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# Esports Corruption: Gambling, Doping, and Global Governance

JOHN T. HOLDEN, RYAN M. RODENBERG & ANASTASIOS KABURAKIS<sup>†</sup>

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## ABSTRACT

*The world of esports is fast becoming a mainstream form of competition and entertainment. While there is debate over whether esports should be recognized as a sport, the emergence of competitive video gaming has seen a rise in many of the problems associated with traditional sport including: doping, gambling-related match-fixing and non-gambling related corruption. Indeed, the esports gambling market has quickly surpassed the total legal sports wagering market in the United States, including daily fantasy sports. This paper examines esports growth and the evolving integrity challenges being faced by players, tournament organizers, gamblers, sponsors, politicians, and fans. Esports, like traditional sports, faces both internal and external corruption-related threats. Internal threats facing competitive video gaming include the use of performance-enhancing drugs and match-fixing. The industry also faces external pressure from a large gambling industry that exists in both regulated and unregulated markets. The entire esports ecosystem is now facing increased scrutiny from various*

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*governments who have expressed concerns about how to regulate the games, and the vast derivative markets.*

*“Instead of trying to make them traditional sports bettors, we’re giving them their own playground.”*

– Kasper Nemeth, Danske Spil’s esports manager<sup>2</sup>

## INTRODUCTION

On April 20, 2016, *Bloomberg Businessweek* published an article titled, “Virtual Weapons Are Turning Teen Gamers into Serious Gamblers.”<sup>3</sup> For many readers, the article marked their first introduction to the game Counter-Strike: Global Offensive or CS:GO, as it is commonly referred to online.<sup>4</sup> It was reported by Brustein and Novy-Williams that a tournament in Columbus, Ohio had generated more than 71 million online views in four days.<sup>5</sup> In addition to adding CS:GO to the mainstream vernacular, the *Bloomberg* article also introduced readers to the concept of skins gambling.<sup>6</sup> In August 2015, a report issued by *Eilers Research* projected that esports wagering would reach \$23.5 billion by the year 2020.<sup>7</sup>

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2. Eben Novy-Williams, *Legal Sports Books Get Ready for Billions in E-Sports Betting*, BLOOMBERG (Aug. 26, 2016, 12:21 AM), <http://www.bloomberg.com/news/articles/2016-08-26/legal-sports-books-get-ready-for-billions-in-e-sports-betting>.

3. Joshua Brustein & Eben Novy-Williams, *Virtual Weapons Are Turning Teen Gamers Into Serious Gamblers*, BLOOMBERG BUSINESSWEEK (Apr. 20, 2016), <http://www.bloomberg.com/features/2016-virtual-guns-counterstrike-gambling/>. See also Shaun Assael, *Skin in the Game*, ESPN (Jan. 20, 2017), [http://www.espn.com/espn/feature/story/\\_/id/18510975/how-counter-strike-turned-teenager-compulsive-gambler](http://www.espn.com/espn/feature/story/_/id/18510975/how-counter-strike-turned-teenager-compulsive-gambler).

4. *Id.*

5. *Id.* Comparatively, more fans tuned in – online – to watch the 2014 League of Legends world championship final, 27 million worldwide, than the respective year’s World Series (23.5 million), NBA Finals (17.9 million), and Stanley Cup finals (6 million); twitch.tv, whence most gaming video feeds are streamed, was sold to Amazon in 2014 for just under a billion dollars, and generates more online traffic than ESPN, MLB, and WWE.com combined. See Stephanie Apstein, *E-sports nation: How competitive gaming became a flourishing sport*, SPORTS ILLUSTRATED (Oct. 29, 2015), <http://www.si.com/more-sports/2015/10/29/esports-competitive-video-gaming>.

6. *Id.* Sarkar defined a skin as: “an alternate outfit of some kind, whether for a character or item. In the particular context of Counter-Strike: Global Offensive, a skin — also known as a “finish” — is a unique visual design for a weapon, whether it’s a firearm or a knife.” Samit Sarkar, *How do Counter-Strike Global Offensive skins work*, POLYGON (July 11, 2016, 10:30 AM), <http://www.polygon.com/2016/7/11/12129136/counter-strike-global-offensive-cs-go-skins-explainer>.

7. Chris Grove & Adam Krejcik, *eSports Betting: It’s Real, and Bigger Than You Think*, EILERS RESEARCH (Aug. 19, 2015). For comparison the size of Nevada’s legal sports gambling

In 2013, Professor Dan Burk called the rise of video gaming “one of the most astounding and largely underappreciated developments accompanying the recent proliferation of mass-market computer technology.”<sup>8</sup> Burk highlighted the unique feature of video gaming whereby player performances are represented by digital depictions, as opposed to the traditional broadcast model where video of actual human beings is projected onto television screens.<sup>9</sup> Burk noted that esports are a representative title that encompasses a wide-variety of sub-groups of games, ranging from sports games with popular titles, including “FIFA football (soccer),” first-person shooter games with games such as Counter-Strike and what Burk terms real-time strategy games, including the game StarCraft.<sup>10</sup> While esports is somewhat nascent to the North American audience in 2017, Comerford noted that in South Korea the StarCraft competitive video gaming competitions emerged from the 1990s financial crisis.<sup>11</sup> Comerford reported that the South Korean esports infrastructure for StarCraft II is run through GomTV, the designated broadcast partner for Blizzard Entertainment (the maker of StarCraft and StarCraft II), in South Korea.<sup>12</sup>

Hollist noted in 2014 that crowds, upwards of 40,000 people, were attending certain esports world championships.<sup>13</sup> That same year, Hollist observed that the massive interest in esports had drawn the

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market was estimated to be \$4.2 billion in 2015. Dustin Gouker, *Nevada Sportsbooks Took Record \$4.2 Billion in Wagers In 2015*, LEGAL SPORTS REP. (Feb. 4, 2016 11:14 AM), <http://www.legalsportsreport.com/7902/nevada-record-sports-betting-2015/>. In 2014, RAND estimated that the size of the heroin market in the United States was \$27 billion. Beau Kilmer et al., *How Big is the U.S. Market for Illegal Drugs?*, RAND CORP. (2014), [http://www.rand.org/pubs/research\\_briefs/RB9770.html](http://www.rand.org/pubs/research_briefs/RB9770.html). For comparison to a prominent legal activity, in 2015 the global market value for recorded music was \$15 billion. Hugh McIntyre, *For The First Time In 20 Years, The Global Music Industry Gained Ground in 2015*, FORBES (Apr. 13, 2016, 8:05 AM), <http://www.forbes.com/sites/hughmcintyre/2016/04/13/for-the-first-time-in-20-years-the-global-music-industry-gained-ground-in-2015/#47a7745a6b1a>.

8. Dan L. Burk, *Owning E-Sports: Proprietary Rights In Professional Computer Gaming*, 161 U. PA. L. REV. 1535, 1535 (2013).

9. *See generally, Id.*

10. *Id.* at 1538.

11. Sean Comerford, *International Intellectual Property Rights and the Future of Global “E-Sports”*, 37 BROOK. J. INT’L L. 623, 628 (2012), *citing* Kristie Lu Stout, *StarCraft II Shakes up S. Korea’s ‘National Sport’*, CNN TECH: DIGITAL BIZ (July 27, 2010, 5:00 PM), <http://www.cnn.com/2010/TECH/gaming.gadgets/07/27/south.korea.starcraft>.

12. *Id.* at 631.

13. Katherine E. Hollist, *Time to be Grown-Ups About Video Gaming: The Rising eSports Industry and the Need for Regulation*, 57 ARIZ. L. REV. 823, 824 (2015) *citing* Paul Tassi, *40,000 Korean Fans Watch SSW Win 2014 ‘League of Legends’ World Championship*, FORBES (Oct. 19, 2014, 11:53 AM), <http://www.forbes.com/sites/insertcoin/2014/10/19/40000-live-korean-fans-watch-ssw-win-2014-league-of-legends-world-championship/#74a43e105a6d>.

attention of both Sony and Microsoft who sought to enter the esports world by launching their own esports leagues.<sup>14</sup> Hollist argued that the current esports structure offers minimal protection to the contestants, including some who may be as young as fourteen years of age.<sup>15</sup> The competitive nature of professional esports has led some players to seek advantages from focus-enhancing nootropics including Adderall, and subsequently led to the implementation of drug testing in one major league.<sup>16</sup> Seo argued that esports has “emerged as a distinct consumer-driven segment within the larger market for computer games,” noting that esports growth has been a collaboration between companies reacting to stakeholder groups, including consumers and esports organizers.<sup>17</sup> Projections estimate a global esports audience reaching over 420 million people in 2019, with direct revenue growing to over a billion dollars within the same timeframe.<sup>18</sup> Approximately 61% of the U.S. population, 194 million, currently engage in some form of gaming.<sup>19</sup> While game manufacturers may be responding to demands

14. *Id.* at 829 citing Eddie Makuch, *Microsoft Announces Halo eSports League*, GAMESPOT (Nov. 6, 2014), <http://www.gamespot.com/articles/microsoft-announces-halo-esports-league/1100-6423409/>; and Vikki Blake, *Sony Launches Esports League on Playstation 4*, IGN (Oct. 15, 2014), <http://www.ign.com/articles/2014/10/15/sony-launches-esports-league-on-playstation-4>; see also Samuel Lingle, *Sony Embraces esports with PlayStation Official League*, THE DAILY DOT (Oct 15, 2014 2:13PM), <http://www.dailydot.com/esports/sony-playstation-official-league/>.

15. Hollist, *supra* note 12 at 831. The risk of exploitation and other dangers child athletes are exposed to have been well documented in numerous other sports. See Ricardo Gentzsch, *Transfer of Adolescents*, 9 INT’L SPORTS L. REV. PANDEKTIS 108 (2011); see also Jean Claude Mbvoumin, *Which Protection for Minors in the 21st Century Football*, PLAY THE GAME (2015), <http://www.playthegame.org/media/4162541/28-10-900-Wednesday-Jean-Claude-Mbvoumin.pdf>; see also Samuel O. Reglado, “Latin Players on the Cheap:” *Professional Baseball Recruitment in Latin America and the Neocolonialist Tradition*, 8 IND. J. GLOBAL LEGAL STUD. 9 (2000); Michael S. Schmidt, *Dominicans Try Shots to Boost Rising Players*, N.Y. TIMES (Oct. 24, 2009), [http://www.nytimes.com/2009/10/25/sports/baseball/25dominican.html?\\_r=0](http://www.nytimes.com/2009/10/25/sports/baseball/25dominican.html?_r=0).

16. Hollist, *supra* note 12 at 833; see also Brett Molina, *Key eSports Group to Create Policy on PEDs*, USA TODAY (July 23, 2015 1:57 PM), <http://www.usatoday.com/story/tech/gaming/2015/07/23/esports-drug-testing/30560219>.

Contrary to skill specificity in mainstream sport, professional gamers may have to learn a new game at regular intervals and depending on competition and prize trends, thus rendering the pressure toward attention-enhancing medication more prevalent. *E.g.*, Tom Pitt *Professional video gaming is a uniquely demanding sport. We need more than a drugs crackdown to fix it*, INDEP. (Aug. 18, 2015), <http://www.independent.co.uk/voices/professional-video-gaming-is-a-uniquely-demanding-sport-we-need-more-than-a-drugs-crackdown-to-fix-10460201.html>.

17. Yuri Seo, *Electronic Sports: A New Marketing Landscape of the Experience Economy*, 29 J. MKTG. MGMT. 1542, 1555 (2013).

18. Henry Young, *Seven-figure salaries, sold-out stadiums: Is pro video gaming a sport?*, CNN (May 31, 2016, 8:00 AM), <http://edition.cnn.com/2016/05/31/sport/esports-is-professional-gaming-a-sport/>.

19. *Id.*

of various stakeholders, other business developers have emerged to fill the demands of consumers that the video game and esports manufacturers are unable or unwilling to fill directly. With the increasing popularity of esports and its emergence into the mainstream, the dark side of esports and derivative game product gambling is being illuminated.

Internationally, the markets of South Korea and China are the most established internationally representing 23% of global revenues in 2016.<sup>20</sup> South Korea has historically dominated the competitive practice of esports, but has also been a front-runner in regards to government recognition and regulation of the industry.<sup>21</sup> Current forecasts envision a near future with esports becoming a truly global enterprise with a viewing audience of 435 million people by 2019.<sup>22</sup> The growth is being partially fueled by a rise in interest in both North America and Europe. In Europe, both France and Great Britain have launched governing bodies, which represent an important step towards sustainable growth and the development of political capital.<sup>23</sup> While esports are growing on national levels, their growth in complementary transnational markets, such as the betting market and specifically skins wagering, is partially responsible for the rapid ascension to mainstream recognition.<sup>24</sup>

## I. ESPORTS GAMBLING

The esports world has positioned itself along the side of other

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20. See Global Esports Market Report: Revenues to Jump to \$463M in 2016 as US Leads the Way, NEWZOO (Jan. 25, 2016), <https://newzoo.com/insights/articles/global-esports-market-report-revenues-to-jump-to-463-million-in-2016-as-us-leads-the-way/>.

