

2022

Leveling the E-Sports Playing Field: An Argument in Favor of Government Regulation to Ensure Fair Player Contracts for Young Professional Gamers in E-Sports

Jesus Cisneros

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Cisneros, Jesus (2022) "Leveling the E-Sports Playing Field: An Argument in Favor of Government Regulation to Ensure Fair Player Contracts for Young Professional Gamers in E-Sports," *California Western Law Review*. Vol. 58: Iss. 2, Article 5.

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**LEVELING THE E-SPORTS PLAYING FIELD: AN ARGUMENT
IN FAVOR OF GOVERNMENT REGULATION TO ENSURE FAIR
PLAYER CONTRACTS FOR YOUNG PROFESSIONAL GAMERS
IN E-SPORTS**

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INTRODUCTION

Electronic sports (“E-sports”) consists of skilled video gamers competing against each other in live events while passionate fans look on and cheer for their favorite teams and players.¹ In fact, “if esports (sic) were considered to be a sport, it would represent the fastest growing segment of the commercial sports industry.”² However, unlike traditional sports, the E-sports industry is still in its infancy, and its growth raises legal questions that do not have clear answers,³ which makes the E-sports industry ripe with various legal disciplines including, but not limited to: sports law, entertainment law, contract law, labor law, and more.

In general, E-sports is not a new industry. The first wave occurred in the 1990s and consisted of Nintendo and *StarCraft* (a popular computer strategy game) tournaments.⁴ In 1994, Nintendo coordinated a traveling video game competition called *Powerfest*, which exhibited gamers from throughout the U.S. playing popular Nintendo games such as *Super Mario Kart*.⁵ The tournament culminated with the Nintendo World Championships held in San Diego, California, where the nation’s best players competed for grand prizes.⁶ A second E-sports wave occurred in the mid-2000s, this time there were more games, players, and technologies than the previous wave.⁷ Notably, in 2002,

1. Jas Purewal & Isabel Davies, *The eSports Explosion*, A.B.A., https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2016-17/november-december/esports-explosion-legal-challenges-opportunities/ (last visited Jan. 29, 2021).

2. John T. Holden et al., *A Short Treatise on Esports and the Law: How America Regulates Its Next National Pastime*, 2020 U. ILL. L. REV. 509, 511 (2020).

3. *Id.* at 509 (explaining that “the industry of [E-]sports is still in its infancy and faces legal challenges that have not yet been fully studied by either legal academics or practitioners”).

4. Purewal & Davies, *supra* note 1.

5. Rob Lammle, *10 Very Rare (and Very Expensive) Video Games*, MENTAL FLOSS (Mar. 16, 2016), <https://www.mentalfloss.com/article/66183/10-very-rare-and-very-expensive-video-games>.

6. *Id.*

7. Purewal & Davies, *supra* note 1.

Major League Gaming became the first organization of its type to broadcast video game tournaments via cable television in the U.S.⁸

Today, E-sports is in its third wave and has evolved into a global industry, gaining unbridled popularity throughout North America, Asia, and the European Union.⁹ In fact, trends predict that the global E-sports audience will grow to nearly 580 million by 2024, up from 435 million in 2020.¹⁰ Moreover, the global E-sports market size in 2019 was valued at \$1.1 billion and is expected to expand in the coming years.¹¹ Thus, the E-sports industry can be considered the “largest, most successful, and most sustainable” form to date.¹²

There are significant parallels between E-sports and traditional professional sports, but E-sports has its own defining features.¹³ For example, E-sports is unique in that fans can play the same games in the same manner as professionals.¹⁴ Arguably, this level of accessibility, which allows fans to both play and watch games, is unlike a fan’s engagement in traditional sports.¹⁵ Moreover, traditional sports have large and established fan bases, whereas E-sports draws in viewers and players from a younger audience made up of Generation Z and Millennials, which creates unique legal issues for the age group. While

8. Holden et al., *supra* note 2, at 518; *see also Major League Gaming*, ESPORTS.NET, <https://www.esports.net/wiki/tournaments/major-league-gaming/> (last visited Apr. 13, 2021) (describing the history of the Major League Gaming organization).

9. Purewal & Davies, *supra* note 1.

10. Dean Takahashi, *Newzoo: Game livestreaming should grow 10% to 728.8M viewers this year*, VENTUREBEAT (Mar. 9, 2021, 7:00 AM), <https://venturebeat.com/2021/03/09/newzoo-game-livestreaming-will-grow-10-to-728-8m-viewers-this-year/>.

11. *Esports Market Size, Share, Growth Trends Report, 2020-2027*, GRAND VIEW RESEARCH (June 2020), <https://www.grandviewresearch.com/industry-analysis/esports-market>.

12. Purewal & Davies, *supra* note 1.

13. *See id.*

14. Holden et al., *supra* note 2, at 512; *see also The NEW \$1bn Industry: eSports*, SIDEQIK, <https://www.sideqik.com/sideqik-infographics-together-marketing/the-new-1bn-industry-esports> (last visited May 1, 2021).

15. *Id.*

there is a “substantial body of law governing traditional sports,” the same cannot be said about E-sports as the emerging sports industry.¹⁶

I. CONTRACTING WITH MINORS OVERVIEW

As the E-sports industry draws in young viewers and players, there underlies a topic that warrants attention: young, teenage players entering into player agreements without fully understanding the terms and conditions to which they are legally bound.¹⁷ After all, one cannot expect teenagers to understand the legalese generally found in contracts. As one E-sports attorney put it, “[Teenagers] don’t have a lot of influence with [contracts], and they don’t have the resources to demand what they deserve.”¹⁸ Often, players are “in situations where they have just days or hours to sign.”¹⁹ These disadvantages coupled with evidence showing “adolescents’ decision making is biased more by motivational factors than by cognitively driven calculation,” the potential for E-sports organizations to exploit young players is obvious and pertinent.²⁰

16. Purewal & Davies, *supra* note 1.

17. Julia Alexander, *Tfue’s Fight Against Faze Clan Is a New for E-sports, Not Youtube*, THE VERGE (May 23, 2019, 10:27 AM), <https://www.theverge.com/2019/5/23/18635507/tfue-faze-clan-lawsuit-youtube-twitch-fortnite-mcn-banks-ninja> (providing quotes from a talent manager and an E-sports attorney regarding the potential for exploitation of young players).

18. *Id.*

19. *Id.*

20. Monica Luciana & Paul F. Collins, *Incentive Motivation, Cognitive Control, and the Adolescent Brain: Is It Time for a Paradigm Shift?*, CHILD DEV. PERSP. 392 (Dec. 1, 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3607661/pdf/nihms379847.pdf>; see also Kornelia N. Balogh et al., *Risk-taking and Decision-making in Youth: Relationships to Addiction Vulnerability*, J. BEHAV. ADDICTIONS 1, 1 (Jan. 7, 2013), <https://akjournals.com/downloadpdf/journals/2006/2/1/article-p1.xml> (concluding that “[b]rain-based changes in emotional, motivational and cognitive processing may underlie risk-taking and decision-making propensities in adolescence, making this period a time of heightened vulnerability for engagement in addictive behaviors”).

