

Esports and the Law

News, case summaries, articles, and strategies concerning esports and the law

The Anti-Cheating Movement: Ridding Esports of Cheats

By Erick Orantes, Aalok Sharma and Habib Ilahi, of STINSON LLP

Over a hundred years ago, several Chicago White Sox baseball players were credibly accused of tanking against the Cincinnati Reds in the 1919 World Series. Allegedly, a criminal syndicate led by mobster Arnold Rothstein paid those players to deliberately throw the games. A criminal trial later took place; however, all players were acquitted of all charges. Nonetheless, the scandal, which later became known as the Black Sox Scandal, rocked professional baseball for decades.

More recently, some esports titles have encountered their own matchfixing scandals which may become synonymous with the Black Sox.¹ With millions of

dollars in wagers in legal and illegal gambling marketplaces, it should come as no surprise that some esports matches are thrown or fixed. Recently, the FBI has conducted probes into Counter Strike Global Offensive (CSGO) teams and tournaments for purported bribery, match fixing and other cheating. Similar to the Black Sox Scandal, criminal syndicates approach gamers to purposefully throw their match for the benefit of the syndicate. The investigation into cheating and fixing in CSGO is ongoing. According to media reports, the illegal activity between syndicates and some players has been going on for quite some time. This type of match fixing results in

See CHEATS on Page 8

INSIDE THIS ISSUE

Dr. Mimi Perreault Discusses Importance of Esports in New Book Contribution 2

Making Space for Women in Games: An Interview with Joanie Kraut, CEO of Women In Games International (WIGI) 3

The Influence of Esports on College Campuses 4

Will the NCAA's NIL Ruling Impact Collegiate Esports? 5

Activision Blizzard Agrees to Expanded Workplace Initiatives, Reaches Settlement with the EEOC 6

Quiles Talks Esports Ecosystem and Why It Matters 7

Professional Skateboarder Amends Complaint, Adds Defendants in Lanham Act Case Against Game Publisher

By Isaac Klipstein, 2L, George Washington Law School

Zachary Miller, a professional skateboarder, sued the video game publisher Easy Day Studios claiming their video game, *Skater XL*, included a character that bears his image and likeness without his permission. Miller's federal lawsuit, filed on November 9, 2020, claimed Easy Day Studios violated the Lanham Act, which prohibits false endorsement and false advertising, and California Civil Code § 3344, which pro-

hibits misappropriation of an individual's name, image and likeness. In September, 2021, the Southern District of California dismissed the case with leave to amend, and in October, 2021, Miller filed an amended complaint which added several third-party defendants and introduced evidence regarding consumer confusion and economic harm.

The new defendants are footwear and apparel companies like Vans, whose products are often associated with skateboarding. Each defendant engaged in

comarketing agreements with Easy Day. For example, players can customize *Skater XL* characters to wear certain apparel from Vans or Cariuma. These collaborations were advertised on social media by Easy Day and by the brands, jointly promoting the game and the apparel brands. Many of those advertisements feature the playable character which was the subject of Miller's initial complaint. Miller's amended complaint argues that these comarketing advertisements imply

See SKATEBOARDER on Page 9

Esports and the Law

HOLT HACKNEY
Managing Editor and Publisher

Hackney Publications

THE ROBERTS GROUP
Design Editor

ELLEN M. ZAVIAN, ESQUIRE
Adjunct Professor at George
Washington University,
Professorial Lecturer in Sports
Law at George Washington Law
School
Editor In Chief

BRIANA NARDONE
Marketing

Please direct editorial or subscription inquiries to Hackney Publications at: info@hackneypublications.com.

Esports and the Law is published quarterly by Hackney Publications.

Postmaster send changes to: Hackney Publications, P.O. Box 684611, Austin, TX 78768.

Copyright © 2021 Hackney Publications

Dr. Mimi Perreault Discusses Importance of Esports in New Book Contribution

Video gaming played competitively, or esports, has grown in such popularity that universities, including East Tennessee State University, have established their own teams to compete against similar lineups at peer educational institutions. esports is also piquing the interests of university researchers and those in marketing and communication.