21. South Korea launched the first team-based esports league, the StarCraft ProLeague in 2003; the league ran until 2016, when it was announced that the league would cease operations, in part as a result of ongoing problems with match-fixing. See Brian Ashcraft, *The End of an Era for StarCraft and South Korea*, KOTAKU (Oct. 18, 2016 6:10AM), <http://kotaku.com/the-end-of-an-era-for-starcraft-and-south-korea-1787917075>.

22. See The Explosive Growth of Esports and Why It Matters to Everyone, NEWZOO (2016), available at: [http://cga.global/research/CGA\\_Newzoo\\_Esports\\_Growth\\_2016.pdf](http://cga.global/research/CGA_Newzoo_Esports_Growth_2016.pdf).

23. Peter Lewin & Jas Purewal, *Esports Predictions: Great Growth in 2016, Storm Clouds for 2017*, GAMESINDUSTRY (Jan. 15, 2016), <http://www.gamesindustry.biz/articles/2016-12-15-esports-predictions-great-growth-in-2016-storm-clouds-for-2017>.

24. Joss Wood, *New Report: Esports Audience Could Almost Double to 600 Million by 2020, With Big Growth for Esports Betting*, LEGAL SPORTS REP. (Feb. 22, 2017 11:44 AM), [http://www.legalsportsreport.com/13132/esports-betting-and-audience-growth-2020/?utm\\_content=bufferfdb5d&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](http://www.legalsportsreport.com/13132/esports-betting-and-audience-growth-2020/?utm_content=bufferfdb5d&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer).

major sports organizations through sponsorships and partnerships with a wide variety of recognizable brands including: Coca Cola, McDonald's, Arby's, Nissan, Red Bull, FritoLay, and technology companies well aligned with esports such as Intel, Microsoft, Sony, and Google/YouTube.<sup>25</sup> While moving towards sponsorships with mainstream enterprises like other sports leagues, the esports world has also given rise to a lucrative gambling market, much like traditional mainstream sports.<sup>26</sup> Robins noted that while the gambling market on esports is meaningful in size, it is dominated by a few entities.<sup>27</sup> Robins further noted that there is not one entity that has cornered the market across various esports titles, with the esports gambling market still developing.<sup>28</sup> Robins observed that in connection with real currencies being wagered on esports matches there is also a market for virtual items to be wagered.<sup>29</sup>

The market for virtual weapon designs as currency opened on August 14, 2013. According to Eric Yu, the makers of CS:GO, Valve, introduced the "Arms Deal Update."<sup>30</sup> The update allowed players the ability to obtain locked crates, while playing the game, that could be unlocked by purchasing a key from a company-operated store.<sup>31</sup> Inside the crate were "decorative weapons skins," that could be bought, sold, traded, and gambled.<sup>32</sup> Yu noted that the website CS:GO Lounge was the first to allow users to bet the skins they obtained on a game played by professional players.<sup>33</sup> Yu noted that as CS:GO Lounge grew in

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25. Blake Robins, *The Esports Landscape—July 2016*, MEDIUM (July 21, 2016), <https://medium.com/ludlow-ventures/the-esports-landscape-july-2016-2350655dfa63#em98ry1u7>. See also John Gaudiosi, *Big brands gravitating towards eSports*, FORTUNE (July 24, 2014, 11:44 AM), <http://fortune.com/2014/07/24/esports-sponsors/>. Traditional sports leagues such as the NBA have begun to launch their own esports leagues, which is coupled with various ownership stakes held by players, and owners in different esports entities. See Jacob Wolf, *The NBA and Esports: How We Got Here*, ESPN (Feb. 17, 2017), [http://www.espn.com/esports/story/\\_/id/18702213/the-nba-esports-how-got-here](http://www.espn.com/esports/story/_/id/18702213/the-nba-esports-how-got-here).

26. Anastasios Kaburakis, et al., *Inevitable: Sports Gambling, State Regulation, and the Pursuit of Revenue*, 5 HARV. BUS. L. REV. ONLINE 27, 28 (2015). Various estimates of the size of the sports gambling industry estimate that upwards of several hundred billion dollars are wagered annually in legal and illegal markets. *Id.*

27. Robins *supra* note 25.

28. *Id.*

29. *Id.* Robins notes that there are third-party sites which allow users to exchange virtual items for real currency. *Id.*

30. Eric 'Xenon' Yu, *The Start Of It All: Skin Gambling*, UNIKRN (July 15, 2016), <https://unikrn.com/news/the-start-of-it-all/>.

31. *Id.*

32. *Id.*

33. *Id.*

prominence the popularity of professional matches also rose.<sup>34</sup> The amount of money that flowed into the skin betting industry created an opportunity for the website OPSkins to operate as a form of foreign exchange facilitator.<sup>35</sup> OPSkins worked like a variety of other peer to peer merchants using PayPal to facilitate the delivery of useable real-world currency to sellers upon completion of a transaction.<sup>36</sup> The facilitation of a reliable means of extracting useable currency for skins led opportunists to create a variety of additional gambling opportunities for holders of skins, including casino style gambling replete with roulette, poker, dice rolling, and coin flipping, where transactions were facilitated almost exclusively in CS:GO skins.<sup>37</sup>

Brautigam noted that the August 2013 release of weapons skins was quickly followed by the rise of a potentially illicit gambling market.<sup>38</sup> Brautigam found that the launch of CS:GO weapons skins and the blossoming gambling market correlated to a three-fold rise in professional tournament prize money, a doubling of the number of tournaments, and an additional \$1,000 in average per professional player monthly earnings.<sup>39</sup> Silverman noted that the CS:GO gambling industry was valued at \$7.4 billion in July 2016, but future valuations were uncertain following efforts by Valve to crack down on gambling sites after the initiation of two class action lawsuits.<sup>40</sup>

## II. MCLEOD AND REED LAWSUITS

Michael McLeod was the first to bring suit against CS:GO game developer Valve, filing his complaint in the District of Connecticut on June 23, 2016.<sup>41</sup> The amended complaint alleged that Valve “knowingly allowed, supported, and/or sponsored illegal gambling,”

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34. *Id.*

35. *Id.*

36. Yu, *supra* note 30.

37. *Id.*

38. Thiemo Brautigam, *Valve's Skin Gambling Ban and How It Affects the eSports Industry*, ESPORTS OBSERVER (July 15, 2016), <http://esportsobserver.com/valves-skin-gambling-ban-and-how-it-affects-the-esports-industry/>.

39. *Id.*

40. Robert Silverman, *Video Game Gambling Just Took A Huge Hit*, VOCATIV (July 14, 2016, 12:23 PM), <http://www.vocativ.com/340492/video-game-gambling-just-took-a-huge-hit/>.

41. Class Action Compl., *McLeod, et al v. Valve Corporation*, (D.Ct. filed June 23, 2016) (3:16-cv-01018-AWT), 2016 WL 3449545 (D.Conn.) On June 28, McLeod filed an Amended Class Action Compl., *McLeod v. Valve Corporation*, (D.Ct. filed June 28, 2016) (3:16-cv-01018-AWT).



by enabling user accounts to be linked to gambling websites.<sup>42</sup> McLeod argued that because Valve creates the skins, the company has the ability to control the value of skins, but unlike the traditional model of a casino there is no cost to Valve.<sup>43</sup> McLeod alleges that Valve is aware that a portion of its consumers are minors, including himself, and by virtue of being under eighteen years old he lacked capacity to enter into a contract thereby voiding Valve's arbitration clause.<sup>44</sup> McLeod sought restitution by virtue of a Connecticut statute that "renders all contracts for gambling null and void."<sup>45</sup> McLeod's second contractual claim asserted the defendants have unjustly enriched and should be disgorged of their profits.<sup>46</sup> The third count in McLeod's complaint alleged violation of the Civil Racketeer Influenced and Corrupt Organizations statute.<sup>47</sup> The final count of the complaint alleged that the defendant engaged in unfair or deceptive trade practices under Connecticut law.<sup>48</sup>

A second lawsuit against Valve was filed by Jayme Reed in New Jersey District Court on July 7, 2016.<sup>49</sup> Reed alleged that, as a minor, Valve's arbitration agreement is non-binding allowing him to proceed in federal court.<sup>50</sup> The first four counts of Reed's complaint were the New Jersey equivalents of McLeod's allegations; however, Reed added two additional counts both labelled Count V and a related count labelled VI.<sup>51</sup> The first Count V in the Reed complaint alleged that it was unlawful to receive "income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt..."<sup>52</sup> The two additional claims advanced by Reed had origins in

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42. *Id.* at 2.

43. *Id.* at 3.

44. *Id.* at 23-24. Mandatory arbitration clauses and clauses prohibiting the initiation of class actions were upheld in *American Express et al. v. Italian Colors Restaurant*, and have been viewed as potential barriers to litigation in the daily fantasy sports realm. 133 S.Ct. 2304 (2013); see Alison Frankel, *Can Fantasy Sports Players Evade Arbitration in Case v. FanDuel, DraftKings?*, REUTERS (Oct. 9, 2015), <http://blogs.reuters.com/alison-frankel/2015/10/09/can-fantasy-sports-players-evade-arbitration-in-case-v-fanduel-draftkings/>.

45. *Id.* at 28 (citing Conn. Gen. Stat. Ann. § 52-553).

46. *Id.* at 29-30.

47. *Id.* at 30.

48. *Id.* at 39 (citing Ct. Gen. Stat §§ 42-110A-42110B).

49. See Class Action Complaint *Reed v. Valve Corp.*, (D. N.J. filed July 7, 2016) (2:16-cv-04099-ES-JAD), 2016 WL 3672054 (D.N.J.).

50. *Id.* at 31.

51. *Id.* at 49, 51—2. It appears as though the Complaint erroneously labeled two counts as V.

52. *Id.* at 49 citing N.J. Stat. Ann. § 2C:41-1.

New Jersey consumer protection statutes.<sup>53</sup> On the same day Reed filed his lawsuit, another federal class action (amended) complaint was filed in the Southern District of Florida, in which a mother (C.B.) sued Valve and others on behalf of her minor son and a related class, outlining similar counts to the McLeod and Reed suits.<sup>54</sup>

The fourth major lawsuit against Valve was filed on August 4, 2016 in the Western District of Washington.<sup>55</sup> The complaint was filed by McLeod, who had originally filed in Connecticut.<sup>56</sup> In the complaint McLeod compared Valve to a:

barkeeper who allows illegal gambling operators to set up shop in its backroom and sell chips for a fee to customers on their way in, and allows another person to cash customers out inside the bar. Valve had the power to prevent the gambling operators from setting up shop, chose not to stop them and in fact gave them the keys to the backroom.<sup>57</sup>

In addition to various claims present in the previously filed complaints, the Western Washington McLeod complaint alleged violations of more than 150 state gambling laws including at least one violation from every state.<sup>58</sup> The allegations contained within the Western Washington complaint argue that Valve was complicit in the facilitation of a market place that was devoid of regulation and rampant with unfair contests, corruption, and received substantial benefit from minors.<sup>59</sup>

Morrison observed that “CSGO has a gambling problem.”<sup>60</sup> The controversy highlighted by the McLeod and Reed lawsuits surrounds the less-than transparent skins gambling industry. Morrison noted that the legal complexity of skin betting is partially driven by the fact that users do not actually own the skins, instead, users are purchasing a

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53. *Id.* at 51-55.

54. Amended Class Action Complaint, *C.B. v. Valve Corp.*, (S.D. Fla. Filed July 7, 2016), 0:16-cv-61561-BB, 2016 WL 3565991.

55. Class Action Complaint, *McLeod v. Valve Corp.*, (W.D. Wash. Filed Aug. 4, 2016) 2:16-cv-01227-JCC.

56. *See* Class Action Complaint, *supra* note 41.

57. *See* Class Action Complaint, *supra* note 54, at 8.

58. *Id.* at 56-60.

59. *See generally id.*

60. Angus Morrison, *Esports Lawyers Dissect CSGO Gambling in Reddit AMA*, PC GAMER (July 6, 2016), <http://www.pcgamer.com/esports-lawyers-dissect-csgo-gambling-in-reddit-ama/>.