It is estimated that E-sports players often go professional between the ages of 16 and 18.²¹ Thus, in an industry that frequently signs player agreements with minors, one should ask whether a player can be too young to enter into an E-sports contract.²² For example, in December 2020, Team 33 (an “elite” E-sports team based out of California) signed Joseph “Gosu” Deen, an eight-year-old, to their roster.²³ While the team claims the contract is valid because it is not “work” or activities that count as work, labor, or making money off a child’s labor, not all legal observers agree.²⁴ As one E-sports attorney pondered, “If [Gosu’s situation] isn’t work, at what point do you cross that line?”²⁵

Despite controversy regarding minors signing what are arguably employment contracts, the fact remains that federal law prohibits labor practices that amount to “oppressive child labor.”²⁶ Federal child labor provisions authorized by the Fair Labor Standards Act (“FLSA”) ensure that minors engage in work that is safe and does not jeopardize their

21. See Seth Suncho, *What Is an eSport’s Gamer’s Career Length? [And Why Do Most Retire Early?]*, ESPORTS LANE, <https://esportslane.com/esports-gamer-career-length/> (last visited Feb. 18, 2022); see also Josh Chapman, *Esports: A Guide to Competitive Gaming*, TOPTAL, <https://www.toptal.com/finance/market-research-analysts/esports> (explaining that “[t]op players often start professionally around age 16 or 17, and then tend to retire around age 24”).

22. See Nathan Grayson, *An Esports Team Signed an 8 Year Old, but Nobody Is Sure If It’s Legal*, KOTAKU (Dec. 21, 2020, 3:30 PM), <https://kotaku.com/an-esports-team-signed-an-8-year-old-but-nobody-is-sur-1845898629>.

23. *Joseph Deen, 8-Year-Old Gamer, Signs to Professional eSports Team Known as Team 33 for a \$33,000 Signing Bonus*, PR NEWSWIRE (Dec. 3, 2020, 2:20 PM), <https://www.prnewswire.com/news-releases/joseph-deen-8-year-old-gamer-signs-to-professional-esports-team-known-as-team-33-for-a-33-000-signing-bonus-301186065.html>.

24. Grayson, *supra* note 22.

25. *Id.*

26. 29 U.S.C. § 212(c); see also *id.* § 203(l) (explaining “oppressive child labor” is “a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer . . . in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being”).

“health, well-being or educational opportunities.”²⁷ States impose additional laws regarding the employment of minors.²⁸ For example, in California, (where the eight-year-old Gosu resides) the state law delineates circumstances under which minors under twelve may be employed.²⁹

There are numerous issues to consider when contracting with minors, such as the fundamental issue of competency.³⁰ Although this issue can be overcome by simply obtaining consent via the signature of a parent or guardian,³¹ the fact remains that minors can void their contracts at will, which poses a potential for liability.³² When there is a breach, the non-breaching party “generally must be placed in the same position as prior to entering into the agreement, or at least at no worse position.”³³ In other words, even though a minor can void their contract at will, they would still be potentially liable for restitution costs. One can imagine this type of issue arising in the world of E-sports when a newly formed professional organization signs a team full of minors, and the organization’s financial success is traceable to the team’s performance. Additional issues parties face when contracting with minors includes requirements under the FLSA, such as ensuring the minors receive a proper education and fair working hours.³⁴

27. *Child Labor*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/child-labor> (last visited Mar. 6, 2021).

28. *See generally About YouthRules!*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/youthrules> (last visited May 2, 2021) (providing access to information about state and federal labor laws).

29. DEP’T OF INDUS. RELS. DIV. OF LAB. STANDARDS ENF’T, CHILD LABOR LAWS 14 (2013), <https://www.dir.ca.gov/DLSE/ChildLaborLawPamphlet.pdf>.

30. *Sports Contracts – Basic Principles*, USLEGAL, <https://sportslaw.uslegal.com/sports-agents-and-contracts/sports-contracts-basic-principles/> (last visited Mar. 6, 2021).

31. *Id.*

32. *Id.*

33. *Id.*

34. Ben Gipson & Benjamin R. Mulcahy, *Minors in Pro Esports Bring 3 Critical Legal Considerations*, DLA PIPER (July 28, 2020), <https://www.dlapiper.com/en/us/insights/publications/2020/07/minors-in-pro-esports-bring-3-critical-legal-considerations/>.

Traditional sports such as gymnastics, swimming, and tennis often involve contractual issues related to minors.³⁵ After all, “with so many younger players exhibiting the skills necessary to compete successfully at the professional level,” one can expect questions regarding the legitimacy of contracts entered into by minors to arise.³⁶ In England and Wales, for example, “many sports—and in particular football—are now subject to extensive regulation when it comes to contracting with young athletes.”³⁷

As the E-sports industry in the United States grows exponentially, issues with contract formation between minors and professional E-sports organizations will arise. Therefore, this Comment will argue in favor of government regulation to protect young players (minors and non-minors alike) who sign with such organizations. In sum, legislation is necessary to protect young players in contracts with E-sports organizations. Additionally, E-sports associations can play an important role in convincing lawmakers to protect young players.

Part II of this essay explores issues that may arise when young players sign with professional organizations. Part III explores how other nations’ governments have attempted to regulate E-sports. Part IV will culminate the discussion by offering suggestions for how state legislators in the U.S. can adapt current laws to regulate the process of contract formation in E-sports. Potential critiques to this notion are considered and the essay concludes by summarizing the general issue and potential solutions.

35. *Sports Contracts – Basic Principles*, *supra* note 30.

36. John H. Shannon & Richard J. Hunter Jr., *Principles of Contract Law Applied to Entertainment and Sports Contracts: A Model for Balancing the Rights of the Industry with Protecting the Interests of Minors*, 48 *LOY. L.A. L. REV.* 1171, 1174 (2015).

37. Thomas Barnard, *Legal and Regulatory Considerations of Minors in Sport*, *LAWINSPORT* (Mar. 30, 2015), <https://www.lawinsport.com/topics/item/legal-and-regulatory-considerations-of-minors-in-sport>.

II. CONTRACT ISSUES IN E-SPORTS

A. Turner “Tfue” Tenney v. FaZe Clan: A Case Study

In May 2019, E-sports superstar Turner “Tfue” Tenney made headlines when he sued his high-profile gaming organization, FaZe Clan (“FaZe”), in California Superior Court.³⁸ Tfue alleged the player contract between himself and FaZe was “grossly oppressive, onerous, and one-sided.”³⁹ The confidential contract leaked online not long after the lawsuit was filed.⁴⁰ Neither party denied the accuracy of the leak; in fact, the organization’s owner went so far as to admit the contract was “trash” and “horrible.”⁴¹ By August 2020, the parties settled their dispute,⁴² but this high-profile incident—in the world of E-sports, at least—provides a stark reminder that, in this underregulated industry, even the most successful and high-profile gamers are subject to unfair contracts. Using Tfue’s leaked contract as an example, the following paragraphs explore how gaming organizations can take advantage of their players.

38. Ashley Cullins, *Esports Pro Sues Gaming Organization FaZe Clan Over “Oppressive” Contract*, THE HOLLYWOOD REP. (May 20, 2019, 9:21 AM), <https://www.hollywoodreporter.com/business/business-news/tfue-sues-faze-clan-oppressive-contract-1212124/>; see also Johnathan Jordan, *Gamer’s Lawsuit Highlights Issues in Esport Player Contracts*, THE TEX. LAWBOOK (Aug. 20, 2019), <https://texaslawbook.net/gamers-lawsuit-highlights-issues-in-esport-player-contracts/> (describing Tfue’s lawsuit as the “first significant (and high-profile) legal dispute” in the E-sports industry).

