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The Role of Copyright and EULAs in the eSports Ecosystem

By Despoina Farmaki

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1. Introduction

The rapid growth of eSports has transformed the gaming industry, creating a dynamic and lucrative ecosystem that encompasses professional gaming competitions, live streaming, and a wide array of digital content. As eSports have evolved from niche communities into a mainstream phenomenon, they have brought with them a number of legal challenges, particularly in the realms of copyright law and End User Licence Agreements (EULAs). These challenges are critical to address, as they affect players, content creators, game developers, and the industry as a whole.

Copyright law plays a pivotal role in eSports, governing the use and distribution of digital content, including the games themselves, in-game assets, and broadcasts of gameplay. The emergence of streaming platforms such as Twitch and YouTube has further complicated the legal landscape, as streamers and viewers navigate the boundaries of content creation and consumption.

EULAs, often overlooked in casual gaming discourse, are equally significant in shaping the legal framework of esports. These agreements, which players must accept to access games, dictate the terms under which the game can be used and shared. They define the relationship between the game developers and the players, setting out rules on everything - from gameplay modifications to the monetisation of streaming content. Understanding the implications of EULAs is crucial for anyone involved in eSports, as these agreements can impact not only player rights, but also the commercial exploitation of eSports content.

This chapter aims to explore the intricate legal terrain of eSports, focusing on the critical issues of copyright and EULAs. We will delve into the complexities of copyright law as it applies to the creation, distribution, and consumption of eSports content, examining key cases and legal precedents from the EU and the UK. Additionally, we will analyse the role of EULAs in regulating content creation, highlighting the balance between protecting intellectual property and fostering a vibrant eSports community.

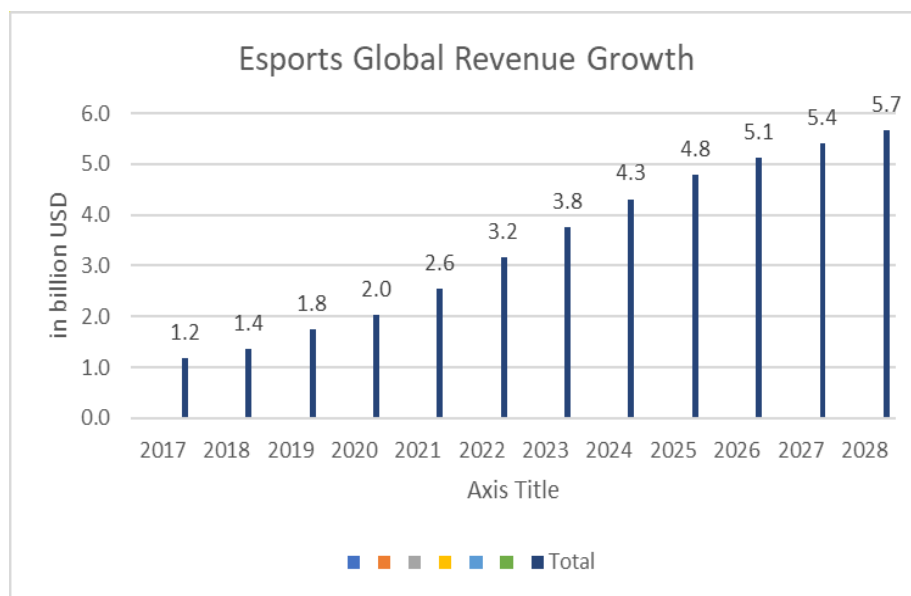
Through this examination, we seek to provide a comprehensive understanding of the legal frameworks that underpin the eSports industry. By addressing these legal challenges, we can better appreciate the rights and responsibilities of all stakeholders in the eSports ecosystem, ensuring that the industry continues to thrive in a fair and legally sound manner.

2. Understanding eSports

2.1. Define eSports and its characteristics

The definition of eSports varies across different contexts, including lay perspectives, industry standards, and academic interpretations.¹ However, all definitions converge on three fundamental elements: competition, organisation, and video gaming. Esports, also referred to as electronic sports, are defined as the competitive playing of video games in league-based formats. Similar to traditional sports, eSports are broadcasted with commentary on the gameplay, often referred to as streams. These broadcasts are typically facilitated over the Internet through platforms such as Twitch and YouTube. Esports is a billion dollar industry (see Figure 1 for Esports Global Revenue Growth 2017-2028). Global eSports revenue is forecast to reach a projected market volume of US\$5.7bn by 2028.² By 2025, the number of esports enthusiasts worldwide is projected to exceed 318 million, a significant rise from the 215.2 million recorded in 2020. Additionally, approximately 322.7 million people are expected to be occasional viewers of eSports by 2025 (see Figure 2 for Esports Global Audience Growth 2020-2025).

