

**OVERSIGHT IN COLLEGIATE eSPORTS:
IS THE NCAA THE ANSWER?**

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ABSTRACT

Over the last decade, eSports has become increasingly popular as sports teams and private investors rush to capitalize on the expanding industry. Nearly 50 colleges nationwide already offer scholarships for eSport athletes. In the United States, the commercial dominance of traditional college sports stems from decades of regulatory support from the National Collegiate Athletic Association (“NCAA”). Consequently, collegiate eSports may also find regulatory support from the NCAA. However, many aspects of eSports inherently conflict with NCAA regulations such as the nature of eSport athletes themselves. Many eSport athletes having existing sources of income through streaming sites, such as Twitch, YouTube, and, more recently, Facebook which conflicts with the NCAA’s rule against profiting from play. Additionally, eSports athletes are faced with the challenge of a model that does not conform to the traditional athletics model. This note will explore why the existing NCAA regulations fail to address these issues and will suggest regulatory solutions to address the unique nature of the eSports industry.

INTRODUCTION

On October 13, 2018, 67,452 people anxiously logged onto their computers to witness one of the most anticipated

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eSports games of the year.¹ G2 Esports was scheduled to face off against Cloud9—two of the top teams in North America in the popular rocket-powered car soccer game, *Rocket League*.²

Rocket League's audience was vast, and the broadcast pulled viewers spanning from the United States, Europe Union, and Australia.³ Over 65,000 viewers gathered, albeit remotely, to watch the *Rocket League* Championship Series that airs annually and spans from fall to spring.⁴ The winner of this highly anticipated game moved on in the bracket for the chance to win over \$200,000 in the finals,⁵ which would take place in Las Vegas early November of 2018.⁶ The venue would entail a large stage with six monitors, a casting table, and multiple colossal screens to broadcast the game with a live audience watching.⁷

This note will discuss the emerging and fast-growing industry of eSports and how the National Collegiate Athletic Association (“NCAA”) is poised to regulate it collegiately, however the NCAA’s rules conflict with the current eSports model. In Part I, this note will introduce eSports and how it became a rapidly growing industry. Part II will discuss the current regulatory models of both eSports and traditional collegiate sports. Part III will identify the inherent differences between

¹ Brett Molina, *Why watch other people play video games? What you need to know about esports*, MEDIUM (Jan. 3, 2017), <https://www.usatoday.com/story/tech/news/2018/01/12/more-people-watch-esports-than-x-dont-get-here-basics/1017054001/>.

² *Rocket League Top Teams*, E-SPORTS EARNINGS <https://www.esportsearnings.com/games/409-rocket-league/top-teams> (last visited Nov. 18, 2019).

³ *Twitch.tv Traffic Statistics*, ALEXA, <https://www.alexa.com/siteinfo/twitch.tv> (last visited Nov. 18, 2019).

⁴ *RLCS Season 5 World Championship Schedule*, ROCKET LEAGUE ESPORTS, <https://www.rocketleagueesports.com/schedule/> (last visited Nov. 18, 2019).

⁵ *Rocket League Championship Series*, E-SPORTS EARNINGS, <https://www.esportsearnings.com/leagues/429-rocket-league-championship-series> (last visited Nov. 18, 2019).

⁶ *Id.*

⁷ Cory Lanier, *The RLCS World Championship Returns To Europe!*, ROCKET LEAGUE (Apr. 26, 2018), <https://www.rocketleagueesports.com/news/the-rlcs-world-championship-returns-to-europe-/>; *Copperbox Arena*, WIKIPEDIA, https://en.wikipedia.org/wiki/Copper_Box_Arena (last visited Nov. 18, 2019).

traditional collegiate sports and eSports serving as obstacles to uniform regulation under the NCAA. Part IV will explain the limitations of the NCAA to regulate the rights of eSports athletes. Finally, Part V will propose alternatives to NCAA regulation of collegiate eSports while also suggesting ways to change existing NCAA rules to more appropriately address eSports.

I. ESPORTS AND ITS RAPID GROWTH

Generally speaking, eSports is competitive gaming that pits players against one another in a tournament setting and allows those who are unable or unwilling to play traditional sports to compete in virtual ones.⁸ As a result of its growing popularity in 2017, the eSports industry brought in roughly 700 million dollars, with almost 385 million viewers that year.⁹ eSports has become a popular alternative to traditional sports and has captured large numbers in younger audiences.¹⁰ The average age of an eSports viewer is thirty-one, while the average age of a traditional sports viewer ranges from 40 to 64.¹¹ Similar to the NBA and NFL, most eSport events involve two teams competing against each other.¹²

⁸ Bountie Gaming, *The History and Evolution of Esports*, MEDIUM (Jan. 3, 2018), <https://medium.com/@BountieGaming/the-history-and-evolution-of-esports-8ab6c1cf3257>.

⁹ Kevin Faber, *How the World of Esports is Taking Over Streaming Services*, INNOVATION MGMT., <http://www.innovationmanagement.se/2018/02/22/how-the-world-of-esports-is-taking-over-streaming-services/> (last visited Nov. 18, 2019).

¹⁰ John Lynch, *As NFL ratings drop, a new internet study says young men like watching eSports more than traditional sports*, BUS. INSIDER (Sept. 14, 2017), <https://www.businessinsider.com/nfl-ratings-drop-study-young-men-watch-esports-more-than-traditional-sports-2017-9>.

¹¹ John Lombardo & David Broughton, *Going gray: Sports TV viewers skew older*, SPORTS BUS. DAILY (June 5, 2017), <https://www.sportsbusinessdaily.com/Journal/Issues/2017/06/05/Research-and-Ratings/Viewership-trends.aspx>; Eoin Bathurst, *The Average Age of Esports Viewers is Higher than You May Think, says GameScope from Interpret, LLC*, ESPORTS OBSERVER (Feb. 24, 2017), <https://esportsobserver.com/average-age-esports-viewers-gamescope/>.

¹² See *Rocket League Championship Series Season 5 – North America*, LIQUIPEDIA: ROCKET LEAGUE, https://liquipedia.net/rocketleague/Rocket_League_Championship_Series/Season_5/North_America (last visited Nov. 18, 2019).

For example, the largest *Rocket League* tournament consist of 3v3 tournaments, which pit teams against each other to score the most points in a five-minute game.

Similar to traditional sports, eSports is a product of entertainment built on athletic competition, a devoted fan-base, an audience, and a unique culture. Audiences watch the games, and often large tournaments will occupy live events where they host meet and greets and interview pro players. Interviews with players include assessments of decisions made in the game, which gives viewers a guide on improvements. Often, analysts discuss the tournament with eSports casters to explain decisions made by players to the audience.

Streaming gameplay on internet streaming platforms, such as Twitch, YouTube, Facebook, and Mixer is one of the largest and fastest growing aspects of eSports. The introduction of streaming platforms has opened up an avenue for video game enthusiasts that, prior to streaming platforms, did not exist.¹³ Additionally, this new avenue has allowed players to make a living by playing a game they love and streaming it for any viewers that wish to tune in. Last year, eSports has seen immense growth in streaming with games like *Fortnite* boasting a total player count of 45 million.¹⁴ *Fortnite* averaged the following daily statistics in September 2018: 153,285 average viewers; 9,469 average channels (each channel typically equaling one player); a maximum of 581,942 viewers; a maximum of 21,152 channels; and 110 million total hours watched.¹⁵ The economic potential of eSports did not go unnoticed, even in its beginning. In 2014, Amazon paid \$970 million to acquire Twitch, one of the primary streaming platforms for eSports tournaments, as well as casual gameplay.¹⁶

¹³ Faber, *supra* note 9.

