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## The Principles of Esports Engagement: A Universal Code of Conduct

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## The Principles of Esports Engagement: A Universal Code of Conduct

### Cover Page Footnote

Appellate attorney at Horvitz & Levy LLP in Burbank, California. Given how quickly esports evolves, new statistics and information might be available by the time of publication. Thanks to Dan Nabel, to the editors of the Journal of Intellectual Property Law, and to all friends of Purple Poring.

**THE PRINCIPLES OF ESPORTS ENGAGEMENT: A  
UNIVERSAL CODE OF CONDUCT?**

*Yen-Shyang Tseng\**

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\*Appellate attorney at Horvitz & Levy LLP in Burbank, California. Given how quickly esports evolves, new statistics and information might be available by the time of publication. Thanks to Dan Nabel, to the editors of the *Journal of Intellectual Property Law*, and to all friends of Purple Poring.

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## I. INTRODUCTION

In November 2019, global representatives of the video game industry announced four “universal esports principles for fun and fair play.”<sup>1</sup> As the Entertainment Software Association (ESA) explained, “These core principles were developed in a collaborative effort and form a set of values applicable in all aspects of the global esports environments: safety and well-being, integrity and fair play, respect and diversity, and positive and enriching game play.”<sup>2</sup>

Historically, each video game company or esports league (such as Blizzard Entertainment and the Overwatch League, Riot Games and the League of Legends Championship Series, and Epic Games) has upheld these principles in their own esports. These actors have combated toxic behavior, cheating, and misconduct through disciplinary measures and even legal action. But when so many game companies across the world come together and speak with one voice to develop a set of unifying principles, the result could lead to something more — a universal code of conduct governing all esports. A code of conduct could only improve esports and further legitimize the industry.

Section I of this article provides a brief background of esports and the ESA. Section II states the four principles of esports engagement announced by the ESA. Section III applies these four principles by reviewing specific problems that have plagued the video game and esports industries, such as toxicity (especially towards women and other minorities), swatting, cheating, and other malicious behavior. This article concludes by discussing implementation of a universal code of conduct in esports based on the principles of esports engagement.

## II. BACKGROUND

## A. THE GROWTH OF ESPORTS

Esports, which “entails ‘professional video game matches where players compete against other players before an audience,’”<sup>3</sup> is a billion-dollar industry

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<sup>1</sup> Entertainment Software Association, *Video Game Industry Establishes Universal Esports Principles for Fun and Fair Play*, ENTERTAINMENT SOFTWARE ASSOCIATION (Nov. 5, 2019), <https://www.theesa.com/press-releases/video-game-industry-establishes-universal-esports-principles-for-fun-fair-play>. Global representatives include associations from Australia, Belgium, Canada, France, Germany, Italy, the Nordic countries, the Netherlands, Poland, Portugal, Spain, Sweden, Switzerland, the United Kingdom, and the United States. See PRINCIPLES OF ESPORTS ENGAGEMENT, ENTERTAINMENT SOFTWARE ASSOCIATION, <https://www.theesa.com/wp-content/uploads/2019/11/FINAL-International-Esports-Principles.pdf> (last visited Feb. 24, 2019).

<sup>2</sup> *Principles of Esports Engagement*, *supra* note 1.

<sup>3</sup> John T. Holden & Thomas A. Baker III, *The Econtractor? Defining the Esports Employment Relationship*, 56 AM. BUS. L.J. 391, 393, 393 n.6 (2019). This article assumes the reader has at least a passing familiarity with esports. For an introduction to esports generally, see, for example, Sok Min Yun, Note, *A Comparative Overview of Esports Against Traditional Sports Focused in the*

experiencing incredible growth. According to Newzoo, esports will generate \$1.1 billion in revenue in 2019, a 26.7% increase from the previous year.<sup>4</sup> Of that \$1.1 billion, the largest revenue stream is sponsorship, generating \$456.7 million a year, while the fastest-growing is media rights.<sup>5</sup> Recent deals demonstrate the value of media rights in esports. In January 2018, Twitch entered into a two-year deal with Activision Blizzard, reportedly worth more than \$90 million, for exclusive third-party rights to stream Overwatch League matches in English, Korean, and French.<sup>6</sup> When that expired, Activision Blizzard entered into a strategic partnership with Google, which included a three-year deal valued at more than \$160 million for YouTube to have exclusive streaming rights for Overwatch, Call of Duty, and Hearthstone esports.<sup>7</sup> And in December 2019, Bilibili paid Riot Games over \$113 million to exclusively broadcast the next three League of Legends World Championships in China.<sup>8</sup>

Newzoo estimates the esports market will reach anywhere from \$1.8 billion to \$3.2 billion by 2022.<sup>9</sup> The explosive viewership numbers also speak to the industry's growth. The global esports audience is estimated to be 453.8 million as of 2019, with 201.2 million "Esports Enthusiasts" and 252.6 million "Occasional Viewers."<sup>10</sup>

The value of esports teams is also catching up with that customary in traditional sports. In 2019, Forbes estimated that two esports teams, Cloud9 and

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*Legal Realm of Monetary Exploitation, Cheating, and Gambling*, 37 CARDOZO ARTS & ENT. L.J. 513, 516-24 (2019); Jacqueline Martinelli, *The Challenges of Implementing a Governing Body for Regulating Esports*, 26 U. MIAMI INT'L & COMP. L. REV. 499, 501-09 (2019); Laura L. Chao, Note, "You Must Construct Additional Pylons": *Building a Better Framework for Esports Governance*, 86 FORDHAM L. REV. 737 (2017).

<sup>4</sup> Jurre Pannekeet, *Newzoo: Global Esports Economy Will Top \$1 Billion for the First Time in 2019*, NEWZOO (Feb. 12, 2019), <https://newzoo.com/insights/articles/newzoo-global-esports-economy-will-top-1-billion-for-the-first-time-in-2019>. North America remains the largest esports market at \$409.1 million in revenue, while China has become the second largest market at \$210.3 million. *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Jacob Wolf, *Overwatch League to be streamed on Twitch.tv in two-year, \$90 million deal*, ESPN (Jan. 9, 2018), [https://www.espn.com/esports/story/\\_/id/22015103/overwatch-league-broadcast-twitchtv-two-year-90-million-deal](https://www.espn.com/esports/story/_/id/22015103/overwatch-league-broadcast-twitchtv-two-year-90-million-deal).

<sup>7</sup> Adam Stern, *Sources: YouTube's Deal With Activision Blizzard Valued At \$160M*, THE ESPORTS OBSERVER (Feb. 13, 2020), <https://esportsobserver.com/sources-youtube-actiblizzard-160m>.

<sup>8</sup> Eva Martinello, *Bilibili reportedly acquires broadcasting rights in China for next 3 League World Championships*, DOT ESPORTS (Dec. 3, 2019, 11:03 AM), <https://dotesports.com/league-of-legends/news/bilibili-reportedly-acquires-broadcasting-rights-for-next-3-league-world-championships>. Other deals have also been reported without mention of their value. *See, e.g.*, Jason Dachman, *Turner Sports' ELEAGUE Inks Exclusive Domestic-TV-Rights Deal for EA Sports FIFA 20 Events*, SPORTS VIDEO GROUP (Dec. 12, 2019, 12:00 PM), <https://www.sportsvideo.org/2019/12/12/turner-sports-eleague-inks-exclusive-domestic-tv-rights-deal-for-ea-sports-fifa-20-esports-series>.

<sup>9</sup> Pannekeet, *supra* note 4.

<sup>10</sup> *Id.*

Team SoloMid, were worth \$400 million each — up from \$310 million and \$250 million the year before.<sup>11</sup> By comparison, NHL teams are worth anywhere from \$300 million to \$1.65 billion; MLB teams are worth \$1 billion to \$4.6 billion; NBA teams are worth \$1.3 billion to \$4.6 billion; and NFL teams are worth \$1.9 billion to \$5.5 billion.<sup>12</sup>

The 2019 Fortnite World Cup and the 2019 League of Legends World Championship provide two recent examples of esports growth. Epic Games hosted the Fortnite World Cup in July 2019, which provided a \$30 million prize pool.<sup>13</sup> The event took place at the Arthur Ashe Stadium in New York.<sup>14</sup> Tickets to the event sold out, and an estimated 2.3 million concurrent viewers watched the finals on Twitch and YouTube.<sup>15</sup>

Just a few months later, Riot Games hosted the League of Legends World Championship at the AccorHotels Arena in Paris. The event brought in more than 100 million viewers, including a peak of 44 million concurrent viewers and a record-breaking 21.8 million Average Minute Audience.<sup>16</sup> By comparison,

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<sup>11</sup> Christina Settini, *'Awful Business' Or The New Gold Rush? The Most Valuable Companies In Esports Are Surging*, FORBES (Nov. 5, 2019, 6:00 AM), <https://www.forbes.com/sites/christina-settini/2019/11/05/awful-business-or-the-new-gold-rush-the-most-valuable-companies-in-esports-are-surging>; see also Mike Ozanian, Christina Settini & Matt Perez, *The World's Most Valuable Esports Companies*, FORBES (Oct. 23, 2018, 5:50 AM), <https://www.forbes.com/sites/mikeozanian/2018/10/23/the-worlds-most-valuable-esports-companies-1>.

<sup>12</sup> *The Business Of Hockey*, FORBES, <https://www.forbes.com/nhl-valuations/list> (last visited Feb. 13, 2020); *The Business Of Baseball*, FORBES, <https://www.forbes.com/mlb-valuations/list> (last visited Feb. 13, 2020); *The Business Of Basketball*, FORBES, <https://www.forbes.com/nba-valuations/list> (last visited Feb. 13, 2020); *Sports Money: 2019 NFL Valuations*, FORBES, <https://www.forbes.com/nfl-valuations/list> (last visited Feb. 13, 2020).

<sup>13</sup> The Fortnite Team, *The Fortnite World Cup | A Record-Setting Tournament*, EPIC GAMES (July 31, 2019), <https://www.epicgames.com/fortnite/en-US/news/the-fortnite-world-cup-a-record-setting-tournament>.

<sup>14</sup> Tyler Erzberger, *Worlds collide as Fortnite meets tennis in Arthur Ashe Stadium*, ESPN (July 26, 2019), [https://www.espn.com/esports/story/\\_/page/FortWC\\_0426/worlds-collide-fortnite-meets-tennis-arthur-ashe-stadium](https://www.espn.com/esports/story/_/page/FortWC_0426/worlds-collide-fortnite-meets-tennis-arthur-ashe-stadium). Other esports have also taken place at well-known traditional sports arenas; Riot Games has hosted portions of its League of Legends World Championship tournaments at Madison Square Garden. See Matthew Dobill, Note, *Leveling (Up) the Playing Field: A Policy-Based Case for Legalizing and Regulating Esports Gambling*, 37 LOY. L.A. ENT. L. REV. 139, 140 (2017); Chao, *supra* note 3, at 738.

<sup>15</sup> The Fortnite Team, *supra* note 13.

<sup>16</sup> LoLesports Staff, *2019 World Championship Hits Record Viewership*, LEAGUE OF LEGENDS, <https://nexus.leagueoflegends.com/en-us/2019/12/2019-world-championship-hits-record-viewership> (last visited Feb. 23, 2020); Kevin Webb, *More than 100 million people watched the 'League of Legends' World Championship, cementing its place as the most popular esports*, BUSINESS INSIDER (Dec. 18, 2019, 12:09 PM), <https://www.businessinsider.com/league-of-legends-world-championship-100-million-viewers-2019-12>. League of Legends's massive viewership numbers are not new. See Annie Pei, *This esports giant draws in more viewers than the Super Bowl, and it's expected to get even bigger*, CNBC (Apr. 14, 2019, 12:19 PM), <https://www.cnbc.com/2019/04/14/league-of-legends-gets-more-viewers-than-super-bowlwhats-coming-next.html> (noting the 2018 World Championship Finals drew almost 100

Super Bowl LIII had 98.2 million television viewers and an Average Minute Audience of 2.6 million streaming viewers.<sup>17</sup>

Besides Fortnite and League of Legends, viewership statistics show that other major esports such as Dota 2, Counter-Strike: Global Offensive, and Overwatch are growing as well, with major events in 2019 generating greater viewership than in the previous year.<sup>18</sup> The number of tournaments held, players participating, and prize money awarded shows continued interest in the entire esports scene.<sup>19</sup> As the ESA recognized when it announced the principles of esports engagement, the industry expects continued growth.<sup>20</sup>

The growth of esports can be tied to the broader growth of video games, which now rival, or have even overtaken, other major forms of entertainment.<sup>21</sup> In 2018, video game sales alone exceeded \$43.4 billion, more than the film industry's \$41.7 billion global box office sales from that year.<sup>22</sup> One estimate claims

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million unique viewers). Even in 2015, the League of Legends World Championship had higher viewership than that year's NBA Finals. See DAN D. NABEL & BILL CHANG, VIDEO GAME LAW IN A NUTSHELL, at 417 (2018).

<sup>17</sup> Sarah Perez, *Super Bowl LIII set streaming records, while TV viewership saw massive drop*, TECHCRUNCH (Feb. 5, 2019, 10:02 AM), <https://techcrunch.com/2019/02/05/super-bowl-liii-set-streaming-records-while-tv-viewership-saw-massive-drop>. The average minute audience, or the average number of people that watches a particular broadcast during a 60-second portion of that broadcast, is a traditional measurement for TV programs. See Graham Ashton, *Esports' Quest for the Average Minute Audience*, THE ESPORTS OBSERVER (Sept. 11, 2019), <https://esportsobserver.com/nielsen-owl-ama-viewership-intro>.

<sup>18</sup> See Ian Boudreau, *The International 2019 was Twitch's most-watched Dota 2 event ever*, PC GAMER (Aug. 26, 2019), <https://www.pcgamer.com/the-international-2019-was-twitchs-most-watched-dota-2-event-ever/> (viewership for Dota 2 International 2019 event); *Katowice 2019 recap: record breaking attendance and online viewership*, MUSECASINO (Apr. 6, 2019), <https://musecasino.com/news/katowice-2019-new-viewership-records> (viewership for CS:GO and Starcraft II at IEM Katowice event); Liz Richardson, *Overwatch League 2019 Grand Finals' average minute audience increases 16 percent from 2018 finals*, DOT ESPORTS (Oct. 3, 2019, 6:21 PM), <https://dotesports.com/overwatch/news/overwatch-league-2019-grand-finals-average-minute-audience-increases-16-from-2018-finals> (viewership for Overwatch League 2019 Grand Finals).

<sup>19</sup> See *Top Games Awarding Prize Money*, ESPORTS EARNINGS, <https://www.esportsearnings.com/games> (last visited Feb. 13, 2020).

<sup>20</sup> *Principles of Esports Engagement*, *supra* note 1.

<sup>21</sup> See Dobill, *supra* note 14, at 140 ("Today, the video game industry draws in revenues that rival 'or exceed the revenues of established music and movie industries.'") (quoting Dan L. Burk, *Owning E-Sports: Proprietary Rights in Professional Computer Gaming*, 161 U. PA. L. REV. 1535, 1536 (2013)).

<sup>22</sup> *Compare 2019 Essential Facts About the Computer and Video Game Industry*, ENTERTAINMENT SOFTWARE ASSOCIATION (2019), [https://www.theesa.com/wp-content/uploads/2019/05/ESA\\_Essential\\_facts\\_2019\\_final.pdf](https://www.theesa.com/wp-content/uploads/2019/05/ESA_Essential_facts_2019_final.pdf), at 3 ("2018 was a record-breaking year for our industry, with total video game sales exceeding \$43.4 billion") with Nancy Tartaglione, *Worldwide Box Office Poised For Record \$41.7B In 2018: ComScore*, DEADLINE (Dec. 27, 2018, 9:19 AM), <https://deadline.com/2018/12/worldwide-box-office-record-2018-domestic-international-china-1202526458> ("As 2018 draws to a close, comScore is estimating that [the] worldwide box office will hit a record \$41.7B.").



the video game industry generated \$134.9 billion revenue in 2018 and \$152.1 billion in 2019, and it is estimated to generate more than \$180.1 billion in 2021.<sup>23</sup> Another estimate puts the digital games market at \$117 billion in 2018 and projects that it will rise to \$132 billion in 2021 and \$160 billion in 2022.<sup>24</sup>

Colleges and high schools now have esports programs,<sup>25</sup> and even legal scholars have taken note of the industry. A cursory Westlaw search reveals only a few articles about esports published between 2012 and 2015, but more than fifty from 2016 through the end of 2019.<sup>26</sup> Practitioners have formed the Esports Bar Association, which, among other things, has launched an academic journal and organized conferences focusing on current issues in the industry.<sup>27</sup>

#### B. ESPORTS AND THE ENTERTAINMENT SOFTWARE ASSOCIATION

Each esports involves a video game developed and owned by a company.<sup>28</sup> For example, Activision Blizzard (through its subsidiaries) owns Overwatch and Hearthstone, as well as the Call of Duty, Warcraft, StarCraft, and Diablo

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<sup>23</sup> See Tom Wijman, *Mobile Revenues Account for More Than 50% of the Global Games Market as It Reaches \$137.9 Billion in 2018*, NEWZOO (Apr. 30, 2018), <https://newzoo.com/insights/articles/global-games-market-reaches-137-9-billion-in-2018-mobile-games-take-half> (showing revenue projections as of early 2018); Tom Wijman, *The Global Games Market Will Generate \$152.1 Billion in 2019 as the U.S. Overtakes China as the Biggest Market*, NEWZOO (June 18, 2019), <https://newzoo.com/insights/articles/the-global-games-market-will-generate-152-1-billion-in-2019-as-the-u-s-overtakes-china-as-the-biggest-market>; see also Teodora Dobrilova, *How Much Is The Gaming Industry Worth?*, TECHJURY (Apr. 4, 2019), <https://techjury.net/stats-about/gaming-industry-worth> (collecting sources).