2017]

ESPORTS CORRUPTION

245

license to use the skins.<sup>61</sup> Bright noted that the relationship between Valve and gambling sites is co-dependent.<sup>62</sup> The gambling websites exist because Valve has built the Application Program Interfaces (APIs) in a manner that allows users to grant access to third-parties.<sup>63</sup> Bright noted that the skins in some games provide nothing more than a surface level change, not a competitive advantage.<sup>64</sup> In the wake of the McLeod and Reed lawsuits, Valve sent twenty-three skin gambling sites cease and desist letters on or around July 20, 2016.<sup>65</sup> The letter purportedly stated:

Dear Sirs:

Re: Violations of Steam Subscriber Agreement

We are aware that you are operating one of the gambling sites listed below. You are using Steam accounts to conduct this business. Your use of Steam is subject to the terms of the Steam Subscriber Agreement (“SSA”),

[http://store.steampowered.com/subscriber\\_agreement/](http://store.steampowered.com/subscriber_agreement/).

Under the SSA Steam and Steam services are licensed for personal, non-commercial use only. Your commercial use of Steam accounts is unlicensed and in violation of the SSA. You should immediately cease and desist further use of your Steam accounts for any commercial purpose. If you fail to do this within ten (10) days Valve will pursue all available remedies including without limitation terminating your accounts.

Karl Quackenbush

General Counsel, Valve Corp.<sup>66</sup>

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61. *Id.* See also Bryce Blum, *Opinion: Can Valve Realign the Ecosystem of Esports Gambling?* ESPN (July 15, 2016), [http://www.espn.com/esports/story/\\_id/17078888/valve-realign-ecosystem-esports-gambling](http://www.espn.com/esports/story/_id/17078888/valve-realign-ecosystem-esports-gambling); Bryce Blum, *Betting and Esports: The Crossroads*, UNIKRN (July 5, 2016), <https://unikrn.com/news/betting-and-esports-the-crossroads/>; Bryce Blum, *How Gambling Can be Good for Esports*, THE DAILY DOT (June 3, 2015, 2:43 PM), <http://www.dailydot.com/esports/gambling-esports-benefits/>.

62. Peter Bright, *Valve Can't Pass Buck to Third Parties for Teaching CS:GO Kids to Gamble*, ARS TECHNICA (July 12, 2016, 12:20 PM), <http://arstechnica.com/gaming/2016/07/valve-cant-pass-buck-to-third-parties-for-teaching-csgo-kids-to-gamble/>.

63. *Id.*

64. *Id.*

65. Chris Grove, *23 Skin Gambling Sites, Spanning Casino and Sports Betting, Targeted with Cease and Desist From Valve*, ESPORTS BETTING REP. (July 19, 2016, 9:14 PM), <http://www.esportsbettingreport.com/valve-skin-betting-cease-desist/>.

66. *Id.*

Grove noted that the cease and desist letter was sent to most of the prominent skin betting companies across a variety of skin betting types.<sup>67</sup> Several days after Valve sent the cease and desist letter, the industry website *eSports Betting Report* noted that while some gambling sites announced their intent to comply with the Valve letter's demands, others continued operating as normal, with some affirmatively stating that they would continue to operate without regard to the Quackenbush letter.<sup>68</sup>

*Gambling Compliance* noted that Valve's cease and desist letter was widely praised by those who see potential in esports growth.<sup>69</sup> It was noted that the use of gambling sites by minors, as well as illegitimate sites had the potential to attract unwanted regulatory attention to an industry that is still nascent in North America.<sup>70</sup> The announcement by Valve, and subsequent cease and desist letters, raised a number of questions for the industry.<sup>71</sup> The reasons behind the willingness of Valve and other companies to distance themselves from the ancillary gambling businesses, including the cash-based sportsbooks that have arguably added to the company's profit margins, are not clear.<sup>72</sup> A story that has emerged from the skin gambling crackdown includes reports of individuals losing large sums of money and of children who allegedly became addicted to skin gambling sites.<sup>73</sup>

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67. *Id.* (noting that there had been speculation that Valve may specifically target a type of betting operator (e.g. casino style or peer-to-peer), but that speculation was unfounded).

68. Will Green, *How The 23 Named Skin Gambling Sites Have Reacted to Valve's Cease And Desist Letter*, ESPORTS BETTING REP. (July 22, 2016, 8:01 AM), <http://www.esportsbettingreport.com/skin-gambling-sites-status-valve-cease-and-desist/>.

69. See David Altaner & Chris Sieroty, *Skins-Betting Crackdown Cheers Legitimate E-Sports Operators*, GAMBLING COMPLIANCE (July 22, 2016).

70. *Id.*

71. See Dustin Gouker, *End of the Skin Betting World As We Know It? Valve Cuts Off CS:GO In-Game Wagering*, ESPORTS BETTING REP. (July 13, 2016, 2:36 PM), <http://www.esportsbettingreport.com/valve-cuts-off-skin-betting/>.

72. Will Green, *Seven Questions Raised by Valve's Skin Betting Announcement*, LEGAL SPORTS REP. (July 16, 2016, 7:34 AM), <http://www.legalsportsreport.com/10739/valve-skin-betting-unregulated-esports-gambling-announcement-questions/>.

73. Colin Campbell, *The True Cost of Counter-Strike Skin Gambling*, POLYGON (July 18, 2016), <http://www.polygon.com/features/2016/7/18/12203534/counter-strike-cs-go-skin-gambling>, (stating that the early reports of gambling by youth, and addiction have featured prominently in numerous other debates surrounding online gambling); see also *Internet Gambling Prohibition Act of 2006 Hearing before the Subcomm. on Crime, Terrorism, and Homeland Security, of the H. Judiciary Comm. on H.R. 4777*, 110 Cong. (Apr. 5, 2006), (noting that Representative McCollum, in a 1998 internet gambling hearing, when discussing the level of skill required to be successful at fantasy sports and explaining to the hearing that he is familiar with fantasy sports, stated: "my kids do that with little games they plug into the

The question of what happens to the esports betting market following the cease and desist letters sent by Valve is one that remains unanswered. Grove noted that the answer may be contingent on how serious Valve is with enforcing their prohibition, noting that “[a]s long as items can be moved from one account to another, the potential for a gambling product enabled by that transferability remains intact.”<sup>74</sup> Grove also observed that the shutdown of gambling sites may not be orderly and some sites may not refund, or allow players the ability to liquidate their accounts potentially adding to the possibility that regulators may become involved.<sup>75</sup> Perhaps the one given, as noted by Grove and proven by the prohibition on sports betting, is that restrictions and proclamations against gambling do little to deter those who enjoy the activity.<sup>76</sup>

### III. THE INDUSTRY SCANDALS

Valve’s crackdown on skin gambling sites came in the wake of revelations that two professional players had been linked to a skin

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video machines.”) *See Internet Gambling Prohibition Act of 1997, Hearing on H.R. 2380 before the subcomm. on Crime of the H. Judiciary Comm.*, 105th Cong. (1998) (Comments of Rep. Bill McCollum) at 116. Former NFL player Reggie Williams testified to the Senate Judiciary Committee in 1990 that if sports gambling were legalized children would collect lottery tickets instead of baseball cards. *See also Legis. Prohibiting State Lotteries from Misappropriating Professional Sports Service Marks, Hearing before the Subcomm. on Patents, Copyrights and Trademarks of the Comm. on the Judiciary on S. 1772*, 101st Cong. (1990) (Statement of Reggie Williams) at 24.

74. *See* Chris Grove, *Where ESports Betting Goes Following Valve’s Crackdown On Skin Gambling*, ESPORTS BETTING REP. (July 14, 2016, 12:32PM), <http://www.esportsbettingreport.com/valve-skin-gambling-crackdown-analysis/>. *See also* Will Green, *How One Esports Gambling Site Still Offers Skin Betting Despite Order to Stop*, ESPORTS BETTING REP. (Aug. 29, 2016), [http://www.esportsbettingreport.com/csgofast-eludes-skin-betting-crackdown/?utm\\_content=buffer625c3&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](http://www.esportsbettingreport.com/csgofast-eludes-skin-betting-crackdown/?utm_content=buffer625c3&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer) (noting that more than one month after the Valve cease and desist letter of July 19, 2016 at least one site was still offering skin betting).

75. *Id.*

76. *Id.* *See also* Nat’l Gambling Impact Study Comm’n, *Gambling In The United States*, 2-14 (1999), available at <http://govinfo.library.unt.edu/ngisc/reports/ngisc-fir.pdf> (stating that the 1999 Commission’s recommendations included a somewhat prophetic note on gambling “...brought about by... greater accessibility, technological advances and increasingly sophisticated games...” The recommendations encouraged research that “... would examine not only the general population, but also sizable subgroups such as youth, women, the elderly and minority gamblers...”). *See also* Complaint, *British Telecomms. PLC v. Valve Corp.*, No. 1:11-CV-01249 (D. Del. July 28, 2016) (Valve has also been sued by British Telecommunications (“BT”), who are represented by law firm Proskauer Rose, which has also represented nearly every major American professional sports league. The BT complaint alleged that various features of Valve’s steam platform infringe on BT patents).

gambling site.<sup>77</sup> One of the lawyers suing Valve posited that Valve is complicit in the growth of the gambling market by virtue of their development of API that can be accessed by third-party sites.<sup>78</sup> The link between professional players and gambling sites may have been a tipping point, however, as several other problems with esports were identified by an Electronic Arts executive who noted that match-fixing and the use of performance enhancing drugs are problems that are present in the industry.<sup>79</sup>

The relationship between CS:GO professionals and gambling sites gained scrutiny when it was revealed that Moe Assad, a professional in a contract with the gambling site CSGO Diamonds, had received proprietary information in order to maximize the suspense for his online streaming.<sup>80</sup> Both Assad and CSGO Diamonds acknowledged that Assad was provided with secret information that according to Assad provided him with an advantage in CSGO Diamonds dice roll games.<sup>81</sup> The relationship soured publicly and it was reported that Assad received the equivalent of \$112,000 in severance.<sup>82</sup> While the Assad case may appear to be an outlier, there have been various other reports of fixing actual CS:GO games and skins-fueled online casinos.<sup>83</sup>

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77. Rich McCormick, *Valve Cracks Down on Gambling Sites After Accusations of Profiteering*, THE VERGE (July 14, 2016, 3:18 AM), <http://www.theverge.com/2016/7/14/12186584/valve-gambling-statement-counter-strike>.

78. Brian Crecente, *Lawyer: Valve's Silence While Helping Gambling Sites is 'Unconscionable.'*, POLYGON (July 6, 2016, 3:15 PM), <http://www.polygon.com/2016/7/6/12109022/valve-csgo-lawsuit-interview>.

79. Darryn Bonthuys, *EA's Peter Moore talks Match-Fixing, Drugs and Diversity in ESports*, LAZYGAMER.NET (July 4, 2016), <http://www.lazygamer.net/esports/eas-peter-moore-talks-match-fixing-drugs-diversity-esports/>.

80. Charlie Hall, *How One Pro CS:GO Player Profited from Gambling, and How It All Went Terribly Wrong*, POLYGON (July 14, 2016, 2:00 PM), <http://www.polygon.com/2016/7/14/12188372/how-one-professional-csgo-player-profited-from-gambling-and-how-it-all-went-terribly-wrong>.

81. *Id.*

82. *Id.*

83. See Yu *supra* note 30 (stating that “Throws” are referred to as the act of intentionally losing a match, a means for some professionals to receive additional compensation. Yu noted that following a scandal involving a prominent professional esports team, iBUYPOWER, throwing was prohibited; however, the practice is allegedly still common with online forums acting as the location for organizing “throws.”). See also Richard Lewis, *New Evidence Points to Match-Fixing at Highest Level of American Counter-Strike*, THE DAILY DOT (Jan. 16, 2015 5:03PM), <http://www.dailydot.com/esports/match-fixing-counter-strike-ibuypower-netcode-guides/>. See generally William K. Black, *The Best Way to Rob a Bank is to Own One* (University of Texas Press, 2005). William Black therein posits that manipulation is the key skill of a “control fraud,” a company a criminal utilizes as protection and shielding illegal

An additional controversy emerged when esports personality James “PhantomL0rd” Varga did not disclose his ownership of the gambling site CS:GO Shuffle.<sup>84</sup> The investigation into Varga revealed that he had requested the website programmer to increase the percentage of dice rolls that he would win on his site.<sup>85</sup> Barlowe noted that the Varga scandal came less than a month after two other players were noted as failing to disclose their ownership of the site CSGO Lotto.<sup>86</sup> The scandals may have prompted the cease and desist letters from Valve; however, given the unregulated nature of the skin gambling market, it is possible that the Assad and Varga scandals are simply the surface of the underbelly of the marketplace.

