

## Esports as a Phenomenon of the Digital Age: an Economic and Legal Analysis (on the Example of Ukraine and Switzerland)

### Los deportes electrónicos como fenómeno de la era digital: un análisis económico y legal (sobre el ejemplo de Ucrania y Suiza)

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**Abstract.** Cybersport is developing rapidly in all developed regions of the world. Currently, eSports has acquired the characteristics of an important economic and socio-cultural factor that needs to be taken seriously. Accordingly, there is an urgent need to regulate social relations within its boundaries. This article is devoted to the analysis of the current state of economic and legal relations in the field of e-sports activities and the search for optimal ways of their improvement. The subject of the study is social relations arising in the field of e-sports. The research methodology includes the basic methods of scientific knowledge, which are the methods of analysis and synthesis, as well as the comparative legal method, which was used to compare the researched aspects in Switzerland and Ukraine. As a result of the research, a number of conclusions were made, which are important for law enforcement activities, can be used in rulemaking activities, and are also valuable from the point of view of the development of economic and legal doctrine.

**Keywords:** eSports, contract, private law, public law, social relations.

**Resumen.** El ciberdeporte se está desarrollando rápidamente en todas las regiones desarrolladas del mundo. En la actualidad, los eSports han adquirido las características de un importante factor económico y sociocultural que debe tomarse en serio. En consecuencia, existe una necesidad urgente de regular las relaciones sociales dentro de sus fronteras. Este artículo está dedicado al análisis del estado actual de las relaciones económicas y legales en el campo de los deportes electrónicos y la búsqueda de formas óptimas para su mejora. El objeto de estudio son las relaciones sociales surgidas en el ámbito de los e-sports. La metodología de investigación incluye los métodos básicos del conocimiento científico, que son los métodos de análisis y síntesis, así como el método legal comparado, que se utilizó para comparar los aspectos investigados en Suiza y Ucrania. Como resultado de la investigación, se llegó a una serie de conclusiones que son importantes para las actividades de aplicación de la ley, se pueden utilizar en las actividades de elaboración de normas y también son valiosas desde el punto de vista del desarrollo de la doctrina económica y jurídica.

**Palabras clave:** eSports, contrato, derecho privado, derecho público, relaciones sociales.

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### Introduction

Esports («Electronic sport», «Cybersports», «Computer sports») is a team or individual competition based on video games. For a person who is far from e-sports, the specified definition will probably not make a special impression. However, eSports is developing surprisingly fast, and the days when it was considered only children's entertainment are long gone.

Today, eSports is a unique sphere of life of a modern person and a full-fledged industry. The path from ordinary entertainment to a powerful segment of the world economy and an integral part of modern culture, which traditional sports covered for decades, if not centuries, eSports covered literally in 15-20 years. In 2022, the global eSports market was valued at just over 1.38 billion U.S. dollars. Additionally, the eSports industry's global market revenue was forecast to grow to as much as 1.87 billion U.S. dollars in 2025. Asia and North America currently represent the largest eSports markets in terms of revenue, with China alone accounting for almost one-fifth of the market.

As of 2022, the worldwide eSports audience size reached 532 million people. In the years to come, more and more viewers are expected to tune in to watch their favorite games being played by some of the best gamers in the world. By 2025, there are expected to be over 640 million viewers of eSports worldwide (Gough, 2022).

### Material & Methods

To achieve the results of the research, the authors of the article used a set of methods of scientific knowledge, among which the methods of analysis, synthesis and the comparative method occupy a prominent place.

Analysis is a method of cognition, the content of which is the dissection of the subject of research into its constituent parts for the purpose of their detailed and comprehensive study. Its sides, signs, properties, relations act as constituent parts of a complete object. With the help of this method, the authors of the article investigated the stages of the formation of e-sports as a unique socio-cultural and economic phenomenon, studied in detail the provisions of the current legislation regulating e-sports relations, studied statistical data reflecting the dynamic growth of the e-sports industry in different countries.

