



Expert insight on eSports

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Introduction

In the late 1990s, a generation grew up playing Goldeneye 007 multiplayer on a split screen with friends. Every group claimed to have had someone who really was 'the best ever'.

This was a common boast but rarely (if ever) settled. An entire generation of video gamers did not have the appropriate platform to test their skills against other players from around the world. Now, the emergence of eSports allows players anywhere to put their expertise to the test and compete against each other across a variety of video games for prize pools which rival those of 'traditional' sports. In turn, this has opened up a range of commercial opportunities within the eSports sector, which have been responsible for regenerating the economies of entire cities.

Commercial revenue growth

It is expected that global eSports revenues in 2016 will have exceeded \$460m with this market set to rise to in excess of \$1bn in 2019. These figures mainly comprise sponsorship and advertising and only include only a very small attribution to media rights sales. More traditional media companies have already entered the sector and, as this market matures, the commercial make-up may move more closely to traditional sports competitions where broadcast rights are exploited by leagues and associations, and revenues can exceed 50% of the total figure.

The variables and the contracting processes relating to these commercial rights will likely mirror those we have encountered for clients during our many negotiations in the media and entertainment sector over the last 20 years. The complexity of these negotiations will increase as the market develops (in particular if any exclusivity is introduced) but the issues and considerations should be very similar (if not identical) to those experienced by other digital models within the industry.

The regulatory environment

Any industry that experiences rapid growth will soon find itself being the subject of public and regulatory scrutiny. eSports is no different and after the significant growth and attention in this

area, it is not surprising that questions are being asked about how eSports are regulated.

Integrity is a key issue facing eSports. The sporting world has been trying to tackle issues of match-fixing, doping and cheating for hundreds of years and there is no reason to believe that these same issues won't affect eSports. With competitors able to compete online from the privacy of their own home, eSports faces unique and arguably more difficult integrity issues than more traditional sports. In addition to this, eSports will need to consider how the competitions and tournaments deal with various offences and offenders as well as how to tackle latency, downtime, cyber crime and other technology-related issues, which could affect the results of competitions. Throw into the mix that the Gambling Commission in the UK is considering whether it has jurisdiction over eSports and suddenly the industry faces significant levels of regulation. It's critical that organisations involved in eSports understand the actual and potential legal and regulatory issues that impact eSports – these must be factored into any business model as it's likely that the level of regulation will increase in the near future.

We have been asked by a number of clients to shape the conversations around the layers of the eSports value chain, the potential opportunities and predicted legal challenges and we hope that you find the pages that follow an interesting introduction to the breadth of the issues facing the various participants.



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Do opportunities for growth start with an IP re-structure?

With global audience figures during 2017 estimated to rise to 335m and as many 21-35 year olds now watching eSports as baseball in the United States, eSports can no longer be considered a niche market. The recent reported decline in traditional sports viewing amongst millennials also indicates that this age group is ripe for alternative engagement and entertainment in the sports and leisure sector.

As the value of prize money, sponsorship opportunities and streaming revenues all grow at pace, the natural question to ask is whether eSports will start to enjoy broadcasting revenues anywhere near the scale of some of its traditional counterparts? In the UK, Sky broadcast eSports for the first time in March 2016 and launched 24/7 eSports channel Ginx TV in June 2016 as part of a joint venture with ITV, but what does this mean for eSports teams and leagues? In the English Premier League, television deals are entered into by an entity collectively selling on behalf of the participating football clubs and revenue shared between them, meaning the top flight clubs in the 2015/2016 season were awarded an average of £96m. No such central licensing arrangements exist in eSports and there is plenty of content out there. Theoretically, given the number of platforms (and therefore potential licensees), there should be more competition for the acquisition of such rights, whether in the form of an exclusive output deal or on a league-by-league basis.

In eSports, leagues and tournaments are often owned and operated by developers, or at the very least publishers retain the broadcast rights, which means there is no central control over the tournaments themselves or the game-related IP.