Grove and Krejcik categorized three prominent types of esports gambling products: sportsbook wagering, fantasy esports, and wagering utilizing in-game items.<sup>87</sup> Sportsbook style wagering is similar to traditional conceptualizations of sports betting, though sportsbooks feature predominantly against the house Las Vegas style wagering versus the popular peer-to-peer wagering on sites such as Betfair.<sup>88</sup> Eilers estimated that in 2015 greater than 60% of sportsbook wagering took place in Asian markets.<sup>89</sup> Daily fantasy esports are offered by both esports specific operators, Vulcan and AlphaDraft, as well as a variety of mid-level companies in the daily fantasy sports space.<sup>90</sup> The daily fantasy esports market is substantially concentrated in North America, with an estimated 84 percent of revenue originating from Canada and the United States in 2015.<sup>91</sup> While both esports sportsbook wagering and daily fantasy esports are closely associated with popular forms of sports gambling, the third category of esports

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action. This manipulation is inherent in complex systems such as banking and financial transactions, particularly when control frauds gain political power and influence efforts to regulate, collect data, and investigate corruption. As per the classic contemporary example of industry (and regulatory) inaction leading to corruption, the post-2008 financial crisis, one readily observes how a key industry influence in the form of a first-mover (Salomon Brothers, Bear Stearns,) maintaining its competitive advantage through integration (bonds-securities, derivatives/CDOs, here: skins gaming/trading) and eventual defensive inaction, may indulge in the institutionalization of corrupt practice due to profit margins growth.

84. Katie Barlowe, *Skins-Betting Rocked by New Controversy, Rigged Games Alleged*, CASINO.ORG (July 19, 2016), <https://www.casino.org/news/skin-betting-rocked-new-controversy-rigged-games-alleged>.

85. *Id.*

86. *Id.*

87. *See* Grove & Krejcik, *supra* note 7.

88. *Id.* at 7.

89. *Id.* at 8.

90. *Id.* at 9.

91. *Id.* at 11.

wagering bears little resemblance to the other two. Wagering using in-game items as currency is the largest segment of the esports wagering market with an estimated handle of \$2.28 billion in 2015.<sup>92</sup> The largest segment of esports betting is primarily confined to the games CS:GO and DOTA 2 due to in-game APIs that allow players to transfer items in marketplaces external to the games themselves.<sup>93</sup> In addition to these three means of wagering, certain sites also offer the ability for two players to play against one another for money in addition to social esports gambling and private bookmaking operations.<sup>94</sup>

Within the third realm of esports wagering, skin-betting is a virtual cornucopia of nearly every available form of gambling.<sup>95</sup> Grove notes that skins can be thought of like casino chips.<sup>96</sup> When users deposit a skin they receive site credits that enable them to participate in a variety of gambling contests including: sports betting, virtual coin flips, virtual dice rolls, roulette and other casino style games.<sup>97</sup> If the users win, they are typically paid in skins with which they can either continue gambling, attempt to trade on a secondary marketplace, use the skins in game, sell for additional credits, or sell for cash through an unaffiliated third-party foreign exchange-type site.<sup>98</sup> While the virtual currency aspect of the skins marketplace may represent a potential legal obstacle, in the United States esports wagering legal liability may be largely determined by whether esports are considered a sport.<sup>99</sup>

The question of whether esports constitute a sport, as a matter of law, is more than an esoteric classification exercise.<sup>100</sup> The decision to term the activity of competitive video game playing “esports” is unlikely to be dispositive of a judicial determination as to whether the

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92. Grove & Krejcik, *supra* note 7 at 12.

93. *Id.*

94. *Id.* at 13.

95. See Chris Grove, *Online Betting in the United States*, NARUS ADVISORS (May 2016).

96. Chris Grove, *Understanding Skin Gambling*, NARUS ADVISORS (2016), <http://www.esportsbettingreport.com/wp-content/uploads/2016/07/A-Guide-To-Skin-Gambling.pdf>.

97. *Id.* at 7.

98. *Id.*

99. John T. Holden, et al., *The Future is Now: Esports Policy Considerations and Potential Litigation*, 27 J. LEGAL ASPECTS OF SPORT 46 (2017).

100. James Dator, *This Chart Will Always Help You Answer 'Is It a Sport?'*, SBINATION BLOG (Aug. 19, 2014, 8:43 AM), <http://www.sbnation.com/lookit/2014/8/19/6044393/is-it-a-sport-chart-nascar-bowling-ultimate-frisbee>, (stating that a 2014 Reddit poll widely circulated on the internet reported that of selected responses, boxing was most frequently cited as constituting a sport, whereas chess, competitive eating and poker ranked in the bottom three).



activities constitute sports.<sup>101</sup> Indeed, while the sport moniker in esports may draw an association amongst some individuals with baseball, basketball or perhaps NASCAR, there are several potential distinct disadvantages associated with esports being considered a sport from the legal perspective.<sup>102</sup> Additionally, the absence of a finding that competitive video game playing constitutes a sport could invoke additional concerns involving separate regulations.<sup>103</sup>

The status of esports as a sport is uncertain. In addition to the colloquial uncertainty as to the status of the activity, there is equal uncertainty as to which factors determine what classifies an activity as a sport.<sup>104</sup> While Reddit polls and casual conversations may appear to be the extent of the importance of the debate over esports as a sport, the classification of the activity may well be determinative of the liability facing esports operators in the United States. The following section will discuss the growing exposure of esports to various U.S. gambling statutes and various international approaches to the regulation of esports.<sup>105</sup>

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101. See *Why Fantasy Sports is Not Gambling*, FSTA.ORG, <http://fsta.org/research/why-fantasy-sports-is-not-gambling/> (last visited Oct. 14, 2016), (arguing fervently that the daily version of fantasy contests was distinct from sports gambling because it was more similar to the season long version of fantasy sports, which were often conceived of as benign. The industry proclaimed that daily variety fantasy sports were distinct from gambling, in part because of the industry's compliance with an exemption in the Unlawful Internet Gambling Enforcement Act, a law applicable to online payment processors). See also Unlawful Internet Gambling Enforcement Act, 31 U.S.C. § 5362 (2006), (stating that despite the seemingly obscure exemption, a variety of state Attorney Generals concluded that daily fantasy sports constituted gambling). See also Dustin Gouker, *Attorney General Opinions on Daily Fantasy Sports*, LEGAL SPORTS REP., <http://www.legalsportsreport.com/state-legality-of-dfs/> (last visited Oct. 14, 2016).

102. For instance, in the United States various gambling statutes have a specific application to sports gambling. See, e.g., 18 U.S.C. § 1084 (1961) (Transmission of Wagering Information); 18 U.S.C. § 224 (1964) (Bribery in Sporting Contests); 28 U.S.C. § 3701 *et seq.* (1992) (Professional & Amateur Sports Protection Act).

103. See, e.g., 47 U.S.C. § 509 (1964) (Prohibited Practices in Contests of Knowledge, Skill, or Chance).

104. See *Biediger v. Quinnipiac*, 691 F.3d 85 (2d Cir. 2012) (stating an example of the complicated nature of classification of activities as sports).

105. Compare Ryan Rodenberg, *Daily Fantasy Sports State-by-State Tracker*, ESPN: CHALK (Aug. 27, 2016), [http://www.espn.com/chalk/story/\\_/id/14799449/daily-fantasy-dfs-legalization-tracker-all-50-states](http://www.espn.com/chalk/story/_/id/14799449/daily-fantasy-dfs-legalization-tracker-all-50-states) (stating that in the United States, esports may face challenges similar to those of daily fantasy sports operators. The daily fantasy industry undertook a meteoric rise in popular press, touting its product as a skill-based game distinct from traditional bookmaker sports-betting. The industry even cited Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) as providing evidence that fantasy sports were recognized as widely legal. However, overlooked or ignored, was the fact that UIGEA does not modify any existing state or federal law. See 31 U.S.C. § 5361(b) (2006). The failure to recognize that state gaming

## IV. RELEVANT U.S. STATUTES

The issue of whether esports are a sport is important because a variety of statutes have special applicability to sport. In the event that esports are deemed a sport, then sport-specific federal statutes such as the Wire Act and Sports Bribery Act are potential threats to the continued growth of the esports gambling market.<sup>106</sup> A finding that esports do not constitute a sport may raise separate concerns for operators and participants, including the potential applicability of the federal “Quiz Show Scandal” statute.<sup>107</sup> In addition, there is a variety of other federal and state statutes that pose potentially serious threats to both the skin-betting market and the real-money esports betting market.<sup>108</sup>

The Wire Act applies to those individuals “engaged in the business of betting or wagering.”<sup>109</sup> Passed in 1961, the Wire Act was a key component of the Department of Justice’s war on organized crime.<sup>110</sup> The statute was prefaced as providing an added tool for combatting the interstate nature of organized crime’s bookmaking business that relied on the racing wire service to obtain fast reliable information about horse racing results and sports scores.<sup>111</sup> The Wire Act specifically targets those entities operating gambling businesses whereby the transmission of gambling information takes place between inter-state jurisdictions where the gambling activity is not permissible in one or both locations.<sup>112</sup> While the Wire Act appears to

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laws would likely be determinative of whether daily fantasy sports were legal has essentially left daily fantasy operators to fight legislators on an individual state by state basis); *with Daily Fantasy Sports in 2015: The Rise and the October Fall*, OnlineGambling.com (Dec. 29, 2015), <http://www.onlinegambling.com/news/2015/12/daily-fantasy-sports-in-2015-the-rise-and-the-october-fall/>; and Don Van Natta Jr., *Welcome to the Big Time*, ESPN (Aug. 24, 2016), [http://www.espn.com/espn/feature/story/\\_/id/17374929/otl-investigates-implosion-daily-fantasy-sports-leaders-draftkings-fanduel](http://www.espn.com/espn/feature/story/_/id/17374929/otl-investigates-implosion-daily-fantasy-sports-leaders-draftkings-fanduel).

106. See, e.g., Transmission of Wagering Information, 18 U.S.C. § 1084 (1961). See also Bribery in Sporting Contests, 18 U.S.C. § 224 (1964).

107. See Prohibited Practices in Contests of Knowledge, Skill, or Chance, 47 U.S.C. § 509 (1964).

108. See, e.g., Prohibition of Illegal Gambling Businesses, 18 U.S.C. § 1955 (1970); see also e.g. Professional and Amateur Sports Protection, 28 U.S.C. §§ 3701 – 3704 (1992).

109. See 18 U.S.C. § 1084 (1961); see also Ben J. Hayes & Matthew J. Conigliaro, “The Business of Betting or Wagering”: A Unifying View of Federal Gaming Law, 57 DRAKE L. REV. 445 (2008); see also DAVID G. SCHWARTZ, CUTTING THE WIRE: GAMBLING PROHIBITION AND THE INTERNET, University of Nevada Press 4 (2005).

110. See Hayes & Conigliaro *supra* note 108.

111. See *Racing Wire Service*, 5 STAN. L. REV. 493 (1953); see also Schwartz *supra* note 108.

112. Mark D. Lynch, *Smart Money is on Prosecutions: Using the Federal Interstate Wire Act to Prosecute Offshore Telephone Gambling Services*, 10 IND. INT’L & COMP. L. REV. 177

encapsulate a broad range of activities beyond the casual bettor, the statute has been found to only apply to “sporting event[s] or contest[s].”<sup>113</sup> Both the Fifth Circuit Court of Appeals and the Justice Department’s Office of Legal Counsel concluded that in order for the statute to be implicated, the infringing activity must involve an underlying sporting event.<sup>114</sup> In the event that esports are viewed by a court as possessing the attributes of a “sporting event or contest,” then gambling site operators and those who assist gambling site operators may be liable under the Wire Act.

The Sports Bribery Act was necessitated by a growing number of match-fixing scandals in the United States beginning with the 1919 World Series and perhaps culminating in 1951 when five scandals rocked college basketball.<sup>115</sup> The Sports Bribery Act has laid largely dormant since its passage in 1964, with few high profile prosecutions.<sup>116</sup> While the statute has been used sparingly by federal prosecutors, if esports were found to constitute a sport, instances of coordinated bribery-fueled match-fixing could invoke the statute.<sup>117</sup>

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(1999). Section 1084(a) of the Wire Act states:

“Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.”

Transmission of Wagering Information, 18 U.S.C. § 1084(a) (1961).

113. See *In re Mastercard Intern. Inc.*, 313 F.3d 257 (5<sup>th</sup> Cir. 2002); see additionally VIRGINIA A. SEITZ, U.S. DEP’T OF JUST., WHETHER PROPOSALS BY ILLINOIS AND NEW YORK TO USE THE INTERNET AND OUT-OF-STATE TRANSACTION PROCESSORS TO SELL LOTTERY TICKETS TO IN-STATE ADULTS VIOLATES THE WIRE ACT (Sep. 20, 2011).

114. See *id.*

115. See John T. Holden & Ryan M. Rodenberg, *The Sports Bribery Act: A Law and Economics Approach*, 42 NKU L. REV. 453 (2015); see also Ante Udovicic, *Sports and Gambling A Good Mix? Don’t Bet on It*, 8 MARQ. SPORTS L.J. 401, 424 (1998).