Figure 1: Esports Global Revenue Growth 2017-2028³

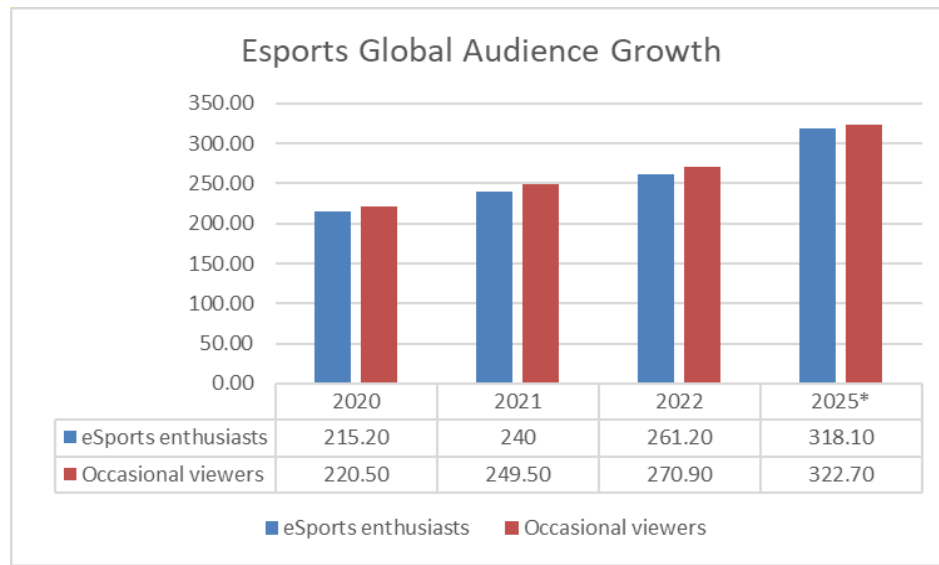


¹ T M Scholz and N Nothelfer, 'Research for CULT Committee – Esports', European Parliament, Policy Department for Structural and Cohesion Policies, Brussels (2022), available at: <https://op.europa.eu/en/publication-detail/-/publication/eb782f76-d263-11ec-a95f-01aa75ed71a1/language-en> accessed 2 July 2024.

² Statista, 'Esports Worldwide', available at: <https://www.statista.com/outlook/amo/esports/worldwide#revenue> accessed 2 July 2024.

³ ibid.

Figure 2: Esports Global Audience Growth 2020-2025⁴



As the eSports industry has grown, it not surprisingly has become the focus of academic debate and discussion. The discussion is mainly centred around legal issues that arise from the eSports endeavour.⁵ The following paragraphs discuss the three elements of eSports: competition, organisation and video gaming.

- Competition

The first essential element is that the game must be competitive. This requires that the video game connect players, either individually or in teams, in a manner that allows them to compete based on their respective skills.⁶ Without this competitive aspect, the video game remains simply a game. Esports have

⁴ Statista, 'eSports audience size worldwide from 2020 to 2025, by type of viewers', available at: < <https://www.statista.com/statistics/490480/global-esports-audience-size-viewer-type/#:~:text=The%20eSports%20market%20has%20boomed,the%20215.2%20million%20in%202020> > accessed 2 July 2024.

