

THE IMPACT OF VIDEOGAME PUBLISHERS ON E-ATHLETES' RIGHTS AND OBLIGATIONS

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ABSTRACT

E-sports offer a career opportunity, a life goal, for many people.¹ In this industry, the pressing question of whether it qualifies as a sport or not often arises, but one aspect rarely examined within professional boundaries is the legal standpoint. One major difference between e-sports and traditional sports is that traditional sports (e.g., football, hockey, basketball, karate) represent freely conducted activities, whereas e-sports are enabled by software, video games, which have copyright holders. Therefore, video games can only be used within the boundaries defined by copyright law, not just for consumers in the traditional sense, but also for e-athletes.² This article examines the impact of copyright holders on the rights and obligations of recreational players who are considering or have set out to become e-athletes. The main problem is that the life paths of an e-athlete and a regular videogame player have a common starting point: recreational gaming, usually at home. The following article will focus on the EULA of the most popular esports game nowadays, the League of Legends (hereinafter referred to as LoL).

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KEYWORDS

Esport, law, gamer, e-athlete, career, copyright law, virtual reality

I. The impact of e-sports on society

In this short section, some data are presented in order to demonstrate the relevance of the study. The e-Sports industry currently affects the lives of approximately 700 million people,³ and generates an ever-increasing revenue stream. While in 2019 the

¹ Bányai, F. – Zsila Á. – Griffiths, M. D. – Demetrovics, Zs. – Király O.: Career as a Professional Gamer: Gaming Motives as Predictors of Career Plans to Become a Professional Esport Player, *Frontiers in Psychology*, 11/2020. <https://doi.org/10.3389/fpsyg.2020.01866>

² As it is written in the „Rocket League Championship Series - 2022-23 Season Official Rules” for example, the rules of a championship just add to the EULAs, but do not replace them.: „5.2 Each Player must follow the Rocket League End User License Agreement (“Rocket League EULA”) (<https://www.psyonix.com/eula/>). These Rules add to, and do not replace, the Rocket League EULA.”

³ *Viewership Engagement Continues to Skyrocket Across Games and Esports: the Global Live Streaming Audience Will Pass 700 Million This Year*: <https://newzoo.com/insights/articles/viewership-engagement-continues-to-skyrocket-across-games-and-esports-the-global-live-streaming-audience-will-pass-700-million-this-year>, (07.20.2023.)

revenue generated in one year was US\$ 957 million, in 2021 it was US\$ 1084 million. In comparison, the video games industry generated a total of US\$180.3 billion in 2021.⁴ On a global economic scale, it would be very difficult to say that the video games industry is very significant to the economy of our planet, as in 2022, for comparison, only Apple's market value was US\$2,640 billion.⁵ However, the mass of people affected by the videogame industry is not negligible, as in 2022 alone, research has classified more than 3 billion people as gamers, i.e. people who have ever played a video game.⁶ It should be added that the very heterogeneous economic structure of the esports industry often leads to the existence of uncertain data. The main problem is the arbitrary interpretation by industry players of the concepts that affect the field of esports (e.g. who is a professional and who is not, or what is the definition of esports itself, what is included in its revenues,⁷ etc.).

Looking at the Hungarian data, the level of exposure is also outstanding: there are approximately 3.5 million video gamers, of which the number of people involved in and aware of e-sports is 640,000; the annual revenue of the Hungarian market in 2021 was HUF 64 billion;⁸ and 30% of the population spent on e-sports-related products or services.⁹ By 2023, these figures had increased, with 810,000 Hungarians now involved in e-sports and a domestic market revenue of HUF 70 billion.¹⁰ As can be seen, the level of social involvement is increasing, hundreds of thousands of young people are involved in e-sports and many of them see it as a career goal.

II. Characteristics of the general legal position of software copyright holders

The present point illustrates the historical and legal development that underpins the copyright position of publishers.

⁴ Gough, C.: *Revenue of the global eSports market 2020-2025*, <https://www.statista.com/statistics/490522/global-esports-market-revenue/> (13.06.2022.)

⁵ Murphy A. – Contreras, I.: *The Global 2000* (2022) <https://www.forbes.com/lists/global2000/?sh=2c6b0f8a5ac0> (07.20.2023.)

⁶ Clement, J.: *Number of video gamers worldwide 2017-2027* <https://www.statista.com/statistics/748044/number-video-gamers-world/> (07.20. 2023.)

⁷ Scholz, T. M. & Nothelfer, N.: *Research for CULT Committee – Esports*, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels, 2022, pp. 23. <https://doi.org/10.5771/9783748934844-23>

⁸ Medve, F.: *eSports market revenue in Hungary 2021, by segment* <https://www.statista.com/statistics/984235/hungary-esport-market-size-by-segment/> (07.20. 2023.)

⁹ Medve, F.: *eSports penetration in Hungary 2021* <https://www.statista.com/statistics/1282144/hungary-esports-penetration/> (2023.01.02.)

