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Letter from the Editor
End Of The Esports Winter?

Though the words of House Stark remind us that 'Winter Is Coming' always, I'm starting to see signs of the end of the 'Esports Winter'. Esports was on a major roll from 2015 to 2020, and we all know what happened next. In the past two years we have seen too many layoffs, asset sales and reorganizations in the video game and esports industries. But recent news is looking up – live in-person tournaments are back and growing, the International Olympic Committee (IOC) just announced its intention to host the inaugural Olympic Esports Games in the Kingdom of Saudi Arabia in 2025, and games are getting bigger and better. Last year was a banner one with ground-breaking games like Baldur's Gate III, Diablo IV, and Spider-Man 2, and this year is off to a great start with the return of College Football 25.

Our firm has been working in the video gaming and esports space for quite a while now, and we are thrilled to partner with Hackney Publications to sponsor Esports & The Law. I look forward to bringing you some great content in the coming months, and by the time we hit the actual winter, I'm hoping esports are back to their former glory.

As the great Stan Lee used to say, Excelsior!

Darius C. Gambino, Editor-In Chief.

Under the Influence: The Legal Implications of Dark Patterns in Video Games and Esports

By Drake Broussard[1]

The competitive world of video gaming, otherwise known as esports, has seen an exponential rise in popularity over the past decade. From casual players to professional gamers, esports has established itself as a legitimate and lucrative industry. However, alongside this growth, concerns about the use of dark patterns and their potential to foster addiction have surfaced. There is an intricate relationship between esports, dark patterns, and video game addiction, and there are many challenges and ethical considerations within this dynamic and quickly expanding landscape.

Esports has evolved from a niche pastime to a global phenomenon with millions of viewers tuning in to watch tournaments featuring games like *League of Legends, DotA 2,* and *Fortnite.*[2] The industry is supported by sponsorship, advertising, and massive prize pools, making it an attractive career path for many young and ambitious gamers.[3] This surge in popularity has been driven by technological advancements, increased internet accessibility,

1 Drake is a rising third-year law student at Penn State University, and a Summer Associate with Saul Ewing LLP. Drake is also a former competitive collegiate *League of Legends* player.

2 *See* Esports Players Club, *The Bright Future of Esports: What You Need to Know* (June 2023),

https://www.esportsplayersclub.com/post/the-bright-future-of-esports-what-you-need-to-know#:~:text=Esports%2C%20or%20competitive%20video%20gaming,in%20esports%20teams%20and%20events.

3 *Id.*

The Need for a Dedicated Esports Visa Program for the U.S.

By Ed Tomasi

The esports industry has rapidly evolved from a niche interest into a global phenomenon, with millions of fans and substantial economic impacts for host destinations. In 2021, global esports revenues are expected to hit $1.8 billion by 2024. The United States has emerged as a leading host destination for many high-profile esports events, attracting top talent from around the world.

However, the current U.S. Visa framework is not well-suited to accommodate the unique needs of foreign esports players, coaches and production teams needing to gain somewhat immediate access through our borders. Unlike traditional sport leagues, where qualifying participants are known well in advance, esports competitors often qualify for events only weeks before the final/major event is set to take place. This tight timeline makes it challenging to navigate the complex and time-consuming visa application process currently in place when they are hosted here in the United States.

Currently, esports event organizers rely on a few visa categories for their players, coaches and/or production team members to enter the United States . . . P-1, O-1A, and B-1 Visas. Each of these options has their unique challenges. The P-1 visa, designed for athletes and entertainers, requires long-term commitments or evidence of contracts with major U.S. sports leagues, which esports organizations currently have difficulty in being recognized to meet. The O-1A visa, while less restrictive, is difficult to obtain due to its stringent requirements. Meanwhile, the B-1 visa allows for short-term visits but severely limits the activities in which the visa holder can engage.

The lack of a tailored visa solution for esports not only threatens the integrity of tournaments—where the best players may be unable to compete—but also the economic impact for host cities, as fans may lose interest if top competitors are absent. Furthermore, as other countries such as Germany and South Korea establish specific visa programs for esports, there is a growing risk that the U.S. will lose its position as a preferred destination for these lucrative events.

Research Summary and Impact Assessment

In July 2024, research was conducted by PLAYHRDR Advisors, in collaboration with students from the Niner Esports program at the University of North Carolina at Charlotte, to address the challenges faced by foreign esports players when applying for U.S. visas. The study gathered insights from five major global esports event producers, highlighting the significant challenges, opportunities and economic impact of international esports events held in the United States. The study found that esports events contribute between $2 million to $4 million per event in direct visitor spending, with an estimated annual economic impact of $30 million to $60 million.

