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LEVELING UP THE LAW: NAVIGATING INTELLECTUAL PROPERTY, CONTRACT, AND REGULATION IN THE E-SPORTS ARENA

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Abstract

What started out as a fun pastime for people has grown into a global phenomenon that is transforming into a leading entertainment, culture, and even the economy of the world. Imagine a world where friendly, small-scale gaming competitions between friends have grown into a billion-dollar industry. This article explores the rapid growth of eSports and the legal, contractual, and intellectual property challenges it faces today. Even though India's Ministry of Youth Affairs and Sports officially recognized eSports as a multi-sport event in 2022, there's still a pressing need for clearer laws and regulations to keep pace with this evolving industry. Key laws like the Public Gambling Act of 1867¹, the Prize Competition Act 1955², the Information Technology Act 2000³, and the Indian Contract Act of 1872⁴ highlight the gap. Good governance is important to stop cheating, keep competition fair, and handle the growth of the industry. Having strong laws and rules, plus international guidelines like those from the Esports Integrity Commission (ESIC), helps ensure the industry stays honest and can grow in a healthy way.

KEYWORDS: ESPORTS, INTELLECTUAL PROPERTY, ANTI-DOPING, MATCH-FIXING, GAMING REGULATION, INDIA, COMPETITIVE GAMING.

¹ Public Gambling Act of 1867

² Prize Competition Act 1955

³ Information Technology Act 2000

⁴ Indian Contract Act, 1872

Introduction

Electronic sports, or “eSports,” is known as a professional sports competition using video games as a platform for competition between two or more individuals for a cash prize. Modern eSports is when people play games using electronic systems. The main parts of the game involve players and teams interacting through devices like computers or controllers. The games themselves are run by the system, and everything players do is done through these interfaces.⁵ To put it simply, it’s a sport that is played on a computer, mobile phone, etc. E-sports are described as online skill games that are performed in tournaments, while various teams or individual participants compete to win the tournament league or title, like physical sports.⁶

The majority of the scientific literature concurs that eSports should be regarded as a distinct activity made possible by electronic technologies, eSports is not yet recognized as a legitimate sport. Because eSports lack the physical component and do not support people's holistic development, several scholars contend that they should not be classified as sports in the traditional sense. Some scholars, however, disagree with this claim and contend that sports are more than mere contests of physical prowess. Like other recognized sports like football, basketball, or even other sports, players must exhibit strategic and tactical understanding in addition to gaming abilities like hand-eye coordination or rapid action to participate in eSports.⁷ The global **esports market size** was valued at **USD 1.88 billion in 2022** and is expected to grow at a compound annual growth rate (CAGR) of 26.8% from 2023 to 2030. More live game streaming, big money investments, **growing** number of viewers, special events to **keep** fans interested, and better setups for tournament competitions are all **helping** the market grow.⁸ Let's look at how esports is growing in terms of numbers in India. According to the State of Indian Gaming Report 2022, which was created together by Lumikai and AWS, the esports industry in India is expected to reach higher levels of success and profit in the years ahead. In

⁵ B. Sai Bhavana, ‘A Study on Impact of Esports on Youth with special reference to Hyderabad Region’ (2023) 3(8) JETIR <<https://www.jetir.org/papers/JETIR2308611.pdf>> accessed 16 October 2024

⁶ Ketan Joshi and Akash Tiwari, ‘Constitutionality and Future of E-Sports in India’ (Maheshwari & Co.18 July 2023) <<https://www.maheshwariandco.com/blog/constitutionality-and-future-of-e-sports-in-india/>> accessed 16 October 2024

⁷ M. Ángeles López-Cabarcos et al., ‘An approach to innovative eSports from a business perspective’ (2023) 3(8) Journal of Innovation & Knowledge <<https://www.sciencedirect.com/science/article/pii/S2444569X24000945>> accessed 16 October 2024

⁸ ‘Esports Market Size, Share & Trends Analysis Report By Revenue Source (Sponsorship, Advertising, Merchandise & Tickets, Media Rights), By Region (APAC, CSA, Europe), And Segment Forecasts, 2023 – 2030’ (Grand View Research, 13 September 2023) <<https://www.grandviewresearch.com/industry-analysis/esports-market>> accessed 16 October 2024

2022, the segment was valued at \$40 million and is expected to grow to \$140 million by 2027, with an estimated annual growth rate of 32%.⁹ The number of players in the Esports category increased four times from 2021 to 2022, going from 150,000 to 600,000. Experts expect this number to go up to 1.5 million by the end of 2027. In fact, Indians download more games than people in any other country in the world. This, along with the strong influence of the young population, is helping the gaming industry grow quickly in many areas.¹⁰ The government of India also greatly supported e-sports by including it as part of the main sports activities in the country.¹¹

This paper, thus, aims to provide an overview of the current legislative framework that governs the e-sports business and to highlight the gaps in these rules.