⁵ Y Harn Lee, 'Copyright and Gaming' in T Aplin (ed), *Research Handbook on Intellectual Property and Digital Technologies* (Edward Elgar Publishing Limited 2020) 60; K Coogan, 'Let's Play: A Walkthrough of Quarter-Century-Old Copyright Precedent as Applied to Modern Video Games' (2018) 28(2) *Fordham Intellectual Property, Media and Entertainment Law Journal* 381; MF Makeen, 'Video Streaming and the Communication to the Public Right in the United States and European Union' in T Aplin (ed), *Research Handbook on Intellectual Property and Digital Technologies* (Edward Elgar Publishing Limited, 2020) 247; T Lu, 'Understanding Streaming and Copyright: A Comparison of the United States and European Regimes' (2018) 13(2) *Journal of Business and Technology Law* 185; M Larkey, 'Cooperative Play: Anticipating the Problem of Copyright Infringement in the New Business of Live Video Game Webcasts' (2015) 13 *Rutgers JL & Pub Pol'y* 52; E Brusa, 'Professional Video Gaming: Piracy that Pays' (2015) 49 *J Marshall Law Review* 217; S Matsui, 'Does it Have to be a Copyright Infringement: Live Game Streaming and Copyright' (2016) 24 *Tex Intell Prop LJ* 215; IAC Caguioa, 'Recent Copyright Issues in Video Games, Esports and Streaming' (2019) 63 *Ateneo LJ* 882; E Windholz, 'Governing Esports: Public Policy, Regulation and the Law' (2020) 1(1) *Sports Law eJournal*, Monash University Faculty of Law Legal Studies Research Paper No. 3622662, Available at SSRN: <https://ssrn.com/abstract=3622662>; S N Mathew, 'Establishing Copyright in Esport Streams Under UK Law' (2022) 44(12) *E.I.P.R* 731.

⁶ K L Adams, G Devia-Allen and M A More, 'What is Esports?', in R. Rogers (ed.), *Understanding Esports: An Introduction to the Global Phenomenon* (Lexington Books, 2019) 3, 5.

developed various competitive formats,⁷ often inspired by traditional sports. For instance, some eSports adopt a tournament format, featuring a circuit of competitions throughout the year. Success in these competitions qualifies players to participate in major tournaments, as seen in Valve Corporation's *Counter-Strike*. Another format is the promotion and relegation system, borrowed from European football, where teams move between leagues or divisions based on their performance in the completed season. Activision's *Call of Duty* and Riot Games' *League of Legends* utilise this system.

- Organisation

In addition, to be considered an eSport, the competition must be organised by an independent third party, separate from the players themselves. As Adams, Devia-Allen, and Moore highlight, this organisational element distinguishes eSports from casual, albeit competitive, play among friends or acquaintances.⁸ Game publishers play a central role in organising eSports competitions. Some, such as Riot Games, the publisher of *League of Legends*, organise competitions themselves. Others license third parties to manage these events. For example, Valve Corporation licenses ESL (Electronic Sports League) to produce competitions for its games, *Counter-Strike* and *DOTA2*.

Organisers of eSports competitions, whether game publishers or licensed third parties, have established complex regulatory frameworks to oversee their events. These frameworks consist of standardised rules, enforcement mechanisms, and penalties for violations.⁹ The teams participating in these competitions have also advanced in sophistication, hiring players, managers, and trainers, and adopting rigorous training regimens. This heightened level of professionalism has resulted in competitions, teams, and individual players drawing passionate fan bases and securing substantial sponsorships from major commercial brands, such as Red Bull.

- Video Gaming

Video games have evolved significantly over the past three decades, emerging as a dominant form of entertainment enjoyed by people of all ages. This growth is closely tied to advancements in digital technology, including new gaming consoles, widespread internet access via personal computers, and the popularity of mobile devices such as smartphones and tablets. These developments have expanded the video game market and diversified its offerings.

⁷ J George and B Sherrick, 'Competition Formats in Esports' in R. Rogers (ed.), *Understanding Esports: An Introduction to the Global Phenomenon* (Lexington Books, 2019) 45.

⁸ K L Adams, G Devia-Allen and M A More, 'What is Esports?', in R. Rogers (ed.), *Understanding Esports: An Introduction to the Global Phenomenon* (Lexington Books, 2019) 6.

⁹ For example, see the *League of Legends* Official Rules 2020 at <https://nexus.leagueoflegends.com/wp-content/uploads/2020/01/2020-LCS-Rule-Set-v20.1_6bkbwz26cgp7fngat6a.pdf> accessed 24 June 2024.

A video game is typically defined as an electronic game played on a video display, encompassing various creative elements such as audio, video, and narrative. While early games such as *Colossal Cave Adventure* relied solely on text-based interaction, modern games emphasise on interactivity,¹⁰ where player inputs directly influence the game's outcomes through sophisticated software. Despite their technical complexity, video games are often categorised under copyright law as computer programs due to their origins in computer engineering.

