

ESPORTS: WHEN A BANDWAGON COLLIDES WITH A REGULATOR

eSports will be the next phenomenon to tax the legal and regulatory community, argues **Stephen Ketteley** from DLA Piper London, who makes some brave predictions as to where some of the challenges will arise and where these may take the industry.

The online gambling industry can be fascinating for lawyers. It is undeniable that regulation drives much of the industry's commercial strategy and, from a purely academic perspective, the interplay between technological innovation and regulatory oversight can lead to some extremely interesting situations.

The next social gaming?

One example of the above is the way in which gambling regulators approached the social gaming phenomenon. Games that looked and smelt like true gambling games did not, however, neatly slot into the established legal definition of gambling. Significant work was undertaken by regulators to understand the application of gambling laws to the social gaming industry. Following the publication of various academic reports, the gambling regulatory community (with one or two notable exceptions) decided to leave social gaming, largely, to consumer legislation rather than wrapping gambling regulations around it entirely. The next phenomenon to tax the legal and regulatory community will be eSports. This article aims to predict where some of the challenges will arise and bravely suggest where such challenges may take the industry.

What is eSports?

For those who have been involved in eSports in one way or another in the past, this may seem like a rather simple question. However,

if you mention "eSports" to most people they will probably think of football on a games console. The man in the street is unlikely to be aware of the growing derivative business built around gaming generally. For the purpose of this article, it can be defined as the application of competition/tournament structures to participation in computer games. Of course, this is very generalised

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but it gets to the heart of the issue - it is the playing of games within communities and in a competitive environment which allow participants to win considerable sums of money as well as other benefits and merchandise.

The initial cross-over with gambling

A few years ago now, a small number of people diligently identified that the growth of tournament gaming could, if allowed to evolve unchecked, stray into gambling if participants were required to pay to enter tournaments and could then win money. In a number of jurisdictions, the trinity of consideration/chance/prize forms the basis of gambling definitions and the

derivative gambling regulation. Remove one of them and, in many jurisdictions, you step outside gambling regulation. However, products and business model continue to challenge such compartmentalisation. During the keynote address at the Oslo conference of the International Association of Gaming Regulators in October 2013, representatives from the Norwegian monopoly, Norsk Tipping, challenged the world's gambling regulators to sit up and take notice of a number of well-known games brands that were being offered on a tournament basis with the ability for anyone

(including minors) to win money. The very clear indication was that they considered such products to be worthy of regulators' attention. For those of us who had already been advising around the area at the time Norsk Tipping spoke, this public statement, made within an authoritative environment, was striking.

Is the landscape changing?

Since that Oslo address, there has been little, if any, legal comment on eSports until earlier this year when certain regulators began to show curiosity about this relatively nascent industry. However, the interest was not piqued by concerns around potential consumer protection or protection of minors

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as has been the case with the attention paid to social gaming. With respect to eSports, the attention was driven by the increasing popularity of betting markets being offered by bookmakers on the real-life eSports tournaments that were becoming increasingly popular in Korea, China and the United States. The business models around the eSports tournaments were rapidly developing, with the creation of sponsored teams and the growth of personalities within the eSports community leading to the evolution of new “brands” in the space which were generating their own fans and followers, just like real sports. People like to bet on a number of things where there is an external event that they show an interest in. A number of the mainstream European bookmakers have begun to offer books, following in the footsteps of Pinnacle, probably the first major bookie to make their move. Gambling regulators’ interest in eSports was driven by the fact that a number of operators began to offer books on these particular events. Whilst they can fully understand the inter-relationship between betting and traditional sports, they don’t necessarily understand eSports and the intricacies of it. Driving concerns around this phenomenon is betting integrity. Whilst bookmakers are now much more geared up to share information with sports bodies and gambling regulators to help try and reduce the effects of match fixing and the like, eSports is an unknown and uncontrolled phenomenon.

Where is this heading?

It is not entirely implausible to envisage

gambling regulators, whose interest in eSports has been driven by betting integrity issues, to seek to understand more and more about how these tournaments are operated and whether the consideration/chance/prize trinity does in fact exist within certain eSports environments. Some of the prizes on offer at eSports tournaments can run in to millions of dollars and money is piling in to the industry as blue chip sponsors spot the opportunity to piggy back off the industry’s growth. Any technical innovation in the gambling industry draws attention from gambling regulators and possibly consumer regulators as they first seek to understand, then seek to assess and, eventually, categorise products and decide whether or not an additional layer of regulation is required. As happened with social gaming when certain regulators publicly stated that they consider such products to fall within their remit, one wonders whether any gambling regulators will look at the eSports phenomenon and treat elements of it in the same way. To do so would possibly be met with derision, as the games industry would be initially aghast and then subsequently dismissive of attention paid by the gambling regulatory community to the games industry generally. These games do not involve the the roll of a dice in the traditional casino sense but they can have chance elements within them - as many computer games do have. Once you give someone the opportunity to play such a game and put some money on the line and do so with the opportunity to see an increased return, one begins to wonder whether the challenge laid down by the Norwegian monopoly to the gambling regulators community in 2013 was

not as leftfield as it appeared to the majority of the audience on the day.

The gambling industry innovates, as always

We have recently seen, on the back of the success of daily fantasy sports in the United States, an emergence of fantasy businesses based on the foundation of the eSports market rather than the traditional sports market. Notable providers such as AlphaDraft have attracted mainstream tech investors and are to be taken seriously. As with social gaming, it is incumbent on the eSports industry to be proactive in any discussions with regulators (be they gambling regulators or consumer regulators) as there is a real danger of immediate reactions, borne out of ignorance, stifling the development of what is a clearly innovative and extraordinarily popular entertainment form. Most people over the age of 25 would not really understand why anyone would want to travel to a football stadium to watch computer gamers play games, live on a big screen. But this is happening and it is growing. An entertainment industry is being built around the eSports phenomenon, as it gets more and more popular and is exported to more and more jurisdictions. But increased innovation will lead to increase scrutiny and it will be interesting to see how the next 12 months pan out for what some are touting as the “next big thing”.



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