¹⁰ From 2023, Reacty Digital Kft. has been in charge of conducting the Hungarian video game and e-sports survey series, which was launched by eNET in 2016. Two surveys will be conducted every year in cooperation with Esport1, Esportmilla and HUNESZ: a video game survey, which will be representative of the Hungarian population aged 18-65 by gender, age and region, and an e-sports survey, which will include gamers aged 16 and over.

The historical and developmental characteristics presented below shed light on why e-sports game publishers hold a leading role. Namely, the competition facilitated through e-sports software was made possible by these game publishers, who are economic corporations. While traditional sports development relied on associations as the primary unit,¹¹ the e-sports industry immediately began with economic corporations.

Indeed, the development of traditional sports and e-sports presents a fascinating contrast. While one of the world's most popular sports, like football, is significantly influenced by its governing body, such as FIFA (a sports association registered in Switzerland,¹² primarily subject to Swiss laws despite defining football rules and organizing competitions on an international level), the e-sports domain operates quite differently. In the realm of e-sports, sports organizations play a negligible role unless granted authority by video game software publishers or individuals who hold the rights to use the given software, i.e., the copyright holders.

The historical reason for that is that video games are subject to copyright protection. The intellectual products of computer program creation are safeguarded under the provisions of the Berne Convention, which in our country, Hungary, was promulgated by Decree No. 4 of 1975 on the announcement of the revised text of the Berne Convention of September 9, 1886, for the Protection of Literary and Artistic Works, revised in Paris on July 24, 1971.¹³ According to Article 2(1) of this decree, protection applies to "literary and artistic works", encompassing all creations of literature, science, and art, regardless of the manner or form of their creation.

This, and the following historical events led to the present intellectual background where intellectual works that we call software are also protected by copyright. As Elkin describes in his paper,¹⁴ in the 80s and 90s, for example, musicians did not have the possibility to sign contracts with every buyer of cassettes and CDs, and software developers did not have the chance to protect their easily duplicable product, but they still needed to protect their creations. That is why all copyrighted works were granted such strong protection. However, the problem is that this level of protection now gives the current copyright holders of software an unrealistically significant amount of power. It is important to note here that, as Fairfield aptly put it,¹⁵ copyright in the digital age has become a kind of code itself,

¹¹ Fejes, P., Sárközy T. – Szekeres, D. – Tóth, N.: *The legal regulation of Hungarian sport*; HVG -ORAC Lap-és Könyvkiadó Kft., Budapest 2019.

¹² Inside FIFA: *About FIFA*. <https://www.fifa.com/about-fifa>

¹³ Decree-Law No. 4 of 1975 promulgating the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, Paris, revised on 24 July 1971.

¹⁴ Elkin-Koren, N.: *Governing Access to Users-Generated-Content: The Changing Nature of Private Ordering in Digital Networks*. Brousseau E. – Marzouki M. – Meadel C. (eds.), *Governance, Regulations and Powers of Internet*, Cambridge University Press, 2009

¹⁵ Fairfield, J.: *Virtual Property*, *Boston University Law Review*, *Indiana Legal Studies Research Paper*, Boston 2005. pp. 1075

like a computer code. The point of his analogy is that digital content protected by copyright is, in fact, protected by a permanent protection, independently of whether our devices are on or off. It is this protection which extends to video games and which gives publishers the power that is the subject of this study and which has eventually reached e-sport players too for two reasons: one is that, for example, according to the first cited source, a set of rules written for a World Cup does not always replace an EULA,¹⁶ on the other hand, the players' life paths have the same origin. They start as recreational players, and they play thousands of hours before they become a professional e-athlete. In traditional sports, amateur athletes around the world play under an institutional system, while in video games, the vast majority of players train in their own homes, and their legal relationship with their "sport", the video game, is governed by the EULAs.

An interesting aspect that led to the current situation, apart from what has been mentioned above, is the application of real-world regulations and norms to the virtual reality, driven by copyright perspectives. As a result, the copyright holders' control in the virtual realm extends beyond the protection typically afforded to intellectual creations in the real world. The ultimate goal of lawmakers is to provide protection for virtual intellectual assets, products, and creations. However, this protection becomes a license in the hands of the copyright holders, allowing them to impose obligations on videogame users. Though slightly biased, the following useful analogy illustrates the copyright perspective: when a poet writes a poem, in order to read it, there is no need to sign a contract with them, dictating behavioural requirements for the reader. In contrast, when using video games, such contracts, known as End-User License Agreements (EULAs), are required. Nowadays, every video game (and other) software use necessitates the acceptance of such a contract before proceeding. Historically it has a legitimate purpose to have those contracts built on copyright law, but the world has changed a lot and nowadays new life situations come to life, like e-sport, where such a big power held by one party (software developers, i.e., copyright holders) is causing unfair situations, at least, for the players who consider gaming as a future career goal.

III. The problem of virtual reality and reality

The author will now briefly present the theoretical background to the jurisprudence on the regulation of virtual reality and reality in order to gain a better understanding of why these contracts are the dominant ones in the relationship between video games and their users. This will help to understand why EULAs used by publishers may also regulate issues, such as consumer behaviour in virtual reality or the use of virtual goods in real life. Virtual realities and videogames have many similarities.