39. Jordan, *supra* note 38.

40. The Blast Staff, *‘Fortnite’ Gamer Tfue’s Contract with FaZe Clan Finally Revealed!*, THE BLAST (May 23, 2019, 6:04 AM), <https://theblast.com/c/esports-gamer-tfue-faze-clan-contract-revealed/> [hereinafter *Tfue’s Contract*].

41. The Blast Staff, *FaZe Clan Owner Banks Admits Tfue’s ‘Contract Was Trash’ in War with Pro Gamer*, THE BLAST (May 23, 2019, 6:01 AM), <https://theblast.com/faze-clan-banks-admits-contract-trash-tfue-esports/>.

42. Ashley Cullins, *Game Over: Tfue and FaZe Clan Settle Esports Contract Fight*, THE HOLLYWOOD REP. (Aug. 26, 2020, 10:46 AM), <https://www.hollywoodreporter.com/thr-esq/game-over-tfue-and-faze-clan-settle-esports-contract-fight>.

Tfue's initial contract was for a six month term.⁴³ However, the agreement was to be "automatically extended for an additional thirty-six (36) months," provided Tfue met certain conditions, such as "participating in tournaments and training sessions with the [t]eam and representing the [t]eam, including at events . . . and provid[ing] publicity and promotional services as required by [the professional gaming organization, FaZe]."⁴⁴ Thus, the contract appears to *automatically* lock Tfue in for three years after his initial six months, with no termination options for the gamer.⁴⁵ At the time of signing, Tfue was twenty years old.⁴⁶

The agreement also contains a non-compete clause that prevented Tfue from earning an income through playing video games if FaZe terminated the agreement based on a material breach.⁴⁷ The agreement states that in the event of termination, Tfue would have been "prohibited from playing video games publically (sic) (on-line or in live tournaments) or professionally for a period of six (6) months from the effective date of such termination."⁴⁸ Arguably, any twenty-year-old whose regular employment is playing video games professionally would be financially devastated if such a clause were triggered.

Moreover, the agreement states, "[e]ach [p]arty is an independent contractor."⁴⁹ However, later the agreement states: "[Tfue] . . . shall be subject to the instructions and direction of [FaZe] and its designated representatives."⁵⁰ These contradicting statements mean it is unclear whether, under the law, Tfue should have been regarded as an employee or independent contractor.⁵¹ While "simply saying in the contract that the player is an independent contractor does not confer independent

43. Tfue's Contract, *supra* note 40.

44. *Id.*

45. *Id.* (showing that termination options for FaZe were provided for, but Tfue's only termination option via the contract was through breach).

46. Cullins, *supra* note 42.

47. Tfue's Contract, *supra* note 40.

48. *Id.*

49. *Id.*

50. *Id.*

51. *See* Jordan, *supra* note 38 (arguing the relationship of the parties was that of an employer-employee).

contractor status on the player[,]”⁵² the issue remains as to what benefits and detriments fall on a gamer based on their classification. Whether a professional gamer is classified as an employee or independent contractor is relevant and important, because “many state and federal laws apply to employees but not to independent contractors.”⁵³ Consequentially, federal employment discrimination laws, wage and hour laws, and tax laws do not apply to professional E-sports players labeled as independent contractors.⁵⁴

Unfortunately, classifying gamers as independent contractors is an all-too-common occurrence in the E-sports industry.⁵⁵ So long as professional E-sports organizations continue this practice, both sides will retain the significant potential for liability. For example, suppose an E-sports player classified as an independent contractor believes they are not receiving the compensation they deserve. In that case, the gamer may sue for minimum wages and overtime pay.⁵⁶ Class-action lawsuits in this vein are possible as well.⁵⁷

Finally, one last source of contention regarding Tfue’s agreement was a clause that restricted him from obtaining sponsors without FaZe’s approval. The agreement stated that unless Tfue obtained FaZe’s prior written consent, he would not be allowed to “appear in, sponsor or be sponsored by, or otherwise promote or endorse, directly or indirectly,” any brands other than those approved by FaZe.⁵⁸ Moreover, FaZe reserved the right to “negotiate the terms and conditions” for any sponsorship and endorsement opportunities that came Tfue’s way.⁵⁹ Sponsorship and endorsement opportunities can be a significant source of income for professional gamers like Tfue; it can be argued such clauses are unfair. For example, the National Collegiate Athletic Association (“NCAA”) in 2021 lifted athlete endorsement rules for its young athletes after states began implementing athlete compensation

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. Tfue’s Contract, *supra* note 40.

59. *Id.*

laws.⁶⁰ As a result, college athletes are now able “to take advantage of name, image, and likeness opportunities.”⁶¹

B. Contract Disputes in E-sports Generally

Generally speaking, an E-sports contract “is designed to set out the player’s working conditions, duties, and whatever else is required of them.”⁶² Most E-sports contracts typically include the contract duration, working hours, salary, percentage taken from tournament winnings, sponsorship requirements, company guidelines, and even holiday and sickness information.⁶³ However, as demonstrated through Tfue’s contract with FaZe, many terms of an agreement can be drafted in favor of the more powerful team organization.⁶⁴ The following paragraphs will explore additional examples of issues that may arise from inequitable E-sports contracts.

One leaked contract between a mobile E-sports player and a North American organization purportedly classifies the player as an independent contractor while also containing an exclusivity clause preventing the player from working for another team.⁶⁵ Moreover, the only income the player is eligible to receive is that earned from their individual live streams, not done in collaboration with the organization or a sponsor.⁶⁶ If the latter occurs, the organization retains the entire

60. Juan Perez Jr., *NCAA Lifts Athlete Endorsement Rules as States Scramble to Court Players*, POLITICO (June 30, 2021, 6:04 PM), <https://www.politico.com/news/2021/06/30/ncaa-lifts-athlete-endorsement-rules-497341>.

61. *Id.* (quoting NCAA President Mark Emmert’s statement regarding the change in rules).

62. *Esports Player Contracts: Basic Info on How They Work*, BRITISH ESPORTS ASS’N, <https://britishesports.org/news/esports-player-contracts-basic-info-on-how-they-work/> (last visited Feb. 9, 2021).

63. *Id.*

64. *See* Tfue’s Contract, *supra* note 40.

65. Adam Fitch, *Player Contract Illustrates Unfair and Unethical Conditions*, ESPORTS INSIDER (Dec. 17, 2019), <https://esportsinsider.com/2019/12/unfair-player-contract/>.

66. *Id.*

revenue generated by the player.⁶⁷ The contract also allows the organization to force the player to participate in any sponsored stream, thereby limiting the player's ability to stream individually.⁶⁸ Taken altogether, these provisions raise questions regarding unfair and unethical conditions.⁶⁹

Professional E-sports players often live in the same home to train together.⁷⁰ Such homes are generally referred to as "team houses."⁷¹ While it is possible that such living situations can help a team succeed, it is also possible that such an arrangement may not provide appropriate working and living conditions. For example, a former coach of Tainted Minds, a professional E-sports organization in Australia, made E-sports headlines when he alleged that his team's living conditions rendered them unable to work.⁷² The allegations included crashing computers, mold growth, unsuitable internet, and lack of air conditioning.⁷³ There was also the issue of "timely payment of the players as specified in the players' contracts."⁷⁴ Ultimately, the parties underwent mediation to determine that Tainted Minds did breach their contract with the players but only concerning the issue of timely payments.⁷⁵ A few players left

67. *Id.*

68. *Id.*

69. *Id.*

70. *See Team Houses and Why They Matter*, ESL GAMING (Jan. 6, 2014), <https://www.eslgaming.com/article/team-houses-and-why-they-matter-1676> (finding that housing players together generally improves team performance).

