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I. INTRODUCTION

In October 2013, Bryant Gumbel and a host of commentators held a discussion on competitive video gaming called “esports.” The event that

1 HBO Sports, Real Sports with Bryant Gumbel, HBO SPORTS (Oct. 2013), https://www.hbo.com/#sports/video&assetID=GOROSTGP41467?videoMode=embeddedVideo; see also Samit Sarkar, HBO’s Real Sports Debates the Merits
prompted their discourse happened earlier in the year: One of the largest venues in the United States, the Staples Center, sold-out in under an hour to accommodate the World Championships of League of Legends, where titans “SK Telecom T1” and “Royal Never Give Up” (esports teams) fought over a million dollar prize pool. Only one of the seven commentators that day acknowledged the legitimacy of people being paid large sums to compete in a video game on the world stage. The rest of the correspondents did not share that sentiment: “My issue is,” correspondent Mary Carillo noted, “it’s still not a sport, it’s a game.”

Regardless, it is undeniable that esports have become more than just a game. Now valued at around $1 billion, esports transformed from a news media joke into an international sensation in the last decade.

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3 See HBO Sports, supra note 1.

4 Id.

5 See also Sarkar, supra note 1. The correspondent who acknowledged esports’ legitimacy, Soledad O’Brien, is quoted as saying: “‘Whether or not esports is a sport isn’t important’ because the global success of . . . the competitive environment in esports make that discussion moot.” Id.


Valuation methods differ, but these reports, among others, both suppose that esports’ market size is around $1 billion.
However, in spite of its increasing pertinence to modern society, there has been no hard and fast regulation or involvement from the U.S. Government. Where other countries with esports communities have government-endorsed and coordinated associations to help administer the rules of fair play, in the United States, only the publishers of the games or third-party league operators regulate esports related activities. Several parties have expressed the opinion that the development of esports and the video game industry, as well as the issues that have arisen from their development, warrants the formation of a central regulatory authority for esports. Yet, exactly what kind of governance structure is needed or appropriate, the issues such an authority can tackle, and what role it would play in the regulatory or legal ecosystem, remains unexplored. Further, exactly how such a monolithic regulatory body for all esports in the United States would benefit or resolve the present issues facing the esports market, assuming it could, is unclear.

This article will conclude, ultimately, it is a matter of policy with two convincing sides best left for the public to decide. First, having a monolithic regulator for all esports in the United States is unnecessary to

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8 Id.


10 Purewal & Davies, supra note 9.

11 See discussion infra Conclusion.
address many of the legal issues esports faces and may actually cause more legal issues.\textsuperscript{12} Second, some centralized effort or a centralized association to heighten and universalize standards would be beneficial because it would allow market participants to address the systemic threats to the esports market.\textsuperscript{13} As to a centralization, this article will argue the most effective means to accomplish such a task is through a binding and monolithic regulatory body.

In arriving at this conclusion, Section I of the article will briefly go over the current nature of the esports regulatory ecosystem and how game publishers exert control over the competitive scenes derived from their games. Section II will give an overview of the legal issues that esports presently faces and what governs how those issues are dealt with. Section III will provide case studies on analogous, monolithic esports regulatory bodies in other jurisdictions. Section IV will examine the similarities between the current esports regulatory bodies and those of conventional sports. Section V will underline several reasons why a monolithic regulator may not be the ideal solution that many scholars have proposed. Last, Section VI will take the insights gained from the analysis in Parts I through IV to provide general suggestions as to what authority an effective monolithic regulatory body should possess. In the interest of brevity, this article will not examine the individual legal issues that esports face with great precision and will be limited in scope to esports as a professional competitive scene.

II. BACKGROUND: ESPORTS IN A NUTSHELL

Esports, short for electronic sports, refers to “highly organized, competitive level gaming” where players or “teams of players compete against each other at a professional level in popular video games.”\textsuperscript{14} The video games encompass a variety of genres, and the publishers of the games often design a competitive ecosystem within them with competitive play in mind.\textsuperscript{15} The humble beginnings of esports in the United States trace

\begin{itemize}
  \item \textsuperscript{12} See discussion \textit{infra} Section II and Section VI.
  \item \textsuperscript{13} See discussion \textit{infra} Sections V & VI.
  \item \textsuperscript{14} Sagar Khillar, \textit{Difference Between eSports and Sports}, \texttt{http://www.differencebetween.net/miscellaneous/sports-miscellaneous/difference-between-esports-and-sports/}.
  \item \textsuperscript{15} \textit{Id.}
\end{itemize}
back to a small, in-house tournament, at Stanford University in 1972. This was followed by strings of local competitions held in arcade cabinets throughout the 1980s. However, it is generally accepted the scene truly saw first light in 1997 when the producers of the game Quake organized a tournament to win a Ferrari at one of the earliest Electronic Entertainment Expos (E3). Since then, esports has become a multi-million dollar affair as an incidental product of the billion dollar video game industry. Perhaps more surprising, COVID-19 has helped, not harmed, both esports and the gaming industry. Further, esports players sign million-dollar

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17 TheScore Staff, *supra* note 2 (noting Billy Mitchel’s holding the Guinness World Record for the highest score in six arcade cabinet games, including *PacMan* and *Mario vs. Donkey Kong*. It also mentions a variety of television programs where child contestants would compete in playing these games on air. *Id.* Note, under the definition of a competition based on esports, a general competitive scene where people compete for the highest score would qualify. *See* Khillar *supra* note 14 (defining esports).

18 TheScore Staff, *supra* note 2.

19 *See* Phillips, *supra* note 16.

20 SuperData Research, *SuperData 2020 Year in Review*, SUPERDATA 6, 21 https://www.superdataresearch.com/reports/p/2020-year-in-review. SuperData notes, specifically, games and interactive media “earned $139.9 billion USD in 2020, up from $124.5 billion USD in 2019; and this fact is actually helped, not hindered, by the COVID-19 pandemic. Analytics presented in the report suggest that the COVID-19 pandemic’s directly causing people to stay home encouraged them to indulge in interactive media and the purchase of technological products incidental to such media’s enjoyment.” *Id.* *See also* Newzoo *Global Esports & Live Streaming Market Report, supra* note 6 (noting that, as of 2019, global esports revenues were estimated at $950.6 million. No data has been released on precisely how much was made throughout the COVID-19 pandemic yet. *Id.* *But see* Newzoo, *Key Numbers*, NEWZOO (Oct. 2020), https://newzoo.com/key-numbers (noting that as of October 2020 and despite the COVID-19 pandemic, there is only an estimated 0.8% reduction in year-on-year thus far, with still some events and releases to come that might eliminate that reduction entirely).
contracts;\textsuperscript{21} commercial companies from a variety of business sectors sponsor esports teams;\textsuperscript{22} and even the casual player can earn up to a six-figure salary living off of “streaming” (where the player collects sponsorships or brand deals based on playing the game as a media personality via social media platforms).\textsuperscript{23} There are no analogous


\textsuperscript{23} See Elizabeth Chung, \textit{Gotta Catch ’Em All! The Rise of Esports and the Evolution of its Regulations}, 22 SMU SCI. & TECH. L. REV. 231, 234–35 (2019) (noting the monetary success of streamers, i.e., PewDiePie and Ninja, who have net worths upwards of several millions of dollars, and that “people are being paid thousands of dollars to play games, while others . . . watch them play for hours on end.”). \textit{See also How Much Do Twitch Streamers Make}, BRAVE (last updated July 6, 2020), https://brave.com/learn/how-much-money-do-twitch-streamers-earn/ (noting that more prominent figures can earn up to $20,000 a month based on streaming alone, not including what income they may receive through sponsorships, competitive gaming contracts and prizes, and brand deals); Twitch \textit{Affiliate Program}, BUS. OF APPS, https://www.businessofapps.com/affiliate/twitch/#:~:text=How%20%20Mone%20Do%20Twitch,about%20%242450%20every%20100%20subscribers (last visited Feb. 13, 2021) (noting the average earnings of a “successful” Twitch.tv streamer are between $3,000 and $5,000 USD a month.); Bob Woods, \textit{Amazon’s Twitch leads a booming esports six-figure-salary job market in coronavirus era}, CNBC (May 19, 2020, 8:58 AM), https://www.cnbc.com/2020/05/19/amazons-twitch-leads-a-booming-esports-six-figure-salary-job-market.html (noting jobs that are incidental or ancillary to the streaming and esports experiences, such as software engineering, managerial work, sales and even stage directors can have six-figure salaries).
streaming opportunities available to an ordinary enthusiast of other competitive sports.24

The following data may prove illustrative of the esports market’s size and its potential for growth: the global audience count for esports in 2019 sits at 194 million, compared to 98.2 million for the Super Bowl.25 In addition, the cumulative viewership of the League of Legends (LoL) finals at 58 million viewers beat that of the Major League Baseball (MLB), the National Basketball Association (NBA), and the National Hockey League (NHL) championships.26 In terms of revenue, the esports industry is reported to have only dropped to $947.1 million in 2020 from $957.5 million in 2019, and is still expected to grow to $1.08 billion in 2021.27 Moreover, esports is poised to be a medal event at the 2022 Asian Games, which may lead to its eventual inclusion into the Olympics.28

III. PRESENT REGULATORY STRUCTURES

Presently, there is no unified or monolithic body that regulates U.S. esports.29 Rather, most mainstream esports are officially regulated through a combined effort between the publisher of the esports underlying game and an esports league, sometimes owned or unofficially controlled by the publishers, with arrangements of varying nature.30 The professional competitive environment for a game, or a set of games, possesses one of two general legal structures:31 the decentralized model and centralized

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24 See Woods supra note 23 (discussing the unique job opportunities created by esports streaming).
26 Id.
29 See Holist, supra note 7, at 843; Martinelli, supra note 9, at 501.
31 See Max Miroff, Tiebreaker: An Antitrust Analysis of Esports, 52 COLUM. J. LAW & SOC. PROB. 177, 184 (2019); see also NABEL & CHANG, supra
model. First, the decentralized model provides “a number of independent tournament organizers license[d] IP from publishers in order to produce and distribute esports content.” Second, the centralized model allows for “publishers [to] take on the tournament organizing role themselves.”

Within these two broader structures, four models exist: Third Party Esports Leagues, Publisher Run Championships, Publisher Run Leagues, and Publisher Run Franchises. In the Third Party Esports League model, a game’s publisher/developer delegates the management and regulation of the game’s competitive scene to a third-party tournament operator by a licensing agreement. In the Publisher Run Championship model, publishers may license independent third parties to run their own leagues in their own jurisdictions, while only retaining control of the operations and regulations of the final competition, the championship. In the Publisher Run League model, a video game publisher directly controls the management and operation of a competitive league and usually delegates the control and management of the participating teams to third parties. Lastly, in the Publisher Run Franchise model, a video game publisher takes direct control over the management and operation of a competitive league and controls the management of individual teams by delegating it to licensed franchisees.

While the esports market’s competitive scene can be classified into the categories above based on their legal mechanics, the factual circumstances of each competitive scene can make definitive classification more difficult. For example, Riot Games, Inc. (Riot Games) technically follows the Third Party Esports League model, where it licenses the operation of the League of Legends (LoL) competitive scene to the League Championship Series (LCS), which serves as the main authority and

Note 30, 418–21 (noting several kinds of arrangements that differ in terms of publisher control over the competitive scene’s regulations that fall within these two general categories).

32 Miroff, supra note 31, at 184.
33 Id.
34 See id. at 189 (noting, “A publisher can act as an organizer, as Riot has with its League of Legends Championship Series. . . . Increasingly, publishers are beginning to also act as both organizers and broadcasters.”); NABEL & CHANG, supra note 30, at 418–21, 441–42.
35 See NABEL & CHANG, supra note 30, at 418.
36 Id. at 420.
37 See also id. at 421.
38 See also id. at 441–42.
esports league for LoL competitions. However, because the LCS is a subsidiary of Riot Games and Riot Games maintains close ties and tight control over the LCS, the LoL esports scene is essentially a Publisher Run League. Conversely, Blizzard Entertainment, Inc. (Blizzard Entertainment) maintains a Publisher Run Franchise model for the Overwatch competitive scene through the Overwatch League (OWL), allowing entities to franchise Overwatch’s competitive scene while maintaining complete control over the competitive authority and the participants of Overwatch competitive esports.

On the other hand, some publishers maintain more distant control over the esports scenes of their games while retaining ultimate authority over their games’ entire esports scene. For example, Valve Corporation (Valve) subscribes to the Third Party Esports League model for Counter-Strike: Global Offensive (CS:GO) and Defense of the Ancients 2 (Dota 2) by licensing them to third party league operators, while only organizing a final championship tournament for Dota 2. Moreover, Valve ultimately decides which tournaments, and thus by extension which players, teams, and arrangements, are “official” and count towards entry into its Publisher Run Tournament. Valve even decides the eligibility of players and competitive organizations, thus maintaining a pseudo control over its games’ esports scenes. It is not necessary, however, that any tournament or league operator be entitled to the competitive game scene exclusively. A prime example is the Evolution Championship Series (Evo), a tournament for fighting games belonging to other publishers, which is run as a third-party tournament by a non-publisher entity that does not hold

40 See id. at 128 (“The LCS has an extremely close relationship with Riot Games, and is in privity with, or an alter ego of, Riot Games.”). See also NABEL & CHANG, supra note 30.
41 See Wong, supra note 39, at 128.
43 Id.
44 See Miroff, supra note 31, at 180.
the exclusive operator for the games in its lineup but is still considered the de facto main event for those games.46

Nevertheless, the arrangements above are possible because of the downward control that the developers may exercise through the intellectual property rights over their products.47 While no one owns the exclusive intellectual property rights to conventional sports, such as football or baseball, game publishers can, and do, own the intellectual property rights to the games underlying esports.48 Because of this, game publishers can exercise significant control over who gets to use their content and how.49 As such, everything relating to the game, from broadcasting to tournament operation, advertising, and sponsorships, and player contracts, is subject to the publishers’ discretion.50 These publishers can then exert considerable control over “downstream markets,”—markets that follow or are based on their original game—and make themselves the ultimate authority for the esport based on their game.51 Publishers can effectively control the rights, status, and conduct of parties in the downstream market, such as: who can broadcast or organize their tournaments, which tournaments are official, who gets to compete, which organizations or institutions may be affiliated with it, and who may advertise in all media produced by the esport, etc.52

Under this downward control, the chain of authority begins with the publisher and then goes to the tournament operators, whether third

47 See Hollist, supra note 7, at 836; see also Miroff, supra note 31, at 182.
49 See Miroff, supra note 31, at 180–81.
50 See id. at 182.
parties or subsidiaries of the publishers.\textsuperscript{53} For the most part, publishers of games that maintain an online multiplayer community begin their regulatory control over players through an end user license agreement and rules and regulations for player conduct.\textsuperscript{54} These base regulations from the publisher can coincide with, supplement, or inform the additional rules and regulations and codes of conduct set forth by a designated authority for the competitive scene to regulate the conduct and interactions between players and teams.\textsuperscript{55} Together, the publisher’s end user license agreement and the competitive operator’s rules and regulations and codes of conduct effectively prescribe the full set of regulations for professional esports.\textsuperscript{56} Each of the regulatory bodies of esports developed its own rules specific to its games and made regulations particularly suited to its competitive environment.\textsuperscript{57} There is, however, a common set of principles that these competitive environments appear to be based on.\textsuperscript{58}

IV. OVERVIEW OF LEGAL ISSUES

To better understand how U.S.-based esports might benefit from some monolithic regulatory body, it is helpful to identify and give a general overview of the major issues that plague the industry by category and status.

