NOTE

KICKING IT NEW SCHOOL: APPLYING THE FIFA REGULATORY MODEL TO THE ESPORTS INDUSTRY

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ABSTRACT
Over the past decade, video gaming has transformed from a teenage hobby into a near-billion-dollar “eSports” industry. “eSports”—professional, competitive video gaming—has grown rapidly in popularity during this time, and shows no signs of slowing down anytime soon. Many of today’s eSports companies are multi-billion dollar, publicly traded businesses. Professional organizations, which support specialized eSports teams, are becoming household names. And professional players are, by many accounts, the rock stars of a new generation. Despite the industry’s recent success, however, eSports continues to operate as its own Wild West, lacking uniform standards and regulations. This Note explores the problems that this has created for professional eSports players and proposes the establishment of an international regulatory body based loosely on the model used by FIFA, soccer’s worldwide governing organization.

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I. Introduction  

Amer Barqawi was twelve years old when he first set foot inside of a video gaming “net café” near his home in Jordan.\footnote{eSports Stories, \textit{The Story of Miracle — Amer Al-Barkawi — Team Liquid — Dota 2 — Biography — Profile}, YouTube (Apr. 9, 2017), https://www.youtube.com/watch?v=dghnyyjR7uM [https://perma.cc/2PT5-6ATE].} His older brothers were frequent visitors to the café and Barqawi was curious to see what all of the excitement was about.\footnote{Id.} Barqawi’s brothers were less than thrilled about the prospect of Barqawi tagging alongside them, but they were given no other choice after their
mother granted him permission to attend. At the café, Barqawi’s brothers introduced Barqawi to the video game “Dota 2” and he was immediately hooked. Unbeknownst to him at the time, in just eight years, playing Dota 2 would earn Barqawi more money than most make in a lifetime.

On August 13, 2017, then-twenty-year-old Barqawi and his teammates were crowned the winners of the renowned eSport tournament “The International” in front of thousands of fans in Seattle’s sold-out KeyArena. The International, which is organized for the world’s top Dota 2 players, boasted almost eleven million concurrent viewers and featured a prize pool of nearly $25 million. As first place winners, Team Liquid took home a total of $10,862,683. Barqawi’s cut of the prize? $2,172,536.

For many, the story of Amer Barqawi reads like a chapter from a young adult fiction novel. A twenty-year-old winning millions of dollars playing video games? Yeah, right. But Barqawi’s story is far from fiction. In fact, Barqawi, and many like him, are pioneers in a twenty-first century Wild West: the rapidly growing industry of “eSports.”

The origin of eSports, i.e., “multiplayer video game[s] played competitively for spectators, typically by professional gamers,” lies in South Korea, where competitive “Starcraft” tournaments first emerged during the 1990s financial crisis. Since that time,
eSports has exploded in popularity throughout the world, naturally leading to the generation of impressive revenues along the way. Today, eSports is on the verge of becoming a billion-dollar global industry.

The eSports industry is both vast and complex, but essentially consists of three main stakeholder groups: (i) eSports companies, which own intellectual property rights to video game franchises; (ii) professional organizations, which support specialized teams of professional players; and (iii) professional players, like Barqawi, who are obtaining widespread notoriety and wealth as eSports continues to grow in popularity.

Despite the industry’s recent success and rapid growth, eSports remains largely unregulated and somewhat disorganized. While this creates challenges for all of the industry’s stakeholders, professional players are arguably impacted most. They face three broad categories of problems persisting in the eSports industry.

First, a lack of transparency makes it difficult for players to negotiate the terms of their contracts with prospective professional organizations. This is particularly true for newer and younger players who are more vulnerable to exploitation. Second, a lack of standardization results in different players being subjected to different rules. These discrepancies are especially concerning with regard to doping and disciplinary proceedings. Lastly, a lack

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15. See, e.g., Our Company, Activision Blizzard, https://www.activisionblizzard.com/about-us (providing a roster of Activision Blizzard’s game franchises) [https://perma.cc/K72C-4EVT].

16. See, e.g., Team Liquid, https://www.teamliquidpro.com/about (highlighting the many successes of the organization’s specialized teams competing in several different eSports games) [https://perma.cc/XSP7-L3JD].


19. See discussion infra Section II.A.5.a.

20. Id.

21. See discussion infra Section II.A.5.b.

22. Id.
of representation leaves players without effective means of redressing problems as they exist and as they may arise.\textsuperscript{23}

With these problems in mind, it is no surprise that calls to regulate eSports have become increasingly common among industry insiders and legal scholars alike.\textsuperscript{24} Thus far, however, legal scholars have mainly focused on regulatory proposals to govern eSports within the United States.\textsuperscript{25} While such proposals are undoubtedly well-intentioned, a state by state approach to eSports regulation is bound to exacerbate the problems already stemming from the industry’s lack of standardization. Given the international scope of the eSports industry, it is apparent that any effective regulatory proposal must also be international in scale.

Establishing an international regulatory body is, admittedly, no simple feat. But thankfully, eSports need not reinvent the wheel. Rather, the industry should look to the Fédération Internationale de Football Association (FIFA),\textsuperscript{26} the international governing organization for the sport of soccer, for a model upon which to structure its own regulatory body. FIFA’s organizational structure enables it to effectively address many of the same issues that are currently facing eSports players.

Accordingly, in order to protect the interests of eSports players, to promote the legitimacy of eSports, and to foster continued growth of the industry, this Note proposes the establishment of an international eSports regulatory body, based loosely on FIFA’s organizational structure, with the authority to set forth and enforce rules and regulations as necessary for the promotion of transparency, standardization, and player representation throughout the industry.

In Section II, this Note will provide an overview of the eSports industry through an exploration of its growth, key stakeholders and events, and problems faced by its professional players. It will also discuss the World eSports Association (WESA) and introduce the FIFA regulatory structure. Next, Section III will propose the

\begin{itemize}
  \item \textsuperscript{23} See discussion \textit{infra} Section II.A.5.c.
  \item \textsuperscript{25} See Hollist, \textit{supra} note 24; Chao, \textit{supra} note 18, at 764 (Chao’s Note focuses on eSports regulation in the United States, but alternatively suggests joining an international body if the U.S. government does not take domestic action).
  \item \textsuperscript{26} Fédération Internationale de Football Association.
\end{itemize}
establishment an international regulatory body loosely modeled upon the organizational structure used by FIFA, but tailored to serve the needs of the eSports industry. Lastly, Section IV will summarize and conclude.

II. BACKGROUND

A. The eSports Industry

Far from the days when video games were considered a mere teenage hobby, eSports has transcended into a truly global industry. This Section will explore (i) the industry’s impressive growth, (ii) its key stakeholders, (iii) its signature tournaments, (iv) WESA, and (v) the problems faced by professional eSports players.

1. eSports by the Numbers

The eSports industry is impressive based on the numbers alone. In 2017, the industry reached $655 million in global revenue (a thirty-three percent increase from 2016), hosted 588 major events, and awarded $112 million in total prize money. Additionally, eSports fans spent some astounding 959.3 million hours watching their favorite players on Twitch, a popular livestreaming platform for gamers. Growth is expected to continue throughout 2018, where forecasts indicate that brands will invest $694 million into eSports, revenues will soar past $900 million, and the global eSports audience will reach 215 million viewers and enthusiasts. By 2021, the industry is expected to exceed revenues of $1.4 billion and expand its audience to more than 550 million people worldwide. To better understand this rapid growth, however, one must take a closer look at the industry’s key stakeholders and signature tournaments.

28. Id. at 7.
29. Id.
30. Id. at 25.
31. See Don’t Just Watch, Join In, Twitch, https://www.twitch.tv/p/about (describing Twitch as “a community where millions of people and thousands of interests collide in a beautiful explosion of video games, pop culture, and conversation”) [https://perma.cc/5UT4-E4KB].
33. Id.
34. Id. at 11.
35. Id. at 7, 11.
2. Key Stakeholders

The eSports industry may generally be broken down into three groups of key stakeholders: (a) eSports companies, (b) professional organizations, and (c) professional players.

a. eSports Companies

ESports companies\textsuperscript{36} are perhaps the most powerful stakeholders in the industry. Not only are many eSports companies large, publicly traded organizations,\textsuperscript{37} but they also control almost every aspect of a game’s use through their ownership of its intellectual property.\textsuperscript{38}

Between the sheer popularity of eSports games and a number of strategic mergers and acquisitions, successful eSports companies have accumulated vast wealth and consolidated ownership rights to the top eSports games. For example, one of the most popular eSports games, “League of Legends,” is developed and published by Riot Games, a Los Angeles, California-based company with twenty-three offices worldwide.\textsuperscript{39} Riot Games, which is estimated to earn over $150 million each month from League of Legends

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\textsuperscript{36} eSports companies provide a wide range of goods and services to the industry, but for the purposes of this Note, “eSports companies” will refer only to those that own intellectual property rights to games played in professional leagues and tournaments. It is difficult to determine the exact number of eSports companies that fit into this category, but data reviewed from the e-Sports Earnings website may provide some insight. According to e-Sports Earnings, there were 43 games in 2017 with cash prizes from competitions totaling over $100,000. \textit{See Top Games of 2017, e-Sports Earnings}, https://www.esportsearnings.com/history/2017/games [https://perma.cc/A5BQ-85XG]. And of those 43 games, the intellectual property rights for those games are held by 25 different companies. \textit{See Games, e-Sports Earnings}, https://www.esportsearnings.com/games/browse-by-name [https://perma.cc/33CF-9Z5U].


