

Intellectual Property and Esports

An overview of the game



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Guidelines for Esports Players

Guidelines for Esports Tournament Organizers



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1 Esports: a thrilling new form of entertainment

In the digital age, esports have become one of the fastest growing forms of entertainment, captivating millions of fans worldwide and generating new business opportunities. This dynamic sector, built around competitive video gameplay, has grown considerably over the past few years, and what started out as a niche hobby has transformed into a global phenomenon. At the heart of this burgeoning sector are several key stakeholders, each playing a decisive role in its development and success.

As will be described in more detail in this work, game developers and publishers are the main architects of the digital worlds and ecosystems in which esports competitions take place. Their task is to create and maintain the games that form the foundations of the sector, investing significant resources into developing and sustaining engaging gameplay experiences. Teams and players, the stars of the esports arena, bring these games to life through their skill, strategy, and dedication, drawing in audiences with their performances. Tournament organizers, including leagues and competition hosts, provide the arenas for these players to showcase their talents, orchestrating events that range from local competitions to international championships.

The esports sector is intensely driven by the generation and use of intellectual property (IP) rights. Game publishers, in most circumstances, hold copyrights and trademarks that protect their creations, ensuring that their games and associated branding are legally safeguarded. IP rights are the most important resource these stakeholders have, as it enables them to maintain control over the distribution and use of their games, preventing unauthorized use and ensuring that they can monetize their products effectively. Teams and players also rely on IP rights to protect their personal brands, which include their image rights, logos and merchandise; this helps them build and maintain a unique identity in this competitive landscape, attracting sponsorship and fan support.

But the esports sector starts with the developers and publishers, followed by the tournament organizers, who leverage IP rights to secure broadcasting deals and sponsorships. By obtaining licenses from game publishers, third-party tournament organizers can legally host and stream competitions later on, creating content that is both engaging and marketable. The interplay of these stakeholders and their reliance on IP rights underscores the complexity and sophistication of the esports sector. As the sector continues to grow, the importance of strategic IP protection becomes increasingly manifest. This ensures that producers, content creators, publishers, players and tournament organizers can benefit from their contributions and investments.

In this publication, the reader will find straightforward information, resources and tips on how to leverage IP to build a successful esports project, regardless of its scope. By understanding the critical role of IP rights and how to effectively manage them, stakeholders can navigate the complexities of the esports sector, protect their content and creations, and capitalize on the opportunities this energetic sector offers.

2 Esports and intellectual property

Basic aspects of IP

IP encompasses a range of legal protections designed to safeguard the creations and innovations of individuals and organizations. The most prominent forms of IP include copyrights, trademarks, patents, trade secrets and industrial designs. These grant protection to rightsholders, meaning a natural or legal person holding the IP rights to a work, whether the author, publisher, or some person or other legal entity to which the rights have been transferred.

As will be described in more detail below, copyrights protect original works of authorship, such as literary, musical and artistic creations, including video games, software and multimedia content. Trademarks, on the other hand, safeguard distinctive signs, symbols, logos and names that identify and distinguish the goods or services of one entity from those of others, playing a key role in brand recognition and consumer trust. Patents provide exclusive rights to inventors for their novel and useful inventions, which span a wide array of technological advancements and processes. Trade secrets protect confidential business information that provides a competitive edge (i.e. formulas, practices, designs, and methods). Lastly, industrial designs protect the aesthetic aspects of products, for instance, their shape, configuration, pattern and ornamentation, guaranteeing the legal recognition and protection of a product's visual appeal.

In this chapter, we will take a closer look at each of these forms of IP and explore their specific applications and importance in the esports sector. In many cases, intangible elements in this sector can be protected by several forms of IP. For example, an esports team's logo can be protected as a trademark and copyright; or a competition's merchandise, which can be protected as an industrial design, trademark and patent, depending on the circumstances. This complementarity of IP rights provides esports stakeholders with an invaluable resource to protect their talent and investment from misuse by third parties.

At a glance, the following table describes the main categories of IP relevant for the esports sector:

	Protected content	Protection and duration	Real-life examples
Copyright	<p>Copyright is a key form of IP protection in esports. It safeguards original works of authorship, including but not limited to graphics, music, storylines, in-game assets, gameplays, and the game engine.</p> <p>Game developers or publishers typically hold the copyright to these elements, granting them exclusive rights to reproduce, distribute, display, perform and make available their creations, as well as to authorize other to do so.</p>	<p>In most countries, formal registration is not required to obtain IP rights. However, it may provide additional benefits in terms of local law (e.g., it may facilitate the resolution of IP-related disputes).</p> <p>In this regard, the specific laws of each jurisdiction may provide for certain categories or classifications of copyrightable works or other subject-matter.</p> <p>In addition, the term of protection varies depending on the territory and the subject matter protected. In general, it lasts from the life of the author plus 50 years after his or her death, and 50 years after publication in the case of audiovisual or sound recordings.</p>	<p>Game engines, scripts, characters, recordings or, as they are known in this sector, <i>gameplays</i>.</p> <p>Examples of game engines include Unity, Unreal Engine or CryEngine.</p> <p>Examples of characters include Jonesy and Peely, from Fortnite.</p>