\textsuperscript{54} Wong, supra note 3939, at 127–28; Holden et al., supra note 46, at 537.
\textsuperscript{55} Wong, supra note 3939, at 128.
\textsuperscript{57} See Tseng, supra note 44, at 247.
\textsuperscript{58} Id.
A. Employment: Labor Laws and Contract Disputes

With so many participants in the esports market, issues surrounding individual “employment terms, contract provisions, and labor laws” are to be expected. Contract disputes are, perhaps, on the more prolific side of disputes that professionals in conventional sports tend to face, and this is not lost to esports.

Despite the esport market’s recent creation, its players have encountered employment issues that are “identical to those faced by traditional sports players” regarding players’ rights and power disparities between them and their employers. These can include, but are not limited to, fair treatment in a balanced work schedule, “post-career development[,] medical insurance[,] quality and term of housing[,] . . . and the rights to their [own] intellectual property, such as image and likeness.”

Though, as with conventional sports, these are not limited to disputes between individual players and their institutions. Sometimes they concern agreements between the publishers, the owners of the exclusive rights to esports’ underlying games, and other participants in the esports market.

A primary concern surrounding these arrangements, however, is that the publishers and league operators maintain the authority to essentially dictate the terms and conditions of teams, other businesses, and

59 Wong, supra note 39, at 124.
61 Cripe, supra note 60, at 151.
62 Id.; see also Holden et al., supra note 46, at 543–48 (detailing, specifically, players’ name, image, and likeness rights).
63 Holden et al., supra note 46, at 550–57; see also Holden et al, supra note 60, at 6768.
players through their control over the underlying game. 64 This has frustrated the question of whether professional esports players are employees or independent contractors, which usually turns on how much control an employer has over a worker and the worker’s economic prospects, by making the analysis more factually intensive given the variations of publisher control over esports through their contractual frameworks. 65 Incidentally, the question of classifying the esports professional player is central to many of the employment issues discussed below. 66 This renders it difficult to ascertain the legal rights and obligations of players, teams, league operators, tournament operators, and publishers; also leaving the best means for ascertaining such things subject to debate.

Further complicating the matter, esports players are generally quite young and legally unsophisticated (some being minors), which may result in unfavorable terms and the use of legal backdoors to employment. 67 One example of this unsophistication, is the case of TFue

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64 Id.; Timothy Heggem, “It’s Complicated”: Analyzing the Potential for Esports Players’ Unions, 6 ARIZ. ST. SPORTS & ENT. L. J. 447, 455–57 (2017) [hereinafter It’s Complicated] (noting that sometimes even the game publishers and the league or tournament operators compensate the players); Wong, supra note 39, at 129–30, 135, 143.

65 See Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323–24 (1992) (noting that the employer-employee relationship is determined by considering how much control the employer has over the alleged employee’s work by considering factual circumstances in light of several factors); NLRB v. E.C. Atkins & Co., 331 U.S. 398, 403–04 (1947) (noting that the employer-employee relationship determination should also take into consideration a worker’s dependency on the business that hires him in an economic context); Reich v. Circle C Invs., 998 F.2d 324, 327 (5th Cir. 1993) (noting that the employer-employee relationship determination should also consider the employer’s degree of control over a worker’s opportunity for profit). But see Wong, supra note 3939, at 125–26, 131–37, 139 (noting, for example, that Riot Games and Blizzard Activision set forth mandatory salaries and benefits to the players of professional LoL and Overwatch, and operate a system of punitive action with “sole and absolute discretion” of the tournament operator and publisher, which likely qualifies them as alter ego employers).


67 See Hollist, supra note 7, at 831 (“Many professional players are inexperienced and uneducated in the complexities of contract negotiation—an unsurprising fact when one considers their ages. In League of Legends, players
and the FaZe Clan, where Tfue “labeled himself [as] an artist, not an athlete” so he could take advantage of the Talent Agency Act. However, it appears that the trend in the law favors “compensat[ing] [the more conventional esports players] as freelance contractors through cash prizes,” while “the more accomplished players” are paid salaries. It would be preferable for the players to be considered employees, as that would entitle them to a greater range of rights and more secure careers.

In response to the growing concern over these arrangements between players and teams, teams and the official leagues and publishers, and the players and the official bodies, there has been a call for the formation of a player’s union for esports. Supporters of unions argue this might help overcome the concerns mentioned previously, while simultaneously helping game publishers address certain antitrust concerns.

can begin playing professionally at 17. For some other e[s]ports, professional play can begin as early as age 14.”); Wong, supra note 39, at 129–30 (“The age of majority for a person to achieve full legal capacity to enter into a professional gamer contract depends on the jurisdiction. In the United States and Europe, for the most part, the age of majority is eighteen.”); Holden et al., supra note 46, at 544.


69 Id.

70 See Wong, supra note 39, at 124.

71 Id. at 140–42; see also National Labor Relations Act, 29 U.S.C. § 158(d) (allowing employees to exercise collective bargaining related to “wages, hours, and other terms and conditions of employment”); NLRB v. Wooster Div. of Borg-Warner Corp., 356 U.S. 342, 349 (1958) (confirming that the subjects of collective bargaining, outlined in section 158(d) of the National Labor Relations Act must be discussed); Fibreboard Paper Prods. Corp. v. NLRB, 379 U.S. 203, 209–10 (1964) (noting that employers have an obligation meet and confer with employees to discuss matters of wages, hours, and other terms and conditions of employment with employees in good faith).

by providing a means for collective bargaining on the players’ behalf.\textsuperscript{73} Currently, however, there are only player associations for specific games, and no unions exist for esports players generally.\textsuperscript{74} The League of Legends Player Association (LoL PA), formed in 2017, is one attempt to provide professional LoL players with representation.\textsuperscript{75} But, there has been some controversy about whether the LoL PA’s financing by Riot Games violates the National Labor Relations Act (NLRA), which turns on the issue of whether professional LoL players are considered employees of Riot Games.\textsuperscript{76}

Other significant players’ associations include the Overwatch Players Association (OWPA) for the players of Overwatch, which “has adopted some aspects of the National Football Players Association,” and the Counter-Strike Professional Players Association (CSPPA).\textsuperscript{77} These associations were founded by current and former players.\textsuperscript{78} The concerning issue here is, that until recently, “the collective bargaining provisions of the [NLRA were] not satisfied in any form,” and considerations on labor laws were left unaddressed in the contracts between players and competitive institutions, meaning the contracts risked

\textsuperscript{73} Wong, \textit{supra} note 39, at 126; NABEL & CHANG, \textit{supra} note 30, at 436 (noting that, “a union allows certain restrictions on trade to exist without running afoul of antitrust law. . . because the courts have recognized a nonstatutory antitrust exemption for contracts that result from collective bargaining.”); see, \textit{e.g.}, Wood \textit{v.} Nat’l Basketball Ass’n., 809 F.2d 954, 961–62 (2d Cir. 1987) (finding a non-statutory exemption for provisions made as the result of a collective bargaining process).

\textsuperscript{74} Wong, \textit{supra} note 39, at 125, 129.


\textsuperscript{76} Minnie Che, \textit{Is Riot Games in Violation of the NLRA for Funding its Own Union?}, ONLABOR (May 1, 2019), https://onlabor.org/is-riot-games-in-violation-of-the-nlra-for-funding-its-own-union/ (noting that if Riot Games is considered an employer of LoL PA’s professional players, then its funding the LoL PA would violate section 8(a)(2) of the NLRA); Holden et al., \textit{supra} note 46, at 556–57 (noting that Riot Games may have “launched preemptive efforts to prevent players from forming a union”); see also National Labor Relations Act § 158(a)(2).

\textsuperscript{77} See Wong, \textit{supra} note 39, at 125; About CSPPA, COUNTER-STRIKE PRO. PLAYERS' ASS’N, https://www.csppa.gg/about (last visited Aug. 8, 2022).

\textsuperscript{78} \textit{Id.}
constituting unfair labor practices. Additionally, there is a “significant lack of transparency in the world of esports [which] makes it difficult for players to determine what constitutes fair compensation.” Despite the lack of apparent transparency, “[m]any of the typical bargaining subjects, such as wages and benefits, have been taken care of by the current e[SP]orts framework,” such that “professional players would have no reason to even consider . . . collective bargaining.”

While contracts govern the arrangements between players, institutions, and publishers, “the relationship between an employee and an employer is governed by [federal] law, not by the employer’s judgment.” Nonetheless, some league and tournament operators maintain their own supplementary standards prescribing certain minimum required benefits and terms for players. With regards to players’ unions, the NLRA governs, and it is difficult for contracting parties in the esports industry to circumvent it. Further, although many parties desire an esports players’ union, the NLRA requires that the workers take the initiative to unionize and that such workers must be employees under the common law definition. Thus, an overarching players union for all players in esports

79 Id. at 141; see also Richard Lewis, How fair is an LCS contract? We asked a lawyer, DOT ESPORTS (Sept. 22, 2014, 6:51 AM), https://dotesports.com/league-of-legends/news/lcs-contract-analysis-league-of-legends-riot-games-682 (noting the many provisions in a sample contract that seem exploitative or without regard for labor conventions); National Labor Relations Act § 158.
81 Wong, supra note 39, at 143.
83 See Wong, supra note 3939, at 137 (noting Overwatch League’s required minimum annual salary and mandated terms for “employer-sponsored health insurance, housing, retirement savings plans, training support, and other benefits”).
85 Ridenhour, supra note 65, at 1862–63; National Labor Relations Act §§ 152(3), 158(a)(2); see also NLRB v. Town & Country Elec., Inc., 516 U.S. 85,
cannot be compelled into existence by the publishers or the league/tournament operators.\textsuperscript{86} As to the disputes that have arisen and led to litigation, there is little case law, with the Tfue controversy—which ended in settlement—being the “esports industry’s first major employment lawsuit.”\textsuperscript{87}

**B. Immigration**

Esports operate internationally as players often travel to global sites to participate in competitions and sometimes transfer between different teams headquartered in different locations.\textsuperscript{88} Thus, immigration laws and the issuing of visas are also a concern to the esports market.\textsuperscript{89} Historically, the U.S. government has denied visas to players, such as, William “Leffen” Hjelte, attempting to enter the country.\textsuperscript{90} At the time, the United States Citizenship and Immigration Services (“USCIS”) did not consider esports as *legitimate* sports for the purposes of the P-1A visa.\textsuperscript{91} The uncertainty of these relatively unresolved legal issues caused fear for some.\textsuperscript{92}

In general, esports immigration issues center around the visa status of professional players under U.S. law and which visa each player may qualify for.\textsuperscript{93} The following are a few possible categories. One

\textsuperscript{86} See National Labor Relations Act, 29 U.S.C. §§ 158(a)(1)–(2).

\textsuperscript{87} See, e.g., Settimi, supra note 67.


\textsuperscript{89} See National Labor Relations Act, 29 U.S.C. §§ 158(a)(1)–(2).


\textsuperscript{91} Parson, *supra* note 87, at 1189.

\textsuperscript{92} See id. at 1190 (“Leffen’s situation embodies the inconsistency and unpredictability of the US visa system as it pertains to admitting Esports players into the United States for competition.”).

\textsuperscript{93} See Jurek, *supra* note 90.
possibility for esports players is to apply for the visa waiver program ("VWP"), which allows “citizens of participating countries” to “stay in the United States for up to ninety days for business or tourism without obtaining a visa.”\(^\text{94}\) However, VWP's are unfavorable because they are unrenewable, “the seasons for US-based [e]sports are often longer than ninety days,” and “it may be illegal for salaried [e]sports players to play in US tournaments under the VWP.”\(^\text{95}\)

Other options include B-1, B-2, or H-1B visas which allow esports players to enter the United States for business, pleasure, or a “specialty occupation,” and require the “attainment of a bachelor’s degree or higher . . . in the specific specialty.”\(^\text{96}\) However, the wording of the statutes authorizing the former B-1 and B-2 visas does not comport with the circumstances of esports players, as the players usually do not meet the requirements for the H-1B visa.\(^\text{97}\) The high evidentiary standards of the O-1A and EB-1 visas, issued to individuals who show “extraordinary ability,” result in players not typically seeking such visas, as well.\(^\text{98}\)

The P-1A visa option for professional athletes shows the most promise.\(^\text{99}\) In 2013, Riot Games successfully took this route when it convinced the USCIS to classify an esports player as a professional athlete because the League of Legends competitive scene had “met government benchmarks for a major sports league,” qualifying him for the P-1A visa.\(^\text{100}\) Despite no official agency comment after this approval, it opened

\(^{94}\) Parson, supra note 88, at 1201 (citations omitted).
\(^{95}\) Id. at 1201–02.
\(^{96}\) Id. at 1202–03 (citations omitted); see also Bridget A.J. Whan Tong, Comment, A New Player Has Entered the Game: Immigration Reform for Esports Players, 24 JEFFREY S. MOORAD SPORTS L.J. 351, 370, 374–75 (2017).
\(^{97}\) Parson, supra note 87, at 1203–04 (citations omitted) (explaining that esports players “do not attend . . . conventions or conferences as specified in the” B-1 visa statute, “do not qualify for a B-2 visa” because they are “employed and salaried,” and avoid the H-1B visa because they do not meet its requirements); Tong, supra note 96, at 370–73, 375.
\(^{98}\) Parson, supra note 88, at 1205–06; Tong, supra note 96, at 378–80.
\(^{99}\) See Parson, supra note 87, at 1207–08; Tong, supra note 96, at 381–83.
\(^{100}\) Chung, supra note 23, at 235; Paresh Dave, Online game League of Legends star gets U.S. visa as pro athlete, L.A. TIMES (Aug. 7, 2013, 12:00 AM), https://www.latimes.com/business/la-xpm-2013-aug-07-la-fi-online-gamers-20130808-story.html (noting a USCIS representative’s statement that P-1A cases are reviewed on a case-by-case basis, and that the competitive league “met
the door for esports players to receive visas under the professional athlete route. However, complications remain in trying to satisfy the definitions and evidentiary requirements for the P-1A as the P-1A’s issuance to esports players remains sporadic and unpredictable. Namely, there appears to be some difficulty defining esports as a sport, and esports players as athletes due to esports’ lack of legitimacy in the public eye and from lack of friendly firm regulatory structures.