The Evolution and History of E-Sports

Ralph H. Baer made the first video game console, called the "Brown Box," more than fifty years ago, in 1967. The name comes from the paint job of the box in which the console was made. But it wasn't until the late 1970s and early 1980s that arcade games really became popular. People believe that these coin-operated machinery in arcades as the beginning of what we currently refer to as eSports, or video games that people compete in.¹² The emergence of eSports may appear new to this world, yet the origins of the first video game competitions can be traced back to the early 1970s.

Stanford University organized the first eSports competition in 1972, which was a significant milestone for gaming. The event was called the "Spacewar Intergalactic Olympics" and it was a contest for the video game Spacewar. The winner got a yearly membership to Rolling Stone magazine as a prize.¹³ Finding the first significant video game tournament that was formally recognized and documented took us eight years, until 1980 (the Atari Tournament).¹⁴ In 1990,

⁹ Deepak Aravind Padmanabhan, 'The Rise of Esports in India: A look at the growing popularity and industry developments' The Times of India (3 July 2023) <<https://timesofindia.indiatimes.com/blogs/voices/the-rise-of-esports-in-india-a-look-at-the-growing-popularity-and-industry-developments/>> accessed 16 October 2024

¹⁰ *Ibid*

¹¹ Ketan Joshi and Akash Tiwari, 'Constitutionality and Future of E-Sports in India' (Maheshwari & Co.18 July 2023) <<https://www.maheshwariandco.com/blog/constitutionality-and-future-of-e-sports-in-india/>> accessed 16 October 2024

¹² Jaume García (ed), Sports (and) Economics (FUNCAS Social and Economic Studies 2019)

¹³ 'History of eSports: how did video game competitions begin?' (Telefónica, 4 March 2024) <<https://www.telefonica.com/en/communication-room/blog/history-of-esports-how-did-video-game-competitions-begin/>> accessed 16 October 2024

¹⁴ *Ibid*

during the peak period of video games in the 1980s, the first Nintendo World Championships took place. They used a special cartridge with three small games based on Super Mario Bros., Rad Racer, and Tetris. Players had six minutes and twenty-one seconds to try and get the highest score they could.¹⁵ The 1990s helped **start** the growth of eSports. The improvement of personal computers and the development of the Internet **using** local area networks **changed** how people **played** games. Instead of **competing** against machines, players **began competing** against each other.¹⁶

The growth of Esports is really amazing. Despite being a relatively new industry, the Esports sector has some unique characteristics that require particular attention when contrasted with traditional sports. These features include how it is structured, the different roles that people and groups play, and the ways people think about economic development. The industry has grown very fast, and the need for online games keeps increasing every year. Several things have helped this growth, and the main ones are better access to the internet, more smartphones, and cheaper gaming devices available around the world.¹⁷ During the 2019 lockdown, online games helped gaming companies make more money. They also saw more attention and support from TV shows, sponsors, and people who invest in businesses. This made esports more popular and profitable. Big sports teams and famous celebrities started getting involved in esports, too.¹⁸ With a large fan base and substantial prize money, competitive gaming has increased in popularity. But as the industry grows quickly, people are starting to ask if it's legal.¹⁹

Protecting Play: Esports Intellectual Property Concerns

Esports has grown into an industry, not just a form of entertainment. Like any industry, it deals with different intellectual property issues. These include things like team logos, sponsorships, the rights to broadcast events, and the branding and assets of the games themselves. Intellectual property is essential to the success of esports. "The more popular a game is in competitions, the more valuable and interesting its associated intellectual property is". This makes it

¹⁵ *Ibid*

¹⁶ García (n 1)

¹⁷ Deepak Aravind Padmanabhan, 'The Rise of Esports in India: A look at the growing popularity and industry developments' The Times of India (3 July 2023) <<https://timesofindia.indiatimes.com/blogs/voices/the-rise-of-esports-in-india-a-look-at-the-growing-popularity-and-industry-developments/>> accessed 16 October 2024

