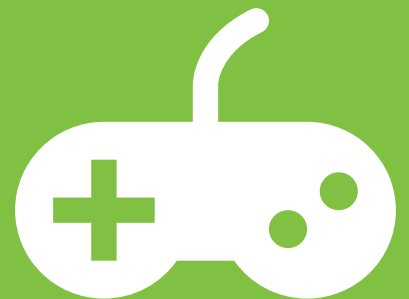
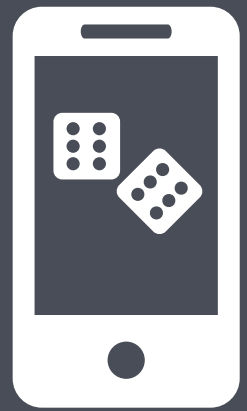


The Ifrah Guide to eSPORTS LAW

An excerpt from *The Definitive Guide to iGaming in the United States*

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eSports are a relatively new entrant to the world of iGaming. While videogames have been part of almost every family for decades, eSports brings team competition to gaming. eSports have turned traditional video gaming into a spectator sport, elevating those who are exceptional at their game of choice into athletes who perform both online and in stadiums for rapt audiences. The growing popularity of eSports has led to international tournaments, team sponsorships, and, inevitably, to gambling.

What are eSports?

eSports are first-person adventure games, where players embark on fantasy quests or military-style missions. These games that began as in-home entertainment have exploded into a professional sport, replete with teams, favorite players, and sponsors. Outstanding players are recruited to professional teams or granted individual sponsorships. As in any other sport, sponsors develop their own professional teams and enter those teams into tournaments all over the world. Individuals and companies investing in teams include individual millionaires and billionaires, NBA and NFL stars, Coca-Cola, Alibaba, and PokerStars.¹

Fans can follow tournaments both in-person and online, although online viewing reigns supreme. Online tournaments are broadcast from platforms such as YouTube and Twitch, Amazon's rapidly growing online video platform. Today, Twitch is the leading eSports viewing platform, regularly featuring tournaments and allowing players to broadcast their gameplay while providing commentary.² Broadcasting allows players to build up a following among fans and for fans to become intimately involved with their favorite players.³ Twitch has also teamed up with Turner Broadcast Systems (TBS), to simultaneously broadcast tournaments online and on cable television during select, high-profile tournaments.⁴ A 24-hour eSports channel is scheduled to launch in late 2016 in the U.K. and Ireland and will reach an estimated 37 million homes.⁵

Emerging eSportsbooks and Skin Betting

As with any competition, gambling has become part of the experience for fans. There are two types of gambling in eSports: real money gambling and skin betting. European sportsbooks have begun setting up eSports wagering tabs for real money bets, which are increasing in popularity.⁶ Within those, fans can place bets on teams in tournaments or individual players.

While the real money gambling is growing, the focus worldwide is on skin betting. Skins are tokens such as guns, potions, swords, or other tools, that help players advance through the game more quickly and efficiently. Players typically gather skins during game play, but now they can purchase them on secondary markets. Typical skins sell for around \$10.00, but particularly rare ones can sell for several hundred dollars.⁷

Outside the game, players can wager their skins two ways. First, they may use the skin as the "money" placed on the bet on a team or player in an eSportsbook or other site dedicated to wagering on eSports competition. Second, they may use their skins to play casino-style games in which they win skins in return. Both styles are extremely popular and in some instances, players are even foregoing their own game play to focus on skin betting.⁸ In fact, there are projections that the skin betting industry will be worth \$8 *billion* in 2016.⁹

Gambling-Related Legal Sports Issues for eSports

Just as eSports are in the process of being defined in the United States, the gambling and betting aspects of eSports games are also in the process of being defined.

The past determinations of regulators and the courts make it fairly clear that real money betting on eSports tournaments is likely illegal in the United States. Either eSports are a sport, in which case gambling on them is prohibited under the Professional and Amateur Sports Protection Act,¹⁰ or (although less likely) they are a game of chance, and betting is illegal under the Unlawful Internet Gaming Enforcement Act.¹¹ Although, as discussed below, some casinos classify eSports as games of skill (but not a sport) and thus exempt eSports from regulation under either federal law. This presents a possible avenue for audience wagering on eSports in the future.

In contrast, skin betting is the wild west of iGaming. Since skin betting does not put real money up for grabs, the entire industry exists in a legal gray area. Gamblers only win and lose skins and do not trade in real money until they exchange their skins on the secondary markets. Some gamblers may never exchange their skins for real money, preferring to use them in personal gameplay.

Skins could ultimately be considered a “thing of value.” If such a designation were made – either by a regulatory body, a legislature, or a court – then skin betting would fall under the auspices of gambling regulation. If so, major skin betting sites such as Counter Strike: Global Offensive Lounge (CS:GO Lounge) would no longer be able to operate in the United States.