As such, with the law prescribing the various visa options under which immigration in esports can be resolved, it appears that immigration issues are more a matter of agency policy than of black letter law. Thus, esports as an industry must work towards classifying their athletes as legitimate for P-1A’s purposes by lobbying for such a designation, legitimizing the esports scene, or registering esports “as an official sport” in the United States. The more immediate concerns with immigration deal with the individual esports leagues’ policies and regulations.

101 See Chung, supra note 22, at 235–36 (noting that the USCIS has begun to approve P1 petitions for eligible professional video gamers who are internationally recognized).
102 Parson, supra note 87, at 1208–10.
103 Id. at 1209–11; Tong, supra note 96, at 382–83. See also Holllist, supra note 7, at 843 (suggesting that the lack of established esports associations in the United States weighs against the legitimacy of esports).
104 Gillian Linscott, Esports, Sports Recognition, and Visas, ESPORTS EDITION (Dec. 4, 2016), https://esportsedition.com/dota-2/esports-sports-recognition-visas/ Linscott notes, “[t]he next step for expanding on [the growth the esports industry] is making esports an officially recognized sport in all countries.” Id. See also Parson, supra note 88, at 1210–11 (noting the absence of a legal definition of “athlete” or “sport,” or a determination of what esports classifies as—in addition to the absence of guidance for USCIS officers on the matter—suggests that the establishment of definitions and guidelines that qualify esports would be beneficial); Dave, supra note 100 (noting there appears to be a benchmark for market capitalization and size of a competitive scene, which suggests that a sufficiently large and capitalized esport could qualify under this regime).
105 See Sayantan Chowdhury, Everything to know about the LCS Import drama, SPORTSKEEDA (Feb. 22, 2021), https://www.sportskeeda.com/esports/everything-know-lcs-import-drama#:~:text=According%20to%20the%20LCS%20import,receive%20proper%20attention%20and%20development.&text=This%20was%20not%20an%20end,in%20the%20history%20of%20LCS.
Namely, the most recent controversy in the esports industry concerns the “Import Rule,” which concerns players hired from other regions to play in the United States, and whether esports should have stricter or looser regulations on incorporating them into U.S.-based teams. Again, this appears to be a matter of policy, albeit one that isn’t touched by law, and must be addressed by the individual esports leagues and publishers through their own regulations and policies.

C. Antitrust via Intellectual Property Rights

Generally, antitrust in sports law concerns regulating the conduct of larger associations or a group of entities engaging in anti-competitive conduct within the competitive scene of the sport or sports. Scholars agree that this applies equally to esports and conventional sports, in that they could monopolize their professional players within a given region, implicating the Sherman Act. However, because game publishers have ultimate control over every aspect deriving from their games through their intellectual property rights, this broad control exposes esports to additional antitrust issues. This makes for a second means of implicating antitrust concerns: the strong bargaining power discrepancy between the game publisher and all downstream esports market participants.

\[\text{References}\]

\[\text{106 Id.; Danny Appleford, Potential LCS import rule change sparks controversy on social media, DAILY ESPORTS (Feb. 20, 2021), https://www.dailyesports.gg/potential-lcs-import-rule-changes-spark-controversy/ (noting LCS team owners held a discussion with Riot Games “to adjust the LCS import rule to allow more international players on LCS rosters…,” with most owners “in favor of the import rule being changed, [and] some executives . . . with a more aggressive take.”); Jef van den Bosch, LCS teams want to remove import restrictions – is it a good idea?, ESPORTS.COM (Mar. 2, 2021) https://www.esports.com/en/the-lcs-removing-import-restrictions-is-it-a-good-idea-174976. Bosch notes, trouble with team and regional identity resulting in games with looser “import rules,” which “takes away a lot of the reasons for American fans to cheer on and support their team.” Id.}\]


\[\text{108 See Grow, supra note 107, at 581; Miroff, supra note 31, at 180–83; NABEL & CHANG, supra note 30, at 422, 426.}\]

\[\text{109 See discussion supra, Section I; see also Miroff, supra note 31, at 179–83; Chao, supra note 9, at 755–56; Hollist, supra note 7, at 836.}\]

This is further complicated by the fact that while there are multiple categories of participants in the esports market, an individual participant can also fall into multiple categories.\textsuperscript{111} For example, because of the incredible downward control that publishers have over an esports IP with the right license, a publisher could potentially also be an operator of a tournament or league as well as the broadcaster of that esports scene.\textsuperscript{112} In the case of the Overwatch League, Blizzard acts as the publisher of the underlying game, \textit{Overwatch}, the organizer of the game’s entire competitive scene, and holds control over all competitive teams under a franchise model.\textsuperscript{113} In the case of \textit{League of Legends}, Riot Inc. acts as the publisher, organizer and broadcaster of the North American League Championship Series.\textsuperscript{114} Even parties that are not publishers can play different roles. For example, professional players of one game can easily be viewers of another or the same game, and customers can switch viewership between each individual game.\textsuperscript{115}

There is an even bigger question of how to define the esports market; and this question is key in determining whether a party is exercising a monopoly or violating antitrust laws: Is the esports market defined as every possible video game with a potential competitive scene?\textsuperscript{116} Or, perhaps, are there “micro-markets” that consist of the competitive scene of just one game?\textsuperscript{117} Or, is there a specific group or
genre of games that constitute the esports market? While the individual publishers may exercise total downwards control over only their IP, it is possible for a single independent tournament organizer to hold an exclusive license from publishers to “produce and distribute esports content.” The sheer number of games in the esports market does not make this issue any easier either. Ultimately, the analyses required to answer such questions are beyond the scope of this article. For now, it suffices to note that there is a convincing argument to consider esports a multi-sided market, which tends to frustrate the conventional tests used by the Department of Justice to fully account for antitrust consideration.

Presently, no case law has addressed antitrust matters in esports. Nonetheless, several parties acknowledge that antitrust law still applies, and they tend to draw analogies from antitrust case law as it applies to conventional sports. This has led some scholars to conclude that the esports market, be it in the context of a single esports game or all esports, is a vertically-integrated monopoly. Subsequently, this means that game

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118 Miroff, supra note 31, at 184. See also Hartung, supra note 51, at 45 (“Games which belong to the same genre are probably substitutable to some extent from the view of the players as well as the consumers of e-sports matches.”).


120 See Miroff, supra note 31, at 197–99 (noting that, because esports has several categories of participants that are uniform throughout multiple products, the esports industry is what is considered a “multi-sided” market that makes it difficult for conventional tests used by the Department of Justice to fully account for antitrust considerations).

121 Holden et al., supra note 46, at 548.

122 See, e.g., Id., at 550; Miroff, supra note 31, at 199–205; Nabel & Chang, supra note 30, at 426–35.

123 See Miroff, supra note 31, at 191–205 (noting that the relevant market definition tests, namely the “small but significant and non-transitory increase in price, or SSNIP” test, makes it possible for a single esport to constitute an antitrust relevant market as easily as all esports would as vertically integrated monopolies).
publishers, who hold ultimate control at the top of the vertical market, are most likely to trigger anti-trust scrutiny through the exercise of their downstream control.\textsuperscript{124}

On the other hand, regardless of market definition, the Supreme Court and the Department of Justice have stated that control over a market based upon one’s intellectual property rights does not necessarily equate to having an antitrust-relevant monopoly over the market.\textsuperscript{125} Another, albeit weaker argument, is that esports are a relatively immature and newly developing competitive environment, when compared to conventional sports, that may justify some anti-competitive activity to a certain extent.\textsuperscript{126} Even if a constituent league is found in violation of antitrust laws, it is not unprecedented for the courts to afford non-statutory exemptions to the rule, as they have for conventional sports.\textsuperscript{127} Ultimately, antitrust is a matter of policy coded into law, and thus an issue left to the legislature and the courts to decide. It appears that game publishers will have little say other than as a special interest group, or as parties to a lawsuit. Regardless, esports’ interactions with antitrust laws, by analogy to conventional sports, is bound to cause trouble, and participants of the esports market would be wise to expect antitrust issues to eventually surface.\textsuperscript{128} If any claims were brought pursuant to the Sherman Act, they “could be brought by antitrust enforcement agencies, such as the

\textsuperscript{124} See Miroff, supra note 31, at 205.
\textsuperscript{126} See Fraser v. Major League Soccer L.L.C., 97 F. Supp. 2d 130, 140 (D. Mass. 2000) (holding, in part, that the relatively new and underdeveloped environment of this particular competitive scene of soccer was not sufficiently developed to warrant the application of antitrust laws); Fed. Baseball Club v. Nat’l League, 259 U.S. 200, 209 (1922) (ruling that competitive baseball did not constitute interstate commerce for the purposes of antitrust regulation, even if teams often travel between states); Chao, supra note 9, at 742 (noting that the esports market is akin to the early stages of Major League Baseball); Nabel & Chang, supra note 30, at 430–34 (noting certain similarities in structure between esports and the institution in Fraser, that “the fact that all esports leagues are still in a development phase helps to defend some restraints of trade,” and that Fraser “provides guidance that may be more applicable to esports”).
\textsuperscript{127} Holden et al., supra note 46, at 549.
\textsuperscript{128} Steven R. Rivkin, Sports Leagues and the Federal Antitrust laws, Government and The Sports Business, 387, 387 (Roger G. Noll ed., 1974) (noting that the application of antitrust laws to professional sports is bound to be troublesome).
Department of Justice or the Federal Trade Commission, or by private plaintiffs . . . directly damaged by anticompetitive conduct.”

D. Gambling

Despite being outlawed for some time and resulting in numerous scandals, gambling on American sports acquired notoriety in the early 1900’s. In light of recent changes to gambling legislation across the U.S., there can be no dispute that sports gambling has become a greater topic of discussion. Gambling, as it pertains to the video game industry, is not without its fair share of such issues, and the discussion seems centered on the “microtransaction” business model. A highly controversial service where players acquire virtual items of varying rarities, and thus of varying value, sometimes through what is akin to a digital roulette, which can then be sold on a secondary market for real currency. This means acquiring in-game content has led to several controversies, all pointing to consumer dissatisfaction and public relations fiascoes, and ultimately culminating in several government hearings in the U.S. and abroad.

129 See, e.g., Miroff, supra note 31, at 206.
130 See, e.g., Evan Andrews, What was the 1919 “Black Sox” baseball scandal?, HISTORY CHANNEL (Aug. 12, 2021), https://www.history.com/news/black-sox-baseball-scandal-1919-world-series-chicago (chronicling the “Black Sox Scandal,” where eight players for the Chicago White Sox were paid significant amounts of money to throw the 1919 World Series); Pete Rose Gets Booted from Baseball, HISTORY CHANNEL (Nov. 16, 2009), https://www.history.com/this-day-in-history/pe-te-rose-gets-booted-from-baseball (noting that the MLB commission permanently banned Pete Rose from participating in any capacity for placing wagers on certain matches while he was a player and a team manager in 1989).
131 Ryan Rodenberg, United States of sports betting: An updated map of where every state stands, ESPN (Apr. 7, 2021), https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization (noting that any state can now legalize sports betting and both state lawmakers and Congress are considering legislating sports betting).
133 Id., at 729 (noting that trading and betting of “skins,” in-game items that aesthetically change a player’s game play has been heavily criticized).
134 Id., at 734–35, 749–50 (noting that the ESRB introduced an “in-game purchases” label for all games that offer microtransactions and detailing the FTC’s investigation and public workshop, leading to public disclosure of loot box odds.
Returning to esports, it appears that gambling based on the outcome of professional games and the performance of players has emerged as well. In fact, as the COVID-19 pandemic virtually stagnated betting on conventional sports, betting on esports became more prolific.
Nonetheless, as of 2018, there are estimates that the annual esports gambling market is “worth between U.S. $2.3 billion . . . and U.S. $50 billion,” which is a far cry from the market capitalization of the esports market, between U.S. $800 million and $869 million during the same period.137 This could be the result of analysts purposefully inflating the numbers to encourage investments through such reports, but otherwise, this suggests that the esports betting economy is troublesomely large.138 This has understandably led some to call for its regulation because the potential for such a lucrative market to compromise the integrity of the sport, in much the same manner as it does conventional sports, seems obvious.139 Indeed, in December 2020, Riot Korea revealed they had not only discovered—but also confirmed—“a number of players overseas have been involved with illegal Chinese esports gambling websites to directly influence the [performance] of” Korean professional players.140

As esports is an international phenomenon, much can be said on the matter of gambling laws relative to esports across national jurisdictions. However, as this paper concerns esports in the United States, the following discussion will be limited to gambling laws within the nation. DLA Piper’s report on esports regulation lists several statutes of primary concern for esports, such as the Illegal Gambling Business Under the Organized Crime Control Act, the Travel Act, the Racketeer Influenced and Corrupt Organizations Act, and the Unlawful Sports Gambling Act.141 However, the report does not make clear as to whether they are implicated by


138 Id.

139 Id.


esports. With the Supreme Court’s ruling in Murphy v. National Collegiate Athletic Association, which held a federal ban on sports betting was unconstitutional, it is clear that the Professional and Amateur Sports Protection Act no longer applies. Although it has never been made entirely clear as to whether betting on esports activities are subject to the Wire Act and the Unlawful Internet Gambling Enforcement Act, both have been pegged as laws that esports betting could potentially run afoul of. There is also the question of “whether e[s]ports itself,” with respect to the mere participation in an event or winning a competition’s payout, “constitutes gambling” which has not been officially resolved; the answer to which is, presumably, no. More troublesome is that while esports market participants and competitive events can implicate such gambling laws, current sports betting regulation does not strictly or explicitly include esports. Further, even if betting on esports is legal, there appears to be no means for market participants to appeal or contest the matter. Thus, it is clear that some kind of legislation is needed to bring esports betting into the purview of sports betting laws or legal attention.