<sup>24</sup> See *Loot Boxes & In-Game Spend Drive Digital Games Market: Surpassing \$160 Billion by 2022*, JUNIPER RESEARCH (May 1, 2018), <https://www.juniperresearch.com/press/press-releases/loot-boxes-in-game-spend-drive-digital-games> (2018 and 2022 figures); see also David J. Castillo, Note, *Unpacking the Loot Box: How Gaming's Latest Monetization System Flirts with Traditional Gambling Methods*, 59 SANTA CLARA L. REV. 165, 167 (2019) (2021 figure).

<sup>25</sup> See generally *About*, NACE, <https://nacesports.org/about> (last visited Feb. 23, 2020); *So Tell Me... What is Tespa?*, TESPA, <https://my.tespa.org/about> (last visited Feb. 23, 2020); *What is CSL?*, COLLEGIATE STARLEAGUE, <https://cstarleague.com/about> (last visited Feb. 23, 2020); *Compete for Esports Glory at Your School*, HIGH SCHOOL ESPORTS LEAGUE, <https://www.highschoolsportsleague.com> (last visited Feb. 23, 2020); *Welcome to PlayVS*, PLAYVS, <https://www.playvs.com> (last visited Feb. 23, 2020).

<sup>26</sup> See Westlaw Search Results for [<sup>27</sup> \*What is the Esports Bar Association?\*, ESPORTS BAR ASSOCIATION, <https://esportsbar.org> \(last visited Feb. 23, 2019\). The author of this article is a member of the EBA.](https://1.next.westlaw.com/Search/Results.html?query=adv%3A%20%22esports%22&jurisdiction=CA-CS&contentType=ANALYTICAL&querySubmissionGuid=i0ad6ad3f00000170a732187885132e2d&searchId=i0ad6ad3f00000170a7319c3210a6f4a8&transition-Type=ListViewType&contextData=(sc.Search)(last accessed Mar. 16, 2020).</a></p>
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<sup>28</sup> See NABEL & CHANG, *supra* note 16, at 417-419.

franchises.<sup>29</sup> Riot Games owns League of Legends.<sup>30</sup> Epic Games owns Fortnite.<sup>31</sup> Wizards of the Coast owns Magic: the Gathering Arena.<sup>32</sup> Ubisoft owns Tom Clancy's Rainbow Six Siege.<sup>33</sup> Electronic Arts Inc. owns Apex Legends and the FIFA games.<sup>34</sup> Take-Two Interactive owns NBA 2K.<sup>35</sup> Valve owns Dota 2 and Counter-Strike: Global Offensive.<sup>36</sup> And so on and so forth.

Video game companies generally control the rights over their own games and corresponding esports, including intellectual property rights, and might use these rights to control the esports ecosystem for their games.<sup>37</sup> For example, Epic Games has a set of "Event License Terms" for third parties who want to host their own Fortnite tournaments.<sup>38</sup> Riot Games has a set of "Tournament Rules" for third parties who wish to organize League of Legends tournaments.<sup>39</sup> And Blizzard offers "Community" and "Custom" licenses for organizers looking to host Hearthstone, Heroes of the Storm, Overwatch, StarCraft and StarCraft II, Warcraft III, or World of Warcraft tournaments.<sup>40</sup>

Each company's ownership of their games also allows them to establish codes of conduct and terms of service.<sup>41</sup> Many of these games require user accounts to

<sup>29</sup> *Our Company*, ACTIVISION BLIZZARD, <https://www.activisionblizzard.com/about-us> (last visited Feb. 23, 2020).

<sup>30</sup> *Our Story*, RIOT GAMES, <https://www.riotgames.com/en/who-we-are/values> (last visited Feb. 23, 2020).

<sup>31</sup> *Company*, EPIC GAMES, <https://www.epicgames.com/site/en-US/about> (last visited Feb. 6, 2020).

<sup>32</sup> *Our Quest: Great Experiences*, WIZARDS OF THE COAST, <https://company.wizards.com/content/games> (last visited Feb. 6, 2020).

<sup>33</sup> *More Games*, UBISOFT, <https://www.ubisoft.com/en-us/games> (last visited Feb. 6, 2020).

<sup>34</sup> *Latest Games*, EA, <https://www.ea.com/games> (last visited Feb. 23, 2020).

<sup>35</sup> *Find a Game*, T2, <https://www.take2games.com/games> (last visited Feb. 6, 2020).

<sup>36</sup> *At Valve we make games, Steam, and hardware.*, VALVE, <https://www.valvesoftware.com/en/about> (last visited Feb. 6, 2020). Interestingly, the ownership of the first Dota game (Defense of the Ancients) has been the subject of lawsuits. *See* David Nathaniel Tan, Note, *Owning the World's Biggest Esport: Intellectual Property and Dota*, 31 HARV. J.L. & TECH. 965 (2018).

<sup>37</sup> For an interesting discussion on whether video game companies can prevent third parties from hosting tournaments, see Duran Parsi, *All in the Game*, 42 L.A. LAW. 26 (2019).

<sup>38</sup> *Events*, EPIC GAMES, <https://www.epicgames.com/fortnite/competitive/en-US/events> (last visited Feb. 23, 2020) (Event License Terms link accessible at bottom of webpage); *see also* The Fortnite Team, *Event License Agreement Update*, EPIC GAMES (May 24, 2019), <https://www.epicgames.com/fortnite/competitive/en-US/news/community-tournaments-update> (discussing the Event License Agreement).

<sup>39</sup> *Community Events*, LEAGUE OF LEGENDS, <https://events.na.leagueoflegends.com> (last visited Feb. 7, 2020) (Tournament Rules link accessible on left side of webpage).

<sup>40</sup> *Organize your own community Esports competition*, BLIZZARD, <https://communitytournaments.blizzard.com/en-us> (last visited Feb. 6, 2020) (login required to view licenses).

<sup>41</sup> *See* NABEL & CHANG, *supra* note 16, at 418-19 ("Many of the most popular esports games require user accounts, which are often managed by the game developer. Therefore, the game developer can control an esports participant's access to the game and can potentially prevent

enable play, giving these companies control over a player's access not only to esports competitions but also to the game itself.<sup>42</sup> For example, Blizzard requires players of its games to agree to its End User License Agreement, which incorporates by reference its Code of Conduct.<sup>43</sup> Overwatch League teams, managers, and players are further subject to the League's Rules of Competition and Code of Conduct.<sup>44</sup> Similarly, Riot Games requires League of Legends players to agree to its Terms of Service, which includes User Rules that provide examples of behavior warranting disciplinary measures.<sup>45</sup> The North American League of Legends Championship Series and Academy Championship Series then provide an additional set of rules for official league play.<sup>46</sup>

With different sets of rules and codes of conduct, different companies might have different responses to the same type of player conduct. A recent conduct incident involved an esports player who commented on the Hong Kong protests.<sup>47</sup> In October 2019, professional Hearthstone player Ng Wai Chung violated official competition rules when he made comments supporting the protests during an interview at the Hearthstone Grandmasters event in Taiwan.<sup>48</sup> Blizzard banned Chung from the tournament, forfeited his prize money, and banned him from other Grandmasters tournaments for one year.<sup>49</sup> After further review,

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a player from competing for reasons entirely unrelated to a third-party league's rules and regulations, such as TOS or EULA violations.”).

<sup>42</sup> *Id.*

<sup>43</sup> *Blizzard End User License Agreement*, BLIZZARD, <https://www.blizzard.com/en-us/legal/fba4d00f-c7e4-4883-b8b9-1b4500a402ea/blizzard-end-user-license-agreement> (last visited Feb. 13, 2020); *Blizzard's In-Game Code of Conduct*, BLIZZARD, <https://us.battle.net/support/en/article/42673> (last visited Feb. 13, 2020).

<sup>44</sup> The Overwatch League, *Rules of Competition and Code of Conduct*, OVERWATCH LEAGUE (Feb. 9, 2019), <https://overwatchleague.com/en-us/news/21568602/rules-of-competition-and-code-of-conduct>.

<sup>45</sup> *Riot Games Terms of Service*, RIOT GAMES, <https://www.riotgames.com/en/terms-of-service> (last visited Feb. 13, 2020).

<sup>46</sup> *2019 Official Rules LCS and LACS*, LEAGUE OF LEGENDS, [https://nexus.leagueoflegends.com/wp-content/uploads/2019/01/2019-LCS-Rule-Set-v19.3\\_uh6o67g0zd58db0o5p08.pdf](https://nexus.leagueoflegends.com/wp-content/uploads/2019/01/2019-LCS-Rule-Set-v19.3_uh6o67g0zd58db0o5p08.pdf) (last visited Feb. 23, 2019). Each region appears to have its own set of rules.

<sup>47</sup> For a brief primer on the protests, see Jessie Yeung, *From an extradition bill to a political crisis: A guide to the Hong Kong protests*, CNN (Dec. 20, 2019, 4:08 AM), <https://www.cnn.com/2019/11/15/asia/hong-kong-protests-explainer-intl-hnk-scli/index.html>.

<sup>48</sup> Paolo Zialcita, *Blizzard Entertainment Bans Esports Player After Pro-Hong Kong Comments*, NPR (Oct. 8, 2019, 2:41 PM), <https://www.npr.org/2019/10/08/768245386/blizzard-entertainment-bans-esports-player-after-pro-hong-kong-comments>.

<sup>49</sup> Blizzard Entertainment, *Hearthstone Grandmasters Asia-Pacific Ruling*, HEARTHSTONE (Oct. 8, 2019), <https://playhearthstone.com/en-us/blog/23179289>. The amount of prize money initially forfeited was reportedly \$10,000. See Zialcita, *supra* note 48.

Blizzard reinstated Chung's prize and reduced his ban to six months.<sup>50</sup> The company explained that the "official broadcast needs to be about the tournament and to be a place where all are welcome."<sup>51</sup>

Esports companies have taken different approaches to this issue. For example, Riot Games has also asked its players and casters to refrain from discussing their personal views on sensitive issues such as politics and religion during broadcasts.<sup>52</sup> Riot Games explained that it wanted to keep its "broadcasts focused on the game, the sport, and the players," that sensitive issues "cannot be fairly represented in the forum [its] broadcast provides," and that it had a "responsibility to do [its] best to ensure that statements or actions on [its] official platforms (intended or not) do not escalate potentially sensitive situations."<sup>53</sup> Epic Games, on the other hand, said it would not bar its players from engaging in political discussions even during post-game interviews.<sup>54</sup> Similarly, Wizards of the Coast did not bar players from engaging in such discussions during a major Magic: The Gathering tournament.<sup>55</sup>

Despite having different opinions on certain topics, many major video game companies have joined the ESA. The ESA first formed in 1994 because violence in video games such as *Mortal Kombat* had put the industry under scrutiny.<sup>56</sup> Several United States Senators introduced the Video Game Rating Act of 1994, which sought to establish a federal commission to create an industry-wide standard for video game ratings.<sup>57</sup> The Act died in committee after companies formed the ESA's predecessor, the Interactive Digital Software Association, and developed the Entertainment Software Ratings Board.<sup>58</sup> Since then, the ESA has

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<sup>50</sup> J. Allen Brack, *Regarding Last Weekend's Hearthstone Grandmasters Tournament*, BLIZZARD (Oct. 12, 2019), <https://news.blizzard.com/en-us/blizzard/23185888/regarding-last-weekend-s-hearthstone-grandmasters-tournament>.

<sup>51</sup> *Id.* Blizzard's president clarified this decision again at BlizzCon 2019. See Steven Messner, *Blizzard president clarifies decision to ban Hearthstone player and two casters over Hong Kong controversy*, PC GAMER (Nov. 2, 2019), <https://www.pcgamer.com/blizzard-president-clarifies-decision-to-ban-hearthstone-player-and-two-casters-over-hong-kong-controversy>.

<sup>52</sup> Lolesports (@lolesports), TWITTER (Oct. 11, 2019, 10:35 AM), <https://twitter.com/lolesports/status/1182711322791698432>.

<sup>53</sup> *Id.*

<sup>54</sup> Makena Kelly, *Unlike Blizzard, Epic Games says it won't ban players for political speech*, THE VERGE (Oct. 9, 2019, 8:09 AM), <https://www.theverge.com/2019/10/9/20906110/blizzard-hearthstone-ban-hong-kong-china-epic-games-fortnite-blitzchung>; see also Tim Sweeney (@TimSweeneyEpic), TWITTER (Oct. 9, 2019, 10:02 AM), <https://twitter.com/TimSweeneyEpic/status/1181933071760789504> (series of tweets by Epic Games CEO Tim Sweeney).

<sup>55</sup> Danny Forster, *WotC won't censor Lee Shi Tian's support for Hong Kong protests at Mythic Championship V*, DOT ESPORTS (Oct. 20, 2019, 7:11), <https://dotesports.com/mtg/news/wotc-wont-censor-lee-shi-tians-support-for-hong-kong-protests-at-mythic-championship-v>.

<sup>56</sup> See Alan Wilcox, *Regulating Violence in Video Games: Virtually Everything*, 31 J. NAT'L ASS'N ADMIN. L. JUDICIARY 253, 258-261 (2011).

<sup>57</sup> *Id.* at 260.

<sup>58</sup> *Id.* at 260-61, 260-61 n.4.

represented the video game industry before lawmakers and before the courts.<sup>59</sup> Of note, the ESA was a plaintiff in *Brown v. Entertainment Merchants Association*,<sup>60</sup> in which the United States Supreme Court held that the First Amendment protects video games as expressive works.<sup>61</sup>

As of December 2019, the ESA has forty member companies, including Activision Blizzard, Bandai-Namco, Bethesda, Capcom, Epic Games, Electronic Arts, Microsoft, NCSOFT, Nexon, Nintendo, Riot Games, Square Enix, Take-Two Interactive, Tencent, Ubisoft, and Wizards of the Coast.<sup>62</sup> Many companies are also members of similar global trade associations.<sup>63</sup> Together, these associations represent a critical mass of esports leaders — and their word will carry weight.

### III. THE PRINCIPLES OF ESPORTS ENGAGEMENT

This section states the four principles of esports engagement announced by the ESA; the next will discuss these principles through a review of events in the video game and esports industries.

#### Principle 1: Safety and Well-Being

All esports community members deserve to participate in and enjoy esports in safe spaces and to be free from threats and acts of violence and from language or behavior that makes people feel threatened or harassed.

#### Principle 2: Integrity and Fair Play

Cheating, hacking, or otherwise engaging in disreputable, deceitful, or dishonest behavior detracts from the experience of others, unfairly advantages teams and players, and tarnishes the legitimacy of esports.

#### Principle 3: Respect and Diversity

Esports promotes a spirit of healthy competition. Whether in person or online, all members of the esports community should demonstrate respect and courtesy to others, including teammates, opponents, game officials, organizers, and spectators.

Esports is truly global and brings together players from different backgrounds, cultures, and perspectives. We believe the broad and diverse player base of esports contributes to its success. We support an open, inclusive, and

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<sup>59</sup> See *id.* at 263; see also *Who We Are*, ENTERTAINMENT SOFTWARE ASSOCIATION, <https://www.theesa.com/about-esa> (last visited Feb. 11, 2019).

<sup>60</sup> *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786 (2011).

<sup>61</sup> *Id.* at 790.

<sup>62</sup> *We Are ESA*, ENTERTAINMENT SOFTWARE ASSOCIATION, <https://www.theesa.com/about-esa> (last visited Feb. 11, 2019).

<sup>63</sup> See *Video Game Industry*, *supra* note 1.

welcoming environment for all, no matter one's gender identity, age, ability, race, ethnicity, religion, or sexual orientation.

Principle 4: Positive and Enriching Game Play

Esports can help build self-confidence and sportsmanship and boost interpersonal communication and teamwork skills. Esports brings players and fans together to problem solve through strategic play, collaboration, and critical thinking. Participation in esports can also lead to the development of new and lasting friendships among teammates, competitors, and members of the broader esports community.<sup>64</sup>

IV. ANALYSIS OF THE PRINCIPLES OF ESPORTS ENGAGEMENT

A. PRINCIPLES 1, 3, AND 4: SAFETY AND WELL-BEING, RESPECT AND DIVERSITY, AND POSITIVE AND ENRICHING GAME PLAY

The first, third, and fourth principles — safety and well-being, respect and diversity, and positive and enriching game play — are interconnected. Showing respect and courtesy towards others and supporting an open, inclusive, and welcoming environment for all will allow everyone to participate in and enjoy esports in safe spaces, “free from threats and acts of violence and from language or behavior that makes them feel threatened or harassed.”<sup>65</sup> This, in turn, will help players build self-confidence, sportsmanship, interpersonal communication, and teamwork skills. This will bring players and fans together and forge “friendships among teammates, competitors, and members of the esports community.”<sup>66</sup> Unfortunately, video game and esports communities have often been plagued with unruly and aggressive behavior, colloquially known as “toxicity.”