¹⁶ As it is written in the "Rocket League Championship Series - 2022-23 Season Official Rules" for example, the rules of a championship just add to the EULAs, but do not replace them.: „5.2 Each Player must follow the Rocket League End User License Agreement (“Rocket League EULA”) (<https://www.psyonix.com/eula/>). “These Rules add to, and do not replace, the Rocket League EULA.”

The laws that govern our social coexistence in "real life" also apply to our world in the digital space. The real world is not legally separated from virtual reality. The situations described below raise the possibility that the rules applied in the virtual world are not always satisfactory and that the legal regulation of these two worlds is a complex problem that is not yet clear.

Current examples of legal discrepancies between the virtual and the real world that exist despite the above statement:

The first example that explicitly complicates the boundaries of legal interpretation and the scope of our laws in relation to the physical space is constituted by the "Metaverse Harassment" cases. For example, several individuals have reported being victims of sexual harassment and even sexual violence on the virtual platform.¹⁷ Although these cases have not been criminalised by any state or grouping under international law, these few cases are representative of the increasingly blurred boundaries between virtual reality and "reality". More precisely, the boundaries do not blur, but rather, they intermittently exist and do not exist. For instance, the accusation of sexual harassment does not stop because this is "merely" a virtual world, while the copyright protection associated with the platform is fully operational and protects the publisher. Moreover, the services purchased by the player, whose only place of appearance is the virtual space, are regulated by the same regulators as if they were used in physical space (e.g. the spendable money).

Other cases that point to the uncertainty of these boundaries are those related to the game *Counter Strike: Global Offensive*, published by Valve. Players receive rewards based on their actions in the game. These rewards are awarded according to a "drop system".¹⁸ The most valuable things are the weapon skins, which can be transferred to another player together with the player's profile. The rarest skins, in some cases, are worth millions of dollars.¹⁹ These skins are also used for betting in *Counter Strike* e-sport matches.²⁰ These problems, which also affect youth gambling, but which affect the virtual world and "reality" at a legal level, have resulted in several court cases.²¹ It is important to quote, from the article cited, the part that perfectly illustrates the problem raised and exemplified: the parents of minor

¹⁷Soon, W.: A researcher's avatar was sexually assaulted on a metaverse platform owned by Meta, making her the latest victim of sexual abuse on Meta's platforms, watchdog says, *Insider*, 2022. <https://www.businessinsider.com/researcher-claims-her-avatar-was-raped-on-metas-metaverse-platform-2022-5> (07.20. 2023.)

¹⁸ Clement, A.: *CS:GO Weekly Drop System Explained*, The Global Gaming, 2022. <https://theglobalgaming.com/csgo/weekly-drop-system> (31.05.2023.)

¹⁹ Patterson, C.: *11 most expensive CS:GO skins in 2023: Knives, AK-47, AWP & more*, Dexerto, 2023, <https://www.dexerto.com/csgo/most-expensive-csgo-skins-1340162/> (31.05.2023.)

²⁰ Brustein J. – Novy-Williams, E.: *Virtual Weapons Are Turning Teen Gamers Into Serious Gamblers*; <https://www.bloomberg.com/features/2016-virtual-guns-counterstrike-gambling/> (31.05.2023.)

²¹ Wilde, T.: *Valve has beaten the last of a series of 2016 lawsuits over CS:GO weapon cases and skin gambling*; <https://www.pcgamer.com/final-claim-in-csgo-skin-gambling-lawsuit-dismissed-because-plaintiffs-never-actually-used-steam/> (07.20. 2023.)

children brought a lawsuit and the courts initially ignored the jurisdiction clause, which designated arbitration in the EUAL, the user contract that the minor children accepted online but the parents did not. Ultimately, the US courts dropped the case, but the conclusions to be drawn from the case law, in the authors' view, are as follows:

1. Currencies used in the real world are spent within the virtual reality.
2. The blending of the virtual and real world is observable through betting activities that have real-life impacts using virtual elements. (While you can purchase the virtual element, it cannot be used for betting on matches organized in the virtual game).
3. (Alleged or real) legal violations implemented with the elements of the video game's virtual world resulted in the demand for court application of laws applicable to real life.
4. The private legal relationship that had to be established with the game publisher (EULA) primarily determined the court's decision.
5. Generally, the law still associates virtual property rights with intellectual property rights. Even if there is theoretical recognition that virtual property is "different" from intellectual property in some way, there is no clear distinction between these two types. Consequently, the possessors of virtual rights are often terminated by copyright holders exercising intellectual property rights through the application of these EULAs, as also discussed by Fairfield, just using a different example²².

The purpose of this study is not to pass judgment on this international practice, but merely to demonstrate through these facts the strong position that publishers are in.

IV. The EULA as a general contractual term through the lens of the Hungarian law

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The author will briefly examine the provisions of the Hungarian Civil Code with regard to the position of the publisher. ???