71. *Id.*

72. Austen Goslin, *Tainted Minds Scandal: What We Know and What's Disputed*, RIFT HERALD (Apr. 13, 2017, 2:26 PM), <https://www.riftherald.com/2017/3/30/1502300/tainted-minds-scandal-oce-lol-opl>.

73. Daniel Rosen, *Former Tainted Minds Coach Alleges Team Was Mistreated by Org, Players Reportedly in Contract Dispute*, L2P.TV (Feb. 23, 2017), <https://www.l2p.tv/2017/02/23/former-tainted-minds-coach-alleges-team-was-mistreated-by-org-players-reportedly-in-contract-dispute/>.

74. Blake Wiles, *Contract Conflicts Creating Players Associations in eSports*, SCI. & TECH BRIEF, (Nov. 12, 2018), <https://web.archive.org/web/20210124112151/https://sciencetechbrief.com/2018/11/12/contract-conflicts-creating-players-associations-in-esports/>.

75. *See id.*

the team soon after the disagreement about proper living arrangements for the team.⁷⁶

The dispute between Tainted Minds and its players highlights the importance of the government “detail[ing] minimum requirements that any contract between an organization and player must adhere to.”⁷⁷ Without certain minimum requirements, players are “much more susceptible to contracts of adhesion,” i.e., contracts in which players lack the opportunity to bargain for terms in an agreement.⁷⁸ Moreover, implementing minimum requirements may prevent unfair terms that seem to make their way into E-sports contracts.⁷⁹ Some argue the key to implementing such requirements lies in players associations, akin to those found in professional sports leagues.⁸⁰ However, despite the existence of dozens of associations throughout the world, issues persist, which means there remains work to be done “to convince governments of the need to engage with [E-]sports.”⁸¹

III. THE REGULATION OF E-SPORTS CONTRACTS AROUND THE WORLD

Despite the global reach of E-sports, the United States government has yet to regulate aspects of the E-sports industry, including the issues arising from player contracts and concerns about contracting with minors.⁸² While the U.S. has not, other major nations have either attempted to regulate the industry or have begun to take steps in that direction.⁸³ The U.S. has the opportunity to review and learn from how other nations and governments have approached regulating the E-sports industry.

76. Goslin, *supra* note 72.

77. Wiles, *supra* note 74.

78. *Id.*

79. *See, e.g.*, Tfue’s Contract, *supra* note 40.

80. Wiles, *supra* note 74.

81. Nico Besombes, *National Esports Associations*, MEDIUM (Sept. 1, 2019), <https://medium.com/@nicolas.besombes/national-esports-associations-e63862840f2a> (providing a list of E-sports associations throughout the world).

82. Laura L. Chao, Note, “*You Must Construct Additional Pylons*”: *Building a Better Framework for Esports Governance*, 86 *FORDHAM L. REV.* 737, 741 (2017).

83. *Id.* at 757.

A. France

In 2016, the French Senate legalized “video game competitions.”⁸⁴ To be clear, France did not make E-sports an official sport.⁸⁵ Instead, it defined E-sports as a video game competition “of at least two players or teams of players for a score or a victory.”⁸⁶ Crucially, the Senate also implemented some regulations for the industry,⁸⁷ including a framework for professional player contracts that ensured minimum standards,⁸⁸ and addressed the specific issue of player agreements between minors and professional organizations.⁸⁹ The regulation specifically requires “parental authorization for children under sixteen.”⁹⁰ Although more remains to be done regarding E-sports regulation in France, the 2016 legislation was an important stepping-stone for the industry, because it catalyzed the formation of a major E-sports lobbying group.⁹¹

B. South Korea

South Korea has surpassed other countries when it comes to E-sports regulation.⁹² The South Korean government developed and implemented infrastructure “to support the [E-]sports industry” to the extent the industry had “achieved a degree of household recognition and normalcy.”⁹³ Established in 2000, the Korea eSports Association (“KeSPA”) regulates national gaming and E-sports.⁹⁴ Despite its status

84. *Id.*

85. Adrient Auxent, *Esports Are Now Officially Legal in France*, THE ESPORTS OBSERVER (Sept. 30, 2016), <https://esportsobserver.com/esports-are-now-officially-legal-in-france/>.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* (describing France eSports as a lobbying group for E-sports).

92. Chao, *supra* note 82, at 757.

93. *Id.*

94. *Id.* at 758.

as a non-governmental organization, it derives its authority from South Korea's Ministry of Culture, Sports and Tourism,⁹⁵ a government agency that “develops and implements a wide range of policies to promote culture, arts, sports, tourism and religion so as to provide cultural opportunities to the public.”⁹⁶ Thus, with support from the government, KeSPA regulates aspects of the E-sports industry in South Korea, including overseeing player registration and enforcing professionalism and ethical standards.⁹⁷

KeSPA also established basic rules pertaining to player contracts.⁹⁸ Nevertheless, recent controversy regarding unfair contracts demonstrated the need for revision. In October of 2019, following a whistleblower report from one of South Korea's most prominent E-sports teams, the Korea Fair Trade Commission (“FTC”) reviewed KeSPA's standard contract and conducted a “full-fledged review of major [E-]sports teams.”⁹⁹ Critically, the FTC reserved the right to revise any unfair clause found during the investigation.¹⁰⁰ As one legislator stated, “This is not only the problem of a single player but of the overall [E-]sports ecosystem in Korea.”¹⁰¹ KeSPA subsequently wrote a new standard contract for the FTC to review and even went so

95. See Stephen C. Rea, *Crafting Stars: South Korean E-sports and the Emergence of a Digital Gaming Culture*, 21 ASS'N FOR ASIAN STUD. 22 (2016), <https://www.asianstudies.org/publications/ea/archives/crafting-stars-south-korean-e-sports-and-the-emergence-of-a-digital-gaming-culture/> (explaining that KeSPA was created “with a mandate from the Ministry of Culture, Sports, and Tourism to oversee Korean e-sports”).

96. *About Us: Ministry of Culture, Sports and Tourism*, KOREA.NET, <https://www.korea.net/AboutUs/Ministry-of-Culture-Sports-and-Tourism> (last visited Jan. 8, 2022).

97. Chao, *supra* note 82, at 758.

98. Marc Leroux-Parra, *Esports Part 2: The Evolving Rules of Esports*, HARV. INT'L REV. (Apr. 24, 2020, 6:47 PM), <https://hir.harvard.edu/esports-part-2/>.

99. Lim Jeong-yeo, *FTC to Probe 'Slave' Contracts of Korean Esports Players*, THE KOREA HERALD (Dec. 10, 2019, 8:14 AM), <http://www.koreaherald.com/view.php?ud=20191209000837>.

