

## eSports Boom During Shutdowns, but the Industry Still Faces Challenges Ahead

### In This Issue

1. [Playing Remotely: Traditional Sports vs. eSports](#)
2. [Untangling Broadcasting and Online Streaming Rights](#)
3. [Who Sets the Rules? Multiple Models to Governing eSports Competitions](#)
4. [Will Player Contract Disputes Lead to Unionization?](#)
5. [Brand Partnerships: eSports Advertisements and Endorsements](#)
6. [Americans with Disabilities Act: How to Accommodate Players with Disabilities?](#)
7. [Betting on eSports: Games vs. Industry](#)
8. [Open Source, Mods, and the Future of PC Gaming](#)
9. [Endnotes](#)

---

Millions of individuals across the globe stayed indoors for unprecedented periods of time during the second quarter of 2020, and many of them turned to gaming to connect and compete with strangers and friends. The shutdowns did not allow for playing and attending traditional sports competitions, and so consumers flocked to virtual arenas and eSports competitions to engage with their favorite pastimes.<sup>1</sup> As countries, states, and localities take steps to emerge from a shutdown, it remains unclear whether the popularity of this alternate form of competition will remain, but the last quarter has helped to further solidify the prominence of eSports in the digital media industry and indicate where the medium may be headed.

As eSports continue to evolve, participants in the eSports and broader gaming industry will have to consider and address various evolving legal and business considerations, some of which include the following:

### Playing Remotely: Traditional Sports vs. eSports

eSports revenue is anticipated to top \$1 billion for the first time this year with almost half a billion people tuning in to eSports competitions.<sup>2</sup> While eSports' adoption has historically lagged behind traditional sports, the eSports industry has seen an uptick in activity and engagement from sports fans unable to enjoy live sporting events during the pandemic. Traditional sports leagues, teams,

and players alike have noticed this and have begun to use the eSports industry to maintain engagement with their fan bases. For example, the NBA planned a “players-only” *NBA 2K* tournament that was broadcast on ESPN,<sup>3</sup> Formula 1 racers played against each other in a virtual “Grand Prix,”<sup>4</sup> and the NFL’s Detroit Lions announced their schedule for the 2020 football season within popular video game *Animal Crossing: New Horizons*.<sup>5</sup>

The bridge between traditional sports and eSports is not new. Games like *NBA 2K*, *Madden NFL*, *FIFA*, *NHL*, and other electronic games based on traditional sports have been released by developers such as 2K Sports, EA Sports, and other developers since the introduction of Pong in 1972.<sup>6</sup> Colleges with traditional sports teams now also have eSports teams for students to join.<sup>7</sup> Shutdowns during the pandemic helped fuel further the connection between traditional sports and eSports, but the question still remains: will eSports maintain a prominent place in the sports universe once live sporting events can continue? While there will likely be some degree of viewership correction as traditional sporting events kick off again, it seems clear that the shutdowns have driven additional demand for eSports that is unlikely to wane in the coming months and years, especially for younger sports fans.<sup>8</sup>

For video game franchises the decision to collaborate with a “real world” partner can involve complex legal and business issues, including whether the partner has the rights it needs to participate in the collaboration, what branding elements can be displayed in-game, and whether the event can be recorded, replayed, and monetized in different mediums. One of the key business issues a gaming franchise should consider is whether the real world partner fits with the game’s audience.

## Untangling Broadcasting and Online Streaming Rights

Consumer demand to watch live eSports events has grown significantly. However, unlike traditional sports games, which in and of themselves are not copyrightable,<sup>9</sup> eSports events are based on electronic games, which are copyrightable. So, while the U.S. Copyright Act was revised in 1976 to provide protections to broadcasters of live sporting events, partly due to the non-copyrightable nature of traditional sports, broadcasters of live eSports events are relying on the developer (and/or publisher) of the electronic game underlying the event to grant broadcasting rights. The developer, as the copyright holder in the game, is effectively the gatekeeper of what events can take place within its game and how those events can be played, displayed, broadcasted, and streamed. The developer should be careful to obtain streaming and broadcast rights in any licensed-in content, such as music, character designs, and other copyrightable elements.