Synthesis is a method of learning, the opposite of analysis, the content of which is the unification of previously dismembered parts of the subject into a single whole. In particular, the specified method allowed the authors of the article to form a holistic approach to understanding the further improvement of legal regulation of relations in the field of e-sports in individual countries and in the world in general.

Analysis and synthesis mutually predict and condition each other.

The comparative method was used by the authors of the article to compare various aspects of the functioning of the eSports industry in Switzerland and Ukraine, as well as in other countries of the world. With the help of this method, positive and negative factors affecting the development of e-sports were identified, and reasonable conclusions were made regarding the appropriate directions of e-sports development.

### **General aspects**

From its appearance to the present, eSports has overcome several stages of development. These include the early period of the emergence of the first video games (1972-1980), the period of active development associated with the spread of arcades<sup>1</sup> (1980-1990), the period of the appearance of online games (1990-2000), and the transition to global world tournaments (2000- at this time). The modern period of development of eSports, as an independent industry, is connected with the significant development of Internet technologies.

In general, about four decades have passed since the invention of the first slot machines to the appearance of systematic global eSports competitions involving a large number of specialists, among whom professional eSportsmen occupy a prominent place.

As for any modern sphere of human activity, due to the complication of social relations, at a certain stage of development, the issue of normative regulation of relevant social relations became vital for eSports.

eSports is developing strongly, but fundamental scientific research devoted to the problems of legal regulation of relations in e-sports is currently in short supply. However, some aspects of the mentioned problems are increasingly becoming the subject of research by scientists, because proper legal regulation is one of the main factors in the successful development of any sphere of human activity.

In particular, one of the leading American lawyers in e-sports, R. Quiles, published a guide called *The Little Legal Handbook for Esports Teams*. This is an ebook discussing the basic legal principles concerning the foundation of an esports team. As the author claims in the foreword, the ebook is an introduction to a few of the legal topics that every esports team must address. The most important aspects that the author reveals in his book include the peculiarities of the organizational and legal form of an eSports club, the peculiarities of contracts in eSports, the important aspects of sponsorship in eSports, the peculiarities of intellectual property rights in eSports, the peculiarities of the acquisition and sale of property in eSports.

John T. Holden, Marc Edelman, and Thomas A. Baker III (2020) in the article "A Short Treatise On Esports And The Law: How America Regulates Its Next National Pastime" also analyze the basic legal problems faced by participants in eSports activities. The authors of the article claim that it provides an in-depth analysis of the primary legal issues that face the esports industry as it pursues its path

toward becoming America's next major national pastime.

David Hoppe, in his article «Esports Law, Continues to Evolve» (2020), analyzed the trends in the development of eSports law and focused readers' attention on the key difference between eSports and traditional sports, which is the presence of the owner of intellectual property rights for eSports games, which is the game developer. This difference, in the opinion of the author, significantly affects the peculiarities of legal regulation of relations in the field of e-sports compared to traditional sports.

Jaime SC Amor, Sergio Aguado Berenguer, Fernando García Pascual in their article «Influence of Service Performance Variables and Brand Variables on the Loyalty of Esports Event Users» (2022) aimed to determine the influence of service performance variables: general quality and perceived value; and the brand variables: brand credibility, brand recognition and corporate image, on user loyalty. The results obtained indicated that the service performance variables significantly predicted loyalty. While the brand variables only predicted corporate image. These data showed that in order to improve user loyalty at esports events, it is necessary to prioritise strategies on variables that influence aspects related to the perceived performance of the event, rather than brand variables.

Carlos Rey Perez, Katia Rubio in their paper «Is a cyberathlete an athlete? Brazilian athlete perspectives» (2023). The purpose of this study was to determine the characteristics and similarities between Brazilian Olympic athletes and esports athletes. The results showed that although the virtual environment differs from an Olympic sport environment, common characteristics are present relative to the understanding of competition as in the elements of athlete identity.

