

Notes

CHEATING IN E-SPORTS: A PROPOSAL TO REGULATE THE GROWING PROBLEM OF E-DOPING

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ABSTRACT—E-sports, also known as professional video gaming, is growing rapidly around the world. In the United States, e-sports events sell out at large sporting venues, including the Staples Center in Los Angeles and the Barclays Center in New York. The growth of this multibillion-dollar industry comes with a host of new legal issues. Among them is the regulation of “e-doping”: the use of hacks and cheats during e-sports games, which gives e-dopers an unfair advantage. E-doping compromises the integrity of the industry, which is vital to its continued growth, by discouraging gamers and fans from trusting the fairness of e-sports. This Note discusses a viable path toward global regulation of e-doping in e-sports by an internal governing body modeled after the organizational structure of the Union Cycliste Internationale, the worldwide governing body for cycling.

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NORTHWESTERN UNIVERSITY LAW REVIEW

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INTRODUCTION

In October 2018, Nikhil “Forsaken” Kumawat sat in front of a computer monitor with headphones in his ears and his gaze fixed on the screen.¹ Forsaken’s seat was one of many in a row lined with computers, with Pepsi cans piled up in pyramids behind each monitor.² Big screens covered the walls, displaying players’ game statistics next to their photos.³ Forsaken—a professional video game player⁴—was competing in a video game

¹ CSGO2ASIA (@CSGO2ASIA), TWITTER (Oct. 19, 2018, 7:15 AM), <https://twitter.com/CSGO2ASIA/status/1053258450866589698?s=20> [<https://perma.cc/LTE4-L4UZ>] (showing a video of a competition administrator catching Forsaken, a professional video game player, during a *Counter-Strike: Global Offensive* tournament); see also Stefanie Fogel, *Pro ‘CS:GO’ Player ‘Forsaken’ Receives Five-Year Ban for Cheating*, VARIETY (Oct. 26, 2018, 8:07 AM), <https://variety.com/2018/gaming/news/counter-strike-forsaken-cheating-ban-1202998388> [<https://perma.cc/DFT6-DKPW>].

² CSGO2ASIA, *supra* note 1.

³ *Id.*

⁴ Professional video game players are real—and they earn significant sums of money. See Diego Palma & Jenny Powers, *I’m a 17-Year-Old Fortnite Gamer Who’s Won Over \$646,000 in Two Years Since Going Pro. I Average About 10 Hours of Gaming Daily*, BUS. INSIDER (Apr. 10, 2021, 9:45 AM), <https://www.businessinsider.com/17-year-old-pro-fortnite-gamer-whos-won-over-646000-2021-4> [<https://perma.cc/FG26-YAHQ>]; Matt Perez, *Top-Earning Video Gamers: The Ten Highest-Paid Players Pocketed More Than \$120 Million in 2019*, FORBES (Jan. 29, 2020, 6:00 AM), <https://www.forbes.com/sites/mattperez/2020/01/29/top-earning-video-gamers-the-ten-highest-paid-players-pocketed-more-than-120-million-in-2019/?sh=2bdba21a4880> [<https://perma.cc/A4SA-GJSU>]; Karyne Levy & Kyle Russell, *15 of the Highest-Paid Professional Video Gamers in the World*, BUS. INSIDER (May 28, 2014, 8:35 PM),

tournament. As a competition administrator stood over Forsaken’s seat to check his screen, Forsaken’s hand shot toward his keyboard. The administrator, noticing the movement, tried to stop Forsaken from touching the keyboard, but Forsaken pushed the administrator’s arm away.⁵ Players sitting in the other seats in his row turned to look at Forsaken’s station.⁶ After Forsaken made a few attempts at frantically reaching for the keyboard, the administrator restrained his arms and forced him to stop clicking.⁷

This moment, captured in a Twitter video, changed Forsaken’s career.⁸ Forsaken was a popular professional video game player in an industry called “e-sports.” E-sports describes competitive video gaming in an organized environment, such as the tournament Forsaken participated in.⁹ In e-sports, professional video game players have contracts with different organizations to participate in tournaments and events, just like professional players of traditional sports.¹⁰ Forsaken played for the India branch of an American e-

<https://www.businessinsider.com/15-of-the-highest-paid-professional-gamers-2014-5> [<https://perma.cc/7Q7H-VQZ6>].

⁵ CSGO2ASIA, *supra* note 1.

⁶ *Id.*

⁷ *Id.*

⁸ See Fogel, *supra* note 1.

⁹ Marc Leroux-Parra, *Esports Part 1: What Are Esports?*, HARV. INT’L REV. (Apr. 24, 2020, 6:28 PM), <https://hir.harvard.edu/esports-part-1-what-are-esports> [<https://perma.cc/578K-KLAY>]. “E-sports” and “esports” are often used interchangeably in the industry, and the term is used in both singular and plural forms. This Note uses “e-sports” in the singular form.

¹⁰ See Ford James, *What Is Esports? A Beginner’s Guide to Competitive Gaming*, GAMESRADAR+ (Feb. 13, 2020), <https://www.gamesradar.com/what-is-esports> [<https://perma.cc/KGJ9-KMRC>]. Whether e-sports is considered a sport in the traditional sense, like football, soccer, or baseball, is an ongoing debate. See, e.g., Roundhill Team, *Are Esports Really Sports? Here’s What You Need to Know*, ROUNDHILL INVS. (Feb. 10, 2020), <https://www.roundhillinvestments.com/research/esports/are-esports-really-sports> [<https://perma.cc/J43H-K5JP>] (“While the International Olympics Committee and some of the event’s top athletes may be [wary] of esports, the fact is that competitive gaming is very much a sport, just not in the traditional sense.”); see also Zach Carrabine, *Paris 2024 “GLHF”: Esports’ Quest for Olympic Inclusion*, 26 SPORTS L.J. 229, 233 (2019) (describing how both professional gamers and professional athletes engage in competitions involving competitors with “elite skills”). Because of e-sports’ similarity to traditional sports, ESPN published an article providing a list of e-sports that fans of popular traditional sports would enjoy. Tyler Erzberger, *Missing Traditional Sports? These Esports Could Be Worth a Watch*, ESPN (Mar. 25, 2020), https://www.espn.com/e-sports/story/_/id/28950272/missing-traditional-sports-e-sports-worth-watch [<https://perma.cc/WU2P-R4AA>] (“There’s something for everyone in the world of esports—though they’re all played on a computer or console, esports are as interesting and varied as any traditional sport.”); see also Eric Windholz, *Governing Esports: Public Policy, Regulation and the Law*, 1 SPORTS L. EJOURNAL 1, 9 (2020) (Austl.) (discussing that whether e-sports is considered a sport in the traditional sense is a “much debated and heavily contested question”); John T. Holden, Anastasios Kaburakis & Ryan Rodenberg, *The Future Is Now: Esports Policy Considerations and Potential Litigation*, 27 J. LEGAL ASPECTS SPORT 46, 48 (2017) (explaining how both traditional athletes and professional video game players are “members of teams that ‘are responsible for their training, sponsorships, travel and lodging when playing abroad’” (quoting Joao Pedro Brito Cicio

sports organization, OpTic Gaming.¹¹ But after Forsaken's cheating scandal, which took place during a *Counter-Strike: Global Offensive* tournament,¹² the tournament disqualified his entire team, and OpTic Gaming shuttered its India branch.¹³

During the 2018 tournament, Forsaken had used and attempted to delete an "aimbot" hack.¹⁴ "An aimbot is a type of software tool that automatically aims a weapon when a player wants to shoot an enemy in first-person shooter games."¹⁵ In first-person shooter games such as *Counter-Strike: Global Offensive*,¹⁶ using an aimbot is a form of cheating because the tool gives players an unfair advantage by improving their shooting accuracy.¹⁷ The use of hacks and cheats during e-sports games is called "e-doping"¹⁸ and is also

de Carvalho, Business Models in Professional Electronic Sports Teams 2 (2015) (Master's Dissertation, University of Minho) (on file with journal)). Most states that have recently passed sports-betting legislation incorporate e-sports into the definitions of "sporting event" or "sports event." David A. Bujarski & Michael A. Tomasulo, *Esports Included in Recent Flurry of States' Sports Betting Legalization Bills*, WINSTON & STRAWN (June 28, 2021), <https://www.winston.com/en/the-playbook/esports-included-in-recent-flurry-of-states-sports-betting-legalization-bills.html> [<https://perma.cc/ATG5-QEUR>]. This Note takes no stance on whether e-sports should be considered a traditional sport.

¹¹ See Adam Fitch, *OpTic Gaming Partners with AFK Gaming, SoStronk for Indian CS:GO Team*, ESPORTS INSIDER (May 1, 2018), <https://www.esportsinsider.com/2018/05/optic-gaming-india-csgo-team> [<https://perma.cc/8KLV-7QYN>]; Sonu Banerjee, *Optic CEO Responds to Forsaken CSGO Hacking Scandal*, TALKESPORT (Oct. 14, 2020), <https://www.talkesport.com/news/optic-ceo-responds-to-forsaken-csgo-hacking-scandal> [<https://perma.cc/LLK7-E457>].

¹² Owen S. Good, *CS:GO Pro Caught Cheating Gets Five-Year Ban*, POLYGON (Oct. 25, 2018, 1:00 PM), <https://www.polygon.com/2018/10/25/18023236/forsaken-cs-go-cheating-optic-india-ban> [<https://perma.cc/H8CJ-YT6Q>].

¹³ See Pranav Nalawade, *Optic Shuts Down Multiple International Operations*, TALKESPORT (Nov. 3, 2018), <https://www.talkesport.com/news/optic-shuts-down-multiple-international-operations> [<https://perma.cc/532F-JR39>]; see also Rishi Alwani, *Optic Gaming to Shut Down India Operations: Report*, GADGETS 360 (Oct. 23, 2018, 7:27 PM), <https://gadgets.ndtv.com/games/news/optic-gaming-to-shut-down-india-operations-report-1936440> [<https://perma.cc/MG3E-NWC7>] (explaining that OpTic India was disbanded after Forsaken cheated and that "the organisation as a whole plans to exit India").

¹⁴ Good, *supra* note 12.

¹⁵ *Aimbot*, SPORTSLINGO, <https://www.sportslingo.com/sports-glossary/a/aimbot> [<https://perma.cc/J39P-MF3V>].

¹⁶ In first-person shooter games, which involve combat with weapons, players play "through the eyes of the main character" and teams compete "against each other in multiplayer sessions." Brendan Dewley, *What Games Are Played in eSports?*, LINEUPS (June 5, 2020, 10:08 AM), <https://www.lineups.com/esports/what-games-are-played-in-esports> [<https://perma.cc/PW4C-XBKV>]; *First Person Shooter (FPS)*, TECHOPEDIA, <https://www.techopedia.com/definition/241/first-person-shooter-fps> [<https://perma.cc/B5TM-5FCU>].

¹⁷ *Aimbot*, *supra* note 15.

¹⁸ See *The Continued Rise of ESport—Efforts to Combat Match Fixing and Improve Integrity*, LAWNSPORT (Sept. 2, 2016) [hereinafter *The Continued Rise*], <https://www.lawnsport.com/topics/features/item/the-continued-rise-of-esport-efforts-to-combat-match-fixing-and-improve-integrity> [<https://perma.cc/ZHK3-JS85>]; Pranav Bafna, *Challenges to the Anti-Doping Regulations in Esports*, 2 J. FOR SPORTS L., POL'Y & GOVERNANCE 133, 135 (2020) (India). Examples of e-doping are "macros,

known as “digital doping” or “mechanical doping.”¹⁹ E-doping is difficult to regulate because in e-sports, there is no single governing body that can provide uniform rules like the rules in traditional professional sports.

Traditional professional sports, such as soccer or basketball, generally have a single governing body with the authority to regulate its respective sport. Examples in the United States include the National Football League (NFL), Major League Baseball (MLB), the National Basketball Association (NBA), and the National Hockey League (NHL). These governing bodies implement “self-regulatory processes to govern industry practices.”²⁰ So industry-level organizations, rather than governmental organizations, create and enforce rules for the industry.²¹ Industries, including professional sports, often choose self-regulation because no government regulation yet exists or to avoid excessive government regulation.²² Through self-regulation, businesses can “decrease risks to consumers, increase public trust, and combat negative public perceptions,” and self-regulation provides rules that complement existing laws.²³

In contrast to traditional professional sports, the e-sports industry does not have a uniform solution to prevent or punish e-doping.²⁴ This Note offers a novel solution to this problem: creating a single governing body to regulate e-doping uniformly in the e-sports industry by following in the footsteps (or bike pedaling) of Union Cycliste Internationale (UCI)—the world’s

wallhacks, maphacks, aimbots, auto-firing, recoil reduction, automatic input hacks, speed hacking, and clipping”—all cheats used in games to gain an unfair advantage. INT’L ESPORTS FED’N, COMPETITION REGULATIONS 15 (2021).

¹⁹ *Infra* note 74 and accompanying text.

²⁰ DANIEL CASTRO, INFO. TECH. & INNOVATION FOUND., BENEFITS AND LIMITATIONS OF INDUSTRY SELF-REGULATION FOR ONLINE BEHAVIORAL ADVERTISING 1 (2011), <https://itif.org/files/2011-self-regulation-online-behavioral-advertising.pdf> [<https://perma.cc/4GBN-B9DY>]; Nathaniel Grow, *Regulating Professional Sports Leagues*, 72 WASH. & LEE L. REV. 573, 575 (2015). Another example of such an industry is soccer, with Fédération Internationale de Football Association (FIFA) as its international self-regulatory body. *See* Catherine Lee, *How the Foreign Corrupt Practices Act Can Help Referee FIFA*, 31 MD. J. INT’L L. 283, 286–87 (2016) (“As the sole international governing body of soccer, FIFA delegates governance to six relatively autonomous regional confederations representing every region and recognized soccer club in the world. . . . Each of these confederations has numerous associations, with a maximum of one association per country, totaling 211 associations within FIFA. . . . FIFA provides financial and logistical support to the associations in return for adherence to the statutes and promotion of the sport, as well as subjection to the jurisdiction of the FIFA judicial bodies and the Court of Arbitration for Sport. Lack of adherence to the statutes or the decrees of FIFA by a member could lead to financial sanctions and potential suspension or expulsion of national football associations.”). These organizations “enjoy[] unchallenged control” over each sport’s industry. Grow, *supra*, at 575.

²¹ CASTRO, *supra* note 20, at 3.

