Notes

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

Jamie Hwang

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.

AUTHOR—J.D. Candidate, Northwestern Pritzker School of Law, 2022; B.S., Northwestern University, Medill School of Journalism, 2018. Thank you to Professor Michael Zuckerman, my husband Connor Cohen, my brother Oscar Jae Seung Hwang, my parents, and the incredible editors and staff of the Northwestern University Law Review, including Julia Zasso, Sarika Pandrangi, Amanda Jones, Lou Jeffers, and Oren Kriegel.
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. Forsaken’s seat was one of many in a row lined with computers, with Pepsi cans piled up in pyramids behind each monitor. Big screens covered the walls, displaying players’ game statistics next to their photos. Forsaken—a professional video game player —was competing in a video game tournament.


2 CSGO2ASIA, supra note 1.

3 Id.

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. Players sitting in the other seats in his row turned to look at Forsaken’s station. After Forsaken made a few attempts at frantically reaching for the keyboard, the administrator restrained his arms and forced him to stop clicking.

This moment, captured in a Twitter video, changed Forsaken’s career. 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. 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. Forsaken played for the India branch of an American e-sports 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. Players sitting in the other seats in his row turned to look at Forsaken’s station. After Forsaken made a few attempts at frantically reaching for the keyboard, the administrator restrained his arms and forced him to stop clicking.

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3 CSGO2ASIA, supra note 1.
4 Id.
5 Id.
6 See Fogel, supra note 1.
7 See 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.
8 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 INSVS. (Feb. 10, 2020), https://www.roundhillinvestments.com/research/esports/are-esports-really-sports [https://perma.cc/343H-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-esports-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. JOURNAL 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 Kabarakis & 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. But after Forsaken’s cheating scandal, which took place during a Counter-Strike: Global Offensive tournament, the tournament disqualified his entire team, and OpTic Gaming shuttered its India branch.

During the 2018 tournament, Forsaken had used and attempted to delete an “aimbot” hack. “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.” In first-person shooter games such as Counter-Strike: Global Offensive, using an aimbot is a form of cheating because the tool gives players an unfair advantage by improving their shooting accuracy. The use of hacks and cheats during e-sports games is called “e-doping” and is also

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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-QUEJ]. This Note takes no stance on whether e-sports should be considered a traditional sport.


14 Good, supra note 12.


17 Aimbot, supra note 15.

known as “digital doping” or “mechanical doping.” 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.” So industry-level organizations, rather than governmental organizations, create and enforce rules for the industry. Industries, including professional sports, often choose self-regulation because no government regulation yet exists or to avoid excessive government regulation. 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.

In contrast to traditional professional sports, the e-sports industry does not have a uniform solution to prevent or punish e-doping. 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...
governing body for cycling. 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. Professional e-sports players often enter contracts with various organizations to participate in tournaments and competitions, just as professional players of traditional sports do. 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. 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.” 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, and some e-sports events attract millions of viewers.

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, or sports-focused television channels, such as ESPN.
Audiences can even physically attend events in arenas to watch players compete—with some events filling the arenas to capacity. Like traditional sports, e-sports has leagues, franchises, teams, professional players, corporate sponsors, play-by-play broadcasters, and significant prize money. Typically, e-sports tournaments only pay the top-ranking players, and the prize money drops off considerably after the first-place winner, 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. 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. 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. Soon, people began to attend PC bangs to watch others compete. 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

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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 . . . .”).


36 Wheelwright, supra note 35.

37 Sungjoo 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].


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.\(^\text{41}\) Thus, the rapid growth of PC bangs contributed to the emergence and early expansion of the e-sports industry.\(^\text{42}\)

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.\(^\text{43}\) For over twenty years, e-sports has been airing on Korean television channels dedicated to broadcasting e-sports matches and tournaments.\(^\text{44}\)

While South Korea influenced the growth of global e-sports, it was not the only country to develop the industry.\(^\text{45}\) Other countries, including the United States, Germany, and Australia, also contributed to the early days of e-sports.\(^\text{46}\) 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.\(^\text{47}\)

\(^{41}\) Leroux-Parra, \textit{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, \textit{supra} note 9.


\(^{44}\) Id.


\(^{46}\) Jin, \textit{supra} note 38, at 3728; see also John T. Holden, Marc Edelman & Thomas A. Baker III, \textit{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, \textit{supra} note 38, at 3733; see also Holden et al., \textit{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. \textit{Id.} at 518.
Today, e-sports is a global phenomenon. While still relatively new, the e-sports industry is on the rise and is projected to become a $1.5 billion industry by 2023. In 2021, e-sports attracted the second-highest viewer count among major sports in the United States, surpassing baseball, basketball, and hockey. 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. 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. Most of the revenue in the e-sports industry comes from

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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 (describing the growth of e-sports in sports 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.”).


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 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.