In their article «To the Peculiarities of Legal and Non-Legal Regulation of Social Relations in the Field of Sport» (2021) Kharytonov, E., Kharytonova, O., Kostruba, A., Tkalych, M., & Tolmachevska, Y. came to the conclusion that modern sport, particularly esports, has an autonomous status and is a special area of legal and non-legal regulation, which has the characteristics of an independent legal order.

In the article «Sanctions in Sport: The Relationship Between Legal and Local Regulation» (2021) Bolokan, I., Samoylenko, G., Tkalych, M., Panchenko, B., & Dmytriv, V. analyzed the state of legal regulation of liability in the field of sports, including esports. The authors of the article came to the conclusion that the field of sports rightfully enjoys a certain autonomy when applying sanctions to the participants of the relevant relations, however, the presence of the state in matters of applying responsibility to violators should be preserved, because in this way the rights and freedoms of a wide range of people are guaranteed.

Concerning Switzerland, the author who thoroughly researched the development and current state of e-sports, as well as specific features of the legal regulation of relevant relations in this country, is Marcel Guterman (2021). In particular, in his study «eSports Switzerland 2021: a study

<sup>1</sup> a term that refers to games with deliberately primitive gameplay

by the Institute of Marketing Management under the direction of Marcel Hüttermann», the author summarized a large array of statistical data in the field of eSports in Switzerland.

The problems of e-sports law in Ukraine are highlighted in Roman Rodin's (2020) article «Young and (too) free: 5 legal challenges that need to be solved in e-sports». In his article, the author examines the legal aspects of organizing e-sports tournaments, the peculiarities of concluding labor contracts in e-sports, as well as problems related to the protection of intellectual property rights in e-sports. The author of the article rightly claims that eSports, like any sport, need adequate regulation. This is necessary to create universal rules for organizing and holding tournaments and to make the esports segment transparent and attractive to investors.

At the same time, one of the key aspects that define the essence of eSports and directly affects the determination of the methods and directions of its legal and quasi-legal regulation is the recognition of the dualistic nature of eSports, which arose at the junction of information technologies and traditional sports. In addition, eSports is characterized by a special role of the intellectual property institute, since the key rights to organize eSports competitions belong to video game developers.

So, the close relationship between e-sports and classic sports has led to the emergence of an obvious solution, which consists in borrowing the model of normative regulation from traditional sports. However, this is only one of the approaches, because the model of normative regulation of eSports has not yet been finalized.

If we try to summarize the views of specialists on the problem of normative regulation of the field of traditional sports, we can come to a conclusion about the existence of two main approaches: private-legal and public-legal. As follows from the terms themselves, the difference between these approaches lies in the ideas about the role of the state in the normative system regulation of sports relations. It is, in particular, about the fact that the private law approach denies the leading role of the state in the specified aspect, and the public law approach defines the role of the state in regulating sports relations as the leading one.

However, since the beginning, the modern sport has enjoyed a kind of immunity from state influence. Namely, it is about the principle of the autonomy of sports, which arose at the time of the birth of the modern Olympic movement at the end of the 19th century, and is now formally enshrined in a number of normative legal acts regulating the sphere of sports.

In particular, the autonomy of sports was first enshrined in the Olympic Charter of 1949 (International Olympic Committee, 1949). According to Art. 25 of this document, the National Olympic Committee must be independent (from public authorities), which is a condition for its recognition (by the IOC). In 1955, the Charter was supplemented by the provision that the National Olympic Committees were to be completely independent and autonomous, and absolutely free from any political, religious, or

commercial influence.

Therefore, it is quite logical to extend the principle of autonomy, in particular, to the field of eSports. Accordingly, the priority approach to the regulation of public relations in eSports is to consider the private law approach, within which eSports organizations, mostly, independently regulate various relations that develop within the boundaries of eSports.