Know Your Customer Concerns with Skin Betting

Complicating matters, many skin betting sites do not follow the protocols that guide the online gambling industry, particularly know your customer protections. These sites do not use player identification verification systems, instead allowing gamblers to sign up with just an email address. So, while skin betting is not illegal currently, if the industry were to face legal scrutiny, sites that allow American players might face a serious threat to their customer base. In fact, the biggest skin betting site in the world, CS:GO Lounge, receives more visits from America than any other country, except Russia.¹² Similarly, on many sites there is no age verification in place, so underage gambling is common.¹³

Skin Betting Lawsuits Begin

The first skin betting lawsuit was filed in the United States District Court for the District of Connecticut on June 23, 2016, *McLeod v. Valve Corporation*, Case No. 3:16-cv-01018. In this case, the plaintiff, as a putative class action representative, alleges that Valve (maker of Counter Strike: Global Offensive) is responsible for violations of state laws prohibiting gambling, racketeering, and unjust enrichment. The plaintiff bases these claims on Valve’s apparent sanctioning of third-party skin betting sites and the secondary market in trading real money for skins. While this case is in its very earliest stages, it will set the tone for future litigation and possible industry regulation.

Industry Begins to Respond

Valve has begun to take a stand on this matter. On July 13, 2016, Valve announced that it would no longer work with websites that violated its terms of service and will no longer allow open access to API.¹⁴ This will effectively shutter all skin gambling sites that rely on access to Valve's API.

Similarly, the online streaming site Twitch has backed out of supporting skin gambling. The day after Valve's announcement, Twitch announced it would no longer host streaming for skin gambling connected to CS:GO or Dota.¹⁵

Real World Casinos Get into the eSports Business

While internet skin betting continues in its legal uncertainty, real world casinos are creating eSports lounges.

Fifth Street Gaming applied for a license from the Nevada Gaming Control Board to offer wagering on live eSports, possibly beginning at a tournament this year.¹⁶ Fifth Street Gaming and their host casino, Downtown Grand, became interested in eSports in 2014 and invited professional eSports team the Renegades to practice at the casino.¹⁷ From there, the relationship has grown with viewing parties and tournaments. The partners also hope to expand into the cardroom-style eSports lounges in the future.

Atlantic City is also poised to offer eSports lounges. The New Jersey Division of Gaming and Enforcement ("NJDE") has already begun reviewing the regulations pertinent to eSports lounges and concluded the games are games of skill.¹⁸ If a casino wished to offer an eSports tournament in which players pay an entry fee and stand to win a prize, the casino merely needs to notify the NJDE of their intent to offer the tournament five days in advance, with details on the number of players, equipment in use, and security in place.¹⁹ Additionally, head-to-head competition, where the players wager against one another and the casino only takes a rake is also permitted under NJDE regulation.²⁰ However, audience wagering on tournaments remains unauthorized under current NJDE guidance.

Other eSports Legal Issues

The legal concerns for eSports do not stop at the issue of gambling. There are a variety of new issues confronting this business that, without proper legal guidance, could create problems for players, sponsors, and fans.

Competitive Integrity

The integrity of the competitions is at risk, as concerns about match fixing appear to have been realized. Industry leader Valve banned several players from future events due to fixing traced back to skin betting sites in early 2016.²¹ Similarly, several players were banned by the Korean eSports Association for match fixing in April 2016.²²

The fixing even extends into the skin betting sites themselves. One player and gambler, Mohamad Assad had half a million followers on Twitch who watched him gamble on the site CS:GO Diamonds. Through an agreement with CS:GO Diamonds, Assad was informed in advance what the outcome of

his rolls would be. He used this knowledge to increase his viewership. However, the relationship soured and Assad and CS:GO Diamonds engaged in a very public argument about the terms of their agreement.²³ Ultimately, Assad was paid nearly \$100,000 from the site to promote their product, but then exposed to his followers that the site was feeding him information about his spins. Assad has been banned from ELeague commentating and other commentating gigs as a result.

In another scandal, two highly popular YouTubers were caught promoting their own skin betting website. Trevor “TmarTn” Martin and Tom “Syndicate” Cassell had, between them, over 12 million subscribers on YouTube.²⁴ Subscribers not only watched them play CS:GO, but also watched them skin bet on games through their favorite site, CSGOLotto. However, what both TmarTn and Syndicate failed to disclose to viewers is that they are the founders and owners of the CSGOLotto website.²⁵ In fact, their videos show them suggesting that CSGOLotto approached them about sponsorship after discovering them on social media.²⁶ This deceptive advertising in particular has rocked the eSports world and put eSports viewers on notice that not all on YouTube and Twitch channels may be as it seems.

Contracting Concerns for Players, Teams, and Sponsorships

Professional or aspiring professional players may be obligated to enter into contracts with sponsors, teams, leagues, or even broadcasting channels as they rise in prominence. Often, these contracts contain terms about non-compete clauses, division of revenue terms, or specifications about the player’s employment status.²⁷ Currently, there is not a standardized set of terms or contracts that guide these agreements; instead, the agreements are entered into privately and individually.²⁸ Further, the lack of legal sophistication or regulation surrounding this market means that parties to the contracts may not be appropriately or adequately protecting themselves. As this market grows, so too will the litigation surrounding these agreements.

