach seems to have changed lately and Psyonix and Epic Games now appear to increasingly handle the organization of major tournaments directly.

Franchise vs. unfranchised models: The tournament environments of Fortnite and Rocket League are currently open, and no franchise-based league has been established for either game. However, Psyonix and Epic Games seem to be considering the possibility of turning Rocket League into a franchise, although no decision has officially been made yet on this front.

⁶ Blizzard Entertainment's set of terms applicable to community licenses related to Overwatch is available at <https://overwatchleague.com/en-us/community-tournaments-license> (last accessed on May 22nd, 2023).

⁷ The application can be submitted online using the standard form made available at https://docs.google.com/forms/d/e/1FAIpQLSc_VTVT-mG61FBiJOMgvbCJnAiiZACT41dw7M4sil4WdvKqEQ/viewform (last accessed on May 22nd, 2023)

Community license structure: Both Epic Games and Psyonix make available a community license, whose terms impose some significant limitations on licensees⁸. Any tournament organizers can rely on these licenses directly, without the need for submitting any information relating to the tournament nor completing any application, unlike other publishers require.

The limitations imposed by the two community license's models are quite similar, though the license relating to Fortnite tournaments is far more structured.

Both community licenses include a limitation on broadcasting tournament-related gameplay (no TV broadcasting is allowed under the community license) and prohibit charging spectators or viewers a fee or requiring participants to pay an entry fee for physical events. Moreover, both licenses limit the value of the compensation that may be awarded to players (including the prize money, purses, salaries, non-cash prizes, travel and lodging expenses, sponsor-furnished clothing or merchandise, and appearance cachets) as well as that of sponsorship contributions. The Fortnite community license caps player compensation of 25.000 USD on, while Rocket League limits it to 15.000 USD. Sponsorship contributions cannot exceed 25.000 USD for Fortnite and 50.000 USD for Rocket League. Finally, both Epic Games and Psyonix set some standard limitations on the sponsors' choice (based on services and products they are offering) and on the players' age.

For Fortnite tournaments there is also a limit to the number of events that the tournament organizer can host (no more than 1 per week) and on the length of each event (no more than 4 consecutive days over a 7 days' period).

2.4.5 Ubisoft

Publisher's degree of control: Tom Clancy's Rainbow Six Siege (R6S) is also considered a new-ish esports title compared to others (e.g., LOL), and is the first esports title that has been published by Ubisoft. Ubisoft seems to have chosen to retain a somewhat significant level of control over the R6S competitive scene from the very beginning and has been directly involved (often in cooperation with local tournament organizers) in the organization of the main local and international events relating to its R6S title.

Franchise vs. unfranchised models: As of today, Ubisoft has not implemented the franchise-based model anywhere in the world. However, for a few years now, rumor has it that Ubisoft may be looking to launch its own franchise-based league. Even though Ubisoft has not embraced the franchise model yet, most R6S tournaments are closed tournaments, as they are completely (or almost completely) reserved to teams chosen by Ubisoft and/or by the third-party tournament organizer.

Community license structure: As it normally happens with leading publishers and popular esports titles, Ubisoft too makes available a limited standard community license covering small scale tournaments⁹. Although Ubisoft requires that a third-party organizer willing to work with the R6S title submits a license request via a bespoke form and provide some minimum information on the tournament, this process is quite straightforward, and the license is normally granted expeditiously.

The R6S community license includes some standard restrictions: the prize pool cannot exceed EUR 10.000; entry fees can only be used to cover the tournament costs (including the value of the prize pool); no TV broadcasting is allowed, and the tournament organizer may not charge online viewers to watch the tournament; the total value of

⁸ Epic Games's set of terms applicable to community licenses related to Fortnite is available at https://cdn2.unrealengine.com/Fortnite+Esports%2FFortniteEventLicenseTerms%2FFortnite-Event-License-Terms_04.01.20-2f1b6cda1fccf3e3ddb23f7a0b03fb6d3131946.pdf, while Psyonix guidelines for organizing community tournaments related to Rocket League are available at <https://esports.rocketleague.com/rules/community-tournament-guidelines/> (last accessed on May 22nd, 2023).

⁹ Ubisoft's set of terms applicable to community licenses related to R6S is made available only to users that successfully submitted a standard form made available at <https://www.ubisoft.com/it-it/esports/rainbow-six/siege/tournament-license/community-application/form> (last accessed on May 22nd, 2023).

sponsoring and partnership contribution cannot exceed the amount of EUR 10.000 and no merchandising rights are granted to the licensee.






PUBLISHERS' APPROACH TO TOURNAMENTS			
Publisher	Publisher's degree of control	Franchise vs. unfranchised models	Community license structure
	Low degree of control	Unfranchised model	It provides community licenses which are very broadly-scoped.
	High degree of control	Franchise-based model for LOL that will apply also to Valorant from 2023	It provides community licenses whose scope is extremely narrow for small and academic tournaments and need to be complemented with individually negotiated terms for major tournaments (and possibly for medium tournaments).
	High degree of control for Activision High - medium degree of control for Blizzard Entertainment	Franchise-based model for both Call of Duty and Overwatch	Activision does not provide any community licenses. Blizzard Entertainment provides community licenses which are very narrowly-scoped.
	Medium - high degree of control	Unfranchised model	Both Epic Games and Psyonix provide community licenses which are very narrowly-scoped.
	Medium - high degree of control	Unfranchised model	It provides community licenses which are very narrowly-scoped.

Table 1 - Summary of the publishers' approach to tournaments

3 Esports tournaments from a regulatory perspective

3.1 General remarks

In the absence of a harmonized regime, transnational esports tournaments are potentially subject to the application of national law rules. In general terms, the fact that a tournament takes place in, or is open to participants residing in, a multitude of countries, entails that the national laws of each of those countries may be relevant from a regulatory perspective.

The laws that are most immediately relevant to, and potentially problematic for, esports tournament organization from a structural standpoint are (i) illegal gambling and regulated gaming activities laws, and (ii) prize promotion regulations.

Of course, other branches of law, such as consumer protection legislation¹⁰, data protection laws¹¹, visa rules¹², minors' protection regulations¹³, tax laws¹⁴ are relevant in the context of organizing and operating an esports tournament; however, these are somehow less impactful from a tournament structural standpoint and are unlikely to be an impediment to the coming into reality of a tournament and to its ability to generate revenues in accordance with the business model imagined by the organizer.