116. See Holden & Rodenberg *supra* note 115. Arguably the highest profile prosecution under the statute involved James “Jimmy” Burke, who was convicted on testimony of Henry Hill and portrayed by Robert DeNiro as Jimmy Conway in the 1990 film *Goodfellas*. See U.S. v. Burke, 700 F.2d 70 (2d Cir. 1983); see also U.S. v. Mazzei, 700 F.2d 85 (2d Cir. 1983); see also Henry Hill & Douglas Looney, *How I Put the Fix In*, Sports Illustrated, Feb. 16, 1981.

117. Section (a) of the Sports Bribery Act states:

“Whoever carries into effect, attempts to carry into effect, or conspires with any other person to carry into effect any scheme in commerce to influence, in any way, by bribery any sporting contest, with knowledge that the purpose of such scheme is to influence by bribery that contest, shall be fined under this title, or imprisoned not more than 5 years, or both.”

18 U.S.C. § 224 (1964).

Although the statute is limited to instances of bribery, it is possible *quid pro quo* style orchestrated fixes, such as that involving the purported iBUYPOWER fix, would be sufficient to invoke the statute.<sup>118</sup> Next to the federal Sports Bribery Act, a variety of state level match-fixing statutes could potentially be invoked depending on the particular fact pattern of a fixed match.

In addition to the Wire Act and the Sports Bribery Act, should esports be considered a sport, esports gambling operators may need to be concerned about the potential threats brought under the Professional and Amateur Sports Protection Act (PASPA) of 1992.<sup>119</sup> The statute has been the subject of litigation a limited number of times, and most recently has involved the five major American sports entities suing New Jersey Governor Chris Christie.<sup>120</sup> The statute has questionable constitutional underpinnings; however, to date, no court has held that the statute violates the Constitution.<sup>121</sup> PASPA grants parallel authority to certain sports organizations and the Department of Justice to stop the spread of state-sanctioned sports gambling.<sup>122</sup> PASPA has been called a paradox because it seemingly constrains states from taking sensible steps to protect consumers.<sup>123</sup> If esports are a sport, there could be additional industry complications in navigating and existing within the confines of PASPA.

If esports are outside the traditional legal definition for sport, the so-called Quiz Show scandal statute could apply to esports broadcasting.<sup>124</sup> Formally labeled “Prohibited Practices in Contests of

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118. See Augranzeb Durrani, *Match-fixing comes to the World of E-Sports*, TECHCRUNCH (Apr. 23, 2016), <https://techcrunch.com/2016/04/23/match-fixing-comes-to-the-world-of-e-sports/>.

119. See Professional and Amateur Sports Protection, 28 U.S.C. §§ 3701–3704 (1992).

120. See *NCAA v. Governor of N.J.*, 730 F.3d 208 (3d Cir. 2013), *cert. denied*, 82 U.S.L.W. 3515 (U.S. June 23, 2014) (No. 13-967); see also Nat’l Collegiate Athletic Ass’n et al. v. Christie, 832 F.3d 389 (3d Cir. 2016) (en banc); see also Governor Christopher J. Christie et al. v. Nat’l Collegiate Athletic Ass’n, 16-476, 16-477 (cert. granted Jun 27, 2017).

121. See Ryan M. Rodenberg et al., ‘Whose’ Game is It? *Sports Wagering and Intellectual Property*, 60 VILL. L. REV. 1 (2014); see also Anastasios Kaburakis et al., *Inevitable: Sports Gambling, State Regulation, and the Pursuit of Revenue*, 5 HARV. BUS. L. REV. Online 27 (2015); see also John T. Holden et al., *Sports Gambling Regulation and Your Grandfather (Clause)*, 26 STAN. L. & POL’Y REV. ONLINE 1 (2014); see also Ryan M. Rodenberg & John T. Holden, *Sports Betting Has An Equal Sovereignty Problem*, 67 DUKE L. J. ONLINE 1 (2017).

122. See 28 U.S.C. § 3703 (1992).

123. See *Daily Fantasy Sports: Issues and Perspectives: Hearing Before the H. S. Comm. On Commerce, Manufacturing, and Trade*, 114<sup>th</sup> Cong. (2016) (written statement of Ryan M. Rodenberg).

124. For a non-legal discussion of esports broadcasting, see Jesse C. Sell, *E-Sports Broadcasting* (June 2015) (unpublished M.S. thesis, Massachusetts Institute of

Knowledge, Skill, or Chance,”<sup>125</sup> the federal statute was passed in the wake of widespread fraud and deceit in several television “quiz show” competitions dating back to the 1950s.<sup>126</sup> As applied to any contest of “knowledge, skill, or chance, the statute makes it unlawful:

for any person, with intent to deceive the listening or viewing public—

(1) To supply to any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill any special and secret assistance whereby the outcome of such contest will be in whole or in part prearranged or predetermined.

(2) By means of persuasion, bribery, intimidation, or otherwise, to induce or cause any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill to refrain in any manner from using or displaying his knowledge or skill in such contest, whereby the outcome thereof will be in whole or in part prearranged or predetermined.

(3) To engage in any artifice or scheme for the purpose of prearranging or predetermining in whole or in part the outcome of a purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance.<sup>127</sup>

Esports are broadcast in two primary ways. First, traditional networks such as ESPN or TBS have shown competitive video gaming. Second, self-streaming platforms such as Twitch or YouTube are hubs for esports viewers. The first category of esports broadcasting almost certainly falls within the purview of the Quiz Show scandal statute. The second category is less certain. Nevertheless, as esports moves into mainstream media, incidents involving manipulation and fraud that deceive viewers could be prosecuted under a statute originally passed to regulate television shows six decades ago.

The Illegal Gambling Businesses Act of 1970 (IGBA) poses a

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Technology)(on file with Comparative Media Studies, Massachusetts Institute of Technology).

125. 47 U.S.C. §509 (1964). *See also*, Michael Larkey, *Cooperative Play: Anticipating the Problem of Copyright Infringement in the New Business of Live Video Game Webcasts*, 13 RUTGERS J. OF L. & PUB. POL’Y 1 (2015).

126. For a detailed discussion of the statute’s origins, *see* Kimberlianne Podlas, *Primetime Crimes: Are Reality Television Programs “Illegal Contests” in Violation of Federal Law*, 25 CARDOZO ARTS & ENT. L.J. 141, 141–72 (2007).

127. 47 U.S.C. § 509 (2012).

potential threat to operators who meet three primary requirements: (i) a predicate violation of state law; (ii) five or more people involved in the operation of the business; (iii) and the business has operated on “substantially continuous” basis for 30 days or has \$2,000 in gross revenue in a single day.<sup>128</sup> The purpose of the statute was to supplement the resources of state law enforcement, who may have faced jurisdictional challenges in stopping large-scale gambling operations.<sup>129</sup> The broad liberties granted under the IGBA to the Department of Justice allow the department to select the state in which to prosecute; this would potentially allow prosecutors to select a jurisdiction such as Washington State with very strict anti-gambling laws as a venue to target a skin or real-money betting site that has not excluded participation by residents of the state.<sup>130</sup> The IGBA may provide the federal government with a powerful tool to take action in a jurisdiction with favorable laws if esports betting companies are not careful to restrict access to customers in non-permissive states.

In addition to the IGBA, the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) may present concerns for esports gambling sites and their payment processors.<sup>131</sup> UIGEA prohibits payment processors from facilitating payments to online wagering companies.<sup>132</sup> While the statute has most recently been the focus of attention because it contains a limited exemption for certain fantasy sports contests, it is unlikely that the exemption would apply to the types of activities taking place in the majority of the skin casinos and skin and real currency esports sportsbooks.<sup>133</sup> It was reported that

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128. See 18 U.S.C. § 1955 (2012).

129. See Kaitlyn Dunphy, *Following Suit with the Second Circuit: Defining Gambling in the Illegal Gambling Business Act*, 79 BROOK. L. REV. 1295, 1310 (2014).

130. States have varying laws, governing the definition of gambling, ranging from permissive to heavily restricted. The number of states recently analyzing their gambling definitions has increased with the growth of the daily fantasy sports industry, whose meteoric rise may be a cautionary tale for the emerging North American esports gambling market. See Dustin Gouker, *Attorney General Opinions on Daily Fantasy Sports*, LEGAL SPORTS REP. (2016), <http://www.legalsportsreport.com/state-legality-of-dfs/>.

131. See 31 U.S.C. § 5361 *et seq.* (2012).

132. *Id.*

133. The carve out in UIGEA for fantasy sports requires: (ix) participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization (as those terms are defined in section 3701 of title 28) and that meets the following conditions:

(I) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid

PayPal instituted a policy that requires various esports tournament operators to confirm that they are not operating as gambling sites; the result has allegedly been a number of operators switching their payment processing provider.<sup>134</sup> The greatest threat that UIGEA likely poses to esports gambling companies is the potential for payment processors to withdraw their services thereby crippling the industry as customers are unable to deposit or withdraw funds.

While federal gambling statutes appear to pose a specific threat to various esports gambling providers, a variety of other statutes may cause operators to be wary. There is the possibility that certain esports gambling ventures may be violating provisions of the Dodd-Frank Wall Street Reform Act that prohibits the listing of certain event contracts, which constitute gaming or are contrary to the public interest.<sup>135</sup> While there is limited case law on prohibited event contracts, the Commodity Futures Trading Commission (CFTC) previously found that binary contracts on the outcomes of elections would offend the statute.<sup>136</sup> Additionally, statutes such as the federal mail and wire fraud statutes are expansive and potentially criminalize a wide variety of activities by virtue of some form of impropriety.<sup>137</sup>

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by those participants.

(II) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.

(III) No winning outcome is based—

(aa) on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams; or

(bb) solely on any single performance of an individual athlete in any single real-world sporting or other event.

31 U.S.C. § 5362 (1)(E)(ix) (2012).

134. See Dustin Steiner, *Paypal Lays Down the Law on ESports Payments*, PVPLIVE (July 29, 2016), <https://pvplive.net/c/paypal-lays-down-the-law-on-esports-payments>. The daily fantasy industry faced a challenge when payment processor Vantiv withdrew from processing daily fantasy transactions following a growing list of states that viewed the activity as constituting illegal gambling. See Joe Drape, *Payment Processor to Stop Working with Daily Fantasy Sports Clients*, N.Y. TIMES (Jan. 29, 2016), <http://www.nytimes.com/2016/01/30/sports/draftkings-fanduel-vantiv-daily-fantasy.html>.

135. See Order Prohibiting the Listing or Trading of Political Event Contracts, Commodity Futures Trading Comm'n, (Apr. 2, 2012), <http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/nadexorder040212.pdf>.

136. *Id.*

137. For instance, the mail fraud statute states:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange,

Instances where esports gambling sites have failed to disclose conflicts of interest in ownership or manipulate contests could potentially invoke the powerful mail and/or wire fraud statutes.

At the state level, at least two categories of laws could attach in the esports betting space. First, numerous states have anti-bookmaking statutes. For example, Washington State regulators recently enforced its bookmaking statute in the case of *Betcha.com*.<sup>138</sup> Like some esports betting portals, *Betcha.com* described itself as a “person to person betting platform.”<sup>139</sup> In a ruling with broad implications for operators with a presence in the Evergreen State, the Washington Supreme Court held that: “Because bookmaking alone may constitute professional

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alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

See 18 U.S.C. § 1341 (2012);

The federal wire fraud statute states:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

See 18 U.S.C. § 1343 (2012).

138. *Internet Cmty. & Entm't Corp. v. Wash. St. Gambling Comm'n*, 238 P.3d 1163, 1168 (Wash. 2010).

139. *Id.*



gambling under the statute, we need not address whether Betcha or its users were also engaged in ‘gambling’ as that term is defined.”<sup>140</sup>

Second, many states regulate or ban pooled money being used as prize money for competitions. With many esports tournaments featuring prize pools in the millions, the source of such pools could implicate various state laws. While nascent esports pools have yet to be scrutinized specifically, North Dakota,<sup>141</sup> Massachusetts,<sup>142</sup> Florida,<sup>143</sup> and Nevada<sup>144</sup> have all analyzed the legality of competition payouts via prize money pools.

#### V. FOREIGN JURISDICTIONS’ ESPORTS LAWS AND POLICY CONSIDERATIONS

Internationally, various countries’ regulators have become aware of the growth of esports and the emergence of consumer protection issues arising out of a lack of oversight.<sup>145</sup> Calvin noted that in the United Kingdom, both the UK Gambling Commission and the Department for Culture, Media and Sport have examined the industry.<sup>146</sup> Indeed, the UK Gambling Commission’s annual report for 2015/16 noted: “[t]he growing market in esports and computer gaming has scope to present issues for regulation and player protection-issues which are being examined by gambling regulators in other international markets.”<sup>147</sup> The UK Gambling Commission’s recognition of esports gambling as an emerging gambling product represents a substantial proactive step; however, as noted by Wood, the UK is presently at the beginning stages of recognizing the potential of the esports market.<sup>148</sup> Wood further observed that the future

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140. *Id.* at 1167.