In the author's opinion, EULAs can be equated to general contract terms, which are regulated in Hungarian law by Act V of 2013 on the Civil Code. According to § 6:77 (1) of the Civil Code:

"A general contract term is a contract term which is predetermined unilaterally by the user for the purpose of concluding several contracts, without the involvement of the other party, and which has not been individually negotiated by the parties."

The terms "Terms of Service", "Terms and conditions" or "End-User License Agreement" are generally identical to the general terms and conditions of

²² Fairfield, 2005, pp. 1075

contracts as indicated in the Civil Code. This is because each set of terms and conditions constitutes a contract that defines the rights and obligations of the parties involved (in the case of this article, the publisher/distributor and the player/consumer). These contracts contain the general terms of use, the user rights and all other issues that should apply to the legal relationship between the player/consumer and the publisher/distributor when using the software, plus these terms are not negotiated individually by the parties, but are presented as a kind of *ultima ratio* to the player, who either signs them (more precisely, in English, they typically click on "I accept" or "I agree" which are from then on binding on them) or cannot start using the given videogame. The immediate question that arises concerning e-sports is whether an e-sports player who wishes to play with and compete in a game should get involved in an unfair consumer situation? The answer to this question is yes, as we will see later.

1.1. The Riot Games User Agreement²³

The focus of this paper will now turn to Riot Games²⁴, the publisher of the world's most popular e-sports game, League of Legends. There are two reasons for the analysis of the EULA used by this company: firstly, it is indeed the most popular e-sports title in the world (with 180 million players worldwide and 32 million people²⁵ playing the game every day, all of whom must have accepted this EULA²⁶), and secondly, there is a lot of literature on the game and the studio that publishes it²⁷, and all EULAs contain similar provisions. The specificity of EULAs can vary considerably from one videogame to another, as each game contains different provisions according to its needs. There are, however, some elements that are often present in many EULAs due to general legal and business needs, as indicated above, and for historical and legal development reasons. In general, these common provisions include terms relating to the scope of the licence, intellectual property

²³ Riot Games Terms of Services: *Riot legal entities* <https://www.riotgames.com/en/terms-of-service#id.xmfwp2obedji> (07.20. 2023.)

²⁴ Riot Games. <https://www.riotgames.com/en> (07.20.2023.)

²⁵ *League of Legends Player Count: These Are The Stats*, <https://rifffeed.gg/more/player-count-league-of-legends> (07.20. 2023.)

²⁶ One important question, which is really difficult to clarify and which the literature does not allow us to answer, is where the boundary between esports and gaming lies. Out of 180 million of LoL players, how many can be considered recreational and how many professional? What makes someone a professional? Is it enough to have internationally renowned achievements, or is the pursuit of material wealth necessary, or is the competitive spirit enough? This is difficult to answer, but the fact is that a career in video games and esports is a common thread and for many young people with career aspirations, LoL is the ticket to the professional leagues. And for these young people, the only way to play is to create the one-sided legal relationship analysed below.

²⁷ King, C.: Forcing Players to Walk the Plank: Why End User Licences Agreements Improperly Control Players, Rights regarding Microtransactions in Video Games, *William & Mary Law Review* 58, no. 4, 2017. pp. 1365-1402

rights, limitations of use, warranty and liability limitations, termination and arbitration provisions, and it is these provisions that may diminish the rights of esports users in the first place, or more precisely, place them in an unfair position. It needs to be mentioned that it is important to separate the esports player from any other average consumer who plays videogames as recreational activity. As it has been mentioned, that difference would be considerable in the light that esports usually is a career²⁸ goal, thus it must be distinguished legally. If we were to speak about football, there is a dividing line between a hobby and a professional player and it would be absurd to use the same rules relating to them. But this analogy is not precise enough because esports is not a sport, but an industry, and the above-mentioned regulations are quite different. In light of the rights and obligations of esports players, the examination focuses on the unrealistic regulations imposed by EULAs when comparing an esports player's career to that of a traditional athlete.

Riot Games has made publicly available the terms of use for its services,²⁹ (hereinafter referred to as: Riot EULA). The Riot EULA needs to be accepted by every League of Legends player and covers the following:

- a) account
- b) account termination
- c) limited license
- d) virtual goods, game currency and purchases
- e) fees & taxes
- f) unsolicited idea submission policy
- g) user rules
- h) user generated content
- i) monitoring & anti-cheat
- j) updates and modifications
- k) links
- l) notice and procedure for claims of copyright infringement
- m) warranty disclaimer
- n) indemnification
- o) limitation of liability
- p) governing law
- q) dispute resolution
- r) additional terms applicable to riot services
- s) riot legal entities
- t) miscellaneous

The EULA states in the second subparagraph of the first paragraph that: *"When you click to purchase, earn or are gifted Virtual Content, you only get a license to access Virtual Content. You have no ownership in any of the Virtual Content you unlock*

²⁸ Bányai et al., 2020.

