

8 KEY TAKEAWAYS

Esports and Copyright

[Caroline Carroll](#) participated a panel on “Esports and Copyright: The Power of Rightsholders,” hosted by the Beverly Hills Bar Association. Esports has emerged as a major force in the entertainment industry, boasting millions of fans around the world and a rapidly growing market. With a market value projected to reach over \$4 billion within the next five years, it is no wonder stakeholders are eager to hop on board. However, the rise of this industry has not come without its legal challenges, and experts are once again questioning the scope of copyright law and acts such as the DMCA.

Ms. Carroll’s key takeaways from the panel include:

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Monetization in esports does not necessarily relate to the IP of the game itself, despite the fact that the players are indeed playing the game. Actual revenue from tournaments is generated from in-game cosmetics, sponsorships, attendance/merchandise, and factors beyond the game itself. However, there remains a consideration that the game being played *is* part of the reason the players, teams, and attendees are involved.

There are various distinctions between esports and traditional sports that make esports tournaments stand out. In traditional sports, nobody “owns” a sport, but there is a monopoly through leagues. In esports, developers/publishers have the exclusive right to their game, and the monopoly is arguably through exploitation of the IP, though we have only seen this play out in limited circumstances (in part due to the limited number of popular esports).

- The revenue sources are essentially the same across the board—coming from sponsorships, merchandise and tickets, and media rights.

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The essentials of video game copyrights. The protectable assets are broken up into various levels, but essentially come down to the written code, and the resulting audiovisual work. Other individual copyrightable elements include character designs, music, dialogue, and so forth.

What IP rights are exploited in the context of esports? The right of reproduction and the right of public performance and display seem to be the most obvious, but others such as the right of distribution may come into account.

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There are different layers of ownership and exploitation to consider. The publisher/developer owns the game, while the tournament organizer or team may own the footage of the tournament itself (considering it as a derivative work).

There are various different licensing approaches to esports. The hands-on approach where publishers are directly involved in the esport and run the tournaments, and the hands-off approach (perhaps through implicit license or simple non-enforcement).

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Queries into how stakeholders should secure themselves against the monopoly of stakeholders. Clear importance in investing in the personalities behind the teams (the players) as well as the other activities branching from the esports activities (e.g., content creation).

Brief discussion of whether esports tournaments are fair use, but the answer is likely no. The main question is whether the tournament itself and the experience of the game being publicly displayed is transformative.

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