²² *See id.*

²³ *Id.*

²⁴ E-sports organizations have emerged around the world to fill this void and attempt to regulate the industry, as well as e-doping, specifically. *See infra* Part II.

governing body for cycling.²⁵ Part I provides background on growing legal issues arising out of the e-sports industry. Part II analyzes the problem of regulating e-doping under the current regime. Part III proposes a solution to this problem—adopting a single governing body that follows the UCI model. The creation of this new governing body would not only account for the various genres within e-sports but would also provide a framework for enforcing mechanical doping prohibitions.

I. WHAT IS E-SPORTS?

E-sports is competitive video gaming in an organized environment.²⁶ Professional e-sports players often enter contracts with various organizations to participate in tournaments and competitions, just as professional players of traditional sports do.²⁷ E-sports players and teams often belong to organizations that privately own and represent them, and the individual teams compete in tournaments hosted by different e-sports organizations.²⁸ Game genres in e-sports range from “team-oriented multiplayer online battle arenas (MOBAs), to single player first person shooters, to survival battle royales, to virtual reconstructions of physical sports.”²⁹ Games such as *Fortnite*, *Minecraft*, *Grand Theft Auto V*, *League of Legends*, and *Call of Duty* are some of the most popular computer-based video games among professional players,³⁰ and some e-sports events attract millions of viewers.³¹

Fans tune in to e-sports tournaments and events for live matches and replays on online platforms such as Twitch, a streaming service dedicated to video gaming,³² or sports-focused television channels, such as ESPN.³³

²⁵ *Mission, Vision, Values*, UNION CYCLISTE INTERNATIONALE, <https://www.uci.org/mission-vision-values/3350a2BpahNCGJ7wuv37ux> [<https://perma.cc/XKW5-9LV2>] (“Founded in 1900, in Paris (France), the Union Cycliste Internationale (UCI) is the worldwide governing body for cycling. It develops and oversees cycling in all its forms and for all people, as a competitive sport, a healthy leisure activity and a sustainable means of transport, but also as a way to have fun.”).

²⁶ Leroux-Parra, *supra* note 9.

²⁷ *Supra* note 10 and accompanying text.

²⁸ *See infra* Part II.

²⁹ Leroux-Parra, *supra* note 9.

³⁰ *Popular Twitch Categories in the Last 30 Days*, ESPORTS CHARTS, <https://escharts.com/games> [<https://perma.cc/4A6F-9WJP>].

³¹ *Esports Viewership Stats for 2018*, ESPORTS CHARTS, <https://escharts.com/2018> [<https://perma.cc/F6HJ-B8XQ>]; Leroux-Parra, *supra* note 9; Tristian de la Navarre, *Biggest eSports Live Events in History*, LINEUPS (June 4, 2020, 3:23 AM), <https://www.lineups.com/esports/biggest-esports-live-events-in-history> [<https://perma.cc/A4WD-YQKG>].

³² James, *supra* note 10.

³³ Brad Adgate, *Esports Is Filling the Programming Void*, FORBES (Apr. 21, 2020, 12:24 PM), <https://www.forbes.com/sites/bradadgate/2020/04/21/esports-is-filling-the-programming-void/?sh=4e088938533b> [<https://perma.cc/7UMK-9YBW>]. ESPN even created a branded “ESPN Esports Day” in April 2020, televising virtual games. *Id.*

Audiences can even physically attend events in arenas to watch players compete—with some events filling the arenas to capacity.³⁴ Like traditional sports, e-sports has leagues, franchises, teams, professional players, corporate sponsors, play-by-play broadcasters, and significant prize money.³⁵ Typically, e-sports tournaments only pay the top-ranking players, and the prize money drops off considerably after the first-place winner,³⁶ so there is an incentive to cheat.

This Part provides an overview of the history of e-sports and legal issues arising in the industry, focusing on e-doping.

A. *The History of E-Sports*

Professional gaming has its roots in South Korea.³⁷ While industry insiders have different theories about e-sports' emergence in South Korea, many versions start in the late 1990s when the South Korean government developed telecommunications and internet infrastructure in response to the Asian financial crisis.³⁸

Gamer communities emerged as a response to a culture of “PC bangs”—social spaces lined with numerous computers serving as gaming clubs where gamers would meet and compete in video games.³⁹ Soon, people began to attend PC bangs to watch others compete.⁴⁰ As a response to the increasing market for video gaming and competitions, the South Korean government created the official Korean Esports Association, the world's first

³⁴ Navarre, *supra* note 31 (“[A] single eSports event is hosted in an arena packed to capacity at 173,000 people, whereas the Super Bowl of 2019’s venue was 75,000 . . .”).

³⁵ Windholz, *supra* note 10, at 1; Trevor Wheelwright, *1 in 4 Americans Are More Interested in eSports Than Traditional Sports: 20 Years of eSports: Payouts, Players, and Games*, REVIEWS.ORG (Feb. 1, 2021), <https://www.reviews.org/internet-service/2021-esports-report> [<https://perma.cc/RX2A-5CEC>]. For example, the League of Legends World Championship in 2015 had a prize pool of \$2,130,000. Navarre, *supra* note 31.

³⁶ Wheelwright, *supra* note 35.

³⁷ Sungjo Park, Dayoun Lim & Jinhee Kim, *An Ethical Reflection on Drug Use in eSport*, 31 KOREAN J. SPORT SCI. 306, 309 (2020) (S. Kor.) (explaining that the ProGamer Korea Open (PKO), held in 1999, was the earliest professional tournament organized in the world); Leroux-Parra, *supra* note 9; Paul Mozur, *For South Korea, E-Sports Is National Pastime*, N.Y. TIMES (Oct. 19, 2014), <https://www.nytimes.com/2014/10/20/technology/league-of-legends-south-korea-epicenter-esports.html> [<https://perma.cc/939L-DVTY>].

³⁸ Mozur, *supra* note 37. Another theory credits private investors with opening gaming centers called “PC bangs,” where e-sports began. Dal Yong Jin, *Historiography of Korean Esports: Perspectives on Spectatorship*, 14 INT’L J. COMMC’N 3727, 3729, 3733 (2020) (Can.) (explaining that people who left large corporations during the financial crisis sparked the rise of PC bangs). For a general overview of the Asian financial crisis, see Alice D. Ba, *Asian Financial Crisis*, BRITANNICA, <https://www.britannica.com/event/Asian-financial-crisis> [<https://perma.cc/KG6D-GNU7>].

³⁹ Jin, *supra* note 38, at 3730–32; Mozur, *supra* note 37.

⁴⁰ Jin, *supra* note 38, at 3733.

governmental body dedicated to regulating video games and e-sports.⁴¹ Thus, the rapid growth of PC bangs contributed to the emergence and early expansion of the e-sports industry.⁴²

Some South Korean television channels even began to air professional gamers competing in *StarCraft*, a popular real-time strategy game, which attracted millions of viewers.⁴³ For over twenty years, e-sports has been airing on Korean television channels dedicated to broadcasting e-sports matches and tournaments.⁴⁴

While South Korea influenced the growth of global e-sports, it was not the only country to develop the industry.⁴⁵ Other countries, including the United States, Germany, and Australia, also contributed to the early days of e-sports.⁴⁶ For example, two gaming leagues founded in the United States in 1997, the Professional Gamers League and the Cyberathlete Professional League, were among the first professional computer gaming leagues created.⁴⁷

⁴¹ Leroux-Parra, *supra* note 9; *see also* KESPA, <http://e-sports.or.kr> [<https://perma.cc/K966-H9JM>] (official website for the Korean Esports Association).

⁴² Leroux-Parra, *supra* note 9.

⁴³ John, *Esports in Korea - a Complete Breakdown of the Korean Gaming Culture*, SEOULZ (May 3, 2021), <https://seoulz.com/esports-in-korea-a-complete-breakdown-of-the-korean-gaming-culture> [<https://perma.cc/G8KR-FC62>].

⁴⁴ *Id.*

⁴⁵ Florian Larch, *In 70 Years: The Evolution of eSports into a Market Worth Billions: The History of the Origin of eSports*, ISPO (Jan. 11, 2019), <https://www.ispo.com/en/markets/history-origin-e-sports> [<https://perma.cc/6PA8-VA8B>] (discussing how e-sports has developed in various countries over the years).

⁴⁶ Jin, *supra* note 38, at 3728; *see also* John T. Holden, Marc Edelman & Thomas A. Baker III, *A Short Treatise on Esports and the Law: How America Regulates Its Next National Pastime*, 2020 U. ILL. L. REV. 509, 517 (“The beginning of esports, or at least competitive video gaming tournaments, can be traced to 1972, when students at Stanford University hosted a tournament for the game *Spacewar*.”).

⁴⁷ Jin, *supra* note 38, at 3733; *see also* Holden et al., *supra* note 46, at 517 (“The 1980s laid the foundation for what we know as esports today, but the 1990s were a decade where consistent growth was established [in the United States].”). In the 1990s, the Cyberathlete Professional League started to offer tournaments with prize money. *Id.* at 518.

Today, e-sports is a global phenomenon.⁴⁸ While still relatively new,⁴⁹ the e-sports industry is on the rise and is projected to become a \$1.5 billion industry by 2023.⁵⁰ In 2021, e-sports attracted the second-highest viewer count among major sports in the United States, surpassing baseball, basketball, and hockey.⁵¹ E-sports' viewership is growing globally, too. More people are making and watching livestreams of video games on platforms such as Twitch and YouTube than ever before.⁵² The e-sports industry had \$4.5 billion in investments in 2018, up from \$490 million in 2017, and investments by venture capitalists and private equity firms also increased.⁵³ Most of the revenue in the e-sports industry comes from

⁴⁸ Leroux-Parra, *supra* note 9; *see also* AFK Gaming, *The Top Indian Esports Business Developments in June 2020*, ESPORTS INSIDER (July 3, 2020), <https://esportsinsider.com/2020/07/india-esports-recap-june-2020> [<https://perma.cc/AGE2-35HC>] (discussing the e-sports market growing in India in 2020); Jo Munnik, *Esports Is on the Rise in Africa and These Two Kenyans Are Leading the Charge*, CNN (Dec. 3, 2020, 10:07 AM), <https://www.cnn.com/2020/12/03/sport/africa-esports-kenya-queen-arrow-beast-spc-intl/index.html> [<https://perma.cc/67LB-YPBF>] (describing the growth of e-sports in Africa and introducing two Kenyan gamers who are “looking to help put African esports on the global map”). Further, e-sports companies such as Global eSports own teams across the globe. *A ‘Player First’ Professional Esports Organization*, GLOB. ESPORTS, <https://www.globalesports.com> [<https://perma.cc/JH8X-YQXH>].

⁴⁹ *See* Eric Griffith, *Even During a Pandemic, Esports Pros Make Bank with Games Like . . . Chess?*, PCMAG (Feb. 15, 2021), <https://www.pcmag.com/news/even-during-covid-esports-pros-make-bank-with-games-like-chess> [<https://perma.cc/8LF5-L4UA>]; Adgate, *supra* note 33 (“In 2020, 1.955 billion people were aware of esports, compare[d] to 1.1 billion in 2016. The esports audience will reach 495 million worldwide in 2020, with 223 million defined as frequent viewers/enthusiasts and 272 million occasional viewers.”).

⁵⁰ According to a 2021 report, 26% of Americans said they are more interested in e-sports than in traditional sporting events. Wheelwright, *supra* note 35; *see also* Mariel Soto Reyes, *Esports Ecosystem Report 2021: The Key Industry Companies and Trends Growing the Esports Market Which Is on Track to Surpass \$1.5B by 2023*, BUS. INSIDER (Jan. 5, 2021, 3:24 PM), <https://www.businessinsider.com/esports-ecosystem-market-report> [<https://perma.cc/QL4Y-Z867>] (“Total esports viewership is expected to grow at a 9% compound annual growth rate (CAGR) between 2019 and 2023, up from 454 million in 2019 to 646 million in 2023, per Insider Intelligence estimates.”).

⁵¹ Steve Fernandez, *The Fastest-Growing Sport Might Surprise You*, BANYAN HILL (Apr. 13, 2021), <https://banyanhill.com/the-fastest-growing-sport-esport-surge> [<https://perma.cc/8KE2-LB24>] (“In 2021, esports attracted the second-highest viewer count by sport in the [United States], behind only the NFL.”).

⁵² Reyes, *supra* note 50. In 2020, Twitch reached a record high number for hours e-sports viewers watched at 3.1 billion hours, and YouTube reported 1.1 billion hours watched. Adgate, *supra* note 33.

⁵³ Reyes, *supra* note 50. When investors look to invest in e-sports, they often invest directly in game developers. Two types of e-sports developers exist: “hands off” and “hands on” developers. “[H]ands off” developers like Microsoft and Nintendo . . . choose to abstain from organizing esports events or their respective titles, instead allowing the community to organize competitions and tournaments so long as they seek the developer’s approval.” On the other hand, “hands on” developers like Riot Games, Activision Blizzard, and Valve Corporation . . . actively organize the professional scene for their respective games. Of the two, the most popular and fastest growing are the ‘hands on’ developers.” Leroux-Parra, *supra* note 9.

sponsorships, advertising, live-event ticket revenues, merchandise sales, and publisher partnerships.⁵⁴

According to one 2021 report analyzing data from the past twenty years, two in five Americans said they watched an e-sports event in the past year, 76% of Americans said they play video games, and 70% of gamers reported that they enjoy watching other people play video games.⁵⁵ Even traditional professional sports teams, including the NFL's Baltimore Ravens, have entered the e-sports industry by signing on with publicly traded gambling firms such as Esports Entertainment Group as e-sports tournament providers.⁵⁶ In 2020, some of the top e-sports organizations included three Los Angeles-based companies—TSM (valued at \$410 million), Cloud 9 (valued at \$350 million), and 100 Thieves (valued at \$190 million).⁵⁷ Such

⁵⁴ Jas Purewal & Isabel Davies, *The eSports Explosion: Legal Challenges and Opportunities*, LANDSLIDE, Nov.–Dec. 2016, at 24, 27; see also Reyes, *supra* note 50 (noting that e-sports gets 69% of its revenue from sponsorships and advertising).

⁵⁵ Griffith, *supra* note 49.