That is why Dr. Mimi Perreault, an associate professor in the Department of Media and Communication at ETSU, said she took the opportunity to contribute a chapter on the news coverage of esports to the “Handbook of Research on Pathways and Opportunities Into the Business of esports,” published earlier this summer.

“I was working on a paper on esports because I was interested in how it intersected with my work in journalism and video games, so this seemed like the perfect outlet,” said Perreault. “This study is relevant as esports is a growing area of interest to many media and communication scholars.”

In the study, Perreault, who also studies journalism and mediated messaging, explored the evolving ways in which esports were covered in major U.S. business news publications, including *Forbes*, *Business Insider* and *The Wall Street Journal*. The study examined how those publications discussed the advent of esports as a mainstream sport in 2018 and found that journalists covered them in a variety of ways, from lifestyle, to art, to sports.

Perreault said it was because of her observations of the trends in esports and video game marketing that she became interested in further exploration, having done work on news coverage and marketing of sports and video games which helped her situate herself in the world of esports.

In 2019, ETSU announced plans to

form a varsity esports team, and renovations at D.P. Culp Student Center included the installation of a state-of-the-art varsity esports arena. Perreault, who joined the faculty that year, said this is one reason contributing to the chapter piqued her interest.

“Last fall, I saw a call out from two professors from the University of Houston looking for book chapters that had to do with esports and marketing and thought I would work on that,” said Perreault. “I was able to obtain a body of articles with the help of Dorothy Carner, my former research librarian when I was a Ph.D. student at the University of Missouri.”

Soon after, Perreault and her co-researcher and husband, Dr. Gregory Perreault, an associate professor at Appalachian State University, submitted their work.



“We were honored to write about a topic that has not been examined by many scholars in our field, but also one that is growing in relevance,” she added.

The paper was also accepted and presented earlier this month at the conference of the Association for Education in Journalism and Mass Communication, a nonprofit, educational association of journalism and mass communication educators, students and media professionals, in its sports communication division.

In addition, Perreault has published two articles in *Games and Culture*, a journal for video game research.

For more information, contact Perreault at perreault@etsu.edu.

Making Space for Women in Games: An Interview with Joanie Kraut, CEO of Women In Games International (WIGI)

By Meredith Murray, 2L, George Washington Law School

Joanie Kraut is the CEO of Women in Games International (WIGI), a nonprofit organization with a mission to cultivate resources to advance economic equality and diversity in the global games industry. Joanie, a lifelong gamer, has held many roles prior to launching WIGI, including acting as an advisor and consultant for smaller studios, startups, and nonprofits in the gaming space, and as a speaker on a variety of topics from optimizing data for analysis to the inclusion and advancement of women in leadership. Her work with WIGI is helping develop opportunities for women and other diverse communities in gaming by creating resources that can be used to help women reach their full potential as individuals, creators, workers, and gamers. In her quest to increase inclusion and representation in gaming spaces, Joanie believes it is time the gaming industry acknowledges women are here, have always been here, and are part of what makes these gaming communities so vibrant and rich.

Question: How did you get involved with the gaming industry?

Answer: I grew up in a household where my dad was into gaming and technology. We were always engaged with a gaming console, board games, and card games. It was part of my family fabric. My mother was into Tetris so deeply that she called it my 'lullaby' music. Falling asleep to Tetris laid the groundwork for my later years.

As I aged out of the crib, my parents divorced, which left us with less disposable income to spend on technology. This greatly impacted my college years when I found myself lost in a computer course, feeling overwhelmed. Conversely,

I knew I could not ignore computers as they would be playing a pivotal role in my post collegiate career.

Beyond the classroom, I began playing World of Warcraft with my then boyfriend. It allowed me to get comfortable with a computer while challenging my 'trouble shooting' skills when facing lag issues, overheating, and, let's be honest, user errors. Beyond gaining confidence in using a computer, I truly embraced the feeling of being part of a community.

Q: What was your first gig in the gaming industry?