1. *Toxicity in video game communities*

Toxicity in video game communities generally refers to “abusive or negative behavior or language” amounting to cyberbullying.<sup>67</sup> As Chang et al. explain, modern video games (including esports) are often played over the internet,

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<sup>64</sup> *Principles of Esports Engagement*, *supra* note 1.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Daniel Fu, *A Look at Gaming Culture and Gaming Related Problems: From a Gamer's Perspective*, CENTER FOR MH IN SCHOOLS & STUDENT/LEARNING SUPPORTS AT UCLA, <http://smhp.psych.ucla.edu/pdfdocs/gaming.pdf> (last visited Feb. 24, 2020). The Fair Play Alliance, discussed *infra*, refers to such conduct as “disruptive behavior.” *Frequently Asked Questions, Why Aren't You Calling This "Toxicity"?*, FAIR PLAY ALLIANCE, <http://fairplayalliance.org/faq> (last visited Feb. 24, 2020). Another definition of toxicity is simply “bad behavior.” See Jeremy Blackburn & Haewoon Kwak, *STFU NOOB! Predicting Crowdsourced Decisions on Toxic Behavior in Online Games*, ARXIV.ORG (Apr. 23, 2014), <https://arxiv.org/pdf/1404.5905.pdf>.

creating a “cloak of anonymity” that allows people to express themselves without concern for real-life perception or repercussion.<sup>68</sup> Anonymity has been given as one reason why overt discrimination is more prevalent in online esports communities than in local scenes like the fighting game community, which originated in “arcades where players stand mere inches from each other.”<sup>69</sup> The “cloak of anonymity lowers the inhibitions of bad actors” and “clears the way for hateful and prejudicial communications, especially those targeting members of minority or marginalized groups.”<sup>70</sup>

No discussion of toxicity is complete without mention of the community’s treatment of women and the “#gamergate” harassment campaign (Gamergate).<sup>71</sup> In 2014, Gamergate targeted several women in the video game industry, including Zoe Quinn, Brianna Wu, and Anita Sarkeesian.<sup>72</sup> The perpetrators of the “weekslong campaign to discredit or intimidate outspoken critics of the male-dominated gaming industry and its culture”<sup>73</sup> threatened the women with abuse, rape, and death, and released their names, cell phone numbers, addresses, and other personal information to the public.<sup>74</sup>

Some have suggested that Gamergate gained traction among in the gaming community because of a negative reaction to the diversification of content and players, including an increase in female gamers.<sup>75</sup> Before Gamergate, people had already identified sexism and misogyny as problems in the video game industry, particularly in online gaming; Gamergate therefore simply “showed the world the extent of gaming’s misogyny.”<sup>76</sup> Some have also noted that many Gamergate participants had the “explicit goal” of excluding “groups of people, particularly women, from the debate and from the game industry.”<sup>77</sup>

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<sup>68</sup> Anna Chang et al., *Diversity in Esports*, ESPORTS BAR ASS’N J. (Oct. 10, 2019), <https://esportsbar.org/journals/2019/10/diversity-in-esports>.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> For a detailed discussion of gender barriers in video games and Gamergate, see Emma Vossen, *On the Cultural Inaccessibility of Gaming: Invading, Creating, and Reclaiming the Cultural Clubhouse*, UWSpace (2018), <http://hdl.handle.net/10012/13649>. For additional background on Gamergate, see Natasha N. Phidd, Note, *A Call of Duty to Counterstrike: Cyberharassment and the Toxic Gaming Culture Plaguing Female Gamers and Developers*, 25 WM. & MARY J. RACE, GENDER, & SOC. JUS. 461, 463, 463-466 (2019) and the sources cited therein.

<sup>72</sup> See Adrienne L. Massanari, “Damseling for Dollars”: *Toxic Technocultures and Geek Masculinity*, in RACE AND GENDER IN ELECTRONIC MEDIA: CONTENT, CONTEXT, CULTURE (Rebecca Ann Lind ed., 2017); Julia M. MacAllister, *The Doxing Dilemma: Seeking a Remedy for the Malicious Publication of Personal Information*, 85 FORDHAM L. REV. 2451, 2459 (2017).

<sup>73</sup> MacAllister, *supra* note 72, at 2459.

<sup>74</sup> *Id.*; see also Massanari, *supra* note 72.

<sup>75</sup> See, e.g., Massanari, *supra* note 72.

<sup>76</sup> Lisa Nakamura, *Racism, Sexism, and Gaming’s Cruel Optimism*, in GAMING REPRESENTATION: RACE, GENDER, AND SEXUALITY IN VIDEO GAMES, at 248 (Jennifer Malkowski & TreaAndrea M. Russworm eds., 2017).

<sup>77</sup> Marie Antonsen et al., *The Many Faces of Engagement*, 2 NORDIC J. SCI. & TECH. STUD. 3, 4 (2016).

If there is any silver lining to Gamergate, it is perhaps the increased awareness of how women are treated in the video game industry. In 2016, during his remarks at a reception honoring Women's History Month, President Barack Obama said "We know that women gamers face harassment and stalking and threats of violence from other players. When they speak out about their experiences, they're attacked on Twitter and other social media outlets, even threatened in their homes."<sup>78</sup>

Other minority groups also experience toxic behavior in the video game community. In 2019, members of the Esports Bar Association "requested anonymous testimonials from minorities in the esports community about their experiences with discrimination."<sup>79</sup> They found that "[e]ach testimonial, while unique, had the same underlying theme: there is a systemic problem with how people treat one another in esports, and that problem has a powerfully negative effect on both the lives of affected individuals and the development of this nascent industry."<sup>80</sup>

For example, one Jewish player asked players in his game to stop talking about a recent shooting at a synagogue.<sup>81</sup> When the player explained he was Jewish, his team "chose to express their frustrations with the concept of circumcision."<sup>82</sup> When he left voice chat, his teammates "started typing hateful things" to him.<sup>83</sup> Similar testimonials came from members of the LGBT community and players with autism.<sup>84</sup>

Apart from suspending or banning players, video game companies have tried many other angles to address toxic behavior. In 2018, many companies came together to form the Fair Play Alliance, which "envision[s] a world where games are free of harassment, discrimination, and abuse, and where players can express themselves through play."<sup>85</sup> Some companies have improved their in-game reporting systems or implemented other community-based initiatives to take action against toxic players.<sup>86</sup> Honor or endorsement systems such as those

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<sup>78</sup> Office of the Press Secretary, *Remarks by the President at Reception in Honor of Women's History Month*, THE WHITE HOUSE (March 16, 2016, 5:23 PM), <https://obamawhitehouse.archives.gov/the-press-office/2016/03/16/remarks-president-reception-honor-womens-history-month>.

<sup>79</sup> Chang et al., *supra* note 68.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *About the Fair Play Alliance*, FAIR PLAY ALLIANCE, <http://fairplayalliance.org/about> (last visited Feb. 27, 2020). The Fair Play Alliance has over 120 members, including Blizzard Entertainment, Epic Games, Riot Games, Twitch, and Ubisoft. *Fair Play Alliance Members*, FAIR PLAY ALLIANCE, <http://fairplayalliance.org/members> (last visited Feb. 27, 2020).

<sup>86</sup> Stephany Nunneley, *Overwatch player toxicity "not solved but getting better," Blizzard takes the fight to YouTube*, VG247 (Jan. 27, 2018, 5:17 PM), <https://www.vg247.com/2018/01/27/overwatch-player-toxicity-not-solved-but-getting-better-blizzard-takes-the-fight-to-youtube>



implemented in League of Legends and Overwatch, allowing players to commend one another for positive behavior at the end of a match with resulting rewards, have also reportedly reduced toxic behavior.<sup>87</sup> And in one different and interesting attempt to deter toxicity, Blizzard published the names of more than 18,000 Overwatch accounts banned in South Korea for toxic behavior.<sup>88</sup>

Companies might also choose *not* to implement certain functions in their game design. For a long time, Riot Games explained its decision not to implement in-game voice chat for League of Legends, citing research showing voice chat increases toxicity, especially towards women.<sup>89</sup> Specifically, the research showed that (1) toxicity increased by 126 percent when some players are in voice chat and others are not, and (2) female voices received 300 percent more harassment than male voices, even when the two voices said the exact same thing.<sup>90</sup> Likewise, in Wizards of the Coast's Magic: The Gathering Arena, players cannot

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(Overwatch); James Billcliffe, *Rainbow Six Siege is launching improvements to its chat toxicity ban system this week*, VG247 (Mar. 5, 2018, 10:15 AM), <https://www.vg247.com/2018/03/05/rainbow-six-siege-chat-toxicity-ban> (Rainbow Six Siege). Valve implemented the "Overwatch" (not to be confused with the video game of the same name), an "in-game replay review system that lets the CS:GO community regulate itself by allowing qualified and experienced members of the community . . . to review reports of disruptive behavior, determine whether those reports are valid, and apply temporary bans if appropriate." See *Counter-Strike: Global Offensive – Overwatch System*, STEAM, [https://support.steampowered.com/kb\\_article.php?ref=7562-ipjn-1009](https://support.steampowered.com/kb_article.php?ref=7562-ipjn-1009) (last visited Feb. 27, 2020).

<sup>87</sup> See Aron Garst, *How Blizzard Reduced Toxic Behavior With 'Overwatch's' Endorsement System*, VARIETY (Mar. 22, 2019, 10:00 AM), <https://variety.com/2019/gaming/features/how-blizzard-reduced-toxic-behavior-with-overwatches-endorsement-system-1203169999> (reporting that Overwatch matches with reported toxicity are down 40 percent since launch of endorsement system); see also Ariel Garlow, *Does the New League of Legends Honor System Work Better?*, ESPORTS EDITION (Jan. 16, 2018), <https://esportsedition.com/league-of-legends/does-the-new-league-of-legends-honor-system-work-better> (discussing the League of Legends honor system).

<sup>88</sup> See Dustin Bailey, *Blizzard names and shames 18,000 South Korean Overwatch accounts banned for toxicity*, PCGAMESN (Jan. 2, 2019), <https://www.pcgamesn.com/overwatch/overwatch-south-korea-bans> (providing a link to the original Blizzard post in Korean).

<sup>89</sup> See Aaron Mickunas, *Riot is finally bringing voice comms to League of Legends*, DOT ESPORTS (Mar. 31, 2017), <https://dotesports.com/news/riot-voice-communications-in-game-league-of-legends-13900>. The company has since revised its position and expressed a willingness to implement voice chat. See Riot Cactopus et al., *Ask Riot: Movie? Voice? Item Sets?*, NEXUS (2016), <https://nexus.leagueoflegends.com/en-us/2017/03/ask-riot-movie-voice-item-sets>.

<sup>90</sup> Mickunas, *supra* note 89.

chat at all,<sup>91</sup> possibly in response to reports of toxicity in Magic: The Gathering Online, where players *could* chat with one another.<sup>92</sup>

Video game companies can also combat toxic behavior by pursuing legal action. In June 2019, the streaming service Twitch went a step further than *banning* users who violated its terms of service by streaming “racist, misogynistic, and violent content”—it sued them.<sup>93</sup> Twitch’s lawsuit might not be directly related to in-game toxicity, as the streamers were not playing games at all, but the willingness of companies to pursue appropriate legal remedies, instead of merely disciplining disruptive players, could further curb toxic behavior.<sup>94</sup>

## 2. Toxicity in professional esports communities

Because esports players operate at a professional level and often serve as role models for aspiring gamers, toxicity in esports differs from toxicity in the general video game community. Professional esports players should be held to a higher standard, and the principles of esports engagement should apply with greater force—particularly when it comes to toxicity. Just as with the general video game community, a discussion of toxicity in esports is incomplete without mention of attitudes towards women, who comprise nearly half of the active gaming community<sup>95</sup> and almost one-third of the global esports viewership audience.<sup>96</sup>

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<sup>91</sup> See WotC Megan, *Confirmed Upcoming Features - Updated Aug. 13th 2018*, MAGIC: THE GATHERING ARENA (Aug. 13, 2018, 12:36 PM), <https://forums.mtgarena.com/forums/threads/34908> (“There are currently no plans to implement a full chat system at this time. We are looking at alternative ways to allow players to communicate, such as with the new emotes system.”).

<sup>92</sup> See Chris Kiritz, *Magic Online Conduct Update*, MAGIC: THE GATHERING (May 1, 2018), <https://magic.wizards.com/en/articles/archive/magic-online/magic-online-conduct-update-2018-05-01>.

<sup>93</sup> Twitch Interactive, Inc. v. Does 1 Through 100, No. 19-cv-03418-WHO, 2019 WL 3718582, at \*1 (N.D. Cal. Aug. 7, 2019).

<sup>94</sup> While the topic of streaming is beyond the scope of this article, it could be important since many professional esports players also stream content, and their conduct on streaming platforms implicates the principles of esports engagement.

<sup>95</sup> The percentage of female gamers varies year by year slightly under half. The ESA publishes an annual report reviewing data it collected about the video game industry. In 2019, it found 46 percent of gamers are female. *2019 Essential Facts About the Computer and Video Game Industry*, *supra* note 22, at 6. In 2018, that number was 45 percent. *2018 Essential Facts About the Computer and Video Game Industry* at 6, ENTERTAINMENT SOFTWARE ASSOCIATION (2018), [https://www.theesa.com/wp-content/uploads/2019/03/ESA\\_EssentialFacts\\_2018.pdf](https://www.theesa.com/wp-content/uploads/2019/03/ESA_EssentialFacts_2018.pdf). And in 2017, it was 41 percent. *2017 Essential Facts About the Computer and Video Game Industry* at 7, ENTERTAINMENT SOFTWARE ASSOCIATION (2017), [https://www.theesa.com/wp-content/uploads/2019/03/ESA\\_EssentialFacts\\_2017.pdf](https://www.theesa.com/wp-content/uploads/2019/03/ESA_EssentialFacts_2017.pdf).

<sup>96</sup> *Females and Esports Viewership – 2019 Update*, INTERPRET (Feb. 21, 2019), [https://interpret.la/wp-content/uploads/2019/02/PR\\_BITE\\_FEB\\_19\\_ESPORTS.pdf](https://interpret.la/wp-content/uploads/2019/02/PR_BITE_FEB_19_ESPORTS.pdf). The Interpret study shows that females comprise 30.4 percent of esports viewership in 2018, up from 23.9 percent in 2016. *Id.*

Despite the impressive number of women actively playing video games and watching esports, women are severely underrepresented in the upper echelons of competitive esports. As of December 2019, of all the players in the Overwatch League — twenty teams and over 180 players — there was only one woman, Se-yeon “Geguri” Kim.<sup>97</sup> The League of Legends Championship Series has not seen a woman since 2016, when Maria Creveling left her team.<sup>98</sup> Only one woman, Sasha Hostyn, has won a major international StarCraft II tournament, the 2018 Intel Extreme Masters, which took place just before the 2018 Winter Olympics in Pyeongchang.<sup>99</sup> Chiquita Evans was the only woman in the second season of the NBA 2K League; there were none in the first season.<sup>100</sup> And in November 2019, Li Xiao Meng became the first woman to win a Hearthstone Grandmasters tournament — and the first to win *any* major competition at BlizzCon.<sup>101</sup>

Moreover, the website Esports Earnings, which tracks the top players in esports by prize money earned, shows only a single woman in the top 500.<sup>102</sup> As of December 2019, the highest earning woman, Sasha Hostyn, earned \$357,563.54, placing her at 334th on the list.<sup>103</sup> The next highest, Li Xiao Meng,

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<sup>97</sup> See *Teams*, OVERWATCH LEAGUE, <https://overwatchleague.com/en-us/teams> (last visited Feb. 14, 2020); *Players*, OVERWATCH LEAGUE, <https://overwatchleague.com/en-us/players> (last visited Feb. 14, 2020); see also Alex Fitzpatrick, *Meet the Female Gamer Taking the Male-Dominated World of eSports by Storm*, TIME (May 16, 2019), <https://time.com/collection-post/5584909/kim-geguri-se-yeon-next-generation-leaders>.

<sup>98</sup> Associated Press, *Female esports players face routine sexism and toxicity: 'I no longer have power'*, N.Y. POST (Jan. 3, 2019, 12:01 PM), <https://nypost.com/2019/01/03/female-esports-players-face-routine-sexism-and-toxicity-i-no-longer-have-power> (noting that Creveling faced toxicity not only for being female, but also for being transgender).

<sup>99</sup> *Intel Extreme Masters Pyeongchang: Stunning Finale Concludes Historic Esports Event Ahead of the Olympic Winter Games 2018*, INTEL (Feb. 7, 2018), <https://newsroom.intel.com/news/intel-extreme-masters-pyeongchang-stunning-finale-concludes-historic-esports-event-ahead-olympic-winter-games-2018>. Like Creveling, Hostyn is also transgender, but that has reportedly been a “non-issue” within the Starcraft II community. Scott Douglas Jacobsen, *A Trans-Setting Star Exhibits Her Craft: The Transgender Community and the Starcraft II Professional Video Gamers*, MEDIUM (Feb. 12, 2019), <https://medium.com/@scott.d.jacobsen/a-trans-setting-star-exhibits-her-craft-the-transgender-community-and-the-starcraft-ii-513499647a86>.

<sup>100</sup> Samit Sarkar, *The NBA 2K League now has a female player. Where does it go from here?*, POLYGON (Mar. 6, 2019, 4:00 PM), <https://www.polygon.com/2019/3/6/18253086/nba-2k-league-chiquita-evans-draft>.