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1291
sponsorships, advertising, live-event ticket revenues, merchandise sales, and publisher partnerships.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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).\textsuperscript{57} Such

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

\textsuperscript{55} Griffith, \textit{ supra} note 49.

\textsuperscript{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, \textit{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-surge-4-top-stocks-to-buy-now/111986554 [https://perma.cc/WR4B-WGWE]; see Cody Luongo, \textit{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. \textit{Id.}

e-sports organizations continue to add new teams each year. 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. Schools such as Northwestern University, Syracuse University, and Ohio University even offer e-sports certificate programs.

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, with China and South Korea at second and third, respectively. The biggest e-sports markets


61 Griffith, 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.


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 antitrust 70 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).
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”).
As in traditional sports, doping issues exist in e-sports. 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.” 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. According to professional gamers interviewed by the Washington Post, the use of Adderall has been “an open secret in the esports community for years.” Certain leagues conduct drug tests, but most leagues do not test for or prohibit drugs like Adderall. Traditional doping may give an unfair advantage to players, but it is also a sensitive issue because some players may have Adderall prescriptions.

E-doping, on the other hand, describes the act of using software hacks or cheats during e-sports games. 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

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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.”

Upon discovering a cheater, tournament organizers or video game companies often ban the cheating player.

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

See infra notes 113–114 and accompanying text.
the biggest threat to e-sports from an integrity point of view.” Accordingly, tracking cheaters and their new ways of cheating is now a part of the development of e-sports. While cheating in competitions is more difficult with tournament organizers’ “tight control” of the players, and developers are attempting to improve their security in the games with anti-cheat solutions, e-doping remains a common issue threatening the integrity of the games. 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.

Today, there is no uniform, international ban on e-doping. While the discussion surrounding traditional doping in e-sports continues, 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

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85 Mulia, supra note 82.
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.”).
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. 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. Further, because e-sports is not recognized as a sport in many countries, regulation becomes even less likely. 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. Three big international e-sports organizations that are well known include the World Esports Association, the Esports Integrity Commission, and the International Esports Federation. 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. This Part describes the three

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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/TryingtOTryingtOThinkFasterDoping.html [https://perma.cc/3QX5-F3Q9] (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 Offensive101—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


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.

contrary to sporting ethics.” Within its integrity-of-matches provisions, WESA prohibits gambling but not e-doping. The section titled “Doping” only mentions traditional doping. 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.” ESIC has sixteen tournament operators and five national federations as members—and ESIC rules only apply to ESIC-run tournaments and ESIC-member teams. 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. 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.”

Unlike WESA’s, ESIC’s code of conduct explicitly addresses elements of e-doping in article 2, titled “Offences.” 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)”;

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110 Id. § 20.1–A.7.
• “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.”

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

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].” 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. 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].
118 Members, IESF, https://iesf.org/about/members [https://perma.cc/U865-NEMC].
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”\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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,\textsuperscript{128} while others can receive shorter bans of years or months and then return to e-sports competitions.\textsuperscript{129} Additionally, IESF’s e-...
doping prohibition names different e-doping methods than ESIC’s, reflecting the inconsistency in the regulatory landscape.\footnote{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).} Even within organizations, cheating punishments vary. For example, ESIC banned a cheating player, Emil “Emilshe1n” Mamedov, for seven months from all ESIC tournaments,\footnote{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 “Emilshe1n” Mamedov (May 1, 2020), https://www.lawinsport.com/topics/sports/item/esl-and-esic-issues-ban-to-team-vac-player-emil-emilshe1n-mamedov?category_id=152 [https://perma.cc/5UGW-ZSFV]).} while ESIC banned Forsaken for five years for cheating.\footnote{Good, supra note 12. While Emilshe1n and Forsaken cheated in different ways, ESIC banned Forsaken more than eight times longer than Emilshe1n—despite describing Emilshe1n’s conduct as “particularly egregious.” See id.; Press Release, LawInSport, supra note 131.} 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.\footnote{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/Z6QQ-UZUQ] (explaining why bans do not curb cheating in amateur competitive online video games).} 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.\footnote{See Martinelli, supra note 72, at 510.} And coalitions lack the power to compel other organizations to follow their regulations, since their authority only reaches their own members.\footnote{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/Z57R-TKNA]).}

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...
among fans, players, and commentators that e-sports is unfair.\textsuperscript{136} For example, e-sports players are concerned about cheating in multiplayer video games.\textsuperscript{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.\textsuperscript{138} Without a single regulatory body, e-sports as an industry does not have a consistent system in place to ensure fair play.\textsuperscript{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.\textsuperscript{140}