²⁹ Riot Games Terms of Services. <https://www.riotgames.com/en/terms-of-service>, (07.20. 2023.)

and you can't transfer it to someone else. Virtual Content has no monetary value, is generally game specific and you can't redeem Virtual Content for any type of "real world" money."

So, among its first provisions, Riot Games makes it clear that virtual goods and other content are its property and have no real value. (Many gamers would argue with this, just as on the black market, countless accounts are exchanged precisely so that players can enjoy these goods. The popular League of Legends account marketplace is a good example.³⁰ In fact, accounts are also traded on this website so that one player's high ranking in the game can be taken over by another player so as to be drawn against a more successful opponent, and also for glory. So, the virtual result itself has a market value, despite the EULA, not just the virtual goods). So, an esports player can actually buy a profile for themselves, allowing them to practise and compete in a higher category. In the case of traditional sports, it would be unimaginable for someone to play in a higher division due to an illegal transaction, but in the world of esports, not only is it possible, but it is also quite common. Obviously, it is not regulated perfectly. It is interesting to think about that method as "electronic doping in the esports industry".

When analysing the text of the EULA, it is striking that, although the document creates a serious legal obligation for the user (consumer) if they accept the contract as binding on them (otherwise they are excluded from using the game software), it tries to guide the player through the maze of rights and obligations in a simple and comprehensible way. In practice, the Riot EULA is like a FAQ (Frequently Asked Questions) section on a website, which is often used to help users find their way around.

1.2. The Riot EULA point 1.

"You'll need a Riot Games account to access many of our services. To create an account and use the Riot Services, you must: (i) be an adult; (ii) be an emancipated minor; or (iii) have valid parent or legal guardian consent to be bound by these Terms."

Thus, the Riot EULA makes the possibility of accepting the contract conditional on full capacity to act in the general sense. Nevertheless, practice shows that a large number of underage players use the software and all the services that can be linked to the user account.

1.3. Riot EULA point 1.5

1.5.: *"Can I share or sell my account or login credentials? (No.)"* Under this question is the detailed information that sharing or transferring the user account is prohibited, that it is also prohibited to allow another person to access the user account, and it literally

³⁰ EB24: *League Of Legends Accounts*. Available at: https://eloboost24.eu/marketplace?gclid=CjwKCAjwsvujBhAXEiwA_UXnACwMBIBB3IL0tj3O-1Sqclq_O_DO8dskxdDS3TwfjVphjXT6GEBnuhoCpygQAvD_BwE (07.20. 2023.)

notes among the obligations in the document that the user must keep the information related to the user account, including e.g. the password, confidential. In addition, the user must notify Riot Games Studios immediately if any security problem arises with their account. This is necessary because the Riot EULA states that the user is liable for any loss, including theft or any misappropriation of virtual property that occurs because we have not in fact fulfilled our contractual obligations relating to the user accounts that we agreed to when we launched League of Legends. This is particularly true in cases where any hacking of our account occurs as a result of us sharing our access data with any third party, contrary to the Riot EULA.

The analysis of this section of the Riot EULA is linked to the information in section 3.1 of the EULA and can be used to extract information about the ownership of the user account. The Riot EULA here explicitly provides for the rights of use of the user account: "*We grant you a limited, non-exclusive, non-transferable, revocable license to use and enjoy the Riot Services (and any Virtual Content) for your individual, non-commercial, entertainment purposes only and expressly conditioned upon your compliance with these Terms.*"

So, players get a licence and not ownership. Thus, the private law relationship fully protects the publishers (or distributors) in relation to their user account. Moreover, as the author will point out in his later analysis, these rules are far from being limited to video games, but all goods in the virtual world are also currently protected by the private property regime³¹. Elkin and Korean argue that this provides adequate protection for users, and Fairfield, in a study also intended for use by the US judiciary³², questions the undoubtedly international practice whereby the overarching protection of intellectual property and the private contracts based on this protection constitute the real binding force between the video game publisher and the consumer, the e-sports player. Especially the esports player faces a questionable legal situation, for example, when they are banned from a game based on such a contract, as illustrated in the cited example below. In this example, the author presents a brief legal case while analysing the Riot EULA, and examining the impact of another similar EULA to reinforce the conclusion that can be drawn from the chapter.

1.4. Case related to Blizzard's EULA

The case of Hearthstone player Ng "Blitzchung" Wai Chung gives an insight into the international politics that affects the world of e-sports³³. At the end of the post-

³¹ Niva Elkin-Koren, 2009.