<sup>101</sup> See Hawken Miller, *Just forget your gender: Xiaomeng 'VKLiooon' Li becomes first female Hearthstone Grandmasters Global Finals champion*, WASH. POST (Nov. 2, 2019, 10:18 PM), <https://washingtonpost.com/video-games/esports/2019/11/02/just-forget-your-gender-xiaomeng-vklioon-li-becomes-hearthstones-first-female-grandmaster-champion>; Nicole Carpenter, *Hearthstone player becomes first woman to win at BlizzCon finals*, POLYGON (Nov. 4, 2019, 11:36 AM), <https://polygon.com/blizzcon/2019/11/4/20947795/hearthstone-grandmasters-blizzcon-2019-first-woman-champion>.

<sup>102</sup> *Top 400 Highest Overall Earnings*, ESPORTS EARNINGS, <https://www.esportsearnings.com/players/highest-overall-x300> (last visited Feb. 27, 2020).

<sup>103</sup> *Id.*

has earned \$213,200, not enough to place her in the top 500.<sup>104</sup> Only two other women have even earned six figures.<sup>105</sup> By comparison, more than 80 men have earned over \$1 million; three have earned over \$6 million.<sup>106</sup>

A few major esports organizations have formed or acquired all-female teams, but those stories are still few and far between.<sup>107</sup> And all-female teams that lose matches can face even more scrutiny and toxicity just for trying to compete.<sup>108</sup> All-female leagues and tournaments have also been formed to help women compete in esports,<sup>109</sup> though some have questioned whether they help empower women in esports or only worsen the gender divide.<sup>110</sup> Others have noticed the disparity in prize pools between all-female and male-dominated tournaments, reminiscent of the recent fight for equal pay by the U.S. women's soccer team.<sup>111</sup> Because of the environment, many women unfortunately might choose not to compete in high level esports. Despite the lessons that the community should have learned years ago from Gamergate, women in esports continue to be the target of toxic behavior — perhaps even more so given the heightened publicity and fame.

Let's use the competitive Overwatch community as an example. In 2016, Se-yeon Kim (Geguri) was one of the highest ranking Overwatch players in the

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<sup>104</sup> See *Top 500 Highest Overall Earnings*, ESPORTS EARNINGS, <https://www.esportsearnings.com/players/highest-overall-x400> (last visited Feb. 27, 2020); *Top 100 Female Players*, ESPORTS EARNINGS, <https://www.esportsearnings.com/players/female-players> (last visited Feb. 27, 2020).

<sup>105</sup> *Top 100 Female Players*, *supra* note 104.

<sup>106</sup> *Top 100 Highest Overall Earnings*, ESPORTS EARNINGS, <https://www.esportsearnings.com/players/highest-overall> (last visited Feb. 27, 2020).

<sup>107</sup> See, e.g., *Fortnite*, GEN. G, <https://geng.gg/blogs/fortnite> (last visited Dec. 22, 2019) (all-female Fortnite team); Piet “Sui” Smet, *Welcome Team Dignitas CSGO Female*, DIGNITAS (Feb. 28, 2017, 9:00 PM), <http://team-dignitas.net/articles/news/Team-Dignitas/10952/welcome-team-dignitas-csgo-female> (all-female CS:GO team).

<sup>108</sup> See, e.g., Dom Sacco, *All-female Russian LoL team Vaevictis Esports lose 52-2 in the LCL: Is this really about giving women a platform or is it just an unfair publicity stunt?*, ESPORTS NEWS UK (Feb. 17, 2019), <https://esports-news.co.uk/2019/02/17/vaevictis-esports-all-female-team>; Hongje “Koer” Kim & Yudae “Akiin” Oak, *Riot Games warn LCL's ROX for Banning 5 Support Champs in Single Match*, INVEN GLOBAL (Feb. 21, 2019), <https://www.invenglobal.com/articles/7635/riot-games-warn-lcls-rox-for-banning-5-support-champs-in-a-single-match>.

<sup>109</sup> See, e.g., Laura Byrne, *GIRLGAMER Esports Festival heads to Dubai for World Finals*, ESPORTS INSIDER (Aug. 28, 2019), <https://esportsinsider.com/2019/08/girlgamer-world-finals-dubai>.

<sup>110</sup> See, e.g., *Opinion | Women Only Esports Teams, Tournaments & Leagues*, NEON (Feb. 4, 2018), <https://wearoneon.com/blog/women-only-esports-teamstournaments-leagues> (collecting opinions from industry insiders on the subject).

<sup>111</sup> See Luke Winkie, *Women-Only Esport Competitions Are on the Rise – But Where's the Money?*, ONEZERO (June 21, 2019), <https://onezero.medium.com/women-only-esport-competitions-are-on-the-rise-but-where-s-the-money-35316acdebc6>. For a brief primer on the equal pay dispute, see Emily Kaplan, *U.S. women's soccer equal pay fight: What's the latest, and what's next?*, ESPN (Nov. 9, 2019), [https://www.espn.com/sports/soccer/story/\\_/id/27175927/us-women-soccer-equal-pay-fight-latest-next](https://www.espn.com/sports/soccer/story/_/id/27175927/us-women-soccer-equal-pay-fight-latest-next).

world.<sup>112</sup> But when her team began defeating major opponents in regional Korean tournaments, people accused her of cheating due to her impeccable aim as the character Zarya.<sup>113</sup> These accusations likely stemmed in part from the erroneous perception that a girl simply could not actually be that skilled.<sup>114</sup> Blizzard Korea cleared the accusations against Kim, and she went even further to demonstrate her legitimacy by streaming her gameplay in a live monitored setting with a camera recording her left hand.<sup>115</sup> But the accusations took their toll.<sup>116</sup>

*Time* magazine recently featured Kim in its “Next Generation Leaders” column alongside the likes of Greta Thunberg and other “rising stars who are changing the world in politics, sports, fashion and more.”<sup>117</sup> *Time* described Kim as “Fighting Gender Bias in Gaming”<sup>118</sup> and “Taking the Male-Dominated World of eSports by Storm.”<sup>119</sup> This profile further highlights the challenges faced by all women in esports.

The discriminatory treatment Kim received was not an isolated incident. Another example comes from a “social experiment” conducted by a male Overwatch player masquerading as a female player called “Ellie,” who was signed by a team in the Overwatch Contenders League.<sup>120</sup> Ellie’s rise drew skepticism similar to Geguri’s, and questioning her ability eventually “snowballed into harassment and threats of doxxing.”<sup>121</sup> Ultimately, Ellie quit her team.<sup>122</sup>

Other women have also spoken out about the discrimination of women in esports. In April 2019, Kate Mitchell, the Assistant General Manager of the Washington Justice, announced her retirement from Overwatch League.<sup>123</sup> In

<sup>112</sup> Julia Alexander, *Blizzard clears high-ranking teenage Overwatch player in cheating scandal*, POLYGON (June 21, 2016, 8:00 PM), <https://www.polygon.com/2016/6/21/11996752/blizzard-overwatch-zarya-cheating>.

<sup>113</sup> *Id.*; see Fitzpatrick, *supra* note 97.

<sup>114</sup> See Chang et al., *supra* note 68.

<sup>115</sup> Young Jae Jeon, *Overwatch pro Geguri signs with ROX Orca*, ESPN (Aug. 7, 2017), [https://www.espn.co.uk/esports/story/\\_/id/20269551/geguri-become-first-female-competitor-overwatch-apex](https://www.espn.co.uk/esports/story/_/id/20269551/geguri-become-first-female-competitor-overwatch-apex); see also Alexander, *supra* note 112 (including a YouTube video of Kim’s livestream). Cheating accusations are also common against male players; however, the accusations against Kim were particularly egregious.

<sup>116</sup> See Alexander, *supra* note 112 (“By the end of the stream, Geguri was in tears, and said the stress of the accusations over the past few days had finally gotten to her.”).

<sup>117</sup> *Next Generation Leaders*, TIME, <https://time.com/collection/next-generation-leaders/2019> (last visited Feb. 28, 2020).

<sup>118</sup> *Id.*

<sup>119</sup> Fitzpatrick, *supra* note 97.

<sup>120</sup> Chang et al., *supra* note 68. The Overwatch Contenders League is a Blizzard-sanctioned “high-level tournament series for pro players who dream of ascending to the Overwatch League.” *Overwatch Contenders*, BLIZZARD, <https://overwatchcontenders.com/en-us> (last visited Jan. 31, 2020).

<sup>121</sup> Chang et al., *supra* note 68.

<sup>122</sup> *Id.*

<sup>123</sup> Katherine Mitchell, *Going Home: I’m retiring from Overwatch League at the end of Stage 2*, MEDIUM (Apr. 10, 2019), <https://medium.com/@gnvkay/going-home-a76bae200088>.

her post, “Going Home,” she reported having “been confronted with toxicity and casual cruelty from strangers that outpaced anything [she] saw in years in gaming and politics.”<sup>124</sup> Similarly, Li Xiaomeng, who won the Hearthstone Grandmasters Global Finals at BlizzCon, has also discussed the discrimination she faced as a high-level female esports player. After her victory at BlizzCon, she explained through a translator that, two years before her victory, while waiting to sign up for a tournament, a man told her not to wait in line because she was female: “It’s not for you.”<sup>125</sup> After sharing that story, Li said, “I want to say to all the girls out there who have a dream for esports — for competition, for glory — if you want to do it and you believe in yourself, you should forget your gender and go for it.”<sup>126</sup>

These examples of toxic behavior and discrimination, even at the highest levels of esports, only scratch the surface. Aspiring female esports players encounter toxicity at all levels of competitive play. The *New York Post* reported on the experiences of an Overwatch player, a League of Legends player, and a twelve-year-old Minecraft player — all of whom faced harassment just for being female.<sup>127</sup>

As in the general video game community, companies have cracked down on toxicity in competitive esports. The discussion below reviews some of the disciplinary actions Blizzard has taken in Overwatch and Riot Games has taken in League of Legends for toxic behavior.<sup>128</sup> Notably, while this article has focused mainly on toxicity toward women, it bears observing that members of other minority groups also regularly face such behavior.<sup>129</sup> Indeed, many of the disciplinary actions discussed below involve players making racist comments.

In March 2018, the Overwatch League<sup>130</sup> fined two players and warned a third over toxic behavior.<sup>131</sup> It fined Timo Kettunen of the Dallas Fuel \$1,000

<sup>124</sup> *Id.*

<sup>125</sup> Carpenter, *supra* note 101 (including a video of Li’s message following her victory).

<sup>126</sup> *Id.*

<sup>127</sup> ‘I no longer have power’, *supra* note 98.

<sup>128</sup> Of course, other esports games also discipline players for misconduct. *See, e.g., Banned players*, LIQUIPEDIA, [https://liquipedia.net/counterstrike/Banned\\_players](https://liquipedia.net/counterstrike/Banned_players) (last visited Feb. 14, 2020) (providing an ongoing list of banned players in CS:GO); Owen S. Good, *Apex Legends cheater ban count: over 700,000 served*, POLYGON (May 4, 2019, 11:22 AM), <https://www.polygon.com/pc/2019/5/4/18529298/apex-legends-cheating-bans-pc-xbox-one-ps4> (noting that 770,000 players were banned from Apex Legends for cheating and other abusive behavior); Wesley Yin-Poole, *Outspoken FIFA 19 pro quits game after EA ban for abusive behavior*, EUROGAMER (Oct. 20, 2018), <https://www.eurogamer.net/articles/2018-10-20-outspoken-fifa-19-pro-quits-game-after-ea-ban-for-abusive-behaviour> (commenting on news that professional FIFA player was banned for abusive behavior).

<sup>129</sup> *See supra* notes 79-84.

<sup>130</sup> For a discussion of the Overwatch League and its structure, see Holden & Baker, *supra* note 3, at 408-410.

<sup>131</sup> The Overwatch League, *Disciplinary Action: Taimou, TaiRong, Silkthread, and xQc*, OVERWATCH LEAGUE (Mar. 9, 2018), <https://overwatchleague.com/en-us/news/21610248/disciplinary-action-taimou-tairong-silkthread-and-xqc>.

for using anti-gay slurs on his personal stream.<sup>132</sup> It issued a formal warning to Tae-yeong Kim of the Houston Outlaws for posting an offensive meme on social media.<sup>133</sup> The biggest punishment went to Felix Lengyel of the Dallas Fuel, who was suspended for four matches and fined \$4,000 for “repeatedly us[ing] an emote in a racially disparaging manner on the league’s stream and on social media, and us[ing] disparaging language against Overwatch League casters and fellow players on social media and on his personal stream.”<sup>134</sup>

After announcing these disciplinary actions, the Overwatch League went on to say, “It is unacceptable for members of the Overwatch League to use or distribute hateful, racist, or discriminatory speech or memes . . . We are committed to building a community around the Overwatch League that is welcoming and inclusive for all players and fans, and we hope that these disciplinary actions demonstrate our seriousness in that endeavor.”<sup>135</sup>

A month later, the Overwatch League fined Josue Corona of the Philadelphia Fusion \$1,000 for making a “racially insensitive gesture on his Twitch stream.”<sup>136</sup> Corona’s team went further, suspending him for three matches, fining him \$2,000, revoking his streaming privileges for over two months, and requiring him to donate \$3,000 to the Anti-Defamation League’s No Place for Hate Campaign.<sup>137</sup>

In December 2018, the Overwatch League began “maintain[ing] a list of players who are disciplined for infractions of the Overwatch League rules of competition and code of conduct” through its Overwatch League Player Discipline Tracker.<sup>138</sup> Among other disciplinary actions taken between December 2018 and November 2019, the League suspended one player—Riku Toivanen of the Los Angeles Gladiators—for five games for “throwing matches and toxicity.”<sup>139</sup>

One player with an extended history of misconduct, Felix Lengyel, merits separate discussion. In November 2017, Blizzard suspended Lengyel’s Overwatch account for 72 hours for “misuse of reporting system.”<sup>140</sup> Just a month

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> The Overwatch League, *Ego Fined*, OVERWATCH LEAGUE (Apr. 4, 2018), <https://overwatchleague.com/en-us/news/21687854/ego-fined>.

<sup>137</sup> Nicole Carpenter, *Philadelphia Fusion DPS Ego suspended for three games for “slant eye” gesture*, DOT ESPORTS (Apr. 4, 2018, 4:18 PM), <https://dotesports.com/overwatch/news/philadelphia-fusion-ego-suspension-22489>.

<sup>138</sup> The Overwatch League, *Overwatch League Player Discipline Tracker*, OVERWATCH LEAGUE, <https://overwatchleague.com/en-us/news/22823906/2019-player-discipline-tracker> (last visited Feb. 28, 2020).

<sup>139</sup> *Id.* Because this list includes only Overwatch League players, it does not include other competitive Overwatch players who might have faced discipline.

<sup>140</sup> Eric Van Allen, *Overwatch Pro’s Mid-Match Suspension Raises Questions About Blizzard’s Reporting System*, KOTAKU (Nov. 18, 2017, 11:44 AM), <https://compete.kotaku.com/overwatch-pros-mid-match-suspension-sparks-debate-over-1820572524>.

later, Blizzard suspended Lengyel's account for 7 days after he intentionally lost a competitive game.<sup>141</sup> As mentioned above, in March 2018, the Overwatch League suspended Lengyel for four matches and fined him \$4,000 for racist and other toxic behavior.<sup>142</sup> This increased punishment likely reflected that the League had just "warned, fined, and suspended" Lengyel for "similar infractions" just months before that incident.<sup>143</sup>

After these disciplinary actions, the Dallas Fuel released Lengyel.<sup>144</sup> Yet again, in August 2018, Blizzard suspended Lengyel's account for 15 days for "abusive chat," prompting the Overwatch World Cup to issue an official warning to Lengyel.<sup>145</sup> And finally, in November 2018, Blizzard suspended Lengyel for another 24 days — once again for "abusive chat."<sup>146</sup>

Lengyel's extensive toxic behavior and resulting punishments are interesting. Consider Lengyel's cumulative punishments (a \$6,000 fine, 8 match suspensions in Overwatch League, and a total of 49 days' suspension of his Overwatch account) for his repeated misconduct. Consider also that Lengyel has been allowed to continue playing in other professional Overwatch competitions. He represented Team Canada in the Overwatch World Cup as recently as November 2019 and played for Gladiators Legion until the team's departure from the Overwatch Contenders League in December 2019.<sup>147</sup>

Interestingly, Lengyel apparently did not limit his toxic behavior to Overwatch. In August 2018 — when Blizzard suspended his Overwatch account for fifteen days for abusive chat — Lengyel earned a permanent ban from League of Legends for "inflammatory and offensive" in-game communication.<sup>148</sup>

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<sup>141</sup> Nicole Carpenter, *Dallas Fuel player xQc receives 7-day Overwatch suspension*, DOT ESPORTS (Dec. 18, 2017, 08:43 AM), <https://dotesports.com/overwatch/news/xqc-seven-day-overwatch-suspension-19615>.

<sup>142</sup> The Overwatch League, *supra* note 131.

<sup>143</sup> *Id.*

<sup>144</sup> Dallas Fuel, *Dallas Fuel Announce Release of Felix "xQc" Lengyel*, DALLAS FUEL (Mar. 10, 2019), <https://fuel.overwatchleague.com/en-us/news/dallas-fuel-announce-release-of-felix-xqc-lengyel>.

<sup>145</sup> Dustin Steiner, *xQc Given Official Overwatch World Cup Warning After In-Game Ban*, UNIKRN (Aug. 21, 2018), <https://news.unikrn.com/article/xqc-overwatch-world-cup-warning-in-game-ban>.