¹⁴ Matt Brian, *The rise and rise (and rise) of 'Fortnite'*, ENGADGET (Mar. 17, 2018), <https://www.engadget.com/2018/03/17/fortnite-battle-royale-record-breaker/>.

¹⁵ *Fortnite: Statistics by Month*, TWITCHTRACKER, <https://twitchtracker.com/games/33214> (last visited Nov. 18, 2019).

¹⁶ Eugene Kim, *Amazon Buys Twitch For \$970 Million In Cash*, BUS. INSIDER (Aug. 25, 2014), <https://www.businessinsider.com/amazon-buys-twitch-2014-8>.

A. A BRIEF HISTORY OF ESPORTS

Prior to the first tournament, there were various eSports events held with some of the first video games created, such as *Spacewar*.¹⁷ In 1980, the first eSports tournament debuted: The Space Invaders Championship. The Space Invaders Championship boasted an attendance of 10,000 participants.¹⁸ However, the first to capitalize on these types of events was Red Annihilation, a tournament featuring the first-person shooter (“FPS”) game *Quake*.¹⁹ Red Annihilation is widely considered to have been the first official eSports tournament.²⁰ The first place prize was a Ferrari previously owned by the lead developer of *Quake*.²¹ With the invention of the internet, alongside the increased power and accessibility of personal computers in the 1990s, competitive video games and eSports saw a huge surge in popularity.²² As eSports continued to grow, the formation of organizations devoted to creating and promoting eSports tournaments began.²³

Some, but not all, eSports athletes have careers as content creators in addition to an eSports professionals. Popular platforms for content creation include streaming sites, such as Twitch, and video uploading sites, such as YouTube. Both types of platforms allow for monetization of their videos.²⁴ YouTube provides revenue to its content creators in two ways: channel memberships and advertising.²⁵ A YouTube channel owner must have at least 100,000 subscribers before charging \$4.99 for a monthly membership.²⁶ YouTube’s current guidelines state that YouTube

¹⁷ Bountie Gaming, *supra* note 8.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Tyler F.M. Edwards, *ESPORTS: A BRIEF HISTORY*, ADANAI (Apr. 30, 2013), <http://adanai.com/esports/>.

²¹ *Id.*

²² See Logan Rivenes, *The History of Online Gaming*, DATAPATH.IO (Jan. 17, 2017), <https://datapath.io/resources/blog/the-history-of-online-gaming/>.

²³ *Id.*

²⁴ Julia Alexander, *Monetization: How Twitch, YouTube and Patreon work for creators revenue*, POLYGON (June 25, 2018), <https://www.polygon.com/2018/6/25/17502380/monteization-youtube-channel-memberships-patreon-twitch-affiliate-partner>.

²⁵ *Id.*

²⁶ *Id.*

only takes 30% of that \$4.99 and the other 70% goes to the content creator.²⁷ Twitch, on the other hand, operates on a roughly 50/50 cut with its content creators using the usual \$4.99 monthly subscription fee.²⁸ Similar to YouTube, Twitch requires that streamers become an “affiliate” and implement a subscription membership for the streamer’s channel.²⁹

Twitch, the largest streaming platform for eSports athletes, emerged in 2018 as the 31st largest internet traffic producer in the United States.³⁰ In 2017 alone, Twitch had 15 million unique viewers a month who viewed a combined 355 billion minutes of gameplay.³¹ YouTube, which is currently the second highest trafficked site on the internet, has two of the top five channels with the most gaming-related subscribers worldwide.³²

B. ESPORTS IN COLLEGIATE SPORTS

Although eSports was marginally prevalent a decade ago, the rapid growth in the eSports industry and its viewership has been immense.³³ This rapid evolution has spread to collegiate sports as universities have launched eSports teams to represent them in competitions.³⁴

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *The top 500 sites on the web*, ALEXA, <https://www.alexa.com/topsites> (last visited Nov. 18, 2019).

³¹ David Carr, *Amazon Bets on Content in Deal for Twitch*, N.Y. TIMES (Aug. 31, 2014), <https://www.nytimes.com/2014/09/01/business/media/amazons-bet-on-content-in-a-hub-for-gamers.html>.

³² *Data from: 4 reasons people watch gaming content on YouTube*, THINK WITH GOOGLE, <https://www.thinkwithgoogle.com/data-collections/gamer-demographics-gaming-statistics/> (last visited Nov. 18, 2019).

³³ Alex Gray, *The Explosive Growth of eSports*, WORLD ECON. GROWTH (July 3, 2017), <https://www.weforum.org/agenda/2018/07/the-explosive-growth-of-esports/>.

³⁴ Neal Robison, *Esports Is The New College Football*, FORBES (Jan. 30, 2018), <https://www.forbes.com/sites/moorinsights/2018/01/30/esports-is-the-new-college-football/#7ca84e8e1855>.

The first varsity eSports program began at Robert Morris University.³⁵ In 2014, Robert Morris University in Chicago received 3,000 inquiries and 2,000 applications following its announcement of an eSports team, which included 35 scholarships for its players.³⁶ As of March 2018, there are more than 80 eSports university programs spanning the United States, most falling under the governing body known as the National Association of Collegiate Esports (“NACE”).³⁷ While many universities are members of NACE, the organization fails to actually operate as a governing body; rather, NACE functions more as an administrator that organizes competitions between universities.³⁸

The increasing number of universities offering similar eSports programs has undoubtedly grabbed the attention of the NCAA—currently at the helm of regulating traditional collegiate sports—due to the lack of a current regulatory body overseeing collegiate eSports.³⁹ However, expansive growth in the field questions whether the NCAA should be involved.

II. EXISTING NCAA REGULATORY MODELS IN TRADITIONAL SPORTS AND ESORTS

Collegiate eSports is without a true governing body, which has left game developers and universities free to create tournaments and leagues along with NACE.⁴⁰ For example, Riot (the developer of the popular multiplayer online battle arena game *League of Legends*) created the “College League of Legends” with the goal of having schools treat the game the same way they treat

³⁵ Sean Morrison, *List of varsity esports programs spans North America*, ESPN (Mar. 15, 2018), http://www.espn.com/esports/story/_/id/21152905/college-esports-list-varsity-esports-programs-north-america.

³⁶ Steve Dittmore, *Are We Witnessing The Dawn Of Competitive Intercollegiate eSports?*, ATHLETIC DIRECTOR U, <https://athleticdirector.u.com/articles/esports-college-gaming-possibility/> (last visited Nov. 18, 2019).

³⁷ Morrison, *supra* note 35.

³⁸ *NACE eSports Constitution Bylaws*, NACE ESORTS, <http://nacesports.org/wp-content/uploads/2017/02/NAC-eSports-Constitution-Bylaws-9-29-2016-1-1.pdf> (last visited Nov. 18, 2019).

³⁹ See Mitch Reames, *The Role of College Programs in Pro Esports*, SPORT TECHIE (May 7, 2018), <https://www.sporttechie.com/role-of-college-esports-ncaa-league-of-legends-overwatch/>.