¹⁰ See *infra/supra* Chapter [•].
¹¹ See *infra/supra* Chapter [•].
¹² See *infra/supra* Chapter [•].
¹³ See *infra/supra* Chapter [•].
¹⁴ See *infra/supra* Chapter [•].

From a practitioner’s perspective, it may be helpful to look at esports tournaments in two ways: (i) esports tournaments as competitions, where two or more players/teams compete for victory and normally a prize (which is oftentimes a cash prize), and (ii) esports tournaments as promotional activities, that is, online or offline events where brands – from the publishers themselves, to tournament organizers, to third-party brands sponsoring players, teams and events – provide visibility to their respective brands and allow the organizer to monetize¹⁵.

Each of these perspectives help explain, and put into context, the key regulatory considerations that are relevant to the structuring and organizing of esports tournaments.

3.2 Esports tournaments as competitions with a prize

Thinking of esports as competitions with a prize should bring to the practitioner’s mind the following questions:

*a. Is an esports a sport?*¹⁶

The traditional sports industry is a heavily regulated one. Sports falling within the remit of sports Federations are subject to specific rules, which are set and operated by the latter. Sports Federations are normally supervised by the country’s National Olympic Committee, which emanates from the State.

If an esports title is considered a sport, then most likely there will be bespoke sport related rules applicable to the organization of tournaments involving the title.

Following the issuing of the “2020 + 5” agenda by the International Olympic Committee (see paragraph 4.3.2), it can be expected that, sooner or later, virtual sports will be recognized as sports by the National Olympic Committees that are members of the IOC.

This means that, at some point, specific virtual sports titles will most likely be formally recognized as sporting activities falling within the regulatory remit of the competent Federations.

On the other hand, the Olympic Council of Asia seems to have significantly speeded up the recognition process for Asia by presenting esports competitions (and, incidentally, not only those relating to virtual sport titles) as medal events to the 2022 Asian Games.

However, as of today, in most countries esports are not considered sports.

b. Is a videogame a game of skill or a game of chance?

In a game of skill, victory is determined by the skills and experience of the player, while in a game of chance it is determined by a randomizer of some sort.

The difference may be relevant from a legal standpoint as games of chance are often regarded as gambling and may be considered illegal in some jurisdictions or, at best, be subject to strict regulation¹⁷. This is an area of law where there is no harmonization at regional or international level (think of the United States, for instance, where each State has its own regulatory regime)¹⁸.

¹⁵ The largest share of Esports market revenue comes from sponsorships and advertising. This was the case also in 2022, see <https://www.statista.com/statistics/490358/esports-revenue-worldwide-by-segment/> (last accessed on January 16th, 2023).

¹⁶ On this matter, see also *infra/supra* Chapter [*].

¹⁷ See M.J. Ware and J.B. Kadane (2002), “Chance and skill in games: electronic draw poker”, *Jurimetrics*, Vol. 43, No. 1 (FALL 2002), pp. 129-134, and Hannum, R.C., and Cabot, A.N. (2009). “Toward Legalization of Poker: The Skill vs. Chance Debate”, *UNLV Gaming Research & Review Journal*, 13(1).

¹⁸ Findings of the inconsistencies of gambling regulations track back in time and have been related to sociological aspects and cultural environment. See H.Zeisel (1965), “The Law, Gambling, and Empirical Research”, *17 Stanford Law Review* 990.

Videogames, unless they replicate real gambling mechanics (e.g., roulettes, video slot or dice games), are, or should be regarded, as (predominantly) skill-games and therefore should not fall within the general prohibition for gambling that is found in many countries¹⁹. The operation of skill-games, however, may also be a regulated activity and be subject to specific rules, which may include the need to obtain a license from the State (e.g., when there is a stake and the prize offered is money or money's worth). Also, while some countries use predominance as the key parameter to categorize a specific game as a game of skill or as a game of chance (whereby a game that has both skill elements and chance elements will be considered a game of skill if the skill element prevails over the chance element), in other countries the presence of chance could make the game a game of chance even if the outcome of the game is influenced predominantly by the player's skills. This is particularly relevant for card-based videogames where the cards that the players randomly draw are a key component of the game and may substantially impact their chance of winning.

c. Is a participation fee problematic?

Generally, the fact that a tournament provides for a participation/entry fee, is not a problem *per se*. However, depending on the definition of gambling and/or of regulated gaming activities applicable in a specific jurisdiction, the presence of a monetary stake may trigger, or be one of the triggers for, the application of the general prohibition of gambling and/or for the application of special rules on regulated gaming activities (which may be legal but require, for instance, a license from the State).

Accordingly, the fact that a tournament requires a participation fee may be construed as a monetary stake. Since tournaments usually involve the possibility of winning a prize, the risk is that participants paying the entry fee in the hope of getting a greater prize and make a profit.

On the other hand, it would seem difficult to deny that, at least large-scale professional tournaments, are in essence entertainment/competitive events that have nothing to do with gambling mechanics. Even in connection with smaller events that be run by less sophisticated organizers and see the participation of amateur players, it's plausible to note that the value of the experience that a player purchases with the entry fee goes beyond the possibility of winning a prize and lies mostly in the competition itself. However, the value of the entry fee and of the prizes (possibly relative to the tournament organization costs) may have an impact on the legal analysis depending on the regulatory rules applicable in each country.

Factors that may help mitigate the risk that the entry fee will be construed as a stake are, by way of example, the fact that the value of the prize pool is equal to or lower than the entry fees/financial sacrifices requested of players have to join the tournament, and/or the fact that the entry fee is structured as a form of remuneration for the services that the organizer provides to the players and teams (technological infrastructures for practice and playing the official games, logistic and IT assistance, *cheating* control during the tournament, web visibility of the events, casters' services etc.) instead of being directly connected with the possibility of winning a prize. It's no coincidence indeed that, as seen in paragraph 2, some publishers in their standard community licenses impose limitations on the maximum amount of the entry fees that may be asked for by organizers (that is, to leave no doubt that the entry fee is not a stake, but an amount designed to compensate the organizer for the services provided and/or to cover the tournament costs).

d. Is a prize (of monetary or other nature) problematic?