A: My first real job after graduation landed me in an accounting role. I found myself in a career I was not passionate about. It was then that my mentor told me, "You need to find the thing that you are super passionate about, and you need



to do that for a living - whatever that is.

Q: What is the thing that makes you happy? That's where you're going to be, where you're going to find your people."

A: At the time I just purchased a mouse for World of Warcraft and I loved how the mouse was manufactured. Upon further inspection, I discovered the name of the manufacturer, Steel Series. Coincidence or not, they were a block away from my

home, so I searched their careers' page to see if they needed an accountant. This was my gateway in the gaming industry.

Q: Explain your role in WIGI, along with the goals of the organization.

A: I started off as the CFO, before taking on the CEO role about a year ago. My extensive nonprofit experience steered me toward fundraising, through donation drives and grant applications. These types of funds have allowed us to create the programs needed, delivering opportunities to women in the gaming space.

Specifically, we built out our workshops, created programs, and rebranded our public facing message. We recently received a \$1 million dollar grant from Activision Blizzard so have a lot in the pipeline for 2021-22, and I am excited to share it with the community soon.

Q: What is a key take away you would like to share with the women in gaming?

A: Get paid for your time and expertise. We have made it a conscious decision to pay our speakers for their time. If they are willing to put together a presentation and spend time sharing their knowledge, then the least we can do is value their expertise. This allows us to amplify the voice of our resources and provide a platform to somebody who is an expert in that field.

Q: In your estimation, what is the most pressing issue facing women and other underrepresented groups in gaming?

A: I would say it is respecting my space in the industry, regardless of my upbringing. It is critical for all women in the space, regardless of their social economics, to take charge of their destiny. As a powerhouse woman once said to me, "You have to work twice as hard, but you're going to get there. When you walk in a room, own it, like you grew up with

everything.” This completely changed my trajectory and I know it will do the same for others.

One place we can start with is having diversity at the top. Women of color need to be able to say, “Wow, that girl looks just like me and I could be anything - whatever it is.”

This type of vision will normalize the presence of women and people of diverse backgrounds within the industry and demonstrate that no barrier, wall, or glass ceiling should ever exist. This, and only this, will allow WIGI to amplify the voices of those diverse people eager to get into the space.

Q: Where have you seen the most growth or improvement in the gaming industry for women?

A: Having a company like Dignitas in the space, a female-owned company, women only teams, and a female C-suite has provided us with the most growth and opportunity.

The Influence of Esports on College Campuses

By Shannon Golden, University of Oregon Brown Rudnick, LLP

Video games have been a part of mainstream American culture since the 1980s, and streaming platforms like Twitch, YouTube Live and Discord make it easy to play with anyone, anywhere, at any time. Competitive online gaming — also known as esports — has become a [billion-dollar media phenomenon](#) with millions of viewers worldwide.

How is this new form of media affecting society? [Amanda Cote](#) and [Maxwell Foxman](#), assistant professors of media and games studies in the UO School of Journalism and Communication (SOJC), are trying to find out.

Cote’s research focuses on [sexism and harassment in the gaming world](#). She hopes to provide insights into how collegiate programs can make their esports teams more inclusive.

Foxman is particularly interested in how esports intersects with video game journalism. Together, they are exploring the emergence of esports programs on college campuses and the effects these programs have on university communities.

In their first stage of research, Cote and Foxman spoke with players and administrators about collegiate programs around the country — including at the University of Oregon, which [established the UO Esports team in 2018](#).

“Our goal was to start with interviews, get an idea of what’s going on, and of the different shapes collegiate institutions can

take,” said Cote. “Then we’re planning to leverage that into broader surveys once we have an idea of what questions we should even be asking.”

The researchers plan to create white papers with suggestions for universities to strengthen their virtual gaming programs. They hope to show how esports might connect with traditional university programs, alumni and stakeholders.

“We want to have hands-on outcomes for people to build strong, inclusive programs that are of benefit to their collegiate communities, rather than limited in terms of the number of students,” Cote said.