	Protected content	Protection and duration	Real-life examples
Trademarks	<p>Trademarks provide legal protection to distinctive signs, logos, and names used by game publishers, teams, and events. These marks help distinguish the goods and services of one entity from another, prevent unauthorized use and secure brand integrity.</p> <p>Trademarks can also protect in-game elements, such as character names, logos, and other distinctive features.</p>	<p>For most of the situations, the protection of trademarks requires their registration before specific public authorities, which may vary from one jurisdiction to another. In addition, the protection of trademarks is territorial, meaning that several registrations may be required to ensure complete protection in the different markets where the video game is operated.</p> <p>A trademark generally lasts for 10 years and can be renewed indefinitely, making its protection almost perpetual as long as the rights holder complies with its obligations.</p>	<p>The titles of the video games, used as a tradename for computer games, backpacks, action figures, boardgames, toys, clothing, footwear, etc.</p> <p>For example, the title "Call of Duty" (owned by Activision Publishing, Inc.) may be used as a trademark to identify videogames, but also ancillary products such as figures or apparel.</p> <p>The image or representation of characters of video games.</p> <p>For example, certain logos depicting Mario (from the Mario Bros. saga) may be registered as a trademark.</p>
Patents	<p>Patents are another critical form of IP protection in esports. They cover new and inventive technological solutions used in the development and operation of games. This may comprise software algorithms (under specific circumstances and in some territories), hardware devices, and other innovations that enhance the gameplay experience. Patents provide developers with exclusive rights to their innovative gameplay elements due to the fact that, in some cases, and in certain jurisdictions, unique game mechanics and features may be patentable.</p>	<p>For most of the situations, patents need to be registered before specific public authorities in order to be protected. However, as it happens with almost every form of IP protection, this requirement may vary from one country to another. Besides, like trademarks, the protection of patents is territorial, so several registrations may be required to ensure full protection in the various markets where the video game is available.</p> <p>The granting of patents typically lasts for 20 years, after which they enter the public domain, meaning that anyone can use them without restriction.</p>	<p>Inventions related to game controls or consoles, such as virtual reality or enhanced reality technologies.</p>
Industrial design	<p>Industrial design, unlike patents, focuses on the aesthetic and ornamental features of a product, whether physical or digital. Some examples of the aesthetical features of a product are the shape, configuration, pattern, or color of an article. Industrial design rights protect these visual elements, so the unique appearance of a product cannot be copied or imitated by competitors.</p> <p>At the Global Design Database, administered by WIPO, there are numerous protected designs related to video games, including characters, game controllers and accessories.</p>	<p>This IP right is not present in every country, and those that do regulate it grant industrial designs upon filing an application with the relevant intellectual property office and need a detailed description of the design's visual aspects. The protection is enforced once the industrial design is registered, and from that point it prevents others from making, using, or selling articles that replicate the design without permission of the rightsholder.</p> <p>Industrial designs are generally granted for 5 years, with subsequent voluntary extensions up to 25 years.</p>	<p>External appearance of game consoles and peripherals, character skins and apparel design.</p>
Trade secrets	<p>Trade secrets protect confidential business or technical information that gives its owner a competitive advantage. In esports, trade secrets could be proprietary algorithms, development processes, and strategic plans that are not publicly available.</p> <p>Teams and players would also rely on trade secrets to protect their strategies and training methods, ensuring the confidentiality of their competitive advantage.</p>	<p>In most countries, the protection of trade secrets depends on the confidentiality measures adopted by the secret holder. In order to protect trade secrets, the holder must implement confidentiality measures such as non-disclosure agreements (NDAs), internal policies and technical measures to limit access to sensitive information. The use of physical and digital security measures, like encryption and secure storage, may also provide with additional grounds for protection.</p> <p>Trade secrets have an indefinite life as long as the owner can maintain the information undisclosed.</p>	<p>By its very nature, the mere existence of a trade secret is unknown. However, it is reasonable to say that tournament organizers protect certain key information of a given competition or teams keep secret the strategies they will follow to win their matches in order to obtain the final prize.</p>
Image/publicity rights	<p>Image/publicity rights are particularly relevant in esports, where players often have significant fan followings and marketability. What these rights protect is the commercial use of a player's likeness, like their name, image, and persona. Players have the possibility to monetize their publicity rights through endorsements, sponsorships, and public appearances, exploiting their popularity to promote products and services.</p>	<p>Depending on the jurisdiction, individuals have more or less rights to control the use of certain aspects of their own persona from commercial exploitation.</p> <p>The protection of image (personality) or publicity rights varies greatly from country to country and lasts at least during the life of the individual, although some territories extend it for several years after the death of the individual.</p>	<p>Famous video game players, either because of their in-game performance or because of ancillary broadcasting activities.</p> <p>Esports players generally license their image or publicity rights to a team or sponsor for merchandising or promotional campaigns.</p>

IP and the foundations of the esports sector

IP is the cornerstone of the esports sector, not only because it protects and exploits very intensively intangible assets from video game publishers and brands, but also because esports organizers, teams and players generate their own rights. This is, therefore, a two-way street: on the one hand, many rightsholders obtain significant revenues through licensing and merchandising; on the other hand, the collaboration of these stakeholders significantly enhances the commercial appeal of the primary IP involved, such as the games. By working together, they not only increase the visibility and attractiveness of these assets but also drive the overall growth and success of the sector. As the esports sector keeps expanding, having strong IP strategies will become even more relevant to ensure the ongoing success and sustainability of this dynamic and fast-changing field.