However, this does not exclude the state's obligation to establish the general principles of normative and legal regulation of relations in the field of eSports at the legislative level, including the recognition of eSports as an official sport. It is logical that over time eSports may create its own system of governing bodies (federations), its own trade unions, a separate system of arbitration courts (following the example of the CAS), and, ultimately, its own specific legal order, relevant only for the field of eSports, following the example of *Lex Sportiva* in classic sports. Of course, it would be possible to try to use the already existing infrastructure of classic sports, because in many countries of the world eSports is recognized as a kind of sport, however, the specifics of eSports require specific knowledge and skills of all participants of eSports activities, accordingly, it is probably more expedient to create separate infrastructure for eSports.

However, as long as eSports does not have its own extensive infrastructure, it can be under the «umbrella» of traditional sports. Actually, this happens automatically in those countries that have officially recognized eSports as a kind of sport.

Unfortunately, Switzerland has not yet officially recognized eSports as a kind of sport, but due to the active development of eSports in Switzerland, this decision will probably appear. As for other European countries, some of them have already recognized eSports as a kind of sport. Such countries include, for example, Germany and France. Ukraine also granted official status to eSports.

## Results

### Swiss law

As for Switzerland, eSports is also developing quite actively in this country. According to data from «eSports Switzerland 2021», a study by the Institute of Marketing Management under the direction of Marcel Hüttermann,

- 43.5 percent of Swiss residents know exactly what eSports is.
- 41 percent have stated that, in their opinion, eSports should be considered as a sport.
- 79.5 percent recognize that eSports in Switzerland is becoming more professional.
- 565,620 Swiss residents are eAthletes (+ 248,530 people compared to 2019).
- More than 110,000 succeeded in gaining money with esports (+ 67,500 people compared to 2019).
- The growth of the eSports phenomenon is sustainable and seems unaffected by the COVID-19 pandemic.

Esports is mainly played or watched on PCs and laptops. Having fun is given as the main reason for playing eSports and gaming. According to eSports enthusiasts, eSports and gaming mainly train players' reaction time. The most popular type of eSports in Switzerland are MOBA (multiplayer online battle arena) games. 49.1 percent of eSports enthusiasts stated that they regularly watch eSports games and tournaments, with the use of streaming platforms. 68.5 percent of respondents watch eSports via streaming platforms such as Twitch, YouTube, or similar providers, which means an increase of 36.3 percent (compared to 2019). Companies are mainly perceived as being involved in streams or as sponsors of live events. Esports players and gamers spend almost CHF 523 a year on their passion, mainly on hardware, games, and fan merchandise (School of Management and Law, 2021).

### *Ukrainian law*

Thanks to the efforts of the eSports community, on September 7, 2020, eSports was officially recognized as a kind of sport in Ukraine. The corresponding decision was adopted at the meeting of the Commission for the recognition of the sport in Ukraine and approved in the Order of the Ministry of Youth and Sports No. 1557 dated September 16, 2020 (Order 1557, 2020).

In accordance with the content of the Order, eSports is included in Section II of the Register of Recognized Sports, approved by the order of the Ministry of Youth and Sports of Ukraine dated March 11, 2015 No. 639, which is entitled «Non-Olympic and National Sports» (Order 639, 2015).

By order of the Ministry of Youth and Sports of Ukraine No. 2561 dated July 21, 2021 (Order 2561, 2021), the eSports Federation of Ukraine received national status and was empowered to hold official competitions, conduct educational programs, form a network of official training bases of national teams, assign ranks and ranks to athletes and other actions within their powers.

On January 26, 2021, the Ministry of Youth and Sports of Ukraine approved the Rules of eSports (electronic sports) competitions (hereinafter – the Rules) (Ministry of Youth and Sports of Ukraine, 2021). In the edition of the Rules dated October 25, 2021, clause 1 of Section I «General Provisions» contains the definition of eSports, according to which it is an individual or team sport in which players compete according to established rules. It is based on the interaction of athletes with a fully or partially artificial environment (video game, computer game, mobile game, virtual (VR) and/or augmented reality (AR)) and its elements through the use of innovative and/or digital technologies and technical means, in which the achievements, skill, and preparedness of athletes are revealed and uniformly compared by conducting an educational and training process and competitions in various disciplines.