Shortly after joining the SOJC in 2018, Cote and Foxman were approached by



David Gugliotti, a 2019 UO master of business administration graduate, about a plan to put together a varsity esports team on campus. Gugliotti later became the [UO Esports program](#) director for the 2019-20 school year.

Cote and Foxman thought this would be an interesting opportunity to investi-

gate esports on a broader scale.

After interviewing students from institutions across the United States, they observed that small schools tend to incorporate esports into university life with a top-down approach. The school’s administration might use it as a recruiting effort for the athletics department or to attract students to the school with scholarships. At larger schools, however, it is more common to see esports teams emerge from existing student-led gaming clubs.

“I think esports is in many ways the vanguard of the expansion of games into the traditional media world,” Foxman said. “It’s amazing how applicable these issues are across countries and different types of universities.”

Cote and Foxman are in the process of establishing an esports research lab on campus. The lab’s research is broad in scope and multidisciplinary in practice. Foxman emphasized that their work connects them to other departments at the UO and to other academic institutions across the world.

When the coronavirus caused the UO’s [Esports Lounge in the Erb Memorial Union](#) to close, students successfully shifted their programming to an online platform. The SOJC’s student-run television network, [DuckTV](#), has been broadcasting and commentating on UO Esports matches.

“It’s really nice to work in a program that’s on the cutting edge of this kind

of communication research,” Cote said, “and that takes new media impacts very seriously.”

Shannon Golden, class of '22, is a jour-

nalism major at the School of Journalism and Communication. She is minoring in global studies and is particularly interested in international journalism. Golden cur-

rently works as a student writer for the SOJC Communications Team and [Ethos Magazine](#).

Will the NCAA's NIL Ruling Impact Collegiate Esports?

By David A. Moreno Jr. and Alvin Benjamin Carter III, of Brown Rudnick

In 2014, Kurt Melcher, an associate athletics director at Robert Morris University, called up an executive at Riot Games, which publishes the popular video game League of Legends. The reason? He was laying plans to form the first collegiate esports team.

“This is such a team-based game, why couldn't we go and treat it like baseball, like basketball, like soccer?” Melcher [wondered](#). “Get the best players, scholarship them and bring them to our school.”

In six months, he'd done just that, finding sponsors to fund uniforms, a facility, and 35 partial scholarships. Three thousand inquiries to join the team flooded Melcher's inbox; 2,000 new students applied to the school. Fast forward to 2021, and hundreds of others have followed in Melcher's footsteps: the National Association for Collegiate Esports (NACE) now [has](#) over 170 member schools that together have provided more than \$16 million in esports scholarships.

One might think, given all this interest, it'd be the NCAA in charge and not a newcomer like the NACE. But in 2019, the NCAA officially chose not to govern esports. Their primary justification, according to Melcher – who is now the Executive Director of Intersport, which led the task force responsible for persuading the NCAA – [was their](#) “inability to get past the fact that gamers might come to college after earning money, have a personal brand already built in their streaming following, and could easily have a sponsorship deal in place...prior

to accepting an NCAA scholarship.”

In other words, the NCAA chose not to govern esports because of their amateurism definition – a definition they amended this year with their new name, image, and likeness (NIL) policy. Though the full impact of this decision on collegiate esports is still uncertain, new questions and opportunities appear to be on the horizon: Will the NCAA rethink its stance towards collegiate esports? What benefits and lessons might this offer esports? And what can esports – which has long allowed young players to profit of their name, image and likeness – offer the NCAA?

The NCAA, NIL, and esports: a brief primer

As noted above, the NCAA chose not to govern esports in 2019. While the amateurism definition was a key issue, the committee also [cited](#) potential Title IX issues (esports is a male-dominated arena) and the violence of certain video games. As of now, [only](#) 8.2% of collegiate esports gamers are women, but interest is there: one study [shows](#) roughly half of women gamers participate in video games that belong in the esports category.

In light of the NCAA's decision, other esports leagues have cropped up, including the NACE and the Electronic Gaming Federation (EGF). These organizations permit gamers to license their names, images, and likenesses to sponsors.