If a tournament offers a prize, this could be problematic vis à vis the gambling and regulated gaming regulation. Under the legislation of certain jurisdiction, monetary prizes are seen as grounds for the State to

¹⁹ See Cabot, A.N., G.J. Light and Rutledge K.F (2008-2009). "Alex Rodriguez, a monkey, and the game of scrabble: the hazards of using illogic to define legality of games of mixed skill and chance", *Drake Law Review*, 57(2), pp. 388 and 389.

assume a monitoring/supervisory/regulatory role over initiatives in the context of which monetary prizes are offered to the public.

In some countries, the presence of a prize is only relevant from a consumer and minor's protection legislation standpoint, which oftentimes prohibits the offering of certain goods or services as prizes (e.g., tobacco, drugs, alcohol products).

3.3 *Esports tournaments as promotional activities*

Thinking of esports as (potential) promotional activities should bring to the practitioner's mind the following questions:

a. Does an esports event serve a promotional purpose?

Here, the answer will very much depend on (i) how the applicable national prize promotion legislation defines the "promotional scope" of an initiative, (ii) how the esports event is structured and the weight that the competitive and entertainment dimension and significance of the event has vs. its promotional nature and purpose.

For instance, the fact that the tournament is organized, or commissioned, by a brand rather than by a promoter whose main business is the organization of tournaments, may be regarded as an indication that the tournament's main purpose is the promotion of a certain brand and of its goods or services. This said, when the publisher is the organizer, there will always be the risk that the event may be regarded as having inherently a promotional purpose since tournament undoubtedly gives visibility, and therefore in a sense promotes, the publisher's brand and videogame(s). In fact, it should be noted, in the initial stage of development of the esports phenomenon and prior to it being considered an industry on its own merits (as it's happening today), most publishers used to treat esports as a marketing opportunity to promote their games.

However, times have changed and it now seems plausible that, at least for medium/large scale tournaments (all the more so if they are of the closed/league type) that see the participation of pro and semi pro players and a large number of spectators following the bigger events, it's the competitive and entertainment dimension of the event that defines its true nature rather than its promotional aspects (which may nonetheless be present as it is present in sporting or other entertainment events, without reducing an esports event to a promotional activity).

b. In the affirmative, can it be excluded from the application of the applicable prize promotion regulations?

Every country has its own rules on prize promotions and both the (i) scope of application of this type of regulation, and the (ii) exceptions that are normally available may vary significantly from one country to another.

In general terms, prize promotion regulations apply to events having a prevailing promotional scope and not to initiatives that pursue different objectives such as the promotion of social and cultural values, or scientific research. The fact that esports tournaments aim to create competitive and entertainment opportunities may (inherently) keep them out of the realm of initiatives having a (prevailing) promotional purpose.

Also, as these types of regulations are designed to protect consumers, tournaments may justify (and/or are more likely to attract) the attention of regulatory Authorities when the tournament poses a risk for consumers,

which arguably does not exist where only legal entities/teams/pro players are allowed participate in the competition.

Finally, the relevant law may provide further exceptions for tournaments offering low value and/or non-cash prizes and/or providing a winning mechanism depending primarily on the participant's skill and/or being promoted by non-for-profit entities/charities.

3.4 *National legislation in selected jurisdictions*

This section will attempt to put the issues identified and discussed in the previous paragraph into perspective by referring to the national laws of a few selected jurisdictions (see also Table 2, at page 24).

3.4.1 *Italy*

In Italy esports have not been formally recognized as sports and there are no bespoke regulations applicable to them.

The country is a good (bad) example of a jurisdiction where old legislation creates problems and regulatory risk for esports organizations.

When it comes to tournaments, potentially problematic legislation relating to both gambling and regulated gaming activities (Legislative Decree no. 496/1948 - the "Regulated Gaming Act"²⁰), and prize promotions (Presidential Decree no. 430/2001 - the "Prize Promotions Decree"²¹) must be considered.

Article 1 of the Regulated Gaming Act creates a monopoly, in favor of the State, which covers the organization and operating of games and competitions – including skill-based ones - offering a reward of any kind, and which also (cumulative conditions) requires the payment of a monetary stake to enter the game. Only the State (directly) or other entities expressly licensed/authorized by the State can operate this category of games, which are considered "regulated gaming activities". Failure to comply with this regime may trigger criminal penalties and administrative fines. The Italian Customs and Monopolies Agency is the supervisory Authority in this area.

According to Article 6 of the Regulated Gaming Act, whenever the "regulated gaming activities" consist in sporting competitions, they will fall within the remit of the Italian National Olympic Committee (the "CONI") and, therefore, of the relevant sport Federations controlled by the CONI. For a competition to fall within the CONI's remit, though, it must involve an activity that the CONI itself has formally recognized as a sport/sporting discipline. On the basis that the CONI has not yet formally recognized any esports as sporting activities falling within its remit, the application of Article 6 and the jurisdiction of the CONI over esports seems to lack any legal justification at present²².

This said, the Prize Promotions Decree (Article 1), applies to all "*competitions [...] of any kind, consisting in promises of a prize made to the public and aimed at promoting, within the territory of the State, the knowledge of products, services, companies, signs or brands or the sale of certain products or the performance of services, having, however, also some commercial purpose*". Furthermore, Article 2 clarifies that the definition of "prize

²⁰ The Regulated Gaming Act is available from <https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1948-05-22&atto.codiceRedazionale=048U0496&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=10&qId=321c9983-b823-4bdb-bb04-39c17d7d5896&tabID=0.4133613686963773&title=lbl.dettaglioAtto> (last accessed on January 16th, 2023).

²¹ The Prize Promotions Decree is available from <https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2001-12-13&atto.codiceRedazionale=001G0490&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=10&qId=58ef274a-d441-4538-ae70-c80257dcdacf&tabID=0.4133613686963773&title=lbl.dettaglioAtto> (last accessed on January 16th, 2023).

²² A few years ago, sport associations affiliated with sport promotion bodies recognized by the CONI have been used as vehicles for the organization esports activities in an attempt to try to bring them under the CONI's remit and avoid drawing the attention of the State regulatory bodies. However, this approach lacks any sound legal basis.

competitions” covers competitions based on chance, as well as those in which the winning of the prize depends “on the skills or abilities of” the participants.

For “prize competitions” to fall within the scope of the Decree, the initiative must have a promotional purpose. While the involvement of brands as sponsors of the competition is a strong indication that an esports event has a promotional component, even in the absence of third-party brands as sponsors and when the event’s emphasis is on its sportive/competitive nature, a tournament may still be seen as having a “promotional purpose” when it’s organized either directly by the publisher of the game or with its blessing (i.e., upon license) (see above at paragraph 3.3).