100. *Id.*

101. *Id.*

far as to “guarantee a designated minimum pay to [registered professional gamers] and offer legal and health care support.”¹⁰²

Finally, it is worth mentioning a 2011 South Korea law that aimed to protect minors from over-engagement with video games.¹⁰³ The Youth Protection Revision Act ensured that certain internet game service providers blocked access to internet games for users under sixteen between the hours of midnight and 6:00 A.M. and was ensured by the potential for criminal sanction including a fine or imprisonment.¹⁰⁴ However, the South Korean government announced in August of 2021 that it would abolish the law “out of respect for the rights of youth and [to] encourage education at home.”¹⁰⁵ In its place remains a “choice permit system” by which underage gamers or their parents can set designated gaming hours.¹⁰⁶

C. *The United Kingdom*

The United Kingdom is in the early stages of implementing E-sports regulations.¹⁰⁷ Founded in 2008, the United Kingdom Esports Association (“UKeSA”) established “an official governing body for the nation’s [E-]sports community.”¹⁰⁸ Specifically, the organization sought to provide “an independent framework for [g]overnment,

102. *Id.*

103. Jiyeon Lee, *South Korea Pulls Plug on Late-night Adolescent Online Gamers*, CNN (Nov. 22, 2011, 2:26 AM), <https://www.cnn.com/2011/11/22/world/asia/south-korea-gaming>.

104. GIULIO CORAGGIO, DLA PIPER, *ESPORTS LAWS OF THE WORLD* 101 (2020), https://www.dlapiper.com/~/_media/files/insights/publications/2019/11/-a03400_esports-of-the-world_booklet_report_v7.pdf?la=en&hash=61A3D80CB7E-40F7AB01B49B3D3726B85ACECFE98.

105. Im Eun-byel, *Korea to Ax Games Curfew*, THE KOREA HERALD (Aug. 25, 2021, 4:09 PM), <http://www.koreaherald.com/view.php?ud=20210825000854>.

106. *Id.*

107. *See* Chao, *supra* note 82, at 759.

108. Goodeh, *UK eSPORTS Gets Organised Bright Future for Nation’s eSports Competitors*, ESPORTS HEAVEN (Oct. 31, 2008, 6:05 PM), <http://www.esportsheaven.com/news/view/47606/ukeslaunches> [<https://perma.cc/H88R-EG3U>].

[i]ndustry and [c]ommunity [E-]sports interaction within the UK.”¹⁰⁹ Unfortunately, the efforts were short-lived because the organization disbanded shortly after its inception.¹¹⁰

Following UKeSA’s dissolution, it took nearly seven years before the government officially backed a new governing E-sports body, the British Esports Association (“BEA”).¹¹¹ The BEA’s initial press release stated that it would “work in conjunction with the Department for Culture, Media and Sport to help and represent players at all levels.”¹¹² However, within one year of its inception, BEA made clear it had no intention to pursue E-sports regulation.¹¹³ Moreover, the BEA currently states on its website that it is “not a governing body.”¹¹⁴

Despite these shortcomings, there is some movement towards considering E-sports regulation. The UK Gambling Commission “published a discussion paper outlining the need for stringent gambling regulations to be imposed on [E-]sports.”¹¹⁵ However, the government

109. *UKeSA/Be Deal*, GAMESINDUSTRY.BIZ (Feb. 9, 2009), <https://www.gamesindustry.biz/articles/ukes-a-be-deal-latter-becomes-former-s-official-broadband-provider>.

110. Chao, *supra* note 82, at 760.

111. See Callum Leslie, *The UK Launches an Official Governing Body for Esports*, DOT ESPORTS (July 1, 2016, 8:52 AM), <https://dotesports.com/general/british-esports-association-3537> [<https://perma.cc/8TJ4-RAX9>].

112. *Formation of the British Esports Association: A New Not for Profit Organisation to Represent Competitive Video Gaming at All Levels*, BRITISH ESPORTS ASS’N (June 30, 2016), <https://britishesports.org/press-releases/formation-of-the-british-esports-association-a-new-not-for-profit-organisation-to-represent-competitive-video-gaming-at-all-levels/>.

113. MCV Staff, *British Esports Association: “We Are Very Clear, We Do Not Want to Get Involved in Terms of Regulation”*, MCV/DEVELOP (Oct. 16, 2017), <https://www.mcvuk.com/business-news/british-esports-association-we-are-very-clear-we-do-not-want-to-get-involved-in-terms-of-regulation/> (providing a quote from the chairman of the BEA’s advisory board in which he states that “[the BEA is] very clear, [it does not] want to get involved in terms of regulation”).

114. *About the British Esports Association*, BRITISH ESPORTS ASS’N, <https://britishesports.org/about-us/> (last visited Feb. 17, 2021).

115. Matthew Astley et al., *What Is eSports and How Should It Be Regulated?*, HARRISON DRURY, <https://www.harrison-drury.com/business-law/sectors/sports/what-is-esports-and-how-should-it-be-regulated/> (last visited Feb. 17, 2021).

has yet to establish any particular requirements regarding player contracts.¹¹⁶ In sum, “there is no dedicated legal or regulatory regime applicable to [E-]sports” in the United Kingdom.¹¹⁷

D. Luxembourg

Luxembourg, one of the smallest European countries, deserves special mention with respect to E-sports’ evolution and regulation. Luxembourg may be the first European nation to recognize E-sports as an official sport. As of Spring 2021, the Luxembourg National Olympic Committee (“COSL”) is deliberating on whether to consider E-sports as a traditional sport.¹¹⁸ If the COSL declares E-sports a traditional sport, Luxembourg’s sports laws should apply.¹¹⁹ Thus, it is possible this small nation may someday set a strong example for other, much larger nations to follow.

E. The United States of America

The United States has no dedicated legal or regulatory regime that applies to E-sports.¹²⁰ Nevertheless, while not proclaimed to address E-sports, some United States laws protect gamers in the industry. Depending on a player’s classification as an independent contractor or employee, the player may benefit from state and federal laws applying to employees. Moreover, certain state employment laws *may* provide players a legal basis to claim “artists” status.¹²¹ Take for example the

116. See CORAGGIO, *supra* note 104, at 174.

117. *Id.*

118. See Rich Simon, *National Olympic Committee of Luxembourg Discusses the Case of eSports*, RTL LUX. (Mar. 28, 2021, 5:49 PM), <https://today.rtl.lu/news/luxembourg/a/1696592.html> (explaining that the discussion on whether E-sports meets the committee’s standards remains ongoing).

119. See CORAGGIO, *supra* note 104, at 104.

120. See *generally id.* (describing which laws the E-sports industry “implicates . . . in the United States that are not specific to the industry itself but are instead triggered by the activities that team, leagues, sponsors, players, media platforms and other industry stakeholders engage in”).

121. See CAL. LAB. CODE § 1700.4(b) (Deering 2021) (defining “Artists” as “actors and actresses rendering services on the legitimate stage and in the production

California Talent Agency Act (“TAA”), which regulates talent agencies throughout the state.¹²² If a player someday successfully argues that E-sports players fall under the definition of “artists” as described by the TAA, the statute would permit the player to recover all fees earned by their organization under the theory the organization is an unlicensed talent agency.¹²³ In fact, this was initially part of Tfue’s claim against FaZe.¹²⁴ Had this argument been successful, Tfue’s case would have essentially required California-based E-sports organizations to register under the TAA “and basically apply the [state’s] entertainment industry regulations” to the E-sports industry.¹²⁵ However, because the parties settled before taking the issue to court, it is unclear whether this argument ultimately holds merit.

IV. GUARANTEEING CONTRACTUAL RIGHTS FOR YOUNG PROFESSIONALS IN E-SPORTS

A. State Regulation for Minors

State legislators bear a moral and civic responsibility to protect minors from unfair player agreements.¹²⁶ One avenue for young professional gamers to achieve meaningful protection in contracting is through state law.

of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises”).