³² Fairfield, 2005, p. 1075

³³ Leroux-Parra, M.: The Implications of the Company Behind Riot Games, *Harvard International Review*, <https://hir.harvard.edu/esports-part-4-developer-control-the-implications-of-the-company-behind-riot-games/> (07.20. 2023).

match interview at the Hearthstone Grandmasters³⁴ tournament, Blitzchung took off his Hong Kong protest mask³⁵ and shouted "Free Hong Kong! The revolution of our time!" In response, Activision Blizzard, the developer of the popular online deck-building card game, gave Blitzchung a one-year ban, effective immediately, effectively kicking him out of the Grandmasters tournament and denying him any winnings he might have earned during that time. They also terminated the contracts of the two interviewers involved in the incident for apparently encouraging Blitzchung's statement. Blizzard justified its surprisingly severe sanctions by saying that it wanted to avoid what it considered to be a realistic risk that China would retaliate by making its dominance in the Chinese market impossible and causing a loss of revenue for the publisher. Indeed, according to several analyses, including the Harvard International Review, cited here several times, China is having such a devastating impact on e-sports that the major e-sports companies are clearly aware that if they do not comply with its demands, they could be shut out of the Chinese market. Even athletes living outside of China are not allowed to comment on sensitive issues, such as the Hong Kong protests, which are known around the world. It can be observed that the player's ban is due to pressure from the Chinese government through public regulators, of course, this has also happened with the American men's basketball league, the NBA³⁶.

How fair is this, and should it be like this? How morally appropriate is it to exclude a young man who is perceived by public opinion to be engaged in an activity so similar to sport from a competition he has successfully competed in because of his political views? It is important to emphasize that this exclusion is based on the EULA itself, which the player was required to accept, or else they would not have been able to start playing in the first place. Should not, for example, the rules of fair play, as internationally understood and accepted, apply? Whose rules should apply in the first place, and who would have the right to intervene in this matter (if it were not for the EULAs)? International organisations do not have the right, no one has the right, only the copyright holders, in this case, Tencent. Another question is: if we consider e-sports as a sport, is it appropriate for a single country to have the lobbying power to simply ban the Cristiano Ronaldos of the e-sports world from

³⁴ Blizzard Entertainment: *Hearthstone News*. Available at: <https://playhearthstone.com/en-us/esports/standings/> (07.20. 2023.)

³⁵ Weekly World Economy: "An unprecedented wave of protests swept Hong Kong after the local legislature attempted to facilitate the extradition of fugitives to China in spring 2019. Although the law has long since been repealed, the demonstrations escalated into riots over the summer. Violence flared up again in the autumn, with police using live ammunition." [Translate from Hungarian] <https://hvg.hu/cs/hongkongi%20r%C3%BCntet%C3%A9sek> (07.20. 2023.)

³⁶ Leroux-Parra, M.: The Implications of the Company Behind Riot Games, *Harvard International Review*, <https://hir.harvard.edu/esports-part-4-developer-control-the-implications-of-the-company-behind-riot-games/> (07.20. 2023.)

competitions and ruin their careers overnight? Legally, there does not seem to be any wrongdoing, yet ethically, morally, in terms of human decency and humanity, based on the conventional values of sport (such as fair play), there are countless wrongdoings.

Thus, it is clear from the ethical and legal analysis of the subject matter that e-sport is far from being properly understood, causing moral and legal concerns and allowing for situations of misunderstanding to appear on a daily basis in social life that have a questionable moral and legal status. Indeed, their legal status is ultimately not questionable, since EULAs, such as the one under discussion in this section, create a legal relationship with the above characteristics, which is in every sense a legitimate relationship.

1.5. Riot EULA point 2.

Moving on to the Riot EULA, if we look at section 2, which covers the options to permanently delete a user account, we find further unilateral provisions. The first of these is the case of how a player can terminate their own account (which any user has the right to do at any time). Among these cases, the following reasons are listed in section 2.1.2:

1. *"you have breached any part of these Terms (including the User Rules);*
2. *doing so would be in the best interests of our community or the Riot Services or is required for upholding a third party's rights;*
3. *we have stopped offering the Riot Services in your region (although we'll normally post advance notice on our website, app or game if we plan to stop offering a material core feature of a game or all of the Riot Services in your region);*
4. *you have failed to pay any fees you owe us (except in cases of our gross negligence or wilful misconduct) or we have to refund someone due to unauthorised use of a payment made from your account; or*
5. *you have (or we have reasonable grounds for suspecting that you have) made unauthorized use of someone else's payment info."*

In section 2.1.2, there is already an elastic clause³⁷ where the Riot EULA expressly states that any user account may be deleted at any time if the account or its user engages in any activity that is not in the best interest of the Riot Games Services or the community using the Riot Games Services. Such a provision would obviously provide Riot Games with a large and unilateral margin for action. In effect, they have granted themselves the right to exclude, at any time, any player they see fit from the pool of players who may use their services. In the author's view, the provision is an excellent example of the earlier thesis that there is a monopoly of eSports-enabling game publishers in the market. So, it is entirely up to the intellectual property holder to decide (at least in these two cases certainly) who and to what extent and in what way can make use of the user accounts it provides

³⁷ Fejes et al., 2019.