⁴⁰ *Id.*

traditional college sports.⁴¹ In 2014, Blizzard (the developer of *Heroes of the Storm*) announced a partnership with the eSports organization TESPAs to create a collegiate eSports tournament aptly named “Heroes of the Dorm,” which offered tuition scholarships to the winning team.⁴²

In 2017, TESPAs partnered with Psyonix to create Collegiate Rocket League (“CRL”).⁴³ CRL is an open bracket league that allows free entry to any college student in the United States or Canada.⁴⁴ Players opt-in to weekly matches against opponents to place in the top two and qualify for regional conferences with other bracket-winning teams.⁴⁵ Regional conferences decide the four qualifying teams for the 2018 conference and totals six teams per conference.⁴⁶

Players wishing to go through the collegiate route to pro eSports will likely face obstacles from the NCAA, if it should choose to step in. Involvement in these growing eSports associations and tournaments will likely bring with it issues over amateurism, compliance with Title IX, and revenue sharing—issues that are further discussed in this note. The NCAA requires student-athletes to adhere to strict amateurism requirements to stay eligible in the field, such as prohibiting students from receiving revenue as a result of using their likeness.⁴⁷ As a result, student athletes are faced with the difficult choice of pursuing their athletic goals over other personal goals, such as YouTube or Twitch streaming.

⁴¹ *Id.*

⁴² Sean Morrison, *As Heroes of the Dorm ‘graduates,’ former players and admins reflect on success*, ESPN (May 10, 2018), http://www.espn.com/esports/story/_/id/23466339/as-heroes-dorm-graduates-former-players-admins-reflect-success.

⁴³ Cory Lanier, *Collegiate Rocket League Returns This Fall*, ROCKET LEAGUE (Aug. 16, 2017), <https://www.rocketleague.com/news/collegiate-rocket-league-returns-this-fall/>.

⁴⁴ *Collegiate Rocket League Open*, TESPAs, <https://compete.tespa.org/tournament/121> (last visited Nov. 18, 2019).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ California is the exception having passed legislation in September 2019 permitting student-athletes to receive revenue as a result of using their name, image, and likeness. S.B. 206, 2019–20 Legis. Sess. (Cal. 2019).

Unlike NACE, existing NCAA regulations heavily restrict the sports a collegiate student-athlete can play, who they play against, and any income made related to the sport in which they compete.⁴⁸ In fact, the eSports industry would have to undergo substantial reform just to meet these NCAA standards because its current model is seriously out of compliance with NCAA bylaw requirements. Student-athletes are required to adhere to strict amateurism rules that prohibit the following: contracts with professional teams; salaries for participating in athletics; prize money above actual and necessary expenses; playing with professionals; tryouts, practice, or competition with a professional team; benefits from an agent or prospective agent; agreements to be represented by an agent; and delayed initial full-time collegiate enrollment to participate in organized sports competition. For these reasons, many prospective eSports student-athletes may find themselves struggling to be in compliance or already non-compliant.⁴⁹

Although there are technically no NCAA age restrictions, the NCAA does require that athletes enroll in a university one calendar year following their high-school graduation and complete a four-year degree within five years.⁵⁰ Typically, entering freshman are roughly 17 or 18 years old.⁵¹ As a result, younger traditional sports players can find themselves matched up against older and more physically apt competition. For example, rookies of the Rochester Institute of Technology lacrosse team found themselves on the opposite side of the pitch of a 26-year-old—8 years older than them.⁵²

In comparison, eSports players rely on things like dexterity and fast decision-making rather than brute physical size. For example, in the spring of 2018, 15-year-old Justin “JSTN” Morales aided NRG Esports to an undefeated regular season and a second-place finish in the North American Rocket League

⁴⁸ NCAA, SUMMARY OF NCAA REGULATIONS – NCAA DIVISION I (2011), http://fs.ncaa.org/Docs/AMA/compliance_forms/DI/DI%20Summary%20of%20NCAA%20Regulations.pdf.

⁴⁹ *Amateurism*, NCAA, <http://www.ncaa.org/student-athletes/future/amateurism> (last visited Nov. 18, 2019).

⁵⁰ Danielle Allentuck, *NCAA age rules hurts younger college athletes*, THE ITHACAN (Apr. 17, 2018), <https://theithacan.org/columns/ncaa-age-rule-hurts-younger-college-athletes/>.

⁵¹ *Id.*

⁵² *Id.*

Championship Series.⁵³ Despite the young talent, many tournament organizations enforce age restrictions on competitors, such as the Rocket League's Championship Series, which has a strict rule prohibiting players under 15 to enter and compete.⁵⁴

As a result, many eSports organizations sponsor young players like Justin Morales before they go to college.⁵⁵ These newly sponsored players—usually teenagers—face the hurdle of being an eSports athlete and being a full-time student. Often, these players are expected to put in 12 to 15 hours of training a day to remain competitive in the eSports arena, which is far more than the 20-hour a week restriction the NCAA implements for traditional athletes.⁵⁶

NCAA athletes are the beneficiaries of scholarships from the school they agree to play for during their undergraduate studies.⁵⁷ Student-athletes sign an agreement, typically a letter of intent, which is a binding agreement between the school and player.⁵⁸ The agreement stipulates that certain school-related expenses will be covered by the university, such as tuition, books, and housing.⁵⁹ Finally, the contract strictly forbids the player from receiving any kind of income from their competing.⁶⁰ Similarly, players are required to sign contracts with the organization that

⁵³ Reames, *supra* note 39, at ¶ 11.

⁵⁴ *Championship Series FAQ - RLCS*, ROCKET LEAGUE, <https://www.rocketleague.com/esports/faq/> (last visited Nov. 18, 2019).

⁵⁵ *jstn*, LIQUIPEDIA: ROCKET LEAGUE, <https://liquipedia.net/rocketleague/Jstn> (last visited Nov. 18, 2019).

⁵⁶ Graham Ashton, *What is the Optimum Training Time for Esports Players?*, ESPORTS OBSERVER (Dec. 28, 2017), <https://esportsobserver.com/optimum-player-training-time/>; Harrison Jacobs, *Here's the insane training schedule of a 20-something professional gamer*, BUS. INSIDER (May 11, 2015), <https://www.businessinsider.com/pro-gamers-explain-the-insane-training-regimen-they-use-to-stay-on-top-2015-5>; Patrick F. McDevitt, *The NCAA's Amateurism Rules Are Indeed Madness*, HUFFINGTON POST (Mar. 2, 2018), https://www.huffingtonpost.com/entry/opinion-mcdevitt-ncaaamateurism_us_5a987314e4b0479c0250a58d.

⁵⁷ *NCAA Sports Contracts and Amateurism*, US LEGAL, <https://sportslaw.uslegal.com/sports-agents-and-contracts/ncaa-sports-contracts-and-amateurism/> (last visited Nov. 18, 2019).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

sponsors them, which can spawn a slew of issues that players are often ill-equipped to address, such as lower bargaining power and lack of knowledge of appropriate contract terms.⁶¹ Younger players that gain a sponsor prior to going to college with the intent to join a collegiate team may face significant hurdles in joining the collegiate team under existing NCAA regulations.

In the eSports industry, the game developers control the intellectual property rights of the games they create.⁶² As a result, developers, such as Psyonix, have the power to ban and/or fine players that violate their intellectual property rights of game through behaviors such as hacking or “modding.”⁶³ Additionally, the developers have discretion to ban and fine players inside and outside their leagues for violating developer created codes of conduct of the game.⁶⁴ The NCAA similarly has sole discretion to ban or fine its players but also offers an appeal process.⁶⁵

This discrepancy between traditional sports and eSports calls for a solution that facilitates an official governing body, such as NACE, to regulate the industry, leaves regulating to individual conferences, or extensively modifies existing NCAA regulation to carve out exceptions. The need is derived from the inherent differences that the NCAA model fails to take into account. eSports players rely on streaming, potential scrimmaging with professional players, or prior sponsorships to become relevant in the eSports circuit, all of which would be prohibited under the existing NCAA model.