142 Id.
143 Holden et al., supra note 46, at 568 (noting that the Murphy ruling more or less allows legal betting on esports contests in a number of states from parties licensed in those states); Hanjoong Kim, supra note 136; see also Murphy v. Nat’l Collegiate Athletic Ass’n, 138 S. Ct. 1461 (2018) (holding that the Professional and Amateur Sports Protection Act of 1992 (“PAPSA”), a federal law that prohibited state sports betting, was unconstitutional, thus allowing state-sponsored sports betting notwithstanding the Act).
145 Gatto & Patrick, supra note 144, at 434–42 (providing legal analysis suggesting that esports, through analogous cases dealing with other forms of betting and wagering, is not illegal under federal or state laws pertaining to gambling and lotteries); Holden et al., supra note 46, at 535 (noting that, particularly as to state gambling laws, there is more ambiguity on prizes from esports because there might be more “chance” involved in determining the outcome of a professional esports match).
146 Martinelli, supra note 9, at 501–02.
Notwithstanding this legal ambiguity, it appears that gambling on esports and fantasy esports is a legal activity, and it has continued to grow.\textsuperscript{148} Publishers can still exercise their intellectual property rights and conduct the appropriate legal proceedings to prevent gambling based on their products,\textsuperscript{149} and both the publishers and the league/tournament operators can write in their own regulations on the matter. But as esports continues to grow, only time will tell if Congress enacts legislation to counteract esports betting. Ultimately, game publishers may also restrict gambling activity, notwithstanding the positive law, through their formidable downward control of their intellectual property in the tournament operators’ official rules and in the publisher’s code of conduct or terms of use.

E. Discrimination & Harassment

Discrimination and harassment—be it by race, gender, class, or age—have been subjects of controversy across American society, and the video game industry is not free of such concerns. However, sexual discrimination appears to be of particular concern. For years, the video game industry, from the player community to the game developers, has suffered from a pervasive trend of sexual discrimination that recently came to a boiling point.\textsuperscript{150}

\textsuperscript{148} Holden et al., supra note 46, at 568–70; Hanjoong Kim, supra note 137; Seth Schiesel, With Real-Life Games Halted, Betting World Puts Action on E-Sports, N.Y. TIMES (June 8, 2020), https://www.nytimes.com/2020/06/08/sports/coronavirus-esports-sports-betting.html (noting that esports betting has picked up following the COVID-19 pandemic).

\textsuperscript{149} Sok, supra note 45, at 534–37 (noting that this was precisely the case where Valve had sent cease and desist letters to gambling sites, pursuant to breaches in terms and conditions of Steam subscriber agreements, which are ultimately controlled and owned by Valve).

\textsuperscript{150} Holden et al., supra note 46, at 577–78. Holden notes, “[t]oxic masculinity permeates the electronic gaming industry . . . . Online gaming communities are very hostile places for women; and the environments are so toxic that they push girls, adolescents and adult women away from competitive video gaming.” Id. Kruthika N. S., Esports and its Reinforcement of Gender Divides, 30 MARQ. SPORTS L. REV. 347, 357 (2020), https://scholarship.law.marquette.edu/sportslaw/vol30/iss2/4. Kruthika notes, “[w]omen have so often been subject to misogynistic and sexist harassment in the world of gaming, that over time, it has almost been accepted as canon.” Id.
Sexual discrimination does not seem to be localized to any particular corporate rank or gaming company. In fact, the most recent scandal involves one of the premier esports game producer’s CEO. It is, however, important to distinguish between the video game industry with that of esports; this paper’s scope is limited to the legal issues surrounding esports and not the video game industry as a whole.

Nevertheless, there has been a long and unfortunate history of gender discrimination and sexual misconduct in esports, particularly


152 Taylor Lyles, Riot Games CEO under investigation following allegations of gender discrimination, VERGE (Feb. 9, 2021, 5:10 PM), https://www.theverge.com/2021/2/9/22275059/riot-games-ceo-investigation-gender-discrimination-sexual-harassment-allegations (noting the latest development from the most recent controversy, but also, that this is not the first time the company has faced such suits).
within the fighting game community, which continues today.\textsuperscript{153} Some of the earliest instances of publicly known harassment applied to professional female players, which led to the retirement of some, and the ostracization of others.\textsuperscript{154} This treatment is not limited to professional players and


\textsuperscript{154} See Mustafa Gatollari, \textit{The Gaming Community Was Shocked to Learn That Remilia Passed Away}, DISTRACTIFY (Dec. 29, 2019, 7:32 PM), https://www.distractify.com/p/how-did-remilia-die (noting that Maria “Remilia” Creveling, largely considered the first female \textit{League of Legends} professional player, had passed away and suffered a constant string of harassment and ridicule since her debut as a professional player); Dom Sacco, \textit{Warnings issued to LCL teams RoX and Vega Squadron for discrimination and unsportsmanlike behaviour towards all-female side Vaevictis}, ESPORTS NEWS UK (Feb. 21, 2019),
participants either, as the management of certain tournament organizers for esports have been equally suspect of such claims.\textsuperscript{155} Also of immediate alarm to esports is the sheer gender imbalance in the professional scene: indeed, the NCAA stepped away from including esports into its purview, ostensibly because it was concerned about the possibility of gender discrimination implicating Title IX of the Education Amendments Act of 1972, with the esports being heavily skewed towards a predominantly male environment.\textsuperscript{156} This does not mean that there is no female talent: there are several highly skilled or even professional female players, all of them formidable in their own right.\textsuperscript{157} Rather, it appears the dearth of female esports professionals is due to the fact that the esports ecosystem

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\textsuperscript{155} James O’Connor, EVO 2020 Online Has Been Cancelled, GAMESPOT (July 6, 2020, 8:49 AM), https://www.gamespot.com/articles/evo-2020-online-has-been-cancelled/1100-6479302/ (noting that several games and commentators pulled out of the online tournament in 2020 in light of several allegations of sexual misconduct on the part of EVO’s CEO). There also appears to be a particularly prevalent trend of sexual misconduct on the part of professional gamers in the Smash Brothers professional scene. Id.

\textsuperscript{156} See Holden, \textit{supra} note 46, at 577–78; DAVID B. HOPPE, \textit{ESPORTS IN COURT, CRIMES IN VR, AND THE 51% ATTACK: KEY TRENDS AND DEVELOPMENTS IN ESPORTS, VR AND AR, BLACKCHAIN AND CRYPTOCURRENCIES} 46–47 (2020) [hereinafter \textit{Esports in Court}]; Tim Reynolds, NCAA’s Emmert expresses concern over wagering, esports, AM. PRESS (Jan. 25, 2019), https://apnews.com/article/7d62e621e8dd4c3bb1edfc54363c40c6 (noting that “[o]ne of the challenges of esports could be having it adhere to Title IX compliance rules . . . there are other studies that suggest the gap between male and female players—while still tilted heavily toward men— is much smaller than [95%].”); see also Education Amendments Act, 20 U.S.C. §1681(a) (1972). The statute reads, “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Id.


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has not nurtured any of them, and the few female players who do pursue competitive aspirations, are treated poorly by the community.\textsuperscript{158}

Claims of discrimination and harassment can implicate several provisions of federal law that provide the afflicted with remedies or injunctive relief, and even criminal liability for varying degrees of violation.\textsuperscript{159} But there does not appear to be many, if any, suits brought forth pursuant to such law in the context of esports. Considering the litigation that has been brought under discrimination and harassment suits in the video game industry already, even if suits are brought forward in the future, individual parties will bring these disputes to court, and it is unlikely that the esports operators will step in for the aggrieved.\textsuperscript{160} Nonetheless, the social community called for reform, and game publishers, particularly for those games with a competitive scene, were quick to respond.\textsuperscript{161} Many, if not all, have implemented other in-game systems to allow for communication without revealing one’s gender and have enforced basic cultural norms through policies and rules of conduct for esports participants with reporting systems for improper behavior.\textsuperscript{162} Further, publishers and other participants in the esports ecosystem have indeed provided their own systems and policies to curtail such behavior through their codes of conduct and their practices.\textsuperscript{163}


\textsuperscript{159} See \textit{i.e.}, Canutillo Independent School Dist v. Leija 101 F.3d 393, 396 (5th Cir. 1996) (citing Cannon v. Univ. of Chicago, 441 U.S. 677, 709 (1979) & Franklin v. Gwinnet County Pub Sch., 503 U.S. 60 (1992)) ("There is an implied right of action under Title IX in favor of victims of discrimination on the basis of sex . . . and monetary damages may be awarded for its intentional violation."); Halczenko v. Ascension Health, Inc., 37 F.4th 1321, 1324 (7th Cir. 2022) ("Title VII provides a range of remedies to successful plaintiffs, including reinstatement, back pay, front pay, compensatory damages and ‘any other equitable relief as the court deems appropriate.’")


\textsuperscript{161} Tseng, supra note 45, at 222–24

\textsuperscript{162} \textit{Id.}

\textsuperscript{163} \textit{Id.}
F. Market Participant Misconduct

Finally, there is the matter of regulating player and institutional misconduct within the esports market. To be specific, this paper refers to the murky area that the law does not necessarily reach: The way participants of the esports market behave, whether through corrupt or unfair or unethical practices; disrespectful or bad “behavior;” poor or unfair treatment of other parties; or foul slurs. This does not come as much surprise since online interactions between players is notoriously hostile at times. Outside of the competitive environment, the online gaming community is rife with unacceptable behavior known generally as “player toxicity,” which can include threats, insults and slurs on a variety of grounds, cheating, and even theft.164 Some individuals are known to involve themselves in corrupt practices that compromise the integrity of a game’s competitive system, and thus, some players seek competitive recognition through unlicensed cheating software or ranking manipulation practices.165

Professional esports is not without such blunders.166 There have been cases of professional players engaging, and even maintaining, toxic and socially unacceptable behavior towards others during their practice games, within their teams, or in their interactions with the general public through the game’s competitive system and beyond.167 For example,

164 Id. at 240–47.
165 See Michael Gwillian, Overwatch player exposes game-breaking win-trading exploit, DEXERTO, https://www.dexerto.com/overwatch/overwatch-player-exposes-game-breaking-win-trading-exploit-1340386/ (last updated Mar. 12, 2020) (noting that an Overwatch player had detailed an exploit in which players can attempt to match against each other, and have one of them intentionally grief their team into losing the game for the other to improve their competitive ranking, a practice known as “win-trading”); Bill Cooney, Blizzard Bans Over 1600 South Korean Overwatch Players for Account Sharing in Season 17, DEXERTO, https://www.dexerto.com/overwatch/blizzard-bans-over-1600-south-korean-overwatch-players-account-sharing-season-17-933822 (last updated Aug. 20, 2019).
166 See generally Tseng, supra note 45; Sok, supra note 45, at 528–33.
substance abuse, particularly with study drugs/nootropics, or drugs that boost brain function, appears to be rampant. Further, unethical competitive practices, such as match fixing, occurs from time to time; Konstantinos ‘Forg1ven’ Tzortziou would be suspended from competitive play for four games following “a pattern of negative in-game behaviour and toxicity[]”); Ibrik Daya, The nail in the coffin for Forg1ven’s legendary career, Qrank (Feb. 18, 2020), https://qrank.gg/lol/forg1ven-and-his-ruined-career/ (noting that Forg1ven is known for his generally toxic and negative behavior, which played a large part in the fall of his professional career); Richard Lawler, ‘Overwatch’ Pro Suspended for ‘Racially Disparaging’ Emote, ENGADGET (Mar. 10, 2018, 11:39 PM), https://www.engadget.com/2018-03-09-overwatch-pro-suspended-again-for-racially-disparaging-emote.html (noting that professional player xQc had been suspended from competitive Overwatch play for using a racially discriminatory emote and that the Overwatch League’s policies and regulations prescribe punishments for in-game actions, actions while streaming, and comments on social media); see also Tseng, supra note 57, at 224–34.


professional and high-ranked players are known to engage in or solicit “ELO Boosting,” in which one player plays on another player’s account to raise its competitive ranking for money, or “win trading,” where players purposefully lose and win matches to promote another’s competitive ranking; additionally, there are documented cases involving the outright use of cheats and hacks to give an unfair advantage in official competitive play. Misconduct, or what would normally count as misconduct in other contexts, can also occur on the part of administrative staff, corporate employees, and even executives of the several participants in the esports market; sometimes, this can involve negligently revealing sensitive and confidential topics related to institutional management and maintaining relationships that might normally be considered a conflict of interest. In fact, some of the latest include the fining of a professional institution’s

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170 See The Riot Ban Hammer Comes Down on XiaoWeiXiao and FORG1VEN, INQUIRER.NET (July 23, 2015, 6:40 PM), https://esports.inquirer.net/8544/the-riot-ban-hammer-comes-down-on-xiaoweixiao-and-forg1ven (noting that professional player Yu “XiaoWeiXiao” Xian was suspended from professional play for participating in ELO Boosting); see generally Eoin Conroy et al., Boosting: Rank and skill deception in esports, 36 ENT. COMPUTING (2021), https://doi.org/10.1016/j.entcom.2020.100393.