\textsuperscript{38} \textit{See} Chao, \textit{supra} note 18, at 749 (explaining that “[c]opyright law grants game developers intellectual property rights over the creative aspects embodied within a game. The copyright holder enjoys the exclusive right to make copies, distribute, make derivative works, and publicly display the game.”).

alone, was acquired in 2015 by Tencent, a $320 billion Chinese investment holdings giant.

A similar example is Activision Blizzard, which was formed through a 2007 merger between Activision and Vivendi Games, owner of then-Blizzard Entertainment. The merger consolidated the ownership rights to many of the top eSports games. In fact, according to eSports data website, e-Sports Earnings, Activision Blizzard owns the rights to five of the top ten games of 2017. Such control over these games has led to large profits—Activision Blizzard is presently valued at $52 billion.

Through their ownership of intellectual property (software, trademarks, etc.), eSports companies control who may play their games, who may host leagues and/or tournaments, and the rules and regulations of gameplay. Take, for example, the Terms of Use upon which all users must agree in order to play League of Legends. By accepting the Terms of Use, every League of Legends player gives Riot Games the power to:

- Set eligibility requirements to use its product and services;
- Suspend or terminate player accounts;
- Set forth the methods of operation and gameplay;
- Delete, alter, move, remove or transfer any and all Game Content;
- Use any unsolicited ideas submitted from users without providing compensation to the submitter;
- Mandate compliance with a Code of Conduct;
- Monitor users while using any of Riot Games’ services;
- Require indemnification for claims that arise or result from use or misuse of Riot Games’ services;
- Limit liability and available damages; and


44. See id.

45. See Our Company, supra note 15 (showing ownership of the Call of Duty, StarCraft, Hearthstone, Heroes of the Storm, and Overwatch franchises).

46. Summary: Activision Blizzard, Inc., supra note 37.

• Mandate arbitration to resolve disputes. 48

This also means that Riot Games maintains exclusive control over its League of Legends professional leagues and signature World Championship Event. 49 Through proliferation of the League of Legends Championship Series (LCS) Rules, Riot Games sets requirements for coaches and managers, team rosters, players contracts and exclusivity, trades, equipment, uniforms, and disciplinary procedures. 50

b. Professional Organizations

Professional organizations make up another key group of stakeholders in the eSports industry. 51 Professional organizations are located in an array of countries across the globe, concentrating in areas where eSports is most popular. 52 As such, most are located in the United States, Europe or Northeast Asia. 53

Beyond location, however, it is difficult to generalize about professional organizations because they vary greatly in size and structure. At their smallest, professional organizations consist of single teams competing to win prize money at gaming events. 54 At their largest, they are structured as sophisticated businesses, supporting specialized teams competing in various games. 55 Because this Note concerns the most influential entities in the eSports industry, the term “professional organization” herein will refer to the larger corporate entities, unless otherwise stated. There is no efficient way to determine the exact number of professional organizations that fit

48. See generally id.
49. See id. § 3.2.
51. This Note uses the term “professional organizations” to describe the umbrella organizations that house individual, specialized eSports teams. This term is used to avoid confusion between the umbrella organization and the specialized teams existing therein.
53. Id.
54. For example, Olympus E Sports is a professional organization with just one team competing in Super Smash Bros Melee and no listed sponsors. See OLYMPUS ESPORTS, http://olympus-esports.com/ [https://perma.cc/GS9Q-ECGH].
55. Team Liquid is an example of a professional organization with 14 specialized teams competing in different games, with sponsorships from major companies, including Alienware, Monster Energy, and Twitch. See TEAM LIQUID, https://www.teamliquid.com/players#sc2 [https://perma.cc/RZT5-WS83].
into this category, but data from e-Sports Earnings suggest that the number is likely well over 100.56

Professional organizations are best understood by looking at their structure and function. Structurally, as mentioned above, professional organizations typically exist as corporate entities housing several teams that specialize in different eSports games.57 It is important to keep this structure in mind, especially because many professional organizations actually include the word “team” in their names.58 For example, “Team Liquid” is the name of a professional organization that contains fourteen teams competing in different games.59

Functionally, professional organizations are responsible for both raising revenue and providing players with the platform and infrastructure needed to compete at the professional level.

i. Raising Revenue

Running a successful professional organization is not inexpensive. Professional organizations require revenue for salaries, equipment, travel, marketing, and several other expenses.60 This revenue can be raised in a variety of ways, both directly and indirectly.

Professional organizations raise revenue directly through traditional means such as “sponsorship relationships, endorsement deals, merchandise sales[,] and other strategic partnerships.”61 These partnerships are often formed with corporate brands and proudly displayed on professional organizations’ websites.62 Direct

56. Assuming that the professional organizations which earned over $100,000 in 2017 prize money are structured as larger corporate entities, there would be 107 professional organizations fitting into this category. See Top Teams of 2017, e-Sports Earnings, https://www.esportsearnings.com/history/2017/teams [https://perma.cc/86J8-WBXB].


59. See TEAM LIQUID, supra note 55 (showing that Team Liquid has teams competing in 14 different eSports games).

60. See The Realities of Financing an eSports Team, GLHF (Aug. 10, 2016), http://goodluckhavefun.co.za/2016/08/10/realities-financing-esports-team/ (interviewing an eSports industry insider about “the actual costs involved with running an eSports organization”) [https://perma.cc/2ULP-V62U]; see also discussion on player support infra Section II.A.2.b.ii.

61. Knapp, supra note 57.

62. See, e.g., TEAM DIGNITAS, http://team-dignitas.net/ (displaying corporate sponsors such as Champion, Mountain Dew, and HyperX on its home page) [https://perma.cc/2HFE-M8C4].
revenue is also raised through less traditional methods like livestreaming, competition victories, and content creation.\textsuperscript{63}

Increasingly, professional organizations are turning to venture capital as yet another source of direct revenue.\textsuperscript{64} Given how quickly eSports has grown in popularity, it is no wonder that it has attracted investors from a wide array of industries. Investors in eSports ventures include owners of traditional sports teams such as Jerry Jones\textsuperscript{65} and Peter Guber,\textsuperscript{66} former athletes like Magic Johnson\textsuperscript{67} and Alex Rodriguez,\textsuperscript{68} and even musicians including Jennifer Lopez\textsuperscript{69} and Steve Aoki.\textsuperscript{70}

Professional organizations also raise revenue indirectly by recruiting top players to their teams. As we will discuss in the following Section, the top professional players are extremely popular among fans.\textsuperscript{71} Professional organizations that succeed in recruiting these players can harness this popularity to increase their own revenues. For example, professional organizations often require players “to attend a slew of live events outside of tournaments, including promotional galas, content production events, and interviews.”\textsuperscript{72} This visibility makes the entire organization more attractive to potential sponsors, who see in eSports a prime opportunity

\textsuperscript{63} Knapp, \textit{supra} note 57.


\textsuperscript{67} See id.


\textsuperscript{69} See id.


\textsuperscript{71} See discussion \textit{infra} Section II.A.2.c.

to market their goods and services to a new audience.\textsuperscript{73} Once revenue streams are in place, professional organizations can focus on ensuring that their players have the support they need to improve their gameplay and to win competitions.

\textit{ii. Player Support}

Professional organizations support their players by providing salaries, housing, and team coaches and managers. Player salaries are set forth in larger contractual agreements “designed to set out the player’s working conditions, duties and whatever else is required of them.”\textsuperscript{74} Unfortunately, most eSports contracts are kept out of the public eye,\textsuperscript{75} but based on the publicly available information, it is fair to say that salaries vary widely from player to player.\textsuperscript{76}

In addition to employing players, professional organizations hire coaches and/or managers (collectively referred to as “coaches” herein) for their teams.\textsuperscript{77} The role of coaches varies across teams and games.\textsuperscript{78} Some games, like “Counter-Strike: Global Offensive,” call for coaches to take a lead role during gameplay.\textsuperscript{79} Counter-Strike coaches can “can feed information a player missed, help clear up communication, help emotional control[,] and call the play or lead the action.”\textsuperscript{80} Other games, like League of Legends,
limit the in-game role of coaches.81 League of Legends coaches thus focus their efforts on “training, scheduling, analysis[,] and drafting.”82 In both games, however, coaches are often tasked with the responsibility of supervising the team “gaming houses” where players live and train.83

It has become increasingly common—if not necessary—for professional organizations to invest in so-called “gaming houses” for players to live and train together.84 The gaming house model was established by professional Starcraft teams in South Korea in the early 2000s85 and has since gained popularity among teams competing in other games.86 A quick search for “gaming house tours” on YouTube results in numerous videos of professional teams proudly showcasing beautiful houses across the globe, with several featuring home gyms, pools, and even private chefs.87

c. Professional Players

Professional organizations may be the most powerful eSports stakeholders, but professional players are likely the most important. Professional players come from all walks of life and represent a wide array of nationalities.88 For example, the top ten highest earning players of all time are from eight different countries of

81. See OFFICIAL RULES: NA LCS AND NA LACS, supra note 50, §7.2.1 (“Managers may be in the match area during the match prep process, but must leave prior to the pick/ban phase and may not return until after the end of the match.”).
82. Chiu, supra note 78.
83. See id.
88. See Top Players of 2017, e-SPORTS EARNINGS, https://www. esportsearnings.com/history/2017/top_players (displaying each player’s country of origin to the left of their names) [https://perma.cc/6LXD-EQAT].
origin. This diversity likely contributes to the global popularity of the industry.