The definition of video games has broadened to include both offline classics, such as Tetris, and online multiplayer behemoths such as *League of Legends*. Genres such as First-Person Shooters (FPS), Real-Time Strategy (RTS), Role-Playing Games (RPGs), Massively Multiplayer Online Role-Playing Games (MMORPGs), and Multiplayer Online Battle Arenas (MOBAs) have become popular, each offering distinct gameplay experiences tailored to different player preferences.

Historically, video games began as arcade amusements in the 1970s, transitioned to personal computers in the 1980s, and proliferated on the internet by the late 1990s. The 2010s witnessed further innovation with the rise of online distribution, social gaming, and the advent of virtual and augmented reality technologies. These advancements not only transformed gameplay, but also expanded the economic footprint of the gaming industry, making it a significant contributor to global GDP and employment.

2.2. Individual works contained in video games: Copyrightable elements

Following the distributive approach, where each (copyrightable) element within a video game is considered a separate work (unlike the unitary approach),¹¹ this section examines the various components of video games, including original literary, dramatic, musical, and artistic works, as well as computer programs under UK law.¹² It also assesses the copyright protection of animated characters, and the potential for video games to be protected as films. Given the diverse creative contributions in video games, they encompass multiple copyrighted original works, characterised as ‘complex works of authorship’ and ‘amalgamation of individual elements that can each individually be copyrighted if they achieve a certain level of originality and creativity’.¹³

¹⁰ G Tavinor, ‘Definition of Videogames’ (2008) 6(6) Contemporary Aesthetics <https://digitalcommons.risd.edu/liberalarts_contempaesthetics/vol6/iss1/16/> accessed 2 July 2024

¹¹ G Dimita, ‘Understanding Intellectual Property in Video Games’ (2023) WIPO Committee on Development and Intellectual Property, available at: <<https://www.wipo.int/export/sites/www/cooperation/en/docs/ip-video-games.pdf>> accessed 2 July 2024.

¹² The UK law on video games is influenced by *Nova Productions Ltd v Mazooma Games Ltd & Ors Rev 1* and *Nintendo Co Ltd v PC Box Srl*. It is suggested that protecting a video game as a whole could be problematic, as the CDPA 1988 only provides eight categories of works, in which video games are missing.

¹³ Case C-355/12 *Nintendo Co Ltd v PC Box Srl* [2014] 1 WLUK 506, ECDR 6, para 22; A Ramos and others, ‘The Legal Status of Video Games’ (2013) WIPO Report 7 <https://www.wipo.int/edocs/pubdocs/en/wipo_report_cr_vg.pdf> accessed 2 July 2024; D Farmaki, ‘Copyright Protection of Video Games: a Comparative Study’ (2022) 5(2) IELR 107; S N Mathew, ‘Establishing Copyright in Esport Streams Under UK Law’ (2022) 44(12) E.I.P.R 731.

Literary Works

According to section 3(1) of the Copyright, Designs and Patents Act 1988 (hereafter CDPA), literary works include any written, spoken, or sung works that are not a dramatic or musical work. This definition covers tables, compilations, computer programs, preparatory design material for computer programs, and databases. Importantly, literary works encompass all written expressions, regardless of quality or style, including poems, novels, slogans, exam papers, trade catalogues, directories, timetables, football fixtures, and business letters. When determining if a work qualifies as a literary work, UK courts use the test from *Hollinrake v. Truswell*, which states that a literary work must provide ‘either information or instruction, or pleasure, in the form of literary enjoyment’.¹⁴ This threshold is low, as evidenced by *Express Newspaper v. Liverpool Daily Post*,¹⁵ where sequences of letters in a newspaper bingo game were deemed literary works because they conveyed information to the player. The work does not need to be understood by the general public; even restricted understanding suffices. In video games, the story, dialogues, and in-game text are considered literary works if they are sufficiently original. The definition of literary work has evolved to include digital media, thus protecting the narrative elements of video games.

Dramatic Works

Dramatic works are defined by national law, with the CDPA 1988 stating they include works of dance and mime. According to *Norowzian v. Arks Ltd. And Others (No. 2)*, dramatic works are ‘works of action, with or without words or music, capable of being performed before an audience’.¹⁶ Dramatic works typically include scenarios or scripts for films, plays, and choreographic works.