⁶¹ See Lydia Mitrevski, *Esports contracts: The Good, The Bad, and The Ugly*, ESPORTS INSIDER (May 30, 2017), <https://esportsinsider.com/2017/05/esports-contracts-good-bad-ugly/>.

⁶² Dan L. Burk, *Owning E-Sports: Proprietary Rights in Professional Computer Gaming*, 161 U. Pa. L. Rev. 1535, 1538 (2013).

⁶³ *Code of Conduct And Banning Policy*, ROCKET LEAGUE (Sep. 16, 2018), <https://www.rocketleague.com/news/code-of-conduct-and-banning-policy/>.

⁶⁴ See, e.g., Richard Lewis, *No Appeals Process for LCS Fines-TSM's Reginald Must Pay*, DAILY DOT (Aug. 20, 2014), <http://www.dailydot.com/esports/tsm-reginald-fine-riot-games/> (describing an instance where a professional player was fined \$2,000 for breaking a rule).

⁶⁵ *Enforcement Process: Penalties*, NCAA, <http://www.ncaa.org/enforcement/enforcement-process-penalties> (last visited Nov. 18, 2019).

III. NCAA GUIDELINES CONFLICT WITH THE ESPORTS MODEL

NCAA athletes are expected to follow strict guidelines to retain their amateurism eligibility in collegiate sports.⁶⁶ One of the more controversial restrictions is the prohibition on a player from earning compensation above the actual cost of attending college including tuition and other related school expenses.⁶⁷ This regulation could cause a rift in the eSports paradigm if the NCAA were to step in to the eSports realm entirely. In particular, this could completely hinder an eSports athlete's ability to stream the player's gameplay.

Unfortunately, current NCAA regulations restrict a student-athlete from receiving compensation beyond cost of attendance, and typically this compensation comes from the school in the form of scholarships for tuition, books, housing, and other related expenses.⁶⁸ If a student-athlete is found to be using their own likeness to receive any kind of compensation, their amateur status becomes jeopardized.⁶⁹ Often times, this leads to student-athletes being forced to choose between their hobbies that are bringing in revenue or their athletic career.⁷⁰ This becomes especially problematic when eSports athletes gain distinction prior to college and have already begun generating revenue as a result. When these young players enter the college arena, they have already become skilled in the game, have climbed the ranks and are established online generating revenue through Twitch or

⁶⁶ SUMMARY OF NCAA REGULATIONS, *supra* note 48.

⁶⁷ Joseph M. Hanna, *NCAA Antitrust Bench Trial Set to Begin*, SPORTS L. INSIDER (Sept. 7, 2018), <https://sportslawinsider.com/ncaa-antitrust-bench-trial-set-to-begin/>.

⁶⁸ Steve Berkowitz, *Judge rules NCAA must defend limits on compensation to college athletes in new trial*, USA TODAY (Mar. 28, 2018), <https://www.usatoday.com/story/sports/college/2018/03/28/ncaa-must-defend-limits-compensation-college-athletes/467495002/>.

⁶⁹ SUMMARY OF NCAA REGULATIONS, *supra* note 48.

⁷⁰ Marc Lancaster, *UCF kicker Donald De La Haye gives up football for YouTube stardom*, SPORTING NEWS (July 31, 2017), <http://www.sportingnews.com/us/ncaa-football/news/deestroying-youtube-donald-de-la-haye-ucf-ncaa-ineligible/9bde3upnbf1sl3o62pz4hjq>.

YouTube. As a result, they are now, and forever, barred from being an amateur under the existing NCAA regulations.

One example of this complication in traditional collegiate sports is Donald De La Haye. Donald De La Haye played on the University of Central Florida (“UCF”) Football team, but he is most known for his YouTube channel “Destroying.”⁷¹ His YouTube channel primarily features videos of De La Haye himself performing different football skills ranging from long-range kicks to ridiculous one-handed catches mimicking the legendary Odell Beckham Jr. His channel has millions of views.⁷² When De La Haye is not performing amazing feats of football prowess, he is making comedic skits about the life of a football player.⁷³ Upon finding his YouTube channel, UCF gave him an ultimatum: Shut down his YouTube channel because he was earning revenue in violation of the NCAA amateurism eligibility requirements,⁷⁴ or quit the college team.⁷⁵ De La Haye chose to continue his YouTube career and, unfortunately, was no longer eligible to play on the University’s team.⁷⁶ In fact, UCF actually rescinded his football scholarship.⁷⁷ In response, De La Haye filed a federal lawsuit against the administration, arguing that his First Amendment right to free speech and his Fourteenth Amendment right to due process were violated by removing his football scholarship following UCF’s discovery of his YouTube channel. UCF investigated and subsequently deemed La Haye’s YouTube channel a violation of NCAA eligibility rules.⁷⁸

The NCAA actually offered to waive the amateurism requirements for De La Haye. This would allow him to continue

⁷¹ Steven Ruiz, *A college football player has a hit YouTube channel. He might have to give it up to remain eligible.*, USA TODAY (June 12, 2017), <https://ftw.usatoday.com/2017/06/donald-de-la-haye-youtube-channel-central-florida-ucf-ncaa>.

⁷² Donald De La Haye (@Deestroying), YOUTUBE, https://www.youtube.com/channel/UC4mLIRa_dezwvytudo9s1sw/videos?view=0&sort=p&flow=grid (last visited Nov. 18, 2019).

⁷³ *Id.*

⁷⁴ SUMMARY OF NCAA REGULATIONS, *supra* note 48.

⁷⁵ Ruiz, *supra* note 71.

⁷⁶ Iliana Limon Romero, *Former UCF YouTube kicker Donald De La Haye files lawsuit against Knights*, ORLANDO SENTINEL (Feb. 1, 2018), <https://www.orlandosentinel.com/sports/ucf-knights/os-sp-ucf-kicker-lawsuit-20180202-story.html>.

⁷⁷ *Id.*

⁷⁸ *Id.*

running ads on his videos without it affecting his eligibility, so long as the ads did not draw on football material.⁷⁹ However, the waiver did not halt the revocation of De La Haye's scholarship. In order to keep his scholarship, he was required by UCF to halt monetization of all of his videos, even the videos unrelated to his football career.⁸⁰ Ultimately, De La Haye decided not to honor the waiver or stipulations to maintain his scholarship and was dropped from the UCF football team.⁸¹

Comparable issues would likely arise with similarly situated eSports athletes under the existing NCAA amateurism guidelines.⁸² As noted above, many eSports players stream their gameplay online, and typically generate income from the ad revenue on their videos and streams.⁸³ As a result, collegiate eSports players that stream will likely find themselves unable to conform, putting their eligibility and potentially their associated scholarships in jeopardy.