¹⁸ Sneha Mahawar, 'Esports and the legality of competitive gaming: an overview' (iPleaders, 23 December 2024) <<https://blog.iplayers.in/esports-and-the-legality-of-competitive-gaming-an-overview/#:~:text=Such%20power%20rests%20with%20state,Tamil%20Nadu%20Prohibition%20of%20Online>> accessed 16 October 2024

¹⁹ *Ibid*

important for game developers and other groups, such as esports teams and sponsors, to handle and protect their rights carefully.²⁰

Esports Gamers' Motion, Slogan, and Nickname/Tag: Gamers may use gamer tags, nicknames, or their own names. Gamers prefer to use their own nicknames in order to create the desired effect in esports in general.⁴⁶ Gamers may have a catchphrase, nickname, or tag that helps them stand out in esports activities. To set gamers apart from one another, personal branding is crucial. The gamer's personal branding draws attention to them on social media and online. For instance, Michael Jordan, a basketball player, goes by the moniker Air Jordan. Nike Inc. has officially claimed this name as its trademark in the category of clothing, shoes, and headwear.²¹

Trademarks in Esports: Trademarks in Esports aren't just about a logo or a team name; they cover the whole look and feel of a league, the personal brand of individual players, and even special moves they do in games. A trademark shows that something is real and of good quality, helping it stand out in a crowded market. In Esports, where fans are really loyal to their favorites, having a strong and protected trademark can make a big difference. It helps a brand be known and remembered, instead of getting mixed up with others.²² They could be made up of players, teams, leagues, software developers, and various sponsors and advertisers. Each group has its own intellectual property rights that need to be carefully assessed and fairly paid for.²³

Industrial Designs in Esports: The process of creating innovative goods, services, systems, and experiences that promote creativity, assist businesses in becoming more successful, and enhance people's lives is known as industrial design. The gaming industry uses industrial designers to make better avatars, characters, and 3D effects. In video games, industrial design can focus on things like how a character looks, the look of gaming devices, or the way the user

²⁰ Daniel Ross, 'The Rise of Esports and the Growing Role of Intellectual Property' (Daniel Ross & Associates LLC, 8 December 2023) <<https://danielrosslawfirm.com/2023/12/08/the-rise-of-esports-and-the-growing-role-of-intellectual-property/>> accessed 16 October 2024

²¹ Armağan Ebru Bozkurt-Yüksel, *Intellectual Property Rights of Gamers in Esports* (Justice Academy of Turkey: Law & Justice Review, January 2021) <https://www.researchgate.net/publication/348550053_Intellectual_Property_Rights_of_Gamers_in_Esports> accessed 16 October 2024

²² Daniel Ross, 'The Rise of Esports and the Growing Role of Intellectual Property' (Daniel Ross & Associates LLC, 8 December 2023) <<https://danielrosslawfirm.com/2023/12/08/the-rise-of-esports-and-the-growing-role-of-intellectual-property/>> accessed 16 October 2024

²³ *Ibid*

interface appears. All of these are new and original ideas. Additionally, industrial designers contribute to a game's increased sales. Even for basic gun skins, they enhance the visual appeal of game characters and add entertaining animations and 3D effects. These designers create exciting and engrossing gaming experiences. In addition to increasing revenue, these designs draw in more players.²⁴

Due to legal protections for original and creative works, intellectual property rights and esports have a complex relationship. Despite the growing popularity of esports, the laws pertaining to the protection of intellectual property remain unclear. Player-generated content and content ownership and authorized distribution are affected. As a consequence, there are many unresolved queries and ambiguous legalese.²⁵

Contracts in E-sports: Player Rights and Agreements

In this industry of esports, which has some moving components that are controlled by the contracts. The correct agreements are crucial to get, particularly in this field, where the regulatory environment is new and changing rapidly with time.²⁶

Types Of Contracts in Esports:

There are many kinds of agreements you will need to deal with and account for, depending on the function you plan to play in this industry. Among them are the following:

- 1. Player Contracts:** Player contracts are essential, and it is important to make sure that they represent the rights and interests of players while simultaneously safeguarding the demands of teams and leagues. When negotiating these contracts, it's critical to ensure that there is a balance of power between esports players and potential employers, as many of them are relatively young.²⁷
- 2. Endorsement and Sponsorship Contracts:** Businesses may offer sponsorship and endorsement agreements to leagues, teams, or even individual athletes. These contracts provide businesses with a significant investment opportunity and account for a sizable