171 See Owen S. Good, CS:GO pro caught cheating gets five-year ban, POLYGON (Oct. 25, 2018, 1:00 PM), https://www.polygon.com/2018/10/25/18023236/forsaken-cs-go-cheating-optic-india-ban (recalling the incident where a prodigious CS:GO player, Nikhil “forsaken” Kumawat, was caught using a cheating software during a professional event and “was handed a five-year-ban by the Esports Integrity Coalition.”).

172 Preston Byers, TSM President Admits to Saying “No One Wants to Pick up Dardoch” on Doublelift’s Stream, DOT ESPORTS (May 11, 2020, 5:56 PM), https://dotesports.com/league-of-legends/news/tsm-president-admits-to-saying-no-one-wants-to-pick-up-dardoch-on-doublelifts-stream (recounting the incident where professional organization Team Solo Mid’s (TSM) president, Leena Xu, conducted a sensitive phone call on a Team Liquid player’s stream, with whom she had a romantic relationship, thus leaking the conversation on player management to the public); see also Josh Tyler, TSM: A Lawyer Breaks Down All the Doublelift, Leena, Dardoch Drama, FANSIDED (May 11, 2020), https://blogoflegends.com/2020/05/11/tsm-latest-doublelift-leena-drama/ (wherein a lawyer gives a legal opinion, with some analysis, on the above controversy with respect to how it implicates and interacts with the law on Conflicts of Interest and Breach of Fiduciary Duty on the part of Leena Xu, and Yilang “Doublelift” Peng, as well as an ethical standpoint on the matter).
CEO for, apparently, insensitive remarks towards a professional player on social media in a comment on the topic of “import restrictions.”

Sometimes, such misconduct results in punitive measures, such as suspension from involvement in the competitive scene and fines; and sometimes, the infractions go unpunished for one reason or another. Much like with discrimination, game publishers, esports operators, and professional institutions within and beyond the esports market have their own policies for these matters, with some seeing action in recent memory; sometimes, these incidents result in legal action, if the jurisdiction in which it takes place has applicable criminal or civil law. Regarding toxic or unbecoming behavior, it seems that the terms of use and the regulations set forth by the game publishers and the tournament operators, respectively, can—and have—governed. That said, it is possible for these incidents to give rise to civil legal process in, say, fiduciary law for example. As to misconduct of a higher level, such as match fixing, past instances show that publishers and tournament operators wrote their own regulations and policies to combat such behavior; and such misconduct may be sanctioned/enforced through legal proceedings in jurisdictions that possess the relevant laws. As for substance abuse, although some

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174 See *The Riot Ban Hammer Comes Down on XiaoWeiXiao and FORGIVEN,* supra note 170 (noting that both XiaoWeiXiao and FORGIVEN were both suspended from competitive participation for their conduct); see also Martinello, supra note 173 (noting that Reginald was fined for his comments); Davis, supra note 169; but cf. Rosenthal, supra note 168 (noting despite there being rampant abuse of study drugs, there does not appear to be any sanctions so far).

175 See, e.g., Todorov, supra note 169 (exhibiting that the Esports Integrity Commission (ESIC) works to eliminate match-fixing and cheating and that Australia could prosecute cheaters).

176 Tseng, supra note 4557, at 224–34 (noting a long list of infractions and disciplinary actions).

177 Tyler, supra note 172.

178 See Godfrey, supra note 169 (discussing law enforcement prosecution of an esport player for violations); Davis, supra note 169 (discussing
Competitive regulations exist, it’s notable that these regulatory measures are neither widespread nor particularly effective, as substance abuse reportedly remains prolific despite preexisting regulations. Further, with the more prolific study drugs falling under the “prescriptive” designation, taking them without prescription is illegal anyways, so the law does provide some additional regulation in a sense. Nonetheless, the issues mentioned above prompted many parties to urge competitive esports operators and publishers to establish and enforce regulations, as well as argue for a monolithic esports regulator to handle such matters.

V. ESPORTS REGULATORY BODIES IN OTHER JURISDICTIONS

To date, there have been several regulatory authorities throughout the world, some of which are government-sponsored, and they have been largely successful in regulating the esports ecosystems in their respective jurisdictions. An examination of several of these regulatory bodies may shed light on the effect that a monolithic regulator or association for esports may have on the esports ecosystem of a given jurisdiction.

A. KeSPA, the Korean Esports Association.

KeSPA, the Korean Esports Association, is the government-backed regulator for Esports in South Korea and is considered the first “regulator,” for lack of a better term, of esports in the world. Note, however, that while it is supported and approved by South Korea’s Ministry of Culture and Tourism, KeSPA is a nongovernment organization with a twelve-member board “composed of executives from major punishment levied by a game’s owner); see Todorov, supra note 169 (discussing a non-profit’s role in suspending players).


180 Chung, supra note 23, at 239–41 (noting, however, that a work around would simply be to have a player receive a prescription for, say, Adderall, and this would be difficult to comport with regulations because nothing would stop the player from taking more than prescribed per dose).

181 See Tyler, supra note 172 (suggesting that Riot should “take a look at their rules…”); see also Xing Li, Conflicts of Interest Are Inherent To the Nature of Sports—and Esports, DOT ESPORTS (June 11, 2020, 5:30 PM), https://dotesports.com/league-of-legends/news/conflicts-interest-inherent-nature-sports-esports.

182 See Wong, supra note 39; Chao, supra note 9, at 758–760.

183 See Chao, supra note 9, at 757–58.
corporations” with a recently established fairness committee to investigate and enforce its policies comprised of scholars and lawyers. With the South Korean government’s support, it is the monolithic regulatory body for all esports in South Korea, whose authority includes officiating competitions, managing venues, supervising arrangements between esports market participants, and enforcing ethical and competitive regulations. KeSPA’s history and South Korean esports’ recent controversies revealed the utility of government involvement in the operations of a monolithic regulatory body for esports in that jurisdiction. Case in point, the controversy henceforth referred to as the “Griffin Scandal,” illustrates this reality well enough: In September 2019, the Korean professional team Griffin let their head coach, Kim “cvMax” Dae-Ho, go. However, shortly afterwards, cvMax made several statements alleging that his release from Griffin stemmed from a long-standing conflict between him and the CEO and manager of Griffin, Cho Gyu-Nam, and seemingly confirmed other reports of Cho’s toxic disposition towards Griffin’s players. Initially, this matter prompted a joint investigation by Riot Games Korea and KeSPA on Griffin’s poor governance and Cho’s conduct, which led to the suspension of both Cho and cvMax from League of Legends activity. Shortly afterwards, rumors

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185 Chao, supra note 9, at 758. Chao notes, “KeSPA, with the support of the South Korean government, can officiate and organize tournaments, manage esports venues and create dedicated esports stadiums, oversee the registration of South Korean Players, enforce professionalism and ethical standards, regulate sponsorships, distribute competition broadcast rights, and coordinate licensing agreements[,]” et cetera. Id.


188 Koyle, supra note 187.

189 GAMES TODAY, [Translated] Riot Korea Reports Interim Findings on the “Griffin Incident”: Ministry of Culture, Sports and Tourism Denies National Assembly’s Request (Oct. 29, 2019, 10:35 AM),
of Cho pressuring a minor into signing unfavorable contract terms, which the minor could not have understood, came to light. Subsequently, a South Korean Ministry investigated this as a legal affair, and the South Korean National Assembly, their equivalent of our Congress, considered and revised regulations regarding the controversial practice of allowing minors to become professional gamers as matter of policy. Since then, the Griffin Controversy has escalated beyond private arbitration or competitive regulation and into criminal investigation: in December 2019, one of Griffin’s ex-players, Choi “Sword” Sung-won, formally filed a report with the police alleging that cvMax verbally and physically abused some of Griffin’s players. Not much news has come of Cho, but cvMax was found liable, fined approximately U.S. $900, and suspended from professional play until May 2021.

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191 Kang & Wolf, supra note 186.


The fact that a single dispute between key members of a professional team could unravel into a legal fiasco seems to strengthen the idea that a monolithic esports regulator must collaborate closely with the government of the jurisdiction to maintain regulatory effectiveness. The authority, procedures, and measures taken to investigate and respond to abuses such as the Griffin Scandal, however, may not have been possible if not for KeSPA’s government support, even though KeSPA is not perfect and is vulnerable to questionable practices. Illustrative of this fact is the open rumor that many of Korea’s own competitive gamers are asked to sign KeSPA’s standard contract template that some users have christened a “slavery contract.” These contracts, copies of which were released onto the internet, contain many terms that are unfavorable to the competitive player including: the revocation of a players’ career autonomy, the “lack of direct payment of tournament winnings to players,” and the lack of “any real protection[] for players[,]” which leaves them at the mercy of their teams. Of particular note is that the sample contract provides that players “aren’t entitled to any earnings . . . from tournaments or brand partnerships,” which are instead “paid to the organization, which then distributes the money at its discretion.” In light of these revelations and the Griffin Controversy, the South Korean Government, through its direct involvement with KeSPA, responded by proposing to draft its own standard contract template, which would differ from the KeSPA template. This leads to a troublesome revelation: if not for the

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195 Id.


197 Lim, supra note 196196 (noting that the Fair Trade Commission has “pledged to comb through the relevant regulations and examine all contracts[,]” such that, “any unfair clauses found during the investigation will be revised . . . ”); David “Viion” Jang, KR government announces official statement on re-investigation of the Griffin controversy, INVENGLOBAL (Jan. 16, 2020), https://www.invenglobal.com/articles/10196/kr-government-announces-official-
government’s direct intervention, KeSPA’s standard contract template would have likely proliferated throughout the scene, damaging the reputation of esports and hindering its development.

B. JESF, the Japanese Electronic Sports Federation.

Until 2018, Japan, despite being one of the foremost producers of video games, had a weak professional esports scene. It was not so much that Japan did not have any associations to handle an esports scene. On the contrary, Japan hosted three separate video game associations and had a considerable arcade-centric community.

Moreover, Japan was home to many fine competitors, but these professional players—and the competitive scene—were limited strictly to fighting games. It also did not help that the larger competitions, which helped such players to flourish in such games, were not hosted in their own jurisdiction. For example, the Evolution Championship Series (Evo), an annual tournament dedicated specifically to fighting games, provided a forum for top professionals to compete at the highest levels for over a decade. But Evo normally hosted its event in Las Vegas, which might have deterred many of Japan’s budding players from competing, and only came to Japan in 2018, in which it operated at a net loss due to the lack of sponsorships. The greatest irony was that Evo’s foremost games over the years were from franchises owned by Japanese developers, such as statement-on-re-investigation-of-the-griffin-controversy (noting the response from the Korean government ad verbatim).


Bandai Namco’s Tekken, Capcom’s Street Fighter, SNK’s King of Fighters, and Arc System Works’s BlazBlue, among others. Yet some Japanese publishers actively exercised their intellectual property rights to exclude their games from esports competitions, as Nintendo did with some of its Super Smash Bros. titles.

The chief cause of the lack of a professional esports market in Japan appeared to originate from Japanese legislation. Of most

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203 Holden, supra note 46, at 539; Hoppe, supra note 156, at 58.

204 Sayuri Kodama, Legal Barrier Hobbles Esports in Game-Crazy Japan, Nikkei Asia (July 25, 2017, 1:00 PM),
immediate concern was the Act Against Unjustifiable Premiums and Misleading Representations of 1962 (Act Against Unjustifiable Premiums). The National Diet originally designed the provision to prevent, or at least restrict, organized crime from generating income through illegal gambling. But the Consumer Affairs Agency also interpreted it as preventing tournaments from offering cash prizes over 100,000 yen. This restriction on payouts effectively stagnated the development of the Japanese esports scene because a competitive environment with little to no payoff was not an attractive prospect. There was also the Japanese Penal Code, which banned all sports betting; this was interpreted as saying that paying the registration fees to an esports competition that would go into the prize money of the competition constituted betting, and thus, was illegal. Equally troublesome was that the arcade-centric gaming community of Japan was subject to the Businesses Affecting Public Morals Regulation Law of 1948, which required game centers—or what Americans would refer to as arcade businesses—to obtain permission from the Prefectural Public Safety


See Futō keihinrui oyobi futō hyōji bōshihō [Act Against Unjustifiable Premiums and Misleading Representations], Law No. 134 of 1962, translated in (Japanese Law Translation [JLT DS]), http://www.japaneselawtranslation.go.jp/law/detail/?id=2007&re=02&vm=04 (Japan); Esports in Court;


HOPPE, supra note 156, at 38; Kodama, supra note 204; see also Act Against Unjustifiable Premiums and Misleading Representations.

HOPPE, supra note 156, at 38; Massaad, supra note 206.

See KEIHÔ [PEN. C.] art. 185, translated in (Japanese Law Translation [JLT DS]), http://www.japaneselawtranslation.go.jp/law/detail/?id=1960&re=02&vm=04 (Japan). The law states: “A person who gambles shall be punished by a fine of not more than 500,000 yen or a petty fine . . . .” Id. Further, the law goes on to state: “A person who, for the purpose of profit, runs a place for gambling or organizes a group of habitual gamblers shall be punished by imprisonment with work for not less than 3 months but not more than 5 years.” Id. art. 186, para. 2. Additionally, see Edge, supra note 198 (discussing the application of the penal code to esports).
Commission and abide by several restrictions. These included a “limitation of business hours, entrance limitations for minors[,] and a ban on giving prize money to players if they [held] competitions,” which effectively prohibited arcade-centric esports. Incidentally, it also did not help that some of the more prolific developers, namely Bandai Namco and Nintendo, were virtually unwilling to allow their products to be associated with a competitive scene out of their own sense of policy.

This changed in February 2018 when three independent esports associations that previously managed smaller-scale tournaments in Japan came together to form the Japan esports Union (JeSU). With the Japanese government’s support, the JeSU then created a new government-approved licensing system for professional esports players to circumvent the legislation mentioned above, namely the Act Against Unjustifiable Premiums, and received the cooperation of over forty-two Japanese game developers. In the span of eighteen months, Japan developed an esports market that was more readily accepted by its society and 1,244% larger in terms of market capitalization.
and increased popularity played a part in prompting some publishers that were once reluctant to enter esports to begin their forays in earnest.  