In this environment, a central licensing scheme for television rights seems complicated and unmanageable if every developer, as opposed to the participating teams, is required to license rights into a central organising body, with little incentive for the teams or individuals to participate. Whilst some eSports teams and gamers may have access to streaming-derived revenues, especially outside of formal competitions from platforms such as Amazon-owned Twitch, it would be unusual for them to have an interest in a high value rights deal.

As with all sports, intellectual property is a crucial component. Where traditional sports clubs tend to enjoy copyright and trade mark protection for their logos or crests, which can then form the basis of commercial partnerships or licenses for the creation of official merchandise or sponsorship, eSports athletes and teams do not actually own the avatars that represent them in-game – the IP remains with the ‘author’ of the artistic work, which is the developer. The traditional sports world has shown that there are opportunities for individuals to exploit and protect their IP, with players such as Federer and Ronaldo successfully protecting their identifying marks or characters. Whether this and lucrative broadcast rights or exclusive output deals can be replicated in the eSports arena remains to be seen.



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eSports regulation

Whilst still a relatively nascent market (the International e-Sports Federation based in Seoul was only founded in 2008), the legal and commercial challenges of eSports are no different to those which have previously faced the leisure industry. One of the key legal considerations is, and will continue to be, regulation. In August 2016, the British Gambling Commission took the proactive step of publishing a discussion paper on eSports.

Additionally, the eSports Integrity Coalition (ESIC) was founded in 2015 to tackle various integrity issues which the sector is facing, particularly in relation to match-fixing and fraud. ESIC has already produced various pieces of regulatory literature, including a Code of Conduct and an Anti-Doping Code.

There is no 'one type' of eSports and therefore each model, and the regulatory requirements it is subject to, must be assessed on a case-by-case basis. Key factors to consider will include:

- ▶ whether the eSport is online, offline or a mixture of both;
- ▶ whether players compete within the privacy of their own home or at a public venue;
- ▶ the rules governing the specific eSport;
- ▶ will the eSport be governed by ESIC's codes;
- ▶ are there any prohibited substances which should be added to ESIC's list;
- ▶ are there any therapeutic-use-exemptions which should be included;
- ▶ whether anything is being wagered on the outcome of the eSport (including by players or viewers);
- ▶ whether players have to pay to participate;

- ▶ if a prize or consideration can be won – whether through a wager or by succeeding in the eSport; and
- ▶ where the prize is in the form of virtual currency or virtual items, whether such items have a real world value.

The last of the factors listed above is of particular importance where eSports take place online, given that the Gambling Commission's paper on eSports also discussed virtual currency and virtual items, known as 'skins'.

eSports is an exciting new sector that has a rapidly growing player and viewer base and shows no signs of slowing down. However, the additional exposure will bring with it added pressure to ensure that eSports do not constitute unlicensed gambling and that it is conducted fairly and with integrity. Now is the time for eSports businesses to consider these issues so as to avoid creating a product where success is subject to future (or current) regulation.



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Digital currencies, blockchain technology and eSports

As eSports take place in a digital environment, it is no surprise that game developers and platform owners embrace the use of digital currencies. Such currencies take many forms, including decentralised currencies which use encryption techniques, such as Bitcoin, and centralised currencies used and accepted among members of a specific virtual community, but all are, essentially, a digital representation of value. eSports is the competitive playing of virtual games for rewards. A whole host of in-game virtual currencies exist, for example Linden Dollars (used in Second Life) and WoW Gold (used in World of Warcraft). Virtual currencies are often earned during game play and can be used to reward players for their gaming performance. Sometimes virtual currencies and skins can also be purchased with, and cashed out into, real money.

Amazon announced in October 2016 that it will be introducing a new virtual currency called Stream+ into its game streaming platform Twitch. It is reported that Stream+ coins will be awarded when players watch different streams and can be spent on in-game items and for 'polls and wagering'. Detail of how 'wagering' will work in practice has not yet been released, but it will be interesting to see how Amazon navigates the regulatory framework. The onus is on operators to manage the risks of cheating, match fixing and inciting young people into gambling. However, this presents particular challenges for an industry which operates globally and in the digital environment, where players' real identities and match fixing can be hidden behind the internet or a screen.