III. A SOLUTION: A SINGLE GOVERNING BODY

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

\begin{itemize}
  \item \textsuperscript{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 & Alasdaire 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.
  \item \textsuperscript{138} See, e.g., Danny Forster, TFT Player Banned from Fates Open Qualifier Raises Concerns over Riot’s Rule Enforcement, DOT SPORTS (Mar. 5, 2021, 6:24 PM) https://dotesports.com/tft/news/tft-player-banned-from-fates-open-qualifier-raises-concerns-over-riot’s-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.”).
  \item \textsuperscript{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.”).
  \item \textsuperscript{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].
  \item \textsuperscript{141} See Purewal & Davies, supra note 54, at 26.
\end{itemize}
trying and failing to regulate e-sports. 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. Existing U.S. law, such as copyright law, could theoretically address issues like e-doping in circumstances where U.S. law applies. For example, copyright law could deter e-doping by prohibiting any changes to a computer program without consent from its copyright holder. 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. Many e-sports competitions take place outside the United States with players from all over the world—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, 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.
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. 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. UCI governs cycling in “all its forms,” creates competition standards, and maintains the integrity of the sport. UCI oversees eight genres of cycling: “road, track, mountain bike, BMX Racing, BMX Freestyle, cyclo-cross, trials and indoor cycling.” UCI has set up separate “UCI Commissions” to implement regulations for each specific discipline that cater to its individual needs. Further, UCI consists of a congress, a management committee, and judicial bodies (including a disciplinary commission, arbitral board, license commission, ethics commission, and anti-doping tribunal). 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.”).


155 Congress, UNION CYCLISTE INTERNATIONALE, https://www.uci.org/congress/3EdOuNJLPX64R8IGFmA1Ms [https://perma.cc/3ZZ9-7SXJ].


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

Mechanical doping in cycling encompasses technological fraud involving the bikes, such as “hiding a small motor inside [a] bike for an extra boost.”\textsuperscript{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.\textsuperscript{160} Similarly, UCI uncovered an electric motor in the bicycle of a Belgian cyclist.\textsuperscript{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.\textsuperscript{162}

To address integrity concerns, UCI has tests in place to detect possible cheaters and continues to update its testing methods with developing technology.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{165} A 2015 CIRC report even admitted that “decisions taken by UCI leadership in the past have undermined anti-doping


\textsuperscript{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].


\textsuperscript{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.

\textsuperscript{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].


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

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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”).
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.\textsuperscript{171} For instance, first-person shooter games such as Call of Duty are played differently than fighting games such as Street Fighter V.\textsuperscript{172} First-person shooter games involve combat with weapons, usually in teams.\textsuperscript{173} In contrast, fighting games typically involve only two players using fight moves to compete with one another.\textsuperscript{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.\textsuperscript{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.” \textit{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-pokertda-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.

\textsuperscript{171} Dewley, supra note 16.


\textsuperscript{173} Supra note 16 and accompanying text.


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, just as mechanical doping issues can arise across various genres within cycling. And players engaging in e-doping are cheating through a modality distinct from traditional drugs, just as cycling players cheat by rigging their bicycles—also a modality separate from traditional drugs. 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, 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. 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. Ingram outlines FIFA’s structure and describes how FIFA

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177 See Ashton, supra note 90.
179 See supra Section I.B.
181 See supra note 150 and accompanying text.
183 See supra note 150 and accompanying text.
sets anti-doping regulations for traditional doping and uniform standards for soccer around the world.\textsuperscript{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.\textsuperscript{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.\textsuperscript{186} The council defines FIFA’s mission and values, and the general secretariat plays an administrative role.\textsuperscript{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.\textsuperscript{188} Further, the judicial bodies include an appeal committee that allows violating members to appeal the other committees’ decisions.\textsuperscript{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,\textsuperscript{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-

\begin{itemize}
\item \textsuperscript{184} Ingram, supra note 93, at 509–16.
\item \textsuperscript{185} Id. at 509–12.
\item \textsuperscript{186} See id. at 510.
\item \textsuperscript{187} Id. at 511.
\item \textsuperscript{188} See id. at 511–12.
\item \textsuperscript{189} Id. at 512.
\end{itemize}
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 doping—in addition to providing uniform standards for cycling around the world.\(^ {197}\) 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/a972bd128bdade4/originaleehkfzvslonjz1fwmse-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/1110955/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.


\(^{198}\) 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.
202 See UNION CYLISTE 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.
204 PART 1 GENERAL ORGANISATION, supra note 203, at 57.
bicycles and other equipment used at competitions. 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.” UCI has formal investigations and procedures to address violations of its regulations, and UCI investigators scrutinize mechanical cheating by players. 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. These organizations may have little incentive to give up their current authority and conform to a single regulatory body. But e-sports will continue to grow as an industry, 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. If existing e-sports organizations join a single governing body as

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205 CLARIFICATION GUIDE, supra note 158.
207 PART I GENERAL ORGANISATION, supra note 203, at 9.
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 KiSPA, 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://gamma.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/JF3Y-CMZK]; Byungho “Haa” 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

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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.”).


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.