⁵⁶ Gambling firms like Esports Entertainment Group Inc., an online gambling company, offer “bet exchange style wagering, player versus player betting and betting on professional e-sports events.” Lee Jackson, *With Esports and Digital Gambling Surging, These Are Four Top Stocks to Make a Bet On*, USA TODAY (June 27, 2020, 7:00 AM), <https://www.usatoday.com/story/money/2020/06/27/e-sports-and-digital-gambling-is-surging-4-top-stocks-to-buy-now/111986554> [<https://perma.cc/WR4B-WGWE>]; see Cody Luongo, *Baltimore Ravens Sign Multi-Year Deal with Esports Ent Group*, ESPORTS INSIDER (Feb. 12, 2021), <https://esportsinsider.com/2021/02/baltimore-ravens-sign-multi-year-deal-with-esports-ent-group> [<https://perma.cc/AN29-RRB5>]. Starting with the Los Angeles Kings (hockey) and Galaxy (soccer) in October 2020, Esports Entertainment Group has partnered with five professional sports franchises. *Id.*

⁵⁷ Christina Settimi, *The Most Valuable Esports Companies 2020*, FORBES (Dec. 5, 2020, 6:30 AM), <https://www.forbes.com/sites/christinasettimi/2020/12/05/the-most-valuable-esports-companies-2020/?sh=7e34e70373d0> [<https://perma.cc/9JN6-TBYA>]. A former *Call of Duty* champion founded 100 Thieves and opened a player-training facility and production studio in 2020. *Id.* Notably, in January 2022, Microsoft announced its plan for a \$68.7 billion acquisition of Activision Blizzard, a powerhouse video game company that made *Call of Duty*, among other popular e-sports games. Karen Weise, Andrew Ross Sorkin, Kellen Browning & Michael J. de la Merced, *Microsoft Will Buy Activision Blizzard, Betting \$70 Billion on the Future of Games*, N.Y. TIMES (Jan. 18, 2022, 5:39 PM), <https://www.nytimes.com/2022/01/18/business/microsoft-activision-blizzard.html> [<https://perma.cc/9GBX-26T3>]; Liz Richardson & Tanner Wooten, *What Microsoft Buying Activision Blizzard Means for Overwatch League, Call of Duty League*, DOT ESPORTS (Jan. 18, 2022, 6:38 PM), <https://dotesports.com/news/what-microsoft-buying-activision-blizzard-means-for-overwatch-league-call-of-duty-league> [<https://perma.cc/A2FP-F2M4>]. This announcement is significant to the e-sports community, especially since Activision Blizzard operates its own e-sports leagues. See *About Our Company*, ACTIVISION BLIZZARD, <https://activisionblizzard.com/content/atvi/activisionblizzard/ab-touchui/ab/web/en/about-us.html> [<https://perma.cc/6WEW-KUPV>]. And fans are asking how this deal might affect their favorite Blizzard e-sports leagues—hopefully for the better. See Richardson & Tanner Wooten, *supra*. Some predict that Microsoft's acquisition could allow e-sports fans to see immediate improvements, including “better production quality, better equipment, . . . higher-quality broadcasts,” sponsors' return to support the leagues, and expanded e-sports championship events. *Id.* Yet a deal of this size will be subject to antitrust scrutiny. See David McLaughlin, *Microsoft Deal for Activision to Be Reviewed by FTC in U.S.*,

e-sports organizations continue to add new teams each year.⁵⁸ And e-sports has become a part of many college programs across the country: in 2017, an estimated fifty colleges had varsity e-sports teams; that number has grown to more than 170 in 2021, with over 5,000 student members of the National Association of Collegiate Esports.⁵⁹ Schools such as Northwestern University, Syracuse University, and Ohio University even offer e-sports certificate programs.⁶⁰

Further, in 2020, the United States had more professional e-sports players “than the next six countries combined” and the highest total payout amount for professional e-sports players at \$20 million,⁶¹ with China and South Korea at second and third, respectively.⁶² The biggest e-sports markets

BLOOMBERG (Feb. 1, 2022, 10:52 AM), <https://www.bloomberg.com/news/articles/2022-02-01/microsoft-deal-for-activision-to-be-reviewed-by-ftc-in-u-s> [<https://perma.cc/AQL3-CKH6>]; see also David McCabe & Cecilia Kang, *Microsoft Starts a Charm Offensive to Push Through Its Activision Deal*, N.Y. TIMES (Feb. 9, 2022), <https://www.nytimes.com/2022/02/09/technology/microsoft-activision.html> [<https://perma.cc/TR3J-XU5U>] (“Regulators are expected to give Microsoft’s proposed acquisition of Activision — the largest in Microsoft’s history — a tough review.”).

⁵⁸ See, e.g., *Minnesota-Based Esports Org Adds New Teams*, FOX 9 (Feb. 14, 2021), <https://www.fox9.com/video/900775> [<https://perma.cc/X59P-DTKU>] (reporting that Minnesota-based e-sports organization Version1 added two new teams after launching ROKKR, its first team, in 2020); Andrew Cohen, *‘The Show’ Goes on with MLB Esports Tournament*, SPORTTECHIE (Apr. 13, 2020), <https://www.sporttechie.com/mlb-esports-players-tournament-the-show/> [<https://perma.cc/B449-4C9F>] (discussing an e-sports tournament launched by “Major League Baseball, the MLB Players Association and Sony”); Annie Pei, *This NFL Giant Just Got Into Esports, and Here’s What the Tipping Point Was*, CNBC (July 5, 2019, 2:38 PM), <https://www.cnbc.com/2019/07/05/this-nfl-giant-just-got-into-esports-and-heres-what-the-tipping-point-was.html> [<https://perma.cc/B6NH-ZHCR>] (describing how “traditional sports giants have already snapped up slots in various leagues or started their own esports branches,” including the New England Patriots, the Los Angeles Rams, and the Houston Rockets). All major American sports leagues except the MLB now have e-sports leagues or tournaments. Daniel Oh, *Why the NBA, NHL, MLS, and NFL Are in on Esports*, FRONT OFF. SPORTS, <https://frontofficesports.com/why-the-nba-nhl-mls-and-nfl-are-in-on-esports> [<https://perma.cc/7VE2-2L2F>].

⁵⁹ Kalhan Rosenblatt, *Sports Have Had to Adjust to New Normals During Covid. Not Esports.*, NBC NEWS (Feb. 13, 2021, 4:00 AM), <https://www.nbcnews.com/tech/video-games/sports-have-had-adjust-new-normals-during-covid-not-e-sports-n1257498> [<https://perma.cc/Q4WK-XCNS>]; *What Is NACE?*, NAT’L ASS’N OF COLLEGIATE ESPORTS, <https://nacesports.org/about/> [<https://perma.cc/YVU9-WEE6>]. The University of California, Irvine was the first public university to have an official e-sports program, and the campus even has its own e-sports arena. *About*, UCI ESPORTS, <https://esports.uci.edu/about/> [<https://perma.cc/HDB4-8PEF>]. With many colleges adopting e-sports in their programs, the National Collegiate Athletic Association has been taking steps to fold e-sports into its organization. Thomas A. Baker III. & John T. Holden, *College Esports: A Model for NCAA Reform*, 70 S.C. L. REV. 55, 55 (2018).

⁶⁰ *Esports Certificate Program*, NW. SCH. OF PRO. STUD., <https://sps.northwestern.edu/graduate-certificates/esports> [<https://perma.cc/5GU8-BXUZ>]; *eSports Gaming Certificate*, SYRACUSE UNIV., <https://parttime.syr.edu/academics/degrees-certificates/undergraduate-degrees-credit-certificate/credit-certificates/esports-gaming-certificate> [<https://perma.cc/JF8X-MH7C>]; *Esports Certificate*, OHIO UNIV., <https://www.ohio.edu/scripps-college/mcclure/esports/esport-certificate> [<https://perma.cc/4MEE-2G3N>].

⁶¹ Wheelwright, *supra* note 35.

⁶² Griffith, *supra* note 49.

by audience and revenue are, in descending order: Asia-Pacific, North America, and Europe, with Asia-Pacific representing 57% of global e-sports viewership in 2019.⁶³

International e-sports tournaments, such as the Lenovo Legion of Champions Series in Asia, draw players from Thailand, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, the Philippines, Singapore, Taiwan, and Vietnam.⁶⁴ The *League of Legends* World Championship, which changes location each year, welcomes twenty-four teams from around the world that compete for one month in front of millions of viewers.⁶⁵ In the United States, big gaming events sell out at large sporting venues, including the Staples Center in Los Angeles and the Barclays Center in New York.⁶⁶ In sum, the e-sports industry has become a huge phenomenon and will only get bigger in the coming years.

⁶³ Reyes, *supra* note 50. Providing projections for the year 2021, Reyes explained that “North America is set to hit \$300 million in esports revenue this year, while Europe is expected to reach \$138 million.” *Id.* Reyes also pointed out that Latin America is a fast-growing region projected to have an e-sports revenue of \$42 million in 2023. *Id.*

⁶⁴ *Lenovo Legion of Champions Series III*, FANDOM, https://lol.fandom.com/wiki/Lenovo_Legion_of_Champions_Series_III [<https://perma.cc/GX55-JV34>].

⁶⁵ *Everything You Need to Know About the League of Legends World Championship*, ESPN ESPORTS (Sept. 21, 2018), https://www.espn.com/e-sports/story/_/id/24754957/2018-league-legends-world-championship-primer [<https://perma.cc/G5TL-PDNL>]; Andrew Zucosky, *Riot Games Picks League of Legends World Championship’s Host Cities for 2021*, DIGIT. TRENDS (June 16, 2021) <https://www.digitaltrends.com/gaming/league-of-legends-world-championship-2021-host-cities/> [<https://perma.cc/S75U-4SA7>]. In 2017, the tournament had a \$5 million prize pool. *Everything You Need to Know About the League of Legends World Championship*, *supra*.

⁶⁶ Holden et al., *supra* note 46, at 519. For reference, the Staples Center has 20,000 seats, and the Barclays Center offers up to 19,000. *See Staples Center, L.A. LIVE*, <https://www.lalive.com/play/staples-center> [<https://perma.cc/K7TQ-RQ8N>]; *About Us*, BARCLAYS CTR., <https://www.barclayscenter.com/center-info/about-us> [<https://perma.cc/S2HV-TXND>].

B. Legal Issues in E-Sports: “E-Doping”

With the growth of the e-sports industry, numerous legal issues have also arisen.⁶⁷ From player eligibility,⁶⁸ gambling,⁶⁹ and antitrust⁷⁰ to intellectual property issues,⁷¹ the legal community has begun to recognize the significance of the emerging e-sports industry.⁷² Among the myriad legal issues arising in e-sports, this Note focuses on the issue of regulating “e-doping.”

⁶⁷ See Holden et al., *supra* note 46, at 533.

⁶⁸ *Id.* at 534 (explaining that e-sports leagues’ discretion to decide player eligibility is subject to the “basic rudiments of due process” (quoting *Crouch v. NASCAR*, 845 F.2d 397, 402 (2d Cir. 1988))). See generally Roshan Patel, *Esports, Player Positions, and the Benefits of Unionization*, 18 DUKE L. & TECH. REV. 232, 232 (2020) (discussing player unionization in e-sports).

⁶⁹ See, e.g., James Gatto & Mark Patrick, *Overview of Select Legal Issues with eSports*, 6 ARIZ. ST. SPORTS & ENT. L.J. 427, 429 (2017) (discussing the issue of nonplayers betting on e-sports events); John T. Holden, Ryan M. Rodenberg & Anastasios Kaburakis, *Esports Corruption: Gambling, Doping, and Global Governance*, 32 MD. J. INT’L L. 236, 241 (2017) (discussing the rise of the gambling market in e-sports).

⁷⁰ See, e.g., Max Miroff, *Tiebreaker: An Antitrust Analysis of Esports*, 52 COLUM. J.L. & SOC. PROBS. 177, 185 (2018) (“Esports also highlights the thorny intersection of antitrust and IP law by presenting difficult questions of market definition . . .”); Jehnyttssa Zetino, Comment, *Out of Their League: An Antitrust Analysis of Esports Players Associations and Attempts at Unionization*, 58 HOUS. L. REV. 777, 777 (2021) (discussing the antitrust implications of e-sports players’ associations).

⁷¹ See, e.g., Holden et al., *supra* note 46, at 536–38 (discussing intellectual property ownership in e-sports); Aaron D. Lovaas, *Esports: A Whole Different Ball Game*, 26 NEV. LAW. 26, 27 (2018) (explaining that the video game publisher who owns the game “also owns the league constructed around that game”).

⁷² See Justin Ronquillo, *The Rise of Esports: The Current State of Esports, Its Impacts on Contract Law, Gambling, and Intellectual Property*, 23 INTELL. PROP. & TECH. L.J. 81, 93 (2019); Holden et al., *supra* note 10, at 47; Michael McTee, *E-Sports: More Than Just a Fad*, 10 OKLA. J.L. & TECH. 1, 1 (2014); Dan L. Burk, *Owning E-Sports: Proprietary Rights in Professional Computer Gaming*, 161 U. PA. L. REV. 1535, 1537 (2013). Some law firms are joining the discussion on e-sports. Jacqueline Martinelli, *The Challenges of Implementing a Governing Body for Regulating ESports*, 26 U. MIA. INT’L & COMP. L. REV. 499, 509 (2019) (citing Greenberg Traurig, *Greenberg Traurig Forms Video Game and Esports Group: Team to Address Legal Needs of Clients in Billion-Dollar+ Industry*, PR NEWSWIRE (Feb. 13, 2019), <https://www.prnewswire.com/news-releases/greenberg-traurig-forms-video-game-and-esports-group-team-to-address-legal-needs-of-clients-in-billion-dollar-industry-300762680.html> [https://perma.cc/QH4C-BE2B]); see also *Disruption and Growth—the Future of Esports*, O’MELVENY (Nov. 15, 2018), <https://www.omm.com/resources/events-and-speaking-engagements/events/disruption-and-growth-esports> [https://perma.cc/D7W9-6GEJ] (announcing that the co-chair of O’Melveny’s sports practice would speak at a panel about the future of e-sports); *Major League Gaming Acquired by Activision Blizzard*, PROSKAUER (Jan. 5, 2016), <https://www.proskauer.com/release/major-league-gaming-acquired-by-activision-blizzard-01-05-2016> [https://perma.cc/F2YM-4G62] (describing Proskauer’s role in Activision Blizzard’s acquisition of Major League Gaming—both e-sports companies).