To avoid infringing developers’ copyright in electronic games, eSports companies face a unique challenge in understanding and defining exactly which rights they need to the electronic games being used by competitors in eSports competitions. Similarly, gamers playing in eSports competitions are often paid or encouraged to stream their play during the competition to online-streaming platforms, like YouTube, Twitch, or Caffeine. It is unclear whether gamers have the right to stream their play during the game, even when there would be no analogous restriction on a traditional sports player capturing its own clip of gameplay using its own equipment. In addition,

unlike traditional sports teams and leagues, most eSports teams and leagues have not traditionally used collective bargaining power to negotiate broadcasting rights over eSports events due to the developers' copyright in the underlying game, which is likely to continue to affect the ability of eSports teams and leagues to scale and thrive like traditional sports.

## Who Sets the Rules? Multiple Models to Governing eSports Competitions

Over time, the biggest American sports have become governed by their collective bargaining agreements (CBA), the contract between the league—a governing body run by team owners through a commissioner—and the union representing the players.<sup>10</sup> Not only do these CBAs govern player compensation, but they directly and indirectly govern the applicable rules of the sport.<sup>11</sup> By contrast, eSports leagues have not gravitated toward any single model: The team owners are not so well established, nor have the players organized.

Instead of representing team owners, competition governance is frequently conducted by one of three bodies: 1) the publisher of the game;<sup>12</sup> 2) ad hoc tournament organizers for fighting games,<sup>13</sup> which is, for example, especially common for *Super Smash Bros.* tournaments; or 3) the standalone league or competition organizer that is formed separate and apart from the ownership of any teams or individual players involved.<sup>14</sup> Each model has its own strengths and weaknesses. The first promotes standardization and allows the publisher to conform game options and rules, but requires direct investment by the publisher and makes them the target for dissatisfaction with league governance.<sup>15</sup> The second allows the community to tap grassroots enthusiasm and knowledge, but can result in both rule fragmentation or division,<sup>16</sup> as well as the inability to promote the game centrally. The third falls somewhere in the middle as standardization is created by a third-party. While eSports has avoided a standard model, other entities have attempted to create standards, such as the governmental Korean eSports Association (KeSPA) in South Korea<sup>17</sup> and the NCAA considered involving itself in collegiate eSports.<sup>18</sup> In the end, the spectrum of governance choices need not collapse on one model and can instead include different models for different eSports.

## Will Player Contract Disputes Lead to Unionization?

eSports covers multiple game titles, countries, cultures, and organizations, so it should be no surprise that there is no standard eSports player agreement. Generally, the basic professional eSport player-to-eSports league relationship is similar enough to the traditional sports analog. The organization creates steady income through marketing and sponsorship deals, and supports the players by providing coaching staff, facilities, or other benefits. The players train with each other, bring in tournament winnings, and build the team's fanbase. Ideally, the player agreement will spell out other terms of the relationship such as expenses and sharing of marketing and streaming revenue.<sup>19</sup>

There have been public disputes between players and clans over players' streaming and other rights under player agreements, which have led to a larger discussion of player-organization relationships, with some advocating for greater protections for players.<sup>20</sup> Some developers already have certain measures in place aimed at player protection. For example, *League of Legends*

developer Riot maintains a set of minimum contract standards for teams competing in its North America and European Union leagues. These include a maximum term of three years, compensation for reserve players, and a prohibition of non-compete clauses.<sup>21</sup> Meanwhile, in response to another recent player-organization dispute, the Korean Fair Trade Commission announced in December 2019 that it would begin probing eSports player contracts.<sup>22</sup> Finally, some are calling for eSports players to follow the example set by traditional sports and unionize.<sup>23</sup> As eSports continues to grow, and as more eSports players take on celebrity status, the rules and norms for player agreements will continue to be a hot-button issue.