Based on existing IP rights, various stakeholders in the esports sector forge commercial agreements that generate revenue from monetization efforts. Usually, even though those revenue streams rely on traditional IP rights (copyright, trademarks, patents, etc.), they are referred to by different, more commercial monickers. For instance, merchandising rights are grounded on trademarks and copyright, while arena rights are basically copyrights.

The table below shows some examples of industry commercial rights, their corresponding revenue streams, and useful insights about their protection.

	Commercial rights	IP protection
Merchandising rights	<p>Merchandising rights allow third-parties to produce and sell products featuring protected IP, such as team logos, player images, and game characters. This also includes apparel, accessories, and other merchandise that fans can purchase.</p> <p>Collaborations between brands and esports can lead to co-branded merchandise, blending the allure of both to create unique and sought-after products.</p>	<p>Merchandising rights are not inherent legal rights but are formed through a combination of IP rights and contractual agreements. Stakeholders should secure licensing agreements that clearly outline the terms for using protected IP on products. These agreements should specify the scope, duration, and financial terms of the license. Furthermore, keeping an eye on the market for unauthorized merchandise and pursuing legal action against infringers can help preserve control over the use of IP.</p>
Broadcasting rights	<p>Broadcasting rights govern the transmission and distribution of live and recorded game content including through different means such as free-to-air or cable TV, streaming, etc. These rights allow stakeholders, like game publishers, tournament organizers, and teams, to control who can broadcast their events and under what terms.</p> <p>This content will reach a wide audience with proper management, while maintaining control over its distribution and use.</p>	<p>Copyright over broadcast content is based on several legal sources that vary across jurisdictions. Related rights over the broadcast might also exist in some territories.</p> <p>It may be protected by law (legal source) or by additional requirements such as the subscription of specific agreements to build broadcasting rights (contractual source). In either both cases, it is key to keep focus on the contractual structure of the specific esports event to ensure the proper management of broadcasting rights.</p>
Competition or arena rights	<p>Competition or arena rights relate to the organization of an activity and take the form of live events and competitions. Game publishers, tournament organizers, and venue owners can benefit from these rights in order to control the use of specific locations for esports competitions. Effective management of these rights ensures that events run smoothly and maximizes revenue opportunities through various commercial ventures.</p>	<p>To protect competition or arena rights, stakeholders implement clear contractual agreements that define the terms and conditions for hosting esports events. These agreements usually cover several aspects, including venue use, ticket sales, sponsorships, and on-site merchandising. Additionally, control over these rights can be reinforced by monitoring for unauthorized events and taking legal action against potential infringements.</p>
Data rights	<p>Data rights are becoming particularly relevant for game publishers, but also for tournament organizers. The data generated by players and their in-game actions are extremely valuable for analytics and can also be protected and monetized, as well as audience metrics and engagement data from live streams and broadcasts.</p>	<p>The existence of a legal right over specific data or datasets varies from one jurisdiction to another. In practice, the different stakeholders reach agreements over specific uses of the data they handle in relation to the video game. For example, publishers can obtain from broadcasters specific information about audience metrics, if particularly agreed upon in their collaboration contracts.</p>

3 Mapping of stakeholders in the esports sector

Introduction

The recent growth of esports has been driven by several key stakeholders, each playing a decisive role in the sector's success. Game developers and publishers create and maintain the games, while teams and players bring these games to life through their skill and dedication. Tournament organizers provide arenas for players to showcase their talents, orchestrating events from local competitions to international championships. The sector is intensely driven by IP rights, crucial for controlling game distribution, protecting personal brands, and securing broadcasting deals and sponsorships.

The debate between sports and esports often centers on the roles and influence of these stakeholders. In sports, stakeholders such as teams, athletes, leagues and broadcasters have well-established roles and revenue models. In contrast, the esports sector is still defining and refining these revenue models, with a significant emphasis on IP rights and digital distribution. This ongoing evolution poses both challenges and opportunities for stakeholders in the esports sector, highlighting the unique dynamics that differentiate esports from sports.

Non-commercial stakeholders

Players are at the heart of the esports sector, serving as the primary talent and driving force behind its growth and popularity. They are the individuals who compete in video game competitions and leagues, displaying their talent and attracting audiences worldwide.

It is safe to say that players are indispensable to the esports sector, as they are among those responsible for its growth and success. They can achieve this through their performance, influence and community engagement. Their role in the esports sector is multifaceted. It is not only about their performance in competitions, but also about their influence on branding, marketing, and the involvement they achieve from their fan base, such as through social media. The sector of esports is evolving everyday, and with it, the importance and the contributions of the players will only increase, solidifying their position as key stakeholders.