Thus, Ukrainian legislation uses the term «cybersports (electronic sports) ». Despite this, in foreign scientific literature and acts of regulation of sports organizations, the term «eSports» is used more often. In relation to eSports,

they are used interchangeably.

The Rules adopted by the Ministry of Youth and Sports became a long-awaited regulatory act in the field of eSports, which industry participants can now rely on when organizing and holding sports competitions. The development of the rules was carried out taking into account the experience of large eSports organizations, for example, the International eSports Federation (IESF), which is stated in Clause 3 of Section I of the Rules. In accordance with clause 4 of Section I, the Rules apply to the conduct of eSports competitions on the territory of Ukraine at the national (all-Ukrainian), regional, city, and district levels in cities. International tournaments are held according to the rules and regulations of the organizer, which uses the competition rules of the international sports federation (most often – IESF).

The rules contain a number of important provisions, in particular, regarding disciplines in eSports and requirements for their conduct. For example, according to Clause 3.1 of Section II of the Rules, the classification of disciplines in eSports consists of seven types:

- 1) real-time strategy;
- 2) battle arena;
- 3) technical simulator;
- 4) sports simulator;
- 5) competitive puzzles;
- 6) fighting game, and;
- 7) tactical and strategic simulator.

An explanation of the essence of the disciplines is contained in Clause 12 of Chapter I «General Provisions». The rules detail the specifics of the organization and conduct of competitions in each of the disciplines.

According to Clause 11 of Section I of the Rules, eSports competitions are subject to the Law of Ukraine «On Anti-Doping Activity in Sports» dated 26.01.2022 (Law 2011-IX, 2022) and the UNESCO (2005) Convention on Combating Doping in Sports.

According to Clause 1.2 of Chapter IV «Competition Participants and Conditions of Participation», the age categories of eAthletes are:

- 1) juniors – 14-16 years old;
- 2) youth – 17-24 years old, and;
- 3) from 25 years old – adults.

The rules contain the rights and obligations of athletes, coaches, team representatives during competitions, and tournament organizers.

Sanctions, according to Clause 14.1 of Section V of the Rules, include such types of liability as:

- 1) warning;
- 2) removal;
- 3) technical defeat in the game, and;
- 4) technical defeat in the match.

According to Clause 6 of Section I of the Rules, taking into account the intellectual property rights of the developer (owner) of the game is mandatory when conducting the competition.

Esports in its pattern of development in many respects

repeats the trends of traditional sports. For example, there are already brand players in eSports like s1mple in CS:GO or Dendi in Dota 2 – like Cristiano Ronaldo in football or Novak Djokovic in tennis. But there is also a huge difference. Unlike football or tennis, any eSports discipline is the intellectual property of the game development company, which is fixed at the level of the official rules of the game. For example, the most popular Dota and Counter-Strike are owned by the American company Valve Corporation, which will always have the last word in any matter related to the use of the game. If Valve decides to revoke the license, no one will be able to hold the competition: the decisions of the tournament operators will simply not have any legal force.

Illegal use of content is also a problem for eSports. It is about the activity of streamers who carry out individual broadcasts of tournaments. In the early stages of the development of eSports, this was not prohibited. Today, most game services simply ban streamers for non-compliance with the Digital Millennium Copyright Act – amendments to the US copyright law adopted to regulate legal issues related to the distribution of digital information (Rodin, 2020).

It should be noted that in legal doctrine, approaches to the protection of intellectual property rights for video games differ. Usually, a particular aspect of the game is taken into account, such as the software code as a literary work, audio-visual effects, and protected under copyright. At the same time, there is no prohibition on protecting game design or gameplay within the framework of patent law. It is also possible to protect the rights to a video game as a computer program, which is the object of copyright (according to Ukrainian legislation, in this case, clause 2, part 1 of Article 433 of the Civil Code of Ukraine (Law 435-IV, 2003), as well as clause 3 of Article 8 of the Law of Ukraine «On copyright and related rights» dated 23.12.1993 (Law 3792-XII, 1993) are applied).