In *Nova Productions Ltd. v. Mazooma Games Ltd*, the court denied protection of the video game as a dramatic work due to the lack of sufficient unity for performance, noting that gameplay sequences vary each time.¹⁷ However, games with a consistent narrative structure, such as role-playing games, may qualify as dramatic works, unlike games without narratives, such as Tetris. Additionally, video games often include cut-scenes—non-playable animated or live-action sequences that advance the story. These scenes lack interactivity and remain the same each time the game is played, potentially qualifying them as dramatic works.

Musical Works

¹⁴ *Hollinrake v. Truswell* (1894) 3 Ch 420, 428.

¹⁵ *Express Newspaper v. Liverpool Daily Post* [1985] 3 All ER 680.

¹⁶ *Norowzian v Arks Ltd. (No 2)* [2000] FSR 363

¹⁷ *Nova Productions Ltd v Mazooma Games Ltd & Ors Rev 1* [2006] EWHC 24 (Ch).

Music is a crucial component of video games, often enjoyed independently from the game and subject to separate exploitation. Pre-existing musical works used in games can lead to disputes over rights, as seen with Croatian musician Elvis Stanic's claim against CD Projekt RED for the alleged unauthorised use of his piece 'Naranca' in *The Witcher 3: The Wild Hunt*. Despite these conflicts, musical works are clearly protected under copyright law. Lyrics within musical works are considered literary works, with music and lyrics treated as distinct entities, potentially owned by different parties and subject to separate copyright duration.¹⁸

Although statutory provisions do not define musical works, case law has provided clarity. In *Sawkins v. Hyperion Records Ltd*, the Court of Appeal emphasised that copyright covers the entire work, including what the audience hears, not just the notes on a score.¹⁹ However, sound effects do not fall under the definition of musical works, as they do not evoke the same emotional or intellectual responses.

Artistic Works

Artistic works, protected by copyright, include photographs, graphic works, collages, and sculptures, regardless of their artistic quality. The succession of frames, such as those in video games, can also be considered artistic works. The Court of Appeal in *Nova Productions* held that a series of frames constitutes a series of graphic works, thus extending section 4 of the CDPA 1988 to cover screen-generated images.²⁰

The visual design of video game characters is protected as artistic work, based on their visual significance. This was established in *Anacon Corporation Ltd. v. Environmental Research Technology Ltd*. Additionally, in *Michael Mitchell v. British Broadcasting Corporation*,²¹ the court ruled that drawings of fictional characters are protected as artistic works. This protection applies equally to characters drawn by hand and those created using computer-assisted design (CAD).

Copyright protection of Characters

Characters are crucial in video games as they link the game's concept with its rules and hold significant commercial value. Video game characters can be fictional or based on real individuals, such as football players in *FIFA* (EA Sports), who are designed to resemble real-life athletes.

¹⁸ P Torremans, 'The role of the CJEU's autonomous concepts as a harmonising element of copyright law in the United Kingdom' (2019) IPQ 4

¹⁹ *Sawkins v. Hyperion Records Ltd* [2005] 3 All ER 636 CA (Civ Div). For the approach of assessing the work as a whole, *Ladbroke (Football) Ltd v. William Hill (Football) Ltd* [1964] 1 WLR 273 HL at paras 277–291 serves as a landmark case.

²⁰ *Nova Productions Ltd v Mazooma Games Ltd & Ors Rev 1* [2006] EWHC 24 (Ch).

²¹ *Michael Mitchell v. BBC* [2011] EWPCC 42.

UK law does not grant separate copyright protection to fictional characters. British case law has established that literary characters are protected only within the context of the works they appear in. For instance, in *Wombles Ltd. v. Wombles Skips Ltd*²² the court ruled that there is no copyright in the name of a fictional character, and in *Exxon Corporation v. Exxon Insurance Consultants International Ltd*²³ it was established that a fictitious word (Exxon) was not protected as a literary work.

Despite the lack of copyright protection, right holders can seek protection under trademark law. An example is the name 'Sonic the Hedgehog', which is trademarked by Sega Games Co. Ltd., ensuring legal protection and commercial control over the name.

While characters in video games are integral and commercially valuable, their legal protection varies by jurisdiction, with the UK limiting the protection to within the specific works characters appear in, relying more on trademark law for name protection.