Players

Players are the individuals who showcase their video gameplay skills in esports competitions. They can range from amateur enthusiasts to professionals who compete at the highest levels.

Business relevance

Players are the core of the esports sector, as their performance and personalities drive viewership and fan engagement. Their influence affects branding, marketing and the overall popularity of esports. They are key in revenue streams for the sector, such as sponsorships, advertising deals and merchandise sales. Due to their popularity, some eventually become celebrities with strong social media engagement.

IP-related matters

Players usually combine and protect their image rights with brands and copyright that reflect their identity, image and likeness. Those would be key in securing revenues from their activity as players and any unique content they generate (such as streaming or social media content). If the IP policies of a concrete video game require it, they may also need to secure rights to use certain in-game assets or characters.

Team organizations are other pivotal stakeholders in the esports sector. They provide structure, support and a training environment for players and teams. These entities are responsible for assembling talent, managing player careers and fostering a sense of community and identity within the esports sector. Their role extends beyond competition, as they also work on other aspects, such as business management, marketing and fan engagement.

Furthermore, team organizations manage IP and branding with respect to, not only themselves, but also the players, and they also navigate complex contracts and agreements and address various challenges and disputes. One of the most important factors they need to consider to maintain their influence in the market are effective management and audience engagement.

Team organizations

Team organizations are entities that recruit and manage players or groups of players (teams) while also competing at competitions. They offer the infrastructure, support and resources required for players to compete at their best.

Business relevance

Team organizations have a very important role in the competitive landscape of esports. They handle business management, marketing and fan engagement, creating a sense of community and identity. The successful organizations are those that manage to attract sponsorships, media deals and a loyal fan base, which consequently contributes significantly to the sector's growth. They also manage and license, to some degree, the image and IP of their players after obtaining authorization to do so.

IP-related matters

Team organizations need to protect their brand, including logos, team names and any unique content they produce. Like players, they also need to secure rights for using game-related content in their marketing and promotional activities. One trend is teams negotiating naming rights with a main sponsor or brand, such as Dplus KIA, Shopify Rebellion or QuikTrip Pioneers Gaming.

Commercial stakeholders

Video game **developers and publishers** in the esports sector are key stakeholders responsible for creating, maintaining and bringing games to market, supporting competitive scenes, and driving the commercial success of competitive video games. While developers focus primarily on the technical aspects of game creation, such as designing gameplay, graphics and mechanics, publishers are responsible for distribution, marketing and monetization. However, the distinction between developers and publishers is often blurred. Developers may take on roles of self-publishing, distributing and marketing their own games, and publishers may develop games in-house or own subsidiaries responsible for game development. This trend reflects a strategic shift towards greater control over the creative and production processes, allowing them to protect and maximize the value of their IP.

Developers and publishers

Game developers are companies or individuals responsible for creating and maintaining video games, especially from the technical perspective. They design the gameplay, graphics and mechanics that form the foundation of esports competitions. Publishers are companies responsible for the commercialization of video games, including distribution, marketing and monetization. They can acquire games from developers by commissioning and financing their development in return for distribution rights and possibly partial or total ownership, or they can develop games in-house. Publishers work closely with game developers, teams and other stakeholders to bring games to market and advocate for the growth and sustainability of the esports sector.

Business relevance

Both developers and publishers play critical roles in the esports sector. Game developers are pivotal as they create and maintain (e.g., by balancing game mechanics) the games that players compete in. They work with publishers in the commercialization of the video game, who usually handle distribution and marketing. Publishers may also contribute by funding game development, managing marketing campaigns and organizing or authorizing the use of video games in large-scale events. They help build the game's brand and expand its reach to a global audience. Together, developers and publishers ensure that the games remain operational, engaging and commercially successful.

IP-related matters

Game developers hold the IP rights to the games they create, including copyrights, trademarks, and patents. Developers may license, commercialize and exploit video games directly or in partnership with publishers, sometimes retaining some or none of the IP rights over the video game. Publishers typically acquire the rights of all those involved in the creation of the video game and hold the exclusive distribution rights to the games they publish. Additionally, publishers usually bear the right to authorize the use of the IP of the video game so that third parties can make use of it (e.g., via EULAs, agreements with tournament organizers).

Tournament organizers are responsible for planning, executing, and managing esports events and competitions. They create competitive opportunities for players, engaging audiences and driving the overall growth of the esports sector. Collaboration between tournament organizers and other stakeholders is needed to deliver high-quality events that exhibit the best of competitive gameplay. Likewise, the organization of competitions is not always attributed to a third party, as sometimes the competitions are organized by the game developers and publishers themselves. For instance, Riot Games hosts the "League of Legends World Championship," while Valve Corporation organizes "The International" for Dota 2.

Tournament organizers

Tournament organizers handle the logistical and operational aspects of these events, ensuring they run smoothly and attract large audiences. They also coordinate with teams and players to ensure their participation, manage schedules and provide necessary support to enhance the competitive experience. Additionally, we note that some organizers operate on a 'white label' basis, meaning they handle the event logistics and planning but allow the event to be branded under the name of the hiring company.