As in traditional sports, doping issues exist in e-sports.⁷³ Unlike in traditional sports, however, doping in e-sports divides into two categories: traditional doping and e-doping—also called “digital doping” or “mechanical doping.”⁷⁴ Traditional doping in e-sports, as in traditional sports, occurs when players take performance-enhancing drugs such as Adderall to increase their focus and alertness during a match.⁷⁵ According to professional gamers interviewed by the *Washington Post*, the use of Adderall has been “an open secret in the esports community for years.”⁷⁶ Certain leagues conduct drug tests, but most leagues do not test for or prohibit drugs like Adderall.⁷⁷ Traditional doping may give an unfair advantage to players, but it is also a sensitive issue because some players may have Adderall prescriptions.⁷⁸

E-doping, on the other hand, describes the act of using software hacks or cheats during e-sports games.⁷⁹ These hacks and cheats allow players to have an advantage over their opponents in a video game, such as giving a player “the ability to see through walls or smoke, . . . to never have to reload a weapon, . . . to enable an auto-aim feature on [a weapon],” or even to use

⁷³ See John T. Holden, Anastasios Kaburakis & Joanna Wall Tweedie, *Virtue(al) Games—Real Drugs*, 13 *SPORT, ETHICS & PHIL.* 19, 20–21 (2019); Colby Stivers, *The First Competitive Video Gaming Anti-Doping Policy and Its Deficiencies Under European Union Law*, 18 *SAN DIEGO INT’L L.J.* 263, 265 (2017); Zachary Kandell, *eSports Has Its Own Doping Problem*, *CBR* (Feb. 28, 2020), <https://www.cbr.com/e-sports-doping-problem> [<https://perma.cc/8YJG-ZEBY>].

⁷⁴ See Victor Ocando, *Digital Doping Invading Virtual Events, Esports*, *GLOB. SPORT MATTERS* (Nov. 18, 2019), <https://globalsportmatters.com/health/2019/11/18/digital-doping-invading-virtual-events-e-sports> [<https://perma.cc/E3LK-CLLJ>]; DLA Piper, *The Concept of eDoping in eSports - Cyber Security as a Safety Measure, Enforcement and Sanctions in Case of Non-Compliance*, *LEXOLOGY* (Apr. 4, 2019), <https://www.lexology.com/library/detail.aspx?g=b3abb0aa-72da-4d26-9ad8-d5ce8204d7c1> [<https://perma.cc/B2RL-KVB8>]; *The Continued Rise*, *supra* note 18; Surbhit Shrivastava, *‘Doping’ in E-Sports*, *IP PRESS* (Aug. 29, 2021), <https://www.theipress.com/2021/08/29/doping-in-e-sports> [<https://perma.cc/PG3Y-U4FB>].

⁷⁵ Kandell, *supra* note 73; see also Coleman Hamstead, *‘Nobody Talks About It Because Everyone Is on It’: Adderall Presents Esports with an Enigma*, *WASH. POST* (Feb. 13, 2020, 10:27 AM), <https://www.washingtonpost.com/video-games/esports/2020/02/13/esports-adderall-drugs> [<https://perma.cc/CYF9-U5T5>] (reporting that a professional e-sports player described Adderall as “steroids for video games”); Tomasz Koryzma & Adriana Zdanowicz-Lesniak, *Doping Is Damaging Esports*, *CMS L.* (Aug. 2019), <https://cms.law/en/mex/publication/doping-is-damaging-e-sports> [<https://perma.cc/2VEG-ST6V>] (describing players’ use of drugs to “concentrate, react quickly and reduce fatigue”); Stivers, *supra* note 73, at 265 (discussing the European Electronic Sports League’s response to admitted Adderall use during one of the organization’s tournaments).

⁷⁶ Hamstead, *supra* note 75.

⁷⁷ *Id.*

⁷⁸ In professional sports, many players are prescribed Adderall since Adderall allows people with ADHD to improve concentration and focus. Park et al., *supra* note 37, at 311.

⁷⁹ *The Continued Rise*, *supra* note 18; Bafna, *supra* note 18, at 135.

“remote cyber-attacks to slow down their opponents’ computers.”⁸⁰ Upon discovering a cheater, tournament organizers or video game companies often ban the cheating player.⁸¹

E-doping is not new. Gamers have been cheating since the beginning,⁸² affecting e-sports players, viewers, and game publishers.⁸³ E-doping is so common that Ian Smith, a commissioner at the Esports Integrity Commission,⁸⁴ one of the big e-sports organizations, said that “cheating is

⁸⁰ *The Continued Rise*, *supra* note 18; *see, e.g.*, Amy Webb, *What Digital Doping Means for Esports—and Everything Else*, WIRED (Oct. 16, 2020, 8:00 AM), <https://www.wired.com/story/what-digital-doping-means-esports-everything-else> [<https://perma.cc/5KD5-4QQG>] (describing a player cheating in an e-sports cycling championship by using a bot to simulate riding the stationary bike and tricking the platform “into believing that [the player] was actually doing the work”); Samir Satam, *Top 5 Cheating Incidents in eSports*, ESSENTIALLY SPORTS (May 14, 2020, 8:36 PM), <https://www.essentiallysports.com/top-5-cheating-incidents-in-esports-csgo-league-of-legends-forsaken-news-2020> [<https://perma.cc/W3NX-X4TJ>] (describing cheating scandals in games, including *Counter-Strike: Global Offensive*, *League of Legends*, and *Hearthstone*).

⁸¹ *The Continued Rise*, *supra* note 18; Elliott Bretland, *How Doping Is Casting a Shadow over the Rise of eSports*, SPORTSMAN (Nov. 6, 2019, 7:01 AM), <https://www.thesportsman.com/features/how-doping-is-casting-a-shadow-over-the-rise-of-esports> [<https://perma.cc/55TR-NVSY>].

⁸² *See* Khamila Mulia, *Cheaters Are Everywhere, but the Game Isn’t Over*, KRASIA (June 28, 2020), <https://kr-asia.com/cheaters-are-everywhere-but-the-game-isnt-over> [<https://perma.cc/Z9CZ-FQUG>] (“Cheating isn’t a new phenomenon. There have been players bending the rules to give themselves an edge since the early days of gaming, when cheat codes were programmed into games for players to unlock.”); *see also* Tom Warren, *Cheaters Are Ruining Call of Duty: Warzone*, VERGE (Feb. 2, 2021, 8:43 AM), <https://www.theverge.com/2021/2/2/22261947/call-of-duty-warzone-cheaters-hackers-aimbots-wallhacks-problem> [<https://perma.cc/7262-6XBB>] (“Cheating in some of the world’s top PC games has been getting worse over the past year, and aimbots and wallhacks are now increasingly common in the industry’s most competitive shooters. . . . Prominent *Warzone* players Nickmercs and YouTuber DriftOr have also both been highly vocal about the rise of cheating in *Warzone*. This latest round of outcries followed months of issues with hacking in the game, where players have regularly spotted people using aimbots and wallhacks and sharing clips on Reddit and TikTok.”); Morgan Park, *On Behalf of PC Gaming, Sorry About All Those Cheaters in Your Console Games*, PC GAMER (July 30, 2021), <https://www.pcgamer.com/on-behalf-of-pc-gaming-sorry-about-all-those-cheaters-in-your-console-games> [<https://perma.cc/AE37-3W2P>] (“When it comes to cheating in PC games, it’s less a question of whether or not it happens and more of how badly cheaters affect the average player’s experience. Almost every competitive shooter I’ve played—including Rainbow Six Siege, Apex Legends, Call of Duty: Warzone, CS:GO and Overwatch—has a cheating problem, and they all center around the PC.”).

⁸³ *See, e.g.*, Warren, *supra* note 82 (“Cheaters in *Call of Duty: Warzone* are ruining the game and forcing professional players to abandon it. Game hacks and cheat software are being widely used in the battle royale hit, and it has left the community of millions of players feeling frustrated with the lack of attention from publisher Activision and developers Infinity Ward and Raven Software. Today, that frustration boiled over to the point that the companies decided to take action, banning 60,000 accounts in a single day, and issuing an official blog post that, once again, promises zero tolerance for cheaters.”); Mulia, *supra* note 82 (“According to a Irdeto Global Gaming survey in 2018, gamers in Asia Pacific are most likely to have their multiplayer gaming experience negatively impacted when other players cheat. The survey showed that 77% of players in China said that this happens frequently, followed by South Korea at 68%, well above the global average of 59%. And a survey in April by marketing analytics firm Adjust showed that more than 40% of mobile gamers in the United States have paid for bots to help them win in games.”).

⁸⁴ *See infra* notes 113–114 and accompanying text.

the biggest threat to e-sports from an integrity point of view.”⁸⁵ Accordingly, tracking cheaters and their new ways of cheating is now a part of the development of e-sports.⁸⁶ While cheating in competitions is more difficult with tournament organizers’ “tight control” of the players,⁸⁷ and developers are attempting to improve their security in the games with anti-cheat solutions,⁸⁸ e-doping remains a common issue threatening the integrity of the games.⁸⁹ And the e-sports industry does not yet have a unified solution to address the problem of e-doping or enact consistent regulations and punishments.⁹⁰

Today, there is no uniform, international ban on e-doping.⁹¹ While the discussion surrounding traditional doping in e-sports continues,⁹² less scholarship exists for e-doping. This Note enters the game.

II. THE PROBLEM: REGULATING E-DOPING IN E-SPORTS

Traditional major league sports are often centralized under a single sport-specific organization, such as the Fédération Internationale de Football

⁸⁵ Mulia, *supra* note 82.

⁸⁶ See Diane Falconer, *ESports Fights Cheating Bugs, Bots and Hacks*, JAKARTA POST (Oct. 14, 2020, 04:06 PM), <https://www.thejakartapost.com/life/2020/10/14/esports-fights-cheating-bugs-bots-and-hacks.html> [<https://perma.cc/H8YG-RAJE>] (“Tracking cheats has become a time-consuming and necessary side to eSports development . . .”).

⁸⁷ In an interview, a commissioner for an e-sports organization told KrASIA: “It is very difficult [for cheaters] to get away as tournament organizers have tight control. Your opponents are very good players too, so they will know if they’re being cheated.” Mulia, *supra* note 82 (alteration in original). However, the article added that “as long as there’s a will, there’s also a way.” *Id.* For example,

[a] \$250,000 *Warzone* tournament was rocked by accusations of cheating . . . when rival high-profile players accused a Canadian player of using an aimbot, which the player denied. It led to a situation where a member of the esports organization 100 Thieves searched through the computer of the accused player live on Twitch, in an attempt to find cheating software.

Warren, *supra* note 82.

⁸⁸ Warren, *supra* note 82 (“There are a variety of anti-cheat solutions being used by various game developers, but it’s a cat-and-mouse game against the hackers developing the cheats.”).

⁸⁹ See Mulia, *supra* note 82 (“[C]heating destroys the integrity of games.”); see also Falconer, *supra* note 86 (“We believe it is in the long-term best interests of the game and all of eSports for integrity breaches to be dealt with head on.”).

⁹⁰ See Graham Ashton, *Cheating in Esports—How Is It Done, and How Is It Dealt With?*, ESPORTS OBSERVER (May 27, 2019), <https://archive.esportsobserver.com/cheating-in-esports> [<https://perma.cc/653Y-WYBK>] (“While finding and exposing cheaters is a decade old practice in esports, the industry is still pretty young when it comes to consistent punishments.”); Warren, *supra* note 82 (“The biggest problem the industry faces is tackling [cheating] collectively.”).

⁹¹ Webb, *supra* note 80.

⁹² See, e.g., Park et al., *supra* note 37, at 307, 314 (arguing that e-sports should weigh the benefits and harms of drugs like Adderall in crafting an appropriate policy that promotes the industry’s values); Stivers, *supra* note 73, at 270 (“[T]he protection of individual privacy rights, derived from both customary and treaty-based international law, should be a major concern of any drug-testing policy.”).

Association (FIFA) for soccer or the NFL for American football.⁹³ In addition to being self-regulated, these organizations are also often governed by relevant statutes, case law, and national or state regulations. In contrast, e-sports is a fragmented and largely unregulated industry.⁹⁴ Further, because e-sports is not recognized as a sport in many countries, regulation becomes even less likely.⁹⁵ In e-sports, different tournament organizers and associations provide their own rules and guidelines, subject to the control of game developers—creating a disjointed regulatory environment.⁹⁶ Three big international e-sports organizations that are well known include the World E-Sports Association, the Esports Integrity Commission, and the International Esports Federation.⁹⁷ In recent years, these global organizations have emerged in an attempt to provide regulations in the e-sports world, but so far, they have been unsuccessful.⁹⁸ This Part describes the three

⁹³ See James A. Ingram, Note, *Kicking It New School: Applying the FIFA Regulatory Model to the Esports Industry*, 51 GEO. WASH. INT'L L. REV. 483, 487 (2019); *National Football League*, BRITANNICA, <https://www.britannica.com/topic/National-Football-League> [<https://perma.cc/QS38-D72W>]; see also Kandell, *supra* note 73 (noting that major league sports are “centralized under individual organizations for each sport”).

⁹⁴ See Purewal & Davies, *supra* note 54, at 27 (“Although traditional sports are largely governed by internal self-regulation (policed by a combination of self-regulatory enforcement with ultimate recourse to local courts if necessary), there is a substantial body of law governing traditional sports, whether from statute, case law, or regulatory action. It is yet to be established how much of this will or should apply to eSports.”); see also Achint Johri, *Cashing In on the Esports Phenomenon: Increasing Awareness on Ethical Issues and Governance Challenges*, 2 J. FOR SPORTS L., POL'Y & GOVERNANCE 41, 47 (2020) (India) (discussing the “fragmented nature” of e-sports); Justin W. Bogle, *Trying to Think Faster: Doping in Esports*, MOORAD SPORTS L.J. BLOG (Oct. 6, 2020), https://www1.villanova.edu/villanova/law/academics/sportslaw/commentary/mslj_blog/2020/TryingtoTTryingtoThinkFasterDoping.html [<https://perma.cc/3QX5-P3Q9>] (describing the e-sports industry as “largely dispersed and unregulated”).

⁹⁵ Martinelli, *supra* note 72, at 506, 510 (explaining that because “many countries do not recognize esports as a sport,” there are “complications while trying to regulate them”); Bafna, *supra* note 18, at 138 (“The question of judicial review of the actions of Sports Governing Bodies (SGBs) (whose contracts with players exist in private law domain) is a subject of great contention, with various jurisdictions having different takes on it. In French law, sports disciplinary actions are classified as administrative actions that can be reviewed by administrative courts. . . . [I]n the UK the SGBs’ actions are not subject to judicial review. In common law jurisdictions such as Australia, the regulation of sport is considered to be a public activity, as is the case with New Zealand, Canada, and the USA.”).

⁹⁶ See Johri, *supra* note 94, at 47–48 (observing that game developers’ intellectual property rights grant them significant control over tournaments and broadcasting, which makes “coherent regulations for esports governance extremely challenging”).