As with professional organizations, there is no readily available data providing an exact number of active professional players. In 2017, there were over 545 professional players in League of Legends alone. Moreover, e-Sports Earnings ranks the top 500 players of each year, many of whom do not play League of Legends. Thus, even a conservative estimate could place the total number of professional players somewhere near, or into, the thousands.

To many eSports fans, professional players are modern day rock stars. This is especially true in South Korea, where eSports is more popular among teenagers than baseball. The following passage from ESPN the Magazine’s feature story on Korean League of Legends star “Faker” is an excellent illustration of the teenaged gamer’s star power. After observing a relatively unimportant match between Faker’s team, SKT, and their opponent, the Samsung Galaxy, author Mina Kimes writes the following:

After the match, a few dozen fans wait outside the studio for autographs. Most of them are women, with similar hairstyles (bangs) and outfits (baggy sweaters with short skirts and heels). One girl is wearing a white hamster onesie; as she kneels down to pick up a box of chocolate cream cookies, a gift for the team, her fuzzy tail drags between her legs. When fans approach Faker, bearing chestnuts and stuffed animals and gifts wrapped in pasted tissue paper, he bows. He carefully places their presents in a pile, then holds their phones out for selfies, tilting them just so. One girl hands him a metallic pen and asks him to sign an autograph book, and he writes FAKER in all caps. He pauses, then adds: haengbok hasaeyo. Be happy.

Ms. Kimes’ anecdote provides a great qualitative example of Faker’s popularity, but his popularity is observable from a quantita-
tive standpoint as well. A visit to Faker’s Twitch page shows that he has over one million subscribers to his account.\(^95\)

Perhaps most surprising to those unfamiliar with the eSports industry is the earning capacity of professional players. As mentioned in our discussion of professional organizations, players receive salaries set forth in contractual agreements,\(^96\) which typically span a period of one to two years.\(^97\) The vast majority of these agreements remain undisclosed, but one notable contract recently provided a glimpse of the money that top players can command.\(^98\)

In September 2017, seventeen-year-old Overwatch star Jay “Sinatraa” Won made headlines after signing a contract with NRG eSports providing him with an annual base salary of $150,000.\(^99\) The contract also included provisions for health insurance, retirement savings, and, importantly, an entitlement to fifty percent of all team bonuses shared between his teammates.\(^100\)

Won’s contract is likely one of the most lucrative in the eSports industry.\(^101\) But players with lower base salaries still have the potential to bring home large sums of prize money, even if their professional organizations are entitled to half their shares. Let us return briefly to the story of Amir “Miracle” Barqawi discussed at the beginning of this Note.\(^102\) Barqawi’s full share of the prize winnings was over $2 million.\(^103\) Even if Team Liquid was entitled to half of his share, Barqawi still earned more than $1 million in under one week.\(^104\)

3. eSports Tournaments

The eSports industry is perhaps best known for its large, international tournaments. Unlike the industry stakeholders discussed

\(^95\). See Faker, Twitch, https://www.twitch.tv/faker (click the ellipsis located next to the word “Clips” toward the top of the page to see the number of account followers) [https://perma.cc/3EAA-R2K6].

\(^96\). See discussion supra Section II.A.2.b.ii.

\(^97\). See Jason Lake, So You Want to Buy an eSports Team, TV Revolution (Oct. 19, 2016), http://tvrev.com/buy-esports-team/#.Wm3uxZM-fVo (“Top gaming brands generally have their players contracted for 1–2 years.”) [https://perma.cc/6YSS-P25Y].


\(^99\). Id.

\(^100\). Id.

\(^101\). Compare id. (stating that Won is the highest paid Overwatch player), with Pan, supra note 76 (providing examples of annual player salaries ranging from $57,000 to $65,000).

\(^102\). Supra Section I.

\(^103\). See Amer “Miracle” Barqawi - Dota 2 Player, supra note 5.

\(^104\). Id.
above, tournaments are not independent entities, but rather the products of those who organize them. 105 Nevertheless, any discussion of the eSports industry would be incomplete without touching on the important role that tournaments play in generating publicity for eSports. By featuring massive prize pools and attracting astounding numbers of viewers, major tournaments have become the industry’s best tool for propelling eSports into the mainstream. 106

Increasingly, major tournaments are grabbing headlines by offering prize pools in the millions of dollars. 107 According to e-Sports Earnings, there were more than a dozen million-dollar tournaments in 2017. 108 As discussed in the introduction of this Note, one such tournament was Valve Corporation’s The International 2017, which shattered its own world record by featuring a prize pool of over $24 million. 109 If the trend continues, The International 2018 should be the largest yet. 110

Tournaments also gain publicity by boasting their high viewership numbers. 111 As with traditional sports, eSports fans can purchase tickets to attend tournaments in person, 112 which for large events can translate into huge crowds. In March 2017, the Electronic Sports League’s (ESL’s) Intel Extreme Masters World Championship became the most attended eSports event in the

105. See Dota Pro Circuit, DOTA 2, https://www.dota2.com/procircuit (showing that DOTA 2, which is published by Valve Corp., has many tournaments organized by third parties) [https://perma.cc/NA7W-BHMN].

106. See, e.g., Greg Wyshynski, NHL Enters Esports Market with International Tournament, ESPN (Mar. 9, 2018), http://www.espn.com/nhl/story/_/id/22699498/nhl-enters-esports-market-international-tournament (providing one of many possible examples of eSports mixing into the mainstream sports market) [https://perma.cc/6RHB-467X].


108. See Largest Overall Prize Pools in Esports, supra note 107.


112. See, e.g., The International Ticketing FAQ, DOTA 2, https://www.dota2.com/international2017faq (showing tickets for The International ranged from $100-$200 depending on the event) [https://perma.cc/5NNF-FQ9K].
world after drawing 173,000 fans to the stadium and surrounding festival in Katowice, Poland.\textsuperscript{113}

ESports fans who prefer to watch tournaments from the comfort of their homes also have the option of livestreaming the action on platforms like Twitch and YouTube.\textsuperscript{114} Livestreams often feature seasoned “shoutcasters”, who enhance the livestream with play-by-play commentary and expert analysis.\textsuperscript{115} Thus far, the livestream model has had incredible success, with livestreams from major tournament frequently generating newsworthy viewership numbers.\textsuperscript{116} The current viewership record was set in November 2017 at Riot Games’ League of Legends World Championship in China.\textsuperscript{117} According to Riot Games, the tournament finals attracted 57.6 million unique viewers.\textsuperscript{118} In comparison, the final game of the 2017 NBA Finals had a peak viewership of just 29.5 million.\textsuperscript{119}

4. The WESA

By now, the size and complexity of the eSports industry must be readily apparent. In an early attempt to bring some organization to this new Wild West, a handful of professional organizations teamed up with ESL in May 2016 to establish the WESA.\textsuperscript{120}

According to its website, WESA aims to “further professionalize esports by introducing elements of player representation, standardized regulations, and revenue shares for teams.”\textsuperscript{121} The organiza-
tion also “seek[s] to create predictable schedules for fans, players, organizers and broadcasters, and for the first time bring all stakeholders to the discussion table.”122 In theory, WESA’s goals are admirable; they are focused on solving many of the problems addressed in the next Section of this Note.123 In practice, however, WESA has a long way to go to fulfill its mission of becoming “the global benchmark for industry-wide standards.”124

To be fair, WESA has taken steps in the right direction, particularly in implementing doping regulations and establishing a disciplinary appeals system for players in ESL’s professional leagues.125 But thus far, WESA’s governance fails to extend beyond ESL and includes only a handful of members.126 Some further discussion of WESA is dispersed throughout the following Section of this Note, confirming the author’s belief that the organization, as it currently stands, cannot adequately address the problems facing the eSports industry.

5. Problems Facing Professional Players

Every new industry faces its fair share of growing pains as it works to establish a permanent place in the market. The eSports industry, despite its initial success, is no exception. While acknowledging that all of the key stakeholders face their own set of challenges, this Note will focus primarily on those faced by professional players. Viewed broadly, professional players face three main problems in the eSports industry: (i) lack of transparency, (ii) lack of standardization, and (iii) lack of representation.

a. Lack of Transparency

It does not take long for those researching eSports to realize that the industry is plagued by a lack of transparency. For researchers, this presents an inconvenience. But for players, a lack of transparency makes it difficult to ascertain industry standards, leaving them vulnerable to exploitation.

