

ANALYSIS SPORT

Legal and Technical Issues Galore as Esports Continue to Grow Rapidly in India

As one of the fastest-growing esports markets globally, India is estimated to see a total economic impact of over Rs 100 billion through investments, direct industry revenues and in-app purchases in the next few years.



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A gamer playing 'Call of Duty'. Photo: Unsplash

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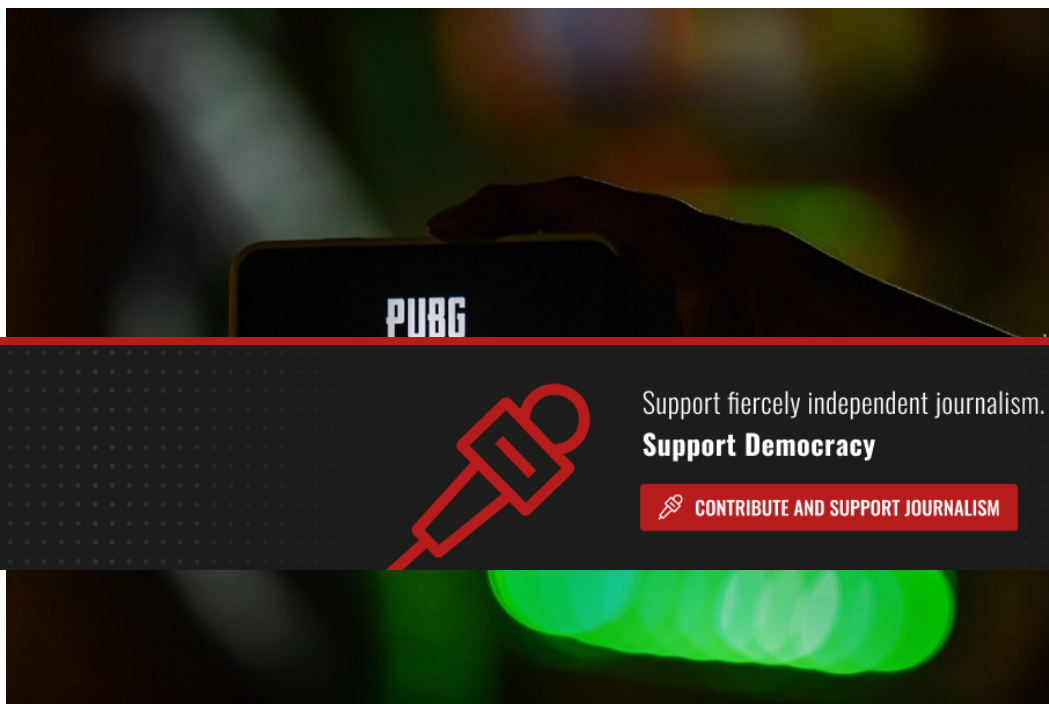


and the mobile revolution, like everything else, sports has also moved online.

And “esports” have turned online gaming into a **spectator sport**.

What are esports? Basically, according to the *Oxford Advanced Learner’s Dictionary*, an esports is “a video game played as a competition for people to watch as entertainment”. They replicate the experience of watching a professional sporting event, except instead of watching a physical event, spectators watch video gamers or e-athletes compete against each other. A 2019 *Forbes report* suggests that the viewership of traditional sports is on the decline while esports’ viewership is on the rise. In 2022, there were 532 million esports **viewers worldwide**.

It is no surprise that the esports scene in India is also on the rise. BGMI, PUBG, Call of Duty, Tekken 7, DOTA 2, FIFA are amongst the more popular esports in India. On December 27, 2022, the government of India integrated esports with traditional sports disciplines and recognised it as part of a ‘multisport’ event. Thus, esports in India now come under the Ministry of Sports and Youth Affairs. India is one of the fastest-growing esports markets in the world.



A man opens the PUBG app on his mobile phone after the government blocked 118 more mobile applications on September 2. Photo: PTI

According to an EY **report**, esports will generate a total economic impact of over Rs 100 billion through investments, direct industry revenues, in-app purchases and other revenues and create more than 11,000 direct and indirect jobs by 2025.

Recently, the Indian DOTA 2 squad won a bronze medal at the Commonwealth Esports Championship. There are several such esports tournaments organised every year on an international level in which India participates. For instance, the upcoming Asian Games will host esports as a **recognised medal event**. According to FICCI-EY Media and Entertainment Report 2022, the number of esports players doubled from 3,00,000 in 2020 to 6,00,000 in 2021, and esports revenue grew by 29% from Rs 7.5 billion in 2020 to Rs 9.7 billion in 2021. It is **estimated** that the number of esports players will reach one million in 2022, out of which 20% would be women.

