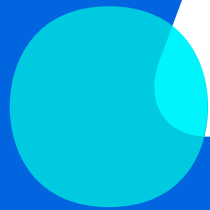


Guidelines for Esports Players



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Guidelines for Esports Players is one of several guides created by the World Intellectual Property Organization (WIPO) and written by Andy Ramos (Pérez-Llorca) and Antonio Muñoz-Torrero (Pérez-Llorca). Other titles:

**Intellectual Property and Esports:
An overview of the game**

Guidelines for Esports Tournament Organizers



Guidelines for Esports Players

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What should players look out for?

In the dynamic world of esports, professional and amateur players frequently encounter IP issues that can significantly impact their activities. As will be further developed below, the most common IP issues players should be aware of in the context of esports are, among others:

- Content ownership and licensing
- Monetization and revenue sharing
- Fan art and game modifications
- Unauthorized use of copyrighted material
- Trademark infringement

There are several reasons why players should care about IP. First and foremost, understanding IP will help you protect your own creations and avoid legal pitfalls. By understanding your rights and the rights of others, you can ensure that your content is legally compliant and protected from unauthorized use allowing you to better plan your career as a player.

IP awareness also demonstrates professionalism and respect for the work of others in the sector. As a player, respecting IP rights fosters a positive community environment and encourages collaboration and innovation. It shows that you value the contributions of game developers, artists and other content creators, which can enhance your reputation within the esports community.

Properly managing IP can open up revenue opportunities through licensing, sponsorships and partnerships. By understanding and respecting IP rights, you can create content that is attractive to potential sponsors and partners, leading to increased monetization opportunities. Brands and sponsors do not want to associate themselves with infringing activities, even if done so indirectly. This includes, for example, people and companies they could be associated with, such as an esports team or an event sponsored by a specific brand. Additionally, being knowledgeable about IP issues can help you negotiate better terms and agreements, ensuring that you receive fair compensation for your work.

As described above, intellectual property (IP) rights are an essential element of the video games and esports industry. By understanding the common IP challenges and the importance of IP awareness, players can better navigate the legal landscape and protect their own creations. This introductory insight sets the stage for more detailed guidance on addressing specific IP challenges, as described below.

Generating and authorizing the use of content

The first step to protecting your creations and respecting the rights of others is to understand who owns the rights to the content you want to use or incorporate in your creation. When you use an online service such as a video streaming platform or even subscribe to online services of a video game, you enter into a contractual relationship with the owner of the platform, video game or service. The contract is detailed in the terms of use, sometimes referred to as End User License Agreement or EULA) available in the platform. There it will not only describe what you can or can't do but also what happens to yours, third parties' and the service provider's IP.

Platforms like Twitch and YouTube, or video games like Fortnite, have specific terms of service that outline content ownership and licensing while also having a system for third-parties to claim infringements. Generally, while you retain ownership of your original content generated while using the platform, you grant a license to use, distribute and monetize it.

To protect your rights, it is important to review and understand the platform's terms and conditions, as well as whether you can exploit your content on other platforms. This might lead you to decide to use one particular platform, or even many at the same time as, generally speaking, the more platforms you use to distribute your content, the more revenue opportunities might appear.

If you are collaborating with other creators, make sure you have clear agreements in place that explicitly address content ownership and revenue sharing. The more detailed and specific the clauses in these agreements, the less likely it is that a dispute will arise over rights ownership and revenue sharing. You can use as a guide the elements commonly found in an IP agreement, which are described below in the guidelines.

If you are generating content that you believe is relevant for your career strategy and contains distinctive signs that could differentiate your product from similar ones in the market, such as catchphrases, personalized emblems or images or a player's nickname, think about protecting those elements through trademarks or registering them as copyrighted works.