Now, the NCAA is allowing their players to do the same. Their [interim policy](#) (active July 1, 2021) allows student-athletes to sign NIL licensing deals from third parties but prohibits pay-for-play (i.e.,

universities can't pay students to play for them) and impermissible inducements. These rules are of course superseded by various state laws – there are 19 thus far and more on the way – and NCAA schools might have their own NIL policies as well.

No matter the specifics, one would expect that with the amateurism issue out of the way and esports' popularity surging (especially amid the pandemic), the NCAA might reconsider their stance – creating new opportunities, benefits and learnings for the NCAA, esports, and the students and schools who participate.

What the NCAA can do for esports

If the NCAA *does* to choose to govern esports, there could be a number of benefits to esports, including:

- *Better regulated competition.* The NCAA has extensive experience and resources when it comes to providing fair competition, standardized rules, and compliance. These are not insignificant issues when it comes to esports, which has been wrestling with drug testing and cheating matters.
- *Improved diversity and inclusion in esports.* If the NCAA were to govern esports, schools would be under more pressure to tackle the Title IX issues inherent in a sport so dominated by men. The NCAA, which is familiar with these issues, could help esports and participating schools take steps in a positive direction – while also implementing measures to facilitate safer environments for women gamers.
- *Ensuring the overall wellbeing of*

student gamers. The NCAA's mission statement focuses on students-athletes' wellbeing and academic success. It could institute and enforce rules that would help ensure student gamers are not lagging behind academically or walking into potentially exploitative deals. The latter is already happening at the school-level in response to NIL policies: the athletic department at Nebraska, for instance, recently [launched education and support](#) for its athletes in this respect.

- *Improving esports' reputation and legitimacy.* Though esports has fast become a legitimized sport – especially amid COVID-19 – the NCAA's participation would go a long way towards legitimizing it even further, while also creating opportunities to increase its exposure and reach. Perhaps there could be even something akin to a traditional sports draft that helps create a more structured way of becoming a professional esports gamer.

What esports can do for the NCAA (and its member schools)

The NCAA – and the schools it works

with – could also greatly benefit from esports on various fronts, such as:

NIL policies. Gamers in esports have always had the independence to license their names, images, and likenesses. Now that the NCAA has agreed to allow its student-athletes to do the same, they could look to collegiate esports for guidance and best practices – especially in this interim period.

For example, this experience could shine a light on issues that may arise with conflicting deals. As Melcher [describes](#), “I knew if we were going to have a successful program, we would have to honor the existing partnerships the players came to our school with. If we had a mouse deal with the program, we would exclude that student from the mouse company deal if they had a competing mouse deal and make sure that player was not of any promotions that would cause conflict with his existing deal.”

New partnerships and recruitment opportunities for schools. Esports opens up entirely new avenues for partnerships (and recruitment) that could benefit universities the NCAA serves. The University of Kentucky, for instance, has [partnered](#) with JMI sports for the naming rights for their

new esports facility and struck a deal with established esports franchise, Gen.G.

These deals show that NIL policies don't have to come at the expense of university partnerships and revenue. As NACE's director [told](#) the *Washington Post* last year, “Whether the esports team is part of the athletic department or the engineering school, we believe esports' success is due to its flexibility, allowing the school to obtain sponsorships while encouraging the gamers to develop their own broadcast channel and licenses. It is all about helping the athlete build their personal brand, which in turn aids the college in the long run.”

Looking forward

Much remains to be seen when it comes to the NCAA and collegiate esports. But one thing is clear: esports' momentum [shows](#) no signs of slowing down. The same could be said of student-athletes' desire for NIL opportunities.

As these new trends gather steam, there's ample potential for the NCAA and esports to come together, learn from one another, and create value for students, schools, and the esports industry at large.

Activision Blizzard Agrees to Expanded Workplace Initiatives, Reaches Settlement with the EEOC

By Holt Hackney

Activision Blizzard has confirmed that, as part of its effort “to have the most welcoming, inclusive workplace,” it has reached an agreement with the U.S. Equal Employment Opportunity Commission (EEOC) to settle claims “and to further strengthen policies and programs to prevent harassment and discrimination in the company's workplace.”