Business relevance

Tournament organizers are necessary for creating competitive opportunities for players and engaging audiences. Their efforts help elevate the profile of esports and contribute to its mainstream appeal.

IP-related matters

Tournament organizers need to manage IP and licensing related to the events they host. This includes securing rights to use game content (generally from publishers), event branding and any promotional materials. They also need to navigate complex contracts and agreements with various stakeholders. Organizers must also obtain licenses from players and teams to use their likenesses, names and other personal IP in promotional materials and broadcasts. This is typically granted in player contracts or team agreements.

Sponsors and brands

Sponsors and brands have an important role in the esports sector, providing financial support, resources and promotional activities that drive the growth and visibility of esports in exchange for having their distinctive signs displayed and shown in events, competitions, or even games. Their involvement is critical to the economic viability and commercial success of esports events, teams and players.

Sponsors and brands

Sponsors and brands are companies that provide financial support and resources to esports entities in exchange for marketing and promotional opportunities. They can range from gameplay-related companies to mainstream brands looking to tap into the esports audience.

Business relevance

Sponsors and brands are vital for the financial sustainability of the esports sector. Their investments help fund players, teams, events and content creation, enabling the growth and professionalization of the sector. They also bring legitimacy and mainstream recognition to the sector by associating their brands with the sector. The expansion of a fanbase community of esports is vital to attract more sponsors and brands to esports.

IP-related matters

Sponsors and brands need to secure rights to use the names, logos and likenesses of the teams, players and events they sponsor. They also need to protect their own IP rights when they are used in conjunction with esports marketing and promotional activities.

Additional stakeholders

In addition to the primary stakeholders discussed above, several other key players contribute significantly to the esports sector. These stakeholders include fans, content creators, online streaming and social platforms, retailers, service and telecommunications providers, and associations and trade organizations. Each of these groups plays a unique role in supporting and enhancing the esports sector.

Associations and trade organizations

Associations and trade organizations bring together and represent the interests of various stakeholders within the video games and esports industry. They advocate for policies and regulations that support the growth and sustainability of esports, design industry standards and guidelines, and offer resources and support to esports professionals. These organizations have considerable influence in shaping the future of the esports sector and ensuring its continued and sustained development.

Fans

Fans are the lifeblood of the esports sector as they bring the audience and community support that drive the popularity and commercial success of esports events, players and teams. Their engagement through live event attendance, online viewership and participation in fan communities helps to create vibrant and dynamic esports ecosystems. They also contribute economically to the sector's revenue through the disbursement they make on ticket sales, merchandise purchases, crowdfunding efforts, membership schemes, donations and subscriptions to streaming services.

Content creators

This category includes streamers, YouTubers and social media influencers, who take advantage of the large audience they attract to promote esports and engage with their community. They produce and share esports-related content, such as live streams, gameplay videos, tutorials and commentary. Professional players can also be content creators. It is the sense of community they create with their audience that increases the visibility and popularity of competitive video games and events.

Governments: Some governments have drafted specific legislation to regulate or support the esports sector. In a handful of cases, this has involved the classification or recognition of esports as a sport, a controversial measure not generally supported by the video games industry, providing funding and resources for grassroots development, and implementing regulations to ensure fair play and protect the rights of players and other stakeholders. Government involvement can help to promote the growth of esports on a national and international level or sometimes has stunted the growth of the sector in a territory. For instance, some governments have opted for the creation of specific entities to regulate the esports sector, such as the Korean e-Sports Association (KESPA). In other cases, governments have focused their activity on facilitating conditions for esports, for example, by financing esports arenas and competitions while also deploying social programs to attract players and teams from underprivileged areas.

Online streaming and social platforms

Platforms such as Twitch, YouTube, and other social media and content distribution sites are the main channels for broadcasting esports events and facilitating community interaction. These platforms provide the infrastructure for live streaming, video on demand and social engagement. They have made esports more accessible, creating a space that allows fans to watch and discuss video gameplay and esports content from anywhere in the world, and this discussion leads to more interactivity among fans. The rapid growth that the esports sector has experienced can be partially attributed to the impact of social and content platforms. As esports attract bigger audiences, platforms sometimes enter into exclusivity agreements with players, teams and even competitions for their broadcasting rights.

Retailers

Retailers are involved in the sale of esports-related merchandise, including apparel, equipment, and other branded products. They increase the visibility and branding of esports teams and events through the commercialization of official team merchandise, gameplay peripherals, and other products that enhance the esports experience.

Service providers

Service providers encompass a wide range of companies that offer essential services to support esports events and operations, ensuring that esports competitions are professionally organized and accessible to a global audience. These include production companies, event management companies, equipment and hardware providers, IT and technical support, and software developers. While they are involved in the organization of the competitions, they cannot exploit the IP rights of the competition, for example by associating their brands with a video game, a competition, or a team, unless authorized to do so.