Monetization and partnerships

While it is always tempting to monetize your content through advertising, subscriptions, or sponsorship, this can raise IP issues, especially if copyrighted material is used in the creation of that content. To avoid potential legal complications, including receiving a takedown notice on your social media account or lose monetization in platforms, ensure that any copyrighted material you use is properly licensed or originally created (by you or that you own the rights), or that you are following the terms of use. You should also understand the revenue sharing agreements and licensing terms of the platforms you use. Sometimes they use language or formulas that are difficult to understand, but you can consult a professional (e.g., lawyers, agents, etc.) to better understand the return you can get from your talent and work.

In-game creations (fan art and mods)

Creating fan art or game modifications (mods) is a popular activity among players, but it can be a gray area in terms of IP. Some game developers encourage fan creativity and usually provide guidelines for creating and sharing fan art and mods. However, others are opposed to modifications not controlled by the developer. Since the video game IP rights are owned by the developer and/or publisher, they can oppose any modifications that they don't authorize as an infringement of their IP rights and the terms of service. To avoid legal disputes over fan art and mods, always check the developer's policy or the game's terms of use on these matters. And equally important, be aware of clauses that impact your ownership over fan art and mods. If in doubt, ask the rightsholder (either the developer or the publisher) for permission before creating or sharing your work.

Using content

This is one of the most important and common IP issues in the esports sector. Players often use a large amount of content, such as footage, music and images, in their streams or videos from their favorite video games in various ways. In order to avoid copyright infringement claims or loss of monetization in relation to the use of this type of content, only content that gamers are authorized to use should be considered. This includes content that gamers obtained through licensing agreements, either directly or via EULAs. Failure to obtain such permissions may result in legal or financial penalties for copyright infringement. Another alternative, whenever possible, is that gamers create their own content, such as background music or images, and therefore are the owners of that content.

Many video game companies provide publicly available guidelines or specific licenses for content creators, so we always recommend that players check the official website or contact the developer or the publisher for more information. Finally, you should seek legal advice to better understand conditions that might apply to your content, such as those associated with the use of AI services, free and open-source licenses, using real people or brands, or assuming that the laws of one country apply elsewhere.

Brands, logos and trademark misuse

Trademark infringement occurs when someone uses names, logos or other identifiers that are protected by trademark law without the permission of the trademark owner. In esports, this includes the names and logos of games, teams and sponsors. To avoid this type of infringement, it is recommended that you obtain permission before using any trademarked material. Again, this can be done by contacting the trademark owner directly or by reviewing the trademark guidelines that many platforms and video game publishers have to understand under what the circumstances use is allowed by the right owner. In some cases, the trademark laws of some countries may permit the descriptive or informative use of a third party's trademark without the need to obtain permission. Even in this case, negative comments about a product or service identified by the trademark or its use in circumstances that could affect the reputation of the product, service or producer/provider could generate legal standing from right owners against unauthorized uses. Before using trademarks, check the circumstances in which you are using them and the rules in your country and adapt accordingly. The context in which you use trademarks is extremely important, as even well-intentioned use can lead to legal problems.

Recommendations for players

As a player or content creator, protecting your own content is just as important as respecting the IP rights of others. Here are some key strategies to safeguard your creations:

Be cautious to prevent any claims

Infringement could have negative effects on your profile and account in video games and social media such as temporary and permanent blocking. It could also generate claims in real life (courts). In order to avoid surprises or any negative consequences, make sure you review all the elements of your content that could be subject to IP rights, or that could infringe someone else's IP rights. Remember that while some platforms might allow using third-party content (for example music) this might have consequences for the monetization of the content.

Manage your IP

You might not be aware that some elements you use can be protected by an IP right. Think about those elements that are important in your activity as a player, streamer or even for your followers, and consider registering them to secure protection (in the case for trademarks, for example) or to document your creation to facilitate enforcement (in the case of copyright, for example). This is the first step to avoid others using your content without authorization and the basis for career development, such as sponsoring agreements and collaborations. This includes gameplay videos, original music and artwork.

Personalization

In addition to creating a visual identity with your followers, personalizing your content via watermarks or branding can be useful in engagement and can also help deter unauthorized use while making it easier to identify your work. This is particularly useful for images, videos and live streams. In the case of video platforms also consider adopting best practices in terms of the metadata contained in your videos; this could help with monitoring and even monetization in the future.