The application of the Prize Promotions Decree has two legal implications, mainly (i) from a structural standpoint, a tournament cannot provide for either an entry fee and/or offer cash/monetary prizes, and (ii) from an administrative perspective, the organizer/promoter of the event will have to comply with certain burdensome formalities and requirements.

These formalities and requirements involve, *inter alia*, that: (i) the organizer must obtain a bond/guarantee to the benefit of the Ministry of Undertakings and Made in Italy (formerly as the Ministry of the Economic Development – the “Ministry”), covering the overall value of the prizes; (ii) that a public notary or an officer from the local chamber of commerce must be present at, and drafts minutes for, the event operations; (iii) all event operations relating to the tournament are to take place within the Italian territory (which implicates that, whenever the tournament activities are carried out online via servers located abroad, the tournament organizer will have to put in place a mirroring system for those servers). Moreover, the Prize Promotions Decree requires that (iv) the tournament rules/terms and conditions must be filed with the Ministry at least 15 days before the beginning of the promotional activities and the beginning of the relevant tournament (whichever is earlier). This prior communication requirement may entail drafting complex Ts&Cs in case of rolling and more structured tournaments.

According to the Guidelines issued by the Ministry, which are a useful tool explaining how the Ministry interprets the Decree, the Prize Promotions Decree does not apply to prize initiatives (including esports tournaments, one would think) which are organized by entities having their registered offices in an EU member state other than Italy and that do not require any purchase at a point of sale located within the Italian territory.

The Ministry current interpretation of the Decree as reflected in its Guidelines is helpful in connection with pan-European initiatives including Italy, in that it should allow the organizer to avoid the local compliance (heavy) burden, in accordance with the country-of-origin principle set out in Directive 2000/31/EC of 8 June 2000 (the “E-commerce Directive”)²³.

This said, even though Italy does have some broadly worded obsolete rules that could be applied to esports based on the black letter of the law, the regulatory risks is reduced by the lack of enforcement activities on the part of local Authorities to date.

3.4.2 United Kingdom

There is no specific regulation covering esports in the United Kingdom as of today.

²³ Namely, the country-of-origin principle is set forth in Art. 3 of the E-commerce Directive, that is available from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32000L0031> (last accessed on January 16th, 2023).

The Gambling Act 2005²⁴ (the “2005 Act”) requires those who organize and manage gambling activities in the UK – including gambling services accessible by UK consumers remotely – to obtain a specific license from the local public authorities identified by the 2005 Act itself²⁵ (*i.e.*, district councils, county councils, borough councils – for the London area – and so on). Failure to comply may trigger the application of criminal penalties and fines. The Gambling Commission is the regulatory Authority in this area.

The starting point is the definition of “*gambling*”. According to Section 3 of the 2005 Act, gambling means any act of “*gaming*”. The reference is to the game of chance as described by the 2005 Act itself, to “*betting*” or to “*participating in a lottery*”.

As clarified by the Gambling Commission in its 2017 position paper on “*Virtual currencies, eSports and social casino gaming*”²⁶ (the “Position Paper”), “*other activities which, although they combine expenditure and the influence of chance, do not fall within [the Commission’s] regulatory remit*” (and therefore do not fall within the scope of the 2005 Act).

Section 339 of the 2005 Act states that “*participating in a competition or other arrangement under which a person may win a prize*” might be a form of gambling regulated by the 2005 Act if it consists in: (i) a form of “*gaming*”, to be intended as “*playing a game of chance for a prize*”; or (ii) some kind of “*betting*”, where participants are required to pay something to win.

According to Paragraph 6 of Section 6 of the 2005 Act, the Secretary of State can “*provide that a specified activity, or an activity carried on in specified circumstances, is or is not to be treated [...] as a game, a game of chance, or a sport*” by issuing specific regulation to this effect. However, the Secretary of State has not availed itself of this possibility in connection with esports, which therefore cannot be considered at the time of this publication, as “*sports*” from a regulatory standpoint.

As for the concept of *game of chance*, which is a requirement for an activity to qualify as “*gaming*”, section 6 of the 2005 Act clarifies that it is not limited to games characterized by randomizing factors only, but it also includes games having an element of skill, and games involving an element of chance that can be eliminated by “*superlative skills*”. Therefore, whether esports fall within the definition of “*gaming*” will ultimately depend on whether the underlying game is a game of skill, in relation to which chance (which arguably is present in videogames generally) plays a negligible role.

Since most games played as esports are inherently skill-games, where the player has control over the outcome of a match and has a significantly higher probability of winning a match against a less skilled player, they should as such fall outside the definition of “*gaming*”.

However, as noted by the Gambling Commission in its Position Paper, it is ultimately for the courts to interpret the 2005 Act and “*it is important for games developers and/or eSport event organisers to assess the element of chance of a particular game prior to permitting its use for a prize of money or money’s worth*”²⁷. Depending on the structure and rules of a tournament, the choice to randomly assign, for instance, characters and weapons to the players may increase the impact of chance on the overall competition.

²⁴ The 2005 Act is available from <https://www.legislation.gov.uk/ukpga/2005/19/contents> (last accessed on January 16th, 2023). It applies to Great Britain with the exclusion of Northern Ireland. In Northern Ireland games and prize draws are regulated by the “*Betting, Gaming, Lotteries and Amusements (Amendment) Act (Northern Ireland) 2022*” which is substantially aligned with the 2005 Act.

²⁵ See Section 2 of the 2005 Act.

²⁶ The Position Paper is available from <https://assets.ctfassets.net/j16ev64qyf6l/7jRMC5FrBfKfXKhMn2rajn/f77a0e6dd36f2e8157c4bbaf53dc2eb7/Virtual-currencies-eSports-and-social-casino-gaming.pdf>.

²⁷ See Section 4.8 of the Position Paper, page 10.