## **Brand Partnerships: eSports Advertisements and Endorsements**

The main source of revenue in the eSports industry is sponsorships.<sup>24</sup> Newzoo, which provides market intelligence for eSports and global gaming, predicts that eSports sponsorship deals will generate \$636.9 million in 2020 with a projected compound annual growth rate of 16.6 percent.<sup>25</sup> Fortune 500 companies, such as Coca-Cola, Mercedes-Benz, and T-Mobile, are among the brands putting money into eSports sponsorships. Brands partnering in eSports aspire, among other things, to target a core industry demographic—males between the ages of 21 and 35, who are increasingly hard to reach through traditional advertising methods.<sup>26</sup> There are three main avenues to eSports sponsorships: 1) partnering with a specific eSports league or tournament, such as Nike's partnership with League of Legends Pro League or Mobil 1's partnership with Rocket League; 2) becoming an official sponsor of an eSports team, such as Sprite's sponsorship of Bucks Gaming or the U.S. Air Force's sponsorship of Cloud 9's Counter-Strike team; or 3) sponsoring an individual athlete, such as Red Bull, Samsung, and Uber Eats sponsoring Richard Tyler Blevins, Jr. (known as "Ninja").<sup>27</sup> Well-known eSports athletes such as Ninja, Lee Sang-hyeok (known as "Faker"), Ali Hassan (known as "SypherPK"), and Justin Kats (known as "ItsFearItself"), to name a few, have massive social media followings and have earned millions based on their skill and popularity.<sup>28</sup>

Just like in traditional sports, sponsored eSports players have disclosure obligations that come with being a paid endorser for others' brands, products, or services. Under Section 5 of the Federal Trade Commission (FTC) Act, 15 U.S.C. § 45, endorsements must not be unfair or deceptive. In the context of social media, as the FTC explains in its Guides Concerning the Use of Endorsements and Testimonials in Advertising,<sup>29</sup> endorsers must disclose any "material connection" that they have to a company or product mentioned in an endorsement. In the eSports arena, a sponsored eSports athlete—whether paid in cash or via other consideration, including free goods or services—would need to make the connection clear (if not already apparent in the context) when referencing his/her sponsor or its products, whether in social media postings or as part of online game play.

Given the growth rate of eSports sponsorships, it is increasingly important that both companies and eSports athletes understand disclosure obligations. In recent years, the FTC has begun to issue complaints against individual influencers, including eSports athletes, not just the big companies that sponsor them.<sup>30</sup> Best practices dictate that eSports athletes express their honest opinions and experiences when giving endorsements, place or make endorsement disclosures somewhere viewers are likely to look or hear, use disclosure language that is clear and unmistakable, and not

assume that disclosures that are built into online bios or social media platforms are sufficient. The FTC continues to focus on these issues: in recent months, the FTC formally solicited public comments on the efficacy of existing guidelines related to testimonial advertising online, which encompasses eSports-related endorsements.<sup>31</sup> Stay tuned for additional FTC endorsement-related guidance in response.

## Americans with Disabilities Act: How to Accommodate Players with Disabilities?

Game companies have made big strides in increasing the accessibility of their products for gamers with disabilities. For instance, Microsoft featured its Xbox Adaptive Controller in a January 2019 Super Bowl advertisement,<sup>32</sup> and more games are adding accessibility features like color-blind mode<sup>33</sup> or subtitles for dialog.<sup>34</sup> At the same time, more high profile gamers at various levels compete or stream with disabilities.<sup>35</sup> This prompts the question: Are eSports organizers required, under the Americans with Disabilities Act (ADA), to grant requests for modifications from competitors with disabilities that would change the nature of their competitions?<sup>36</sup>