Protection of Video Games as Films

Considering the individual elements of video games, one realises the complexity of today's video games and the numerous types of copyrighted works within them. Apart from the protection afforded to the individual works, the UK High Court case of *Nova Productions Ltd. v. Mazooma Games Ltd*²⁴ went a step further by introducing that the series of frames produced on the screen were a series of graphic works protected by copyright. As such, every screenshot taken from a video game constitutes a copy of that particular graphic work.

In *Nova*, the claimant asserted film copyright infringement of his video game. However, the court addressed the issue briefly and dismissed the claim based on the fact that the defendants did not copy the video game *by photographic copy anyway*. The court left the question of film copyright protection open. Section 5B(1) of the CDPA 1988 defines a film as 'a recording on any medium from which a moving image may by any means be produced'. This broad definition covers many multimedia works, such as computer programs and games.²⁵ However, as the court held, film copyright in the UK only protects against infringement by *copying by photographic means*. For video games this means the game must be copied as a whole, so there is no protection against close recreation of the game.

The element of interactivity is a significant reason why video games are not universally recognised as films under copyright law.²⁶ While they contain cinematic elements, the control users exert over the

²² *Wombles Ltd. v. Wombles Skips Ltd.* [1975] FSR 488.

²³ *Exxon Corporation v. Exxon Insurance Consultants International Ltd.* [1982] RPC 69.

²⁴ *Nova Productions Ltd v. Mazooma Games Ltd & Ors* [2007] EWCA Civ 219

²⁵ W Cornish et al., *Intellectual Property: Patents, Copyright, Trademarks and Allied Rights* (7th edn, Sweet & Maxwell, 2010).

²⁶ F W Grosheide, H Roerdink and K Thomas, 'Intellectual property protection for Video Games: A Review from the European Union' (2014) 9(1) *Journal of International Commercial Law and Technology* 1.

game's narrative and outcome distinguishes them from traditional films, affecting their legal protection under current copyright frameworks.

3. Streaming and Copyright Implications

The use of video games within the esports industry is predominantly governed by End User Licence Agreements (EULAs), which are set forth by the game publishers. These agreements outline the terms and conditions under which players can access and use the games, encompassing a wide range of stipulations from gameplay modifications to content creation and distribution. In the context of esports, understanding these EULAs is crucial, as they directly impact how games can be used in professional settings, streamed online, and monetised. To provide a comprehensive analysis, the policies of game developers regarding the use of copyrighted materials will be reviewed, focusing on those games that are most popular in eSports according to the eSport Gaming ranks. While it is impractical to review all game developers' policies, examining those of leading eSports titles will offer valuable insights into the prevailing practices and regulatory frameworks that shape the esports landscape.

The five most popular eSports games for 2024 (by viewership) for PCs and consoles, whose publishers' policies will be reviewed for the purposes of this chapter are the following: *League of Legends* (Riot Games), *Counter-Strike* (Valve), *Valorant* (Riot Games), *Fortnite* (Epic Games), and *Apex Legends* (Electronic Arts). Therefore, for the purposes of this section, the EULAs of the following four publishers will be utilised as case study: Riot Games, Valve, Epic Games and Electronic Arts.

3.1 Riot Games:

In reviewing Riot Games' EULAs, the following terms/clauses are of particular importance and relevance:

‘We grant you a limited, non-exclusive, non-transferable, revocable license to use and enjoy the Riot Services (and any Virtual Content) for **your individual, non-commercial, entertainment purposes only** and expressly conditioned upon your compliance with these Terms.’²⁷

‘You can’t create any work of authorship based on the Game Content or Riot Services except as expressly permitted by us. For more info about what fan uses we currently permit, please read our Legal Jibber Jabber policy’²⁸

‘Riot Games (“Riot” or “We”) grants you a personal, non-exclusive, non-sublicensable, non-transferable, revocable, limited license for you to use, display and create derivative works based upon Riot’s IP, **strictly for non-**

²⁷ Riot Games, ‘Terms of Service’, available at: <<https://www.riotgames.com/en/terms-of-service>> accessed 2 July 2024.