122. *Id.* § 1700 et seq.

123. See Anthony Zaller, *Tfue v. Faze Clan – Esports Lawsuit Raises Many California Employment Legal Issues*, CAL. EMP. L. REP. (May 24, 2019), <https://www.californiaemploymentlawreport.com/2019/05/tfue-v-faze-clan-esports-lawsuit-raises-many-california-employment-legal-issues/>.

124. *Id.*

125. *Id.*

126. See generally Adam McGlynn, *When Minors are the Majority – The Legality of Contracts with Minors* (Oct. 4, 2020), ETHOUGHTS, https://www.ethoughts.co.uk/post/contracts_with_minors (explaining that “the prevalence of young people in the space means the [E-]sports industry has a responsibility to protect their health, wellbeing, and education”).

Lawmakers should look to the entertainment industry concerning the regulation of the employment of minors. In California, a permit issued by the California Labor Commissioner’s Office is often required to employ a minor within the entertainment industry.¹²⁷ The Commissioner’s Office evaluates the effect of employment on a child’s health and education.¹²⁸ An application will not be approved unless the following conditions are satisfied: (1) the minor’s environment is proper, (2) the conditions of employment are not detrimental to the minor’s health, and (3) the minor’s education “will not be neglected or hampered by his or her participation.”¹²⁹ The law even provides for a necessary investigation into the conditions described.¹³⁰ It follows that if a minor’s employment contract runs counter to these requirements, the employment contract may not be valid.

The Labor Code should officially recognize E-sports players as a category of “employee” within the entertainment industry that requires a permit to employ a minor. That way, an application to employ a minor in E-sports will not be approved unless a proper environment for the child’s health or education is ensured. Currently, with respect to the employment of minors, the California Code of Regulations defines an employer within the entertainment industry as “any organization or individual, using the services of any minor in . . . any . . . performances where minors perform to entertain the public.”¹³¹ Arguably, professional E-sports falls within this definition, because players ultimately apply their skillsets to media technology to attract and entertain audiences.

The New York Arts and Cultural Affairs Law may also provide guidance for protecting minors in E-sports.¹³² The law covers minors who “perform or render services” as a performing artist, “or as a

127. CAL. LAB. CODE § 1308.5 (Deering 2021).

128. *Application for Permission to Work in the Entertainment Industry*, CAL. DEP’T OF INDUS. RELS. DIV. OF LAB. STANDARDS ENF’T, <https://www.dir.ca.gov/dlse/DLSEForm277.pdf> (last visited Mar. 6, 2021).

129. CAL. LAB. CODE § 1308.6 (Deering 2021).

130. *Id.*

131. CAL. CODE REGS. tit. 8, § 11751 (2021).

132. *See* N.Y. ARTS & CULT. AFF. LAW § 35.03 et seq. (McKinney 2021).

participant or player in professional sports.”¹³³ Importantly, the law provides that a contract between a minor and an employer can be approved by a court.¹³⁴ This guarantees that the minor cannot thereafter disaffirm the contract “on the ground of infancy or assert that the parent or guardian lacked authority to make the contract.”¹³⁵ The law also “grants the court the ability to set aside and protect part of the child’s earnings.”¹³⁶ Moreover, a contract will not be approved if “the term during which the [minor] is to perform or render services . . . extends for a period of more than three years.”¹³⁷ However, if the court finds that the minor “is represented by qualified counsel experienced with entertainment industry law and practices,” then the contract may extend up to seven years.¹³⁸ Finally, if the court finds that the minor’s well-being “is being impaired by the performance thereof, it may . . . either revoke its approval of the contract, or declare such approval revoked” unless the parties modify the agreement and the court approves the modification.¹³⁹

Taken altogether, the New York law provides unique protections for minors, but only if their contracts are presented for judicial approval.¹⁴⁰ Moreover, it is unclear whether E-sports players fall under the definition of performing artist or professional sport. Nevertheless, the state’s legislature could amend the law to specify the coverage of professional E-sports gamers. Elsewhere, lawmakers can refer to the statute for guidance for implementing similar policies in their respective states.

133. *Id.*

134. *Id.*

135. *Id.*

136. Shannon & Hunter Jr., *supra* note 36, at 1188; *see also* N.Y. ARTS & CULT. AFF. LAW § 35.03(3) (McKinney 2021).

137. ARTS & CULT. AFF. § 35.03(2)(d).

138. *Id.*

139. *Id.* § 35.03(2)(e).

140. *See generally id.* § 35.03 (omitting the requirement to present a contract for judicial approval); *see also* Shannon & Hunter Jr., *supra* note 36, at 1188.

B. State Regulation for Non-Minors

E-sports players generally *retire* by the age of 25.¹⁴¹ Thus, most E-sports players, even those who are adults, are relatively young. As demonstrated by contract issues within the industry, there is a necessity for state legislation that protects even adults from unfair player contracts.

In California, the TAA is a helpful law to consider when exploring protections for players in E-sports contracts.¹⁴² Expanding the scope of the TAA to include E-sports could be a means for protecting young adult players. Under the TAA, every talent agency is required to submit to the Labor Commissioner “a form or forms of contract to be utilized by such talent agency in entering into written contracts with artists . . . and secure the approval of the Labor Commissioner thereof.”¹⁴³ A contract will not be approved if it is deemed “unfair, unjust and oppressive to the artist.” Additionally, the commissioner reserves the right to adjust the contract if there exists “controversy” between the parties regarding the terms of the contract.¹⁴⁴ If E-sports organizations were considered a “talent agency” under the TAA, young adult E-sports players would receive these same protections.

In a similar vein, specifying that E-sports players are “artists” under the TAA could achieve a similar result. Currently, the TAA defines “artists” to mean actors and actresses as well as “persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises.”¹⁴⁵ It is unclear whether a professional E-sports player who streams on behalf of a professional gaming organization falls under the definition of a person rendering services in an entertainment enterprise. Nevertheless, an argument can be made that when an E-sports player, on behalf of a professional gaming

141. Patrick Shanley, *Gamers’ Plight: Why So Many Esports Players Retire by 25 — and What Comes Next*, THE HOLLYWOOD REP. (Sept. 24, 2019, 6:00 AM), <https://www.hollywoodreporter.com/news/gamers-plight-why-e-sports-players-retire-by-25-1242628>.

142. CAL. LAB. CODE § 1700 et seq. (Deering 2021).

143. *Id.* § 1700.23.

144. *Id.*

145. *Id.* § 1700.4(b).

organization, streams their gameplay live online or participates in a tournament, both of which involve spectators, the player effectively renders a professional service in an entertainment enterprise. Moreover, the debate on whether E-sports should be considered and regulated as a traditional sport is far from settled; therefore, classifying E-sports players as “artists” and providing protections under existing state laws like the TAA is one viable alternative.

C. Possibility of Suggested Approaches

It is important to address the possibility of implementing state laws to regulate E-sports player-organization contracts. After all, there are state laws that govern contracts made between young athletes and athlete agents, such as Alabama’s Uniform Athlete Agents Act and others like it.¹⁴⁶ To demonstrate that such legislation is possible for E-sports, consider the implementation of regulation and oversight in France and South Korea.