4 Stakeholder business models

Emerging revenue streams for esports

Due to its relatively recent emergence, the esports sector is not as developed as other entertainment sectors in terms of revenue streams.

Today, the sector uses a variety of business models to generate revenue streams, with sponsorship and advertising being by far the most important. Brands pay large sums of money to be associated with popular teams, events and players in order to gain exposure to a young and passionate audience. Merchandise sales, including apparel and gameplay accessories, are another source of revenue, although consumer spending in this area remains relatively low compared to other sectors. Ticket sales for live events also contribute to revenue during the final rounds of a competition or league.

Moreover, amateur competitions offer a platform for aspiring players to compete, often with low entry barriers, including low or non-existent entry fees and smaller prize pools, fostering community engagement and talent development. Streaming platforms, where fans watch live broadcasts of their favorite games and players, generate revenue through advertising, subscription fees and in-stream purchases, increasing fan interaction and engagement. Similarly, merchandise sales, including team jerseys, branded accessories, and collectibles, provide another significant revenue stream while enhancing fan loyalty and involvement.

These diverse revenue streams demonstrate the multifaceted nature of the esports business model, which combines monetization strategies from the entertainment and sports sectors with innovative digital approaches, but with a heavy reliance on advertising. The diversity of revenue streams in the sector, some of which are based on the exploitation of IP rights, is also apparent among its various stakeholders.

Developers and publishers

Video game developers and publishers are fundamental in the esports ecosystem, each with interconnected roles. Publishers typically own the IP of the games, making them indispensable to any event. They have developed diverse revenue models to capitalize on the growing popularity of competitive gameplay, such as selling franchise slots for competitions. For example, team owners have reportedly paid up to \$25 million per slot to publishers and event organizers like Riot Games or Activision Blizzard. When publishers do not organize events, their primary income comes from revenue sharing with third-party tournament organizers, who host and broadcast competitions on platforms like Twitch and YouTube.

Although developers are essential in the video game industry, their role in esports is often less prominent because publishers own the game rights. Publishers usually hold the distribution rights and may license additional IP rights. However, developers can benefit from in-game purchases related to esports teams, allowing them to participate in the financial success of the game. They might also ensure their participation contractually in sequels and further developments of the original title.

Authorizations and licenses in the esports sector involve exploiting IP rights, mainly copyrights and trademarks. The collaboration between developers and publishers ensures the growth and sustainability of the esports sector, highlighting the importance of strategic management of IP rights. This partnership allows for effective control over the use of game content and branding, which is crucial for the commercial success of competitive video games.

Tournament organizers

Esports tournament organizers have also explored a variety of revenue streams to effectively monetize their investment. Third-party tournament organizers typically charge very low or no entry fees to teams, viewing the relationship with such teams as a win-win partnership. As a result, their primary source of revenue is through sponsorships and brand partnerships. These agreements often include the display of sponsor logos on event materials, broadcast channels, and even within the game itself. Sponsors may also provide financial support in exchange for exclusive marketing opportunities, such as naming rights for competitions or specific segments of the competition.

In addition, organizers can generate revenue from ticket sales for live events, where fans pay to attend and experience the competition in person, primarily during the final stages of a competition. Another source of revenue for esports tournament organizers, as discussed above, is the sale of broadcast rights, which they typically share with the publisher, to stream their events on platforms and broadcast through linear television networks. This includes revenue from advertisements shown during the broadcasts, as well as potential subscription fees from viewers who want premium access to the content. However, in current industry trends, the broadcasting of video gameplay and competitions is generally offered free of charge and has diminished in significance as a primary source of income.

Finally, organizers can also monetize their events by selling merchandise, such as competition-branded apparel and accessories.

Once again, most of these authorizations and licenses involve the exploitation of IP rights, such as copyrights and trademarks for franchise slots, trademarks for the sale of merchandising, and, most importantly for tournament organizers, copyrights when they acquire a license from the publisher of a particular title to run the event and display the competition's gameplay, either on site or via Internet video platforms.

Team organizations

Esports team organizations have also attempted multiple revenue streams to effectively monetize their investment. For these stakeholders in the esports sector, the primary source of revenue is through sponsorships and partnerships with various brands. These deals often involve naming rights, which includes the right for the sponsor to be in the team's name, as well as logos appearing on team jerseys, social media channels, and sometimes during live streams of competitions. In addition, teams can generate revenue through prize winnings from major competitions.

As publishers and tournament organizers, another important source of revenue for esports teams is the sale of merchandise. Teams often sell branded apparel, accessories, in-game cosmetics and other products to their fan base, both online and at live events. Some teams also sell merchandise and manage deals with team players. In these circumstances, contractual arrangements between teams and players allow teams to negotiate deals with the image, publicity and IP rights of team members against a salary, a fee, or a percentage of the sum of the sponsorship, merchandising, partnership or other type of contract. In addition, teams monetize their content through streaming and video platforms such as Twitch and YouTube by creating engaging out-of-competition content such as live streams, tutorials and behind-the-scenes videos.