The company had been named, along

with other California companies, in a [lawsuit](#) by the state's Department of Fair Employment and Housing in which it alleged Equal Pay Violations, Sex Discrimination, and Sexual Harassment.

Under the Settlement, Activision Blizzard has committed to create an \$18 million fund to compensate and make amends to eligible claimants. Any amounts not used for claimants will be

divided between charities that advance women in the video game industry or promote awareness around harassment and gender equality issues as well as company diversity, equity, and inclusion initiatives, as approved by the EEOC. The agreement is subject to court approval.

“Many tech companies build on the motto ‘build fast and ask forgiveness later’,” said Ellen Zavian, a GW law pro-

fessor and the editor of [Esports and the Law](#). “It is my hope all video companies take a pause and realize that forgiveness means someone has already been harmed. I hope the industry takes this opportunity to get it right so no one going forward is put in harm’s way.”

Activision Blizzard also announced an initiative to develop software tools and training programs to improve workplace policies and practices for employers across the technology industry.

“There is no place anywhere at our company for discrimination, harassment, or unequal treatment of any kind, and I am grateful to the employees who bravely

shared their experiences,” said Activision Blizzard CEO Bobby Kotick. “I am sorry that anyone had to experience inappropriate conduct, and I remain unwavering in my commitment to make Activision Blizzard one of the world’s most inclusive, respected, and respectful workplaces.

“We will continue to be vigilant in our commitment to the elimination of harassment and discrimination in the workplace. We thank the EEOC for its constructive engagement as we work to fulfill our commitments to eradicate inappropriate conduct in the workplace.”

In addition to the agreed funds, the company is taking additional steps,

including:

Upgrading policies, practices, and training to further prevent and eliminate harassment and discrimination in its workplaces, including implementing an expanded performance review system with a new equal opportunity focus;

Providing ongoing oversight and review of the Company’s training programs, investigation policies, disciplinary framework and compliance by appointing a third-party equal opportunity consultant whose findings will be regularly reported to our Board of Directors as well as the Commission.

Quiles Talks Esports Ecosystem and Why It Matters

By Ellen M. Zavian, Esq., Editor-in-Chief ESL

Roger Quiles grew up in the heart of New York City with a passion for sports and video games. Though initially opening a law firm with multiple areas of practice in 2014, Roger took the deep dive in 2015 – focusing solely on esports. Although the vertical focus was on a growing niche, Roger created a broad type of clientele in the ecosystem, including media platforms, teams, and players. This required him to stay abreast of the changing legal issues like intellectual property, corporate M&A, and igaming matters. Today, he is the Founding Partner of [Quiles Law](#) and a worthwhile candidate for the following interview.

Question: Why in 2015 and 2017 did you create two separate agencies, to work with gamers and how do they differ (In 2015, 1337 Sports Management, and in 2017, co-founded FTW Talent)?

Answer: During the early days of servicing the esports industry through my firm, it was quickly evident that talent (both players and content creators) needed assistance on a more ongoing basis than I was providing as their attorney. While

talent was able to identify situations that had become problematic, they were not readily able to identify future issues that could be nipped in the bud at an early stage. Similarly, talent was too trusting of their employers and would blindly enter into agreements based on their personal relationships or the reputation of the other party. I created 1337 Sports Management as an ancillary business to Quiles Law to work with talent at a much closer, ongoing, level to fill those identified gaps and coach talent on what it means to professionalize their endeavors.

Q: Explain your role on the [Esports Integrity Commission’s](#) key talent agent subcommittee, which has a mission to help shape regulation for esports player agents? And, the accomplishments, to date?

A: If you take a look at the many individuals and entities which are holding themselves out to be agents in the esports space, it becomes painfully obvious quite quickly that the vast majority are operating in an unlicensed manner. Unfortunately, the lack of a license has not stopped them from obtaining clients and attempting to represent them. Many

are also engaging in direct conflicts of interests and will openly disclose such to talent. Recognizing this, ESIC created the key talent agent subcommittee to help define regulations that we as agents within the industry would uphold to help self-regulate the profession. In seeking to define these regulations, the subcommittee has provided members with the opportunity to voice our concerns about the state of the profession in esports and offer solutions. Two key areas are unlicensed representation and agents directly engaging in conflicts of interest. The subcommittee is tackling these issues and many more, as it makes an effort to raise the standard of what it means to operate as an esports agent.