In 2001, the Supreme Court held in *PGA Tour, Inc. v. Martin*<sup>37</sup> that the ADA required the PGA to allow a golfer with Klippel-Trenaunay-Weber Syndrome to use a golf cart, despite the PGA's rule requiring high-level golfers to walk the course during tournaments. The Court explained that golf courses are "public accommodations"<sup>38</sup> and that the cart would be a "reasonable modification" that would not "fundamentally alter" the nature of the competition, "shotmaking."<sup>39</sup> Online competitions are much less likely to be decreed "public accommodations,"<sup>40</sup> but in-person events at stadiums and similar facilities are definitively places of public accommodation. eSport events taking place at physical stadiums<sup>41</sup> would certainly have to meet at least some accessibility criteria, including wheelchair seating and assistive listening systems in the seating areas.<sup>42</sup> As to *fundamental alterations*, both the nature of the modification and the nature of the competition would need to be assessed. For instance, wheelchair ramps to get to the playing field would not affect the fundamental nature of any game. By contrast, accommodations relating to visual or auditory impairment would likely fundamentally alter competition in twitch-based games where the essence of the game is quick reaction to visual and auditory cues.<sup>43</sup> Such modifications would be less likely to be seen as fundamental alterations where the visual and auditory components of a game are more for presentation and not relevant to the competition.

## Betting on eSports: Games vs. Industry

With no traditional sports to bet on and no casinos to venture to during the shutdown, the \$500 billion global gambling industry saw consumers betting on other competitive events, such as eSports.<sup>44</sup> Prior to the pandemic, the Nevada Gaming Control Board had approved of betting on only three eSports events, but since March, that same board has approved 13 separate eSports leagues and tournaments.<sup>45</sup> Most major bookmakers now offer eSports betting, and eSports gambling revenue is expected to double this year to \$14 billion globally.<sup>46</sup> While consumers may divert their attention back to betting on traditional sports and in casinos eventually, it seems clear

that betting on eSports is here to stay.

Despite the half-trillion-dollar size of the global gambling industry, gambling on competitive sporting events in the United States had been largely illegal under the Professional and Amateur Sports Protection Act until the U.S. Supreme Court struck the Act down as unconstitutional in 2018 in *Murphy v. National Collegiate Athletic Association*.<sup>47</sup> After that decision, the ability to permit or prohibit gambling on competitive sporting events, like eSports tournaments, became a decision for state governments. As a result, as betting on eSports grows globally, in the United States, participants will have to look to various state laws in determining whether their betting activities in connection with competitive eSports events are permissible under applicable state law, which is a more challenging exercise for online gambling platforms with users in multiple states.

## Open Source, Mods, and the Future of PC Gaming

Electronic Arts recently announced that it would be releasing the source code behind the Remastered Collection of its Command & Conquer (C&C) games, Tiberian Dawn and Red Alert, under the GNU General Public License v3 (GPLv3) open source license.<sup>48</sup> GPLv3 is one of the most-commonly used open source licenses, and, like most open source licenses, grants users broad freedoms to view, use, modify, and redistribute the source code of the software they have received. The GPLv3 also includes what is commonly referred to as a "copyleft" obligation, which requires that distributions of the software by users also be made under the terms of the GPLv3, including those terms that require the distributor of the software to also make the source code of the software available to recipients. This copyleft effect will ensure that any user-made changes to the C&C source code must be, when distributed, licensed under the open-source terms of the GPLv3. The open-sourcing of the C&C source code will better-enable and encourage the dedicated community of C&C fans to develop and create user-generated modifications or "mods" to the game.

Game development shops have allowed mods of, or open sourced, certain parts of their software in the past, and the path from mod to hit game is not a new one—blockbuster franchises such as DOTA, Player Unknown Battlegrounds, and Counter-Strike all had origins as mods to pre-existing proprietary games. However, the open-sourcing of the C&C code is perhaps the most notable example to date of a large AAA publisher releasing the source code for one of its most beloved-franchises for modification, re-distribution, and even commercialization by third-party developers. The release of the C&C source code is also a reflection of a shift in how gaming companies think about their games and a recognition of the growing importance of player gaming communities as gaming transitions more and more to a live and interactive format. EA's authorization and encouragement of such community development for C&C and how it will impact other game's release models in the future will be noteworthy to watch.

---

Wilson Sonsini's [electronic gaming](#) practice counsels developers and publishers of multiplayer video games, streaming platforms, tournament hosts, clans, and other participants in the eSports industry. If you have any questions about growing your eSports business and tackling the legal challenges mentioned above, please reach out to any member of Wilson Sonsini's electronic gaming practice [here](#) for more information.