As regards the concept of “betting”, Schedule 1 and Section 11 of the 2005 Act provides that any form of payment, which is money or money’s worth and which is requested to participate to an arrangement to win a prize is deemed as a form of betting and thus triggers the application of the 2005 Act, regardless of whom the payment is given to and of whether it is an actual stake. Here, a risk has been identified by the Gambling Commission: that commercial entities providing facilities that allow esports players to compete against each other and place bets on themselves to win may be considered as falling within the definition of “betting”, either as fixed odds, pool betting or acting as betting intermediaries. While noting that “*drawing a distinction between arrangements caught by the definitions of the different forms of betting and genuine competitive tournaments is not straightforward*”, the Gambling Commissions acknowledges that there are instances where an esports tournament will be an innocuous entertainment/competition event that should be not caught by the betting definition.

Quite helpfully, in an attempt to draw a distinction between licensable betting and genuine esports tournaments, the Commission differentiates between a “wager” (betting) and a “competition” (not betting), listing some of the factors that the Commission considers relevant²⁸. For instance, “*arrangements characterised as single short contests played between two participants*” and/or “*prizes confined to money or money's worth*” will point towards a wager, while formats including “*a series of contests played between multiple participants competing for an overall prize*” and/or “*entry fees considered payment for the right to participate and test one's skill utilising the infrastructure and pool of participants provided by the event, league or contest*” will weight in favour of the existence of a genuine tournament falling outside the scope of the 2005 Act.

Looking at esports tournament as tools to promote goods and services, the main reference is the British Code of Advertising, Sales Promotion and Direct Marketing²⁹ (the “CAP Code”)³⁰, which is enforced by the Advertising Standards Authority (ASA). The CAP Code requires that all forms of advertising and marketing communications and activities must be transparent and be recognizable as such by the consumers/viewers (Rule 2.1 of the CAP Code).

While attention will have to be made in respect of the drawing up of tournament Ts&Cs and their communication to the public, the CAP Code does not impose burdensome formalities, such as bond requirements, involvement of public officials/notaries and so on, or the prohibition for cash prizes, like other jurisdictions do (notably, Italy). Therefore, clear tournament rules will normally satisfy the requirement of the CAP Code.

3.4.3 United States of America

Even though the US esports industry is one of the most developed worldwide, the country has not specifically addressed esports from a regulatory perspective. Esports, indeed, lack general regulation at both Federal and State levels. Furthermore, esports are not considered “sports” from a technical/legal standpoint.

However, the US, with a very pragmatic approach, is one of the first countries to have addressed the visa problem international pro players still face in many countries³¹. Most probably prompted by the socio-economic relevance that the industry achieved, on specific occasions the US Citizenship and Immigration Services has opened up the

²⁸ For the full list of factors, see page 12 of the Position Paper.

²⁹ The CAP Code is available from <https://www.asa.org.uk/static/47eb51e7-028d-4509-ab3c0f4822c9a3c4/1ec222e7-80e4-4292-a8d46c281b4f91b8/The-Cap-code.pdf> (last accessed on January 16th, 2023).

³⁰ When advertising is broadcast through radio or TV, the Code of Broadcast Advertising (the BCAP Code), which is also administered by the ASA, will have to be considered. However, the BCAP Code does not include additional or different rules that are worth referring to here. The BCAP Code is available from <https://www.asa.org.uk/static/846f25eb-f474-47c1-ab3ff571e3db5910/717b1f78-c8b3-4e5b-b49f337f16bd1cb0/BCAP-Code-full.pdf> (last accessed on January 16th, 2023).

³¹ See [*infra/supra*] Chapter [•].

visa rules applicable to traditional sports athletes to esports players too, since 2013, making the P-1A visa, designed for internationally recognized athletes, available also to esports' players³².

On the other hand, the complexity of the US legal system - with the constant intertwining between States' and Federal legislation –inevitably impacts also the esports industry. Tournaments organizers willing to work with the local market have to face quite a fragmented regulatory landscape.

As in the other jurisdictions considered in this chapter, gambling legislation potentially impacts on esports tournaments and significant differences exist at State level in this area. It is outside of the scope of this chapter to provide detailed information on the gambling legislation applicable in each of the 50 States of the Union. Suffice it to say that while some States prohibit gambling outright (e.g., Hawaii and Utah), in other States gambling is a regulated activity which, in principle, requires an authorization from public authorities, with some States having a more liberal regulatory regime (for example, New Jersey, West Virginia, Nevada) than others.

A fundamental question from gambling perspective is, in the US too, whether a specific videogame should be regarded as a game of chance (vs. a game of skill).

In general terms, the “*Unlawful Internet Gambling Enforcement Act*” of 2006³³ – a Federal act specifically addressing online gambling – defines “bet” or “wager” as “*the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome*”. It also clarifies in the US any game whose outcome is determined by the players' luck rather than by their skills can be deemed a game of chance.

Games of skill do not fall within the scope of application of this Act.

In order to evaluate whether an esports tournament may be gambling activities, the role of the players' skills vs. that of chance must therefore be assessed based on the criteria applicable in the relevant State.

In most States, the assessment is conducted applying the predominance (of skills vs. chance) test, which requires to establish “*which [between chance or skill elements] is the dominating element that determines the result of the game*”³⁴. Other States apply the materiality test, whereby the game is considered a game of chance whenever “*the outcome [of the game] depends in a material degree upon any element of chance, notwithstanding that skill of the contestants may also be a factor therein*”³⁵. In some other states, the “*any chance*” test applies. According to this test, the mere presence of an element of chance, however small its impact on the outcome of the game is, is enough for the game to qualify as a game of chance³⁶.

Oftentimes, the role of the players' skills will be more immediately apparent in respect of certain categories of games (e.g., FPS or RTS games) vis-à-vis others (e.g., games involving collectible-cards that are shuffled before

³² It was the case of Danny “Shiptur” Le in 2013, see article available from <https://www.latimes.com/business/la-xpm-2013-aug-07-la-fi-online-gamers-20130808-story.html>; and of William “Leffen” Hjelte in 2016, see article available from https://www.espn.com/esports/story/_/id/17705825/leffen-receives-visa-allowed-return-usa-compete-smash-tournaments (last accessed on May 22nd, 2023).

³³ 31 U.S.C. §§ 5361–5367. The Unlawful Internet Gambling Enforcement Act is available from <http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title31-chapter53-subchapter4&edition=prelim> (last accessed on January 16th, 2023).

³⁴ *People ex Rel. Ellison v. Lavin*, 179 N.Y. 164, 170-71 (N.Y. 1904).

³⁵ Section 225.00(1) of the Penal Code of the State of New York, which is available from <https://www.nysenate.gov/legislation/laws/PEN/P3TMA225> (last accessed on January 16th, 2023).