In 2016, the French Senate legalized E-sports and implemented corresponding regulations.¹⁴⁷ Later, in 2017, France passed legislation to regulate player contracts. The law limited the length of player contracts¹⁴⁸ and disallowed the participation of children under twelve in monetized tournaments.¹⁴⁹

146. See ALA. CODE § 8-26B-10 (2021) (describing basic terms an agency contract must contain and rights of a student athlete); see also *id.* § 8-26B-14 (describing limits on an agent’s ability to influence “a student athlete or, if the athlete is a minor, a parent or guardian of the athlete” when entering into an agency contract); see also *State-By-State Athlete Registration Forms and Laws*, SPORTS AGENT BLOG (July 25, 2021), <http://sportsagentblog.com/state-by-state-athlete-agent-registration-forms-and-laws/>.

147. See Auxent, *supra* note 85.

148. Gabriel Ionica, *French Government Pass Legislation to Regulate Esports Player Contracts*, ESPORTS INSIDER (May 13, 2017), <https://esportsinsider.com/2017/05/5659/>.

149. Alejandro Ruiz Bobillo, *France Advances in the Regulation of Esports*, AS DIARIA (May 12, 2017, 2:33 PM), https://as.com/esports/2017/05/12/portada/1494591828_926101.html (explaining the law limited player contracts to a minimum twelve-month period (with some exceptions) and a maximum five-year period).

In South Korea, the Korea eSports Association, a non-governmental organization, manages Korean E-sports.¹⁵⁰ The organization was created by and derives its authority from South Korea's Ministry of Culture, Sports and Tourism.¹⁵¹ When issues arose in 2019 regarding unfair contracts for young professional E-sports players, the ministry worked closely with the country's Federal Trade Commission to review and revise KeSPA's standardized player agreements.¹⁵²

Simply put, if France and South Korea are willing to recognize E-sports as an industry in its own right and regulate it as such, why not the United States? Among other reasons described throughout this Comment, a quick glance at the money that is at stake for the top 100 E-sports players in the U.S. should indicate a need to protect all players from unfair contracts.¹⁵³ Other countries have demonstrated that it is possible to implement E-sports regulatory legislation. The challenge, then, lies in convincing United States lawmakers of the need for it.

Fortunately, E-sports associations in the United States may lobby lawmakers to action. The United States Esports Association seeks to “build a uniquely American [E]-sports for everyone” through “facilitat[ing], support[ing], promot[ing], and organiz[ing] opportunities for involvement in [E]-sports and the [E]-sports professions[.]”¹⁵⁴ Likewise, the National Esports Association works closely with education institutes to “develop [E-s]ports programs on [college] campus[es] and online.”¹⁵⁵ Finally, there is also the United States eSports Federation, which seeks to “nurture, inspire, and protect

150. John, *Esports Organizations in Korea – A Complete Overview for 2021*, SEOUZ (Aug. 23, 2021), <https://seoulz.com/esports-organizations-in-korea-a-complete-overview-for-2021/>; see also discussion *supra* Section III.B.

151. Rea, *supra* note 95.

152. See Jeong-yeo, *supra* note 99.

153. See *Top 100 Highest Earnings for United States*, ESPORTS EARNINGS, <https://www.esportsearnings.com/countries/us> (providing a list showing that, as of May 1, 2021, the highest-earning U.S. player has made over \$3,000,000, and the 100th listed player has earned just over \$300,000) (last visited Mar. 27, 2021).

154. UNITED STATES ESPORTS ASS'N, <https://esportsus.org> (last visited Jan. 18, 2020).

155. *About the National Esports Association*, NAT'L ESPORTS ASS'N, <https://www.nea.gg/about> (last visited May 1, 2021).

[a]thletes and the [E-]sports culture.”¹⁵⁶ Thus, there is the potential for developing strong campaigns made up of E-sports professionals, associations, and enthusiasts alike. For example, together they could strive to promote legislation requiring state labor commissioners to oversee contracts for players and have the final say on unfair terms or clauses.¹⁵⁷ After all, as explained above, California’s Labor Commissioner has oversight over artist contracts in the entertainment industry—thus, it is plausible the agency (or another with a similar function) could also oversee E-sports player agreements.¹⁵⁸

Alternatively, E-sports associations in the U.S. can attempt to position themselves as more than just policy advocates and attempt to participate in the oversight of player agreements. Like KeSPA in South Korea, an E-sports association in the United States should strive to achieve a similar legitimate status as a national E-sports regulatory body. In doing so, such an association could seek to establish guidelines for player contracts and even go so far as to create standardized contracts for players. Moreover, like KeSPA, the association could provide legal support for players, thereby ensuring that *all* young E-sports players are given access to the resources to properly negotiate their player agreements.¹⁵⁹

Ultimately, E-sports stakeholders in the United States—including E-sports associations, players, professional gaming organizations, and even game developers¹⁶⁰—must first agree that it is in the industry’s

156. *About Us*, U.S. ESPORTS FED’N, <http://www.esportsfederation.org/pages/about> (last visited Jan. 18, 2021).

157. *See* Jeong-yeo, *supra* note 99 (explaining that, following controversy, the Federal Trade Commission in South Korea pledged in December 2019 to “comb through the relevant regulations and examine all contracts”).

158. *See* discussion *supra* Section IV.B.

159. *See* Jeong-yeo, *supra* note 99.

160. *See* Hauk Nelson, *The Esports Ecosystem Part 5: Game Developers*, KEMPERLESNIK, <https://www.kemperlesnik.com/2019/11/the-esports-ecosystem-part-5-game-developers/> (last visited May 2, 2021) (explaining that “the competitive scene of an [E-]sport is largely dependent on the [game] developer[s] . . . [t]his includes creating a code of a conduct [for their developed franchise leagues], facilitating player trades and securing sponsorships for [E-]sports broadcast and sponsorships.” Still, other developers “are far more liberal with their games” by “provid[ing] free licenses to tournament organizers” while retaining some oversight.

best interest to ensure fair contracts for young players. Only then will lawmakers throughout the United States take notice that government engagement with E-sports is necessary, particularly with respect to the protection of young players (minors and non-minors alike) from one-sided player agreements.

D. Addressing Potential Critiques to the Proposal of Ensuring Fair Player Contracts Through Government Regulation

It would be unwise to presume broad agreement with the notion that government regulation is the best means for ensuring fair player contracts. While there may be criticism, it is a valid option.¹⁶¹

For starters, E-sports has evolved beyond just a niche hobby—it is an activity the likes of which has undoubtedly permeated and transformed commerce.¹⁶² As mentioned above, the phenomenon of E-sports was a \$1.1 billion global industry as recent as 2019¹⁶³ and may reach almost 580 million viewers by 2024.¹⁶⁴ As a result, the industry’s “high economic yields alone should warrant regulation.”¹⁶⁵

Again, there remains the fact that professional E-sports gamers tend to skew young.¹⁶⁶ A report by ESPN found the average age of E-sports

Thus, the extent to which competitive leagues self-regulate varies widely depending on the circumstances under which they operate.).

161. See Eric L. Windholz, *Governing Esports: Public Policy, Regulation, and the Law*, 1 SPORTS L. & GOVERNANCE J. 1, 34–36 (2020), <https://slej.scholasticahq.com/article/13241-governing-esports-public-policy-regulation-and-the-law> (explaining that there is a “school of thought [that] comprises those who believe [E-]sports should be allowed to evolve without government intervention according to the interests and values of its various participants and stakeholders . . . [similar to how] traditional sports’ governance structure evolved”).