141. Letter from Heidi Heitkamp, N.D. Att’y Gen., Letter Op. 94-L-298, to Andrew Maragos, Rep., H.R. (Nov. 1, 1994).

142. MASS. GAMING COMM’N, White Paper on Daily Fantasy Sports (Jan. 11, 2016).

143. FLA. ATT’Y GEN. OP. 90-58 at 1 (July 27, 1990); FLA. ATT’Y GEN. OP. 91-03 at 1 (Jan. 8, 1991); FLA. ATT’Y GEN. OP. 94-72 at 1 (Aug. 23, 1994).

144. NEV. ATT’Y GEN. MEMO., LEGALITY OF DAILY FANTASY SPORTS UNDER NEVADA LAW at 1 (Oct. 16, 2015).

145. See Alex Calvin, *Does Esports Need Regulation?*, THE MKT. FOR COMPUTER & VIDEO GAMES (July 29, 2016, 11:57 AM), <http://www.mcvuk.com/news/read/does-esports-need-regulation/0170439>.

146. *Id.*

147. Sarah Harrison, *Annual Report & Financial Statements 2015/16*, U.K. GAMBLING COMMISSION at 11 (2016), <http://www.gamblingcommission.gov.uk/pdf/Annual-report-and-accounts-2015-16.pdf>.

148. See Joss Wood, *UK Gambling Commission: We’ll Work to Minimize Risks from Emerging Esports Betting Markets*, ESPORTS BETTING REP. (July 19, 2016),

regulatory landscape of esports in the UK will likely involve input from various private esports operators; however, these groups may have competing interests.<sup>149</sup> The UK Gambling Commission also acknowledged that they had knowledge of skin betting and would take action if British players were invited to gamble on licensed sites.<sup>150</sup> While the UK attempts to decide how to regulate esports, France has taken steps to create the France esports federation.<sup>151</sup>

In November 2015, France took preliminary steps to classify esports as a sport.<sup>152</sup> As the process is underway for the formal recognition of esports under French law, the France esports federation was launched as the representative voice of the national esports community and as a “partner of the French National Olympic and Sports Committee.”<sup>153</sup> While the federation appears to provide a voice to the French esports community, Auxent noted that the federation possesses no power and is essentially a lobbying group.<sup>154</sup> Kint and Ledure observed that the French regulatory and legal framework needs to provide clarity and protect against outside threats.<sup>155</sup> Kint and Ledure noted that without government clarification esports contests would be classified as illegal lotteries under French law.<sup>156</sup> In addition to the

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<http://www.esportsbettingreport.com/uk-regulators-address-esports-betting/>.

149. *Id.*

150. See Scott Longley, *Skin Betting of Increasing Interest to UK Regulators, Operators, and Industry Monitors*, ESPORTS BETTING REP. (May 16, 2016), <http://www.esportsbettingreport.com/uk-considers-skin-betting-regulation/>. Indeed, the Isle of Man, a British Crown dependency, through its Gambling Supervision Commission has amended gaming regulations to allow for skin betting. Joss Wood, *Good News For Skin Betting, As Isle of Man Amends Gaming Regulations to Allow It*, ESPORTS BETTING REP. (Feb. 21, 2017), <http://www.esportsbettingreport.com/isle-man-amends-gaming-regulations-allow-skin-betting/>.

151. Adrien Auxent, *All You Need to Know About France’s New Esports Federation*, ESPORTS OBSERVER (Apr. 28, 2016), <http://esportsobserver.com/need-know-frances-new-esports-federation-france-esports/>.

152. See Adrien Auxent, *The French Government Recognizes Esports, but Who Gets to Decide What Esports Is?*, ESPORTS OBSERVER (Nov. 15, 2015), <http://esportsobserver.com/the-french-government-recognizes-esports-but-who-gets-to-decide-what-esports-is/>.

153. Auxent *supra* note 152.

154. *Id.*

155. See Arnaut Kint & Sebastien Ledure, *Esports: The French Quest For A Legal Framework*, WORLD SPORTS L. REP. (July 2016).

156. France applies a strict test for determining whether an activity is a lottery, according to Kint and Ledure the test involves: “(i) a public offer, (ii) hope of a gain, (iii) financial contribution from players and (iv) presence of an element of hazard.” See *id.* As described by Kint and Ledure, the definition of lottery in France appears to be the equivalent of the “any chance” test, which is applied in a minority of U.S. jurisdictions, and is regarded as the most stringent test for classifying an activity as not gambling, because even skill-based activities

gambling connotation, the authors noted that absent government oversight, professional esports players may not receive protections that other professional athletes receive.<sup>157</sup> The French Ministry of the Economy and Finance released a report noting that France is the world's seventh largest esports market.<sup>158</sup> The government report recommended clarification on the noted lottery issue, in addition to protection for children, and appropriate recognition for professional players including a visa program to attract international players to French competitions.<sup>159</sup>

While France and the UK progress towards regulation, the country with the most developed esports infrastructure is South Korea, regularly broadcasting esports on mainstream television.<sup>160</sup> The South Korean government formed the Korean Esports Association to oversee the industry.<sup>161</sup> Jung noted that the government support in South Korea for esports coupled with cheap and widely available broadband internet have been the two factors most important to the activity's growth in the country.<sup>162</sup> The Korean Esports Association is embedded within the South Korean Ministry of Culture, Sports and Tourism and has the authority to license and regulate professional gamers, teams, and certain businesses that are associated with esports broadcasting.<sup>163</sup> While esports governance is most advanced in South Korea, the state gambling monopoly does not offer esports betting, driving the practice underground and contributing to the estimated \$14-25 billion wagered illegally each year.<sup>164</sup>

The Canadian province of Quebec, launched an esports betting offering for the first time on August 11, 2016 through the provincial

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possess some element of chance. Anthony Cabot, et al., *Alex Rodriguez, A Monkey, and the Game of Scrabble: The Hazard of Using Illogic to Define the Legality of Games of Mixed Skill and Chance*, 57 DRAKE L. REV. 383, 393 (2008).

157. See Kint & Ledure, *supra* note 156.

158. See Rudy Sales & Jerome Durain, *E-Sport La Pratique Competitive Du Jeu Video*, MINISTERE DE L'ÉCONOMIE, DE L'INDUSTRIE ET DU NUMÉRIQUE at 2 (Mar. 2016).

159. *Id.* at 4.

160. See Jorge Albor, *Why Korea Is Set to Dominate 'Overwatch' Esports*, FANDOM (June 29, 2016), <http://fandom.wikia.com/articles/korea-set-dominate-overwatch-esports>.

161. See Paul Mozur, *For South Korea, E-sports Is National Pastime*, N.Y. TIMES (Oct. 19, 2014), [http://www.nytimes.com/2014/10/20/technology/league-of-legends-south-korea-epicenter-esports.html?\\_r=0](http://www.nytimes.com/2014/10/20/technology/league-of-legends-south-korea-epicenter-esports.html?_r=0).

162. See Daniel Jung, *Olswang on eSports: Lessons from South Korea*, OLSWANG (Mar. 2, 2016), <http://www.olswang.com/articles/2016/03/olswang-on-esports-lessons-from-south-korea/>.

163. *Id.*

164. *Id.*

lottery Loto-Quebec.<sup>165</sup> Lottery administrators noted that there would be future offerings on esports, marking an opportunity for Quebec residents to gamble in an environment with clear regulation.<sup>166</sup> Quebec is the home of various online gambling providers, but the move to offer esports betting in a regulated market is still progressive for a North American market.<sup>167</sup> Hincer noted that many of Canada's gaming laws are designed for land-based casinos and they may stifle technological advances, while at the same time leaving individuals without sufficient protection.<sup>168</sup> The move by Quebec, however, comes at a time when a Quebec government working group has suggested that all private gambling sites should be available only through "a governmental website/portal," which would be the gate keeper allowing only those private companies with appropriately issued licenses to be accessible to residents.<sup>169</sup>

While countries such as the UK, France, Korea, and Canada (Quebec) have begun exploring ways of regulating various components of the esports industry and related gambling market, other regions are choosing to ban the gambling aspects. For instance, the government of South Australia announced its decision to ban esports betting, citing concerns about the risk of children becoming addicted to the activity.<sup>170</sup> A variety of other countries have laws that could potentially be implicated in esports betting and/or corruption. For example, in China it is a criminal act to organize gambling activity,

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165. See Joss Wood, *Regulated Esports Betting Now Available from Loto-Quebec*, ESPORTS BETTING REP. (Aug. 15, 2016), [http://www.esportsbettingreport.com/loto-quebec-esports-betting-service/?utm\\_content=buffer66e9&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](http://www.esportsbettingreport.com/loto-quebec-esports-betting-service/?utm_content=buffer66e9&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer).

166. *Id.*

167. *Id.*

168. See Ilkim Hincer, *A World of Change, The Future of Gaming Regulation*, CANADIAN GAMING LAW, Summer 2016, at 8, 9.

169. See Johnny Jaswal, *The Illegality of Current Gambling Laws in Canada and the Vince Carter Trade – Views from the 6*, CALVIN AYRE (Mar. 14, 2016), <http://calvinayre.com/2016/03/14/business/the-illegality-of-current-gambling-laws-in-canada/>. For additional discussion of online gambling in Canada see Ryan M. Rodenberg & John T. Holden, *A Sure Thing? Online Gaming and Canada*, 3 PACE INTELL. PROP. SPORTS AND ENT. L. F. 98 (2013).

170. See Joss Wood, *South Australia Gets Cold Feet About Esports Betting and Bans It*, ESPORTS BETTING REP. (Aug. 9, 2016, 6:48 AM), <http://www.esportsbettingreport.com/south-australia-prohibits-betting-esports/>; see also John Rau, *New Frontier Against Problem Gambling*, News Releases John Rau –Government of S. Austl. (Aug. 5, 2016), <http://www.premier.sa.gov.au/index.php/john-rau-news-releases/970-new-frontier-against-problem-gambling> (noting that "[t]here is very little research on eSports betting and the potential dangers, especially to children and young people").

which may limit opportunities for individuals to wager.<sup>171</sup> Germany has relied on fraud statutes to prosecute those suspected of betting-related match fixing and could potentially attempt to utilize the same statutes to target esports match fixers.<sup>172</sup> The classification of esports as a sport would potentially implicate sport fraud statutes in the Italian penal code that specifically apply to individuals who undertake to manipulate a sporting event.<sup>173</sup> The Criminal Code of Canada includes a provision that prohibits cheating in betting where there is an intent to defraud.<sup>174</sup> In addition to the noted countries and specific statutory provisions that may be applicable to combat corruption in esports, a number of other countries rely on various fraud, bribery, and gambling statutes that could be potentially implicated in the esports context.<sup>175</sup>

## VI. VIRTUAL CURRENCY

Moving forward, an important issue in attempting to determine the proper regulatory approach to combating corruption in esports will be what sort of treatment courts will afford the skins, which fuel the skins gambling industry. While Bitcoin is the most visible and prominent form of virtual currency, with transactions exceeding \$575,000,000 USD on a daily basis, other virtual items such as skins are raising additional challenges for a banking and regulatory system that is seemingly unprepared for a technological shift.<sup>176</sup> The U.S. Treasury has defined a virtual currency as “a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency.”<sup>177</sup> Amongst the cited benefits of Bitcoin and other virtual currencies such as Ether is the anonymity for users, which has also likely caused some governments to ban the user-generated currency.<sup>178</sup> Other countries have taken different approaches, such as the UK, which stated that Bitcoins are unregulated and subject

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171. See John T. Holden & Ryan M. Rodenberg, *Lone-Wolf Match-Fixing: Global Policy Considerations*, INT’L J. OF SPORT POL’Y & POL. 1, 6 (2016).

172. *Id.*

173. *Id.*

174. *Id.*; see also Criminal Code of Canada RSC 1985 Sec. 209.

175. See generally Holden & Rodenberg *supra* note 171.

176. For a background discussion of Bitcoin, see Kevin V. Tu & Michael W. Meredith, *Rethinking Virtual Currency Regulation in the Bitcoin Age*, 90 WASH. L REV. 271 (2015).

177. See *id.* at 277 note 36 (quoting DEP’T OF THE TREASURY, FIN. CRIMES ENFORCEMENT NETWORK, FIN-2013-G001, APPLICATION OF FINCEN’S REGULATIONS TO PERSONS ADMINISTERING, EXCHANGING, OR USING VIRTUAL CURRENCIES (2013)).