Q: Please provide your goals while sitting on the board of [Latinx in Gaming](#), a nonprofit organization which serves to connect, and increase the representation of, the Latinx community in the gaming industry and promote cultural appreciation.

A: From a vision perspective, my first and foremost goal for Latinx in Gaming is to increase the visibility of the many amazing Latinx peoples working on

all sides of the video game industry. A common theme that I encounter from many Latinx professionals in the space is that they were unaware of the magnitude of the presence of Latinx people in the gaming industry. Realistically, if the professionals are unaware of the size of the community, then it is certainly difficult for our younger generations, who are not involved in the industry yet, to see us. In connecting those individuals and creating a platform to showcase the many disciplines that we all operate in, we then help pave the way for the future Latinx developers, programmers, artists, and even attorneys, that want to work in games. As an attorney of Puerto Rican descent, I know all too well what its like to grow up wanting to engage in a profession that seemingly didn't have many people from my background involved. As an organization, Latinx in Gaming has the ability to help rectify that problem.

Q: Can you speak to your representation of a group of athletes who sued their

owner to obtain payment for their services and how that case impacted the industry?

A: In 2018, I filed suit on behalf of five Heroes of the Storm players against their previous organization, Naventic Esports, and its then twenty-year-old owner. The suit raised several causes of action, including multiple breaches of contract and fraudulent misrepresentation. Specifically, the breaches of contract were in reference to unpaid prize money from a significant international tournament and several months of unpaid compensation. In total, on contract claims alone, the players were due in excess of \$50,000. By the time suit was filed, the organization had been effectively defunct for a year, as the owner no longer engaged with the organization and was unreachable by the players and the organization's staff.

Despite the amounts in question not being particularly high, it was especially important for the players to file suit in this case against both the organization and its owner. Esports players are too often taken

advantage of by organizations, especially with respect to nonpayment. These five individuals chose to take a stand and file the first such lawsuit of its kind. Our suit established consequences where there had not previously been any.

Q: What are some of the legal issues that are coming down the pipe in esports that you are thinking about?

Link to YouTube response: <https://youtu.be/Dix3o44K1Rc>



The Anti-Cheating Movement: Ridding Esports of Cheats

Continued from page 1

considerable harm to game publishers, tournament organizers, leagues, teams, players, coaches, fans, advertisers and sportsbooks.

Since some esports tournaments take place across the globe, criminal enforcement can become complicated. Certainly, global competitions raise the issue of jurisdiction and conflicts of laws. However, for cheating that occurs within the United States, some laws may be used to ferret out cheating in esports. For example, the Sports Bribery Act of 1964 provides for criminal penalties "for any person who carries into effect, attempts to carry into effect, or conspires with any other person to carry into effect any scheme in commerce to influence, in any way, by bribery any sporting contest, with knowledge that

the purpose of such scheme is to influence by bribery that contest."² Violations of the Sports Bribery Act permit fines and imprisonment for up to five years. To date, the Sports Bribery Act has been used very little by prosecutors. There are less than two dozen reported decisions, with the majority of those cases involving manipulated results in horse racing. Besides federal laws, state law can be used to prosecute criminal conduct. As an example, New Jersey law prohibits "rigging publicly exhibited contest[s]." Under that law, it is a crime to tamper with a sporting event, including the solicitation or acceptance of benefits for rigging an event. The ultimate goal of this law is to insure integrity so that the outcome is not affected by nefarious conduct.