²⁸ *ibid*

commercial (except as specifically provided below) community use. We reserve the right to deny anyone the use of our IP at any time, for any reason or no reason, including when we decide, in our sole and absolute discretion, that you are using our IP inappropriately.’²⁹

‘We allow passive ad revenue generation for some content, subscriptions and donations on streaming channels, and some commercial projects that comply with our API Terms and Policies and use a valid API key’³⁰

3.2. Valve:

Similarly, the non-commercial use is also highlighted in Valve’s EULAs, as follows:

‘Valve hereby grants, and you accept, a non-exclusive license and right, to use the Content and Services for your **personal, non-commercial use** (except where commercial use is expressly allowed herein or in the applicable Subscription Terms).’³¹

‘We encourage our users to make videos using Valve game content, such as playthrough or instruction videos or SFM movies. We are fine with publishing these videos to your website or YouTube or similar video sharing services. We’re not fine with taking assets from our games (e.g. voice, music, items) and distributing those separately.

Use of our content in videos must be non-commercial. By that we mean you can’t charge users to view or access your videos. You also can’t sell or license your videos to others for a payment of any kind.

You are free to monetize your videos via the YouTube partner program and similar programs on other video sharing sites.’³²

3.3. Epic Games:

In a similar vein, Epic Games also emphasise the ‘non commercial’ objective:

‘In most cases, using our games, artwork, videos, music, characters, logos, and other intellectual property (“Epic IP”) without our permission is illegal and a violation of our rights. So we created this Policy to explain what you may do regarding your Fan Content. In this Policy, “Fan Content” means: your personal, **non-commercial (i) fan art** (such as artwork, photographs, videos,

²⁹ Riot Games, ‘Legal Jibber Jabber’, available at: <<https://www.riotgames.com/en/legal>> accessed 2 July 2024

³⁰ *ibid*

³¹ Valve, ‘Steam Subscriber Agreement’, available at: <https://store.steampowered.com/subscriber_agreement/> accessed 2 July 2024.

³² Valve Video Policy, available at: <https://store.steampowered.com/video_policy> accessed 2 July 2024.

and other materials) that is based on the Epic IP; and (ii) Epic IP-related websites and apps that are freely accessible to the public.’³³

‘Fan Content **must have no commercial (i.e., monetary) objective**. As an exception to this, individual fans are permitted to monetize web videos (such as YouTube) with advertisements, so long as those videos otherwise meet the requirements of this Policy.’³⁴

‘Epic, in its sole discretion, can revoke your permission to create Fan Content **at any time and for any reason**.’³⁵

‘You may not do or attempt to do any of the following with respect to the Software or any of its parts: (a) use it commercially or for a promotional purpose except as Epic expressly authorizes;’³⁶

3.4. Electronic Arts:

Following the same approach, Electronic Arts also underscore the non-commercial use:

‘The EA Services are licensed to you, not sold. EA grants you a personal, limited, non-transferable (i.e., not for sharing), revocable and non-exclusive license to use the EA Services to which you have access for **your non-commercial use**, subject to your compliance with this Agreement.’³⁷

Although the above policies do not explicitly define commerciality, one could understand the ‘non-commercial’ activities as something creators create for “themselves”. Interestingly, eSports are generally seen as inherently commercial, based on the assumption that any eSport creation will occur in a professional (e.g., ticketed, sponsored) environment. As Thomas observed, most eSports are excluded from the policies by omission, with a few explicitly excluding them, such as Hi-Rez, Blizzard, and Bethesda.³⁸

Publishers in the gaming industry leave room for third-party organisers to facilitate player and community engagement, by providing open licensing systems (also known as community licences), for

³³ Epic Games, ‘Fan Content Policy’, available at: < <https://www.epicgames.com/site/en-US/fan-art-policy> > accessed 2 July 2024.

³⁴ *ibid*

³⁵ *ibid*

³⁶ Epic Games, ‘Fortnite EULA’, available at: < <https://www.fortnite.com/eula?lang=en-US> > accessed 2 July 2024.

³⁷ Electronic Arts, ‘Terms of Service’, available at: < <https://tos.ea.com/legalapp/WEBTERMS/US/en/PC/> > accessed 2 July 2024.