There have been various instances where the integrity of eSports has been called into question, for example, allegations of eSports

tournament organisers failing to pay out cash prizes. Could blockchain technology, which underpins cryptocurrencies such as Bitcoin, be used to create a more secure environment for eSports gamers? Blockchain is a shared digital ledger, distributed across a network of computers which can be used to record and verify data. A decentralised eSports gaming platform based in the Ethereum blockchain is being developed by FirstBlood. Once the FirstBlood network verifies the match result, prize money is automatically distributed to the winning individual or team using smart contracts. According to the FirstBlood whitepaper, one of the features of the decentralised automated platform will be a user reputation system which allows users to identify players who have a history of abusing other players or hacking. As the popularity and commercial value of eSports continues to increase, so too will the call to ensure the integrity of the industry. Blockchain technologies have the potential to materially deliver against this goal.



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M&A and investment opportunities in eSports – just the beginning...

The eSports ecosystem spans a broad range of areas (technical service providers, events, teams and other ancillary services) which offer M&A and investment opportunities for companies to expand, promote brand recognition or simply tap into the growing revenues from online advertising, sponsorship and media rights.

M&A and investment activity has been increasing across these areas. Since the start of 2011, eSports and game streaming start-ups are believed to have raised close to \$1bn in funding. There remains a predominant US and Asian focus on early stage financing backed by venture capital. However, the larger M&A deals have been dominated by established tech and media businesses that have recognised the complementary nature of the eSports industry to their existing businesses.

Areas of particular activity have been in streaming/broadcasting services, leagues and teams. Given viewing hours for eSports in 2016 are estimated to total around 6.1bn and the coveted consumer demographics (young males with high engagement rates who are traditionally harder to reach through other mediums), streaming and broadcasting services have been the focus of the largest deals in recent years in terms of acquisitions (Amazon's \$1bn purchase of Twitch along with Activision Blizzard's purchase of Major League Gaming for \$46m) and investments (with Azubu raising \$60m in 2015 and DouyuTV, China's answer to Twitch, raising \$226m in its latest funding round in August 2016).

European digital media companies are not being completely left behind - to expand on their traditional sports broadcasting experience in 2015 Modern Times Group took a majority stake in ESL, the league and tournaments organizer, for \$86m, with President Jørgen Madsen Lindemann hailing the investment as a key milestone in Modern Times Group's digital development.

2016 has seen investments in eSports teams, with NBA franchise owners and players featuring frequently in deals seeking to leverage their experience in more established sports markets. Activision Blizzard has also recently launched a new league for its Overwatch title, structured to encourage investors to buy into the team franchises. In Europe West Ham, Manchester City, Wolfsburg and Schalke have all hired eSports players for Fifa tournaments as part of branding opportunities and investments or joint ventures involving sports clubs are likely to be on the horizon.



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Brands vying for recognition in the developing eSports environment

eSports competitions are attracting bigger live and online audiences than many traditional sporting events. Much of the value is derived from advertising and sponsorship, which accounts for a large proportion of revenues and established brands are investing significantly in eSports. For example, as mentioned above, in the UK we have seen English Premier League clubs such as Manchester City and West Ham participate thanks to a shared demographic.

It is inevitable that, as the number of people following eSports reaches critical mass, a number of independent team brands will start to generate a high level of social media engagement and global recognition with their audiences. In that environment, eSports merchandising is likely to generate significant revenues if parallels with other sports are anything to go by. This is challenging given the current fragmented market and the slightly different characteristics of eSports, however, securing intellectual property rights early on will help major stakeholders establish their brands in an increasingly fast-moving environment.

Brand recognition will embed itself over time, and the key areas of activity are likely to be the development of national/regional

leagues and other major events, teams and leading players. In particular, as fan loyalty grows, the demand for official team and player merchandise will increase. It will be important to ensure that the underlying intellectual property rights, including trade marks, have been secured.

If you are looking to invest in eSports or to take your eSports offering to the next level, it will be important to have a focussed intellectual property strategy in place to ensure that your brand is protected and rights can be licensed effectively. This will help you to capture as much value as possible.