⁹⁷ This Note focuses on these three e-sports organizations because they are well known within the industry. However, these three organizations do not form an exhaustive list of major e-sports organizations. Other large e-sports organizations include, for example, the Australian Esports Association, which aims to promote e-sports in Australia and provides anti-doping policies, among others, governing its members. *Home*, AUSTRALIAN ESPORTS ASS'N, <http://www.aesa.org.au> [<https://perma.cc/V3RN-N82V>]; *Policies*, AUSTRALIAN ESPORTS ASS'N, <http://www.aesa.org.au/policies> [<https://perma.cc/TR2N-J6UH>].

⁹⁸ Martinelli, *supra* note 72, at 506.

organizations in turn, discusses each organization's policy on e-doping, and explains their current failure to regulate e-doping.

A. *The World ESports Association*

In 2016, ESL Gaming, the world's largest e-sports company based in Germany,⁹⁹ came together with several professional e-sports teams to form the World ESports Association (WESA) with a mission "to become the global benchmark for industry-wide standards."¹⁰⁰ WESA focuses on only one e-sport—*Counter-Strike: Global Offensive*¹⁰¹—and aims to advocate for professional gamers and e-sports teams by providing "player representation, standardized regulations, and revenue shares for teams."¹⁰² While WESA's mission is to become an organization to e-sports as FIFA is to soccer or the NFL is to football, WESA only represents competitions organized by ESL.¹⁰³ This limitation means that WESA has no authority over other leagues and competitions not related to WESA, and WESA's rules and regulations only apply to WESA-affiliated players and competitions.¹⁰⁴ Further, because WESA's focus is only on one e-sport, it does not impact competitors in other popular games, such as *League of Legends* or *Fortnite*.¹⁰⁵

When it comes to regulating e-doping specifically, WESA does very little. Its code of conduct, for example, does not include a section on e-doping.¹⁰⁶ Instead, under the section titled "Integrity of Matches and Competitions," WESA's code of conduct simply states: "Persons bound by this Code must not conspire to influence the result of a match in a manner

⁹⁹ *ESL and DreamHack Merge to Shape Future of Esports and Gaming, Globally*, ESL (Sept. 30, 2020), <https://about.eslgaming.com/blog/2020/09/esl-and-dreamhack-merge-to-shape-future-of-esports-and-gaming-globally> [https://perma.cc/4GQW-5XV5].

¹⁰⁰ *Home*, WESA, <http://www.wesa.gg> [https://perma.cc/2WLP-MZ5J]; Hans Oelschlägel, *Announcing the Founding of WESA - the World Esports Association*, ESL (May 13, 2016), <https://www.eslgaming.com/article/announcing-founding-wesa-world-e-sports-association-2856> [https://perma.cc/FGL5-28ZM]; *World Esports Association (WESA) Founded*, BUSINESSWIRE (May 13, 2016, 10:00 AM), <https://www.businesswire.com/news/home/20160513005180/en/World-E-sports-Association-WESA-Founded> [https://perma.cc/JSC3-VBLZ].

¹⁰¹ Colin Campbell, *The Who, What and Why of the World Esports Association*, POLYGON (May 13, 2016, 10:00 AM), <https://www.polygon.com/2016/5/13/11668182/what-is-wesa> [https://perma.cc/9MS4-RZFP].

¹⁰² *Home*, *supra* note 100; see Oelschlägel, *supra* note 100 ("WESA will . . . bring much needed structure, predictable schedules and transparency to the scene.").

¹⁰³ Campbell, *supra* note 101.

¹⁰⁴ *Id.* ("WESA members are free to participate in . . . rival leagues.").

¹⁰⁵ *See id.*

¹⁰⁶ *See* WESA, CODE OF CONDUCT AND COMPLIANCE FOR TEAMS AND PLAYERS (2017), <http://www.wesa.gg/wp-content/uploads/2019/05/WESA-Code-of-Conduct-Teams-and-Players-Final-03052019-1.pdf> [https://perma.cc/3EZG-3LG6] (including no mention of e-doping).

contrary to sporting ethics.”¹⁰⁷ Within its integrity-of-matches provisions, WESA prohibits gambling but not e-doping.¹⁰⁸ The section titled “Doping” only mentions traditional doping.¹⁰⁹ As WESA only governs its own players and the competitions of one game—out of the many games and genres that constitute e-sports—WESA does not, by itself, provide industry-wide standards for e-doping that other organizations must follow.

B. *The Esports Integrity Commission*

Also in 2016, a British nonprofit organization called the Esports Integrity Commission (ESIC) formed with the mission “to be the recognised guardian of the integrity of esports and to take responsibility for disruption, prevention, investigation and prosecution of all forms of cheating, including, but not limited to, match manipulation and doping.”¹¹⁰ ESIC has sixteen tournament operators and five national federations as members—and ESIC rules only apply to ESIC-run tournaments and ESIC-member teams.¹¹¹ Members include e-sports stakeholders such as the U.K. Gambling Commission, Nevada State Gaming Control Board, the Portuguese Esports Federation, and e-sports competition operators.¹¹² Ian Smith, ESIC’s Esports Integrity Commissioner, said in an interview that ESIC is neutral, “so the politics and rivalries of the industry can be left at the door and everyone can work together to address this threat to the common good.”¹¹³

Unlike WESA’s, ESIC’s code of conduct explicitly addresses elements of e-doping in article 2, titled “Offences.”¹¹⁴ While article 2 does not mention the term e-doping, it describes “[c]heating or attempting to cheat to win a Game or Match” as a serious offense and provides examples of cheating to win that include forms of e-doping, such as:

- “Map Hack (using external software to gain more vision than intended by the game mechanics)”;

¹⁰⁷ *Id.* § 19.1.

¹⁰⁸ *Id.* § 19.2.

¹⁰⁹ *Id.* §§ 20.1–4.7.

¹¹⁰ *Who We Are*, ESIC, <https://esic.gg/about> [<https://perma.cc/E677-MQCY>].

¹¹¹ *Members & Supporters*, ESIC, <https://esic.gg/members> [<https://perma.cc/Z6V7-MU2L>]; Nick Johnson, *Who Is the ESIC and What Power Do They Have in CS:GO?*, WIN (Oct. 3, 2020, 7:28 PM), <https://win.gg/news/who-is-the-esic-and-why-do-they-have-so-much-power-in-cs-go-question-mark/> [<https://perma.cc/KT8G-E9ZJ>] (“ESIC player and coach sanctions only apply to organizations that are members of the ESIC and pay a membership fee for the privilege.”).

¹¹² *Members & Supporters*, *supra* note 111.

¹¹³ *Everything You Need to Know About the Esports Integrity Coalition*, MCV (Mar. 17, 2017), <https://www.mcvuk.com/business-news/everything-you-need-to-know-about-the-esports-integrity-coalition> [<https://perma.cc/2VTH-LJRW>].

¹¹⁴ *Code of Conduct*, ESIC, <https://esic.gg/codes/code-of-conduct> [<https://perma.cc/A59S-N3XE>].

- “Aim Bot (using external software to automatically hit opponents when firing a weapon)”;
- “Ghosting (getting additional information about the game, usually the opponent, from third party sources like stream viewers or the live audience)”;
- “Any external software that directly tampers with the game software to gain any kind of advantage in the game.”¹¹⁵

Despite its more specific regulations geared towards e-doping, ESIC does not set industry standards because it only governs its own tournaments and member teams.

C. *The International Esports Federation*

Based in South Korea,¹¹⁶ the International Esports Federation (IESF) seeks to promote e-sports as a legitimate sport around the world.¹¹⁷ IESF includes 111 national federations as members,¹¹⁸ and IESF offers rules and regulations that specifically govern the IESF World Championships and IESF institutions.¹¹⁹ These regulations include anti-doping regulations developed in compliance with the World Anti-Doping Agency,¹²⁰ an independent organization initiated by the International Olympic Committee to combat traditional doping in traditional sports.¹²¹

The term “e-doping” does not appear in IESF’s competition regulations, but the “Integrity” section states that “[n]o forms of cheating are allowed within the tournament[s].”¹²² The rule provides examples of cheating, including “macros, wallhacks, maphacks, aimbots, auto-firing, recoil reduction, automatic input hacks, speed hacking, and clipping”—all forms of e-doping.¹²³ While the issue of e-doping is briefly addressed in IESF’s regulations, the organization’s reach cannot go beyond IESF championships and member institutions.

¹¹⁵ *Id.* (internal quotation marks omitted).

¹¹⁶ *Contact Us*, IESF, <https://iesf.org/contact> [<https://perma.cc/QR9E-DSRC>].

¹¹⁷ *What We Do*, IESF, <https://iesf.org/about/what-we-do> [<https://perma.cc/S9M8-K74G>].

¹¹⁸ *Members*, IESF, <https://iesf.org/about/members> [<https://perma.cc/U865-NEMC>].

¹¹⁹ *Rules & Regulations*, IESF, <https://ie-sf.org/governance/regulations> [<https://perma.cc/PFQ3-XE7Z>].

¹²⁰ *Anti-Doping Regulations*, IESF, <https://ie-sf.org/governance/anti-doping> [<https://perma.cc/7L9N-XRLR>]; IESF, INTERNATIONAL ESPORTS FEDERATION ANTI-DOPING RULES 3 (2020), https://iesf.org/wp-content/uploads/2020/12/2021_IESF_Anti-Doping_Rules_Approved.pdf [<https://perma.cc/58FT-Z35J>].

¹²¹ *Who We Are*, WORLD ANTI-DOPING AGENCY, <https://www.wada-ama.org/en/who-we-are> [<https://perma.cc/KY9H-ULH8>].

¹²² INT’L ESPORTS FED’N, *supra* note 18, at 15.

¹²³ *Id.*

As demonstrated, the regulations for e-doping under WESA, ESIC, and IESF are each different in scope. And each organization only governs its own tournaments and member teams, which limits its authority to set and enforce uniform industry standards regarding e-doping. The next Section describes these organizations' failure to regulate the e-sports industry.

D. *The Problem with Existing E-Sports Organizations*

While WESA, IESF, ESIC, and others “are trying to police the industry”¹²⁴ and promote fair competition through rules prohibiting cheating, these rules only apply to players affiliated with, and competitions hosted by, each association. Their limited reach leaves the industry with fragmented regulations and enforcement mechanisms.¹²⁵ It is true that some of the organizations' regulations appear to be similar in theory—for example, despite the fact that ESIC and IESF each prohibit different types of e-doping, the organizations' rules against cheating seem to overlap.¹²⁶ But this similarity does not overcome the problem that these organizations only have authority over their own competitions and players, each of which forms only a small portion of the whole e-sports industry.¹²⁷ This problem remains even though IESF seems to have a wide reach; it has no authority to govern other organizations such as WESA and ESIC. Today, no single e-sports association can provide uniform e-doping regulations and enforcement.

Compounding the inconsistent regulations in e-sports, organizations and game developers punish cheating violations differently. For example, some professional players who cheat can be permanently banned from official competitions,¹²⁸ while others can receive shorter bans of years or months and then return to e-sports competitions.¹²⁹ Additionally, IESF's e-

¹²⁴ Bogle, *supra* note 94.

¹²⁵ Compare INT'L ESPORTS FED'N, *supra* note 18, at 15 (prohibiting cheating, including “macros, wallhacks, maphacks, aimbots, auto-firing, recoil reduction, automatic input hacks, speed hacking, and clipping”), and *Code of Conduct*, *supra* note 114 (prohibiting use of any “external software that directly tampers with the game software to gain” an advantage, such as map hack, aim bot, and ghosting software), with WESA, *supra* note 106, at 9 (prohibiting cheating without mentioning e-doping).

¹²⁶ See *supra* Sections II.B–II.C.

¹²⁷ See *supra* Sections II.A–II.C.

¹²⁸ Kevin Webb, *A Teenager's Lifetime Ban from 'Fortnite' Sheds Light on a Dark Reality in the Esports Business*, BUS. INSIDER (Nov. 10, 2019, 8:10 AM), <https://www.businessinsider.com/jarvis-fortnite-ban-epic-games-esports-ninja-2019-11> [<https://perma.cc/F3HD-KT33>].

¹²⁹ Chadley Kemp, *Riot Games Officially Reveal Why They Banned Valorant Pro Slaze*, GINX ESPORTS TV (Nov. 5, 2021, 12:31 PM), <https://www.ginx.tv/en/valorant/riot-games-officially-reveal-why-they-banned-valorant-pro-slaze> [<https://perma.cc/8WDX-J3NY>] (three-month ban for cheating); Lauren Bergin, *Convicted Cheater Returns to Competitive PUBG After 2 Year Ban*, DEXERTO (Mar. 18, 2021, 12:27 PM), <https://www.dexerto.com/pubg/convicted-cheater-returns-to-competitive-pubg-after-2-year-ban-1535778> [<https://perma.cc/URS4-VQJA>] (two-year ban for cheating).

doping prohibition names different e-doping methods than ESIC's, reflecting the inconsistency in the regulatory landscape.¹³⁰ Even within organizations, cheating punishments vary. For example, ESIC banned a cheating player, Emil "EmilshelN" Mamedov, for seven months from all ESIC tournaments,¹³¹ while ESIC banned Forsaken for five years for cheating.¹³² Additionally, organizations do not enforce one another's player bans. So cheaters banned from one tournament could still play in other tournaments during their ban.¹³³ Even a condemned e-doper who specializes in only one game could play that game in tournaments held by other organizations. Further, existing e-sports associations are independent coalitions, not backed by governments. Since existing e-sports associations are rarely recognized by nonmember leagues, organizations, or teams, some spectators view certain associations as illegitimate.¹³⁴ And coalitions lack the power to compel other organizations to follow their regulations, since their authority only reaches their own members.¹³⁵

Unsurprisingly, individual regulation by various organizations has failed to make the e-sports industry fair across all teams and game genres. Rather, inconsistent regulation of cheating creates a widespread perception

¹³⁰ Compare INT'L ESPORTS FED'N, *supra* note 18, at 15 (naming "macros, wallhacks, maphacks, aimbots, auto-firing, recoil reduction, automatic input hacks, speed hacking, and clipping"), with *Code of Conduct*, *supra* note 114 (using only "Map Hack," "Aim Bot," and "Ghosting" as examples).