and which cannot be legally used without the games. The reason why it is essential to consider, examine and, not least, evaluate this kind of legal position is that in the debate about whether e-sports will ever become a sport, such a strong legal position can undoubtedly be decisive (as the above case demonstrates that it is decisive). In further analysis of the general contractual terms and conditions, the author will also highlight the common and dominant legal situation in private law that exists between video game publishers and players and users of any kind. Now, if we examine this phenomenon called esports, which, as mentioned earlier in the study, has already affected the lives of 700 million people by 2023, we will find the legitimacy of the chapter's title, 'Regulatory Wild West,' when we scrutinize the terms of use and see that the majority of video game publishers hold this right, namely the unlimited power to determine, at any time and under any circumstances who can access their software or any other services they provide. Essentially, in this analogy, the game publishers become rulers of life and death when considering the use of the software as life. This immensely strong legal position, according to the author's standpoint, has an impact on the future of e-sports and influences the aspirations of players and e-sports organizations, since the publisher can abruptly terminate an esports player's career without any reason or obligation to provide an explanation.

1.6. Riot EULA point 2.1

The Riot EULA takes into account the consequences of unilaterally deleting a user's account as described in section 2.1, e:

- a) *you will not be entitled to any refund and we will not be liable to you; and*
- b) *we also reserve the right to terminate any other account you have created and your access to the Riot Services (again, without refund or liability).*

The legal connection between point 2 and point 2.1 is that if Riot Games deletes an account under the above "elastic clause", the user cannot claim any damages from Riot Games Studios. An e-athlete's career could easily depend on these accounts, as they could lose the opportunity to practice³⁸.

The last paragraph of section 2.3 underlines the above: *"You understand and agree that using the Riot Services comes with the risk that your account may be terminated or suspended in accordance with these Terms and that, whenever you use the Riot Services, you'll bear this risk in mind and always conduct yourself appropriately."*

The legal uncertainty is not due to a lack of information, but to the unilateral application of contractual terms that go beyond the limits of Riot Games' terms of use, extending to issues that do not necessarily originate from the power derived from the copyright position that underlies the Terms and Conditions. Indeed, the

³⁸ If an e-athlete loses their account in, for example, League of Legends published by Riot Games, they will have to build a new character pool and start from the level of the new players in the so-called ranked system. To use a sports theory analogy, a football player in the NBI has to play in NB3 again.

expectation of proper behaviour, if we refer back to the condition in point 2.1.2, which states that Riot Games can terminate our account also where it would serve the interests of the community or Riot Services. It is really difficult to define the form of behaviour that could not potentially jeopardize the interests of Riot Games Studios or its community, thus it expects the user to demonstrate a behaviour the boundaries of which are not entirely clear.

Possible consequences of deleting a user account under the Riot EULA for an e-athlete

In the career of an e-sports League of Legends player, a new account can affect their training opportunities, comfort, but it can also mean the loss of experience points they have previously gained, as well as their characters, etc., but the following problems can all arise:

- a) Beginner level: when creating a new account, the e-sports player is forced to play with lower-level players and it takes a long time to get to the same level due to different limits.
- b) There is a delay in the ranking, as mentioned above, so it is possible that over a long period of time an e-sports player will play with players who cannot represent his level, for example, and thus lose valuable time in training, which will not be efficient enough for the "professional" level.
- c) Limited skill points: with the new account, the player must regain all his skill points. As mentioned in the analysis of the Riot EULA, these skill points are used to buy upgrades or skins, for example, so if you do not have these points, you will not be able to use the skills that are necessary for professional play and that you were used to before your account was deleted.
- d) Unlocking characters: you will not be able to play with all characters, so you may not be able to play with the character you have used and practiced very effectively - typically for hundreds or even thousands of hours - unless you re-purchase it or acquire it through your performance in the game).
- e) Loss of contact capital: all contacts, friends and teammates made while using the account will be deleted. Thus, you may have to relearn strategic and tactical game mechanics with other e-athletes.

Overall, creating a new user account can put an e-athlete in a difficult situation, especially if it is deleted at an important stage in their career. In the author's view, it would be important to build guarantees into such and similar contracts to protect e-sport players.

1.7. Riot EULA: "Legal Jibber Jabber"

In paragraph 7 of the online document called Legal Jibber Jabber, Riot Games states that it is free to use any creative activity of players, and in the document Riot Games encourages players to produce creative content.

"Virtual goods in-game currency and in-game purchases", this is the title of section 4 of the Riot EULA and section 4.1 sets out what constitutes virtual content: heroes,

the appearances of heroes, the behaviours of heroes that can be unlocked, etc. Based on the above mentioned, whatever content the player creates will never be theirs, but they will be encouraged to create it.

1.8. Riot EULA point 4.2

According to section 4.2, there are three ways to access virtual content:

1. *purchasing it (e.g., with a credit card);*
2. *earning it (e.g., by completing game missions or tasks); or*
3. *receiving it (e.g., from another player as a gift or using crafting functionality like Hextech®).*

As mentioned above, user accounts change hands frequently, so it is worth pointing out that although Riot Games' contractual provisions are far from always achieving their objectives, the situations that arise in the use of games and user accounts can create a difficult legal situation. It is possible that a player may ultimately sell his account on the basis of his work (Riot EULA, section 4.2(b)).