³⁸ A Thomas, ‘Merit and monetisation: A study of video game user-generated content policies’ (2023) 12(1) Internet Policy Review, <doi.org/10.14763/2023.1.1689> accessed 2 July 2024.

third parties to organise events under specific terms. These standard (in their majority) agreements include restriction on prize pools values, revenue generation, and entry fee, in an effort to help publishers maintain control over their game. For those publishers who prefer tight control, they may provide narrow licences or none at all, necessitating direct negotiations for any tournament authorisation.³⁹

4. Moving forward: Clarity in EULAs

While Ahuja argues that EULAs provide essential information to users by outlining the terms, conditions, and rights of the involved parties,⁴⁰ and Miller claims that EULAs benefit consumers by enhancing efficiency, spreading information, and defining rights,⁴¹ it is crucial to note that these agreements are non-negotiable and presented on a ‘take-it-or-leave-it’ basis. Since users frequently do not read these agreements, the supposed informational and efficiency benefits are effectively negated. This non-negotiable nature highlights the practical limitations of EULAs for the average user.

An in-depth examination of EULAs reveals nuances that challenge their efficacy in protecting user interests. Corbett's analysis shows that EULAs for computer games are often similar across different jurisdictions, likely due to copying from other games or using online templates without thorough legal review.⁴² Rights owners seem complacent about enforcing their EULAs, relying on studies indicating that few users read the agreements, and most agree (to these terms and conditions) without understanding the content or consequences.⁴³

However, this complacency is problematic. For players, many EULA terms infringe on their rights as consumers and users of intellectual property. These standardised agreements often overlook legal nuances of different jurisdictions, leading to potential conflicts. This situation underscores the need for a more conscientious approach to formulating EULAs, ensuring they respect user rights and comply with legal standards across regions.

³⁹ For an overview of publishers' approach to tournaments please see: Riot Games, 'Licence Request' available at: <<https://riot.eurcommunitycompetition.com/tournament-form?game=lol>> accessed 2 July 2024; Valve, 'Tournament Licences', available at: <https://store.steampowered.com/tourney/limited_licens> accessed 2 July 2024; and Epic Games, 'Fortnite Event License Terms', available at: <https://cdn2.unrealengine.com/Fortnite+Esports%2FFortniteEventLicenseTerms%2FFortnite-Event-License-Terms_04.01.20-2f1b6cda1fccffe3ddb23f7a0b03fb6d3131946.pdf> accessed 2 July 2024.

⁴⁰ N Ahuja, 'Commercial Creations: The Role of End User License Agreements in Controlling the Exploitation of User Generated Content' (2017) 16 The John Marshall Review Of Intellectual Property Law 382, 400

⁴¹ D C Miller, 'Determining Ownership in Virtual Worlds: Copyright and License Agreements' (2003) 22(2) Review of Litigation 435.

⁴² S Gorbett, 'Computer Game Licences: the EULA and its discontents' (2019) 35 Computer Law and Security Review 453.

⁴³ Y Bakos, F Marotta-Wurgler and D Trossen, 'Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts' (2014) 43(1) The Journal of Legal Studies 1-35, <<https://doi.org/10.1086/674424>> accessed 2 July 2024.

To enhance the clarity and fairness of EULAs, publishers need to adopt straightforward language that clearly defines key terms such as 'commercial and non-commercial use' and explicitly outline what activities are permitted under this classification. Publishers should detail the specific circumstances under which licences will be granted for eSports purposes, providing transparency for third-party organisers. Furthermore, clauses allowing the revocation of permission 'at any time and for any reason' (also shown above under 3.3., for example) should be revised to include clear, specific conditions under which such revocations can occur, to make sure that this power is not wielded arbitrarily. This will -not only - foster trust but also provide the stability necessary for organisers and content creators to invest in the gaming and eSports ecosystem.

5. Concluding Remarks

The popularity of eSports has brought with it a number of legal challenges, particularly in the realms of copyright law and End User Licence Agreements (EULAs). Addressing these challenges is of paramount importance as they affect players, content creators, game developers, and the industry as a whole.

In shaping the legal framework of eSports, copyright law and EULAs play a pivotal role. This chapter explored the intricate legal terrain of esports, with a focus on the complexities of copyright law and the (arbitrary) role (and legalese writing style) of EULAs, highlighting the balance between protecting intellectual property and fostering a vibrant eSports community.

By implementing the changes discussed in section 4, publishers could create a more balanced and predictable environment that encourages community engagement while protecting their intellectual property. Clarity in the EULAs will help reduce misunderstandings and potential conflicts, fostering a more collaborative relationship between the publisher and the (gaming) community.