³⁶ *State v. Gambling Device*, 859 S.W.2d 519, 523 (Tex App. 1993), where the relevant applicable State law – the Texax one – has been interpreted “*to [be applied] to contrivances that incorporate any element of chance, even if the exercise of skill also influences the outcome*”.

being distributed to the players); however, each game and its mechanics will have to be considered on its own merits.

In the US also, the promotional nature that esports tournaments may trigger the application of sweepstakes/contests laws, which also vary from one State to the other. For instance, the laws of some States (e.g., Colorado) provide for the so called “no-purchase-necessary-law”, which makes it unlawful to make the participation to a prize promotion subject to a purchase or disbursement (and therefore the requirement that a participant would have to pay an entry fee or purchase a product/service) and require that a “free-entry-route” be also available to participants (which enables participation in the contest without any financial sacrifice).

According to the laws of other States, providing prizes exceeding a certain threshold will entail some formalities. In Florida, for example, if the overall value of the prizes is over 5,000.00 USD, a security bond must be obtained and registered seven days before the beginning of the activities to guarantee that the prizes will be paid to the winner(s) by the organizer; similarly, the State of New York requires obtaining and registering a bond thirty days prior to the start of the activities.

3.4.4 France

Having considered esports phenomenon as an opportunity for digitalization and growth France passed some bespoke regulation for esports³⁷.

In 2017 France introduced in its legislation some rules designed to avoid the application of gambling laws to esports tournaments.

Article L. 320-1 of the French Code on Internal Security³⁸ (*Code de la sécurité intérieure* – “CSI”), in fact, provides a rather broad definition of gambling, which covers “*any operation offered to the public, under any name whatsoever, in order to generate the hope of a gain whose obtaining depends, even partially, on chance, and in consideration for which the operator requires a financial contribution from participants*”, and which is prohibited, unless an operation falls under one of the exceptions set out in the CSI (in which case an authorization can be obtained for the activity)³⁹.

This definition, according to which the presence of an element of chance triggers the qualification of a game as a “game of chance”, could have posed a regulatory obstacle for the esports industry since most if not all videogames may be regarded as having such chance element, as already noted elsewhere in this chapter.

To remove this potential regulatory obstacle with a view to supporting the growth of the esports industry, the French legislator has introduced an express exception for certain esports competitions. Further to adding a new chapter (*Chapitre I^{er} bis: Compétitions de jeux vidéo*; articles L. 321-8 to L. 321-11) to the CSI.

³⁷ In addition to the rules on the organization of tournaments considered in this paragraph, article 102 of the Law no. 2016-1321 of October 7th, 2016 for a digital Republic – as amended by Decree no. 2017-871 of May 9th 2017, specifically related to the organization of videogame competitions – on the one hand defines the “*salaried professional esports player*” as “*any person whose remunerated activity is participation in video game competitions under an employment relationship with an association or a company benefiting from an approval from the minister in charge of digital technology*”, and, on the other hand, it establishes that certain labor law protections are applicable to such professional players. The text of the Law no. 2016-1321 of October 7th, 2016 is available from <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033202746/2023-01-16/> (last accessed on January 16th, 2023).

³⁸ The CSI is available from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000025503132?init=true&nomCode=BfMAIA%3D%3D&page=1&query=&searchField=ALL&tab_selection=code (last accessed on January 16th, 2023).

³⁹ According to L. 320-6 CSI, for example, lottery games, casinos and sports betting operated in physic store-networks are exceptions that can be authorized.

Physical esports competitions are, in principle, lawful activities and can be legitimately structured with the inclusion of both an entry fee and a monetary prize. According to Article L. 321-9 CSI, physical events do not fall within the scope of Article L. 320-1 CSI and of the gambling prohibition contained thereunder, if “*the total amount of registration fees or other financial sacrifices made by players [to join the tournament] does not exceed*” the total costs of the events’ organization itself, which must include also the total value of the prizes⁴⁰. In addition, when the overall value of the prizes exceeds EUR 10.000,00, the organizers must provide a guaranty to ensure the prizes will actually be distributed to the winners⁴¹.

Conversely, online esports tournaments that require the payment of an entry fee or require a financial sacrifice to allow a player to participate fall under the gambling definition of Article L.320-1 CSI and are therefore illegal. However, Article L. 321-11 CSI specifies that internet costs sustained by players to participate in the competition and the cost of the game itself do not constitute a form of financial sacrifice for the purposes of the application of the gambling prohibition.

This being said, the new rules require that the organizers of an esports tournament must comply with certain administrative formalities. For example, some information must be communicated in advance of the event to the Central Racing and Games Service of the Ministry of the Interior (*Service du ministère de l’intérieur Chargé des Courses et Jeux*), including key information about the structure of the event/competition and the amount of participation fees collected.

From a local prize promotions legislation compliance perspective, the French Consumer Code⁴² (*Code de la consommation*) defines “promotional prize operations” as operations “*aimed at awarding a gain or an advantage of any kind by means of a draw, whatever the modalities, or by the intervention of a random element*”⁴³. According to Article L. 320-6 CSI, promotional prize operations fall outside the scope of application of the gambling regulation and are therefore lawful activities.

If an esports tournament qualify as (legitimate) promotional prize operation, the organizer/promoter must comply with certain information requirements: to ensure the transparent communication of the terms and conditions applicable to the initiative and of their advertising to the prospective participants, all information provided by the organizer/promoter in relation to the tournament must be complete, detailed and easily accessible by the public.

3.4.5 Germany

In Germany esports are not recognized as sports and they are not covered by a bespoke general/exhaustive regulation.

However, esports have been equalized to sports in some specific legal areas. For instance, the Foreign Affairs Ministry (the *Auswärtiges Amt*) has recognized esports tournaments as “*events having a sporting character*” since 2018, with the aim of extending the Visa regime applicable to non-EU professional sportspeople to professional esports players also⁴⁴. Furthermore, under German tax-law, esports are currently treated as sports but only for the

⁴⁰ For the sake of completeness, the limit of the overall cost has been administratively set out by the *Conseil d’Etat*, as the original wording of Article L. 321-9 CSI refers to “*a fraction*” of the total costs of organizing the event.

⁴¹ Once again, the amount of Euros 10,000.00 has been set out by the French *Conseil d’Etat*.