Article 1 of the Law of Ukraine «On Copyright and Related Rights» defines a computer program as a set of instructions in the form of words, numbers, codes, schemes, symbols, or in any other form, if they are expressed in a form suitable for computer reading by the computer, which bring it into action to achieve a certain goal or result. This concept covers both the operating system and the application program expressed in source or object code.

Computer programs are an example of electronic (digital) information, which, in accordance with Art. 1 of the Law «On Copyright and Related Rights» may be contained in electronic (digital) form as one, two, or more files or their parts on storage devices or in a computer database or on servers (on the Internet). In accordance with Part 4 of Art. 433 of the Civil Code of Ukraine, a computer program is protected as a literary work.

Thus, the legal regulation of eSports in Ukraine is subject to the norms of the Constitution, the Civil Code of Ukraine, laws: «On physical culture and sport» dated 24.12.1993 (Law 3808-XII, 1993), «On copyright and

related rights», «On anti-doping activity in sports», regulatory acts of the Federation of eSports (electronic sports) of Ukraine, regulatory acts of the Ministry of Youth and Sports (orders, rules).

Therefore, the approach to the legal regulation of eSports in Ukraine can be conventionally characterized as public-law or interventionist on the part of the state, which, in addition to the formal recognition of eSports as a sport, tries to regulate its various aspects as fully as possible. Instead, Switzerland's approach can obviously be characterized more as a private legal one, since the state does not interfere in the field of eSports organizations, although official recognition of eSports would certainly give it more institutional formality and provide a powerful impetus for its further development.

## Discussion

### *Mixed matters and conflicts*

Abstracting from the Ukrainian and European levels, it is worth emphasizing that there are problematic aspects of the legal and quasi-legal regulation of relations in the field of eSports, which are typical for the entire global eSports community. In addition to intellectual property rights, these include the problems of contractual regulation of relations in eSports. The contract itself, as a legal fact, a specific obligation, and a document containing the rights and obligations of participants in eSports activities, is a specific circumstance with which the law binds the establishment, change, and termination of relations in the field of eSports. The greatest theoretical interest is the so-called eSports contracts (contracts on eSports activities) which are concluded between an athlete and an eSports organization (club), as well as transfer contracts, with the help of which the transition of eAthlete is carried out from one eSports organization (club) to another eSports organization (club).

Contracts in professional sports must be in writing, and eSports is no exception. However, this is a practical necessity, since there is actually no legal prohibition against the conclusion of an oral contract - there is no rule that states that a contract for eSports activities concluding without observing the form, which should be in writing, is void.

However, it is extremely undesirable to conclude a contract on eSports activity in oral form. Verbal contracts in eSports were actively concluded at the stage of its birth and led to the violation of the rights and interests of the player since it was necessary to prove the existence of civil (contractual) legal relations in court. Thus it was a problem to prove that the team did not fulfill its obligations under the contract, for example, did not pay or unreasonably reduced the remuneration, or otherwise violated the agreement, abused its rights, for example, interfered in the private life of the player without contractual grounds. In order to avoid such troubles, the parties began to enter into written contracts. Thus, a detailed and balanced written contract is a guarantee that the parties will have a contractual basis that they can refer to as the basis of their claims or objections

(Quiles, 2018).

The legal nature of the contractual relationship between the player and the club under the contract is that the club acts as a customer, and the player acts as an independent contractor. However, the mere statement of these relations in the contract is not enough for the actual existence of these relations between the parties - which can then be established in a court of law, when it turns out that in fact, the relations between the parties are the subject of labor law regulation, since, in fact, the club acts in as an employer, and the player acts as an employee. In addition, an important condition is the conclusion of a contract with the proper party. For example, concluding a contract directly with the owner of the club is not allowed, since the proper party to the contract must be the club itself, and not its owner (individual or legal entity).

As a general rule, the greater the control of one party in such a relationship over the other – the club over the player – the more likely it is that this is an employment relationship. The team is usually not interested in such a development because it imposes additional responsibility on the club under labor law. There are other reasons why clubs prefer an equal business with players as independent contractors:

- 1) reduction of social security costs;
- 2) simplified hiring/termination procedure;
- 3) the possibility of choosing flexible behavior within the contract, and;
- 4) lower risks of being liable in court.