¹³¹ Aditya Singh Rawat, *ESIC and ESL Issue 7 Months Ban to 19 Year Old CS:GO Pro for Cheating*, AFK GAMING (Apr. 30, 2020, 2:21 PM), <https://afkgaming.com/articles/csgo/News/3831-ESIC-and-ESL-Issue-7-Months-Ban-to-19-Year-Old-CSGO-Pro-for-Cheating> [<https://perma.cc/QXF9-9XAF>] (During a timeout due to internet issues, "[Emil] was able to 'potentially pass on tactical information to his teammates about the economy of the opponent team, nerdRage.' Though there was a delay of 3.5 minutes in the broadcast, as the technical pause ran for seven minutes 'there was enough time to gain information that could be used to gain an advantage.'" (quoting Press Release, LawInSport, ESL and ESIC Issues Ban to Team VAC Player Emil "EmilshelN" Mamedov (May 1, 2020), https://www.lawinsport.com/topics/sports/item/esl-and-esic-issues-ban-to-team-vac-player-emil-emilshelN-mamedov?category_id=152 [<https://perma.cc/5UGW-ZSFV>])).

¹³² Good, *supra* note 12. While EmilshelN and Forsaken cheated in different ways, ESIC banned Forsaken more than eight times longer than EmilshelN—despite describing EmilshelN's conduct as "particularly egregious." *See id.*; Press Release, LawInSport, *supra* note 131.

¹³³ *Cf. How to Solve the Cheating Problem in Esports for Good with Blockchain Technology*, FYX GAMING, <https://blog.fyxgaming.com/articles/how-to-solve-the-cheating-problem-in-esports-for-good-with-blockchain-technology> [<https://perma.cc/Z69Q-UZUQ>] (explaining why bans do not curb cheating in amateur competitive online video games).

¹³⁴ *See* Martinelli, *supra* note 72, at 510.

¹³⁵ *See id.* ("[N]one of the groups appear to be recognized by any nonmember leagues, organizations, players, or teams. It would therefore appear that coalitions lack the power to compel those bodies to act a certain way. Each group launched with the self-stated goals of being the globally recognized authority in their respective missions." (citing Will Green, *Establishing Esports Oversight: The Groups, Issues, and Potential Challenges*, LINES (Jan. 22, 2018), <https://www.thelines.com/esports-oversight-overview-and-challenges> [<https://perma.cc/ZS7R-TKNA>])).

among fans, players, and commentators that e-sports is unfair.¹³⁶ For example, e-sports players are concerned about cheating in multiplayer video games.¹³⁷ When cheating players in e-sports tournaments are punished differently, the integrity of competitions is affected because the inconsistent enforcement of rules against cheating can deter players from wanting to compete.¹³⁸ Without a single regulatory body, e-sports as an industry does not have a consistent system in place to ensure fair play.¹³⁹ As the e-sports industry grows, it should consider a uniform solution to address e-doping and ensure fairness, quality of competition, and sustainability.¹⁴⁰

III. A SOLUTION: A SINGLE GOVERNING BODY

Today, the e-sports industry is full of regulatory experimentation.¹⁴¹ As discussed in Part II, the industry is currently crowded with organizations

¹³⁶ See, e.g., Rupesh Nair, *CSGO: Should Forsaken Be Forgiven for Cheating?*, ESSENTIALLY SPORTS (Feb. 14, 2021, 12:54 AM), <https://www.essentiallysports.com/csgo-should-forsaken-be-forgiven-for-cheating-esports-news> [<https://perma.cc/6J4P-9JVP>] (discussing Forsaken's ban and adding that "[a]lthough everyone deserves a second chance, it becomes hard for people to forgive someone that literally ruined thousands of opportunit[ies] that could have been there for others"); Nick Fitzpatrick & Alasdair Muller, *The Rules of the Game*, DLA PIPER (June 4, 2020), <https://www.dlapiper.com/en/us/insights/publications/2020/06/patch-notes-dla-piper-guide-to-esports> [<https://perma.cc/8UX6-F438>] (concluding that a single e-sports regulatory body is necessary and will need support from "all of the stakeholders with an interest in the esports industry (including players, teams, developers, publishers, distributors, tournament organizers, promoters, and so on)"); see *supra* notes 82–83 and accompanying text.

¹³⁷ See, e.g., Abhimannu Das, *Why Is Cheating Almost Impossible to Stop in Video Games?*, AFK GAMING (Jan. 31, 2021, 10:32 PM), <https://afkgaming.com/articles/esports/News/6521-why-is-cheating-almost-impossible-to-stop-in-video-games> [<https://perma.cc/9666-VUG8>] (noting that 88% of players in South Korea and 85% of players in China are "strongly against cheating in multiplayer games").

¹³⁸ See, e.g., Danny Forster, *TFT Player Banned from Fates Open Qualifier Raises Concerns over Riot's Rule Enforcement*, DOT ESPORTS (Mar. 5, 2021, 6:24 PM) <https://dotesports.com/tft/news/tft-player-banned-from-fates-open-qualifier-raises-concerns-over-riots-rule-enforcement> [<https://perma.cc/9USP-AK7R>] ("Consistency is key to competitive integrity, where inconsistencies within the enforcement of the rules could possibly discourage up-and-coming players from wanting to compete at the highest levels.").

¹³⁹ DLA Piper, *supra* note 74 ("[I]t is interesting to consider that no specific independent authority/regulator has been identified, so that eSports tournaments are usually self-regulating. For instance, FIFA – for its e-football events and tournaments – developed a single global regulatory body in order to ensure the quality of tournaments and the competition in the play and consistency in rules and code of conducts across different games.").

¹⁴⁰ In the long run, uniformity can help the e-sports industry be more formally recognized, with the possibility of joining the Olympic Games, since the Olympic Games will likely resist adoption of e-sports unless e-sports has "an established governance framework." Sabrina Bruno, *No Pixel Podiums: Lack of Governance in Esports Excludes Them from the Olympic Games*, MCCARTHY TETRAULT (Oct. 24, 2019), <https://www.mccarthy.ca/en/insights/articles/no-pixel-podiums-lack-governance-esports-excludes-them-olympic-games> [<https://perma.cc/9R4Q-DTKB>].

¹⁴¹ See Purewal & Davies, *supra* note 54, at 26.

trying and failing to regulate e-sports.¹⁴² As the e-sports industry grows, it needs a uniform solution to address integrity issues like e-doping. In the United States, a combination of internal self-regulation and statutes, case law, and regulatory action govern traditional sports, but their relevance to e-sports remains uncertain.¹⁴³ Existing U.S. law, such as copyright law,¹⁴⁴ could theoretically address issues like e-doping in circumstances where U.S. law applies.¹⁴⁵ For example, copyright law could deter e-doping by prohibiting any changes to a computer program without consent from its copyright holder.¹⁴⁶ However, private enforcement of U.S. copyright law cannot do enough to rein in e-doping because the global nature of e-sports necessitates a globally uniform solution.¹⁴⁷ Many e-sports competitions take place outside the United States with players from all over the world¹⁴⁸—meaning that U.S. law will not always govern when a player is found e-doping.

While regulation of the e-sports industry is a relatively new discussion in legal scholarship, previous articles have argued in favor of adopting an internal regulatory body in e-sports,¹⁴⁹ focusing on the soccer industry's

¹⁴² See Martinelli, *supra* note 72, at 509–10.

¹⁴³ Purewal & Davies, *supra* note 54, at 27. Another complication furthers this problem: “[E]sports is not one sport, but multiple sports in different regions of the world, so there are multiple shareholders and owners involved in esports competitions. Stakeholders do not view the groups formed as authorities; thus, there is not consensus on what rules apply to competitions.” Martinelli, *supra* note 72, at 510.

¹⁴⁴ Cf. Carl “Ott” Lindstrom, *Mod Money, Mod Problems: A Critique of Copyright Restrictions on Video Game Modifications and an Evaluation of Associated Monetization Regimes*, 11 WM. & MARY BUS. L. REV. 811, 816–23 (2020) (discussing video game modifications in the context of U.S. copyright law); Tori Allen, *What’s in a Game: Collective Management Organizations and Video Game Copyright*, 8 UNLV GAMING L.J. 209, 211 (2017) (analyzing how copyright law applies to e-sports tournaments); Michael Larkey, *Cooperative Play: Anticipating the Problem of Copyright Infringement in the New Business of Live Video Game Webcasts*, 13 RUTGERS J.L. & PUB. POL’Y 52, 54–55 (2015) (discussing the application of U.S. copyright law to online video gaming generally). The possible application of existing Polish copyright law to e-doping may suggest that U.S. copyright law also has the capacity to deter e-doping. See Koryzma & Zdanowicz-Lesniak, *supra* note 75 (explaining that Polish copyright law “prohibits any changes to the structure or modifications of the computer program without the consent of its copyright holder,” which is usually the game organizer who obtains copyright from the author, and adding that e-doping in the form of changing the structure of the computer program could be a basis for legal claims against the infringer). This Note does not compare U.S. and Polish copyright law.

¹⁴⁵ The intricacies of choice of law doctrine—including when and how U.S. law would apply in individual cases—are beyond the scope of this Note.

¹⁴⁶ See, e.g., *Software Copyright – Basics Explained [Guide 2021]*, 10DUKE, <https://www.10duke.com/resources/glossary/software-copyright/> [<https://perma.cc/XEW9-BQ5P>] (providing the basic theory of software copyright infringement).

¹⁴⁷ See *supra* Part I.

¹⁴⁸ See *supra* Part I.

¹⁴⁹ See, e.g., Purewal & Davies, *supra* note 54, at 26 (“Underlying this is the growing industry consensus that eSports need[s] to be organized and governed better for the future in order for it to grow on a sustainable and long-term basis.”).

governing structure and regulations under FIFA.¹⁵⁰ Yet the scholarship proposing adoption of the FIFA model does not account for the multigenre aspect of e-sports or the unique problem of e-doping.

This Part argues that e-sports should instead adopt a single internal regulatory body based on the Union Cycliste Internationale (UCI) to better address e-doping concerns because e-sports shares similarities with cycling that other sports like soccer do not share. This Part (1) describes what the UCI does, (2) discusses the similarities between cycling and e-sports, (3) compares UCI with FIFA and argue that the former is a better fit for e-sports, (4) explains how e-sports can adopt the UCI model, and (5) analyzes how the proposed governing body would regulate e-doping in e-sports.

A. *What Is UCI and How Does It Address Mechanical Doping?*

UCI is the global governing body for cycling.¹⁵¹ UCI governs cycling in “all its forms,” creates competition standards, and maintains the integrity of the sport.¹⁵² UCI oversees eight genres of cycling: “road, track, mountain bike, BMX Racing, BMX Freestyle, cyclo-cross, trials and indoor cycling.”¹⁵³ UCI has set up separate “UCI Commissions” to implement regulations for each specific discipline that cater to its individual needs.¹⁵⁴ Further, UCI consists of a congress,¹⁵⁵ a management committee,¹⁵⁶ and judicial bodies (including a disciplinary commission, arbitral board, license commission, ethics commission, and anti-doping tribunal).¹⁵⁷ UCI outlines rules that apply to all genres of cycling, such as the UCI Code of Ethics and

¹⁵⁰ See Ingram, *supra* note 93, at 516 (“[T]he eSports industry must establish an international regulatory body. Of course, eSports cannot simply substitute the term ‘football’ for ‘eSports’ in the FIFA Statutes and expect to have a functioning regulatory body of its own. But the eSports industry can certainly borrow from FIFA’s organizational structure and regulations and tailor them to its own needs.”); Martinelli, *supra* note 72, at 515 (“To address this regulatory problem in esports, there needs to be one organization that oversees the industry. . . . An organization, like FIFA, needs to be created and can then delegate powers to national bodies to regulate the sport in different territories throughout the world.”).

¹⁵¹ *Mission, Vision, Values*, *supra* note 25.

¹⁵² *Id.*; see *Regulations*, UNION CYCLISTE INTERNATIONALE, <https://www.uci.org/regulations/3MyLDDrwJCJ0BGGOFzOat> [<https://perma.cc/MC44-ML8V>].

¹⁵³ *Mission, Vision, Values*, *supra* note 25.

¹⁵⁴ *Commissions*, UNION CYCLISTE INTERNATIONALE, <https://www.uci.org/commissions/6kulgm mhggqk6NvEp3dy1G> [<https://perma.cc/B4M7-U8QB>].

¹⁵⁵ *Congress*, UNION CYCLISTE INTERNATIONALE, <https://www.uci.org/congress/3EdOuNjLPX64R8fGFmA1Ms> [<https://perma.cc/3ZZ9-7SXJ>].

¹⁵⁶ *Management Committee*, UNION CYCLISTE INTERNATIONALE, <https://www.uci.org/management-committee/2aaY7PhhuUt4ixUsgjiy> [<https://perma.cc/9VJT-8E6J>].

¹⁵⁷ *Judicial Bodies*, UNION CYCLISTE INTERNATIONALE, <https://www.uci.org/judicial-bodies/4DeAGy6jHYGdec9R49wKVS> [<https://perma.cc/5PZT-CTW3>].

the UCI Technical Regulation, creating a uniform system to regulate common issues like mechanical doping.¹⁵⁸

Mechanical doping in cycling encompasses technological fraud involving the bikes, such as “hiding a small motor inside [a] bike for an extra boost.”¹⁵⁹ Over the years, UCI has overcome mechanical doping scandals—specifically involving hidden motors. One example involved a Canadian cyclist whose bike “appeared to rotate away from him as it lay on the floor” after he fell during a race, raising questions about his use of a hidden battery pack on his bicycle.¹⁶⁰ Similarly, UCI uncovered an electric motor in the bicycle of a Belgian cyclist.¹⁶¹ Despite her denial of any knowledge about the motor, UCI banned the cyclist for six years and issued a fine, and she soon retired from competitive cycling.¹⁶²

To address integrity concerns, UCI has tests in place to detect possible cheaters and continues to update its testing methods with developing technology.¹⁶³ UCI has implemented various tools to scan for prohibited methods of mechanical doping on bicycles, including magnetic resonance testing, thermal cameras, and X-ray scans.¹⁶⁴ UCI also established the Cycling Independent Reform Commission (CIRC) in 2014 “to conduct a wide ranging independent investigation into the causes of the pattern of doping that developed within cycling and allegations which implicate the UCI and other governing bodies and officials over ineffective investigation of such doping practices.”¹⁶⁵ A 2015 CIRC report even admitted that “decisions taken by UCI leadership in the past have undermined anti-doping

¹⁵⁸ UNION CYCLISTE INTERNATIONALE, CODE OF ETHICS 3 (2021), <https://www.uci.org/docs/default-source/rules-and-regulations/2021-uci-ethics-en.pdf> [<https://perma.cc/WXK5-Y43Z>]; UNION CYCLISTE INTERNATIONALE, CLARIFICATION GUIDE OF THE UCI TECHNICAL REGULATION 9 [hereinafter CLARIFICATION GUIDE], <https://www.uci.org/docs/default-source/equipment/clarification-guide-of-the-uci-technical-regulation-eng.pdf> [<https://perma.cc/K9FS-MXC4>].