Teamwork and ownership

You might collaborate with many people or eventually ask others to prepare or work on content you incorporate or use in a video, for example. In some cases, it might seem unnecessary to formalize these arrangements via written the agreements that regulate the terms of these collaborations, but the lack of clarity and proof that you actually own the content might eventually cause you to be unable to use a brand, logo or other content in which you invested a lot of effort and that generates engagement with fans. In order to avoid future problems, make sure to reflect in writing, in the form of contracts, agreements or licenses, who owns the outcome of a project when more than one person is involved, whether they are contributors, employees, freelancers or just friends. Whenever in doubt, think about the question: How can I prove I own this content?

Authorizing the use of your content

If you collaborate with other creators or allow others to use your content, make sure that everybody involved understands the conditions to use the content, how they can use it (modify, adapt, etc.) and the duration of these agreements. The best option is to have those elements in writing, preferably in the form of a licensing agreement. Remember that the previous registration of your content could be important to bring certainty about your ownership over the content you are authorizing.

Monitoring and Enforcement

Regularly monitor the internet for unauthorized use of your content. There are various tools and services available in the market that can help you track where, how, by whom and how much your content is being used. If you find challenges in monitoring and enforcing, re-think your strategy in terms of personalization of your new content or even adapt old content. In many cases, it might be in your interest that your content is disseminated, but under some conditions, such as mentioning you as the creator. If you find unauthorized use that you would like to stop, take appropriate and immediate action, such as sending a cease-and-desist letter or filing takedown request procedures that might exist in the country of the infringement. (Most platforms have an internal notification system related to infringement).

Legal advice

The safest solution is to consult a legal professional to understand your rights and the best ways to protect your content. There are many different ways that legal professionals can help you, from personalized advice regarding how to protect your IP through registrations and other legal actions to drafting licensing agreements for use in your daily activities.

Team player

You might receive proposals to become a member of a team. It is important to understand the agreement with the team to avoid unpleasant surprises. Agreements might include exclusivity over some elements of your activity, such as streaming, for example. Of course, avoid any breach of contract once the agreement is signed. Remember, disputes might arise.

Think about using alternative conflict resolution clauses such as a WIPO clause in the contract (for more information go to <https://www.wipo.int/amc/en/center/specific-sectors/videogames>).

About the authors

Andy Ramos is a partner specializing in Entertainment and Technology Law at Pérez-Llorca, with offices in Europe, the Americas and Asia-Pacific. Andy holds a law degree from the University of Seville and an LL.M. in Intellectual Property from Whittier Law School in the USA, where he also gained international experience working at Sony Pictures in Los Angeles. He works with multinational companies and video game associations on intellectual property, contract law, and regulatory issues, representing clients in copyright litigation and advising on complex negotiations and legal issues in the video game, audiovisual and music industries, including the convergence of entertainment and technology.

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 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 the World Intellectual Property Organization to speak around the world. Andy is also the co-founder and vice president of the Spanish Entertainment Association (DENA), father of three children with whom he enjoys spending time playing great video games, especially cooperative action-adventure platformers with puzzle-solving elements.

Antonio Muñoz-Torrero is a lawyer at Pérez-Llorca and has previous experience of working in prestigious international law firms. Antonio studied Law and Economics at the Universidad de Granada. He holds a Masters in Intellectual Property and New Technologies from the Universidad Autónoma de Madrid, and has deepened his studies in data protection and artificial intelligence through various programmes at the IE Law School (Instituto de Empresa). He also collaborates as a lecturer in several Masters courses offered by both universities.

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 e-sports player.

Guidelines for Esports Players addresses the growing number of professional esports players worldwide who face IP challenges.

As players compete individually or in teams, they must balance optimizing their own IP rights management while avoiding infringement of rights held by tournament organizers, video game publishers, and other industry stakeholders. This publication identifies key IP issues that esports players encounter and provides practical, step-by-step guidance for implementing straightforward strategies to optimize IP management.