This is not to say that the situation has become perfect: there are still reports of unlicensed players being underpaid or entering into “unfair” arrangements, much as was noted with KeSPA. Furthermore, the model which JeSU operates, to issue an “esports player license” to individuals and selectively include member institutions with the government’s support, raises some concerns that it affords an alarming degree of control over who can participate in Japan’s esports market that borders on monopolistic or anti-competitive. But, JeSU’s success thus far illustrates how consolidation and government involvement in an esports association can be of benefit; if not for the Japanese government’s willing cooperation, and for the fact that the separate esports associations had agreed to merge into a single entity, JeSU probably would have never managed to create

https://prtimes.jp/main/html/rd/p/000005308.000007006.html. Please note, the original domain, Gzbrain, has moved to Kadokawa linkage. The report referenced to in this article was previously published in the Gzbrain domain. HOPPE, supra note 156, at 40–43.  

216 HOPPE, supra note 156, at 40–43, 60–62.  


218 See, e.g., Brian Ashcraft, The Japanese Esports License System Is A Mess, KOTAKU (Jan. 30, 2020, 6:30 AM), https://kotaku.com/the-japanese-esports-license-system-is-mess-1841348143 (noting that even with the licensing system, local statements by the Consumer Affairs Agency have stated that “monetary awards in a tournament [fall] under goods and services paid . . . for work and not as a gift,” which means that having such a license is redundant). See also Takashi Kiso, 日本 e スポーツ連合さん、うっかり自ら「プロ制度は不要」を証明 し て ま う , YAHOO JAPAN (Sep. 12, 2019), https://news.yahoo.co.jp/byline/takashikiso/20190912-00142276/ (noting the above contradiction); Virginia Glaze, Licensed to Play: How Japan’s Pro Gaming Licenses Are Affecting Asia’s FGC, REDBULL (Feb. 24, 2018), https://www.redbull.com/us-en/japan-pro-gaming-license-asia-fgc (discussing the impact of Japanese regulation of esport licenses); PuppySwarm, supra note 211.
the pro gaming licenses, and esports might have never come to flourish in Japan.\footnote{See David Hoppe, The Remarkable Success of the Japanese Esports Union (JeSU), Gamma L., (Sep. 9, 2019), https://gammalaw.com/the-remarkable-success-of-the-japanese-esports-union/.
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C. The United Kingdom Esports Association and its heir, the British Esports Association

What happens, then, if an association is formed without the official support or oversight of the government? As one legal scholar notes, a case study of UKeSA shows that the association would likely fail, and “supports the idea that government involvement may be necessary to ensure that a national esports association does not fold.”\footnote{Time to be Grown-ups, supra note 7, at 843–44.} The UKeSA claimed to be “the [United Kingdom’s] official esports governing body” at the time of its founding in 2008, and sought to “[work] with government, industry and community to develop, support, encourage, and promote the growth of a professional competitive esports framework.”\footnote{You Must Construct Additional Pylons, supra note 9, at 759–60 (citing Goodeh, UKeSA Launches, ESPORTS HEAVEN (Oct. 31, 2008, 6:05 PM), http://www.esportsheaven.com/news/view/47606/ukesa-launches [https://perma.cc/H88REG3U]).} The result was a spectacular failure: the year following its formation was a disaster of “uncompleted tournaments and unpaid prize money,” which eventually led to UKeSA’s filing for bankruptcy.\footnote{You Must Construct Additional Pylons, supra note 9, at 760; Andra Ciubotaru, Government-backed “British Esports Association” established, Dotablast (Jul. 5, 2016) https://dotablast.com/british-esports-association/.
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Little material on the UKeSA remains publicly available; its website and many online materials no longer exist.\footnote{Multiple research efforts by the author returned no results.} However, the events that unfolded during its time strongly support the conclusion that the lack of government support detracted from the association’s ability not only to survive, but to operate effectively and consistently.\footnote{Time to be Grown-ups, supra note 7, at 843–44.} That is, consider the alternative: the UKeSA probably would not have failed to complete its tournaments, left prize pools unpaid, or filed for bankruptcy if the body had been run, supported, or at least overseen by the government or an
entity thereof. Thankfully, this cautionary tale of the UKeSA’s lack of authority seems to have been heeded, as the UKeSA was succeeded by the British Esports Association (BEA) as of 2016, which received the support of the British government.

D. The World Esports Association, the International Esports Federation, and the Esports Integrity Coalition

Considering our discussion above, some may raise the argument that there need not be government involvement because esports should be regulated on an international level. A viable version of this argument is that if esports is such an international phenomenon, then would it not be best for there to be standard practices for all jurisdictions through a global governing body, like FIFA for football or the Olympic Council for the Olympics? Three associations have been formed with the aim of becoming such an institution, but all have amounted to little, arguably because none hold the sufficient authority of law or enforcement mechanisms to enforce their goals. Indeed, “[t]he groups lack the enforcement mechanisms necessary to enforce rules and regulations in the

225 See id.
226 About Us, BRITISH ESPORTS ASS’N, https://britishesports.org/about-us/ (last visited Mar. 1, 2021); You Must Construct Additional Pylons, supra note 221, at 760; Callum Leslie, The UK Launches an Official Governing Body for Esports, DOT ESPORTS (July 1, 2016, 8:52 AM), https://dotesports.com/general/british-esports-association3537 [https://perma.cc/8TJ4-RAX9] (noting commentary that it is necessary for a governing body in the UK to be government driven or sponsored); Ciubotaru, supra note 222.
esports industry,” and are “independent coalitions [that] are not government-backed and are not viewed as legitimate.” Thus, if a member of an association disagreed with its rules or policies, they could simply leave with no repercussions due to the association’s lack of bargaining power.

WESA is a new regulatory body that aims to introduce elements of player representation and standardized regulations—particularly as to players’ rights—to the esports market through its membership, which now consists exclusively of competitive teams but no esports leagues or publishers. It has provided an interesting solution in the form of its conflict resolution and arbitration system, a medium through which players and institutions can resolve infractions and disputes. Further, WESA’s creation of a Player Council, consisting of individuals elected by players to review competitive mechanics, policies, and rules, was a step forward in establishing players’ rights and maintaining their representation in esports governance. But WESA is still “not viewed as legitimate and does not have regulation enforcement powers.” It “aims to gain legitimacy by being an organization founded and run by major esports brands[,]” but maintains no exclusivity or absolute authority over the games or leagues of the esports market. Further, FaZe Clan’s comments on WESA’s shortcomings when it left the association for a time in 2016 suggest that WESA’s limited scope, in its lack of inclusion of North

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229 The Challenges of Implementing a Governing Body, supra note 9, at 510.
230 See, e.g., Jacob Wolf, FaZe Clan Officially Leaves WESA, ESPN (May 25, 2016), https://www.espn.com/esports/story/_/id/15721431/faze-clan-officially-leaves-wesa (noting FaZe’s opinion that WESA needed a larger scope to help the esports scene, and concerns “about the lack of North American organizations[—]leagues, teams and players[—]to be included.”).
231 WESA, http://www.wesa.gg/ (last visited Mar. 4, 2021) (the page scrolls seamlessly from WESA’s introductory statement to its list of members); Holden et al., supra note 46, at 556.
234 Martinelli, supra note 9, at 507; Holden et al., supra note 46 at 556 (noting that WESA “represents player interests, but is not a traditional union”).
235 Martinelli, supra note 9, at 507.
American leagues, teams, and players, led to WESA’s ineffectiveness.\(^\text{236}\) Thus, WESA technically has no force behind its regulatory or enforcement powers, and does not appear to have the scope necessary to meaningfully effect the needs esports market.\(^\text{237}\)

The IeSF is another living example of an international esports regulatory body that some may find lacking.\(^\text{238}\) Granted, it has hosted tournaments internationally, and does possess a general regulatory structure as well as alliances with esports regulatory bodies across the world, including KeSPA.\(^\text{239}\) It operates by its own ratified statutes, primarily through a board elected every three years that spreads its authority to different committees to handle different matters.\(^\text{240}\) The IeSF’s competitions, however, are few: its four-fold mission statement does not include any form of standard-setting or regulation;\(^\text{241}\) its membership primarily consists of national regulators and does not have any direct influence on the major esports leagues;\(^\text{242}\) and, much like WESA, apparently has not received the licenses to many of the games on which

\(^{236}\) See Wolf, supra note 230.

\(^{237}\) See Martinelli, supra note 9, at 507.

\(^{238}\) See Joost, supra note 233 (“The IeSF has a structure closely resembling traditional GSOs. Its members are national esports federations. This organizational structure is not suited well for esports.”).


\(^{240}\) IeSF Statutes, INT’L E-SPORTS FED’N (Dec. 13, 2019), https://ie-sf.org/wp-content/uploads/2020/04/IeSF-Statutes.pdf (of note is that Membership is through application, that the main leadership is a “Board” through “elections” of its members, that issues are resolved through “general meetings” and “special meetings” that require a “quorum” among other things.); See also Committees, INT’L E-SPORTS FED’N, https://ie-sf.org/governance/committees (last visited Oct. 31, 2020) (noting the committees are, respectively, the World Championships and Events Committee, which organizes and oversees the IeSF events and activities; the Members’ committee, which oversees the implementation of the IeSF’s statutes, provides support to its members evaluates the applications of prospective members; the Legal Committee, which makes recommendations on the IeSF’s regulations and supervises and ensures the IeSF’s compliance; and the Partnership’s committee, which evaluates and develops opportunities for partnerships and collaborations).

\(^{241}\) What We Do, INT’L E-SPORTS FED’N, https://ie-sf.org/about/what-we-do (last visited Oct. 31, 2020) (noting official directives as to increase membership, to promote global standardization, to train and educate officials, managers and professionals, and to host global tournaments and championships).

the esports’ market thrives. It also does not appear that they hold any real form of authority for policing or regulating the international competitive environment; its rules only govern those who are a party to its membership, and there is nothing stopping its constituent members from backing out without losing out on a particular esport or suffering consequences from publishers, who hold the ultimate authority over their games. There does not appear to be notable controversies demonstrating the IeSF’s regulatory effectiveness. Nor does it appear that the IeSF has resolved the controversies that have been plaguing the esports and video game industries.

A third, non-government backed organization, which is dedicated to enforcing competitive regulations is the ESIC, was established in 2015 to address corrupt or unethical practices by identifying and prosecuting match-fixing, in-game cheating, and doping through its own codes and regulations. But, like WESA and the IeSF, its scope is limited to only

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243 *News, INT’L E-SPORTS FED’N*, https://iesf.org/news/category/iesf-news (last visited Oct. 31, 2020). Of note, the latest competition included only DoTA 2, eFootball, and Tekken. But DoTA’s own “The International” is far more prominent; FIFA holds its own esports league, which is rather prolific; and Tekken is more famous for operating as one of the many fighting games under the EVO Tournament. In fact, there has been little coverage on any tournaments listed in the IeSF’s page in mainstream e-Sports media. *See also Events, INT’L E-SPORTS FED’N*, https://iesf.org/events (last visited Oct. 31, 2020) (listing the games for this year).

244 *See supra*, Section I.

245 *See, e.g.*, Kruthika N. S., *supra* note 150, at 349 (noting that even with an IeSF statute on non-discrimination and promoting female participation, the statute “does not elucidate the exact nature of such ‘appropriate’ measures, leaving it to the discretion of the stakeholders [of the IeSF]”).

those tournament operators that agree to join and be bound by it and, so far, of all the mainstream esports leagues, only ESL and Dreamhack have submitted to its authority. Moreover, despite its admittedly impressive record in adjudicating regulatory violations, ESIC still struggles to handle match-fixing controversies, and its jurisdiction is so limited that corrupt and immoral market participant misconduct, such as in-game cheating and doping, still occurs in esports leagues and tournaments both under and beyond its jurisdiction. Thus, ESIC’s limited success in “taking responsibility for disruption, prevention, investigation and prosecution” of market participant misconduct does demonstrate that an international regulatory body could work. However, its failures illustrate the precise concern this paper noted earlier: ESIC only affects those tournament operators and leagues that pledge themselves to its authority and nonetheless fails to curtail regulatory violations.

VI. LOOKING AT OTHER AMERICAN SPORTS AUTHORITIES.

The regulatory bodies examined above provide important lessons on how a centralized regulatory body for all esports in each jurisdiction can benefit that jurisdiction’s esports ecosystem. Further, the case studies point out certain lessons to keep in mind for a hypothetical equivalent in the United States. However, these regulatory bodies either belong to foreign jurisdictions with different laws, or to no specific jurisdiction which exerts influence through the power of contract; this may explain the ease with which, or the extent to which, they are able to exert influence


247 Who We Are, ESPORTS INTEGRITY COMM’N, https://esic.gg/about/ (last visited Mar. 3, 2020) (“Each member has signed their commitment to these Principles and ESIC will be diligent in making their regulatory ambitions for the sport a reality through the Codes and Procedures . . .”).


249 See supra Section II.


251 See supra Section III.

252 See discussion supra Section III.
over their respective jurisdictions.\textsuperscript{253} Thus, what makes it possible or even acceptable for these organizations to possess the powers they do from both a legal and political standpoint may not apply here.\textsuperscript{254} However, it is noted that, except for the physical aspects, the fundamental principles belying esports are largely similar to those of conventional sports;\textsuperscript{255} and with “esports leagues increasingly mirroring traditional sports leagues,” it would be reasonable to compare the regulatory ecosystem of esports to conventional sports in the United States to gain some insight.\textsuperscript{256}

On a broader level, the regulatory ecosystem of esports is not completely unlike that of conventional sports.\textsuperscript{257} In fact, the “governance and commercialization of esports” is said to “emulate[] the traditional sports industry,” and the current state of esports has also been “compared to the state of American baseball when the first vestigial forms of the current team, league, and ownership structures were emerging.”\textsuperscript{258} Most professional conventional sports are run by a single official body, referred to as a “sports league,” which “enjoys significant control over governance issues.”\textsuperscript{259} Similarly, individual esports leagues regulate their particular games through varying levels of control granted by game publishers through a central body.\textsuperscript{260} Further, esports leagues and many of the primary conventional sports leagues are not government-run or owned.\textsuperscript{261}

For example, the entities that run the League Championship Series, the

\textsuperscript{253} See, e.g., Miroff, supra note 31, at 180–82 (noting an example of how an antitrust-related dispute in Korea would have succeeded had it occurred and been brought to court in the United States).