Player Organization and Regulation

Professional sports generally have a national governing body and related players’ association to protect the interests of teams and players. However, in almost all jurisdictions, there is no such organization protecting eSports participants.

The Korea e-Sports Association (“KeSPA”) emerged in 2012 as the managing body for 25 competitive eSports.²⁹ KeSPA has provided some regulation, including rankings systems, minimum salary for players, and promoting a shift to league rather than tournament format competitions. KeSPA is unique, but the desire for a regulatory body is not. There have been calls among players, team owners, and tournament organizers to consider whether eSports would benefit from centralized oversight.

The World eSports Association (“WESA”) also launched in May 2016. WESA’s goal is to bring together eSports professionals from all over the world and “further professionalize eSports by introducing elements of player representation, standardized regulations, and revenue shares for teams.”³⁰ The organization already has a board and league commissioner and is looking to establish a players’ council as well.³¹ At this point, WESA is a voluntary organization with aspirational motivations, but no ability to enforce them.

One of the reasons some have called for a governing body is to manage concerns about drug abuse among players. It is almost an open secret that many players take prescriptions to help with focus and attentiveness, such as Adderall, during competition.³² In casual play this is simply an unfair advantage; but in professional play, this may violate terms of contracts and be considered doping. However, without a governing body to institute drug regulations and testing, the use of such performance enhancement may continue.

Cybersecurity in Gaming

As with all things internet, cybersecurity is a major issue for eSports. Already, leagues have been attacked by hackers. A Defense of the Ancients 2 league had to suspend a round of semi-final competition when it was subjected to a Distributed Denial of Service (“DDoS”) attack.³³ The DDoS attack caused gamers to have to continually disconnect from the game. The source of the attack was not identified. As the money and interest in eSports continues to grow, so too will the number of nefarious hackers that may try to raid eSports servers for their own gain.

Cross-border Competition

One of the draws of eSports is the ability to connect with players from all over the world from the comfort of one’s own living room. Yet, the rise of eSports tournaments and professional gaming has demanded that teams from all over the country come together in one arena in-person. This raises immigration issues for players and teams. For example, in May 2016, authorities deported a leading player in Super Smash Bros Melee, William “Leffen” Hjelte, from the United States.³⁴ Hjelte had been in the U.S. on a tourist visa to play in professional tournaments. The United States Citizenship and Immigration Services had determined he should have entered on a work visa, and then denied him the needed visa because “Smash Bros Melee is not considered a legitimate sport.”³⁵ Players rallied behind Hjelte, and petitioned the White House through its WeThePeople.com portal to review the ruling.³⁶ Hjelte’s was eventually approved to attend a major tournament in the U.S. in July 2016.

This case highlights an unusual issue for international competitors. Players are traveling around the world for competition and need to be able to secure the necessary travel documents to do so. However, the government agencies that issue these documents may not know how to classify players appropriately. As tournaments and related travel grows, players, teams, and sponsors will need to become well-acquainted with their cross-border obligations.

Conclusion

eSports is the rowdy teenager of the online gaming family. The industry is growing rapidly as new players and fans begin participating and tournaments and leagues grow in size and value. This expanding industry seems poised to bring in new participants and fans, but it also needs to be aware of the myriad legal concerns. As the sport matures, hopefully so will the legal sophistication among players, sponsors, teams, and fans.

The full version of *The Definitive Guide to iGaming in the United States* can be accessed [HERE](#)



About Ifrah Law



Ifrah Law was founded in 2009 by Jeff Ifrah, one of the world's foremost attorneys on iGaming law. The only American listed on the 2012 Gaming Intelligence Magazine Hot 50 Winners in the Category of Law and Regulation, Jeff applies his complex litigation skills to defend clients who find themselves at the intersection of interactive gaming and government regulation.

Since its founding, Ifrah Law has become a leading provider of litigation and compliance services to companies active in internet advertising, iGaming, Fantasy Sports and eSports. Ifrah Law's attorneys include a former assistant U.S. Attorney and a number of highly trained veterans from some of the nation's largest and most respected law firms. These attorneys have all developed a deep understanding of how businesses operate in the online space, and they focus the majority of their time counseling and representing companies who rely on the internet for their livelihood. The firm's attorneys share their insights into iGaming regulation on their blog, IfrahOniGaming.com.

Over the past four years, Ifrah Law has been at the center of most of the important prosecutions and lawsuits in the iGaming industry. The firm's clients include Full Tilt Poker, PokerStars, and the Inter-active Gaming Council (IGC). The firm also serves as Special iGaming Counsel to the State of Delaware and the Delaware State Lottery, advising on iGaming-related legal issues. The firm is known for its negotiation of the historic agreement between the Department of Justice, PokerStars and Full Tilt. Ifrah Law also assists with U.S. gaming licensure for internet gaming operators and defends trademarks and copyrights in the online space.

Based in Washington, D.C., Ifrah's main office is located just half a block from the White House.

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