It is often seen in traditional sports that players become a brand in themselves and thus generate a lot of revenue. The esports arena is no different. With the esports industry flourishing in India like the traditional sports industry, it is natural for e-athletes to generate traction and revenue.

In traditional sports, players usually have managers to help make sophisticated business decisions and navigate through legal situations. Earlier most professional esports players

esports organisations in India to participate in leagues and tournaments. However, the lack of regulatory bodies often causes problems for e-athletes in understanding and securing their rights in a contract.



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Initially, esports players were mostly covered under contract law because their only form of revenue came from tournament winnings. With time, teams have increased their control over players, their conduct and even their brand management and consequently, esports player contracts often take the form of an employment contracts.

For anyone who is well acquainted with the esports industry would know that organisations/teams and their investors profit from esports, however, it is not clear how the players benefit. The popular belief is that esports players live in luxury but the reality is very different. Professional esports players often have limited bargaining power and leverage when negotiating a deal. For instance, Cloud9 arbitrarily removed Zachary “Sneaky” Scuderi from their starting roster and required him to compete for his starting spot.



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File photo. Sneaky playing during the 2015 North America League Championship Summer Split — Week 6, Day 2. Photo: Wikimedia Commons/YinChannel.

Accordingly, professional esports players should be more careful while collaborating with an esports organisation/team. Let us take a look at some of the key clauses in an esports player contract.

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contract, i.e., whether it is an employment contract or a contract that is used for appointing a genuinely self-employed individual such as a consultant (or a profession or business run by that individual) to carry out services for another party

where the relationship between the parties is not that of employer and employee or worker. It is even more important to state who the parties are so that no subsidiaries/sister companies are latently added to the contract and subsequently, the player is obliged to 'n' number of parties. Further, it is vital to state clearly what is it that the parties are negotiating and entering into a contract for. Sometimes player contracts with an esports organisation are discreetly and often ignorantly clubbed with brand and sponsorship agreements without the clear knowledge and understanding of the player. The player should know what the subject matter of the deal is and should not be duped into signing a contract.

For instance, it should be clearly stated that *“Organization X and the Player are desirous of entering into this Agreement to record the terms and conditions on which the Player shall engage in e-sports tournaments under the name and style “Organization X” in consideration for Organization X agreeing to allow the Player to participate as a part of the Organization X team as per the terms and conditions set out herein.”*

2. Brand endorsements and sponsorships. The terms of the contract should clearly state whether it is a player agreement or an agency agreement to handle the brand endorsements and sponsorships of a player or both. An agent is a person who carries a fiduciary relationship with the player in which he serves a significant role in negotiating contracts of the

a deal with an organisation such as content creation, streams, sponsorships et cetera. Reportedly, these additional incentives make the deal more attractive for them.



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Ideally, agency agreements should be separate from player agreements. Such agency agreements are independent contracts that do not require an employer-employee relationship and thus, offer a player more freedom and flexibility. Just as traditional sports players can sell their name, image, or likeliness to a company for advertising, so can e-athletes. Therefore, it is imperative to understand the motivations of the parties to the contract. Players should have the freedom to choose their agent/manager when it comes to choosing brand endorsements and sponsorships. They should not be coerced into a brand and sponsorship contract with an organisation as a compulsory tie-in arrangement.

For instance, Call of Duty League (“CDL”) star, Seth “Scump” Abner, **alleged** that the CDL forced him to sign a contract without having a lawyer review it before he could compete in a tournament and was fined for doing a sponsored stream on his personal Twitch channel.

Also read: [To Better Govern the 1%, Centre’s Regulations Complicate Gaming for the 99%](#)

Further, Athena, a popular “Rocket League” streamer for Team Envy, **reported** that another common practice is for organisations to set themselves up as exclusive agencies for their players and then take substantial percentages of revenue the players bring in through sponsorships and ad deals.



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of deals it sourced for Tenney. FaZe Clan **disputed** that it ever withheld Tenney’s money according to those percentages.

Player trading to another team/organisation without their knowledge and consent further complicates this system. Thus, players must pay attention to this while entering into a contract.

3. Needless to say that the duties and obligations of the player must be clearly stated in a contract along with the term of contract and consideration (including performance incentive and bonus) that he/she is entitled to receive and the arrangement through which such consideration will be paid to the player.