²⁴ Devashish Jaiswal, 'Highlighting the Complex Relationship of Esports and Intellectual Property Rights' (Ipleaders, 12 July 2021) <<https://blog.ipleaders.in/highlighting-complex-relationship-esports-intellectual-property-rights/>> accessed 16 October 2024

²⁵ *Ibid*

²⁶ Jonathan Herpy, 'Getting Esports Contracts Right: The Basics' (Forbes, 6 January 2022) <<https://www.forbes.com/councils/forbesbusinesscouncil/2022/01/05/getting-esports-contracts-right-the-basics/>> accessed 16 October 2024

²⁷ *Ibid*

portion of the industry's earnings. Therefore, it is necessary to carefully create the details of these agreements.²⁸

- 3. License Agreements:** Leagues and teams may license their intellectual property (IP) for financial gain, and game developers license IP to merchandisers and leagues. Licenses could be abused in this quickly growing field if they are not managed carefully enough.²⁹

In esports, teams, players, tournament organizers, and leagues will all need to negotiate, draft, and sign contracts now that esports is a recognized industry. When going into such arrangements, some crucial considerations include:

Age of the player: As was previously said, eSports is a field that mostly appeals to younger people, typically those between the ages of 15 and 25. Because minors under the age of 18 participate, this element needs to be investigated. Contracts made by minors are void because they lack the legal capacity to do so, corresponding to the Indian Contract Act of 1872³⁰. Such a contract will not be enforceable against the minor, but it is not illegal. Teams and organizations involved in esports must make sure the entire contract is enforceable.³¹

Enforceability of contract terms: Under Indian contract law, it is also debatable whether some of the other clauses listed above are enforceable. Agreements that prohibit others from practicing their trade or profession are likewise deemed null and unlawful by Section 27 of the Contract Act.³² Non-compete agreements, for instance, could be void unless the court finds them to be reasonable in the circumstances. Non-compete agreements that are in effect for the duration of the contract are frequently seen as reasonable, but those that are in effect after that time must meet a higher standard of reasonableness.³³

Regulation in Competitive Gaming

The legal standing of esports depends on the country. In some places, it is considered a real sport, but in others, people are still talking about whether it should be called a sport. As esports is the fastest-growing market in the world, it is generating a great impact on the Indian economy too. India officially recognized eSports as a multi-sport event on December 27, 2022. As a

²⁸ *Ibid*

²⁹ *Ibid*

³⁰ Indian Contract Act 1872

³¹ Aakriti Bansal, 'Esports Player Contract' (ipleaders, 23 June 2021) <<https://blog.ipleaders.in/esports-player-contract/>> accessed 16 October 2024

³² Indian Contract Act of 1872, s27

³³ Bansal (n 1)

result, the Government of India (Allocation of Business) Rules 1961³⁴ were modified, and the Ministry of Youth Affairs and Sports integrated esports with traditional sports disciplines to include esports in the category of "multisport events." Among the most well-liked esports in India are FIFA, Tekken 7, DOTA 2, Call of Duty, PUBG, and BGMI. So, esports in India are controlled by the Ministry of Sports and Youth Affairs. Esports will now be treated with the same respect as more conventional sports like football, hockey, cricket, etc.³⁵

There are certain laws and regulations that already apply to esports and competitive gaming within India such as The Public Gambling Act 1867³⁶, the Prize Competition Act 1955³⁷, and the Information Technology Act 2000³⁸ which governs internet gaming; however, gambling falls under state jurisdiction (see Indian Constitution Seventh Schedule Article 246)³⁹ and Section 12 of The Gambling Act means that its rules apply to games based on chance as opposed to skill. As a result, esports in India are mostly seen through the prism of whether the activity is classified as a skill-based competition or a type of gambling, with gambling being strictly regulated and skills-based tournaments usually allowed.⁴⁰

As sports are part of the State List of the Indian Constitution, the Central Government does not have the power to regulate betting and gambling. State governments in India have this authority; for example, the Sikkim Online Gaming (Regulation) Act of 2008 and the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act of 2015⁴¹ both have laws governing online gaming, and the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022⁴², which imposes a ban on online gaming activities. Karnataka's Government has also amended the provisions, thereby restricting gambling, betting, wagering, etc.⁴³

³⁴ Government of India (Allocation of Business) Rules, 1961

³⁵ Mahawar, (n 1)