A sports spectacle is regarded as a product, and an athlete acts as a service provider. Thus, there are no obstacles to recognizing relations in professional sports as civil-law, if they have a contractual basis, which is created by equal subjects. The activity of these subjects is of an economic nature, and for each of them sport is the main activity, the main source of income. By creating a spectacle, they maximize their profits and participate in a competitive economic relationship where similar actors compete to maximize profit from the sporting spectacle. Accordingly, we are dealing with market, commodity-monetary relations, which are the subject of civil law regulation.

Attributing eSports contracts to the subject of labor law regulation would give rise to a number of cases that do not correspond to real practice. For example, if eSports were regulated by the norms of labor law, then the athlete would have to hold a position in the staff schedule, to obtain the profession of an athlete, he would have to obtain a diploma with an indication of specialization, the employer would have to «work» for a set minimum time per week, receive a salary according to the level of his work. All this does not exist in the reality of professional sports, because relations in professional sports are civil, and are generated by the market, and competitive circumstances.

Achieving or not achieving a highly competitive result cannot be the subject of an employment contract, therefore, it is also not possible to terminate an employment contract on the basis of not achieving this result - otherwise, it

would be contrary to the requirements of labor legislation. According to the employment contract, the party is obliged to perform work, and not to show spectacular sports result in a competitive sports competition, like a professional athlete who does not just perform work but provides his services to the team (club), applying his level of sportsmanship.

The subject of a typical contract in eSports is the obligation of the player to participate in competitions and show a high result, for which the team undertakes to pay him a reward. Also, the player must wear the team's uniform at all competitions and appearances in the stream, and participate in the club's promotional events. The club undertakes to pay the player a reward in the form of a percentage of the prize money earned at tournaments or in the form of a fixed amount.

An important section of the sports contract is the section regulating the use of the player's intellectual property. The parties, in accordance with the copyright legislation, agree on how the player's name, appearance, brand, and logo will be used. The terms and conditions of such use, whether the player's copyright and other rights can be transferred to a third party, must be established.

An important source of income for players is streaming. The contract must specify how much the player earns from online broadcasts if he wants to earn from them separately from the team. The contract may specify how many «team» streaming hours a player must spend per month.

An important condition in the contract is the clause on «buyout» (compensation to the previous club in case of transfer of the athlete) of the player. It applies if there is a third party willing to «acquire» the player or the player is willing to pay himself to end his relationship with the team and become a «free agent».

Also, the contract may state that upon reaching a certain age, the player has the right to leave the club freely if he pays a certain amount of «severance pay» or free of charge.

The second basic type of contract in eSports is a transfer contract. With the help of this contract, the athlete is transferred from one club to another club. Such a contract is concluded between two clubs (teams).

A transfer contract can be concluded after its approval by the player himself. To do this, he needs to agree on the appropriate clause in the sports contract that he concluded with his team. At the same time, he does not become a party to the transfer agreement, but the team itself complies with the obligation according to a separate agreement concluded between it and the player. Establishing a relevant clause in the contract is a guarantee of protection of the player's interests.

The player can also set a condition that will limit the transfer based on a geographical criterion (certain countries, regions) or will set a list of teams, or clubs to which the player is known not to transfer.

However, the transfer model in eSports has some differences from the transfer system that exists in traditional sports, in particular, football. The first of them is the status

of the transfer market regulator. In particular, football governing bodies are public organizations that do not own the rights to the game, while in eSports we are dealing with the developers of the game – both regulatory bodies and owners of the rights to the game. Accordingly, eSports regulators have more rights. For example, they can allow the transfer of a player outside the transfer window or prohibit the transfer of a player altogether if there are good reasons.