<sup>146</sup> Calum Patterson, *xQc gets Overwatch account suspended, says he's done with Overwatch*, DEXERTO.COM (Nov. 19, 2018, 10:19 AM), <https://www.dexerto.com/overwatch/xqc-gets-overwatch-account-suspended-says-hes-done-with-overwatch-223175>. Lengyel admitted on his stream, "let's be real, we've been pretty toxic about the game." *Id.*

<sup>147</sup> Michael Gwilliam, *xQc makes Team Canada's final roster for Overwatch World Cup 2019*, DEXERTO.COM (July 29, 2019, 3:06 PM), <https://www.dexerto.com/overwatch/xqc-makes-team-canadas-final-roster-overwatch-world-cup-858131>; Andrew Amos, *xQc blindsided by shock departure of his pro Overwatch team*, DEXERTO.COM (last edited Dec. 8, 2019, 1:59 PM), <https://www.dexerto.com/overwatch/xqc-blindsided-shock-departure-pro-overwatch-team-1295758>.

<sup>148</sup> Justin Binkowski, *Former Overwatch League player xQc has been permanently banned from League of Legends*, DOT ESPORTS (Aug. 31, 2018), <https://dotesports.com/league-of>



According to Riot Games, Lengyel was “among 0.006 percent of *League* players negative enough to be permanently banned.”<sup>149</sup>

Thus, compared to the penalties Riot Games issues to League of Legends players engaging in similar behavior (discussed in more detail further below), Blizzard appears more lenient when it comes to disciplining esports players for toxic behavior. While it makes sense to give players a chance to reform,<sup>150</sup> video game companies and esports leagues should consider drastically increasing penalties for repeated misconduct by professional players. Lengyel’s unabated toxic behavior might have warranted not just a twenty-four-day suspension, but perhaps a year-long ban from all competitive Overwatch play as well as his Overwatch account. While harsh, such a ban would serve to uphold the principles of esports engagement and effectuate lasting change in reducing toxicity.

Indeed, a compilation of competitive rulings shows Riot Games is not shy about handing down harsh penalties to professional League of Legends players for similar behavior.<sup>151</sup> This compilation shows over 100 players having been disciplined over the years for toxic behavior, with penalties ranging from fines or warnings to lifetime bans (with periodic review).<sup>152</sup> A few are mentioned below.

In 2012, Riot Games suspended Christian Rivera from the League of Legends Championship Series and banned his accounts for one year, finding he had engaged in a “persistent record of in-game harassment, verbal abuse, offensive language and negative attitude.”<sup>153</sup> Rivera’s ban was reportedly the “first instance of a high profile player being subject to punishment of this kind.”<sup>154</sup>

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legends/news/former-overwatch-league-player-xqc-has-been-permanently-banned-from-league-of-legends.

<sup>149</sup> *Id.*

<sup>150</sup> Some players given a second chance after a long ban appear to have reformed with no further notable misconduct. *See, e.g., infra* note 158 (discussing Jensen’s return to League of Legends after being banned for several years); *see also* Daniel Friedman, *How Riot may have made it impossible to keep ‘the most toxic League of Legends player’ banned*, POLYGON (Jan. 9, 2018, 3:19 PM), <https://www.polygon.com/2018/1/9/16868868/tyler1-unbanned-twitch-lol-league-of-legends-riot> (discussing Tyler1’s return to League of Legends after being banned for two years); Tyler Erzberger, *From permaban to poster boy, Tyler1’s TCS is a League of Legends staple*, ESPN (Dec. 20, 2019), [https://www.espn.com/esports/story/\\_/id/28341660/from-permaban-poster-boy-tyler1-tcs-league-legends-staple](https://www.espn.com/esports/story/_/id/28341660/from-permaban-poster-boy-tyler1-tcs-league-legends-staple) (providing further discussion of Tyler1).

<sup>151</sup> *List of Competitive Rulings*, GAMEPEDIA, [https://lol.gamepedia.com/List\\_of\\_Competitive\\_Rulings](https://lol.gamepedia.com/List_of_Competitive_Rulings) (last edited Dec. 13, 2019). This list includes links to sources for each reported disciplinary action.

<sup>152</sup> *Id.*

<sup>153</sup> RedBeard, *IWillDominate Tribunal Permaban & eSports Competition Ruling*, LEAGUE OF LEGENDS (Dec. 4, 2012), <http://forums.na.leagueoflegends.com/board/showthread.php?t=2864421>.

<sup>154</sup> Zac Cameron, *Pro League of Legends Players That Met The Ban Hammer*, TWIN GALAXIES (Feb. 9, 2018, 5:00 PM), [https://www.twingalaxies.com/feed\\_details.php/188/lol-pros-behaving-badly](https://www.twingalaxies.com/feed_details.php/188/lol-pros-behaving-badly). Rivera later rejoined the competitive scene after Riot Games lifted his suspension. *Id.*

In 2013, Riot Games banned three players on the same team for toxic behavior, disqualifying the entire team from a League of Legends Championship Series qualifying event.<sup>155</sup> First, Riot Games issued a lifetime ban to Khaled Abusagr for a “consistent pattern of in-game verbal abuse, racism, anti-Semitism and threatening behavior.”<sup>156</sup> The company explained that Abusagr had “fully violated every part of the Summoner’s Code,” which established the “standards of behavior for all League of Legends players.”<sup>157</sup> Riot Games further described Abusagr’s behavior as “represent[ing] the extreme edge of violations of the letter and spirit of the Summoner’s Code. The persistence and ferocity of his abusiveness and aggressiveness are the antithesis of acceptable conduct for the League of Legends community.”<sup>158</sup>

Second, Riot Games issued a lifetime ban to Nicolaj Jensen for his “history of DDOS activity, abusive behavior and poor sportsmanship.”<sup>159</sup> It lamented that Jensen’s “disrespect for the rules of the game is unacceptable for any player, especially a high-profile eSports competitor who has a regular opportunity to lead the community by example.”<sup>160</sup>

Third, Riot Games issued a permanent ban to Simon Näslund for his “consistent pattern of in-game verbal abuse, offensive behavior and negative attitude.”<sup>161</sup> Näslund’s account had “built a harassment score so high that it warrants an automatic permanent ban” — indeed, it was “among the worst 0.01% of all European accounts.”<sup>162</sup> As with Jensen, Riot Games stated that Näslund’s “tendency to engage in verbal abuse, insults and offensive behavior is unacceptable for any player, especially a high-profile eSports competitor who has a regular opportunity to lead the community by example.”<sup>163</sup>

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<sup>155</sup> bitingpig, *eSports Competition Rulings: Suspensions of StunnedandSlayed, Veigodx and Rayt3ch*, LEAGUE OF LEGENDS (Jan. 23, 2013), <http://forums.euw.leagueoflegends.com/board/showthread.php?t=1015978>; see also Luke Plunkett, *Entire League of Legends Team Disqualified For, Yes, “Toxic Behaviour”*, KOTAKU (Jan. 24, 2013, 11:30 PM), <https://kotaku.com/entire-league-of-legends-team-disqualified-for-yes-t-5978832>.

<sup>156</sup> bitingpig, *supra* note 155.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* DDOS attacks are discussed later in section III.B.1. Two years later, Riot Games would allow Jensen to return to League of Legends esports. Yannick LeJacq, *For The First Time, A Banned League Of Legends Pro Gets Second Chance*, KOTAKU (Apr. 1, 2015, 1:30 PM), <https://kotaku.com/for-the-first-time-a-banned-league-of-legends-pro-gets-1695047985>. Jensen went on to play for major esports teams Cloud9 and Team Liquid. See Brian Chang, *Jensen on Liquid’s place on the world stage: “I’d probably place us somewhere in the top 4”*, DOT ESPORTS (Aug. 9, 2019, 12:12 PM), <https://dotesports.com/league-of-legends/news/team-liquid-jensen-interview-aug-9>.

<sup>160</sup> bitingpig, *supra* note 155.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

Fast-forwarding ahead, Riot Games removed an entire team, Rich Gang, from the Oceanic Pro League in 2015 for showing a “lack of institutional governance over their players.”<sup>164</sup> The company had suspended three players from Rich Gang for inappropriate behavior, and it found the team had “demonstrated a disappointing lack of professionalism on their own social media channels, resulting in lewd, racist, abusive and otherwise indecent content released on a regular basis.”<sup>165</sup>

To this day, Riot Games continues to discipline League of Legends players for toxic behavior. As recently as December 2019, it suspended a player from “all Riot-affiliated competitions” for more than two months due to “usage of discriminatory language towards other players.”<sup>166</sup> Notably, Riot Games has also disciplined esports players for toxic conduct arising *outside* the game; for example, it banned Li Wei Jun for two years after investigating a domestic violence incident caught on Li’s stream.<sup>167</sup>

The above review of select disciplinary actions in Overwatch and League of Legends shows toxicity is a continuous problem in esports. Toxic behavior prevents esports community members from “be[ing] free from threats and acts of violence and from language or behavior that makes people feel threatened or harassed.”<sup>168</sup> It is the opposite of “demonstrat[ing] respect and courtesy to others” and “support[ing] an open, inclusive, and welcoming environment for all.”<sup>169</sup> And toxic behavior certainly does not “build self-confidence and sportsmanship,” nor does it “boost interpersonal communication and teamwork skills.”<sup>170</sup> In short, toxic behavior runs wholly antithetical to the first, third, and fourth principles of esports engagement.

Thankfully, video game companies and esports leagues are trying to address the issue by fining, suspending, and even banning esports players who engage in toxic behavior. The principles of esports engagement might not add teeth not already present through license agreements, codes of conduct, and rules and regulations. But they establish unifying principles all can agree on, and they solidify

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<sup>164</sup> MissFortier, *OPL Competitive Ruling: Rich Gang*, LZURUHA (Mar. 20, 2015, 4:39 AM), <https://forums.mylzh.net/forum/lzuruha-game-forums/league-of-legends/league-of-legends-general/general-discussion-ac/169208-opl-competitive-ruling-rich-gang>.

<sup>165</sup> *Id.*

<sup>166</sup> Maximilian Peter Schmidt, *Competitive Ruling: Matúš “Neon” Jakubčík*, LEAGUE OF LEGENDS (Dec. 13, 2019), <https://eu.lolesports.com/en/articles/competitive-ruling-matus-neon-jakubcik>.

<sup>167</sup> Callum Leslie, *Vasilii banned until 2020 for “credible threats of physical violence” against his girlfriend*, DOT ESPORTS (Nov. 22, 2017, 05:09 AM), <https://dotesports.com/league-of-legends/news/vasilii-banned-2020-domestic-abuse-18903>; see also MCV Staff, *League of Legends pro Li “Vasilii” Wei Jun banned after assaulting his girlfriend while livestreaming*, MCV/DEVELOP (Oct. 27, 2017), <https://www.mcvuk.com/league-of-legends-pro-li-vasilii-wei-jun-banned-after-assaulting-his-girlfriend-while-livestreaming>.

<sup>168</sup> *Principles of Esports Engagement*, *supra* note 1.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

the importance of combating toxicity and promoting safety and well-being, respect and diversity, and positive and enriching gameplay. Perhaps someday, these principles could result in a universal code of conduct, allowing other companies and leagues to preemptively ban players like Lengyel for his conduct in Overwatch and League of Legends without waiting for displays of the same toxicity in their own esports scene.

### 3. *Swatting*

Swatting is one form of harassment that merits separate discussion from the general concept of toxicity. It “generally refers to an individual calling in a fake emergency requiring a police response on another individual.”<sup>171</sup> A few well-known instances of swatting in video games and esports are discussed below.

In January 2013, a League of Legends player, Nathan Hanshaw, fought with one of his in-game friends.<sup>172</sup> Hanshaw found out where his friend lived in California and called the police (after spoofing his own location so the call would appear from a California area code), telling them he had hundreds of rounds of ammunition, demanding money and a helicopter ride to Mexico, and threatening to kill any law enforcement personnel who arrived to stop him.<sup>173</sup> Investigators eventually traced the call back to Hanshaw, who was arrested, pleaded guilty, and was sentenced to thirty months in prison.<sup>174</sup>

In December 2017, two Call of Duty players, Casey Viner and Shane Gaskill, argued over a match and \$1.50 bet.<sup>175</sup> Viner threatened to swat Gaskill, who responded by providing a false address and daring Viner to swat him.<sup>176</sup> Viner contacted Tyler Barriss to swat Gaskill.<sup>177</sup> Barriss reported a shooting and

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<sup>171</sup> NABEL & CHANG, *supra* note 16, at 414; *see also* Elizabeth M. Jaffe, *Swatting: The New Cyberbullying Frontier After* *Elonis v. United States*, 64 *DRAKE L. REV.* 455, 456 (2016) (“Swatting is where the victim is engaged in gaming on the Internet, the swatter calls 911 and reports that there has either been a crime or some other type of emergency, and the 911 dispatcher then summons the SWAT team or the police.”). Jaffe describes swatting as a “new form of cyberbullying.” *Id.*

<sup>172</sup> Jaffe, *supra* note 171, at 472.

<sup>173</sup> *Id.* at 472-473.

<sup>174</sup> *Id.* at 473, 473 n.147.

<sup>175</sup> NABEL & CHANG, *supra* note 16, at 414; *see also* James Queally, *Fictitious shooting in video game sparked real-life shooting in Kansas swatting case, records show*, *L.A. TIMES* (Jan. 26, 2018, 6:35 PM), <https://www.latimes.com/local/lanow/la-me-ln-kansas-swatting-records-20180126-story.html>.

<sup>176</sup> NABEL & CHANG, *supra* note 16, at 414; *see also* Queally, *supra* note 175; Press Release, U.S. Dep’t of Justice, *Federal Charges Filed In Deadly Wichita Swatting Case* (May 23, 2018), <https://www.justice.gov/usao-ks/pr/federal-charges-filed-deadly-wichita-swatting-case>.

<sup>177</sup> NABEL & CHANG, *supra* note 16, at 414; *see also* U.S. Dep’t of Justice, *supra* note 176.

hostage situation at the false address, where the police ultimately killed Andrew Finch, an unarmed man who had nothing to do with the Call of Duty match.<sup>178</sup>

Viner, Gaskill, and Barriss were all later indicted and charged with various crimes in the U.S. District Court for the District of Kansas.<sup>179</sup> Viner pleaded guilty and received a fifteen-month sentence in addition to two years' probation, during which he would be banned from playing video games.<sup>180</sup> Gaskill reportedly "struck a deal for deferred prosecution that could allow the charges against him to be dropped."<sup>181</sup> Barriss was sentenced to twenty years in prison after pleading guilty to fifty-one counts of swatting — including the one Viner asked him to perform.<sup>182</sup> Barriss's sentence was reportedly the "longest prison sentence ever imposed for 'swatting.'"<sup>183</sup>

A third well-known instance of swatting occurred more recently. In July 2019, Kyle Giersdorf won the \$3 million top prize in the Fortnite World Cup.<sup>184</sup> Just two weeks later, while streaming Fortnite gameplay on Twitch, Giersdorf's father informed him that "armed police" had arrived.<sup>185</sup> Giersdorf later explained on his stream that the local SWAT team had come to his house armed.<sup>186</sup> Fortunately, the situation defused because one of the responding officers lived in his neighborhood and recognized him.<sup>187</sup>

Swatting directly violates the first principle of esports engagement: "[a]ll esports community members deserve to participate in and enjoy esports in safe spaces and to be free from threats and acts of violence and from language or behavior that makes people feel threatened or harassed."<sup>188</sup> As the Call of Duty incident shows, swatting threatens not only the safety, but the lives of all people, regardless of their involvement in the game. The consequences of that swatting incident — an innocent man's death and resulting prison sentences for the individuals who participated in the swatting — might have served as a reminder that such in-game actions, often perceived as harmless pranks, have real consequences. But the recent swatting of Giersdorf suggests more action is necessary.

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<sup>178</sup> NABEL & CHANG, *supra* note 16; Nichole Manna, *Family says son killed by police in 'swatting' was unarmed, didn't play video games*, THE WICHITA EAGLE (Dec. 29, 2017, 12:37 PM), <https://www.kansas.com/news/local/crime/article192147194.html>.

<sup>179</sup> U.S. Dep't of Justice, *supra* note 176.

<sup>180</sup> Associated Press, *Ohio gamer sentenced to 15 months prison for fatal 'swatting' case*, NBC NEWS (Sept. 13, 2019, 4:39 PM), <https://www.nbcnews.com/news/us-news/ohio-gamer-sentenced-15-months-prison-fatal-swatting-case-n1054331>.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> Associated Press, *supra* note 180.

<sup>184</sup> *See* The Fortnite Team, *supra* note 13.

<sup>185</sup> Ben Gilbert, *The 16-year-old 'Fortnite' player who won \$3 million at the Fortnite World Cup was 'swatted' during a stream*, BUS. INSIDER (Aug. 12, 2019, 10:01 AM), <https://www.businessinsider.com/fortnite-world-cup-winner-kyle-bugha-giersdorf-swatted-2019-8>.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Principles of Esports Engagement, supra* note 1.

Needless to say, an esports player found guilty of swatting should face a lifetime ban from all competitive and casual play. Presumably, a Call of Duty player who swats another would certainly have violated the terms of service or code of conduct of the game and should be precluded from ever having a Call of Duty account again. If the principles of esports engagement were universally adopted, another company such as Riot Games would have grounds to preclude that player from having a user account in League of Legends.