One area of the industry that is seriously lacking in transparency is player contracts. As discussed above, the vast majority of eSports player contracts are not disclosed to the public.127 This differs

122. Id.
123. See discussion infra Section II.A.5.
124. WESA, supra note 121 (see “Mission” section).
125. See supra Section II.A.5.b.
126. See WESA, supra note 121 (see “Members” section).
127. See Mitrevski, supra note 75.
from traditional sports, where professional contracts are commonly disclosed by players unions or leaked to the public through the media. Non-disclosure in eSports places players at an inherent disadvantage in salary negotiations. Without the ability to see what other similarly situated players are earning, they are left with few resources to assist in the determination of their worth.

The problem of non-disclosure is especially concerning when considered alongside the age and experience of professional players. Professional players are typically young and relatively inexperienced in the professional world. Most eSports players are either teenagers or in their early to mid-twenties and “often give their signature without much thought.” Assuming that many new professional players break onto the scene at the younger half of this range only adds to the likelihood that they will be taken advantage of when it comes to salary negotiations.

b. Lack of Standardization

Another problem that professional players face is an overall lack of standardization throughout the industry. Rules and regulations that apply in one league do not always apply in others. This lack of standardization is to be expected within a system where eSports companies enjoy almost total control over their own games, yet operate independently from one another. But low

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129. The website “Sportrac” is a “team payroll, player valuation, and overall research tool” for professional sports team and player contracts. About Sportrac, SPORTRACT, http://www.spotrac.com/about/ [https://perma.cc/8GM7-RGTM]. The website lists a variety of traditional media sources, including USA Today, from which it gathers contract information. See Sources & Affiliates, SPORTRAC, http://www.spotrac.com/sources-affiliates/ [https://perma.cc/WE4R-7L8A].

130. See Pan, supra note 76 (explaining that “[c]ompanies have more leverage when there is information asymmetry”).

131. See Hollist, supra note 24, at 831.

132. Id. See also Average Age in Esports vs. Major Sports, ESPN (Sept. 19, 2017), http://www.espn.com/esports/story/_/id/20733853/the-average-age-esports-versus-nfl-nba-mlb-nhl (finding that the average age of professional League of Legends players is just over 21 years old) [https://perma.cc/T5UJ-P67G].


135. See, e.g., discussion on doping regulations infra Section II.A.5.b.i.

136. See discussion of eSports companies supra Section II.A.2.a.
expectations do not alleviate the problems that the absence of standardization creates for players. The countless discrepancies between different games and competitions can have significant impact on players. Of the more egregious discrepancies, two areas stand out from the rest: (i) doping regulations and (ii) disciplinary appeals.

i. Doping Regulations

The regulation of doping,\textsuperscript{137} or lack thereof, is a major area of discrepancy that persists in the eSports industry. Before discussing one notable example of this discrepancy, however, the concept of doping in eSports bears explanation.

Understandably, the terms “doping” and “performance enhancing drugs” may seem like they do not belong in eSports. After all, this is professional video gaming, not a physical sport like baseball, where there is a logical connection between using performance enhancing drugs like steroids and hitting a home run. Nevertheless, eSports has its own array of performance enhancing drugs.

In an eye-opening essay,\textsuperscript{138} industry insider Bjoern Franzen\textsuperscript{139} details the many ways that performance enhancing drugs are used in eSports. According to Franzen, a “regular diet” for many professional eSports players includes: (i) piracetam to assist in memorizing opponents gameplay strategies, (ii) psychostimulants like methylphenidate (the active ingredient in Ritalin\textsuperscript{140}) to allow for extra hours of training, (iii) selegiline to provide motivation after

\begin{itemize}
  \item \textsuperscript{137} The World Anti-Doping Agency (WADA) is the primary sports authority on doping regulations. The WADA Anti-Doping Code broadly defines doping as a violation of any of the provisions set forth in Article 2 of the Code. \textit{World Anti-Doping Code Art. 1 (2015)}, https://www.wada-ama.org/sites/default/files/resources/files/wada-2015-world-anti-doping-code.pdf [https://perma.cc/EM5W-GBPK]. Doping, however, is perhaps widely most known as the “use or attempted use by an athlete of a Prohibited Substance or a Prohibited Method.” \textit{Id.} art. 2.1. The Code provides that a substance may be added to WADA’s Prohibited List if two of three of the following criteria are met: (i) the substance “has the potential to enhance or enhances sport performance”; (ii) “use of the substance or method represents an actual or potential health risk to the Athlete”; and/or (iii) “[u]se of the substance or method violates the spirit of sport described in the introduction to the Code.” \textit{Id.} art. 4.3.1.
  \item \textsuperscript{139} Franzen worked for renowned eSports professional organization, SK Gaming, for about six years. \textit{See Biography, Bjoern Franzen}, https://bjoernfranzen.com/ [https://perma.cc/HDC4-QGD5].
  \item \textsuperscript{140} \textit{Ritalin}, DRUGS.COM, (Sept. 5, 2017), https://www.drugs.com/ritalin.html [https://perma.cc/FB6D-NL34].
\end{itemize}
long weeks of practicing, and (iv) propranolol to overcome nerves and provide some extra steadiness.141

Franzen’s allegations were met with resistance by some inside the industry,142 but have been corroborated by several professional players. Most notably, in July 2015, Kory “Semphis” Friesen, one of the top Counter-Strike players, admitted that he and his Cloud9 teammates “were all on Adderall” throughout a major tournament.143 In an interview following the tournament, Friesen also answered affirmatively when asked whether “everyone does Adderall” at eSports events.144

Friesen’s was the first major player admission of Adderall abuse, but several others have followed. Professional “Halo” player, Tyler Mozingo, admitted to using Adderall for the drug’s ability to enhance performance through laser-like focus, faster reaction time, and increased alertness.145 Moreover, two additional professional players, who wished to remain anonymous, have indicated that the abuse is rampant throughout the industry. One is quoted as saying that Adderall use in eSports is “very, very widespread”146 and the other admits to selling Adderall to “half of the top 20 players” at the professional tournaments in which he competed in the previous year.147

The industry’s response to doping allegations has been mixed, resulting in discrepancies between major leagues and tournaments. One prominent example of this discrepancy lies between ESL, the industry’s largest third-party organizer of leagues and tournaments, and Riot Games’ League of Legends professional circuit. In response to the Friesen admission, ESL, through its partnership with WESA, implemented a comprehensive anti-doping policy, governed by the World Anti-Doping Agency’s (WADA’s) Prohibited

141. Franzen, supra note 138.
142. See Simon Parkin, Winners Might Use Drugs, EURO GAMER (Aug. 4, 2015), http://www.eurogamer.net/articles/2015-04-08-winners-might-use-drugs (providing two examples of industry insiders who feel that eSports doping is being exaggerated) [https://perma.cc/6TJE-RW4A].
143. See Nick Summers, Top ‘Counter-Strike’ Player Admits eSports has a Doping Problem, ENGADGET (July 17, 2015), https://www.engadget.com/2015/07/17/esports-adderall-doping/ [https://perma.cc/TKY8-SQR7].
144. Id.
146. Parkin, supra note 142.
147. Loria, supra note 145.
List, for its renowned Counter-Strike professional league. Pursuant to the policy, Counter-Strike players are “obliged to undergo doping tests if required by the Executive Board and/or the Commissioner.” The tests may be conducted on players’ urine and blood samples, as Executive Board and/or the Commissioner deem necessary.

In stark contrast to ESL lies Riot Games. To date, Riot Games has not implemented any sort of anti-doping policy for its League of Legends leagues and tournaments. The closest Riot Games’ LCS Rules come to governing doping is a general section forbidding criminal activity. This, of course, is miles away from actually testing for the use of performance enhancing drugs.

Discrepancies of this sort in an important regulatory area is problematic for players on multiple levels. More broadly, this discrepancy may give League of Legends players an advantage when it comes to negotiating salaries and sponsorship deals. By their very name, performance enhancing drugs work to do just that—increase player performance. Higher levels of performance make leagues and tournaments more exciting to watch, thereby incentivizing professional organizations and corporate sponsors to invest more money into those players.