\textsuperscript{254} Id. at 183–84.

\textsuperscript{255} See generally Mark Filchenko, A Comparison Between Esports and Traditional Sports (final class paper for Art 108: Introduction to Games Studies, San Jose State Univ. (May 1, 2018)) (noting that despite the distinction that some parties may make between conventional sports and esports, esports requires just as much dedication and involves much the same principles, skills and abstract concepts as conventional sports, translated into a different context).

\textsuperscript{256} NABEL & CHANG, supra note 30, at 426.

\textsuperscript{257} See id.


\textsuperscript{259} Id. at 742; See also Ridenhour, supra note 66, at 1867.

\textsuperscript{260} See Chao, supra note 9, at 744.

\textsuperscript{261} See generally Chao, supra note 9.
Overwatch League (“OL”), and the EVO Tournament are all privately owned; as are the NFL, the NBA and the MLB.\textsuperscript{262} Also, much like in esports, it appears that the legal and governance structures of conventional sports leagues were purposefully constructed to allow for vertical integration, thus creating a chain of authority for each sport among its market participants.\textsuperscript{263} That is, conventional sports consist of independent economic parties with “upstream competition organizing services and downstream clubs participating in the competition,” in much the same way that esports publishers are at the top of the chain and license out certain powers over their games’ esport scene downstream.\textsuperscript{264}

Further, common to both esports leagues and conventional sports leagues is that one body tends to hold a monopoly on their particular sport or esport “in spite of the Sherman Antitrust Act.”\textsuperscript{265} For example, the “Big Four” sports leagues—the NBA, the NFL, the MLB, and the NHL—are all said to have virtually monopolistic control over professional basketball, football, baseball, and hockey, respectively.\textsuperscript{266} This, again, is very similar to esports, where game publishers essentially maintain ultimate control over their products that produce a competitive esport scene.\textsuperscript{267} Unsurprisingly, this fact has led to concerns about the large degree of control that conventional sports leagues have held over the commercialization of the individual teams, and arguments for the establishment of a monolithic regulator for all professional-level conventional sports.\textsuperscript{268}

\textsuperscript{262} See Wong, supra note 39, at 128 (noting that, in the LCS case, it has “an extremely close relationship with Riot Games” to such an extent as to be considered “an alter ego of[] Riot Games.”); Ian Walker, Sony Buys Evo, Kotaku (Published Mar. 18, 2021) https://kotaku.com/sony-buys-evo-1846507520. Evo has now been acquired by Sony. See also Ridenhour, supra note 66, at 1867 (discussing franchising structure of the “Big Four,” which includes the NFL, NBA, and MLB).

\textsuperscript{263} See discussion supra Section I.


\textsuperscript{266} See Grow, supra note 107, at 575; Ridenhour, supra note 66, at 1867.

\textsuperscript{267} See supra Section I.

\textsuperscript{268} See Grow, supra note 107, at 577; Ross & Szymanski, supra note 264, at 216–19 (noting the control that individual sports leagues have over the
However, unlike conventional sports, in which most leagues subscribe to a joint venture model for governance,}\textsuperscript{269} esports sees the use of multiple governance structures which vest varying degrees of authority in one or more entities, based on the publisher’s desired degree of control over their games.\textsuperscript{270} Additionally, while an organizational body can be formed by multiple parties who agree to regulate the professional play of a particular conventional sport, in esports, organizational bodies must “license[] the right to play titles created by game developers.”\textsuperscript{271} Thus, member franchises share control over tournament organization and the sports leagues’ actions in conventional sports,\textsuperscript{272} while esports tend to cede tournament organization to a competitive operator with oversight from the publisher as another higher body of authority.\textsuperscript{273} This is also, in large part, the result of how intellectual property rights leave the degree of the esports market participants controls’ to the mercy of the publisher, who is beyond the authority of an esports league, of which, conventional sports has no analogue.\textsuperscript{274} That is, the publisher of any game in esports invariably owns the intellectual property rights granting the publishers ultimate control over what happens in a particular game’s competitive scene, which is impossible for any party in conventional sports.\textsuperscript{275}

\begin{thebibliography}{99}
\bibitem{269} See Ross & Szymanski, supra note 264, at 223.
\bibitem{270} See supra Section I; Ross & Szymanski, supra note 264, at 223. \textit{But see} Ridenhour, supra note 66, at 1867 (noting that the Women’s National Basketball Association and Major League Soccer are single-entity leagues).
\bibitem{271} Chao, supra note 9, at 744.
\bibitem{272} See supra Section I; Ross & Szymanski, supra note 264, at 223.
\bibitem{274} See discussion supra Section I. \textit{See also} Chao, supra note 9, at 749 (“Copyright is likely to be the lynchpin in any dispute.”) (citations omitted).
\bibitem{275} See discussion supra Section I. \textit{See also}, Chao, supra note 9, at 741 (citing Andreas Rahmatian, \textit{Cyberspace and Intellectual Property Rights}, RSCH. HANDBOOK ON INT’L LAW & CYBERSPACE 72, 76 (Nicholas Tsagourias & Russell Buchan eds., 2015) (“The international nature of cyberspace with separate (private, property-holding) individuals and companies as actors within the cyberspace can potentially blur the legal division between sovereignty and property . . . . So he who has quasi-proprietary power over the cyberspace may very well acquire quasi-sovereignty over people . . . .”)).
\end{thebibliography}
Thankfully, both the conventional sports and esports ecosystems appear to handle most of the legal issues presented in Section II in the same manner, leading some parties to conclude that many regulatory issues in esports “can be addressed within the confines of traditional sports governance.” This conclusion makes sense: Matters of discrimination, immigration and contract disputes, for example, are all already subject to legal proceedings pursuant to the relevant statutes and legal principles.

On the other hand, issues that are not touched or strictly prohibited by the law, such as market participant misconduct, corruption, and gambling in conventional sports, are subject to administrative tribunals, investigations, and subsequent sanctions. The determinative question is a matter of which parties are involved. Moreover, esports and conventional sports also both maintain technical rules and codes of conduct. Esports face “a fundamental quandary[,]” however, because they are played in a digital medium, “where physical analogues provide no precedent,” thus forcing the rules for esports play to deviate somewhat from those of conventional sports. This is largely explained by the fact that, unlike in conventional sports, where the mechanics and fundamental rules of the sport tend not to change, a video game’s features are constantly changed to balance the game and make competitive play more fair or interesting. This leads to the establishment of a constantly fluxing “metagame,” where the strategies and preferences of competitive play evolve constantly, causing the regulations of an esports game to evolve accordingly, usually at a higher rate than in conventional sports.

Lastly, most conventional sports have a players association to represent the players’ interests and provide a means of collective

276 Chao, supra note 9, at 740. Chao notes that, “the dovetailing between esports and traditional sports, and the increasing regulatory legitimacy of esports, indicates that many of these issues can be addressed within the confines of traditional sports governance.” Id. See also David E. Schwartz, et al., Sports Law in the USA, LEXOLOGY (Mar. 21, 2019), https://www.lexology.com/library/detail.aspx?g=27995df4-a1da-4b5c-bb5d-682e792471f4.
277 Schwartz, et.al, supra note 276.
278 See discussion supra Section II.
279 See discussion supra Section II.
280 See Chao, supra note 9, at 751–52.
281 Id. at 741.
282 Id. at 752.
283 Id.
bargaining on behalf of the players for that sport, which incidentally, helps the conventional sport address some antitrust issues.\textsuperscript{284} While there have been arguments for their establishment, few esports games have players associations, in fact, only two of them have one, and there is no such union for all esports players.\textsuperscript{285} Moreover, despite the high-monopoly they have over their respective sports, conventional sports leagues receive antitrust exemptions through Congress and even monetary support from the federal government.\textsuperscript{286} However, there does not appear to be any support or restrictions from the federal government for esports, in legislation or court opinions thus far.\textsuperscript{287}

VII. THE EFFECTIVENESS OF A MONOLITHIC REGULATOR

So far, the observations above provide the following revelations: the legal issues that esports face in antitrust, immigration, gambling, discrimination, harassment, employment, and market participant conduct already have mechanisms to help resolve them.\textsuperscript{288} Specifically, one can execute legal processes pursuant to relevant statutes, or petitions with the relevant departments to resolve any conflicts those laws touch upon. As for the problems that cannot be resolved in such a manner, usually as they pertain to policy and conduct, there is typically some guidance from the esports market participants’ individual conduct and policies, as well as government policies, which the courts cannot address.\textsuperscript{289} But, it is clear that the relevant laws will require some amendment or elucidation to bring esports into their purview and provide a clearer perspective on where and how esports activities and issues interact with them.\textsuperscript{290}

As for the several esports regulatory bodies in other jurisdictions, their successes and failures provide insight on the prospect of a monolithic

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\item \textsuperscript{284} Hollist, \textit{supra} note 7, at 834 (“Unlike e[s]ports professionals, traditional athletes have successfully applied their collective bargaining power to secure better working conditions for players.”); Ridenhour, \textit{supra} note 66, at 1869–74.
\item \textsuperscript{285} See discussion \textit{supra} Section II; see also Hollist, \textit{supra} note 7, at 836 (“The two solutions most commonly discussed for eliminating bargaining power discrepancies are antitrust law and unionization. However . . . neither option is feasible for today’s e[s]ports players.”).
\item \textsuperscript{286} Grow, \textit{supra} note 107, at 578.
\item \textsuperscript{287} Chao, \textit{supra} note 9, at 741.
\item \textsuperscript{288} See discussion \textit{supra} Section II.
\item \textsuperscript{289} See discussion \textit{supra} Section II.
\item \textsuperscript{290} See discussion \textit{supra} Section II.
\end{itemize}
regulatory body for all esports in the United States. The UKeSA and its successor organization, the BEA, demonstrate the importance of having government involvement or an arrangement to strong arm compliance with regulations and inclusion. Additionally, KeSPA demonstrates that government support can resolve the industry’s controversies, to an extent, but it also demonstrates that there must be active supervision and interaction by the several parties of the esports market to ensure fair representation for all. The JeSU demonstrates the effectiveness of consolidating multiple associations into a single government supported entity and shows how providing legal support to change the country’s interpretation of its legislation can untie legal Gordian Knots that hinder growth of esports in a jurisdiction. WESA and the IeSF show that simply leaving this matter to an international body would not suffice for the interests of esports market participants in the United States, let alone at an international level, if left without the requisite force of authority behind their regulatory oversight.

This paper has also remarked on the similarities between the regulatory ecosystem of conventional sports and esports, from which one can make the following conclusions: both seem to have singular, near monopolistic regulatory bodies for each sport or game that are privately owned, both set forth their own policies and regulations as to conduct between players and teams, and both are granted some degree of control over. Esports differs both in how the publishers of the game maintain ultimate control over any of the decisions or arrangements made in the competitive scene which arise from its products, and in that esports is based on games that are subject to constant change, thus requiring that their regulations change and adapt as well.

Further, esports does not have unions for all players or for players of every game, and esports has not yet been fully addressed by the government as to how antitrust applies, nor has it been graced with any form of exemption. Moreover, other sports associations in the United

291 See discussion supra Section II.
292 See discussion supra Section III.
293 See discussion supra Section III.
294 See discussion supra Section III.
295 See discussion supra Section III.
296 See discussion supra Section III.
297 See discussion supra Section IV.
298 See discussion supra Section IV.
States show that individual sports can remain individually regulated and managed through separate leagues. So, individual games can be sufficiently managed and regulated through individual leagues or operators.

The above observations may lead some to reasonably conclude that the number of issues esports faces, with respect to legislation and policy, cannot be fully resolved through private legal maneuvers alone. Others may take these realities as a premise for arguing that the establishment of a central monolithic regulator for all esports in the United States is needed to resolve the issues and promote the growth of esports in the United States. Yet, this paper presents this tentative counterargument: it is doubtful that a monolithic regulator for all esports could solve a majority of the present issues. In fact, at present, a monolithic regulatory body for all United States esports may be unnecessary and even prove to be redundant or harmful. This is because questions of policy have more to do with the legislature and the relevant governing departments revising their definitions, than it does the work of a national regulator. Therefore, the esports market would benefit more from a court opinion or a declaration from Congress giving certain terms or providing an opportunity for legislative change through lobbying than the establishment of a regulatory body designed to monitor and regulate these issues. Thus, the methods and means for handling the matters above are either at the mercy of law or market participant-based policy or regulation.

With respect to employment concerns, there is little a private party to employment arrangements can do to circumvent or supersede the NLRA,

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299 See discussion supra Section IV.
300 See discussion supra Section IV.
302 See Grow, supra note 107, at 577; Ross & Szymanski, supra note 264, at 216–19.
303 See discussion supra Introduction.
304 See discussion supra Introduction.
305 See discussion supra Section III.
outside of negotiating favorable terms between the relevant parties.\textsuperscript{307} As previously mentioned, “[t]he relationship between an employee and an employer is governed by law, not by the employer’s judgment.”\textsuperscript{308} Aside from the ways in which parties to an agreement draft their terms, there is no way for these parties to proactively define the relationship, and thus the rights owed, between them contrary to such laws.\textsuperscript{309} Parties that do enter some sort of employment relationship with another, for example, a player with a professional team or even a publisher are accorded the right to form a union for collective bargaining.\textsuperscript{310} But for the most part, such a union must be established on the player’s volition; the players across or within individual esports games have not, of their own volition, begun unions of their own, as evidenced by the fact that no such unions exist.\textsuperscript{311}

Immigration, too, is hardly within the control of esports market participants.\textsuperscript{312} With the USCIS being, essentially, the decision maker as to who may receive a visa, the only other authority is the law pursuant to which the USCIS issues its visas.\textsuperscript{313} The most that market participants may do is petition to the USCIS, as Riot Games did, or lobby for a change in definitions that would recognize esports as a legitimate purpose for issue.\textsuperscript{314} With respect to discrimination, harassment, and market participant misconduct, the law generally provides restrictions and a remedy for those violations through legal process.\textsuperscript{315} With regards to what is not touched upon or prohibited by the law, particularly with market participant misconduct and gambling, these concerns can be addressed by regulations set forth by the publishers based on their downstream control.\textsuperscript{316} Further, publishers, operators, individual players, and high-

\textsuperscript{307} See supra Section II; see generally Wong, supra note 39.
\textsuperscript{308} Wong, supra note 39, at 130.
\textsuperscript{310} National Labor Relations Act, 29 U.S.C. §157 (noting that employees have the right to self-organize and collectively bargain for their collective aid or protection).
\textsuperscript{311} See discussion supra Section II; Holden et.al., supra note 46, at 550–54.
\textsuperscript{312} See discussion supra Section II.
\textsuperscript{313} See discussion supra Section II.
\textsuperscript{314} See discussion supra Section II.
\textsuperscript{315} See discussion supra Section II.E.
\textsuperscript{316} See discussion supra Section II.C; see also Miroff, supra note 31, at 182.
profile individuals in the industry, have practiced a type of a “cancel-culture” to effectively deny participation or profit of individuals suspected of discrimination and harassment.\textsuperscript{317} Moreover, most publishers have also implemented in-game systems of reporting and communication to reduce and address instances of harassment.\textsuperscript{318} Given market participants’ healthy pattern of response towards the community’s calling in allegations and incidents of misconduct, discrimination, and harassment, the filing of lawsuits on behalf of aggrieved parties would serve to reinforce this mechanism of socially based policy reform.