This issue does not only arise in the context of a current eSports player, it can also arise with a player wanting to be on a collegiate team in the future. For example, England's Kyle Jackson is considered the youngest *Fortnite* player to become a professional gamer at the age of 13.⁸⁴ Now, suppose that Jackson wished to come to the United States for his college education and was offered a scholarship in exchange for playing on a university's team. Jackson would likely be ineligible for failing to meet the amateurism requirements if his streamed gameplay was monetized through advertisements.⁸⁵

⁷⁹ Alex Kirshner, *He lost a scholarship because of YouTube ads, so he's taking NCAA rules to court*, SB NATION (July 14, 2018), <https://www.sbnation.com/college-football/2018/7/13/17565672/donald-de-la-haye-youtube-ncaa-deestroying>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² SUMMARY OF NCAA REGULATIONS, *supra* note 48.

⁸³ Adريان King, *Get Rich with Twitch: Tips on How to Make Money Streaming*, MEDIUM (Jan. 21, 2018), <https://medium.com/@andrae.king1991/get-rich-with-twitch-tips-on-how-to-make-money-streaming-e18a0e2397cd>.

⁸⁴ Kevin Breuninger, *This 13-year-old is the youngest professional 'Fortnite' Gamer*, CNBC TECH (May 8, 2018), <https://www.cnn.com/2018/05/08/this-13-year-old-is-the-youngest-professional-fortnite-gamer.html>.

⁸⁵ *Id.*

eSports is vastly different from traditional sports in regards to the physical attributes necessary to be a top-level athlete, and the NCAA has failed to address the fact that eSports athletes can find success at a young age. Like Kyle Jackson or Justin Morales, many young players find themselves performing at the top level many years prior to going to college and gain a following on streaming platforms.⁸⁶ Under NCAA regulations, for athletes to be eligible as an amateur they cannot have earned an income at any point in the past or present.⁸⁷ As a result, these young entrepreneurial eSports athletes would be forever barred from playing in collegiate eSports under the current NCAA governing body of eSports before they even reached college age.

These regulations not only affect the ability of an eSports player to stream gameplay, but also it affects their ability to make themselves relevant in the industry and become a professional following graduation. One of the most important things an aspiring eSports athlete can do is gain a following and become well known in the community in which they play. This allows eSports organizations to become familiar with the players and their skill and hopefully lead to a sponsorship. Applying NCAA regulations to collegiate eSports would drastically reduce a player's ability to build a brand and following prior to playing on a college team.

IV. NCAA GUIDELINE CONFLICTS WITH VIDEO GAME MODELS

Generally, competitive video games have two dominant playlists: casual and ranked. Casual consists of an unranked playlist that is predominantly players that play the game for fun and on a very casual level, hence the name. On the other hand, ranked is a place for competing in an effort to climb the ranked leaderboards and achieve the highest rank possible. Winning in either of these playlists results in an increase in a player's matchmaking ranking ("MMR").⁸⁸ Increases in MMR are not dictated by how well a player plays, rather they are solely based

⁸⁶ *Id.*

⁸⁷ SUMMARY OF NCAA REGULATIONS, *supra* note 48.

⁸⁸ Grand Champion, *How MMR and the Ranking System Works*, REDDIT, https://www.reddit.com/r/RocketLeague/comments/8qvbwf/how_mmr_and_the_ranking_system_works/ (last visited Nov. 18, 2019).

on whether the player's team won or lost the match.⁸⁹ Developers implement MMR's as a way of matching players of similar rank with each other, allowing for an even progression of skill and avoiding unfair matchups between players and teams.⁹⁰ MMR in video games functions similarly to varying divisions in college and professional sports.⁹¹

Naturally, as a player's MMR increases the player competes against better players, and if they get to the top few percent of the players in the game, they have the possibility of playing against a professional player. For example, the top rank in Rocket League is "Grand Champ," and if you are an aspiring eSports athlete this is the rank that is essentially a prerequisite to being noticed in the competitive circuit. As discussed above, age is generally immaterial to that player's ability to perform well and achieve the highest rank, or MMR, in a particular game.⁹² As a result, there are many players in a particular game that have played against professional eSports athletes and by no choosing their own. Rather, it is merely a product of the competitive system in many games hoping to break into the eSports circuit.

This system leaves aspiring players out of compliance with NCAA guidelines.⁹³ NCAA amateurism eligibility requirements prevent student-athletes from becoming eligible if they have played with a professional athlete prior to or during their time at college.⁹⁴ One of the biggest problem with this requirement is that, in the case of video games, it is out of the control of the player who the player is matched against. When players enter a queue for a match, they do not get a choice of who to play, rather, it is randomly decided by the matchmaking system

⁸⁹ *Id.*

⁹⁰ *How Does the MMR Work?*, LEAGUE OF LEGENDS, <http://forums.euw.leagueoflegends.com/board/showthread.php?t=1231895> (last visited Nov. 18, 2019).

⁹¹ Justin Berkman, *What Are NCAA Divisions? Division I vs 2 vs 3*, PREP SCHOLAR (Aug. 22, 2015), <https://blog.prepscholar.com/what-are-ncaa-divisions-1-vs-2-vs-3>.

⁹² *See NRG's jstn about proving his critics wrong*, ROCKETEERS (June 9, 2018), <https://rocketeers.gg/interview-nrg-jstn-rlcs-world-championship/>.

⁹³ SUMMARY OF NCAA REGULATIONS, *supra* note 48.

⁹⁴ *Id.*

designed by the game developer.⁹⁵ By contrast, players competing in traditional collegiate sports are matched to others in a given league that can be identified prior to competing.⁹⁶

Similar to the income revenue requirement hindering an eSports player's ability to stream or post their gameplay, restrictions on who a player can play with will have detrimental effects on their ability to grow and become relevant. Because the competitive video game model is not in step with the model of traditional sports, the same NCAA guidelines cannot possibly be the answer to the absence of true regulation in collegiate eSports. NCAA eligibility requirements are ill-equipped to address the complex nature of different video game designs of the twenty-first century because they are based off of requirements made in the early 1900s.⁹⁷ As a result, the NCAA's amateurism guidelines would force eSports athletes to choose between retaining their eligibility going forward or to earn money through the sport.

Immunizing eSports athletes from the prohibition on competing against professionals is a necessity if eSports is to be regulated at the collegiate level by the NCAA or similar governing body. Restricting eSports players from professional competition would require extensive and likely expensive changes to video game designs. Players at a young age aspiring to play on a collegiate team and get a scholarship would have to be extremely diligent in avoiding playing with any professional player, which is often out of the control of the player. This is where the game developers come in. Restricting play with professionals must come from the side of the developers and would call for special game modes that exclude professionals, which would require a system to be in place that recognizes professionals and puts them into their own playlist. This is unrealistic, however, because this would be costly and unduly burdensome on the players and game developers.

⁹⁵ See Rexas, *Video Game Matchmaking: A Data-Driven Take from Blizzard*, DIGITAL INITIATIVE (Apr. 9, 2018), <https://digit.hbs.org/submission/video-game-matchmaking-a-data-driven-take-from-blizzard/>.

⁹⁶ See Michael Felder, *How Is a College Football Schedule Made?*, BLEACHER REP. (Sept. 27, 2012), <https://bleacherreport.com/articles/1350023-how-is-a-college-football-schedule-made>.

⁹⁷ *National Collegiate Athletic Association*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/National-Collegiate-Athletic-Association> (last visited Nov. 18, 2019).