¹⁵⁹ James Huang, *What Is Mechanical Doping?*, BIKERADAR (July 16, 2015, 4:00 PM), <https://www.bikeradar.com/features/what-is-mechanical-doping> [<https://perma.cc/96AJ-RFB9>].

¹⁶⁰ Charlotte Smith, *Cycling Should Take a Lead from F1 as Hidden Motor Scandal Emerges*, CONVERSATION (Feb. 3, 2016, 7:46 AM), <https://theconversation.com/cycling-should-take-a-lead-from-f1-as-hidden-motor-scandal-emerges-54011> [<https://perma.cc/37VU-3G37>].

¹⁶¹ The cyclist denied knowing anything about the motor, explaining “that the bike belonged to a friend who had left it with her mechanics, who wrongly thought it was hers.” *Id.*

¹⁶² See Dan Nosowitz, *How the Tour de France Encourages Cheating*, GQ (July 12, 2016), <https://www.gq.com/story/how-the-tour-de-france-encourages-cheating> [<https://perma.cc/QM3B-7PC3>].

¹⁶³ See Emily Reynolds, *What Is Mechanical Doping and How Is It Detected?*, WIRED (Apr. 5, 2017, 9:56 AM), <https://www.wired.co.uk/article/mechanical-doping> [<https://perma.cc/CZ5G-4F2V>].

¹⁶⁴ Chris Lavey, *Technology Changing Sport: Mechanical Doping*, MEDIAWRITES (Feb. 12, 2018), <https://mediawrites.law/technology-changing-sport-mechanical-doping> [<https://perma.cc/JAL5-SNHK>].

¹⁶⁵ CYCLING INDEP. REFORM COMM’N, REPORT TO THE PRESIDENT OF THE UNION CYCLISTE INTERNATIONALE 6, 16 (2015), https://www.sportsintegrityinitiative.com/wp-content/uploads/2016/03/CIRCReport2015_Neutral.pdf [<https://perma.cc/8BY3-5JGN>].

efforts.”¹⁶⁶ The report also focused on mechanical doping in particular, noting that “technical cheating may be emerging as a more significant avenue for illicit gains than ever before.”¹⁶⁷

Using anti-cheating tools, UCI detects and sanctions players’ use of prohibited mechanical doping uniformly according to its regulations, and the organization regularly updates its technology and regulation of mechanical doping for more effective enforcement.¹⁶⁸ UCI’s continuous effort to address the issue of mechanical doping helps assure the public that the competitions are fair.¹⁶⁹

The next Section delves into the similarities between cycling and e-sports to demonstrate how, by following the UCI model, the e-sports industry could also uniformly address e-doping issues and maintain public faith in the fairness of e-sports competitions.

B. Similarities Between Cycling and E-Sports

Because of the similar natures of cycling and e-sports, the e-sports industry should follow the model of the UCI.¹⁷⁰ First, e-sports and cycling

¹⁶⁶ *Id.* at 9.

¹⁶⁷ *Id.* at 25, 85–86 (warning that a “clear, unambiguous set of technical rules are critically important” for cycling because of the wide range of mechanical doping tactics, “including using motors in frames[,] . . . heat[ing] a cycling track to elicit an advantage to the home team, by enabling them to use more advantageous tyres,” and methods “relating to frames construction, saddle specifications, and the wearing of illegal clothing and apparel”).

¹⁶⁸ See Daniel Ostanek & Josh Croxton, *Mechanical Doping Claims Resurface at Tour de France*, CYCLINGNEWS (July 17, 2021), <https://www.cyclingnews.com/news/mechanical-doping-claims-resurface-at-tour-de-france> [<https://perma.cc/2V5Z-7SDZ>] (describing how UCI has updated its mechanical doping testing technology over the years); Andrew Hood, *UCI to Use New Testing Methods to Combat ‘Mechanical Doping’*, VELONEWS (June 6, 2019), <https://www.velonews.com/news/uci-to-use-new-testing-methods-to-combat-mechanical-doping> [<https://perma.cc/X4XF-LZCC>] (describing “UCI’s strong-arm tactics against technological fraud,” explaining how such tests were conducted, and reporting on UCI’s plans for further technological development for testing).

¹⁶⁹ See, e.g., *Inside the UCI’s Plan to Combat Motorized Cheating*, VELONEWS, <https://www.velonews.com/news/road/inside-the-ucis-plan-to-combat-motorized-cheating> [<https://perma.cc/ZKL6-GDLY>] (describing UCI’s use of new X-ray technology to “assure the public that no riders are using illicit motors”); *UCI Introduces Tougher Laws Against Motor Doping*, CYCLIST, <https://www.cyclist.co.uk/news/4467/uci-introduces-tougher-laws-against-motor-doping> [<https://perma.cc/V3JQ-2NKK>] (reporting on UCI’s efforts to address mechanical doping with “thermal imaging cameras, magnetometer tagging and a state-of-the-art X-ray machine”).

¹⁷⁰ I do not know of any other sports with governing bodies that would make a more suitable model. Tournament poker might seem like a candidate at first glance. See David G. Schwartz, *Historical Parallels Between Tournament Poker and Esports*, 10 GAMING L. REV. 730, 730 (2017) (discussing how tournament poker and e-sports appear similar). But a closer comparison between tournament poker and e-sports shows significant differences. For example, e-sports is played with different competition mechanisms and across different game genres, while tournament poker “boils down to the manipulation of playing cards.” *Id.* (“Though the rules of poker games may differ, their fundamental media is

both encompass various genres. As discussed in Part I, e-sports consists of different games that are played in distinctive ways, with the shared mechanism of using a computer to compete in video games.¹⁷¹ For instance, first-person shooter games such as *Call of Duty* are played differently than fighting games such as *Street Fighter V*.¹⁷² First-person shooter games involve combat with weapons, usually in teams.¹⁷³ In contrast, fighting games typically involve only two players using fight moves to compete with one another.¹⁷⁴

Similarly, all cycling disciplines share the mechanism of using a bicycle to compete, but individual cycling competitions encompass different genres such as road racing, track racing, and BMX—each of which requires different skillsets.¹⁷⁵ Road racing takes place outdoors and requires traditional road bicycles, while track racing takes place indoors and requires

identical.”). Further, e-sports “developers, publishers, leagues, or third-party organizations” hold e-sports competitions, while casinos host poker tournaments “at their discretion.” *Id.* at 731. Tournament directors—employees of the casino—set and enforce the rules of each poker tournament. *See* Tadas Peckaitis, *Who’s in Charge of the WSOP? Here’s Everything You Need to Know*, CASINO.ORG (Sept. 28, 2021), <https://www.casino.org/blog/whos-in-charge-of-wsop> [<https://perma.cc/H96L-RDV2>]. The Poker Tournament Directors Association—“a voluntary trade association of the poker tournament industry”—recommends rules, but they only supplement each tournament’s local rules. *See View Poker TDA Rules, Procedures, & Addendum*, POKER TOURNAMENT DIRS. ASS’N, <https://www.pokertda.com/view-poker-tda-rules> [<https://perma.cc/T3C3-2KYX>]; *see also* Scott J. Burnham, *A Transactional Lawyer Looks at the Rules of Tournament Poker*, 20 GAMING L. REV. & ECON. 9, 11 (2016) (analyzing the contracts that govern poker tournaments and discussing the role of the Tournament Directors Association rules in those contracts). And the authority to regulate casinos falls to individual states, not an international governing body. *See Play Your Cards Right with USA Gambling Laws*, VEGASMASTER, <https://www.vegasmaster.com/casino-guide/step1/play-it-safe/united-states-gambling-laws> [<https://perma.cc/MY2H-23H7>]; *US Online Poker News and Resources*, ONLINE POKER REP. (July 26, 2021), <https://www.onlinepokerreport.com/us> [<https://perma.cc/YUK3-638J>]. In short, there is no international governing body for tournament poker, so there is no model for e-sports to follow. Many thanks to Cliff Goldkind for providing expert insights into the poker world.

¹⁷¹ Dewley, *supra* note 16.

¹⁷² *See id.*; Oscar Rojas, *Top 10 Competitive Fighting Games You Need to Follow*, ESPORTS.NET (Sept. 3, 2020), <https://www.esports.net/news/fighting-games/top-10-competitive-fighting-games> [<https://perma.cc/67YH-DGX7>].

¹⁷³ *Supra* note 16 and accompanying text.

¹⁷⁴ Izaak, *How to Learn and Start Playing a Fighting Game*, SPORTSKEEDA (Aug. 8, 2020), <https://www.sportskeeda.com/esports/news-how-learn-start-playing-fighting-game> [<https://perma.cc/7D9A-QJ4H>]; *see also* Trent Murray, *An Introduction to Watching Fighting Games as Esports*, ESPORTS OBSERVER (Feb. 26, 2018), <https://esportsobserver.com/introduction-fighting-games-esports> [<https://perma.cc/XD9N-KEV6>] (describing the format of fighting game tournaments and the key distinguishing characteristics of popular fighting games).

¹⁷⁵ Simon Kidd, *A Glossary of Cycling Events: Road, Off-Road, and Track Racing*, BREAKING MUSCLE, <https://breakingmuscle.com/fitness/a-glossary-of-cycling-events-road-off-road-and-track-racing> [<https://perma.cc/3P9G-W8SP>]; *see Ready to Start Racing?*, USA CYCLING, <https://usacycling.org/get-involved/find-support> [<https://perma.cc/LU4V-LHKQ>].

track bicycles, which lack brakes and use a fixed-wheel design that makes them “distinct from virtually all other bicycles.”¹⁷⁶

Second, e-sports and cycling share the problem of mechanical doping because both involve players relying on a machine to compete. E-doping issues can arise across genres of e-sports,¹⁷⁷ just as mechanical doping issues can arise across various genres within cycling.¹⁷⁸ And players engaging in e-doping are cheating through a modality distinct from traditional drugs,¹⁷⁹ just as cycling players cheat by rigging their bicycles—also a modality separate from traditional drugs.¹⁸⁰ The modalities of e-sports and cycling stand in stark contrast to those of other sports like soccer or football, where players do not rely on a machine such as a computer or a bicycle. The similarities between cycling and e-sports make the UCI model more suitable than the FIFA model, as explained in the next Section.

C. *The UCI Model Is a Better Fit Than the FIFA Model*

Given that some in the e-sports industry have proposed the FIFA model as a viable way to regulate e-sports,¹⁸¹ this Section outlines the FIFA model before explaining why the UCI offers a better model for regulating e-doping. Both FIFA and UCI formed when existing associations from different countries came together to establish a uniform governing body.¹⁸² And FIFA, like UCI, is an international organization governing one sport uniformly around the world. Accordingly, some scholars, such as James Ingram, have argued that e-sports should form a uniform governing body that follows the FIFA model.¹⁸³ Ingram outlines FIFA’s structure and describes how FIFA

¹⁷⁶ *Road Cycling Versus Track Cycling: What’s the Big Difference?*, SPORTS FITNESS (May 30, 2016), <https://www.sports-fitness.co.uk/blog/road-cycling-versus-track-cycling> [<https://perma.cc/KF8R-GV36>].

¹⁷⁷ See Ashton, *supra* note 90.

¹⁷⁸ See, e.g., Joe Lindsey, *How Does Mechanical Doping Work?*, BICYCLING (Feb. 1, 2016), <https://www.bicycling.com/bikes-gear/a20010594/how-does-mechanical-doping-work> [<https://perma.cc/24AD-GUTJ>] (describing the attempted use of a motorized bicycle during the 2016 UCI Cyclocross World Championships).

¹⁷⁹ See *supra* Section I.B.

¹⁸⁰ See Lindsey, *supra* note 178; Daniel McMahon, *Cycling Officials Keep Checking Riders’ Bikes Because They Suspect There May Be Motors in Them — and the Riders Are Calling It ‘the Stupidest Thing’ Ever*, BUS. INSIDER (June 6, 2015, 12:07 PM), <https://www.businessinsider.com/mechanical-doping-in-pro-cycling-2015-6> [<https://perma.cc/X5Z4-FYQ9>].

¹⁸¹ See *supra* note 150 and accompanying text.

¹⁸² See *FIFA — Soccer’s World Governing Body*, U.S. SOCCER, <https://www.ussoccer.com/history/organizational-structure/fifa> [<https://perma.cc/U56R-8VD3>]; *1900: A Major Cycling Organization Is Born in Paris*, TRANSP. HIST. (April 14, 2020), <https://transportationhistory.org/2020/04/14/1900-a-major-cycling-organization-is-born-in-paris> [<https://perma.cc/63VD-5SKU>].

¹⁸³ See *supra* note 150 and accompanying text.

sets anti-doping regulations for traditional doping and uniform standards for soccer around the world.¹⁸⁴

FIFA's organizational structure consists of a congress, a council, a general secretariat, and judicial bodies, which work together to carry out FIFA's functions of improving the game of soccer, organizing competitions, creating and enforcing regulations, and ensuring that member organizations follow FIFA's rules.¹⁸⁵ Specifically, FIFA's congress acts as the legislative body, voting on matters including approving new members to join FIFA, suspending existing members, or amending the FIFA rules—such as rules prohibiting traditional doping.¹⁸⁶ The council defines FIFA's mission and values, and the general secretariat plays an administrative role.¹⁸⁷ The judicial bodies consist of committees for disciplinary and ethical violations that provide sanctions to members who violate the FIFA rules—including anti-doping rules—and disciplinary code.¹⁸⁸ Further, the judicial bodies include an appeal committee that allows violating members to appeal the other committees' decisions.¹⁸⁹

Of course, FIFA is an international organization governing a sport uniformly around the world. Some of the appeal in following FIFA's lead may be its global fame,¹⁹⁰ which makes it an accessible example. But the comparison between soccer and e-sports underlying the FIFA model's appeal lacks nuance. There are major practical differences in the sports themselves, and Ingram fails to address this. For example, soccer is a one-

¹⁸⁴ Ingram, *supra* note 93, at 509–16.

¹⁸⁵ *Id.* at 509–12.

¹⁸⁶ *See id.* at 510.

¹⁸⁷ *Id.* at 511.

¹⁸⁸ *See id.* at 511–12.

¹⁸⁹ *Id.* at 512.