Moreover, as Nabel and Chang suggest, the video game and esports industry can combat swatting and other criminal activity by forging relationships with law enforcement, who can help identify and prosecute those engaged in such activity.<sup>189</sup> And, as the Twitch lawsuit shows, companies may also pursue civil legal remedies against bad actors.<sup>190</sup>

#### B. PRINCIPLE 2: INTEGRITY AND FAIR PLAY

The second principle of esports engagement states, “[c]heating, hacking, or otherwise engaging in disreputable, deceitful, or dishonest behavior detracts from the experience of others, unfairly advantages teams and players, and tarnishes the legitimacy of esports.”<sup>191</sup> The video game and esports industries have repeatedly faced this type of behavior. Several incidents are discussed below.

##### 1. *Distributed denial of service attacks*

“A distributed denial of service (DDoS) attack is a malicious attempt to disrupt normal traffic of a targeted server, service or network by overwhelming the target or its surrounding infrastructure with a flood of Internet traffic,” often by using multiple computer systems.<sup>192</sup> In short, a DDoS attack tries to overwhelm or limit the target’s internet connection.<sup>193</sup> In esports, DDoS attacks seek to disconnect an opposing player and prevent him or her from participating meaningfully in a game, thus giving the attacker a win.<sup>194</sup> Since esports are played online and thus require a stable internet connection, DDoS attacks can severely disrupt integrity and fair play in esports competition.

DDoS attacks are not new to the video game industry. Between December 2013 and January 2014, the group DerpTrolling attacked several major online

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<sup>189</sup> NABEL & CHANG, *supra* note 16, at 415.

<sup>190</sup> See *Twitch Interactive, Inc. v. Does 1 Through 100*, No. 19-cv-03418-WHO, 2019 WL 3718582 (N.D. Cal. Aug. 7, 2019).

<sup>191</sup> *Principles of Esports Engagement*, *supra* note 1.

<sup>192</sup> *What is a DDoS Attack?*, CLOUDFLARE, <https://www.cloudflare.com/learning/ddos/what-is-a-ddos-attack> (last visited Feb. 14, 2020).

<sup>193</sup> Steve Weisman, *What is a distributed denial of service attack (DDoS) and what can you do about them?*, NORTON, <https://us.norton.com/internetsecurity-emerging-threats-what-is-a-ddos-attack-30sectech-by-norton.html> (last visited Feb. 14, 2020).

<sup>194</sup> NABEL & CHANG, *supra* note 16, at 413.

gaming platforms, including PlayStation, Steam, and EA's Origin platform.<sup>195</sup> In December 2014, the group Lizard Squad disabled the PlayStation Network and Xbox Live for several days.<sup>196</sup> Others threatened or carried out similar attacks against gaming services during the winter holidays in 2015 and 2016.<sup>197</sup> In 2017, a report showed that 82 percent of all DDoS attacks targeted gaming companies.<sup>198</sup> As recently as September 2019 — just weeks after releasing its much-anticipated World of Warcraft Classic game — Blizzard experienced DDoS attacks, causing connectivity issues for its World of Warcraft Classic and Overwatch servers.<sup>199</sup>

DDoS attacks can be costly to video game companies. They not only lose revenue and goodwill while their networks are down, but also must invest in greater security measures to prevent future attacks. Attacks also inconvenience players, preventing them from accessing the network and playing their games. Over 150 million people used the PlayStation Network and Xbox Live in 2014, and the holiday attacks occurred at a time when many tried to use their PlayStations and Xboxes for the first time.<sup>200</sup>

But the stakes can be much higher in esports. Imagine, for example, if a malicious actor had launched a DDoS attack against the servers hosting the Fortnite World Cup finals at the Arthur Ashe stadium — when players were competing for the \$3 million grand prize. Or if Giersdorf had been the target of a DDoS attack during one of the qualifying rounds and never even made it to the finals as a result. The rise of esports gambling has made it potentially lucrative for non-

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<sup>195</sup> Catalin Cimpanu, *Hacker who launched DDoS attacks on Sony, EA, and Steam gets 27 months in prison*, ZDNET (July 4, 2019, 9:04 AM), <https://www.zdnet.com/article/hacker-who-launched-ddos-attacks-on-sony-ea-and-steam-gets-27-months-in-prison>.

<sup>196</sup> See Steven J. Vaughan-Nichols, *Merry Xm#@! Lizard Squad took down Xbox and Playstation networks*, ZDNET (Dec. 29, 2014, 12:00 AM), <https://www.zdnet.com/article/merry-xm-lizard-squad-takes-down-xbox-and-playstation-networks>; see also Cimpanu, *supra* note 195.

<sup>197</sup> See Catalin Cimpanu, *Phantom Squad Starts Christmas DDoS Attacks by Taking Down EA Servers*, SOFTPEDIA NEWS (Dec. 24, 2015, 4:16 PM), <https://news.softpedia.com/news/phantom-squad-starts-christmas-ddos-attacks-by-taking-down-ea-servers-498078.shtml>; Alex Hernandez, *R.I.U. Star Patrol threatens DDoS attacks on Xbox and Playstation Christmas Day*, TECHAERIS (Dec. 25, 2016), <https://techaeris.com/2016/12/25/r-u-star-patrol-threatens-ddos-attacks-xbox-playstation-christmas-day>.

<sup>198</sup> NABEL & CHANG, *supra* note 16, at 413.

<sup>199</sup> Cale Michael, *DDoS attack on Blizzard servers causes connectivity issues for Overwatch and World of Warcraft*, DOT ESPORTS (Sept. 7, 2019, 7:37 PM), <https://dotesports.com/overwatch/news/ddos-attack-on-blizzard-servers-causes-connectivity-issues-for-overwatch-and-world-of-warcraft>; Dom Sacco, *Twitter suspends account claiming responsibility for WoW DDoS attack, Blizzard confirms suspect has been arrested*, ESPORTS NEWS UK (Sept. 20, 2019), <https://esports-news.co.uk/2019/09/20/twitter-suspends-account-claiming-responsibility-for-wow-ddos-attack>.

<sup>200</sup> See Jemima Kiss, *Xbox live and Playstation attack: Christmas ruined for millions of gamers*, THE GUARDIAN (Dec. 26, 2014, 12:03 PM), <https://www.theguardian.com/technology/2014/dec/26/xbox-live-and-psn-attack-christmas-ruined-for-millions-of-gamers>; NABEL & CHANG, *supra* note 16, at 413.

participants to try to influence the results of a match.<sup>201</sup> One cybersecurity company recently outlined some of the threats it believes the esports industry should prepare for.<sup>202</sup> A few notable examples of DDoS attacks in esports are mentioned below.

In April 2013, a series of DDoS attacks against players from three esports teams led to the suspension of a Chinese Dota 2 league.<sup>203</sup> One attack targeted the team Evil Geniuses, allowing their opponents to win.<sup>204</sup> The motivation for this attack might have been to prevent an individual from losing a \$20,000 bet.<sup>205</sup> Later that same year, in November, Evil Geniuses faced another series of DDoS attacks during Dota 2 matches, forcing the matches to be rescheduled.<sup>206</sup>

In 2014, Riot Games published a “DDoS Prevention Guide” for League of Legends players.<sup>207</sup> Despite following that guide, the Turkish team “Zone” fell victim to DDoS attacks in 2015 that it “couldn’t do anything about” and that ultimately led to losses in league matches.<sup>208</sup> Likewise, Denial eSports was winning a match against Team Dignitas when one of its players became the target of a DDoS attack.<sup>209</sup> The esports betting site Unikrn showed people had placed bets on the match, with only 8 percent of wagers favoring Team Dignitas.<sup>210</sup> Other League of Legends teams have faced DDoS attacks as well.<sup>211</sup>

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<sup>201</sup> One popular esports betting website is Unikrn. See UNIKRN, <https://unikrn.com> (last visited Feb. 12, 2020).

<sup>202</sup> *Cheats, Hacks, and Cyberattacks: Threats to the Esports Industry in 2019 and Beyond*, TREND MICRO (Oct. 29, 2019), <https://www.trendmicro.com/vinfo/us/security/news/cybercrime-and-digital-threats/cheats-hacks-and-cyberattacks-threats-to-the-esports-industry-in-2019-and-beyond>.

<sup>203</sup> Phil Savage, *Dota 2 eSports league suspended after players hit by DDoS attacks*, PC GAMER (Apr. 16, 2013), <https://www.pcgamer.com/dota-2-esports-league-suspended-after-players-hit-by-ddos-attacks>.

<sup>204</sup> *Id.*

<sup>205</sup> *See id.* It is worth noting that the individual who claimed responsibility for the attack to prevent the loss was anonymous and unverified. *See id.*

<sup>206</sup> Cody Conners, *Distributed denial-of-service attack postpone two major Evil Geniuses Dota matches*, GAMESPOT (Nov. 12, 2013, 3:55 PM), <https://www.gamespot.com/articles/distributed-denial-of-service-attack-postpone-two-/1100-6436322>.

<sup>207</sup> Picture of Horse, *DDoS Prevention Guide*, LEAGUE OF LEGENDS (Feb. 7, 2014, 9:56 PM), <https://support-leagueoflegends.riotgames.com/hc/en-us/articles/201751764>.

<sup>208</sup> Emanuel Maiberg, *eSports Has a DDoS Problem*, MOTHERBOARD TECH BY VICE (Aug. 7, 2015, 9:00 AM), [https://www.vice.com/en\\_us/article/vvba9m/esports-has-a-ddos-problem](https://www.vice.com/en_us/article/vvba9m/esports-has-a-ddos-problem).

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *See* William Turton, *Mass DDOS attacks hit pro League of Legends teams*, DOT ESPORTS (July 10, 2014, 9:36 AM), <https://dotesports.com/general/news/league-of-legends-ddos-attacks-483>.



In 2015, Valve hired OptaNet to handle network services for the International Dota 2 Championships, held at the KeyArena in Seattle.<sup>212</sup> With an \$18 million prize pool, the championship was one of the biggest esports events in the world at the time.<sup>213</sup> OptaNet claimed that “[c]omplex security rules have been deployed to mitigate against possible denial of service attacks.”<sup>214</sup> Nevertheless, in front of a crowd of 10,000 people at the KeyArena and 200,000 concurrent viewers at home, a DDoS attack delayed the event for almost an hour.<sup>215</sup>

These examples show that DDoS attacks have become a growing concern for esports competitors. In fact, a cybersecurity provider published a report in 2018, stating that “DDoS attacks on e-sports players and sites with the goal of denying access are becoming increasingly common.”<sup>216</sup> Indeed, as evidenced by the recent attacks against Blizzard’s servers, DDoS attacks continue to this day.<sup>217</sup> Such attacks often frustrate the targeted players and teams, unfairly advantage opposing teams and players (often at a critical point in a competitive match), and tarnish the legitimacy of esports — all in violation of the second principle of esports engagement. Esports players who engage in DDoS attacks should therefore face a permanent, lifetime ban from all esports competitions.

But not everybody who launches a DDoS attack against a player, video game company, or esports tournament is necessarily a professional esports player; he or she might be a member of a “hacker group” like DerpTrolling or Lizard Squad, or a gambler who placed a wager on a losing team. As with swatting, video game companies can combat such criminal activity by building relationships and coordinating with law enforcement to identify and prosecute attackers. Companies that successfully identify attackers can also pursue civil legal remedies under the Computer Fraud and Abuse Act.<sup>218</sup>

Relationships with law enforcement appear to have been especially fruitful in combating DDoS attacks. In 2018, law enforcement from the United States, the United Kingdom, and the Netherlands seized the domains of 15 DDoS-for-hire services just before the winter holidays to prevent yet another holiday attack.<sup>219</sup>

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<sup>212</sup> *OptaNet deliver core network at the world’s largest eSports tournament*, OPTANET (July 27, 2015), <http://www.optanet.com/optanet-deliver-core-network-at-the-worlds-largest-esports-tournament>.

<sup>213</sup> Emanuel Maiberg, *The ‘Dota 2’ Championships Was Temporarily Taken Down by a Cyberattack*, MOTHERBOARD TECH BY VICE (Aug. 4, 2015, 4:24 PM), [https://www.vice.com/en\\_us/article/jp5zz8/the-dota-2-championships-was-temporarily-taken-down-by-a-cyberattack](https://www.vice.com/en_us/article/jp5zz8/the-dota-2-championships-was-temporarily-taken-down-by-a-cyberattack).

<sup>214</sup> *OptaNet*, *supra* note 212.

<sup>215</sup> *eSports Has a DDoS Problem*, *supra* note 208; *see also The ‘Dota 2’ Championships Was Temporarily Taken Down by a Cyberattack*, *supra* note 213.

<sup>216</sup> Timur Ibragimov et al., *DDoS attacks in Q2 2018*, KASPERSKY (July 24, 2018, 9:00 AM), <https://securelist.com/ddos-report-in-q2-2018/86537>.

<sup>217</sup> *See sources cited supra* note 199.

<sup>218</sup> *See* NABEL & CHANG, *supra* note 16, at 413-14. For the Computer Fraud and Abuse Act, *see* 18 U.S.C. § 1030 (2018).

<sup>219</sup> Press Release, U.S. Dep’t of Justice, *Criminal Charges Filed in Los Angeles and Alaska in Conjunction with Seizures of 15 Websites Offering DDoS-For-Hire Services* (Dec. 20,

The Department of Justice's press release identified the ESA and Riot Games, among others, as "valued private sector partners" that "provided additional assistance" with these cases.<sup>220</sup> Additionally, according to other reports, members of DerpTrolling (who instigated the DDoS attacks in 2013) and Lizard Squad (who launched the DDoS attacks in 2014) were later arrested, sent to prison, and ordered to pay restitution.<sup>221</sup> Reportedly, authorities also identified and arrested a suspect just days after the September 2019 DDoS attacks against Blizzard.<sup>222</sup>

## 2. Cheating

Cheating can take many forms in video games and esports. Cheaters might engage in "botting" (automating player inputs) or "account boosting" (paying a higher ranked player to increase a lower ranked player's account rating). They might also engage in more traditional forms of cheating, such as match-fixing (manipulating the outcome of a match) or doping (taking performance-enhancing drugs before a match or tournament). These, and other types of cheating, are discussed below.

In 2015, a professional Counter-Strike: Global Offensive player admitted that he and some team members used Adderall during a major \$250,000 tournament run by the Electronic Sports League (ESL).<sup>223</sup> Almost immediately after this

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2018), <https://www.justice.gov/opa/pr/criminal-charges-filed-los-angeles-and-alaska-conjunction-seizures-15-websites-offering-ddos>.

<sup>220</sup> *Id.*

<sup>221</sup> See Press Release, U.S. Dep't of Justice, American and Dutch Teenagers Arrested on Criminal Charges for Allegedly Operating International Cyber-Attack-For-Hire Websites (Oct. 5, 2016), <https://www.justice.gov/usao-ndil/pr/american-and-dutch-teenagers-arrested-criminal-charges-allegedly-operating>; Press Release, U.S. Dep't of Justice, Utah Man Sentenced for Computer Hacking Crime (July 2, 2019), <https://www.justice.gov/usao-sdca/pr/utah-man-sentenced-computer-hacking-crime> (announcing that operator of DerpTrolling was sentenced to 27 months in prison and ordered to pay \$95,000 in restitution); Owen S. Good, *Lizard Squad member convicted for Christmas attacks on PSN, Xbox Live*, POLYGON (Jul. 7, 2015, 6:30 PM), <https://www.polygon.com/2015/7/7/8909347/lizard-squad-ryan-teenager-kivimaki-psn-attack-xbox-live-finland> (reporting that Lizard Squad member was convicted in Finland); Jason Meisner, *'Lizard Squad' hacker-for-hire cries in court as he's sentenced to three months in prison*, CHICAGO TRIBUNE (Mar. 28, 2018, 7:15 AM), <https://www.chicagotribune.com/news/breaking/ct-met-hacker-zachary-buchta-sentenced-20180327-story.html> (reporting that Lizard Squad founder was sentenced to 3 months in prison and ordered to pay \$350,000 in restitution).

<sup>222</sup> Kaivax, *Recent DDoS Attacks Impacting Game Service*, BLIZZARD (Sept. 19, 2019), <https://eu.forums.blizzard.com/en/wow/t/recent-ddos-attacks-impacting-game-service/83272/35> (As one Blizzard community manager explained in a forum post, "Immediately after the Distributed Denial of Service attacks against our game service began, the Blizzard Security Team worked around the clock with local and international law enforcement agencies to track down the source of the DDoS. It is our understanding that, within a few days, authorities were able to successfully identify and arrest a suspect.")