Earlier it was common in esports for team owners or tournament organisers to **not pay their players adequately**. In some instances, esports teams have gone as far as running competitive teams while in debt, seeking merger and acquisitions to pay off debts. However, organisations/teams are much more organised and professional now. Still, it is imperative to categorically state the player's fee and other benefits in the contract.

4. Intellectual property and moral rights. The World Intellectual Property Organization (“WIPO”) has described the complexity of video game Intellectual Property rights by stating that “[v]ideo games are complex works of authorship – containing multiple art forms, such as music, scripts, plots, video, paintings and characters – that involve human interaction while executing the game with a computer program



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rights qua streams, player's appearances at events, content created during the course of employment by the player for the organisation, player characteristics et cetera, by making

players their employees. Section 17 of the Copyright Act, 1957 provides –

Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein: Provided that – (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;



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(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall,

in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

Further, such contracts include a clause which reads "*The Player hereby waives, to the fullest extent permissible by law, all moral rights to which he is or may become entitled under applicable laws in relation to his performance of this Agreement.*"

It is imperative to note that such waiver of moral rights is impermissible under the Indian Copyright law.

Section 57 of the Copyright Act, 1957 deals with the Author's special rights, whereby under sub-section (1) (b), independent of the author's copyright and even after the whole or partial assignment of such copyright, an author shall have the right "to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation".

Thus, even if a player, as an author or performer of a work created under the contract, assigns all intellectual property

management clause that should be included in their contract to protect them from prolonged benching by their team/organisation. In the case of *F.S. Global Services Ltd. v. Mr. S Roy 2008*, the Bombay High Court stated that if there is a



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prolonged benching by a team of its player(s) without specifying any reasons as to the same, then that would be considered as a restraint of trade and a valid reason for termination of the contract.

6. Cooling period. If a player terminates a contract, organizations/teams often ask them to not represent any other team/organisation for unreasonable amounts of time such as 100-120 days. A standard cooling period clause reads as *“If player chooses to leave the organization between 1st and 2nd year, “Player” shall give a written 30 (thirty) days’ notice to the organization and a 120 (one hundred twenty) days of cool-down period (Player cannot represent any other eSports Organization/team/banner) will be imposed.”*

Professional e-athletes become brands over time. Many viewers follow professional players through competitive tournaments much like traditional sports. However, with the rise of digital platforms such as Twitch, YouTube players also gain traction from online streaming. Often the broadcast viewers show up not to watch particular games, but because they like the person playing the game in any case, halting a player’s career for almost four months is an unreasonable restraint of trade. Esports’ tournaments are scheduled on a seasonal basis and asking a player to not represent any other team/organisation for four months and thus, not restraining their earning capacity for almost a season is unreasonable and grossly unfair. Cooling period should be reasonably negotiated



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representation is made, that is given to induce another party to enter into a contract or take some other action. A **warranty** is a promise of indemnity if the assertion is false.

Indemnification or indemnity is an undertaking by one party to pay for potential losses or damages caused by another party.

Ideally, in all contracts, the representations and warranties clause, and the indemnity clause should be mutual for both parties so that no one party is made liable unreasonably. For instance, if a player indemnifies an esports organisation/team against all losses, damages, costs, claims and expenses then the organisation/team should also indemnify the player against loss of reputation, damages et cetera.

This will protect the interest of both parties involved.

Indian esports is a big professional setup now and thus deals between esports organisations/teams and players should not be one-sided but equal where both parties have equal bargaining power. E-athletes rightly demand some decision making power in such deals if not equal power.

8. Termination. Termination clauses, are included in employment contracts. The clause provides a pre-set agreement on what will happen when the employee is terminated in terms of how much notice they get and/or what sort of payment they will receive. A **termination clause** may spell out specific acts or omissions that warrant termination or it may simply make any uncured breach a cause of termination. **Termination clause** in standard contracts provides that a player can be terminated at any time, including during a season, even without cause. Further, such right to terminate is only available

restriction of a cooling period.

Job security is a common and justified requirement of employees across all professions. Lokmanyu confirmed this



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and said that while negotiating a deal, a player fears the termination clause the most, usually per which an organisation can terminate the contract, inter alia, at its will without giving the player sufficient time to make alternate arrangements.

The termination clause must be given to both parties with each party required to give a thirty days' notice to the other. This will better the situation of players who are otherwise suddenly rendered unemployed.

Aishwarya Chaturvedi is an Assistant Professor at Jindal Global Law School.

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