³⁶ Public Gambling Act of 1867

³⁷ Prize Competition Act of 1955

³⁸ Information Technology Act of 2000

³⁹ Constitution of India 1950, Article 246

⁴⁰ Mahawar, (n 1)

⁴¹ Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015

⁴² Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022

⁴³ Sneha Mahawar, 'Esports and the legality of competitive gaming: an overview' (iPleaders, 23 December 2024) <<https://blog.iplayers.in/esports-and-the-legality-of-competitive-gaming-an-overview/#:~:text=Such%20power%20rests%20with%20state,Tamil%20Nadu%20Prohibition%20of%20Online>> accessed 16 October 2024

The three main categories of cheating in eSports are **sabotage** (the practice of undermining opponents using dishonest means such as purposely injuring them, preventing their participation, or tricking them into violating rules), **doping** (a system of performance enhancement involving illegal drugs or questionable practices), and **match-fixing** (the bribery of referees to make biased calls, the wagering by players and insiders on game results, and the acceptance of bribes by teams for rigging games). This article discusses the rapid growth of eSports as well as the legal, contractual, and intellectual property issues it currently faces.⁴⁴ In eSports, cheating and sabotage take on somewhat different forms. Teams can use software cheats to improve their chances of winning or launch online attacks to slow and disable an opponent because competitions are computerized. There is a market for cheaters in the gaming industry. To circumvent the game's rules, they can buy a variety of digital tools.⁴⁵

Besides the usual rules that apply to competitive gaming or esports, there are also rules in place to stop doping. The World Esports Association (WESA) has a section in their "Code of Conduct Teams and Players" (2017) document that talks about doping. But this section is only a few lines long in a 11-page document. The Esports League (ESL) spreads out its doping and anti-doping info across its three major events, which are for Counter-Strike 2 (CS2), StarCraft 2, and DOTA 2. For Counter-Strike and StarCraft 2, there are specific player guidelines that cover doping, illegal substances, cheating, hacking, and corruption. These rules are found in different sections of the ESL document. For example, StarCraft 2 has these rules in Section 3 and Section 6. Counter-Strike covers similar topics in Section 5 and Section 1. However, DOTA 2 does not have any information about doping or anti-doping on the ESL website. But since ESL is the main governing body, DOTA 2 is still expected to follow the same rules as the other games they manage.⁴⁶

As the last entity to be examined, the Esports Integrity Commission (ESIC) declares that its "mission is to be the recognized guardian of the integrity of esports and to take responsibility for disruption, prevention, investigation, and prosecution of all forms of cheating, including,

⁴⁴ Jaume García (ed), Sports (and) Economics (FUNCAS Social and Economic Studies 2019) <https://www.researchgate.net/publication/332781901_eSports_A_New_Era_for_the_Sports_Industry_and_a_New_Impulse_for_the_Research_in_Sports_and_Economics> accessed 16 October 2024

⁴⁵ *Ibid*

⁴⁶ Andrew Richardson, 'Entering Cheat Codes or to Play True: Where is Anti-Doping going within Esports?' (2024) <<https://www.ijesports.org/article/144/html#:~:text=With%20the%20International%20Olympic%20Committee's,fair%20competition%20and%20intelligence%20gathering.>> accessed 16 October 2024

but not limited to, match manipulation and doping."⁴⁷ In light of all of this, the work will now examine the arguments and recommendations made to address some of the oversight, intelligence, and instructional challenges that esports organizations encounter.

Conclusion

Esports has revolutionized how we interact, celebrate, and make money, from intense local competitions to massive tournaments that fill arenas and captivate millions of viewers online. However, despite all of this excitement, the legal aspect of eSports is still somewhat disorganized, dispersed throughout various jurisdictions, and lacking a unified set of regulations. This is especially true when it comes to things like contracts, owning digital content, and how things are regulated. It's still hard to know who really owns the content made in games, whether it's from players or developers. Intellectual property is important for protecting the work of game makers, players, and teams, but figuring out who owns what is still tricky.

It is also important to write e-sports contracts carefully so that the needs of teams, sponsors, and players, many of whom are still young, are met while following the rules and laws as they change.

With the industry growing, there's more need for strong rules to keep things fair and honest. This includes dealing with issues like cheating, using drugs, and fixing matches. Even though groups like the World Esports Association (WESA) and the Esports Integrity Commission (ESIC) are working hard to create monitoring and rules to fix these problems, there are still some areas that need more attention, especially when it comes to anti-doping rules and making sure games are fair.

⁴⁷ *Ibid*