Esports also differ from traditional sports in the ability to verify players who make the transition. The entire history of the athlete's game is stored on the servers, so the new club can easily check whether the player has been involved in any violations of the rules of the game and in which ones. So, all such data exists in digital, not analog form. At the same time, the team can check the analog data in the usual way, which does not differ from the one adopted in classical sports (for example, providing certificates or passing a medical examination).

As for the transfer value of players in eSports, it does not fall with the age of the athlete, as in traditional sports. Rather, the transfer value is formed more depending on the number of views of the events with the participation of the athlete.

In eSports, there are also cases of a complete buyout of the team. Considering that an e-team usually consists of five main players and three substitutes, this is indeed possible, something that is unimaginable in traditional sports, unless you consider a change of management of a club as a ransom when a club has a new owner. In eSports, the situation is similar, but another club can buy the entire team and reserve the selling team's place in the league for itself, but already under the name of the new club, with the same players who transferred to it.

## Conclusions

On the basis of the above, it is appropriate to draw the following conclusions:

1. Today, e-sports is a unique sphere of life of a modern person and a full-fledged economic industry that needs full-fledged regulatory and legal regulation.

2. The dynamic development of eSports is taking place in all developed countries of the world, in particular, Switzerland and Ukraine. Unfortunately, the development of eSports in Ukraine is temporarily stopped due to the full-scale war that the Russian Federation started against Ukraine on February 24, 2022.

3. Comparing approaches to the regulation of eSports in Switzerland and Ukraine, it is worth emphasizing that Switzerland has not recognized eSports at the official level, unlike Ukraine. On the one hand, the lack of official recognition by the state provides more opportunities for private law regulation of relevant relations. However, on the other hand, official recognition of a sport provides better financing and institutional development of the sport. Perhaps these factors are more important for Ukraine, which is less wealthy, and Ukrainian sports need more state support.

4. The modern period of development of e-sports, as an independent industry, is connected with the significant development of Internet technologies. At the same time, one of the key aspects that define the essence of e-sports and directly affects the determination of the methods and directions of its regulation is the recognition of the dualistic nature of e-sports, which arose at the junction of information technologies and traditional sports.

5. The issue of normative and legal regulation of e-sports is at the stage of formation, however, currently e-sports can use the main principles of normative and legal regulation of relevant relations, borrowed from traditional sports. At the same time, conventional approaches to such regulation can be divided into private-law and public-law.

6. It is expedient to consider the priority approach to the regulation of social relations in e-sports to be the private-law approach, within which e-sports organizations, mostly, independently, regulate various relations that develop within the boundaries of e-sports. However, this does not exclude the state's obligation to establish the general principles of normative and legal regulation of relations in the field of e-sports at the legislative level, including the recognition of e-sports as an official sport.

7. Over time, eSports may create its own specific "legal order" specific only to the field of eSports, following the example of *Lex Sportiva* in classical sports. At the current stage of development, it is advisable to use the already existing infrastructure of classic sports as an «umbrella», because in many countries of the world eSports is already recognized as an independent sport.

8. Compared to classic sports, eSports has a special role of the intellectual property institute, since the key rights to organize eSports competitions belong to video game developers. Any eSports discipline, unlike traditional sports, is the intellectual property of the game development company, which is fixed at the level of the official rules of the game. Also, the problem of individual broadcasts (streams) is characteristic only for eSports, because at the first stages they contributed to the development of eSports, but now they are prohibited as illegal broadcasts. And this causes displeasure of streamers.

9. The problems of contractual regulation of the relevant relations of relations belong to the actual problems of e-sports. The contract itself, as a legal fact, a specific obligation, and a document containing the rights and obligations of participants in e-sports activities, acts as a specific circumstance with which the law binds the establishment, change, and termination of relations in the field of e-sports. In other words, it is the presence of the legal structure of the contract that makes the existence of eSports as such possible.

10. The greatest theoretical interest is the so-called contracts on e-sports activities concluded between an athlete and an e-sports organization (club), as well as transfer contracts, which are used to transfer an e-sports player from one e-sports organization (club) to another e-sports organization (club), which have their own specifics compared to contracts in classical sports.

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