---

## Endnotes

1. Gary Jones, *Modern Warfare servers down as Call of Duty Warzone queue returns*, Express (Apr. 13, 2020), <https://www.express.co.uk/entertainment/gaming/1268266/Modern-Warfare-servers-down-Call-of-Duty-Warzone-queue-April>. See also Ben Gilbert, *The Nintendo Switch is sold out everywhere, and it likely won't be back in stock until the summer*, Business Insider (Apr. 15, 2020), <https://www.businessinsider.com/nintendo-switch-out-of-stock-until-may-june-analyst-2020-4> (“[S]tarting in March, supplies of the Switch became just as scarce as toilet paper at the supermarket.”); Sam Byford, *Steam hit its all-time concurrent user peak over the weekend*, Verge (Mar. 16, 2020), <https://www.theverge.com/2020/3/16/21181272/steam-concurrent-user-record-set-cs-go> (record concurrent Steam users).
2. Jonno Nicholson, *Newzoo's 2020 report estimates \$1.1 billion in revenues*, ESI (Feb. 26, 2020), <https://esportsinsider.com/2020/02/newzoo-2020-esports-market-report/>.
3. See Richard Lawler, *NBA reportedly plans 'players-only' 2k tournament that will air on ESPN*, Engadget (Mar. 30, 2020), <https://www.engadget.com/2020-03-30-nba-2k-players-only-tournament-espn.html>.
4. Ed Dixon, *F1 Virtual Grands Prix pull in 30m total viewers*, Blackbook Motorsport (Jun. 19, 2020), <https://www.sportspromedia.com/news/f1-virtual-grands-prix-total-viewers-audience-tv-digital-social-esports>.
5. Taylor Lyles, *Detroit Lions reveal schedule through Animal Crossing: New Horizons*, The Verge (May 8, 2020), <https://www.theverge.com/tldr/2020/5/8/21251996/detroit-lions-2020-schedule-reveal-animal-crossing-new-horizons>. Even outside of traditional sports and eSports, musicians have also found novel ways of utilizing game platforms to reach their fans. For example, rapper Travis Scott hosted an in-game virtual concert on Epic Games' Fortnite that 12.3 million people watched. See *Fortnite and Travis Scott Present: Astronomical*, Epic (last accessed July 8, 2020), <https://www.epicgames.com/fortnite/en-US/news/astronomical>; Anthony Ha, *Fortnite hosted a psychedelic Travis Scott concert and 12.3M people watched*, Tech Crunch (Apr. 24, 2020), <https://techcrunch.com/2020/04/24/fortnite-hosted-a-psychedelic-travis-scott-concert-and-12-3m-people-watched>.
6. Corey Nachman, *The Evolution of Sports Video Games*, Business Insider (Aug. 25, 2011), <https://www.businessinsider.com/sports-video-games-history2011>.
7. See, e.g., *List of Colleges with Varsity Esports Programs*, Next College Student Athlete, <https://www.ncsasports.org/college-esports-scholarships/varsity-esports>; *Collegiate Varsity Esports Programs*, GameDesigning (Feb. 8, 2020), <https://www.gamedesigning.org/schools/varsity-esports/>.
8. A May 2020 survey showed almost half of Americans are “not a fan at all” of Major League Baseball, with that disinterest data skewing higher as age skews younger. See Christina Gough, *Level of Interest in MLB in the United States as of May 2020, by age*, Statista (June 3, 2020), <https://www.statista.com/statistics/1100122/interest-level-baseball-age/>. See also Jay Massaad, *Traditional sports relying upon esports during COVID-19 crisis*, ESI (Mar. 23, 2020), <https://esportsinsider.com/2020/03/sports-esports-content-covid-19/>. In addition, younger generations are following and engaging with eSports athletes on social media more so than certain traditional sports athletes. For example, Mike Trout (one of the best players in the MLB) has ~1.8 million followers on Instagram and ~32,000 on TikTok, whereas Ninja (one of the best eSports players in the world) has 15 million followers on Instagram and 3.7 million on TikTok.
9. *Nat'l Basketball Ass'n v. Motorola, Inc.*, 105 F.3d 841, 846 (2d Cir. 1997).
10. Gabe Feldman, *Collective Bargaining in Professional Sports: The Duel Between Players and Owners and Labor Law and Antitrust Law*, Oxford Handbook of American Sports Law (2017), <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780190465957.001.0001/oxfordhb-9780190465957-e-10> (“Collective bargaining agreements in professional sports govern a wide range of terms and conditions of employment,