1.9. Riot EULA point 4.3

The Riot EULA specifies in point 4.3 who owns the Redeemable Virtual Content. Specifically, the EULA states that no player has any property rights or other ownership interests in any virtual goods acquired or acquirable in the game. So, players do not own anything as a result of using the virtual software. Of course, based on the previous provisions, it is not difficult to conclude that the use of software can provide no additional rights under any circumstances for the players, but from an ethical point of view, it is worth examining the situation: players can spend up to 8-10 hours a day with the game League of Legends, so it is not uncommon for a player to log thousands of hours in the game. In fact, on average, according to publicly verifiable statistics, a casual player spends approximately 832 hours, or 35 full days playing, for example, with League of Legends³⁹. From a product sales point of view, the fact that someone spends 35 days with our product is undoubtedly a relevant factor, since in-game purchases are a significant source of revenue and an economic interest is attached to them.

Hence, one of the paramount characteristics of the private legal relationship is that irrespective of the player's accomplishments, time devoted, and energy expended, they cannot, under any given circumstances, lay any legal claim to any virtual commodity. While this scenario is not an anomaly in the realm of digital products, considering that all such products are utilized under user contracts and general terms and conditions of varying types, it undoubtedly substantiates the

³⁹Wiki E-sports guides: *How Much Time I've Spent on League of Legends | The How-To Guide* <https://www.esports.net/wiki/guides/how-much-time-i-spent-on-league-of-legends/> (07.20. 2023.)

assertion that the legal standing of game publishers remains steadfast and unassailable.

1.10. Riot EULA point 4.4

"Notwithstanding anything to the contrary in these Terms, you acknowledge and agree that you shall have no ownership or other property interest in your account, and that all rights in and to your account are and shall forever be owned by and inure to the benefit of Riot Games."

In the case of an e-sports player, for example, if we accept that an e-sports player is playing for his or her own interests, for career and profit, then no rights will ever, under any circumstances, arise from the game that would serve his or her interests. It is difficult to determine exactly what this means and whether it extends to a career, but it is certain that this career can be terminated at any time by Riot Games, and thus the suspicion arises. In this case, it cannot be an untrue statement that the publishers also control the careers of e-sports players.

There are clear and marginal boundaries within which, as a classic private and recreational user, we can use all of Riot Games' intellectual property as private individuals. Understandably, the limits go well beyond those for any other physical product, and full compliance with the consumer obligations associated with digital purchases undoubtedly requires a conscious attitude and even a more in-depth knowledge. By setting out these facts, the author simply sought to highlight even more the difference, which could be described as huge in legal terms, between a sports game such as football and a game software. Football or ice hockey (and I could mention almost any sport here) are not intellectual products, and even if they had individual originality, there is no one from whom we would need to ask permission to play them, because there is no one who has the right to grant such permission; it is conceptually impossible.

1.11. Riot EULA point 15.1

In the light of the following provisions, an e-sports user would not be entitled to any compensation even if they were to win a lawsuit, as Riot Games' liability only covers the amount of money users have spent on their services in the last six months.

"To the extent permitted by law, our total liability to you (whether for breach of this contract, negligence or for any other reason whatever) for any loss, harm or damage suffered by you in connection with your downloading, use and/or access of the Riot Services is limited to the total amounts paid by you to Riot during the six (6) months immediately prior to the time your cause of action first arose."

In some cases, therefore, an e-athlete's tool for achieving their life goal or career might be the game League of Legends, and according to the aforementioned set of conditions, they are entirely at the mercy of the decisions made by Riot Games Studios. As the legal case and literature examined show, the provisions based on the principles found in the Berne Convention, which represent total protection of intellectual property rights, are firstly outdated since they are incapable of adequately

responding to new life situations created by digital services. Secondly, the document extends beyond the traditional framework of intellectual property and imposes unrealistic rules on players, citing the protection of intellectual property (e.g., behaviour demonstrated for the benefit of the community and its qualification by Riot), which overstep the realistic power of the software copyright holder.

V. CONCLUSIONS

In light of the above provisions, publishers are in a stronger legal position with respect to e-athletes, which stems from the EULAs, as the above example demonstrates. Within this stronger legal position, for instance, Riot Games can unilaterally terminate a gamer, i.e. a future e-athlete's access to a particular video game without any justification or reason. In some cases, there is no legal distinction between an e-athlete and a consumer of video games, so the fact that one uses software for entertainment purposes and another for career and income generation is not differentiated, hence the e-athlete, sometimes as a simple consumer, can usually advocate for their career. This study serves merely the purpose of fact-finding, but fundamentally, it can be stated that a solution might be to define the terms "recreational and entertainment-oriented video gamer" and "e-athlete". The aim of the study is to demonstrate the vulnerability of a group of players who are at a point in their esports careers where they are still covered by classic EULAs, rather than the B2B contracts publishers may have with so-called professional e-athletes. Here it should be noted - as the study cited in this article shows - that the content of EULAs is not always invalidated by the additional B2B contract.