Perhaps more importantly, this discrepancy leaves a large number of players vulnerable to the adverse health effects that come from abusing performance enhancing drugs. For example, according to Dr. Carl L. Hanson, Program and Associate Professor at the Department of Health Science at Brigham Young University, “Adderall use can lead to weight loss, loss of appetite and other adverse effects” and there is “plenty of evidence that . . . amphetamine abuse can cause brain damage.” Moreover, “the U.S. Drug Enforcement Agency has placed Adderall on its Schedule II list of

149. See id. § 20.3.
150. See id.
151. The League of Legends Championship Series Rules state that “a Team Member may not engage in any activity which is prohibited by common law, statute, or treaty and which leads to or may be reasonably deemed likely to lead to conviction in any court of competent jurisdiction.” Official Rules: NA LCS and NA LACS, supra note 50, § 15.2.8.
152. See Loria, supra note 145.
153. Compare Shah, supra note 98 (detailing top Overwatch player, Jay “Sinatraa” Won’s $150,000 annual salary), with Pan, supra note 76 (detailing annual salaries ranging from $57,000 to $65,000 for lesser-known players).
154. Parkin, supra note 142.
drugs, as having “a high potential for abuse and the potential for leading to severe psychological or physical dependence, including depression, hostility, and paranoia.” While risks like these are concerning for all people, they are especially concerning for young eSports players, who have not yet reached full cognitive development.

ii. Appeals

Another area of discrepancy in the eSports industry involves the ability of players to appeal league disciplinary rulings. Again, ESL and Riot Games provide us with an example of differing approaches. In ESL’s professional leagues, which are governed by WESA’s Code of Conduct, participants who are punished for rule violations are “given a time until which they can appeal the decision.” The appeal and scope of sanctions are governed by WESA’s Sanctions Regulations.

In contrast, players in Riot Games’ leagues have no right to appeal. Riot Games League Rules specify that disciplinary decisions are final and binding. To Riot Games’ credit, they do publish a “Global Penalty Index,” which provides descriptions of various penalties, their minimum and maximum sentences, and their respective limitations periods, as well as written “Competitive Rulings” detailing rule violations and their corresponding disciplinary decisions. However, Riot Games is not bound by the Global

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155. Id.


158. See id. § 4.2.

159. OFFICIAL RULES: NA LCS AND NA LACS, supra note 50, § 16.1.


Penalty Index\textsuperscript{162} and has been accused of a failure to adhere to its own precedents.\textsuperscript{163}

The inability of some professional players to appeal disciplinary rulings is concerning. Professional players depend on their ability to earn income by competing in leagues and tournaments. If they lack the opportunity to have a fresh set of eyes review their cases, they are deprived of the due process afforded to other players in the same industry. When the stakes are this high, players need an industry-wide standard to protect them.

c. Lack of Representation

The problems facing players due to the eSports industry’s lack of transparency and standardization are not unsolvable. And as those impacted most, players are perhaps best situated to propose solutions. However, there is currently no industry-wide body that provides players with a platform from which to voice their concerns.

Some organizations, to their credit, have recognized the need for player representation and have attempted to facilitate the development of representative bodies for players. Notably, WESA, in partnership with ESL, has included a players’ council in its governance structure\textsuperscript{164} and Riot Games has announced plans to incorporate a players association into its North American League.\textsuperscript{165} Both measures are well-intentioned steps in the right direction, but neither provides the type of industry-wide representation required to be effective in a global system. Moreover, it is

\begin{itemize}
  \item \textsuperscript{162} The Global Penalty Index states that “in extenuating aggravating circumstances, league officials reserve the right to modify minimum and maximum suspension terms.” \textit{League of Legends Global Penalty Index, supra} note 160. An example of this can be found in Riot Games’ competitive ruling for player Li “Vasilii” Wei Jun. Vasilii was served with a 20-competitive-month suspension for extreme misconduct, despite the penalty’s maximum suspension time of 12 competitive-months. \textit{See} Callum Leslie, \textit{Vasilii Banned Until 2020 for “Credible Threats of Physical Violence” Against His Girlfriend, DOT ESPORTS} (Nov. 22, 2017), https://dotesports.com/league-of-legends/news/vasilii-banned-2020-domestic-abuse-18903 [https://perma.cc/5WE8-7YYY].
  \item \textsuperscript{163} \textit{See} Community Discussion Board, \textit{Competitive Ruling: Tainted Minds, RIOT GAMES} (Apr. 12, 2017), https://www.lolesports.com/en_US/articles/competitive-ruling-tainted-minds (providing written comments from \textit{League of Legends} community members accusing Riot Games of failing to apply disciplinary measures consistently) [https://perma.cc/6BWS-FCP4].
  \item \textsuperscript{164} \textit{See} WESA Structure, WESA, http://www.wesa.gg/structure/ [https://perma.cc/7WPP-3MB8].
\end{itemize}
unclear whether, and to what extent, either of these representative
groups even exists.

The WESA website provides a Code of Conduct for Teams and
Players but it lacks any mention of a Players Council. The Play-
ers Council may be included in WESA’s Articles of Association,
which are referenced in the Code of Conduct, but the Articles of
Association are not available on the WESA website and do not
appear to be available elsewhere online.

Riot Games made its Players Association announcement in June
2017. The announcement indicated that more details on the
Association would be shared later in the year. However, there
have been no updates since that time.

B. FIFA

As a relatively new sporting industry, eSports enjoys an advantage
that early traditional sports did not: the ability to look to other
sporting regulatory bodies as potential models for establishing its
own. Given the international scope of the eSports industry, a natu-
ral consideration for such a model is FIFA, the international gov-
erning body for the sport of soccer.

FIFA was founded in Paris, France on May 21, 1904 by delegates
from Belgium, Denmark, France, the Netherlands, Spain, Sweden,
and Switzerland. The need for a global governing body had
become apparent as the number of international matches
increased near the end of the 1800s. Today, FIFA is best known
for organizing the FIFA World Cup—“the biggest single-event
sporting competition in the world”—but the organization’s

166. See WESA CODE OF CONDUCT, supra note 147.
167. See id. § 2.
168. Goslin, supra note 165.
169. Id.
171. FIFA Statutes, FIFA, [https://perma.cc/TVB4-YGKY].
173. See id. at 17 (providing a timeline that includes the dates of some of the earliest
international soccer matches).
174. FIFA World Cup™, FIFA, [https://perma.cc/8ML5-RPMD].
reach extends well beyond hosting competitions.\textsuperscript{175} According to the FIFA Statutes, FIFA’s objectives are as follows:

- To improve the game of football constantly and promote it globally in the light of its unifying, educational, cultural and humanitarian values, particularly through youth and development programmes;
- To organise its own international competitions;
- To draw up regulations and provisions and ensure their enforcement;
- To control every type of association football by taking appropriate steps to prevent infringements of the FIFA Statutes, regulations or decisions of FIFA or of the Laws of the Game;
- To prevent all methods or practices which might jeopardise the integrity of matches or competitions or give rise to abuse of association football.\textsuperscript{176}

Before continuing to FIFA’s organizational structure, and its safeguards of transparency, standardization, and player representation, however, it is necessary to address FIFA’s 2015 corruption scandal and subsequent reforms adopted by the FIFA Congress.

1. Corruption & Subsequent Reforms

The FIFA corruption scandal began in May 2015 when the U.S. government indicted fourteen FIFA officials and associates “on charges of ‘rampant, systemic, and deep-rooted’ corruption following a major inquiry by the Federal Bureau of Investigation.”\textsuperscript{177} The allegations of bribery totaled over $150 million and included “claims of buying and selling votes for South Africa to get the 2010 World Cup.”\textsuperscript{178} As the investigation continued to unfold, it became clear that even FIFA’s highest-ranking officials had been involved.

FIFA President Sepp Blatter was suspended from FIFA for six years after authorities discovered that he had made a “disloyal payment” of $2 million to European Federation President Michael Platini,\textsuperscript{179} who wanted to succeed Blatter as president.\textsuperscript{180} Platini, in

\textsuperscript{175} \textit{All About FIFA}, supra note 172, at 7 (“Refereeing and disciplinary matters, the national transfer system and the fight against doping also come under the associations’ remit.”).

\textsuperscript{176} Id. at 6.


\textsuperscript{179} See \textit{The FIFA Scandal Timeline}, EWN, http://ewn.co.za/2017/10/16/the-fifa-scan dal-timeline [https://perma.cc/9V7E-GWT7].

\textsuperscript{180} See \textit{Fifa Corruption Scandal Timeline}, supra note 178.
turn, was suspended for four years.\textsuperscript{181} To make matters worse, in June 2016, FIFA ultimately revealed that Blatter, Secretary General Jerome Valcke, and Caretaker Secretary General Markus Kattner had “skimmed off $80 million” from the organization in “a coordinated effort to enrich themselves through annual salary increases, World Cup bonuses and other incentives” throughout the preceding five-year period.\textsuperscript{182}

In response to the corruption scandal, the FIFA Extraordinary Congress passed a series of comprehensive reforms to the FIFA Statutes in February 2016.\textsuperscript{183} These reforms, now solidly in place, are incorporated into this Note’s subsequent discussion of FIFA’s organizational structure, transparency, standardization, and player representation.