including the player entry draft, free agency restrictions, minimum and maximum salaries, salary caps and luxury taxes, revenue sharing, roster sizes, player discipline, drug testing, practice times, season length, travel expenses, health benefits, and myriad other issues impacting the players and owners.”).

11. See, e.g., Anthony Rieber, *MLB and Players' Union Agree to Rule Changes and CBA Talks*, Newsday (Mar. 14, 2019), <https://www.newsday.com/sports/baseball/mlb-rules-changes-1.28513655>; Dan Graziano, *NFL CBA Approved*, ESPN (Mar. 15, 2020), [https://www.espn.com/nfl/story/\\_/id/28901832/nfl-cba-approved-players-get-new-deal-how-expanded-playoffs-schedule-work](https://www.espn.com/nfl/story/_/id/28901832/nfl-cba-approved-players-get-new-deal-how-expanded-playoffs-schedule-work) (explaining that the CBA determines governs “the rules under which the game is played”).
12. See, e.g., *Rules*, Capcom Pro Tour, <https://capcomprotour.com/rules/> (last visited May 16, 2020); *Dota 2 2019/2020 Season Majors and Minors Registration*, Valve, <https://www.dota2.com/majorsregistration/home/> (last visited May 16, 2020).
13. See *General Rules for EVO 2020*, Shoryuken, <https://evo.shoryuken.com/additional-rules/>.
14. See, e.g., *Global Rules*, ESL Play, <https://play.eslgaming.com/rules/> (last visited May 16, 2020); tim, *What Are Event Rules*, ESEA (2018), <https://support.esea.net/hc/en-us/articles/360008740454-What-are-the-Event-rules->.
15. See, e.g., Nicole Carpenter, *BlizzCon 2019: Blizzard Apologizes for its Response to Hong Kong Protests*, Polygon (Nov. 1, 2019), <https://www.polygon.com/2019/11/1/20940520/blizzard-apologizes-for-its-response-to-hong-kong-protests-at-blizzcon-2019> (discussing criticism of a decision to suspend a competitor); *Overwatch, the End of the Story*, Team LDLC (July 5, 2017), <http://www.team-ldlc.com/en/overwatch-en/overwatch-the-end-of-the-story-73683> (“[T]he strategic choice of Blizzard Entertainment, which doesn’t help clubs like ours to continue to invest in this game, makes us decide to stop the story.”).
16. See, e.g., Alexander Lee, *Organizers Face Tough Task in Crafting Smash Ultimate Rulesets*, ESPN (Jan. 31, 2019), [https://www.espn.com/esports/story/\\_/id/25893421/setting-rules-super-smash-bros-ultimate-tournaments-no-easy-task](https://www.espn.com/esports/story/_/id/25893421/setting-rules-super-smash-bros-ultimate-tournaments-no-easy-task) (“Constructing a standard tournament ruleset for a Super Smash Bros. title is not easy work. Super Smash Bros. Brawl never really had one; at the height of the game’s competitive lifespan, a ‘Unity Ruleset Committee’ failed to produce standardized practices after the committee’s decision to ban Meta Knight was widely disregarded by pro players.”).
17. Katherine E. Hollist, Note, *Time to Be Grown-Ups about Video Gaming: The Rising eSports Industry and the Need for Regulation*, 57 Ariz. L. Rev. 823, 843 (2015) (“[T]he (admittedly arguable) success of KeSPA supports the idea that government involvement may be necessary to ensure that a national eSports association does not fold.”).
18. Tom Schad, *NCAA Tables Possibility of Overseeing eSports*, USA Today (May 21, 2019), <https://www.usatoday.com/story/sports/college/2019/05/21/ncaa-and-esports-not-just-yet-organization-tables-possibility/3751122002/>.
19. See Pete Lewin, *Why Every Esports Player Needs a Contract*, Esports Observer (Nov. 21, 2016), <https://esportsobserver.com/every-esports-player-needs-contract/>.
20. See Noah Smith, *Debate: What does a fair esports contract look like? It’s complicated*, The Washington Post (June 18, 2019), <https://www.washingtonpost.com/sports/2019/06/18/debate-what-does-fair-esports-contract-look-like-its-complicated/>.
21. Thimo Bräutigam, *Riot’s New LCS Player Contracts—A Legal Analysis*, The Esports Observer (Nov. 20, 2015), <https://esportsobserver.com/riots-new-lcs-player-contracts-a-legal-analysis/>.
22. Lim Jeong-yeo, *FTC to probe ‘slave’ contracts of Korean esports players*, The Korea Herald (Dec. 9, 2019), <http://www.koreaherald.com/view.php?ud=20191209000837>.
23. See, e.g., Aabicus Lee, *The dangers of esports contracts: Don’t sign before you read this*, Daily Esports (Apr. 21, 2019), <https://www.dailyesports.gg/the-dangers-of-esports-contracts-dont-sign-before-you-read-this/>.
24. Ophelie Castelot, *Why Brands Spend Millions in Esports Sponsorship*, ESTNN (Apr. 29, 2020), <https://estnn.com/why-brands-spend-millions-in-esports-sponsorship>.
25. Sam Carp, *Study: Sponsorship to Push 2020 Global Esports Revenue to US\$1.1bn*, SportsPro (Feb. 26, 2020),