<sup>223</sup> John T. Holden et al., *Esports Corruption: Gambling, Doping, and Global Governance*, 32 MD. J. INT'L L. 236, 269 (2017); see also Emanuel Maiberg, *Counter-Strike eSports Pro: We Were All on*

revelation, the ESL announced it would coordinate with the World Anti-Doping Agency, create an anti-doping policy, and begin testing players for performance-enhancing drugs at ESL events.<sup>224</sup> At least one other esports, FIFA, has also begun drug testing players.<sup>225</sup>

In 2015, Valve banned seven Counter-Strike: Global Offensive players for match-fixing.<sup>226</sup> A team called iBUYPOWER had lost to NetcodeGuides.com, in a match that “featured a lot of bizarre decisions and odd play.”<sup>227</sup> An investigation “pieced together text and chat messages along with betting behaviour from the CSGO Lounge to put together a convincing case that iBUYPOWER threw the match on purpose.”<sup>228</sup> According to the investigation, which Valve later confirmed, one iBUYPOWER member had placed \$10,000 worth of bets and then distributed the winnings to other members of the team.<sup>229</sup>

One of the most high profile match-fixing incidents occurred in the South Korea StarCraft II scene.<sup>230</sup> In 2015, the Changwon Regional Prosecutor’s office arrested and indicted twelve people connected to five fixed StarCraft II matches, including the head coach and two players from Prime, a prominent team.<sup>231</sup> The investigation found the coach and players had been involved in fixed games across multiple leagues, including the prestigious Global StarCraft II League.<sup>232</sup> They were later sentenced to eighteen months in prison, but the sentence was

*Adderall*, MOTHERBOARD TECH BY VICE (July 14, 2015, 9:20 AM), [https://www.vice.com/en\\_us/article/gvy7b3/counter-strike-esports-pro-we-were-all-on-adderall](https://www.vice.com/en_us/article/gvy7b3/counter-strike-esports-pro-we-were-all-on-adderall).

<sup>224</sup> See Yun, *supra* note 3, at 529-530; see also Ella McConnell, *ESL leads anti-PED initiative for esports with the support of NADA*, ESL (July 23, 2015), <https://www.eslgaming.com/news/esl-leads-anti-ped-initiative-esports-support-nada-2170>; Emanuel Maiberg, *For the First Time, an eSports League Is Testing for Performance Enhancing Drugs*, MOTHERBOARD TECH BY VICE (July 23, 2015, 12:04 PM), [https://www.vice.com/en\\_us/article/xywnqk/for-the-first-time-an-esports-league-is-testing-for-performance-enhancing-drugs](https://www.vice.com/en_us/article/xywnqk/for-the-first-time-an-esports-league-is-testing-for-performance-enhancing-drugs); Colby Stivers, Note, *The First Competitive Video Gaming Anti-Doping Policy and its Deficiencies Under European Union Law*, 18 SAN DIEGO INT’L L.J. 263, 265 (2017).

<sup>225</sup> See Associated Press, *FIFA introduces drug tests for gamers at eWorld Cup as prize money and interest surge*, ABC NEWS (last updated Aug. 3, 2018, 8:26 PM), <https://www.abc.net.au/news/2018-08-04/doping-tests-introduced-to-esports-world-cup/10073440>.

<sup>226</sup> *Integrity and Fair Play*, COUNTER-STRIKE: GLOBAL OFFENSIVE (Jan. 26, 2015), <https://blog.counter-strike.net/index.php/2015/01/11261>.

<sup>227</sup> Philippa Warr, *Valve Bans Players Caught In CS:GO Match-fixing*, ROCK PAPER SHOTGUN (Jan. 27, 2015, 2:00 PM), <https://www.rockpapershotgun.com/2015/01/27/counter-strike-global-offensive-match-fixing>.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*; see also *Integrity and Fair Play*, *supra* note 226.

<sup>230</sup> For a brief discussion of the culture and governance of esports in South Korea, see Burk, *supra* note 21, at 1541-42; Chao, *supra* note 3, at 757-58.

<sup>231</sup> See Waxangel, *Match-Fixing: Prosecutor’s Report*, TEAMLIQUID (Oct. 19, 2015, 8:38 AM), <https://tl.net/forum/starcraft-2/496889-match-fixing-prosecutors-report>; TL.net ESPORTS, *YoDa, B4, Gerrard arrested for match-fixing*, TEAMLIQUID (Oct. 18, 2015, 8:29 PM), <https://tl.net/forum/starcraft-2/496866-yoda-b4-gerrard-arrested-for-match-fixing>.

<sup>232</sup> See *Match-Fixing: Prosecutor’s Report*, *supra* note 231.

suspended for three years.<sup>233</sup> The Korean e-Sports Association (KeSPA) also announced a lifetime ban for the coach and players, and said it would pursue civil litigation against those involved in the scandal.<sup>234</sup>

After further investigation, the Changwon Regional Prosecutor's office made even more arrests — including two more professional StarCraft II players.<sup>235</sup> One of the players arrested, Lee Seung Hyun, had won several major StarCraft II tournaments and earned over \$470,000 at the time of his arrest.<sup>236</sup> Lee had been considered one of the greatest StarCraft II players of all time before his arrest and lifetime ban.<sup>237</sup>

Another common form of cheating is account boosting. This generally occurs when “a very skilled player . . . is paid to log into a lower skilled player's . . . account and rank the account” to a higher tier.<sup>238</sup> Video game companies

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<sup>233</sup> See Waxangel, *PRIME match-fixers given suspended sentences*, TEAMLIQUID (Mar. 31, 2016, 08:14 AM), <https://tl.net/forum/starcraft-2/506723-prime-match-fixers-given-suspended-sentences>.

<sup>234</sup> Korea e-Sports Association Announces Positions on Illegal Gambling and Gameplay, KESPA (Oct. 19, 2015), [http://www.e-sports.or.kr/board\\_kespa2014.php?b\\_no=6&module=data&\\_page=view&b\\_pid=9999571400](http://www.e-sports.or.kr/board_kespa2014.php?b_no=6&module=data&_page=view&b_pid=9999571400) (translated from Korean); Korea E-Sports Association's follow up on illegal gambling and winning, KESPA (Oct. 20, 2015), [http://e-sports.or.kr/board\\_kespa2014.php?b\\_no=6&module=data&\\_page=view&b\\_no=6&b\\_pid=9999571300](http://e-sports.or.kr/board_kespa2014.php?b_no=6&module=data&_page=view&b_no=6&b_pid=9999571300) (translated from Korean); Korea e-Sports Association's position on the decision of the Starcraft II match-maker, KESPA (Apr. 8, 2016), [http://e-sports.or.kr/board\\_kespa2018.php?b\\_no=6&module=data&\\_page=view&b\\_no=6&b\\_pid=9999557700](http://e-sports.or.kr/board_kespa2018.php?b_no=6&module=data&_page=view&b_no=6&b_pid=9999557700) (translated from Korean).

<sup>235</sup> See Waxangel, *Prosecutor's Report: Life & Bbyong match-fixing*, TEAMLIQUID (Apr. 21, 2016, 5:28 AM), <https://tl.net/forum/starcraft-2/507941-prosecutors-report-life-and-bbyong-match-fixing>; Waxangel, *Life and Bbyong charged with match-fixing*, TEAMLIQUID (Apr. 21, 2016, 2:15 AM), <https://tl.net/forum/starcraft-2/507933-life-and-bbyong-charged-with-match-fixing>.

<sup>236</sup> See Martinelli, *supra* note 3, at 511–12; see also *Life*, ALIGULAC, <http://aligulac.com/players/3-Life/earnings> (last visited Mar. 1, 2019).

<sup>237</sup> stuchiu, *Greatest Players of All Time: The Finale*, TEAMLIQUID (Apr. 29, 2015, 4:52 PM), <https://tl.net/forum/starcraft-2/484252-greatest-players-of-all-time-the-finale>; see also Stephen Chiu, *The life of Life: Chronicling the rise and fall of Lee “Life” Seung Hyun*, ESPN (Apr. 25, 2016), [https://www.espn.com/esports/story/\\_/id/15356948/chronicling-rise-fall-lee-life-seung-hyun](https://www.espn.com/esports/story/_/id/15356948/chronicling-rise-fall-lee-life-seung-hyun).

<sup>238</sup> Veronika Rodriguez, *Account Boosting in Overwatch: Is it Illegal?*, DBLTAP (Dec. 21, 2018), <https://www.dbltap.com/posts/6253343-account-boosting-in-overwatch-is-it-illegal>; see also Yun, *supra* note 3, at 527–528.

regularly discipline esports players for engaging in this activity,<sup>239</sup> and South Korea has even criminalized it.<sup>240</sup>

The Dreamhack Winter 2014 tournament — then the biggest tournament in the history of Counter-Strike: Global Offensive — highlights two additional forms of cheating. First, just days before the tournament, Valve’s Anti-Cheat system caught and banned several professional players for using aimbots.<sup>241</sup> Those bans resulted in the disqualification of two teams.<sup>242</sup> Second, during a tournament match, Team Fnatic exploited a glitch in the game.<sup>243</sup> Dreamhack officials ordered a rematch after finding the opposing team had also exploited a glitch, but Fnatic voluntarily forfeited the rematch.<sup>244</sup>

Aimbots and related hacks continue to be popular cheats in shooter games. With the help of a community-run organization called the Overwatch Police Department—a group of players dedicated to identifying and reporting cheats and hacks to Blizzard—Blizzard recently banned more than 1,600 players using hacks such as aimbots, hero outline detection, and avoidance of certain in-game abilities.<sup>245</sup>

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<sup>239</sup> See *Overwatch League Player Discipline Tracker*, *supra* note 138 (Overwatch League); *List of Competitive Rulings*, *supra* note 151 (League of Legends); Jeffrey Matulef, *Pro League of Legends player suspended for boosting other accounts for money*, EUROGAMER (last updated July 23, 2015), <https://www.eurogamer.net/articles/2015-07-23-pro-league-of-legends-player-suspended-for-boosting-other-accounts-for-money>.

<sup>240</sup> See Alissa McAloon, *Law against account boosting goes into effect in South Korea*, GAMASUTRA (June 26, 2019), [https://www.gamasutra.com/view/news/345613/Law\\_against\\_account\\_boosting\\_goes\\_into\\_effect\\_in\\_South\\_Korea.php](https://www.gamasutra.com/view/news/345613/Law_against_account_boosting_goes_into_effect_in_South_Korea.php).

<sup>241</sup> See Evan Lahti, *CS:GO competitive scene in hacking scandal, 3 players banned*, PC GAMER (Nov. 22, 2014), <https://www.pcgamer.com/csgo-competitive-scene-embroiled-in-hacking-scandal-as-three-players-are-banned>. For an explanation of the Valve Anti-Cheat system, see *Valve Anti-Cheat System (VAC)*, STEAM, <https://support.steampowered.com/kb/7849-RADZ-6869/> (last visited Mar. 1, 2019). For a discussion of aimbots and other third-party cheats, see Yun, *supra* note 3, at 532–33.

<sup>242</sup> See MIRAA, *Titan, Epsilon Disqualified from DHW*, HLTV (Nov. 20, 2014, 8:02 PM), <https://www.hltv.org/news/13642/titan-epsilon-disqualified-from-dhw>.

<sup>243</sup> See Emanuel Maiberg, *Counter-Strike eSports Team Forfeits Victory After Using Map Exploit*, GAME SPOT (Nov. 30, 2014, 10:52 AM), <https://www.gamespot.com/articles/counter-strike-esports-team-forfeits-victory-after/1100-6423866>.

<sup>244</sup> See *id.* Valve later fixed the exploit and placed a sign at the location that says “Geländer übersteigen verboten!” See Daniel Rosen, *How did this happen: Fnatic’s infamous Olofboost*, THE SCORE ESPORTS (Aug. 2, 2017), <https://www.thescoreesports.com/csgo/news/14857-how-did-this-happen-fnatic-s-infamous-olofboost>.

<sup>245</sup> See Olivia R., *Blizzard bans 1,600 hackers caught by Overwatch Police Department*, WIN.GG (Dec. 20, 2019), <https://win.gg/news/3322/blizzard-bans-1-600-hackers-caught-by-overwatch-police-department>; Pedro Peres, *Blizzard bans Overwatch cheaters who used a hack called Pentagon*, DOT ESPORTS (Dec. 17, 2019, 08:36 AM), <https://dotesports.com/overwatch/news/blizzard-bans-overwatch-cheaters-who-used-a-hack-called-pentagon>. The Overwatch Police Department is a community-run organization with no connection to Blizzard. See Arran Brown, *Meet the Sheriff leading the Overwatch Police Department*, THE LOADOUT (Dec. 8, 2019), <https://www.the-loadout.com/overwatch/police-department>.

Since the rise of the battle royale genre with games such as Fortnite, PlayerUnknown's Battlegrounds, and Apex Legends, yet another form of cheating has emerged: "teaming," or working together in matches that are designed to be played solo.<sup>246</sup> In the first of many weeks of tournaments leading up to the Fortnite World Cup championship, Epic Games issued 1,163 bans, eight of which were for teaming.<sup>247</sup> During the third week, Epic issued several fourteen-day competitive bans and revoked one player's qualification to the Fortnite World Cup finals after determining that a group of players had been teaming.<sup>248</sup>

All forms of cheating clearly violate the principles of esports engagement. Game companies and leagues rightfully hand down severe punishments to cheating players. In 2016, Ubisoft announced it would permanently ban cheaters in Rainbow Six Siege on the first offense, stating that "if a player is caught cheating, we do not want them returning to ruin the experience of other players."<sup>249</sup> In 2017, the ESL adopted sanctions for cheating including, for a first offense, a ban of one to two years for doping, competition manipulation, or bribery, a ban of two years to a lifetime ban for cheating, and a ban of five years for match-fixing.<sup>250</sup> The StarCraft II coach and players involved in the infamous 2015 match-fixing scandal faced prison time and lifetime bans.<sup>251</sup> Riot Games has issued penalties ranging from temporary suspensions to lifetime bans for match-fixing.<sup>252</sup> And Epic Games has issued bans of varying timeframes for cheating — including a recent lifetime ban for a streamer who used an aimbot in Fortnite.<sup>253</sup>

Moreover, given that esports players found cheating likely have no future as professional gamers, the industry should also be wary of false reports, such as those made against Se-yeon "Geguri" Kim.<sup>254</sup> As Epic Games recognized during the Fortnite World Cup, "questioning the results of an individual participant

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<sup>246</sup> See Ali Jones, *Epic will ban you if you're caught teaming up in Fortnite solos*, PCGAMES (Mar. 5, 2018), <https://www.pcgamesn.com/fortnite/fortnite-squads-solo-matchmaking> ("Epic Games will take action against players caught teaming up to gain an advantage in Fortnite Battle Royale's solo game mode.").

<sup>247</sup> The Fortnite Team, *Fortnite - Competitive Game Integrity*, EPIC GAMES (Apr. 19, 2019), <https://www.epicgames.com/fortnite/competitive/en-US/news/competitive-game-integrity>.

<sup>248</sup> The Fortnite Competitive Team, *Weekend Issues Update and Competitive Ruling 5/3/19*, EPIC GAMES (May 3, 2019), <https://www.epicgames.com/fortnite/competitive/en-US/news/weekend-issues-update-and-competitive-ruling-5-2-19>.

<sup>249</sup> *Cheating & Banning in Rainbow Six Siege FAQ*, UBISOFT (June 7, 2016), <https://www.ubisoft.com/en-us/game/rainbow-six/siege/news-updates/6ave3II8tHpLLUnlHmrQTf/cheating-banning-in-rainbow-six-siege-faq>.

<sup>250</sup> Hans Oelschlägel, *ESL aligns with ESIC's recommendation on sanctions for cheating in esports*, ESL (July 24, 2017), <https://www.eslgaming.com/article/esl-aligns-esic-s-recommendation-sanctions-cheating-esports-3641>.

<sup>251</sup> See *supra* notes 233-237.

<sup>252</sup> See *List of Competitive Rulings*, *supra* note 151.

<sup>253</sup> Julie Muncy, *Epic Games Just Banned a Fortnite Streamer for Life*, WIRED (Nov. 8, 2019, 4:05 PM), <https://www.wired.com/story/fortnite-banned-player>.

<sup>254</sup> See *supra* notes 114-118.

without direct evidence unfairly tears apart what should be a crowning moment of achievement for an individual or team who earned their way there and performed when it counted.”<sup>255</sup> While companies must maintain a delicate balance to encourage legitimate reports of cheating, they should also discipline players who deliberately engage in false reporting.<sup>256</sup>

Many cases of cheating involve players using third-party services or software, such as aimbots in shooter games and account boosting services in games that include a skill rating. These services and software often circumvent anti-cheating tools used by video game companies.<sup>257</sup> As discussed below, companies can take appropriate legal action against the cheating service or software provider — and even the cheaters themselves.

One of the first notable lawsuits on this subject occurred over ten years ago, when Blizzard sued MDY Industries, the maker of the “Glider” bot software, which allowed players to auto-play early levels of World of Warcraft.<sup>258</sup> In 2010, the United States Court of Appeals for the Ninth Circuit issued a lengthy opinion in the case; of note, it found MDY liable under 17 U.S.C. § 1201(a)(2) — one of the anti-circumvention provisions of the Digital Millennium Copyright Act — for selling Glider because the program circumvented Blizzard’s anti-cheating tool Warden, which controlled access to copyrighted work in World of Warcraft.<sup>259</sup>

A few years later, Blizzard won another case on summary judgment against Ceiling Fan Software LLC and its owners, who sold bots that, like Glider, automated World of Warcraft gameplay.<sup>260</sup> Blizzard also defeated the operator of

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<sup>255</sup> The Fortnite Team, *supra* note 248.

<sup>256</sup> One of Felix Lengyel’s many suspensions from Overwatch included a 72-hour suspension for false reporting. *See* Van Allen, *supra* note 140. Repeat or particularly egregious false accusations might warrant a longer suspension. For example, although their decision was ultimately voluntary, three players who accused Se-yeon Kim of cheating retired from professional Overwatch play after she proved them wrong. *See* Maddy Myers, *Geguri Holds No Grudges*, KOTAKU (Apr. 30, 2018, 6:30 PM), <https://compete.kotaku.com/geguri-holds-no-grudges-1825151718>.