2. Organizational Structure

In order to ensure the organization is “making the right decisions for the game,” FIFA recognizes that it must “get the right people together at the right times, so that no one person, or nation, has too much influence.”\textsuperscript{184} Accordingly, FIFA is organized into three main bodies—the Congress, the Council, and the general secretariat\textsuperscript{185}—along with independent judiciary bodies.\textsuperscript{186} These bodies will be examined more closely after an exploration of FIFA’s membership structure.

\begin{footnotesize}
\begin{enumerate}
\item[181.] Id.
\item[182.] Id.
\item[183.] The reforms included replacing the Executive Committee with the FIFA Council, a “non-executive, strategic body”; imposing term limits on the FIFA President, Council members, and independent committee members; requiring public disclosure of compensation paid to senior officials; creating a fully independent Audit & Compliance Committee; bolstering independence requirements for certain committee members; establishing independent judiciary bodies; and requiring increased representation of women on the Council. See FIFATV, 2016 FIFA Reforms (Updated), YouTube (May 10, 2016), https://www.youtube.com/watch?v=RAA5KJLxIBE [hereinafter 2016 FIFA Reforms] [https://perma.cc/WGL2-YPFD].
\item[184.] FIFATV, Inside FIFA’s Structures, YouTube (May 4, 2015), https://www.youtube.com/watch?v=LL22YYHdA9s [hereinafter Inside FIFA’s Structures] [https://perma.cc/4CBF-U55X].
\item[186.] Inside FIFA’s Structures, supra note 184.
\end{enumerate}
\end{footnotesize}
a. Member Associations

FIFA currently has 211 “member associations,”187 which are organized into six regional Confederations.188 To qualify for membership, an association must be “responsible for organising and supervising [soccer] in all of its forms in its country.”189 This means that FIFA’s member associations are the national soccer associations in their respective home countries.190

FIFA affiliation provides several benefits to member associations. It enables them to participate in the Congress, “to nominate candidates for the FIFA presidency and Council,” and “to take part in competitions organised by FIFA.”191 In turn, member associations are required to “comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time as well as the decisions of the Court of Arbitration for Sport (CAS),” “to pay their membership subscriptions,” and “to respect the Laws of the Game.”192

b. Congress

Together, the member associations make up the Congress,193 FIFA’s “supreme and legislative body.”194 Each member association receives one vote in the Congress195 and may be represented by up to three appointed delegates.196

Ordinarily, the Congress meets once a year to receive organizational updates and to “make the big decisions for the game.”197 Some of the most important matters voted upon at the annual meeting of the Congress include the approval of new member associations; the suspension or expulsion of existing member associations; the approval of an annual budget; the approval of proposals to adopt or amend the FIFA Statutes; the election or

188. “The AFC in Asia, CAF in Africa, the Football Confederation (CONCACAF) in North and Central America and the Caribbean, CONMEBOL in South America, UEFA in Europe and the OFC in Oceania . . . .” Id.
190. See Associations, supra note 187.
192. Id. § 14.1.
193. Id. § 26.1.
194. Id. § 24.
196. See id. § 1.1.
197. Inside FIFA’s Structures, supra note 184.
removal of a President, as needed; and the election or removal of Committee members on proposal from the Council, as needed.\textsuperscript{198}

c. Council

The FIFA Council serves as the organization’s “strategic and oversight body.”\textsuperscript{199} It consists of the FIFA president, eight vice presidents, and twenty-eight other members,\textsuperscript{200} each of whom is elected to a four-year term by the member associations within their regional Confederations.\textsuperscript{201} The Council is charged with defining “FIFA’s mission, strategic direction, policies, and values.”\textsuperscript{202} In order to assist in the execution of these functions, the Council appoints individuals to oversee FIFA’s standing committees.\textsuperscript{203} In addition, the Council “oversees the overall management of FIFA by the general secretariat.”\textsuperscript{204}

d. General Secretariat

The general secretariat is FIFA’s “executive, operational and administrative body,”\textsuperscript{205} “responsible for delivering the Council’s strategy.”\textsuperscript{206} It is led by the General Secretary, who serves as FIFA’s Chief Executive Officer.\textsuperscript{207} Under the General Secretary’s direction, the general secretariat organizes competitions, negotiates commercial contracts, provides administrative support to FIFA’s standing committees, and manages the operations and day-to-day business of the organization.\textsuperscript{208}

e. Judicial Bodies

FIFA’s independent judiciary bodies are organized into three committees: the Disciplinary Committee, the Ethics Committee, and the Appeal Committee.\textsuperscript{209} The Disciplinary Committee has

\textsuperscript{198}. FIFA Statutes § 28 (Apr. 2016) (“Ordinary Congress agenda”).
\textsuperscript{199}. Id. § 24.2.
\textsuperscript{200}. See id. § 33.1.
\textsuperscript{201}. Id. §§ 33.3–33.4.
\textsuperscript{202}. Id. § 34.1.
\textsuperscript{203}. See id. § 34.5. The FIFA Statutes establish nine standing committees: (i) Governance Committee, (ii) Finance Committee, (iii) Development Committee, (iv) Organising Committee for FIFA Competitions, (v) Football Stakeholders Committee, (vi) Member Associations Committee, (vii) Players’ Status Committee, (viii) Referees Committee, and (ix) Medical Committee. Id. § 39.1.
\textsuperscript{204}. Id. § 34.3.
\textsuperscript{205}. Id.
\textsuperscript{206}. 2016 FIFA Reforms, supra note 183.
\textsuperscript{207}. FIFA Statutes § 37.1 (Apr. 2016).
\textsuperscript{208}. Id. § 36.
\textsuperscript{209}. Id. § 52.1.
the authority to “pronounce the sanctions described in [the FIFA] Statutes and Disciplinary Code on member associations, clubs, officials, players, intermediaries and licensed match agents.”210 The Ethics Committee, which is divided into two chambers—investigatory and adjudicatory—enjoys similar authority for violations of the Statutes and the FIFA Code of Ethics.211 Lastly, “[t]he Appeal Committee is responsible for hearing appeals against decisions from the Disciplinary Committee and the Ethics Committee that are not declared final by the relevant FIFA regulations.”212

To ensure these committees are staffed by qualified individuals, the FIFA Statutes require that “[t]he chairpersons and deputy chairpersons . . . be qualified to practise law.”213 The Statutes also require that all members of the judicial bodies satisfy the independence criteria prescribed by the FIFA Governance Regulations.214

3. Transparency

In the aftermath of the 2015 corruption scandal, FIFA adopted measures aimed at making the organization more transparent. For example, FIFA now requires that the compensation of its top executives be disclosed to the public215 and, with the exception of the World Cup, which must be voted upon by the Congress, that the general secretariat publish “a public report evaluating the compliance of all bids” considered in deciding the venue of FIFA competitions.216 Further, FIFA publishes all of its official documents on its website available to download in PDF format.217 The available documents range from “archived financial reports to published circulars, on subjects as diverse as the Laws of the Game, the regulations of each and every FIFA tournament, technical reports or even security regulations” that “[have] been collated and organised to

210. Id. § 53.2.
211. See id. §§ 54.1–54.2.
212. Id. § 55.2.
213. Id. § 52.3.
214. Id. § 52.4. For example, chairpersons and deputy chairpersons of judicial bodies are not permitted to have other official functions within FIFA, a confederation, or a member association for four years preceding their initial terms. See FIFA GOVERNANCE REGULATIONS § 5.1 (2016). The same restriction applies to individuals whose immediate family members have served in any of these official functions during the same four-year time period. Id.
215. FIFA STATUTES § 51.10.
216. Id. § 69.2b.
help [visitors] find exactly the documents [they] are looking for.”218

Despite making positive strides for transparency within the organization, however, FIFA’s rules and regulations remain silent on player salary disclosures or league salaries caps, instead leaving disclosure on those topics subject to regulations within the national associations and leagues therein.219

4. Standardization

The FIFA Statutes enable the organization to implement uniform standards regarding the most important issues in soccer.220 As mentioned, all of FIFA’s member associations are required to “comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time.”221 Moreover, Section 60 of the FIFA Statutes extends this requirement to the Confederations and the leagues therein.222 Importantly for this Note, FIFA has implemented procedures for the regulation of doping and mandated the availability of disciplinary appeals.

a. Anti-Doping Regulations

FIFA’s standing Medical Committee is the primary body charged with leading the fight against doping in soccer.223 The Medical Committee is responsible for “advis[ing] the FIFA Anti-Doping Unit in relation to drawing up the FIFA Anti-Doping Regulations, recording and monitoring the medical aspects of any positive tests and reporting to the Disciplinary Committee.”224 FIFA’s most recent edition of its Anti-Doping Regulations was adopted by the Council on October 27, 2017 and went into effect on January 15, 2018.225 The 126-page document is dense and comprehensive, but the subsequent paragraphs will highlight its most important features.226

218. Id.
221. Id. § 14.1.a.
222. See id. § 60.1.
223. The Medical Committee “deals with all medical aspects of [soccer], including the fight against doping.” Id. § 48.
224. FIFA Governance Regulations § 35.2(i) (2016).
225. FIFA Anti-Doping Regulations § 86.6 (2018).
226. See generally id.
The Anti-Doping Regulations have a broad scope of application, applying to all players within FIFA’s member associations. Pursuant to the Regulations, which have “accepted the World Anti-Doping Code 2015 and implemented the applicable provisions [contained therein],” each player has a personal duty to ensure that no substance on the WADA Prohibited List enters his or her body. To ensure compliance with this provision, players are obligated to undergo testing as described in Section 40 of the Anti-Doping Regulations.