- <https://www.sportspromedia.com/news/esports-revenue-2020-sponsorship-media-rights-newzoo-report>.
26. Michael Gannon-Pitts, *Esports Sponsors: Building Lucrative Brand Partnerships*, Magnetic, <https://magneticcreative.com/esports-sponsors>; E.J. Schultz, *Are You Game?*, AdAge <https://adage.com/article/news/e-sports/308447>.
  27. Gannon-Pitts, see note xxvii.
  28. *Who are the Most Popular Esports Players in 2019?*, Ready Esports, <https://readyesports.com/who-are-the-most-popular-esports-players>; Julie Veloz, *The Growth of Esports—and the Sponsorship Opportunities for Tomorrow's Brands*, *Forbes* (July 2, 2019), <https://www.forbes.com/sites/forbesagencycouncil/2019/07/02/the-growth-of-esports-%C2%AD%C2%ADand-the-sponsorship-opportunities-for-tomorrows-brands/#4d7e57a3e119>.
  29. See 16 C.F.R. § 255.0.
  30. See, e.g., Press Release, Fed. Trade Comm'n, *CSGO Lotto Owners Settle FTC's First-Ever Complaint Against Individual Social Media Influencers* (Sept. 7, 2017), <https://www.ftc.gov/news-events/press-releases/2017/09/csgo-lotto-owners-settle-ftcs-first-ever-complaint-against>.
  31. Press Release, Fed. Trade Comm'n, *FTC Seeks Public Comment on its Endorsement Guides* (Feb. 12, 2020), <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-seeks-public-comment-its-endorsement-guides>.
  32. Kris Holt, *Gaming Accessibility Is the Star of Microsoft's Super Bowl Ad*, *Engadget* (Jan. 31, 2019), <https://www.engadget.com/2019-01-31-microsoft-super-bowl-ad-xbox-adaptive-controller-accessibility.html>.
  33. See, e.g., *Distinguish This from That*, Accessible Gamers (last accessed Apr. 29, 2020), <https://accessible.games/accessible-player-experiences/access-patterns/distinguish-this-from-that/> (“Fortnite Battle Royale includes 3 settings based on a player’s type of color vision deficiency.”); *Starcraft II: Legacy of the Void 3.14.0 Patch Notes*, Blizzard (May 22, 2017), <https://starcraft2.com/en-us/news/20799759> (“You can now adjust default colors in Color Blind Mode.”).
  34. See, e.g., Ian Hamilton, *Subtitles are Changing, Don't Get Left Behind*, *GDCVault* (Mar. 2019), <https://www.gdcvault.com/play/1025738/Subtitles-Are-Changing-Don-t>.
  35. Amy Chen, *Championing Accessibility: An Interview with Deaf Overwatch Player Danik Soudakoff*, *Daily Esports* (May 22, 2019), <https://www.dailyesports.gg/deaf-overwatch-player-interview-danik-soudakoff/>; @Sneaky, Twitter, July 21, 2015, 4:59PM, (“If you didn't know, I'm colorblind, along with @Hai\_L9 and @IncarnatiOnLoL.”), <https://twitter.com/Sneaky/status/623598093674483712>.
  36. See, e.g., 42 U.S.C. §§ 12181–12189; see also ADA Amendments Act of 2008, Pub. L. 110-325, 122 Stat. 3553.
  37. 532 U.S. 661 (2001).
  38. See 42 U.S.C. § 12181(7)(L) (listing a “golf course” as a “public accommodation”).
  39. 532 U.S. at 683.
  40. See *Stern v. Sony Corp. of Am.*, 459 F. App'x 609 (9th Cir. 2011) (holding that “[a] video game is not a facility” and therefore not a public accommodation); *Estavillo v. Behaviour Interactive*, No. 19-cv-01025-SVK, 2019 U.S. Dist. LEXIS 108146, at \*7–8 (N.D. Cal. May 30, 2019) (holding that the Steam digital game store is not subject to the ADA); cf. *Earll v. Ebay, Inc.*, 599 F. App'x 695, 696 (9th Cir. 2015) (“We have previously interpreted the term ‘place of public accommodation’ to require ‘some connection between the good or service complained of and an actual physical place.’”).
  41. See, e.g., 28 C.F.R. § 36.104(3) (explaining that a “stadium” is a place of public accommodation).
  42. See, e.g., Department of Justice, *ADA Title III Technical Assistance Manual Covering Public Accommodations and Commercial Facilities* § III-7.5185 (1993), <https://www.ada.gov/taman3.html>.
  43. See E.J. Schultz, *Are You Game?*, AdAge (Apr. 3, 2017), <https://adage.com/article/news/e-sports/308447> (describing how members of Faze Clan underwent training, including “vision training meant to improve reaction time”).
  44. Seth Schiesel, “With Real-Life Games Halted, Betting World Puts Action on E-Sports,” *The New York Times* (June 8,