178. See Tu & Meredith, *supra* note 176.

to value-added taxation.<sup>179</sup>

Greebel and others observed: “[r]ather than trying to stifle or control virtual currencies, U.S. governmental entities recognize the long-term value of virtual currencies and are trying to create a regulatory regime to foster growth and development, and an atmosphere where institutional and retail investors are protected.”<sup>180</sup> Conversely, Tu and Meredith note that under U.S. federal law virtual currency exists in something of a regulatory black hole.<sup>181</sup> Two states, Kansas and Texas, have issued pronouncements that virtual currencies such as Bitcoin have no monetary value.<sup>182</sup> A Florida Circuit Court has similarly found that Bitcoins do not meet the statutory definitions of monetary instrument for a money laundering conviction.<sup>183</sup>

Three U.S. federal courts have recently examined cases involving virtual items. The first decision was issued by the U.S. District Court for the District of Maryland on October 20, 2015.<sup>184</sup> In *Mason*, the court ruled that the plaintiff’s virtual losses were not manifested in the real-world.<sup>185</sup> The plaintiff played the mobile game *Game of War* (GoW). In the game, there is a virtual casino where players can pay for spins of a virtual wheel game in hopes of winning an in-game prize.<sup>186</sup> The plaintiff claimed that she lost approximately \$100 in the GoW virtual casino over the course of a year.<sup>187</sup> The court held that by purchasing spins of the GoW wheel with virtual gold “the plaintiff was not wagering with *dollars*; she was playing with *virtual gold* (emphasis in original).<sup>188</sup> The gold purchased in the gold-store was issued for entertainment purposes through a revocable license; however, the court noted that while she could spend the gold in game she was not

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179. *Id.* at 302.

180. Evan L. Greebel, et al., *Recent key Bitcoin and virtual currency regulatory and law enforcement developments*, 16 J. OF INVESTMENT COMP. 13 (2015).

181. Tu & Meredith, *supra* note 176 at 306.

182. *Id.* at 308. Although as noted by Tu and Meredith, in perhaps some form of irony, the U.S. District Court for the Eastern District of Texas held that Bitcoin is a form of currency, and a scheme involving attempts to defraud individuals transacting in Bitcoin was subject to the laws of the SEC. *See id.* at 309 *citing* *SEC v. Shavers*, No. 4:13-cv-00416, 2013 WL 4028182, at 2 (E.D. Tex. Aug. 6, 2013).

183. *See* Order Granting Defendant’s Motion To Dismiss the Information, *State v. Espinoza*, No. F14-2923, 6 (Fla. Cir. Ct. July 22, 2016).

184. *See* *Mason v. Mach. Zone, Inc.*, 140 F. Supp. 457 (D. Md. 2015).

185. *Id.* at 459.

186. *Id.* at 460.

187. *Id.* at 460.

188. *Id.* at 465.

able to “cash out” in the game.<sup>189</sup>

The second virtual currency case originated in the Western District of Washington.<sup>190</sup> The plaintiff sought recovery under Washington’s gambling loss recovery statute for losses suffered in the virtual game *Big Fish Casino*.<sup>191</sup> Visitors to the virtual casino can play for, or purchase, additional chips to play games at the casino.<sup>192</sup> Similar to the plaintiff in *Mason*, the court noted that the plaintiff in *Kater* did not suffer a loss of a “thing of value,” noting that the chips in the casino cannot be exchanged for cash or merchandise, and therefore the plaintiff’s claim was outside the scope of the Washington gambling loss recovery statute.<sup>193</sup> The plaintiff further argued that the chips could be exchanged on the secondary market for cash and therefore are things of value; however, the exchange violated the terms of use associated with the game, and the court concluded that allowing a plaintiff to sue based on the plaintiff’s own breach of contract “would be contrary to basic principles of law and equity.”<sup>194</sup>

The third in the examined trilogy of virtual currency cases originated in the North District of Illinois.<sup>195</sup> The Double Down Casino in *Phillips* operated similarly to the Big Fish Casino in *Kater*, with users being able to play for free with virtual chips in a virtual casino, but users also had the ability to purchase additional chips.<sup>196</sup> The Double Down chips could not be exchanged for cash, nor could they be cashed out for physical items.<sup>197</sup> While players could cash out their chips through an unaffiliated Double Down market, such transfers violate the game’s terms of service.<sup>198</sup> The court noted that the plaintiff was not a loser in the traditional gambling sense, because buying virtual chips was only buying the right to continue playing the games,

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189. *Id.*

190. *See Kater v. Churchill Downs Inc.*, No. C15-612 MJP, 2015 WL 9839755 (W.D. Wash. Nov. 19, 2015).

191. *Id.* at 1.

192. *Id.* at 1.

193. *Id.* at 4.

194. *Id.* at 2, 4.

195. *See Phillips v. Double Down Interactive LLC*, No. 15 C 04301, 2016 WL 1169522 (N.D. Ill. Mar. 25, 2016).

196. *Id.* at \*4.

197. *Id.* at \*5.

198. *Id.* Interestingly, while not allowing the exchange of virtual currency for physical currency, the court notes that Double Down reported revenue of over \$280 million in 2014, which the court observed appears to be exclusively from the sale of virtual chips, *id.* at n.4.

not a form of a wager.<sup>199</sup> It is unclear how or if these three cases would apply in the case of skin gambling, where the skin marketplace that facilitates the transfer of virtual items is operated by the company who manufactures the game.<sup>200</sup> In the case of skin wagering, while Steam is a subsidiary of Valve and operates the skins' marketplace, it does not operate the third-party skin-to-physical currency exchange.<sup>201</sup>

Internationally, there appears to be similar confusion as to what status to afford virtual currencies, though the idea of denationalizing money is not a new concept.<sup>202</sup> The International Monetary Fund (IMF) acknowledges that the historical conceptualization of money, being associated with the rights sovereign governments maintain to regulate the mediums of exchange within their borders, does not fit with the current emergence of virtual currencies.<sup>203</sup> The IMF argues that presently virtual currencies (VC) do not fulfill "the three economic roles associated with money": "(1) High price volatility of VCs limits their ability to serve as a reliable store of value."<sup>204</sup> (2) "The current small size and limited acceptance network of VCs significantly restricts their use as a medium of exchange."<sup>205</sup> (3) "As of now, there is little evidence that VCs are used as an independent unit of account."<sup>206</sup> While the three factors cited by the IMF are not presently demonstrable in virtual currencies, the market continues to evolve. Additionally, the IMF does not bind any country or court; as such, to deduce that skins or any other form of virtual currency are not the same as physical currency would be ill-advised.

The question of whether skins constitute currency or are a commodity may have different solutions in differing jurisdictions. However, in contrast to the virtual casino cases, the Steam marketplace seemingly acknowledges that skins may be bought and sold on the marketplace, though funds cannot be withdrawn through the Steam

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199. *Id.* at \*9.

200. *See Community Market*, STEAM, <https://steamcommunity.com/market/> (last visited Oct. 20, 2016).

201. *See, e.g., Frequently Asked Questions*, SKINEXCHANGE, <https://skinexchange.com/> (last visited Oct. 20, 2016).

202. *See DONG HE ET AL., VIRTUAL CURRENCIES AND BEYOND: INITIAL CONSIDERATIONS*, 11 (2016), <https://www.imf.org/external/pubs/ft/sdn/2016/sdn1603.pdf> (noting Friedrich Hayek proposed denationalizing in the 1970s).

203. *Id.* at 16.

204. *Id.* at 17.

205. *Id.*

206. *Id.*



marketplace.<sup>207</sup> From a public policy perspective, it is likely undesirable to allow a highly regulated practice to flourish in an opaque market. However, the challenges with applying real world laws to virtual worlds is one that courts are likely going to have to address for the foreseeable future.<sup>208</sup>

## VII. INTEGRITY SCANDALS

The biggest scandal in esports arguably unfolded in October 2015, when South Korean investigators arrested twelve people in association with five fixed StarCraft 2 matches.<sup>209</sup> The scandal allegedly allowed the orchestrators to win \$37,000 by exploiting the illegal betting market through payments to three players.<sup>210</sup> While

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207. See *Community Market FAQ*, STEAM, [https://support.steampowered.com/kb\\_article.php?ref=6088-UDXM-7214](https://support.steampowered.com/kb_article.php?ref=6088-UDXM-7214) (lasted visited Oct. 20, 2016).

208. See generally Jon M. Garon, *Playing in the Virtual Arena: Avatars, Publicity, and Identity Reconceptualized Through Virtual Worlds and Computer Games*, 11 CHAP. L. REV. 465 (2008). Courts have been tasked with addressing virtual disputes since early in the development of online gaming. For instance, in the early 2000s a group started a company that employed unskilled laborers to sit at computers in Tijuana training and developing virtual characters that could later be sold for up to \$200. Julian Dibbell, *Serfing the Web: Black Snow Interactive and the World's First Virtual Sweat Shop* (January 2003), <http://www.juliandibbell.com/texts/blacksnow.html>. In response, the game operator Mythic Entertainment banned the accounts associated with the characters being sold; this launched an early discussion as to who is the rightful owner of virtual items. *Id.* Professor James Grimmelmann noted that the online game *Second Life* allows users to purchase plots of land, which can also be transferred amongst other game participants. James Grimmelmann, *Virtual World Feudalism*, 118 YALE L. J. PKT. PART 126, 126-27 (2009). Virtual property in *Second Life* was the subject of a 2007 lawsuit in the Eastern District of Pennsylvania. *Bragg v. Linden Research, Inc.*, 487 F. Supp. 2d 593, 596 (E.D. Pa. 2007). The dispute arose when the plaintiff acquired virtual land for below the virtual fair market value through what the game maker termed an “exploit.” *Id.* at 597. The game maker subsequently suspended the plaintiff’s account who then filed suit. *Id.* The parties would subsequently settle prior to a resolution on the merits. See *Second Life: Settlement in Bragg v. Linden*, US LEGAL (Oct. 10, 2007), <http://blog.uslegal.com/2007/10/10/second-life-settlement-in-bragg-v-linden/>.

209. Brendan Sinclair, *12 Arrested in Esports Match Fixing Scandal – Report*, GAMESINDUSTRY (Oct. 19, 2015, 2:12 PM), <http://www.gamesindustry.biz/articles/2015-10-19-12-arrested-in-esports-match-fixing-scandal-report>.

210. *Id.* The gambling market is victimized in some match-fixing situations by virtue of the fact that the market is theoretically meant to have a price set such that it attracts an equal amount of bets (in monetary value) on each side of the wager, allowing the bookmaker to then make money off the vigorish (a type of commission). In gambling-related match-fixing situations the fixers typically are able to make bets at an attractive market price because the odds reflect the bookmaker’s belief that the price is informed by the bookmakers’ expert knowledge. Match-fixing creates a situation where the fixer is betting with non-public information, or greater knowledge than the bookmaker, and therefore is able to exploit a market price that does not reflect all information. For additional information on the structure of gambling markets see Steven D. Levitt, *Why Are Gambling Markets Organized So*

match fixing has resulted in some of the most prominent scandals to affect esports, the industry has seen its share of growing pains with other scandals including sexism, use of banned competitors, doping, and agreements to split prize pools.<sup>211</sup>

The esports match-fixing scandals are becoming more prominent. Durrani reported in April 2016 that twenty-one CS:GO players had been accused of being complicit in match fixing dating back to 2015.<sup>212</sup> Durrani observed that match fixing scandals have also rocked the game community surrounding DOTA 2, noting that in 2013 a Russian player threw a match in order to win a bet of \$322; since that time, the number 322 has become synonymous with match-fixing in the industry.<sup>213</sup> Richmond wrote that the pressures of short careers on esports competitors may contribute to a willingness to manipulate the outcomes of matches, observing that some esports athletes retire as young as nineteen years old, and they have little opportunity to remain involved in the activity following the end of their playing careers.<sup>214</sup> While match-fixing scandals involving players have become the focus of recent attention, the practice is not confined directly to those competing.<sup>215</sup> MBC, a Korean esports broadcaster, undertook modifying some game maps in the game Warcraft III in order to have a more competitive competition.<sup>216</sup> The in-game match-fixing scandals have been exacerbated by a series of seemingly unbelievable scandals in the esports gambling market.

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*Differently from Financial Markets*, 114 ECON. J. 223 (2004).

211. See *5 Biggest Esports Scandals*, BETMINDED (2016), <http://www.betminded.com/5-biggest-esports-scandals-27320.html>; see also Kevin Loria, *Some competitive video gamers are abusing drugs to get an edge*, BUS. INSIDER (Jan. 15, 2016, 3:44 PM), <http://www.businessinsider.com/esports-doping-scandal-investigated-by-espns-otl-2016-1>.

212. Aurangzeb Durrani, *Match-Fixing Comes to the World of E-Sports*, TECHCRUNCH (Apr. 23, 2016), <https://techcrunch.com/2016/04/23/match-fixing-comes-to-the-world-of-esports/>.