⁴² The *Code de la consommation* is available from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006069565?init=true&nomCode=HEC9cQ%3D%3D&page=1&query=&searchField=ALL&tab_selection=code (last accessed on January 16th, 2023).

⁴³ Article L. 121-20 *Code de la consommation*.

⁴⁴ See Section 6 of the Handbook on Visas (the “*Visumhandbuch*”) issued by the German Foreign Affairs Ministry, available from <https://www.auswaertiges-amt.de/blob/207816/a0f24b5e2808a52f5f83c069d4b75bc0/visumhandbuch-data.pdf> (last accessed on May 24th, 2023).

purposes of allowing the taxation on tournaments' wins, so that these can be considered as trading income or as employee salary respectively depending on whether they are independent players or work for structured teams⁴⁵.

Absent a general regulation of esports, the application of gambling and regulated gaming activities rules, on the one hand, as well as prize promotion regulations, on the other hand, must be considered in relation to esports tournaments.

In Germany, gambling/regulated gaming activities legislation impacts only on games of chance (*Glücksspiele*) that fall within the scope of application of the *Glücksspielstaatsvertrag 2021*⁴⁶ (the State Treaty on gambling, issued in 2020/2021 – “GlüStV”) and the relating implementing legislation issued by the German States, as well within §§284-287 of the *Strafgesetzbuch*⁴⁷ (the German Criminal Code – “StGB”). These rules require that operators of games of chance must obtain a license from the State to lawfully carry out economic activities in this area and set out the criminal penalties and/or administrative sanctions for non-compliance.

The authorization is required, in particular, where “*a fee is charged in order to obtain a chance of winning, and the fact of winning or losing depends entirely or predominantly on random events*” (i.e., possible win) and “*the decision on winning or losing depends on random events in any case when it is dependent on the uncertain occurrence or outcome of future events*” (§3 of GlüStV)(i.e., games where chance is predominant vs. skills).

Against this regulatory background, as already noted in respect of the UK, tournaments involving where the underlying games should be considered games of skill (as is the case for the most popular esports titles) and that are structured as genuine competitions, should not pose significant regulatory risks even if they include both a participation fee and a monetary prize⁴⁸.

From the perspective of the potential application of the local prize promotion legislation, Germany does not appear to be a particularly problematic country either. In fact, on the one hand, the *Bürgerliches Gesetzbuch*⁴⁹ (the German Civil Code – “BGB”), which regulates promises of rewards, prize competitions and prizes' promises in Title 11 (from §657 to §661a), as well as the *Telemediengesetz*⁵⁰ (the German Law on TMT – “TMG”), which provides for some transparency and information requirements, do not appear to prevent organizers, in principle, to charge players a participation fee. On the other hand, such regulatory framework does not prevent prizes, also of monetary nature, to be offered to the winners, as long as alcohol, tobacco or other dangerous substances are not given to minors as prize.

⁴⁵ On the matter, see Growth S., and Kämmerer S., “Regulation (Tax): Esports from a tax perspective” (2020), available from <https://www.pwc.de/en/technology-media-and-telecommunication/digital-trend-outlook-esport-2020/regulations-tax.html> (last accessed on May 24th, 2023) and the Fiscal Code of Germany (“*Abgabenordnung*”), available in English from https://www.gesetze-im-internet.de/englisch_ao/englisch_ao.html#:~:text=The%20Fiscal%20Code%20of%20Germany,the%20Federal%20Ministry%20of%20Finance (last accessed on May 24th, 2023).

⁴⁶ The GlüStV is available from <https://www.gesetze-bayern.de/Content/Document/StVGlueStV2021-G1> (last accessed on January 16th, 2023).

⁴⁷ The StGB is available from <https://www.gesetze-im-internet.de/stgb/> (last accessed on January 16th, 2023).

⁴⁸ Based on the letter of the law, it seems pretty clear that the “*fee*” to which the GlüStV’s provision refers has to be an actual “*stake*”.

⁴⁹ The BGB is available from <https://www.gesetze-im-internet.de/bgb/> (last accessed on January 16th, 2023).

⁵⁰ The TMG is available from <https://www.gesetze-im-internet.de/tmg/> (last accessed on January 16th, 2023).

REGULATORY RISK AT A GLANCE











Country	Regulatory risk level	Notes
		Despite the wide-scope rules on gambling/regulated gaming activities and the cumbersome rules on prize promotions, the potentially high regulatory risk is somehow reduced by the limited enforcement activity registered so far.
		Due to the sensible approach taken by the Gambling Commission in respect of the interpretation of the Gambling Act 2005 and the low level of formalities required for prize promotions, the regulatory framework as of now appears to be esports friendly.
		There are significant differences from one State to the other from a gambling law perspective, which is why it does not seem appropriate to rate the entire jurisdiction as a whole.
		While France has a generally friendly (albeit somewhat bureaucratic) approach to physical esports tournaments, the regulatory treatment of online tournaments is unsatisfactory.
		Germany seems to have taken a balanced approach vs. the regulation of esports tournaments.

Table 2 - The overall regulatory risk in the selected jurisdictions⁵¹

4 Governance and its impact on tournament organization

4.1 Introduction: governance, a fundamental question

A fundamental question for the esports industry to address is whether the current governance model whereby the competitive gaming ecosystems are controlled by the publishers, is fit to sustain the growth of the phenomenon into a stable, economically sustainable, socially healthy and durable industry.

Governance has meaningful repercussions also on how tournaments are, and will be, organized and administered. Therefore, at the closing of this chapter it seems useful to lay out some general considerations to try and frame the dynamics that have the potential to bring about changes to the *status quo* in the near future.

4.2 The current governance model: the pivotal role of the publisher and its criticism

Albeit with some differences in terms of how each publisher administers its own game ecosystem (see paragraph 2.4), amongst all stakeholders involved, the publisher plays the most meaningful role. With little or no constraints in terms of bespoke government-made regulation and by leveraging the IP rights to the game that it acquired at origin or subsequently, the publisher directly or indirectly controls the entire esports ecosystem related to its game. Generally speaking, the legal and business position of all other stakeholders is subordinate, and is dependent on, the position of the publisher, which is one of substantial monopoly.

According to some⁵², this is not avoidable, and no other model would be better for the esports industry. In fact, a model centered around the publisher is respectful of the publisher's prerogatives as the game is its creature and the publisher owns the IP rights to it. No other party would be better positioned to administer the game ecosystem

⁵¹ The icons used in Table 2 can be found on www.flaticon.com, and the author is Roundicons.