As for antitrust concerns, a government-sponsored monolithic regulator of all esports would likely not comport with the United States’ respect for sports associations and regulatory bodies.\textsuperscript{319} Rather, these conventional sports bodies have been left to be privately governed and given antitrust exemptions, and the government has also funded their continued operations.\textsuperscript{320} By analogy, it would be unlikely the government would take a different course with respect to esports, because doing so would trample the game publishers’ intellectual property rights. Even if the government attempted to accomplish this by altering federal legislation pursuant to the Copyright Clause, or embedding video games into the purview of an existing regulatory bureau, this would set a dangerous and unpopular precedent.\textsuperscript{321} Further, despite the Sherman Act being described as ill-suited to regulate the central regulatory bodies for conventional sports—warranting a national, monolithic regulator—market participants would benefit more from clearer legislation, tighter vigilance, and action from existing bodies.\textsuperscript{322} It may be reasonable to claim that establishing a larger monolithic regulatory body would encourage greater degrees of vigilance towards monitoring and enforcing the existing policies and regulations in esports, but whether this will occur remains unclear.\textsuperscript{323}

\textsuperscript{317} See discussion supra Section II.
\textsuperscript{318} See discussion supra Section II.E.
\textsuperscript{319} See discussion supra Section IV.
\textsuperscript{320} See discussion supra Section II; See Grow, supra note 107, at 576–77.
\textsuperscript{321} See U.S. CONST. art. I, § 8, cl. 8. (The Copyright Clause is interpreted as providing Congress the power to create Copyright Laws, which affords Congress the right to make exceptions in the case of video games if lobbied, but this is unlikely); see also Chao, supra note 9, at 761.
\textsuperscript{322} See discussion supra Section II.
\textsuperscript{323} See discussion supra Section III.
Even if this monolithic regulator were a corporate or otherwise privately-owned entity, with no government involvement (which would run contrary to the lessons of the UKeSA), it would probably implicate antitrust law to a greater extent than if the games were regulated separately notwithstanding a government based exemption or neglect.\footnote{See Grow, \textit{supra} note 107, at 576–77; discussion \textit{supra} Section III.} It is noted that “[t]raditional sports . . . leagues do not adequately address the interests of all stakeholders but, instead, tend toward collusive practices[,]” such as encouraging the regional monopolistic statuses of conventional American sports leagues.\footnote{Chao, \textit{supra} note 9, at 761–63.} The JeSF is a living indicator that allowing a monolithic regulatory body to govern all of esports, even with government support, would lead to reasonable concerns that such a body would engage in highly selective practices that border on anticompetitive conduct.\footnote{See discussion \textit{supra} Section IV.} As such, allowing a monolithic regulator of all esports in the United States would probably cause more trouble absent appropriate counter measures being put in place.\footnote{See generally discussion \textit{supra} Section IV.}

As for the intangible, murky area that the law does not touch, this paper concedes that a monolithic body overseeing all esports might be more effective at handling such matters and could lead to improvement of the industry’s standards. As other scholars have noted, a monolithic body would provide a forum for the esports community and market participants to interact and address their grievances, promote regulatory stability, and lend much needed legitimacy to esports.\footnote{Chao, \textit{supra} note 221, at 764.} A collective effort would cultivate greater momentum towards effecting change in the policies of market participants as well as those belying legislation and the government. Finally, a consolidated body of all market participants can address the policy issues that are systemic to the esports market through mass lobbying or widespread standardization.\footnote{See discussion \textit{supra} Section II; \textit{See also} INT’L E-SPORTS FED’N, \textit{supra} note 239.}

But there remains the question of whether such reforms are worth the redundancy and trouble of a regulatory body, and whether the degree of success this regulatory body would enjoy is highly conditional on the regulatory body possessing a questionable degree of power over the
To ensure that leagues, tournament operators, and publishers address non-legal issues through their codes of conduct, competitive regulations, and end user license agreements, it is necessary for the authority to be binding, lest the issues of WESA, the IeSF and the UKeSA come to pass. Even with the establishment of a monolithic regulatory body, there is no guarantee that such issues will be enforced, that parties would comply to those new standards, or that conduct contrary to the newer standards would be curtailed, unless it provides specific task forces on a rigorous schedule to address such issues, as we have seen with ESIC and KeSPA. If anything, while a regulatory ecosystem with separate bodies regulating separate esports has proven incapable of preventing non-legal abuses and infractions, it remains beyond the control of the law, the publishers, or operating esports leagues.

VIII. FEATURES OF A MONOLITHIC BODY

To recapitulate, a monolithic regulatory body for all esports in the United States is not necessary to address the issues it currently faces because the legal issues that are present already have mechanisms for resolution, and the issues not prohibited by the law are addressed through the market participants’ policies and regulations. However, to address some of esports’ systemic issues by improving the market’s standards and policies, a monolithic entity which would represent the interests of all esports market participants and equalizes their representation and bargaining power, would be beneficial. In other words, rather than mandating that everyone abide by a charter or submit to an authority, one should attempt to form a global forum to affect policy change. Thus, assuming arguendo that it is absolutely necessary or mandated for such a body to exist, there are a few features it should or should not possess in light of the conclusions and observations above.

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330 See discussion supra Section II.
331 See discussion supra Sections II–III.
332 See discussion supra Section III.
333 See discussion supra Section III.
334 See discussion supra Section I–III.
335 See generally discussion supra Sections I–III.
336 See Ross & Szymanski, supra note 264, at 216 (arguing that “entertainment in . . . competitive sports leagues can be produced through a structure in which coordination of the particulars of the competition (playing rules, distribution of revenues, terms of competition) is provided by a separate entity . . . distinct form the clubs participating in the competition.”).
The key is to ensure that the hypothetical United States Esports Association (USeSA) possesses a binding legal force, lest it remain ineffective at accomplishing any regulation or reform, as was the case with the UKeSA, WESA and the IeSF. That said, it is entirely possible for the hypothetical USeSA to be a private entity formed contractually and still possess a “force of authority” to back its powers. The very existence of the American conventional sports authorities show that it is possible. But, to prevent the mistakes of the UKeSA, the IeSF and WESA, and in consideration of how conventional sports leagues’ monopolistic degrees of control bely their regulatory effectiveness, there should be some form of exclusivity agreement from the publishers to submit to such an authority. After all, since the individual publishers hold ultimate downstream control over their products, their agreement to submit their games’ competitive esports scenes to the hypothetical USeSA’s ultimate regulatory authority is the only way to bind all other parties in the market. In such a case, matters that involve criminal issues would be referred to the appropriate authorities regardless. Further, because many of the issues surrounding esports are either addressed by pre-existing law or policy, one could argue that there is no need for large scale government or legislative intervention.

Nonetheless, a tentative route for government involved regulation is preferable. It would be practical for the federal government to pass and sign relevant legislation to form the USeSA pursuant to its power to regulate interstate commerce.Esports, and online multiplayer in general, are conceivably a multi-state affair involving a sort of commerce between states over the internet by providing digital goods and services from one state to another. Moreover, with most issues facing esports being already addressed by federal law, there is further justification for the hypothetical monolithic regulator to derive its authority from federal law. Incidentally, if the authority of the hypothetical USeSA would derive from federal legislation, this route would also maintain the legal force necessary

337 See discussion supra Section III.
338 See discussion supra Section II.D.
339 See discussion supra Sections I & II.C.
340 See, e.g., Chao, supra note 9, at 762–63. (“UKeSA’s failures, in conjunction with the limited successes of KeSPA, support the notion that federal support and regulatory intervention is necessary to ensure the success of a national esports governing body.”).
341 See U.S. CONST. art. I, § 8 (granting Congress the power to regulate commerce among states, foreign nations, and Indian Tribes).
342 See discussion supra Section IV.
to bind all parties that supersedes even the authority of the publishers.\textsuperscript{343} This legislation should also grant USeSA the powers it needs to exercise regulatory authority in much the same way that the Securities Exchange Act of 1934 created and delegated certain authorities to the Securities and Exchange Commission.\textsuperscript{344} Although, as noted before, given the government’s previous non-involvement in conventional sports, this is unlikely, especially because doing so would override the rights of the publishers to hold intellectual property.\textsuperscript{345} This would also likely be ill-preferred by the several publishers, as their control over derivative markets from their products would essentially remain at the whims of lawmakers.\textsuperscript{346}

Moreover, a monolithic regulator for esports must be able to maintain the protective nature of the existing regulatory ecosystem and prevent abuse on the part of the regulators and publishers or leagues’ control.\textsuperscript{347} Thus, it must be stressed that a particular competitive title’s inclusion into the purview of the monolithic regulatory body should not be governed by vote, but by classification. That is, if a competition based on a video game wishes to conduct an activity that meets the definition set forth by the regulatory body, then it is classified as an esport, and must submit to the authority of the regulatory body. This avoids the pitfall in the joint venture model of conventional sports and the JeSU: giving constituent representatives, particularly the developers, a choice on whether to include or recognize a particular league runs the risk of bias and possibly even runs afoul of antitrust provisions.\textsuperscript{348} This is because the developers participate in the competitive market that is the esports market; and, participants in competitive markets are conceivably incentivized to make more money by ensuring that others do not take away from the consumers of their products. Thus, allowing these developers to decide whose products should be deemed “official” under a regulatory body would probably lead to anti-competitive activity.\textsuperscript{349}

\begin{itemize}
\item \textsuperscript{343}See discussion supra Section IV.
\item \textsuperscript{344}See Securities Exchange Act, 48 Stat. 891 (1934) (codified as 15 U.S.C. §78j(b)).
\item \textsuperscript{345}See discussion supra Section IV.
\item \textsuperscript{346}See discussion supra Section IV.
\item \textsuperscript{347}See, e.g., Chao, supra note 9, at 761. (“Since joint-venture and developer-sponsored leagues have historically exhibited anticompetitive behavior, esports regulators must consider governance that protects consumer demands and stymies anticompetitive practices.”).
\item \textsuperscript{348}See discussion supra Section III.
\item \textsuperscript{349}See discussion supra Section III.
\end{itemize}
or involvement is justified on this ground as well, since it would at least provide the contingency of checking against interests of the regulatory body’s constituents as a public entity.\(^{350}\)

The regulatory body must be a consolidated single entity, and the extra bodies that claim the same jurisdiction must be either merged into the monolithic body or eliminated. This was made clear from the success of JeSU and the failure of the international regulatory bodies, as well as the prior revelation that “[h]aving multiple regulatory organizations creates confusion and lacks cohesion” to effectively regulate the esports ecosystem.\(^{351}\) A main “board” should also exist to maintain representation, through which all regulatory issues must pass in a manner that does not lead to significant disparity in bargaining power between esports market participants. Consequently, this board’s membership also needs to ensure a fair representation of relevant parties, major game publishers, key platform providers, individual league operators, the federal government, and perhaps, several competitive organizations. This would ensure that the interests of all are equally accounted for. Assuming that publishers and developers would like to maintain a certain degree of autonomy, whatever institution ends up binding the majority of the esports market participants (i.e. the publishers, developers, operating leagues, franchises and teams) to the authority of the USeSA, it may arrange a contractual agreement which allows for such autonomy.\(^{352}\)

Additionally, to address the matters that existing law and legal process do not reach, such as esports market participant policies and conduct, there must also be an enforcement and investigation wing to serve in the function that their name suggests.\(^{353}\) Further, it is recommended, pursuant to the KeSPA model, that there be a pseudo-judiciary wing to the regulatory body.\(^{354}\) Preferably, this wing would be comprised of lawyers and developers representing the several leagues who will not only adjudicate regulatory violations, but also advise on the regulations and conflict resolution in light of developments in the industry and legislation. This will, at least, ensure that forthcoming developments and controversies in the esports market maintain integrity and security and will

\(^{350}\) See discussion *supra* Section III.

\(^{351}\) Martinelli, *supra* note 9, at 506; See also discussion *supra* Section III.

\(^{352}\) See discussion *supra* Section II.

\(^{353}\) See discussion *supra* Section II.C.

\(^{354}\) See discussion *supra* Section III.
be addressed or considered—even if the several publishers and esports leagues do not do so.

IX. CONCLUSION: GOOD LUCK, HAVE FUN

In sum, the study above has examined several pressing legal issues in esports, several central regulators of esports in other jurisdictions, similarities between conventional sports and esports regulatory systems, the effectiveness of a potential monolithic regulator, and the features that a monolithic regulator should possess if it must exist. Reasonable minds could differ as to whether a monolithic central regulatory body for all U.S.-based esports should exist or not. Of greater import, however, is that there are still plenty of legal and policy-based questions that must be resolved before any meaningful progress on the issues currently plaguing the esports market can be made. All signs point to esports becoming a much greater phenom in the future, one which the U.S. Government may no longer afford to ignore. Thus, it is likely that some kind of order will be established, be it by the controlling interests of the esports market or policy makers, or a combination of both; and it is the hope of the author that this note will provide some guidance on the matter.