213. *Id.*

214. Ben Richmond, *When it Comes to Gambling Scandals, Esports Are Just Like Regular Sports*, VICE MOTHERBOARD (Jan. 28, 2015), <http://motherboard.vice.com/read/when-it-comes-to-gambling-scandals-esports-are-just-like-regular-sports>.

215. Callum Leslie, *MOE's Future with Turner's ELEAGUE in Doubt Amid Gambling Scandal*, THE DAILY DOT (June 20, 2016, 5:56 PM), <http://www.dailydot.com/esports/m0e-gambling-eleague/>.

216. Alex Whiteman, *A Short History of Match-Fixing in Esports*, ESPORTS BETS (May 10, 2016), <http://www.esportsbets.com/2255/esports-match-fixing-prevalence-history/>; see also KidArtica, *MBC Map Scandal Update*, SK-GAMING (Mar. 2, 2005), [http://www.sk-gaming.com/content/9111-MBC\\_Map\\_Scandal\\_Update](http://www.sk-gaming.com/content/9111-MBC_Map_Scandal_Update); see also *MBC Map Scandal*, TEAMLIQUID, [http://wiki.teamliquid.net/warcraft/MBC\\_Map\\_Scandal](http://wiki.teamliquid.net/warcraft/MBC_Map_Scandal) (last modified June 30, 2016).

Examples of recent scandals highlight issues of lack of transparency on the part of gambling sites as well as potential conflicts of interest. For example, CS:GO player “MoE” was sponsored by casino style skin-betting site CS:GO Diamonds, and in exchange for compensation, MoE would broadcast his gambling on the site. In a related scandal, CS:GO Lotto, became embroiled in a scandal when it was revealed that two popular esports professionals had an equity stake in the site, which was not revealed in videos showing the players winning on the site.<sup>217</sup> These gambling sites lacked transparency and expanded the scope of likely conflicts of interest within the industry.<sup>218</sup>

While corruption has plagued both the esports games themselves and the integrity of the gambling market, the lack of central governance may be condoning the use of performance enhancing drugs. In January 2016, ESPN Outside the Lines ran a feature on the doping problem currently emerging in esports.<sup>219</sup> The drugs of choice in esports are nootropics, or drugs designed to boost cognitive function.<sup>220</sup> Professional CS:GO player Kory “Semphis” Friesen was quoted as saying “we are all on Adderall.”<sup>221</sup> The doping scandal led to esports league ESL implementing random drug screening of competitors.<sup>222</sup> ESL noted that it views doping as the equivalent to other forms of cheating including match-fixing, and violators of the league’s drug policy would receive equivalent punishments to other forms of cheating.<sup>223</sup> In April 2016, it was noted that no ESL player

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217. See Leonardo Postrado, *Youtube Esports Star Issues Non-Apology Over Skin Betting Scandal*, CALVIN AYRE (July 7, 2016), <http://calvinayre.com/2016/07/07/business/youtube-esports-star-issues-non-apology-over-skin-betting-scandal/>.

218. For a more detailed discussion of the MoE CS:GO Lotto affair see Will Green, *Skin Gambling Site CSGO Diamonds: We Told Sponsored Player In Advance When He Would Win*, ESPORTS BETTING REP. (June 13, 2016, 2:23 PM), <http://www.esportsbettingreport.com/csgo-diamonds-skin-betting-m0e/>.

219. See Kevin Loria, *Some Competitive Video Gamers Are Abusing Drugs To Get An Edge*, TECHINSIDER (Jan. 15, 2016, 3:44 PM), <http://www.techinsider.io/esports-doping-scandal-investigated-by-espns-otl-2016-1>.

220. See Ryan M. Rodenberg & John T. Holden, *Cognition Enhancing Drugs (‘Nootropics’): Time to Include Coaches and Team Executives in Doping Tests?* BRIT. J. OF SPORTS MED. (Jan. 25, 2016), <http://bjsm.bmj.com/content/early/2016/01/25/bjsports-2015-095474.full>.

221. See Hugh Langley, *Sex, Drugs and Counter-Strike: eSports is Fighting its Demons*, TECHRADAR (Apr. 1, 2016), <http://www.techradar.com/us/news/gaming/sex-drugs-and-counter-strike-esports-is-fighting-its-demons-1318109>.

222. Evan Lahti, *After Drug Scandal, ESL Says “Esports Needs to Mature,”* PC GAMER (July 24, 2015), <http://www.pcgamer.com/after-drug-scandal-esl-says-esports-needs-to-mature/>.

223. *Id.* See also Rob Crossley, *ESL Reveals Plan to Clean Up Doping, Corruption, and Cheating in Esports*, GAMESPOT (May, 13, 2016), <http://www.gamespot.com/articles/esl->

had yet returned a positive test.<sup>224</sup> Langley wrote that amongst the strategies to deter doping are contractual morals clauses that would allow for termination of an individual caught doping from sponsorship and playing contracts.<sup>225</sup> While randomized drug testing may catch some drug users, given the short time that the drug is detectable in an individual's system, it is likely that advanced doping regimes may be able to defeat the testing programs.<sup>226</sup>

The corruption scandals facing the esports industry are similar to those being faced by other sports. Both doping and match-fixing have had a substantial impact on international sport.<sup>227</sup> Similarly the corruption facing the esports gambling industry is not unprecedented nor is the growth of the gambling industry seemingly outpacing the industry that supports it.<sup>228</sup> The continued success of the esports industry will likely require some form of overarching governance across various titles capable of representing the interests of the industry to various law making bodies. The idea of attempting to continue with reactionary responses to scandals previously present in other sports would not be viewed favorably by lawmakers, who will likely lack the technical expertise to fully appreciate the intricacies of the industry.

Amongst the challenges with the international regulation and governance of esports are several aspects. Firstly, the industry is still in growth stages, there are presently a number of national and international organizations that are competing for recognition; however, to date no all-encompassing organization has emerged in the form of Olympic-style governing bodies akin to other more traditional

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reveals-plan-to-clean-up-doping-corruption-and/1100-6439781/.

224. See Langley, *supra* note 221. One of the critiques of various sports drug testing programs is that "they were more like discipline tests, IQ tests. If you were careful and paid attention, you could dope and be 99 percent certain that you would not get caught." Henry Abbott, *The Gaps in NBA Drug Testing*, ESPN (Jan. 11, 2013), [http://www.espn.com/blog/truehoop/post/\\_id/51305/gaps-in-nba-drug-testing](http://www.espn.com/blog/truehoop/post/_id/51305/gaps-in-nba-drug-testing).

225. See Langley, *supra* note 221.

226. The presence of Adderall is estimated to be detectable in saliva (ESL uses oral swabs for drug testing) for seventy-two hours. See *Adderall and Drug Tests: What Drug Adderall Really Comes Up As In A Test*, HOME HEALTH TESTING (Mar. 9, 2010), <http://www.homehealthtesting.com/blog/2010/03/adderall-and-drug-tests-what-drug-adderall-really-comes-up-as-in-a-test/>. See James Pavisian, *The Case for Human Ingenuity: How Adderall has Sullied the Game*, 48 WASHBURN L. J. 175, 205 (2008), for a discussion of the benefits and drawbacks of salivary testing.

227. See generally DECLAN HILL, *THE INSIDER'S GUIDE TO MATCH-FIXING IN FOOTBALL* (2014), for a background discussion on the impact of match fixing.

228. See, e.g., Ryan M. Rodenberg & Anastasios Kaburakis, *Legal and Corruption Issues in Sports Gambling*, 23 J. LEGAL ASPECTS OF SPORT 8 (2013).

sports.<sup>229</sup> Secondly, there is a challenge of attempting to put the disruptive technologies of esports into the model that has traditionally been used for sports. For instance, esports broadcasting is typically encountered online through platforms such as Twitch and Youtube; through these forums many different broadcasters can all be watching and describing the same esports event allowing viewers to choose their favorite broadcaster.<sup>230</sup> This form of broadcasting changes one of the more lucrative parts of traditional international sports competitions, the national-level sale of broadcast rights. Thirdly, a challenge facing the governance of esports is that game preference changes over time, some games fall out of favor, and while this has happened with some sports at the Olympics and other competitions, in esports the changes appear magnified given the relatively recent emergence of the activity. It is likely that once various countries show a sustained ability to produce top level talent, then the feasibility of international governance of the activities will become more stable; but at the moment the industry is still in its initial stages of seeing where it fits within existing models. The one aspect of the industry that appears to clearly fit transnational models is corruption; gambling, match-fixing, and doping. While it is uncertain how exactly esports will continue to develop on an international stage, it is necessary that efforts to preempt esports corruption begin with international cooperation, given the portability and intangibility of the emerging gambling markets that have fueled nefarious behavior.

## CONCLUSION

Future regulation of the esports industry is inevitable if the games are going to take the next step towards being recognized alongside other more traditional sports.<sup>231</sup> Various multinational groups are attempting to move the esports industry towards better regulations. For

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229. See Andrew Visnovsky, *Growth of Esports: Regulatory Concerns*, SPORTS INTEGRITY INITIATIVE (Dec. 16, 2015), <http://www.sportsintegrityinitiative.com/growth-of-esports-regulatory-concerns/>

230. See Mary-Ann Russon, *What is Twitch and How do I Make Money From It?* IBTIMES (Feb. 11, 2014), <http://www.ibtimes.co.uk/what-twitch-how-do-i-make-money-it-1435874>.

231. See generally Robert Silverman, *Why Regulating the Billion-dollar Esports World is Nearly Impossible*, THE WEEK (Aug. 16, 2016), <http://theweek.com/articles/635530/why-regulating-billion-dollar-esports-world-nearly-impossible>; Tricia Duryee, *ESports Wagering Estimated to Hit \$23.5B by 2020, Generating Revenues of \$1.8B Worldwide*, GEEKWIRE (Sept. 9, 2015, 10:23 AM), <http://www.geekwire.com/2015/esports-wagering-estimated-to-hit-23-5b-by-2020-generating-revenues-of-1-81b-worldwide/>; Kane Fulton, *The Beautiful Aim: Can WESA Fix eSports?*, TECHRADER (May 17, 2016), <http://www.techradar.com/news/gaming/the-beautiful-aim-can-wesa-fix-esports-1321511>.

example, the Esports Integrity Coalition has proposed various standardized policies for esports leagues to adopt.<sup>232</sup> Silverman observed that as a non-profit startup the Esports Integrity Coalition may not have the necessary resources to provide oversight to multiple esports leagues.<sup>233</sup> In addition to the Esports Integrity Coalition, there is also the World Esports Association, supported by multiple organizations with the objective of advocating on behalf of players, though within two weeks of launching, FaZe Clan left the Association citing a lack of transparency.<sup>234</sup> Additionally, there is the World Esports Council, which launched in 2015 and seeks to provide “an overarching governing body.”<sup>235</sup> In addition to multinational groups, there are also groups that have been formed to specifically address issues related to British and French esports industries.<sup>236</sup>

According to Green, regulation of the industry and appointment of a unifying governing body may serve several functions for advancing esports.<sup>237</sup> Success of an overarching esports governance structure will likely require a large number of organizations coming together while delegating some rule making authority from their respective organizations.<sup>238</sup> However, the most important role that a regulatory body may have is its advocacy to governments.<sup>239</sup> In addition to demonstrating to lawmakers a sense of legitimacy, a respected governing body with regulatory teeth may be able to assert to lawmakers that the industry is capable of self-regulation and does not require governmental intervention. While the future success of esports will include numerous challenges, it has arguably survived to make it to those future discussions, which is no small feat.<sup>240</sup>

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232. *Id.*

233. *Id.*

234. See Will Green, *Establishing Esports Oversight: The Groups, Issues, and Potential Challenges*, ESPORTS BETTING REP. (July 12, 2016, 7:13 PM), <http://www.esportsbettingreport.com/esports-oversight-overview-and-challenges/>.

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. For examples of sports that failed to achieve mainstream popularity and failed sports leagues see, e.g. *Slamball*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Slamball> (last visited Jan. 31, 2017); Robert Wood, *Universal Football*, TOPEND SPORTS (2016), <http://www.topendsports.com/sport/extinct/universal-football.htm>; Matt Crossman, *A Beautiful Corpse: An Oral History of the Fast Life and Quick Death of the XFL*, SBINATION (May 7, 2014), <http://www.sbnation.com/longform/2014/5/7/5683742/xfl-oral-history>; Lorenzo Arguello, *9 Ill-Conceived Pro-Sports Leagues That Went Down In Flames*, BUSINESS

2017]

ESPORTS CORRUPTION

273

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INSIDER (Feb. 8, 2012, 5:31 PM), <http://www.businessinsider.com/10-ill-conceived-pro-sports-leagues-that-went-down-in-flames-2012-2>.; Robert Wood *See List of Discontinued Sports and Events of the Summer Olympics*, TOPEND SPORTS (May 2016), <http://www.topendsports.com/events/discontinued/list.htm> (listing sports that have been played at the highest level before being discontinued).