⁵² See J. A. Carrillo Vera and J. M. Aguado Terrón (2019), "The eSports ecosystem: Stakeholders and trends in a new show business", *Catalan Journal of Communication & Cultural Studies*, 11(1), pp. 3–22.

because no one is closer to the game and its community, or more invested in the game, and could therefore do better to make its competitive ecosystem blossom.

However, others argue that, while in principle the interests of all stakeholders are aligned most of the times, this is not necessarily always the case. Therefore, a model whereby the publisher is the ruler, the judge, the jury and the executioner cannot adequately guarantee the diversified interests of all other stakeholders, even though the publisher has to operate within the boundaries set by the general law and, in particular, by antitrust and consumer protection legislation; this, in turn, makes the industry vulnerable and less investible. Amongst those who criticize the current model and call for some mechanism to counterbalance the publisher's substantial monopoly, some advocate, to varying degrees, regulatory intervention by the State. State intervention may range from the passing of (more or less invasive) bespoke legislation to, and including, the bringing of esports within the remit of traditional sports Federations that are ramifications of the International Olympic Committee (IOC) and of the National Olympic Committees that are members to it (and which emanate from the national States). Some others, on the other hand, take the view that, rather than State-intervention, a better way to counterbalance the power of the publisher may be for the other stakeholders to come together and in the form of (voluntary, non-State-driven) esports associations.

4.3 The involvement of new stakeholders

4.3.1 Esports associations

Unsurprisingly then, in parallel with the growth of the industry, over the last few years myriads of esports associations at the international, regional and national levels have appeared on the scene. What all these associations have in common is that they position themselves as representing the industry (or portions thereof) and, to various degrees and with nuanced differences, declare as their mission the promotion of the industry and its value, the contribution to its sustainable growth and even the setting of industry standards.

At the international level, perhaps IeSF (the International Esports Federation) with its 70+ members, and the GEA (the Global Esports Federation) with the Chinese tech giant Tencent as its founding global partner and its 120+ member federations, are worth mentioning.

At the regional level, the recently formed EEF (the European Esports Federation), with over 40 member federations, and the relatively older and more established AESF (the Asian Esports Federation, which is recognized by the Olympic Council of Asia, the association that has as its 45 members the national Olympic Committees from the Asian region and is recognized by the International Olympic Committee) are perhaps the most significant players.

At the national level, very much every country has at least one (but often several) esports associations/federations, which sometimes (not very often actually) are recognized by the State (e.g., KeSPA, the Korean Esports Association).

At a closer look, however, with few (very few) exceptions, these associations/federations do not seem to have had, nor to have, any significant impact on the industry and their common feature seems to be the lack of legitimacy and real industry-representation capacity. Indeed, neither of those could be achieved without the blessing and active involvement of publishers.

4.3.2 The Olympic movement and the sports Federations

A new dynamic that somehow seem more likely to have some impact on the industry from a governance perspective relates to the involvement of the Olympic movement in esports.

In April 2021, the International Olympic Committee (IOC) published its “2020+5” agenda, in which, after some hesitation, it’s finally taken a position in respect of esports. The IOC draws a distinction between virtual sports (i.e., virtual simulators of recognized sporting activities) and videogames. Albeit (all) videogames are seen as an important medium to engage youngsters in sport, the IOC has clarified that its focus, and therefore that of the entire Olympic movement, will be on virtual sports, with International Federations to assume governing and regulatory responsibilities in respect of them. Since most videogame titles played as esports are not simulators of existing sports (in fact none of the games that we’ve mentioned as part of paragraph 2.4 is), the IOC effectively envisages the introduction of a dualistic system: while virtual sports will fall within the remit of sports Federations, non-virtual sports titles will be subject to different rules (and would continue to be subject to the publisher’s current governance model).

Now, at present it’s impossible to predict if, when and how this approach will be declined in practical terms and what the relationship between the publishers of the selected virtual sports titles and the relevant Federations will be like. However, it seems that the wheels are in motion for sports Federations to become involved in esports in some shape or form in a not-so-distant future. In some countries (e.g., Italy) legislative proposals have already been advanced to implement the approach advocated by the ICO. It may therefore be expected that esports falling within the responsibilities of Federations, in one way or another, are perhaps likely to be subject to a regulatory regime similar to that applicable to traditional sports, which are heavily regulated activities. This, in turn, would impact on the rules applicable to the organization of tournaments involving certain games, as their publishers would inevitably lose some control over them to the benefit of the competent Federations.

Interestingly, however, the EU Parliament’s resolution of 10 November 2022 on videogames and esports, which calls the Commission and the Council to consider taking actions to develop “*a coherent, long-term European video game strategy*”, underlines that “*that esports and sport are different sectors, not least because the video games used for competitive gaming or esports are played in a digital environment and belong to private entities that enjoy full legal control and all exclusive and unrestricted rights over the video games themselves*”, which sounds like a reminder (perhaps also to the sports industry?) that the publisher’s exclusive rights to the game is a key trait of the esports industry that must be taken into account by any third party willing to get involved in it.

4.4 Conclusion: a fragmented landscape in a state of flux

Each esports game title has its own ecosystem. This is because each game is a universe that has its own (built-in, game design) rules which makes it unique and explains why the esports ecosystems landscape is naturally fragmented. Also, at present each publisher manages its own game ecosystem(s) differently with little interference from the State.

The question remains, however, whether the status quo is the optimal solution to sustain the growth of the industry, which is global by its very nature.

In the authors’ views, it’d seem undeniable that in certain areas, namely immigration (i.e., VISA rules), tax, and tournament regulations, harmonized rules would be beneficial. In these areas, intervention from the national governments is inevitable. The current shortcomings could be dealt with efficiently through an international convention.

On the other hand, the lack of hetero-determined uniform rules is not balanced by the adoption of industry-wide uniform rules to address, for instance, integrity matters (perhaps because publishers are competitors and they do not see collaboration to set uniform rules and standards as valuable objectives). Organizations do exist for specific games, competitions, and events, however no one body encompasses all different genres of games and

tournaments. This presents a risk of a fragmented and inconsistent approach to integrity matters, which would be good for the industry to address through self-regulation in order to anticipate, and avoid, forms of regulatory hetero-intervention.