- 2020), <https://www.nytimes.com/2020/06/08/sports/coronavirus-esports-sports-betting.html> (“Some bookmakers have seen increases in e-sports betting of more than 40 times [since early March]”).
45. *Nevada approves esports betting on three events*, Yogonet (Apr. 15, 2020), <https://www.yogonet.com/international/noticias/2020/04/15/52937-nevada-approves-esports-betting-on-three-events>. Seth Schiesel, “With Real-Life Games Halted, Betting World Puts Action on E-Sports,” *The New York Times* (Jun. 8, 2020), <https://www.nytimes.com/2020/06/08/sports/coronavirus-esports-sports-betting.html>. See also *Regulation 22.1201 Approvals*, Nevada Gaming Control Board Gaming Commission, <https://gaming.nv.gov/index.aspx?page=343>.
46. *Id.*
47. See 584 U.S. \_\_\_ (2018). See also Adam Liptak & Kevin Draper, “Supreme Court Ruling Favors Sports Betting,” *The New York Times* (May 14, 2018), <https://www.nytimes.com/2018/05/14/us/politics/supreme-court-sports-betting-new-jersey.html>.
48. /u/EA\_Jimtern, *Remaster Update and Open Source / Mod Support*, Reddit (May 20, 2020), [https://www.reddit.com/r/commandandconquer/comments/gnev8/remaster\\_update\\_and\\_open\\_source\\_mod\\_support/](https://www.reddit.com/r/commandandconquer/comments/gnev8/remaster_update_and_open_source_mod_support/).