162. Katherine E. Hollist, Note, *Time to be Grown-ups About Video Gaming: The Rising eSports Industry and the Need for Regulation*, 57 ARIZ. L. REV. 823, 839–41 (2015), <https://arizonalawreview.org/pdf/57-3/57arizlrev823.pdf>.

163. *Supra* note 11.

164. Takahashi, *supra* note 10.

165. Hollist, *supra* note 162, at 841.

166. See generally *Average Age in Esports vs. Major Sports*, ESPN (Sept. 17, 2017), https://www.espn.com/esports/story/_/id/20733853/the-average-age-esports-versus-nfl-nba-mlb-nhl.

players in 2017 was between 21 and 25.¹⁶⁷ The average E-sports professional gamer retires by the age of 25.¹⁶⁸ Moreover, one can point to Team 33's signing of eight-year-old Joseph Deen to show just how young players may be.¹⁶⁹ Given the industry's enormous economic underpinnings,¹⁷⁰ the potential for exploitation is ever-present. Thus, an industry that inherently features and is driven by the success of young people, including minors, is one that state governments should have an inherent interest in regulating.

Finally, there is wisdom in the fact that governments worldwide have regulated E-sports industries. As explained above, countries such as France and South Korea have established laws and regulatory systems intended to protect players from unfair contracts.¹⁷¹ Other countries such as Luxembourg and the United Kingdom have recognized the possibility of government regulation and are still determining whether and how to embrace this challenge.¹⁷² Simply put, if countries in Europe and Asia have, at the very least, *considered* the potential need for government regulation, it is incumbent upon lawmakers throughout the United States to do the same. As Tfue's situation shows and this Comment argues, E-sports player agreements can raise important legal questions.

Another criticism to consider is the notion that government regulation effectively inhibits industry growth. However, it *is* possible to regulate the United States E-sports industry without inhibiting its growth.¹⁷³ For example, if a state legislature passed a law that designated professional E-sports players as employees,¹⁷⁴ this would avoid the thorny issue of creating industry-specific regulations because

167. *Id.*

168. Shanley, *supra* note 141; *see also* Chapman, *supra* note 21 (explaining professional E-sports players "generally start and end their careers much earlier than the average professional athlete").

169. *See generally* Grayson, *supra* note 22.

170. *See generally supra* note 11.

171. *See discussion supra* Sections III.A., III.B.

172. *See discussion supra* Sections III.C., III.D.

173. *See* Hollist, *supra* note 162, at 842.

174. *Id.* at 844.

existing employment laws would provide protection.¹⁷⁵ Moreover, professional E-sports players classified as employees would be able to organize without being subject to antitrust liability.¹⁷⁶ The same can be said about the idea of using existing state entertainment laws to enable state agencies to oversee player agreements between players and professional organizations.¹⁷⁷ Thus, it is possible to regulate unfair player agreements without implementing industry-specific regulations, thereby providing the space for natural industry growth.

Finally, one last criticism to consider is that unionization and collective bargaining may be a better means to ensure fair player agreements for minors and non-minors alike.¹⁷⁸ In fact, professional gamers have sought to do this in recent years, inspired by players associations such as those found in the National Football League and Major League Baseball.¹⁷⁹ However, the fact remains that achieving unionization in E-sports is a herculean task in and of itself.¹⁸⁰ For starters, the professional status of an E-sports player can come and go quickly, meaning players as a whole lack the practical ability to unionize.¹⁸¹ Secondly, because of their status as independent contractors, players lack legal rights to form a union and thereby cannot be guaranteed that professional organizations would negotiate with

175. See Kyle D. Smith, *Independent Contractors vs. Employees: A Guide to California Law*, WORK LAWS. (Oct. 22, 2021), <https://www.worklawyers.com/independent-contractor-employee/#employees-have-more-legal-protections>.

176. See Hollist, *supra* note 162, at 844 (explaining that if players are classified as employees, they are free to organize under the National Labor Relations Act and the Sherman Act would protect them from liability).

177. See discussion *supra* Part IV.

178. See, e.g., Kelsey F. Ridenhour, *Traditional Sports and Esports: The Path to Collective Bargaining*, 105 IOWA L. REV. 1857 (2020), <https://ilr.law.uiowa.edu/print/volume-105-issue-4/traditional-sports-and-esports-the-path-to-collective-bargaining/>; see also Hollist, *supra* note 162, at 837 (explaining there are “factors [that] suggest that [E-s]ports players might benefit from unionization”).

179. Maddy Myers, *Pro Gamers Are Getting Serious About Unionization*, KOTAKU (Mar. 14, 2018, 1:30 PM), <https://compete.kotaku.com/pro-gamers-are-getting-serious-about-unionizing-1823770452>.

180. See Hollist, *supra* note 162, at 837.

181. *Id.* at 839.

them.¹⁸² Finally, because of their status as independent contractors, players would face the risk of liability under antitrust laws.¹⁸³ Therefore, government regulation is a more reasonable alternative than unionization and collective bargaining for resolving the issue of inequitable player agreements.

CONCLUSION

Government regulation is a viable and sound solution for ensuring that E-sports players, minors and non-minors alike, are not taken advantage of when contracting with professional teams or organizations. The industry has inherent features—particularly the fact that the industry is primarily composed of young players—that the government should be interested in regulating.

Such regulation can take shape through existing law. For example, with respect to minors, California’s entertainment laws could be adapted to apply to agreements between players and professional organizations.¹⁸⁴ The same can be said about adapting California’s Talent Agency Act with respect to non-minors.¹⁸⁵ Ultimately, lawmakers should consider existing regulatory frameworks and adapt them to apply to the burgeoning E-sports industry.

E-sports associations also have a strong role to play. As demonstrated in South Korea, it is not inconceivable that such organizations can possess government-derived authority and directly have an effect on how E-sports player contracts are formed. Currently, E-sports associations in the United States are far from reaching such status. Nevertheless, KeSPA’s example in South Korea should represent a worthy ideal for any E-sports association interested in protecting young professional gamers in the United States.

Ultimately, this Comment argues that government regulation is necessary to ensure that young professional E-sports players in the United States receive some level of protection from exploitation when

182. *Id.*

183. *Id.* (warning that liability under antitrust laws could result from using labor organizations to help negotiate better terms as independent contractors).

184. *See* discussion *supra* Section IV.A.

185. *See* discussion *supra* Section IV.B.

entering player contracts. As seen in the examples of Tfue and the former players in *Tainted Minds*, it is important to acknowledge the high potential for exploitation in player agreements, which warrants regulatory protection. In fact, with respect to minors, it must be emphasized that child labor laws are ambiguous as they pertain to E-sports, which deserves the attention of lawmakers—as demonstrated by the signing of eight-year-old Joseph “Gosu” Deen. However, until E-sports industry awareness reaches legislative chambers, courts will be compelled to shape relevant public policy from the bench, thereby depriving the issue of the legislative and democratic processes it deserves.

*Jesus Cisneros**

*J.D., California Western School of Law, 2022; B.A. Philosophy, Political Science, University of California San Diego, 2015. I would like to thank my family for their continuous love and inspiration; the *California Western Law Review* staff, particularly the writers and editors who invested their time and effort in my work; Professor Nancy S. Kim for her support in developing my topic; and finally, a special thanks to my friends who share in my passion for video games.