V. ADDRESSING NCAA REGULATION CONFLICTS IN COLLEGIATE ESPORTS

One of the biggest barriers to regulating eSports is public unwillingness to accept eSports as a legitimate industry with career opportunities, which in turn obstructs the regulation of eSports.⁹⁸ Rapid growth in the eSports industry suggests that it is no longer merely a hobby; rather, eSports can lead to a successful career that merits widespread respect like traditional sports careers. Serious growth in the eSports industry and the spread to collegiate sports programs means that this industry can no longer be ignored and requires accommodating regulation.

Additionally, eSports' consumers represent key advertising demographics that generates substantial advertising revenue.⁹⁹ Access to this diverse and key demographic has encouraged large advertisers to start sponsoring major events. State Farm recently partnered with Psyonix to sponsor season five of the Rocket League Championship Series with viewership in the tens of thousands.¹⁰⁰ Other large name companies have also stepped into the market of eSports including Brisk, Mobil 1, 7 Eleven, and Old Spice.¹⁰¹ Computer hardware companies, like

⁹⁸ For an example of public unwillingness to accept eSports as a legitimate industry, see Vlad Savov & Sam Byford, *Can Video Games Be Sports?*, THE VERGE (July 11, 2014), <http://www.theverge.com/2014/7/11/5890907/can-videogames-be-sports>.

⁹⁹ In the United States, 60% of eSports viewers are between 21 and 35 (43% male and 17% female). NEWZOO, GLOBAL 2018 ESPORTS MARKET REPORT (2018), <https://newzoo.com/solutions/standard/market-forecasts/global-esports-market-report.pdf>. In addition, 52% of eSports viewers are married, and eSports viewers are more likely to be employed full-time than the general population. *Id.* at 4–5, 7.

¹⁰⁰ *State Farm® Joins The RLCS For Season 5*, ROCKET LEAGUE, <https://www.rocketleagueesports.com/news/state-farms-joins-the-rlcs-for-season-5/> (last visited Nov. 18, 2019).

¹⁰¹ John Gaudiosi, *Brand Sponsors Take Notice As 'Rocket League' Sets New Esports Standard*, A.LIST (May 30, 2017), <https://www.alistdaily.com/strategy/brand-sponsors-take-notice-rocket-league-sets-new-esports-standard/>.

Intel, have tapped into the success of eSports too, having sponsored the Electronic Sports League since 2006.¹⁰²

The problem is that eSports is an industry that exists tangentially to and because of the existence and continued growth of the Internet, which the government has struggled to keep up with and create proficient and adaptive regulations for.¹⁰³ However, many problems that players face are not inherently tied to the Internet or even to the video games themselves, but rather, they are tied to the structures of the collegiate eSports leagues. Ideally, either the eSports structure would change to more similarly reflect the American sports league system, or the NCAA would adapt its regulations to meet the unique differences inherent in collegiate eSports leagues.

One of the biggest hurdles with any regulatory system, but especially with the Internet, is enforcement.¹⁰⁴ In particular, it would be challenging to impose regulations on collegiate eSports leagues and not affect other non-collegiate leagues. Developers would likely be placed in a situation where they have to alter their game to conform to NCAA regulations because, as stated earlier, the models do not align. Specifically, the NCAA would have to target its regulations at collegiate leagues and programs with new regulations drawing a line that properly accounts for the inherent differences between traditional sports and eSports.

This note proposes three possible solutions that would allow the eSports industry to be properly regulated without impeding growth or requiring new bylaws every time a new game enters the eSports circuit: (1) creating a new collegiate regulatory body solely dedicated to eSports (similar to, if not, the NACE); (2) leaving the regulations to the individual universities; or (3) carving out specific exceptions to the current NCAA regulations.

¹⁰² Andrew Meola, *The biggest companies sponsoring eSports teams and tournaments*, BUS. INSIDER (Jan. 12, 2018), <https://www.businessinsider.com/top-esports-sponsors-gaming-sponsorships-2018-1>.

¹⁰³ See, e.g., Patrick Ryan & Max Senges, *Internet Governance Is Our Shared Responsibility*, 10 J.L. & POL'Y FOR INFO. SOC'Y 1, 4 (2014).

¹⁰⁴ See Shamoil Shipchandler, *The Wild Wild Web: Non-Regulation as the Answer to the Regulatory Question*, 33 CORNELL INT'L L.J. 435, 453 (2000).

A. CREATING A NEW COLLEGIATE REGULATORY BODY

The vacancy left by the NCAA in collegiate eSports regulation has been filled by non-regulatory bodies such as NACE, Collegiate Starleague (“CSL”), American Collegiate ESports League (“ACEL”), and TESPA.¹⁰⁵ Each requires certain eligibility requirements to be met in order to compete. For example, TESPA requires a valid school email address in order to sign up and play in any TESPA sponsored tournament.¹⁰⁶ However, a potential pitfall is the fact that school accounts are not valid representations of student status because school faculty, professors, other staff, and prior students may hold school email addresses as well. TESPA states in its bylaws that it requires “certified proof” of enrollment for players that become finalists in its tournaments but fails to state what exactly qualifies as “certified proof.”¹⁰⁷

CSL has also set out standards that student-athletes are required to meet prior to becoming eligible for tournament play. Student-athletes must be enrolled full-time in a university and be in good standing.¹⁰⁸ Unlike TESPA, CSL gives faculty the ability to request transcripts from players to authenticate their status as a student enrolled at a legitimate collegiate institution.¹⁰⁹ Additionally, sanctions can be imposed if a student-athlete fails to provide transcripts when requested.¹¹⁰

Alternatively, students can create their own organizations, such as ACEL. ACEL is a non-profit organization wholly run by

¹⁰⁵ TESPA is the leader in collegiate eSports on campus and on the competitive stage. *See* TESPA, <https://tespa.org/> (last visited Nov. 18, 2019); *Championing Collegiate Esports Nationwide*, NACE ESPORTS, <https://nacesports.org/> (last visited Nov. 18, 2019); *HAPPENING NOW*, COLLEGIATE STAR LEAGUE, <https://www.cstarleague.com/> (last visited Nov. 18, 2019).

¹⁰⁶ *Eligibility from Tespa Tournaments-Rules*, TESPA, <https://compete.tespa.org/tournament> (last visited Nov. 18, 2019).

¹⁰⁷ *Id.*

¹⁰⁸ *Season Guide to CSL Fall 2019 - Spring 2020, League of Legends*, CSTAR, <https://cstarleague.com/lol/rules> (last visited Nov. 18, 2019).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

students.¹¹¹ ACEL has created a conference system that allows students to face off against other students that are near them geographically.¹¹² A quick look at the eligibility requirements make clear that the ACEL has minimal requirements for students to join and subsequently compete. For example, for a student to compete in a League of Legends tournament in the ACEL league, they must be at least 17 years of age, be enrolled at a school and be in good standing, have an eligible League of Legends account, play on their main accounts¹¹³, and have at least five players and one coach. While the ACEL does require students be in good standing, it fails to provide protections or rights to the players within the league and are still at the mercy of the game developers, rather than the league.¹¹⁴

Finally, NACE is likely the most restrictive and most regulatory-like organization currently in collegiate eSports. In addition to requiring a student-email as proof of a status as an enrolled student and for the student to be in good standing, NACE also requires minimum standardized test scores in order to qualify.¹¹⁵ Particularly, NACE requires a minimum ACT score of 18 or SAT score of 860.¹¹⁶ Grade point averages must be greater than a 2.0 on a standard 4.0 grading scale.¹¹⁷ Lastly, NACE limits a player's time in the league to a total of 5 seasons, which comes to 10 semesters at a university.¹¹⁸

As convenient as these organizations may be, they fail to truly provide students with uniform protections and regulatory oversight. One possible solution is the creation of a totally new organization that properly distinguishes from traditional sports

¹¹¹ *What is ACEL?*, AM. COLLEGIATE ESPORTS LEAGUE, <https://www.acelesports.org/about/> (last visited Nov. 18, 2019).