Increasingly, some believe that recently passed legislation, titled the Rodchenkov Anti-Doping Act of 2019, may assist in the crackdown of cheating in esports. The act was passed to provide criminal enforcement mechanisms to counter cheating or doping. This act was created as a result of the state-sponsored doping scheme employed by the Russian Olympic Committee during the 2014 Olympic Winter Games held in Sochi, Russia. Unlike the Sports Bribery Act or other federal and state laws, the Rodchenkov Act specifically provides for extraterritorial enforcement. Thus, global esports competitions would not escape enforcement by federal prosecutors. Under the Rodchenkov Act, it is unlawful for any person to use a "prohibited method" or

“prohibited substance” in any international sports competition. However, the term “prohibited method” relates solely to methods or practices which involve illegal doping. Accordingly, the Rodchenkov Act could be used to crackdown on illegal doping in esports, but it would provide little assistance in rooting out illegal match fixing.

Corruption, match fixing, bribery, and other misconduct has existed in traditional stick-and-ball sports for centuries. Given the meteoric growth in the esports marketplace, it was only a matter

of time until this industry faced similar misconduct. While there are a number of tools available to prosecutors to seek out corruption, the most effective methods involve self-governance, and may include rigorous investigations by outside counsel. Due to the irreparable harm that teams and organizations face with this growing threat, the esports marketplace must take protective measures itself and rid itself of cheating.

1. Other than organized match fixing, esports organizations are focused on eradicating corruption

and doping. This conduct is being monitored by some game publishers, governmental authorities, and third parties such as Esports Integrity Coalition (ESIC). 2. It’s unclear whether the Sports Bribery Act applies to esports. The statute only applies to “sporting contests,” which means “a contest in any sport, between individual contestants or teams of contestants (without regard to the amateur or professional status of the contestants therein), the occurrence of which is publicly announced before its occurrence.”

Professional Skateboarder Amends Complaint

Continued from page 1

that he endorses those brands as well as the game itself.

Miller argues that the character’s frequent appearance in *Skater XL* advertisements is likely to cause consumer confusion. Specifically, Miller claims “through his exemplary performance as a professional skateboarder, [he] has become a trusted endorser of products such that when he is seen wearing or using a particular shoe, watch or riding a specific skateboard, as examples, the viewing public sees this as him endorsing that specific product(s)... and in many instances consumers will shape their purchasing decisions based on Plaintiff’s endorsement.” The amended complaint points to the compositional similarities between Miller’s authorized advertisements and defendants’ unauthorized advertisements using the *Skater XL* character.

The Lanham Act provides certain protections for expressive, artistic speech which might potentially confuse consumers. Therefore, Miller must show either that the inclusion is totally irrelevant to the artistic work, which he likely cannot do, or that consumers are “explicitly misled” as to the endorsement. Miller’s name is not mentioned anywhere in the game or in the game’s advertisements. Miller argues that his likeness alone

constitutes explicit endorsement, and emphasizes a [Nixon advertisement](#) which Miller authorized but in which his name does not appear. To further strengthen this argument, Miller has included two consumer-generated social media posts demonstrating that some gamers believed the unnamed character was Miller.

As to harm, the amended complaint alleges that the Easy Day and the co-marketing apparel brands have injured Miller’s ability to maintain current and obtain future endorsements, with competing brands in a market which values exclusivity. Although *Skater XL* advertisements show several playable characters, Miller claims the majority of the comarketed advertisements use the unnamed character that resembles Miller wearing brands he does not endorse.

This case presents the collision of two trends. First, brands have demonstrated

a greater appreciation for the power of video games to shape consumer behaviors: gamers can equip Balenciaga fashion wear and Air Jordan sneakers in Epic Games’ *Fortnite*. Second, the rules regarding athletes’ publicity rights are in flux: this summer, the NCAA announced that college athletes would be allowed to profit from their name, image, and likeness. For game developers, celebrity athletes, and brands seeking to increase their market penetration in America’s [most profitable media industry](#), collaborations, however vital, may incur liability. *Miller v. Easy Day* is a case to watch.

First Amended Complaint, [Miller v. Easy Day Studios Pty. Ltd., No. 20cv02187-LAB-DEB, 2021 U.S. Dist. LEXIS 176582 \(S.D. Cal. Sep. 16, 2021\)](#)