<sup>257</sup> Video game companies regularly implement anti-cheat mechanisms. *See supra* note 241 (Valve); Michael VanKuipers, *Riot’s Approach to Anti-Cheat*, RIOT GAMES (July 17, 2018), <https://technology.riotgames.com/news/riots-approach-anti-cheat> (Riot Games); mi-rageofpenguins, */Dev/Null: Anti-Cheat Kernel Driver*, RIOT GAMES, <https://na.leagueoflegends.com/en-us/news/dev/dev-null-anti-cheat-kernel-driver> (last visited Mar. 4, 2020); *Blizzard End User License Agreement*, *supra* note 43, at § 4 (requiring users to consent to monitoring for third-party programs).

<sup>258</sup> *See* NABEL & CHANG, *supra* note 16, at 404-06.

<sup>259</sup> MDY Indus., LLC v. Blizzard Entm’t, Inc., 629 F.3d 928, 953-54 (9th Cir. 2010); *see* NABEL & CHANG, *supra* note 16, at 405-06.

<sup>260</sup> Blizzard Entm’t Inc. v. Ceiling Fan Software LLC, 28 F. Supp. 3d 1006, 1007 (C.D. Cal. 2013).

www.peons4hire.com, which offered gold-selling and power-leveling (an equivalent of account boosting) services in World of Warcraft.<sup>261</sup>

More recently, Blizzard obtained a default judgment, consisting of a permanent injunction and judgment for more than \$8 million, against Bossland GmbH, a German company that had sold over 42,000 copies of cheating software for World of Warcraft, Diablo 3, Heroes of the Storm, Hearthstone, and Overwatch.<sup>262</sup> Blizzard also defeated Bossland in the German court system.<sup>263</sup>

Riot Games has also had some success in its legal efforts to prevent cheating. The company obtained a permanent injunction against the operator of www.DivineSmurfs.com, a website that sold stolen League of Legends accounts.<sup>264</sup> It also obtained a permanent injunction and consent judgment for \$10 million against a cheating operation known as LeagueSharp, which also provided a botting service to players.<sup>265</sup>

In perhaps one of the more aggressive campaigns of anti-cheating lawsuits, Epic Games began suing cheaters in Fortnite soon after the game's release.<sup>266</sup> It sued individuals associated with the cheating website Addicted Cheats, who used and advertised their aimbots on YouTube.<sup>267</sup> Epic Games has also sued popular streamers for using and selling aimbots.<sup>268</sup> The company settled several of these lawsuits, with the offenders agreeing to a permanent injunction.<sup>269</sup> In one notable

<sup>261</sup> See PatentArcade Admin, *Case Analysis: Blizzard Entertainment v. In Game Dollar*, PATENT ARCADE (June 26, 2009), <http://patentarcade.com/2009/06/case-analysis-blizzard-entertainment-v.html>.

<sup>262</sup> See NABEL & CHANG, *supra* note 16, at 408-409. For a discussion of *Blizzard Entertainment, Inc. v. Bossland GmbH* and its potential effects, see Tianyue Zhang, Note, *Fighting Cheaters in Games After Blizzard v. Bossland: The History and Future of Anti-Cheats Litigation*, 2019 U. ILL. J.L. TECH. & POL'Y 241 (2019).

<sup>263</sup> See Felix Hilgert, *Bots and Buddies: The Blizzard v. Bossland Saga in German Courts*, VIDEO.GAMES.LAW (May 25, 2018), <https://gameslaw.org/bots-and-buddies-the-blizzard-v-bossland-saga-in-german-courts>.

<sup>264</sup> See NABEL & CHANG, *supra* note 16, at 407-08.

<sup>265</sup> See *id.* at 409-10.

<sup>266</sup> See Charlie Hall, *Epic Games is suing more Fortnite cheaters, and at least one of them is a minor*, POLYGON (Nov. 27, 2017, 1:49 PM), <https://www.polygon.com/2017/11/27/16705184/epic-games-suing-fortnite-cheaters-minor-14-years-old> (noting eleven lawsuits by Epic Games); see also Sarah Jeong, *The Curious Case of the Fortnite Cheater*, THE VERGE (May 9, 2018, 10:23 AM), <https://www.theverge.com/2018/5/9/17333292/fortnite-cheater-lawsuit>.

<sup>267</sup> See David Lumb, *Fortnite' studio Epic Games sues two alleged cheaters*, ENGADGET (Oct. 12, 2017), <https://www.engadget.com/2017/10/12/fortnite-studio-epic-games-sues-two-alleged-cheaters>.

<sup>268</sup> Complaint, *Epic Games, Inc. v. Lucas*, No. 5:18-cv-00484-BO, 2018 WL 5306630 (E.D.N.C. Oct. 10, 2018); see also Owen S. Good, *Epic takes big-time YouTuber to federal court over Fortnite hacks*, POLYGON (Oct. 17, 2018, 4:38 PM), <https://www.polygon.com/fortnite/2018/10/17/17991422/fortnite-hacks-lawsuit-golden-modz-youtube-takedown>.

<sup>269</sup> See *Fortnite-maker settles lawsuit against cheat-seller*, BBC (Oct. 8, 2019), <https://www.bbc.com/news/technology-49972407> (noting an opinion that Epic Games "isn't trying to bankrupt these people"; rather, the "main goal appears to be to stop the cheaters and prevent them from encouraging and facilitating others to do the same.").



exception, a minor known as C.R. (or Sky Orbit in Fortnite) has apparently not learned from his mistake; he continued to cheat, and even insulted Epic Games, after the company sued him.<sup>270</sup> As of October 2019, that action was still pending.<sup>271</sup>

Video game companies' willingness to pursue lawsuits against cheaters and those providing cheating services and software show that these companies take the integrity of their games and esports seriously. Upholding the second principle of esports engagement by banning and pursuing legal action to its fullest extent against cheaters can only further promote fair play and integrity and legitimize esports competition.

## V. CONCLUSION

So far, attempts at creating a universal body to govern all esports have met with limited success.<sup>272</sup> With no such body, the industry relies on each company and league to individually curb toxicity, cheating, and other misconduct by players. This current landscape of self-governance does not necessarily present a problem. After all, the video game industry has self-regulated for years. And the continued success of esports such as League of Legends and Overwatch shows that the self-governance model can work. Esports that are not well developed or governed will lose players, sponsors, and media and public interest — and will ultimately fail.<sup>273</sup> That would be no different than the successes and failures seen in various other competitive sports leagues.<sup>274</sup>

Moreover, discussions of forming a universal governing body in esports sometimes make inapt comparisons to traditional sports. Esports is not one sport; the term refers collectively to all individual professional competitive video

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<sup>270</sup> Nicole Carpenter, *Teenage Fortnite player continued to cheat, even after being sued by Epic Games*, POLYGON (Oct. 14, 2019, 12:08 PM), <https://www.polygon.com/2019/10/14/20913710/epic-games-fortnite-cheating-lawsuit-continues>.

<sup>271</sup> *See id.*

<sup>272</sup> *See* Martinelli, *supra* note 3, at 506-510 (discussing the Esports Integrity Coalition, the World Esports Association, the International E-Sports Federation, and others).

<sup>273</sup> One recent example involves the game Artifact, which launched with a promise of a tournament with a \$1 million prize pool, but lost nearly all of its players in less than a year. *See* Ethan Gach, *Valve's Card Game Artifact Is Running Out Of Players*, KOTAKU (Jan. 16, 2019, 4:30 PM), <https://kotaku.com/valves-card-game-artifact-is-running-out-of-players-1831816328> (noting Artifact's decline from 60,740 concurrent players in November 2018 to fewer than 1,500 by January 2019); Mike Stubbs, *How Artifact became Valve's biggest failure*, EUROGAMER (last updated July 3, 2019), <https://www.eurogamer.net/articles/2019-07-03-how-artifact-became-valves-biggest-failure> (finding only 101 players in Artifact in July 2019).

<sup>274</sup> *See* Holden et al., *supra* note 223, at 272, 272 n.240 (providing examples of “sports that failed to achieve mainstream popularity and failed sports leagues”). For example, numerous football leagues that sought to compete with the NFL have failed over the years. *See* Jim Reineking, *Alliance of American Football is just the latest in a long line of failed start-up leagues*, USA TODAY (Apr. 3, 2019, 6:40 AM), <https://usatoday.com/story/sports/nfl/2019/04/03/aaf-joins-xfl-usfl-wfl-start-up-pro-football-leagues-failed/3349422002/>.

game scenes.<sup>275</sup> One suggestion has been made to form a single organization like FIFA to govern all esports.<sup>276</sup> The International Olympic Committee reportedly hesitated to include esports in the Olympic Games because of the lack of an international body governing all esports.<sup>277</sup> But there is no comparable body governing all traditional sports, either. For example, FIFA governs football (soccer), but not basketball, which is governed by the International Basketball Federation.<sup>278</sup> And governing bodies over individual esports already exist. FIFA (along with Electronic Arts) governs the FIFA eWorld Cup,<sup>279</sup> the NBA (along with Take-Two Interactive) runs the NBA 2K League,<sup>280</sup> Riot Games governs League of Legends, Blizzard governs its esports, and so on.

Thus, a national body such as the Korean eSports Association (“KeSPA”), or an international body such as the International e-Sports Federation or World Esports Association, appears unnecessary at best and harmful at worst.<sup>281</sup> Apart from the logistical challenges of forming governing bodies in esports, recent scandals in FIFA and KeSPA have shown that even established governing bodies are not immune to corruption.<sup>282</sup>

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<sup>275</sup> See Martinelli, *supra* note 3, at 510 (“[E]sports is not one sport, but multiple sports in different regions of the world.”).

<sup>276</sup> *Id.* at 515 (advocating for “one organization that oversees the industry”); Chao, *supra* note 3, at 761 (advocating for “the formation of a pan-esports governing body under federal authority” or “induction into an existing international esports governance organization”).

<sup>277</sup> See Chao, *supra* note 3, at 756-757.

<sup>278</sup> See FIFA, <https://www.fifa.com> (last visited Feb. 9, 2020); FIBA, <http://www.fiba.basketball> (last visited Feb. 9, 2020).

<sup>279</sup> See *FIFA eWorld Cup 2020*, FIFA, <https://www.fifa.com/fifaeworldcup/organisation/> (last visited Feb. 9, 2020).

<sup>280</sup> *Frequently Asked Questions*, NBA 2K LEAGUE, <https://2kleague.nba.com/frequently-asked-questions> (last visited Jan. 8, 2019).

<sup>281</sup> KeSPA is supported by the South Korean government and oversees more than twenty esports in the country, including League of Legends, Dota 2, Starcraft II, and Counter-Strike: Global Offensive. Chao, *supra* note 3, at 758; Martinelli, *supra* note 3, at 517-18. The IeSF and WESA are international esports organizations. See Chao, *supra* note 3, at 764 nn. 240-41; Martinelli, *supra* note 3, at 506-508.

<sup>282</sup> See, e.g., Sahiba Gill et al., *Whose Game? FIFA, Corruption and the Challenge of Global Governance*, 30 EUR. J. INT'L L. 1041 (2019) (FIFA); Martinelli, *supra* note 3, at 518-519. As for KeSPA, a 2017 investigation into bribery and embezzlement recently led to a five-year prison sentence and 350-million-won fine for former KeSPA chairman Jun Byung Hun. See Waxangel, *KeSPA ex-chairman bribery/embezzlement investigation*, TEAMLIQUID (last updated Feb. 22, 2019), <https://tl.net/forum/starcraft-2/528458-kespa-ex-chairman-bribery-embezzlement-investigation>. And in a separate controversy, the South Korea Fair Trade Commission has begun investigating KeSPA’s standard player contracts and reportedly declared its intent to review the Korean esports industry as a whole. See Lim Jeong-yeo, *FTC to probe ‘slave’ contracts of Korean esports players*, THE KOREA HERALD (last updated Dec. 10, 2019, 8:14 AM), <http://www.koreaherald.com/view.php?ud=20191209000837>; Alexander Lee, *Korean Fair Trade Commission to investigate contract issues in the LCK*, GGRECON (Dec. 4, 2019, 9:08 PM), <https://www.ggrecon.com/articles/korean-fair-trade-commission-to-investigate-contract-issues-in-the-lck>.

That said, a universal code of conduct based on the principles of esports engagement could be both practical and helpful. The ESA's announcement shows that even though companies and leagues might differ in their opinions, all agree that toxic behavior and cheating are bad for esports. A universal code of conduct could even be implemented without encroaching on each company and league's individual control. Companies and leagues could agree upon a governing body for the limited purpose of establishing and overseeing compliance with a universal code of conduct across all esports, while giving individual companies and leagues power to implement and enforce the code.<sup>283</sup> Or they could build cross-esports cheating policies into their terms of service or rules and regulations, giving them the discretion to honor or apply disciplinary actions taken by other organizations.<sup>284</sup>

Thus, a universal code could allow for cross-esports bans, so a cheater or toxic player banned from one esports cannot simply resurface in another. A player who engages in misconduct while streaming gameplay could also face a cross-esports ban — not just from the esports they are streaming but from all. Since many players succeed in multiple esports, the possibility that a player could be suspended from all esports for misconduct in one, or for misconduct during streaming, could further deter toxic behavior and cheating. This type of cross-

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<sup>283</sup> This structure calls to mind the World Anti-Doping Agency, which oversees compliance with the World Anti-Doping Code. See *What We Do*, WORLD ANTI-DOPING AGENCY, <https://www.wada-ama.org/en/what-we-do> (last visited Mar. 1, 2020). Each signatory implements and enforces the Code. See *World Anti-Doping Code*, USADA, <https://www.usada.org/about/world-anti-doping-code> (last visited Feb. 10, 2020). In 2012, Lance Armstrong was banned from “participating in any activity or competition organized by any signatory to the Code or any member of any signatory.” See *Lance Armstrong Receives Lifetime Ban And Disqualification Of Competitive Results For Doping Violations Stemming From His Involvement In The United States Postal Service Pro-Cycling Team Doping Conspiracy*, USADA (Aug. 24, 2012), <https://www.usada.org/sanction/lance-armstrong-receives-lifetime-ban-and-disqualification-of-competitive-results-for-doping-violations-stemming-from-his-involvement-in-the-united-states-postal-service-pro-cycling-team-doping-conspi>. This ban prevented Armstrong from competing in the 2012 Chicago Marathon sanctioned by USA Track & Field, a signatory to the World Anti-Doping Code. See Dick Patrick, *Lance Armstrong Not Allowed in Chicago Marathon*, RUNNER'S WORLD (Sept. 7, 2012), <https://www.runnersworld.com/races-places/a20798887/lance-armstrong-not-allowed-in-chicago-marathon>.

<sup>284</sup> One esports journalist, Duncan Shields (Thorin), previously suggested such a cross-game cheating policy. Duncan Shields (@Thorin), TWITTER (Oct. 15, 2017, 1:14 PM), <https://twitter.com/thoorin/status/91961237796145155>. Albeit imperfect, an analogy could be made to unarmed combat sports such as boxing and mixed martial arts, which are governed by each state's athletic commission or equivalent body, and many (if not all) of which have discretion to honor disciplinary actions taken by other jurisdictions. See, e.g., NEV. ADMIN. CODE § 467.888 (In Nevada, the State Athletic Commission “may honor the suspension of a person licensed, approved, registered or sanctioned by an agency that regulates unarmed combat in another jurisdiction or any other entity recognized by the Commission, if the suspension is ordered for” medical safety, violation of law or regulation that also exists in Nevada, or “[a]ny other conduct which tends to reflect negatively on the reputation of this State, the Commission or unarmed combat, as determined by the Commission.”); 523 MASS. CODE REGS. § 20.06 (2019); N.Y. COMP. CODES R. & REGS. tit. 19, § 206.11 (2020).

game banning is not new to video games. Players found cheating in one game by the Valve Anti-Cheat system can be banned in other games as well.<sup>285</sup> And players banned from one game for running the anti-cheat system PunkBuster can be banned from all other games using the same system.<sup>286</sup> A cross-esports ban would be far more limited than these cross-game bans — it would prevent players from participating in esports competitions, but not necessarily from playing the game in a non-competitive capacity.

Properly implemented and enforced, such additional deterrence from engaging in misconduct can help legitimize esports by reducing toxic behavior and cheating. As the ESA said:

With expectations for continued growth, the esports community has a vested interest in supporting the best conditions for play and the principles are a public statement of its values. It is vital for all participants to engage actively in esports culture in a positive and enriching way, ensuring esports remains an exciting and inclusive activity and industry at all levels.<sup>287</sup>

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<sup>285</sup> See *I've been VAC banned*, STEAM, [https://support.steampowered.com/kb\\_article.php?ref=4044-qdhj-5691](https://support.steampowered.com/kb_article.php?ref=4044-qdhj-5691) (last visited Feb. 10, 2020).

<sup>286</sup> *PunkBuster Violations and Bans*, EA (Nov. 25, 2019), <https://help.ea.com/en-us/help/battlefield/punkbuster-bans-and-violations> (“A PunkBuster ban affects all games that use PunkBuster services.”). A company might also ban a player from multiplayer games or from having an account with the company entirely. See *How EA Bans and Suspensions Work*, EA (Jan. 14, 2020), <https://help.ea.com/en-us/help/account/electronic-arts-account-suspension-policy/> (discussing suspensions and bans of EA account and bans from online play).

<sup>287</sup> *Video Game Industry Establishes Universal Esports Principles for Fun and Fair Play*, *supra* note 1.