¹¹² *Id.*

¹¹³ Often times players attempt to “smurf” by playing on accounts that display a rank that is lower than their true rank. *See* Anna Ward, *What does ‘smurfing’ mean?*, DAILY DOT (Sept. 1, 2019), <https://www.dailydot.com/parsec/what-is-smurfing-gaming/>.

¹¹⁴ ACEL, OFFICIAL LEAGUE OF LEGENDS HANDBOOK, Art. 1 § 1.2 (2018), <https://docs.google.com/document/d/1AZqCJ7tk-ag7hqkcJfivesmo1hqGRbjdQMMZOIPqtCw/edit> (last visited Nov. 18, 2019).

¹¹⁵ NACE, ESPORTS OFFICIAL POLICY HANDBOOK, Art. 2 (2016), <http://nacesports.org/wp-content/uploads/2017/02/NAC-eSports-Constitution-Bylaws-9-29-2016-1-1.pdf>.

¹¹⁶ *Id.* at § B(2)(a).

¹¹⁷ *Id.* at § B(2)(b).

¹¹⁸ *Id.* at § C(1).

and eSports, while providing for a forum that creates uniformity. A unique obstacle in eSports—due to its very nature being tied to the Internet—is the intangibility of the sport and the fact that players are able to communicate and play with players all over the globe. The United Kingdom has NUEL with approximately 3,000 students and prospective growth moving forward.¹¹⁹ Oceania has UniGames with approximately 26 teams and 150 students, and Malaysia Campus League with approximately 771 teams and 6,000 students.¹²⁰

Understandably, collegiate eSports is international and calls for an organization able to interact with the organizations of other countries. This type of oversight would likely need the intervention of the government to some capacity; and because of this, the collegiate organizations are not capable of proper regulation as non-governmental entities. An organization separate from game developers and players would allow for uniformity and address the present difficulties if the NCAA were to step in and regulate under its current model. Therefore, the new organization, to some degree, would require government oversight.

B. INDIVIDUAL UNIVERSITY OR CONFERENCE REGULATION

The second potential solution is for the NCAA to relinquish all control and let each university oversee regulation of their eSports programs. Essentially, the suggested model would give full discretion to each university to decide their rules in isolation from the NCAA or other collegiate sports entities. Ideally, this keeps players from being completely barred, even if a particular university has guidelines similar to the NCAA, there will be other universities without those requirements where the student athlete's entry will not be barred.

This idea has been suggested in the form of leaving regulations to conferences of schools, rather than individual schools, but the same idea would apply: each conference/institution would have full discretion in implementing the rules

¹¹⁹ Manny Anekal, *Asia Ahead Of The US in Collegiate Sports*, BUS. INSIDER (Jan. 12, 2018), <https://medium.com/tnlmedia/asia-ahead-of-the-us-in-collegiate-esports-9b762166e52c>.

¹²⁰ *Id.*

and regulations that they deemed necessary.¹²¹ For example, Ohio State University, one of the country's largest and most sports driven universities, has pushed into the eSports arena and the NCAA has yet to step into the picture.¹²² Ohio State has announced it will be building a dedicated arena, integrated curriculum involving five colleges and research initiatives aimed to bolster gaming performance.¹²³ The new program will not be housed under the school's athletics department and as a result, it would be out of the reach of the NCAA should they decide to step in and regulate.¹²⁴ Ohio State recognizes the inherent differences with eSports and traditional sports, because eSports athletes are faced with the reality that they gain prominence in their teens and occupy a space between competitors and entertainers.¹²⁵ Other universities have followed suit by stationing their eSports programs in their academic departments, rather than their sports departments, including, Miami University, the University of Utah, and the University of California, Irvine.¹²⁶

The Pac-12 created an eSports conference called the Pacific Alliance of Collegiate Gamers (PACG), which is a collective organization of universities devoted to planning and hosting eSports events for big titles, including—League of Legends, Hearthstone, and Overwatch.¹²⁷ PACG includes student led organizations at the University of Arizona, Arizona State University, the University of California, University of Oregon, Stanford University, Oregon State University, University of California, Los Angeles, University of Southern California, and

¹²¹ See Bill Connelly, *College football regulation! Here's how conferences would change for 2016*, SB NATION (May 5, 2016), <https://www.sbnation.com/college-football/2015/2/24/8052475/college-football-relegation-promotion-conferences-LIKE-SOCCER>.

¹²² Noah Smith, *Ohio State is latest power conference school to embrace esports while NCAA sits idle*, WASH. POST (Oct. 11, 2018), https://www.washingtonpost.com/sports/2018/10/11/ohio-state-is-latest-power-conference-school-embrace-esports-while-ncaa-sits-idle/?utm_term=.efa3c2f72daa.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Jacob Wolf, *Pac-12 student groups form independent esports league*, ESPN (Jan. 31, 2018), http://www.espn.com/esports/story/_/id/22273704/pac-12-student-groups-form-independent-esports-league.

Washington State University.¹²⁸ The hope behind the creation of PACG was to provide a student-driven, competitive eSports league to further legitimize collegiate eSports and elevate the schools involved.¹²⁹ Some of the schools offer scholarships to eSports student-athletes in exchange for playing on their team and representing the school in league tournaments or other similar events.¹³⁰

Riot Games, the creator of the most popular video game in the world, *League of Legends*, stated that it supports the PACG, and it wants current high school freshman to know they can play the game and be officially supported by their school of choice in four years.¹³¹ A big push behind the conferences' moves is to challenge the stereotype that gamers are unmotivated individuals; to counter this, they give scholarships to the student applicants that excel in their particular video game field that the school currently hosts.¹³²

While this is merely a start and only encompasses less than a dozen schools, it is a hopeful start to what could be the solution to the absence of regulation in eSports. Ideally, conferences will create their own regulations that colleges under their oversight would be mandated to comply with. Naturally, the universities would be more in touch with the student population, as opposed to the NCAA, and therefore be more representative of the needs of the students, rather than hiding behind the idea that amateurism requirements are a bedrock principle to the success of collegiate sports. This would give students a realistic expectation of the rights and protections they would have at a university in an eSports setting, which would be more apt to handling the unique obstacles that can arise in eSports and the internet.

Obvious benefits of this include school freedom to implement or amend rules to most benefit their students. Additionally, the programs, similar to Ohio State's model, would be made specifically for eSports, as opposed to being in the

¹²⁸ *Id.*

¹²⁹ Rylee Kahan, *PACG: The Future of College Esports*, DAILY EMERALD (Feb. 25, 2018), https://www.dailyemerald.com/news/pacg-the-future-of-college-esports/article_c989848f-3e93-5b01-bf68-17933401635b.html.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

athletics department. Not only does this avoid any potential NCAA regulation, but more importantly, it is overseen by a program that is devoted to eSports alone. As a result, the university would be more likely to take into consideration the current problems with NCAA guidelines being imposed on eSports. University of Utah even used Twitch during one of the tournaments to stream the gameplay, so surely universities would be understanding of individual players desire to stream their own content as well.¹³³

The downside, of course, would be the lack of uniform regulation and standards across the nation. Likely, this would lead to some universities lowering their standards to attract students and inevitably lead to schools poaching students or other similar anticompetitive behavior. Activity such as this would be frowned upon as failing to preserve the important and revered concept that student-athletes are students first and athletes second. While addressing the unique hurdles of eSports is important, the primary reason schools exist is to educate their students. This idea should be preserved and remain untarnished by the opportunities that are indeed available through various sports programs, which is the argument that the NCAA has historically used to block compensation for collegiate athletes. Of most importance is for the schools to maintain strong academics while still providing for appropriate regulation of eSports.