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Data protection in eSports

The rapid growth of eSports has, to a large degree, been mirrored by the increased coverage of data protection over the last few years. There is of course no causal link between these two areas, but it is inevitable that their paths will cross and organisations involved in eSports will need to understand their obligations under data protection legislation – both under the current regime and the upcoming EU Regulation.

The nature of eSports means that huge numbers of individuals from around the world will easily be able to share and disclose personal data – ranging from usernames of players to account information of viewers to marketing preferences of interested parties – through a variety of digital media. This will mean that any company involved in eSports will need to consider data protection, particularly how it collects and processes personal data and how it organises its online marketing.

Data protection should not be seen as an obstacle to a growing industry. There are, however, compliance requirements when processing personal data (such as how data is collected, shared and what information is given to players), which will need to be considered and doing so from the outset could avoid complications in the future as well as allowing businesses to fully understand how best to monetise the data it collects.



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Player rights – a claim waiting to happen?

A career as a pro-gamer was once a pipe dream. These days, it doesn't seem so crazy. With eSports audience numbers starting to rival traditional sports and prize money soaring to dizzy heights, it's not surprising that many talented gamers are pursuing the opportunity of turning their childhood dream into a reality. But for many, things aren't quite as glamorous as they expect.

There is little work-life balance. For example, most players in League of Legends teams reportedly practise upwards of 50 hours per week, some playing every waking minute. All-nighters are also common, particularly in the run up to tournaments. To make matters worse, most players don't receive a regular salary and get paid nothing unless their team is successful.

So is this lawful? In short, probably not.

If a UK player is personally obliged to practise and compete and cannot fairly be said to be operating their own business (most aren't) then at the very least they are likely to have the legal status of a 'worker'. This would entitle them to the minimum wage, rest breaks, paid holiday leave and potentially pension contributions. As the industry grows rapidly, surely an employment tribunal claim can't be too far away? And that's before you consider

the potential reputational damage such claims could bring which would likely taint publishers, leagues, sponsors and team operators alike.

There are signs some are already addressing these risks. Activision Blizzard, which is launching its first eSports league based around its title, Overwatch, is insisting that players recruited by a team are guaranteed a basic minimum salary and benefits package while some eSports teams are also beginning to offer salaries and contracts to their players. But such approaches are not yet the norm. Until they are, the potential for player rights issues to rear their head will never be far away.



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Hosting and venue hire

In the last 25 years the evolution of the home gaming console and the development of the internet have moved the concept of eSports out of stadiums (think of the very early Mario Bros tournaments once hosted by Nintendo), down into the remote space of the individual user's own online network, up in to the connected viewer platforms controlled by providers such as Twitch and Hitbox, and now again (with a growing demand for 'physical' involvement by fans and sponsors) back into stadiums.

In the immediate future, venue support for the hosting of eSports events is a clear priority, but at this stage of development, with the notable exception of the Gfinity Arena at Fulham Broadway, the majority of eSports teams, platforms and leagues (in the UK at least) don't have dedicated stadiums for fixtures and competitions. Instead, venues are more typically licensed on a bespoke basis, in the same manner that event promoters secure venues for analogous 'single hire' events such as a music concert.

The licensing of venues and stadiums requires careful negotiation between the concerned parties so that interests are appropriately protected. Key considerations include distribution of ticket proceeds, confidentiality provisions, appropriate IP protection and all

necessary licensing for venue use (PRS licences for the performance of live music, PPL licences for the performance of recorded music and premises licences under Licensing Act 2003).

If eSports evolves into the acquisition of dedicated stadiums, a new layer of complexity is added. In the meantime, eSports teams and leagues are increasingly sourcing facilities to serve as hubs for the purposes of training, collaboration, socialising and publicity. As the popularity of eSports continues to increase the demand for larger and longer term interests in such spaces is likely to follow close behind. Leagues and teams will have to move towards large scale acquisitions of land with extreme caution and ensure they are carefully advised on all key risk areas.



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