Section 40 states that “every Player may be subject to In-Competition Testing at the Matches in which he competes and to Out-of-Competition Testing at any time and place by FIFA or the relevant Association,” and specifies that “[t]esting includes urine tests and blood tests.” Players who test positive for Prohibited Substances “have the right to request a hearing in front of the FIFA Disciplinary Committee before any decision on the merits is rendered in accordance with [the Anti-Doping] Regulations and the FIFA Disciplinary Code,” as well as “the right to be assisted by counsel.”

If the Disciplinary Committee ultimately finds that an anti-doping rule has been violated, the player may face severe sanctions. For example, players who have intentionally used a Prohibited Substance are subjected to a four-year period of ineligibility. During this time, they are suspended “from participating in any Competition or other activity or from receiving sport-related financial support.” To safeguard against any erroneous findings, players are entitled to appeal Disciplinary Committee decisions prior to the imposition of the ban.

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227. The Anti-Doping Regulations “apply to FIFA, its Member Associations and the Confederations and to Players, clubs, Player Support Personnel, Match Officials, Officials and other Persons who participate in activities, Matches or Competitions organised by FIFA or its Associations” . . . .” Id. § 1.1.

228. Id. at Preface/Objective.

229. Id. § 6.1.

230. Id. § 3.2.

231. See id. § 40.

232. Id. § 40.1.

233. Id. § 62.

234. Id. § 63.a.

235. See id. § 19.

236. Id. § 19.1.

237. Id. § I.26 (defining “ineligibility”).

238. See id. §§ 74–83 (detailing the appeals process for doping violations).
b. Disciplinary Appeals

The FIFA Statutes and Disciplinary Code allow players to appeal decisions made by the Disciplinary Committee.239 Under the Disciplinary Code, “[a]nyone who has been a party to the [Disciplinary Committee’s] proceedings before the first instance and has a legally protected interest justifying amendment or cancellation of the decision may lodge an appeal with the Appeal Committee,”240 so long as the pronounced disciplinary measure is not a warning, reprimand, suspension for fewer than three matches or of up to two months, or a fine of up to CHF241 15,000 imposed on an association or a club or of up to CHF 7,500 in other cases.242 In the event that a party wishes to appeal a decision of the Appeal Committee, FIFA allows for a final appeal to the independent Court of Arbitration for Sport (CAS).243

In Section 57 of the FIFA Statutes, “FIFA recognises the independent [CAS] . . . to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents.”244 Appeals to CAS must be against “final decisions passed by FIFA’s legal bodies . . . [or] by confederations, member associations or leagues,” and only “after all other internal channels have been exhausted.”245 The decisions reached by CAS, after applying FIFA regulations and Swiss law,246 are binding on the confederations, member associations, leagues, and their respective members, players, and officials.247

243. See FIFA Statutes § 57 (Apr. 2016). “The Court of Arbitration for Sport (CAS) is an institution independent of any sports organization which provides for services in order to facilitate the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adapted to the specific needs of the sports world.” Frequently Asked Questions, Ct. Arbitration for Sport, http://www.tas-cas.org/en/general-information/frequently-asked-questions.html [https://perma.cc/7DDG-BDZZ]. “The CAS has nearly 300 arbitrators from 87 countries, chosen for their specialist knowledge of arbitration and sports law.” Id.
244. FIFA Statutes § 57 (Apr. 2016).
245. Id. §§ 58.1–58.2.
246. Id. § 57.2.
247. See id. § 59.1.
5. Player Representation

Players receive representation in FIFA through their national soccer associations. Although players do not directly vote in the in Congress, they often get to vote for the leaders who will represent them.\textsuperscript{248} Take, for example, the U.S. Soccer Federation, FIFA’s member association in the United States.\textsuperscript{249} The U.S. Soccer Federation Bylaws provide that the President will “serve as or designate the official representative of the Federation in FIFA, CONCACAF, and other international organizations.”\textsuperscript{250} The President is elected by the organization’s National Council,\textsuperscript{251} which is required to have at least twenty percent of eligible votes cast by delegates from the Athlete’s Council.\textsuperscript{252}

FIFA also allows for player representation within its Players’ Status Committee, which is responsible for the work of the Dispute Resolution Chamber.\textsuperscript{253} The Players’ Status Committee and the Dispute Resolution Chamber, both governed by FIFA’s Regulations on the Status and Transfer of Players,\textsuperscript{254} are responsible for adjudicating a variety of contractual and employment-related disputes that arise between teams, players, and coaches.\textsuperscript{255}

III. Analysis

In order to effectively address the problems discussed above, the eSports industry must establish an international regulatory body. Of course, eSports cannot simply substitute the term “football” for “eSports” in the FIFA Statutes and expect to have a functioning regulatory body of its own. But the eSports industry can certainly borrow from FIFA’s organizational structure and regulations and tailor them to its own needs.

\textsuperscript{248} See, e.g., U.S. SOCCER FED’N, BYLAWS 302 §§ 3(a), 3(b) (2017); CAN. SOCCER ASS’N, BY-LAWS § 2.01(A)(1)(iv) (2017) (“Athlete Member”).

\textsuperscript{249} U.S. SOCCER FED’N, BYLAWS 103 § 1.

\textsuperscript{250} Id. 402 § 1(d).

\textsuperscript{251} Id. 301(1).

\textsuperscript{252} Id. 302 §§ 3(a), 3(b).

\textsuperscript{253} See FIFA GOVERNANCE REGULATIONS § 33 (2016) (allowing up to six player representatives to serve on the Committee).

\textsuperscript{254} See id. § 33(2).

\textsuperscript{255} See FIFA REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS § 22 (2017).
A. An eSports Regulatory Body

1. Organizational Structure

FIFA’s general organizational structure provides a functional model for the eSports industry to adopt in forming its own international regulatory body. Like FIFA, an eSports regulatory body could be structured to include a Congress which serves as the organization’s legislative body, a Council which serves as its strategic oversight body, and a general secretariat which serves as its executive body. However, the composition of these bodies would need to be modified to ensure proper representation for both professional players and eSports companies alike. This could function as follows.

An eSports regulatory body could have two classes of members with voting rights in Congress: professional organizations and eSports companies. As in FIFA, each member could be represented by up to three delegates. For professional organizations, the statutes should provide that the delegates must be elected, at least in part, by the players themselves to ensure proper representation of their interests.

The founders of the regulatory body would also need to establish objective criteria for admitting both classes of members. For example, the criteria could be based on time in existence or success in leagues and tournaments for teams, and based on intellectual ownership of games for developers. The exact methodology need not be determined here, so long as the adopted criteria is objective, reasonable, and inclusive.

Once membership criteria have been established, voting rights must be allocated. For professional organizations, this could work similar to FIFA’s one member, one vote policy. For eSports companies, which are outnumbered by professional organizations, the allocation of votes requires more creativity. There, the number of votes allocated should equal the total number of professional organizations divided by the total number of eSports companies. This would ensure that companies and professional organizations wield an equal amount of power within the regulatory body.

With regard to the Council, members should be selected on a regional basis, as FIFA does in its Conferences. To accomplish

256. See supra Section II.B.2.
258. See id. § 26.1.
259. See id. § 33.3.
this, the Congress could either vote to establish separate regional Conferences, or it could choose simply to create regional committees within the Congress for the purpose of selecting Council members. Either way, representation on the Council should be proportionate to the number of professional teams and organizations within a given region and should also be divided evenly between professional organizations and the eSports companies.

2. Powers

Whereas the eSports regulatory body’s Congress, Council, and general secretariat would all play similar roles to their FIFA counterparts, the eSports body as a whole would need to differ from FIFA with regard to the amount of power it is granted. In theory, FIFA could exercise almost total control over its members, but it would be unreasonable to expect eSports companies to submit to the same in order to obtain membership. As such, it is essential for the founders of an eSports regulatory body to find a balance that allows it to promote transparency, standardization, and player representation while still respecting the intellectual property rights of the companies.

Perhaps such a balance could be struck by allowing the regulatory body to set forth rules and regulations governing “big picture” items and leaving more of the day-to-day items to the companies. For example, the body would be able to set standards for doping and disciplinary appeals throughout the industry, but the companies would maintain control of the rules of gameplay, the operation of their own professional leagues and tournaments (subject to “big picture” regulations from the body), and the granting of licenses to third-parties. This would allow players to influence the issues that affect them the most, while still granting a large amount of independence to the companies.

3. Applications to Doping and Disciplinary Appeals

By striking a proper balance of power, an eSports regulatory body will enable the implementation of industry-wide standards for the regulation of doping and the availability of appeals from disciplinary proceedings. Here again, the eSports industry can borrow from FIFA’s rules and regulations in these areas.