C. CARVING OUT NCAA BYLAW EXCEPTIONS FOR ESPORTS ATHLETES

A final solution involving the NCAA is also possible. In large part, the issue with the NCAA stepping in as the primary regulatory body for eSports is not the NCAA's ability to implement, but rather the language of certain bylaws themselves. As previously mentioned, the primary issue here is the bylaws' unalignment with the eSports model. Specifically, the amateurism eligibility requirements that do not allow previous sponsorship, playing with professionals, or making revenue from sports. Generating revenue through streaming or video uploading sites

¹³³ University of Utah Esports (@UniversityofUtahEsports), TWITCH, <https://www.twitch.tv/universityofutahesports> (last visited Nov. 18, 2019).

like Twitch and YouTube, specifically, is of the utmost concern when protecting players' rights.¹³⁴

Collegiate sports are predicated on the idea that the athlete is working towards being drafted and “going pro.”¹³⁵ However, the typical route of going pro in eSports is through sponsorships by individual eSports organizations, rather than a large organization, that facilitates a means of drafting student athletes, such as the NFL.¹³⁶ As a result, eSports players aspiring to be professionals require exposure to the community to become known by the eSports organizations that have teams in that particular gaming community.¹³⁷

Implementing NCAA guidelines that strictly prohibit the means by which eSports players become known and potentially sponsored are not realistic. Exceptions must be made in order to account for the lack of a systematic way of drafting talented eSports student-athletes. Allowing for specific types of activity that are essential to the success of eSports athletes would allow an even playing field for student athletes and non-student athletes that are all competing for the limited spots on eSports organizations.

In fact, sponsorships by eSports organizations are much more common with younger players, relative to traditional sports. Accordingly, the NCAA guidelines have to be accommodating to this difference. Sponsorships are one of the biggest ways for players to gain exposure in a community and it cannot be understated how critical exposure is to be a professional player in the eSports circuit. Likewise, the guidelines would merely need to exempt eSports players from this particular eligibility requirement.

¹³⁴ SUMMARY OF NCAA REGULATIONS, *supra* note 48.

¹³⁵ *National Football League Draft*, WIKIPEDIA, https://en.wikipedia.org/wiki/National_Football_League_Draft (last visited Nov. 18, 2019).

¹³⁶ *The Rise of the Sponsored Professional Gamer*, SPORT TECHIE (Jan. 30, 2018), <https://www.sporttechie.com/rise-of-the-sponsored-professional-competitive-gamer/>.

¹³⁷ See Ben Fischer, *Esports players have less endorsement freedom*, STREETS AND SMITH'S SPORTS BUS. J. (May 28, 2018), <https://www.sportsbusinessdaily.com/Journal/Issues/2018/05/28/In-Depth/Endorsement.aspx>.

Arguably the most controversial requirement of amateurism is the complete bar on being paid for the player's likeness or image related to the sport they participate in.¹³⁸ Because a player's online presence is an essential component of a player's exposure in eSports, it is necessary to carve out an exception for streaming or posting one's gameplay on sites like Twitch and YouTube.¹³⁹ Respecting the sport and a student-athlete's position as a student first and foremost is understandable and therefore the solution offered is in an effort to preserve this idea. The rules would allow for eSports student-athletes to stream and earn revenue; however, any revenue must be placed in an escrow account or similar alternative account that is not available until post-graduation.¹⁴⁰ Similarly, the rules could allow for revenue earning that must go towards school expenses and would reduce the amount of scholarships given for the total compensation capped at the cost of attendance, with any additional revenue going into an escrow or similar account that is not available until after graduation. Thus, preserving the revered idea that student-athletes are students first, requiring that academics come first, while also allowing for student-athletes to grow their online presence and increase their chances of being sponsored by an eSports organization.

From an economic standpoint, this would be a relatively cost-free option that would properly address the major pitfalls in the NCAA regulations currently being implemented in collegiate eSports. If successful, this could be implemented across every category of sports under the NCAA umbrella. Additionally, the NCAA would have the means necessary to institute uniform and national regulations on all colleges that institute eSports programs.¹⁴¹ Simultaneously, this would keep individuals desiring to go the educational route to professional play on even footing with players that opt to forego school and stream or upload videos full-time.

¹³⁸ NAT'L COLLEGIATE ATHLETIC ASS'N, 2019-20 NCAA DIVISION 1 MANUAL, Art. 12.01 (2019), <http://www.ncaapublications.com/productdownloads/D120.pdf> [hereinafter NCAA BYLAWS].

¹³⁹ See Zac Dudzik, *THE ULTIMATE GUIDE TO GAMING SPONSORSHIPS*, ROGUE ENERGY (Sept. 15, 2018), <https://therogueenergy.com/blogs/news/the-ultimate-guide-to-gaming-sponsorships>.

¹⁴⁰ See, e.g., CAL. FAM. CODE §§ 6750–53 (West 2018).

¹⁴¹ NCAA BYLAWS, *supra* note 138.

CONCLUSION

Still in its emerging stages, eSports is poised to surpass many traditional sports in viewership via marketing and revenue. Although game developer-owned leagues have helped to pioneer this success, they have created an environment where players are without true regulation, and as a result are without protections and rights. Even NACE, which has forged a start in the regulation and oversight of the collegiate eSports, does not truly oversee the collegiate eSports. Rather, it is one of the few organizations that has the power to oversee the leagues they create and their members but has no authority outside of those leagues. At the same time, it is unrealistic to task game developers, such as Psyonix, with the responsibility of giving players favorable terms for playing their games. The problem with the eSports industry is not that the collegiate eSports leagues or developers themselves are corrupt; the problem is that the players have no significant way to advance their own interests or rights, and those would be hindered if the NCAA, as is, takes over regulations.

Notwithstanding the lingering disbelief over eSports as a legitimate for-profit business, the increasing interest by companies like Amazon suggest that it is becoming a major source of entertainment and one that demands proper regulation. Any of the three proposed solutions discussed in this note—to create a new collegiate regulatory body, carve out NCAA bylaw exceptions for eSports athletes, or individual university or conference regulation—would create a better and more reliable working environment for eSports players and safeguard a position for eSports as an established industry. As discussed, perhaps the most viable option requires the NCAA to carve out exceptions to the current bylaws for eSports players because the NCAA has the power and authority to implement strong and uniform regulation across the nation.

At the end of the day, the game developers and what conferences do exist are the ones that provide the backdrop of competitive collegiate eSports. Regulation, to some degree, is necessary to ensure the success of the eSports industry within college sports. However, the restrictions placed on eSports and the players must be limited in scope and measures to maintain the integrity of video game models and freedom from infringing upon the developers' freedom and ability to design the game they desire. Game developers are driving the eSports scenes and

without popular competitive games, there would be no collegiate eSports or eSports at all. With that in mind, oversight ensures the rights of the players are protected in an environment where their power is limited.