Team contracts are less intensive in terms of IP licensing, except with sponsors. The most important agreements for a team to ensure income and financial stability over the years are trademark license agreements, whereby both the sponsor and the team authorize the use of their respective trademarks in the context of the esports initiative, in exchange for

consideration. This agreement typically provides for ancillary use of the trademarks, primarily through merchandising that bears both the sponsor's and the team's brands. Although teams generate a lot of content, such as out-of-competition gameplay, it is typically exploited directly by the teams on video-sharing platforms due to its low commercial relevance in today's content licensing market.

Players

Esports players include different levels of professionals. Elite players are primarily paid by the team organization for which they compete, also in exchange for licensing their publicity or image rights. Only when a professional player has achieved a high level of notoriety can he or she negotiate with the team for the possibility of personal sponsorship and participation in the contracts negotiated by the team. Furthermore, successful players can earn remarkable amounts of money by competing in and winning major esports events, which often have substantial prize pools.

Another important source of income for esports players is content creation on platforms such as Twitch and YouTube. By live-streaming their gameplay, offering tutorials, and creating engaging videos, players can attract a large audience and generate revenue through advertising, subscriptions and donations from fans. Some players also monetize their personal brands by selling merchandise, such as branded apparel and accessories, to their followers. Sometimes this is also done in partnership with the team.

IP also plays an important role in the lives of professional players, especially when they license their image or publicity rights to a team or sponsor, authorizing their limited exploitation in exchange for a fee. Some players are intensive content creators, not only using third-party works (e.g. gameplay), but also creating their own material, mostly audiovisual recordings, and later exploiting them on their own channels on Twitch, YouTube or TikTok.

This mix of revenue streams is driving the growth and sustainability of the sector, despite its relative youth compared to other entertainment sectors, some of which involve the exploitation of IP rights, while others do not. It is likely that as the esports sector grows and reaches a certain level of maturity, revenues from the exploitation of IP rights will increase, mainly from advertising, merchandising and broadcasting rights. To this end, it is advisable that stakeholders in this sector develop multifaceted strategies for the optimal exploitation of their intangible assets, paying particular attention to the licensing agreements they sign, where the IP section is of particular importance.

5 Tutorial on IP commercialization in the esports sector

Identifying your role in the esports sector

Anyone wishing to enter the esports sector with a high IP component should first identify its role in the sector whether as a publisher, developer, distributor, service provider, agent, team owner, player, etc. and then create a portfolio of the IP rights owned, or those owned by others, that are needed for the project. Roles can vary from project to project, and understanding this dynamic is critical to navigating the complex landscape of IP rights in the esports sector. Also, the IP rights licensed or assigned can vary from time to time and for each project; however, there are basic principles for negotiating these types of agreements, which we will describe below.

First, when dealing with an agreement involving IP rights, the rightsholder must analyze the asset being licensed or assigned. The language may be similar, but the legal implications are significant.

Licensing an IP right involves granting permission to another party to use the rights under certain conditions, while retaining ownership. The licensor can set terms such as duration, scope and territory of use, and may receive royalties or fees in return. In contrast, assigning an IP right is a complete transfer of ownership to another party. The assignor relinquishes all rights and control over the IP, and the assignee receives full ownership, including the right to use, modify and sell the IP. Licensing allows the original owner to maintain control and continue to benefit from the IP, whereas assignment results in a complete transfer of rights.

Therefore, the second step is to determine whether some IP rights need to be acquired or licensed by the party who wishes to use them in the context of an esports activity.

Anatomy of an IP license agreement

In the contractual relationship between esports companies and rightsholders, the IP clause is essential for defining the terms of use of a licensed video game in, for example, an esports competition. This is generally the anatomy of an IP license agreement:

Scope

The subject matter section usually defines the purpose of the agreement by detailing the rights granted to the licensee to use the video game for the organization and conduct of the competition.

Exclusivity

This could apply with respect to different criteria: territory, time, other stakeholders, elements of the video game, type of rights, etc. The exclusivity/non-exclusivity clause determines whether the licensee has exclusive rights to, for example, use the game for esports events or whether the rightsholder may license the game to other parties. Just one word can make a big difference in how the competition is run as it could dictate whether or not the organizer can have a competing competition in the same territory.

The exclusive license agreement allows non-exclusive licenses to be granted to third parties, covers all the elements of the video game, and regulates the duration and space in which it can be exploited or the mode of exploitation. A non-exclusive license is generally materialized through licenses of use, prohibits sublicensing and allows the exploitation of certain rights of the video game, which may be limited to specific elements.

Duration

The term clause defines the period of time for which the license is valid, ensuring that both parties are clear about the period of use. This could also include basic agreement for continuation or termination of the contract in certain circumstances.

Territory

The territory section outlines the geographic area in which the licensee may exploit the IP, which may be limited to certain countries or regions. In addition, with respect to broadcasting rights, license agreements must be reached with the necessary broadcasters to cover the retransmission in the territories where the content is to be retransmitted.

Rights

The rights licensed clause lists the specific rights granted, such as reproduction, communication to the public, public performance, display and transformation. The scope of use or exploitation defines how the IP can be used, including online, public venues and digital platforms. Rights can also be contractually divided or defined in ways that are particular to that specific contract.