260. Recall that eSports companies enjoy almost total control over their games through intellectual property ownership. See supra § II.A.2.a. Understandably, they will be hesitant to relinquish too much of that control.
With regard to doping, the WADA Prohibited List used by FIFA, covers a host of stimulants, including the active compounds in commonly-abused eSports drugs like Adderall and Ritalin.\textsuperscript{261} By adopting a testing system tied to the Prohibited List and carrying severe penalties like those in FIFA, the regulatory body would provide a strong incentive for players to avoid doping and simultaneously promote the health of its players.

For players initially found to be in violation of the regulatory body’s doping regulations or other rules, the regulatory body can offer them an appeals process similar to FIFA’s. Players who are unhappy with the adjudication process that they receive from league organizers (e.g., Riot Games) will be able to appeal that decision to the regulatory body’s Appeals Committee, where they will be entitled to a neutral and independent review of their case. In the event that players continue to disagree with the decision reached by the Appeals Committee, they will be entitled to a final appeal to CAS, which will have the ultimate say on the outcome of the dispute. This will ensure that all professional players, whose careers depend on the outcomes of such cases, will receive the due process that they deserve.

4. Increasing Transparency through Salary Disclosures or Minimums

As discussed above, FIFA does not regulate player salary disclosures or league salary caps. Perhaps this is because soccer is already so well-established that players and their agents have no trouble knowing what they or their clients are worth. It is also possible that FIFA chooses not to regulate this area because it is quite common for the media to leak players’ salaries to the public.\textsuperscript{262} And still another reason might be that players’ unions themselves publicly disclose the salaries, as is the case with Major League Soccer in the United States.\textsuperscript{263}

As eSports continues to grow in popularity, it is possible that, like soccer, it will become unnecessary for a regulatory body to govern player salaries and disclosures. In the meantime, however, some action should be taken. One option would be to require that

\begin{itemize}
\item \textsuperscript{261} See WADA Prohibited List § S6 (2018) (covering “stimulants”).
\item \textsuperscript{262} See Christopher Simpson, Neymar’s Alleged Contract Details Leaked, Revealing Barcelona Salary, Bleacher Report (Apr. 11, 2016), http://bleacherreport.com/articles/2631945 (revealing that Neymar allegedly received a salary of £77,000 per week in 2016) [https://perma.cc/PKV3-YE2Z].
\item \textsuperscript{263} See 2017 MLS Salary Report, MLS Players Ass’n (Sept. 15, 2017), http://mlsplayers.org/salary-guide [https://perma.cc/78WV-F7QC].
\end{itemize}
player salaries be publicly disclosed and published online. Admittedly, this method may be overly invasive for professional organization and players. A better alternative may be to mandate that each professional league create minimum salary requirements to which professional organizations must adhere for their players to compete.\footnote{Indeed, some professional eSports leagues have adopted minimum salaries for their players. See Eben Novy-Williams & Chistopher Palmeri, This Esports League Will Pay Pro Gamers $50,000 Plus Benefits, BLOOMBERG (July 26, 2017), https://www.bloomberg.com/news/articles/2017-07-26/activision-s-video-game-pros-to-earn-minimum-of-50-000-a-year (“Video-game players competing in Activision Blizzard Inc.’s new esports league will receive minimum salaries of $50,000 a year, health insurance and retirement benefits.”) [https://perma.cc/3QRD-QBGM]; Callum Leslie, LCS Franchising: The revenue Sharing Model Explained, DOT ESPORTS (June 1, 2017), https://dotesports.com/league-of-legends/news/lcs-franchising-revenue-14975#list-1 (“[T]he minimum LCS salary is being massively increased from $25,000 to $75,000.”) [https://perma.cc/MEX8-2ETR].} Such a mandate would ensure that players have at least a baseline knowledge of their worth and a starting point from which to negotiate for higher compensation.

### B. Incentives to Join

Although professional players have ample incentive to establish an international regulatory body, the incentives for companies may be harder to discern. After all, it is the companies that must agree to give up some of their power. This does not mean, however, that incentives for companies do not exist.

First, as the eSports industry continues to grow, it will become more likely that governmental bodies will begin regulating it.\footnote{See Porter, supra note 24 (noting concern that the eSports industry will “catch external regulation” if the problems of eSports governance are not addressed).} If eSports companies agree to join the type of regulatory body proposed here, they will be able to shape the regulations to which they are subjected, rather than turning their power over completely. This direct voice will allow companies to avoid the inevitable lobbying costs and legal fees needed to influence policy and ensure compliance with potentially varying regulations adopted in different jurisdictions.

Second, eSports companies will also benefit financially. By participating in a body working to promote transparency and standardization, eSports companies will send a strong message to investors that the industry is becoming more organized and efficient. With this assurance of stability, formerly-reluctant investors will begin opening their checkbooks. Further, by working closely with player representatives, companies will enjoy a direct line of access to player feedback and suggestions. This will save money...

264. Indeed, some professional eSports leagues have adopted minimum salaries for their players. See Eben Novy-Williams & Chistopher Palmeri, This Esports League Will Pay Pro Gamers $50,000 Plus Benefits, BLOOMBERG (July 26, 2017), https://www.bloomberg.com/news/articles/2017-07-26/activision-s-video-game-pros-to-earn-minimum-of-50-000-a-year (“Video-game players competing in Activision Blizzard Inc.’s new esports league will receive minimum salaries of $50,000 a year, health insurance and retirement benefits.”) [https://perma.cc/3QRD-QBGM]; Callum Leslie, LCS Franchising: The revenue Sharing Model Explained, DOT ESPORTS (June 1, 2017), https://dotesports.com/league-of-legends/news/lcs-franchising-revenue-14975#list-1 (“[T]he minimum LCS salary is being massively increased from $25,000 to $75,000.”) [https://perma.cc/MEX8-2ETR].

265. See Porter, supra note 24 (noting concern that the eSports industry will “catch external regulation” if the problems of eSports governance are not addressed).
that would otherwise be spent on research and development and increase profits by placing better products into the marketplace.

C. Defending the FIFA Model

Some will read this Note and wonder why it proposes the establishment a new regulatory body when WESA already exists, or why it proposes using FIFA as a model for eSports after its 2015 corruption scandal. Both are fair questions deserving attention.

1. Why Not WESA

As acknowledged above, WESA appears to be taking some positive steps to address the ongoing problems facing the eSports industry. Nevertheless, WESA cannot adequately satisfy the industry’s need for an international regulatory body as it currently stands. WESA currently only governs two professional leagues—a small segment of the vast eSports industry.266 And, even if WESA were to expand its jurisdiction, the organization does not publish many of its governing documents to the public, making a more comprehensive evaluation of the organization quite difficult.267

2. The FIFA Model Works

In light of the 2015 corruption scandal, it is clear that FIFA is by no means a perfect organization—no regulatory body is. But the goal of this Note is not to establish a flawless regulatory body to govern eSports; it is to propose a solution that will work to protect players and help to further legitimize the eSports industry. And despite its past shortcomings, the FIFA organizational structure does work.

Look, for example, at how quickly the FIFA Congress was able to respond to the corruption scandal. The raid of the Zurich hotel that began the scandal occurred on May 27, 2015 and much of the information about the depth of the organization’s corruption did not come to light until September 2015.268 By December 2015, the FIFA Executive Committee was already meeting to discuss


268. See Fifa Corruption Scandal Timeline, supra note 178.
reforms, and those comprehensive reforms were adopted by the FIFA Extraordinary Congress in February 2016, less than a year after the events giving rise to the scandal took place. Moreover, it appears that the reforms have been successful thus far. This ability to respond quickly to problems and adopt necessary reforms is exactly what is needed in the rapidly-changing world of eSports.

IV. Conclusion

Late at night on March 14, 2018, the eSports world again collided with mainstream culture, this time truly making waves. Tyler Blevins, better known by his moniker, “Ninja,” logged onto Twitch and began livestreaming himself playing “Fortnite,” a survival shooting game that has recently taken eSports by storm. Blevins, a former professional Halo player, is now widely popular for his incredible Fortnite skill and perhaps equally well-known for his electric blue hair.

In the midst of livestreaming that night, Blevins received a text from none other than rap superstar, Drake, wanting to play together online. Soon enough, the pair were in the heat of battle and chatting back and forth, with Ninja’s streamers listening in and soaking up every moment. As if this unseemly duo was not newsworthy enough alone, they were later joined by rising rap star...
Travis Scott and Pittsburg Steelers wide receiver JuJu Smith-Schuster.²⁷⁹ Needless to say, the foursome smashed Twitch’s single-player stream record with 600,000 concurrent viewers glued to Ninja’s page.²⁸⁰

The Drake-Ninja livestream is yet another indication of what continues to grow clearer each the day: that eSports is entering the mainstream and not going away anytime soon. As the industry continues growing, it is time for all of its key stakeholders—eSports companies, professional organizations, and professional players—to capitalize on this momentum and establish an international regulatory body to effectively address the problems that the industry is facing today. By creating an organization that will work to promote transparency, standardization, and player representation, the eSports industry will secure its place in the market for many years to come.

²⁷⁹. Id.
²⁸⁰. Young Gu, supra note 272.