¹⁹⁰ *See, e.g.*, FIFA, BRITANNICA, <https://www.britannica.com/topic/Federation-Internationale-de-Football-Association> [<https://perma.cc/3TR9-F685>] (describing FIFA as “one of the largest and most-powerful sports organizations in the world”); Ishaan Tharoor, *How FIFA Became the World's Most Powerful and Loathed Sports Organization*, WASH. POST (May 27, 2015), <https://www.washingtonpost.com/news/worldviews/wp/2015/05/27/how-fifa-became-the-worlds-most-powerful-and-loathed-sports-organization/> [<https://perma.cc/JV8H-K68H>] (describing FIFA's World Cup as “one of the greatest ‘occasions during which humanity can be an imagined community’” (quoting David Goldblatt, *How FIFA's Fouls May Revive the Beautiful Game: David Goldblatt*, BLOOMBERG (June 2, 2011, 11:01 PM))); *FIFA Almighty: 'Bigger Than the UN,'* EURONEWS (May 31, 2015), <https://www.euronews.com/2015/05/31/fifa-almighty-bigger-than-the-un> [<https://perma.cc/67CS-QLK3>] (explaining that FIFA is bigger than the United Nations and “rules the planet's most popular sport”); Kelly Phillips Erb, *World Cup Mania: Figuring Out FIFA, Soccer & Tax*, FORBES (June 16, 2014, 12:23 PM), <https://www.forbes.com/sites/kellyphillipserb/2014/06/16/world-cup-mania-figuring-out-fifa-soccer-tax/?sh=6f9d473444a7> [<https://perma.cc/H5NW-BZY7>] (describing FIFA as the “United Nations of Football,” adding that “soccer is the most popular sport in the world”); *see also* Ingram, *supra* note 93, at 507 (explaining that FIFA is a “natural consideration” as a governing body for e-sports to follow because both industries are international).

genre sport, while e-sports has multiple genres—thus it is unclear how the FIFA model will account for the different genres in e-sports. Additionally, e-doping in e-sports is a problem soccer does not have, and the analogy between e-doping and traditional doping does not go much deeper than the names.¹⁹¹ Methods of regulating traditional doping that FIFA employs would not work in the e-doping context.¹⁹² Accordingly, the differences between e-sports and soccer would require creating many rules and procedures from scratch—work that would be avoidable when modeling an e-sports body after UCI because cycling and e-sports have a stronger resemblance.

Cycling is a multigenre sport that confronts mechanical doping issues.¹⁹³ UCI regulations include separate sections for each genre of cycling with rules that address the specific genre's needs, as the next Section explains in detail.¹⁹⁴ The cycling industry has been combatting the issue of mechanical doping at the professional level for years and has made progress to maintain the integrity of the sport with specific regulations of mechanical doping and improvements in testing technology.¹⁹⁵ Further, UCI, like FIFA, has a congress, a management committee, commissions, and judicial bodies,¹⁹⁶ and, like FIFA, UCI offers anti-doping regulations for traditional doping¹⁹⁷—in addition to providing uniform standards for cycling around the world.¹⁹⁸ In short, UCI can do what FIFA does—and more. Because UCI has a uniform organizational structure, and e-sports shares more similarities with cycling than soccer, the UCI model is a better fit for e-sports than FIFA.

The next Section explains how e-sports can adopt the UCI model.

¹⁹¹ See *supra* Section I.B.

¹⁹² See FIFA, FIFA ANTI-DOPING REGULATIONS 62 (2021), <https://digitalhub.fifa.com/m/a972b6128bdade4/original/eehkfzlvslonjz1fwmse-pdf.pdf> [<https://perma.cc/KJC4-NYAN>] (explaining that testing methods for traditional doping include urine and blood tests).

¹⁹³ *Supra* Section III.B; *infra* Section III.D.

¹⁹⁴ *Infra* Section III.D.

¹⁹⁵ See Michael Pavitt, *UCI Reveal No Cases of Technological Fraud Uncovered at Tour de France*, INSIDE THE GAMES (July 13, 2021), <https://www.insidethegames.biz/articles/1110095/no-technological-fraud-tour-de-france> [<https://perma.cc/24G4-BH2X>] (relating the UCI innovation manager's statements about the "thorough and extensive" testing for the Tour de France and about how UCI continuously innovates to enhance its testing efficacy in order "to be sure [it has] the trust of cycling's fans and stakeholders").

¹⁹⁶ *Supra* notes 156–160 and accompanying text; *supra* note 185 and accompanying text.

¹⁹⁷ *Rules and Procedures*, UNION CYCLISTE INTERNATIONALE, <https://www.uci.org/inside-uci/clean-sport/anti-doping/rules-and-procedures> [<https://perma.cc/FE26-LSWF>]; Ingram, *supra* note 93, at 513.

¹⁹⁸ See *Mission, Vision, Values*, *supra* note 25.

D. Adopting the UCI Model for E-Sports

E-sports can improve its reputation for fairness in the industry as a whole by following in UCI's footsteps. First, the UCI model already accounts for various disciplines within cycling. Although cycling comprises different genres, UCI oversees the "development of cycling as a competitive sport," and its reach encompasses cycling's eight disciplines: road, track, mountain bike, BMX Racing, BMX Freestyle, cyclo-cross, trials, and indoor cycling.¹⁹⁹ Accordingly, UCI regulations include a section for each genre of cycling that UCI oversees.²⁰⁰ Within each section, UCI tailors the regulations to each individual genre. For example, the section on road races includes separate provisions on one-day races and stage races,²⁰¹ whereas the section on cyclo-cross does not.²⁰² As with e-sports, the natures of the competitions between the two genres are different. A uniform governing body for e-sports could have different sections within its regulations to accommodate each genre of games played at competitions—such as one section for first-person shooter games and another for fighting games. Then, those regulations could encompass all e-sports games and govern across disciplines.

Second, the UCI approach to enforcing its prohibition on mechanical doping can inform how e-sports should address e-doping issues. UCI has a separate section in its regulations for "[t]echnical innovations."²⁰³ This provision prohibits "technical innovation regarding anything used, worn or carried by any rider or license holder during a competition (bicycles, equipment mounted on them, accessories, helmets, clothing, means of communication, etc.)" without approval.²⁰⁴ Further, UCI's "Clarification Guide of the UCI Technical Regulation" provides additional guidelines on

¹⁹⁹ *Id.*

²⁰⁰ *Regulations*, *supra* note 152.

²⁰¹ UNION CYCLISTE INTERNATIONALE, CYCLING REGULATIONS: PART 2 ROAD RACES 34, 56 (2021), <https://www.uci.org/docs/default-source/rules-and-regulations/part-ii-road/2-roa-regulations-e.pdf> [https://perma.cc/2NEU-MBY7].

²⁰² *See* UNION CYCLISTE INTERNATIONALE, CYCLING REGULATIONS: PART 5 CYCLO-CROSS (2021), <https://www.uci.org/docs/default-source/rules-and-regulations/5-cro-20200612-e.pdf> [https://perma.cc/J2MP-4TF9]. Cyclo-cross racing involves several laps around a relatively short course that features a combination of rough terrains (such as mud, gravel, or snow). *See* Stan Purdum, *How Long Is a Typical Road Bike Race?*, ROAD BIKE RIDER, <https://www.roadbikerider.com/how-long-bicycle-race> [https://perma.cc/24XC-3KDH]. Road racing, on the other hand, involves a longer course on paved road that athletes traverse over the course of one day (known as "one-day races") or several days (known as "stage races"). *See id.*

²⁰³ UNION CYCLISTE INTERNATIONALE, CYCLING REGULATIONS: PART 1 GENERAL ORGANISATION OF CYCLING AS A SPORT 57 (2021) [hereinafter PART 1 GENERAL ORGANISATION], <https://www.uci.org/docs/default-source/rules-and-regulations/part-i-general-organisation/1-gen-20210208-e.pdf> [https://perma.cc/RF7E-567W]; *see* CLARIFICATION GUIDE, *supra* note 158, at 5.

²⁰⁴ PART 1 GENERAL ORGANISATION, *supra* note 203, at 57.

bicycles and other equipment used at competitions.²⁰⁵ These regulations address the issue of mechanical doping by cycling competitors.

Based on these regulations, UCI conducts mechanical doping tests “to counter the risks of technological fraud” and “to ensure that the cycling community has confidence in the performances of [its] athletes.”²⁰⁶ UCI has formal investigations and procedures to address violations of its regulations,²⁰⁷ and UCI investigators scrutinize mechanical cheating by players.²⁰⁸ Similarly, the e-sports governing body can create a section in its regulations for prohibited methods of e-doping and uniform testing and investigation guidelines that would apply to all e-sports competitions. Then, the e-sports industry can foster public confidence in e-sports players’ performances—knowing the players are playing fair, according to uniform standards. The next Section describes the proposed governing body.

E. Proposed Governing Body and Existing E-Sports Organizations

The e-sports industry is currently packed with organizations hoping to regulate e-sports, with little success.²⁰⁹ These organizations may have little incentive to give up their current authority and conform to a single regulatory body.²¹⁰ But e-sports will continue to grow as an industry,²¹¹ and with the greater prevalence of e-sports, governmental bodies may soon intervene to regulate the industry, taking regulatory power out of the hands of industry experts.²¹² If existing e-sports organizations join a single governing body as

²⁰⁵ CLARIFICATION GUIDE, *supra* note 158.

²⁰⁶ Alex Ballinger, *UCI Carries Out 1,300 ‘Rigorous’ Motor Doping Tests at Giro D’Italia 2019*, CYCLING WEEKLY (June 6, 2019), <https://www.cyclingweekly.com/news/racing/giro-ditalia/uci-carries-1300-rigorous-motor-doping-tests-giro-ditalia-2019-426279> [<https://perma.cc/ZG8J-YSPZ>].

²⁰⁷ PART 1 GENERAL ORGANISATION, *supra* note 203, at 9.

²⁰⁸ See Alex Ballinger, ‘*There’s No Motor-Doping at Highest Level, but the UCI Hasn’t Convinced Fans*,’ Says Jean-Christophe Péraud, CYCLING WKLY. (July 7, 2020), <https://www.cyclingweekly.com/news/racing/theres-no-motor-doping-at-highest-level-but-the-uci-hasnt-convinced-fans-says-jean-christophe-peraud-459306> [<https://perma.cc/3J5U-MX8R>].

²⁰⁹ Martinelli, *supra* note 72, at 506.

²¹⁰ Ingram, *supra* note 93, at 520.

²¹¹ See *supra* Part I.

²¹² For example, the South Korean government created the Korea Esports Association, managing Korea’s e-sports scene and building e-sports arenas. John, *supra* note 43; see KESPA, *supra* note 41. The e-sports scenes in other countries have also seen government recognition and involvement. See David Hoppe, *Five Key Ways Governments Are Getting Involved in Esports*, GAMMA L. (Feb. 13, 2020), <https://gammalaw.com/five-key-ways-governments-getting-involved-in-esports> [<https://perma.cc/MV8W-9UB6>] (discussing how governments in countries like Russia, China, Germany, and Japan have become involved in e-sports in their respective countries); Neslyn Apduhan, *Japanese Government Devises Plan for Esports Expansion*, ESPORTS INSIDER (Apr. 1, 2020), <https://esportsinsider.com/2020/04/japan-government-esports-plan> [<https://perma.cc/JJ3Y-CMZX>]; Byungho “Hao” Kim & Daniel “Quest”

this Note proposes, they can have their input reflected in the uniform structure for e-sports, rather than losing control over how to regulate their industry.²¹³ Both FIFA and UCI formed out of existing associations from different countries coming together to establish a uniform governing body,²¹⁴ and the e-sports industry should do the same.

As seen with UCI, a single governing body can house various member federations that represent countries around the world.²¹⁵ According to the UCI constitution, “The members of the UCI shall be the national federations accepted by the Congress as being the representative organization for the sport of cycling in general in the country of that national federation.”²¹⁶ UCI allows one national federation to become a member per country.²¹⁷ Similar to this model, the e-sports governing body can have member federations that represent various countries and games around the world, and existing e-sports associations can also join. Although the existing regulations on e-doping are inconsistent in their specificity and reach, they can easily be reconciled by a single governing body that sets down uniform standards across the industry.²¹⁸ No existing organization effectively regulates e-doping. Because e-sports is global, its governing body must be able to incorporate representative associations from around the world. By taking after the UCI model, a new governing body for e-sports can effectively address e-doping across the industry’s various games and genres.

CONCLUSION

The e-sports industry is growing fast. The integrity of the industry—including the public perception that e-sports is fair—is vital to its continued growth. Players cheating through e-doping is affecting public faith in the industry, discouraging fans from trusting in the fairness of e-sports. With a single governing body, the e-sports industry can uniformly address

Kwon, *Chinese Government Officially Recognizes Esports as a Reputable Profession*, INVEN GLOB. (Feb. 23, 2021), <https://www.invenglobal.com/articles/13371/chinese-government-officially-recognizes-esports-as-a-reputable-profession> [https://perma.cc/36T8-XBVC].

²¹³ See Ingram, *supra* note 93, at 520 (“By participating in a body working to promote transparency and standardization, eSports companies will send a strong message to investors that the industry is becoming more organized and efficient.”).

²¹⁴ See *FIFA — Soccer’s World Governing Body*, *supra* note 182; *1900: A Major Cycling Organization Is Born in Paris*, *supra* note 182.

²¹⁵ *Continental Confederations and National Federations – Information*, UNION CYCLISTE INTERNATIONALE, <https://www.uci.org/continental-confederations-and-national-federations-information-main-page/6AutcpFCy486Rae3Gs5cKP> [https://perma.cc/7PD3-WYJS].

²¹⁶ UNION CYCLISTE INTERNATIONALE, CONSTITUTION 5 (2019), <https://www.uci.org/docs/default-source/rules-and-regulations/uci-constitution-and-standing-orders.pdf> [https://perma.cc/X22L-GVBP].

²¹⁷ *Id.*

²¹⁸ See *supra* Section II.D.

widespread cheating in e-sports competitions and make the industry and its integrity sustainable in the long run. Such uniformity can help the e-sports industry gain further formal recognition, including the possibility of joining the Olympic Games.

E-sports should follow UCI's model because e-sports and cycling share distinctive characteristics—they both encompass various disciplines within one sport and rely on machines to participate. Following a traditional sport's model, such as soccer's FIFA model, would not allow e-sports to adequately address the unique challenges the industry faces as a multigenre sport susceptible to cheating through technological manipulation. UCI has a uniform set of regulations that applies to the various disciplines within cycling and that tackles the issue of mechanical doping. The e-sports industry can adapt the UCI model to its needs. Because UCI has charted a path forward in a similar industry, following its lead is the best solution for e-sports.