Rights reserved

For clarification, rightsholders usually include a section describing the rights that are reserved and therefore cannot be exploited by the licensee.

Compensation

In an esports IP licensing agreement, forms of compensation can vary. One common form is a lump-sum payment, where a publisher pays to the tournament organizer a fixed amount, in one or more installments, in exchange for the use of the video game in a competition. Sometimes, publishers and tournament organizers negotiate royalties or share revenues from advertising or the sale of merchandising. The calculation of royalties is complex and should be well-defined in agreements, specifying whether they are based on gross or net income and detailing any deductible expenses. Careful negotiation of royalty terms is advisable, as a successful event can result in significant revenue.

Ancillary rights

Licensees usually need some rights to carry out their main activities. However, in the entertainment business, many times other secondary exploitations take place (e.g.: merchandise, promotional activities, online use, etc.) and, for this purpose, ancillary rights must be granted.

Warranties

The warranties section contains representations by the rightsholder that it has the authority to grant the license and that the IP does not infringe third-party rights.

These agreements are complex and typically have many other sections, including editorial control, trademark use, advertising, etc. Taken together, all of these clauses aim to set clear rules for licensors (mostly, video game publishers) and licensees (e.g.: competitions organizers, streamers, broadcasters, etc.), in order to maximize investment, not only in financial terms, but also in resources, creativity, talent, and emotion.

By clearly defining the terms of use, both esports companies and rightsholders can focus on creating engaging and successful events. This structured approach helps realize the full potential of the IP, creates stability and legal certainty, and improves the overall experience for players and audiences alike. Ultimately, well-crafted IP clauses contribute to the sustainable growth and success of an esports project. Many contracts used in the industry are actually standard clauses developed by a publisher or other stakeholder and are used repeatedly.

The contracts that are frequently entered into by esports stakeholders are as follows:

Sponsorship and advertising agreements

These agreements often involve multiple stakeholders, including publishers, agencies, tournament organizers, sponsors and advertisers. Key considerations include brand alignment, ensuring that the sponsor's image aligns with the game's audience and values; exclusivity for a specific sector, so a competitor of the sponsor is not involved in the same event; and rights and obligations of each party, including detailed obligations and use of logos, promotional activities and content creation.

Live streaming agreements

These agreements involve stakeholders such as tournament organizers, game publishers, and streaming platforms, and typically relate to arena and gameplay rights, specifying the scope of content that can be streamed, including live matches, highlights and behind-the-scenes footage. As illustrated, IP rights are the most important elements of these agreements, and where, when and how these rights can be used is highly detailed, especially by the licensor.

Data and game statistics agreements:

A game publisher licenses rights to data generated in an esports event to a third party. The IP rights included in the agreement are carefully regulated to ensure that the publisher retains significant control over access and uses allowed. The publisher, as the rightsholder, typically grants licenses that allow third parties to use game statistics, player data and other event-related information under certain conditions, typically provided via an application programming interface or API. These agreements often specify the scope of use, including restrictions on commercial use, attribution requirements and prohibitions on sublicensing to third parties.

In summary, the anatomy of an IP agreement in the esports sector is diverse and tailored to specific uses, with the game publisher retaining as many rights as possible with the goal of licensing them to third parties. These agreements can foster a stable and legally certain environment if they clearly define the terms of use. This allows esports projects and rightsholders to focus on creating compelling and successful competitions, while realizing the full potential of the IP and contributing to the sustainable growth and success of esports projects, enhancing the overall experience for players and audiences alike.

About the authors

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Andy has contributed to international legal articles and studies on intellectual property and technology, coordinating major works such as "Video Game Law: Legal and Business Aspects" (2023), a treatise he coordinated with the participation of over 60 authors; and the international studies commission by the World Intellectual Property Organization (WIPO) "The Legal Status of Video Games: Comparative Analysis in National Approaches" (2013) and "The Role of Mobile Apps in the Video Game Industry" (2023). He is an active speaker and lecturer in professional courses and has been invited by WIPO to speak around the world. Andy is also the co-founder and vice president of the Spanish Entertainment Association (DENA) and father of three children with whom he enjoys spending time playing great video games, especially cooperative action-adventure platformers with puzzle-solving elements.

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Antonio works for national and multinational companies, advising them in areas such as intellectual property, data protection, cybersecurity and regulatory compliance (e.g. digital services, artificial intelligence, telecommunications). In the video games sector, Antonio guides his clients in navigating the complex legal and regulatory landscape they face in the course of their activities. As a gamer, Antonio enjoys role-playing games, either single-player or multiplayer (mostly MMO), and is a modest esports player.

Intellectual Property and Esports examines the intersection of IP and the rapidly growing global esports industry and will help readers understand the critical role of IP management in esports.

As competitive gaming attracts fan engagement and produces international superstar players, questions arise about how this emerging sport relates to existing IP frameworks and business models. The publication identifies key stakeholders in esports and explains the building blocks of the industry.

It provides essential insights into how intellectual property impacts professional players, teams, video game publishers, tournament organizers, and sponsors.