The research revealed that 75% of the surveyed event producers had to hire consultants or legal advisors to manage visa applications for staff and players, underscoring the complexity and difficulty of the current process. On average, event organizers allocate 3-4 months to secure visas for staff and 1-2 months for players and coaches, often encountering delays and challenges with U.S. embassies in countries like Brazil, China, and Russia. These delays can

jeopardize the successful execution of events, leading to financial losses and reputational damage for both the event producers and the host cities/countries.

The study also highlighted several direct questions from event producers to U.S. government agencies, emphasizing the need for expedited visa processing, clearer guidelines, and a more esports-friendly immigration framework. The ability of event producers to secure timely visas is crucial not only for the smooth running of events but also for maintaining the United States' competitiveness as a premier esports destination.

Recommendations and Solutions

Given the findings of the research and the growing importance of esports, it is imperative that the U.S. government takes action to create a more streamlined and esports-specific visa process. The following recommendations are in the process of being offered as potential solutions to address the current shortcomings:

1. Creation of a P-1A Esports Visa:

One potential solution is the introduction of a P-1A visa category specifically tailored for esports. This visa would recognize the unique characteristics of the esports industry, such as shorter tournament seasons and the need for quick roster changes. It would allow players and essential staff to obtain longer-term, multiple-entry visas, blending the characteristics of the existing P-1 and B-1 visas. This would reduce the burden on event organizers and ensure that top talent can participate in U.S.-based events without unnecessary delays.

2. Formal Recognition of Esports within the B-1 Visa Category:

For those who do not qualify for the P-1 or O-1 categories, the State Department should update the Foreign Affairs Manual to formally recognize esports under the B-1 visa category. This would create specific allowances for esports professionals, including coaches, content creators, and other essential personnel. By doing so, the U.S. would acknowledge the economic and cultural significance of esports and facilitate smoother visa processes for all stakeholders involved.

3. Expedited Tourist Visas for Parents of Minor Esports Athletes:

Many esports athletes are minors, and their parents often seek to accompany them to international events. The U.S. should offer expedited B-1/B-2 tourist visas for the parents of these young athletes, particularly those from non-visa waiver countries. This would ensure that underage competitors have the necessary support during their participation in U.S. events, enhancing the overall experience for both the players and their families.

4. Engagement with U.S. Congress for Legislative Changes:

Addressing the root of the issue may require congressional action to amend existing immigration laws. By advocating for legislative changes that reflect the needs of the esports community, stakeholders can work towards creating a more inclusive and supportive environment for international competitors. This would involve lobbying efforts to educate lawmakers about the economic benefits of hosting esports events and the challenges posed by the current visa framework.

In conclusion, the growth of esports presents a unique opportunity for the United States to capitalize on a rapidly expanding industry. However, to maintain its position as a global leader in hosting esports events, the U.S. must adapt its visa policies to better support the needs of foreign players and event organizers. By implementing these recommendations, the U.S. can ensure that it remains an attractive destination for esports events, continue driving economic growth and strengthening its reputation as a national hub for global talent.

Contributors: PLAYHRDR Advisors; Visit Raleigh; Niner Esports; Velez & Cipriano, PLLC; Justin Jacobson Law, P.C.

Attorney Chris Greeley Appointed Head of Esports for League of Legends

Chris Greeley, previously a partner at Herrick, Feinstein LLP, has taken over for Naz Aletaha and will be Head of Esports at Riot Games' League of Legends. Aletaha resigned her post last month at Riot Games, creating the opening for Greeley. Greeley will oversee "creating a comprehensive, long-term plan that puts the financial success of the participating professional teams ahead of the sport's expansion," according to India Today Gaming. Greeley previously was Head of Esports for North America and Oceania at Riot Games, where he was responsible for the vision and strategy for the competitive and business operations of all of Riot's competitive esports (League of Legends, VALORANT, Wild Rift, Teamfight Tactics and Legends of Runeterra) in the US, Canada and all of Oceania. Greeley was also one of the primary architects of the Legends Championship Series (LCS) franchise model and led the 2017 application process for participation in the LCS.

Dr. Disrespect's Twitch Ban Shines Light on Legal Concerns of the Dark Side of Online Streaming

By Ethan Chaiet, 2L, Villanova University - Charles Widger School of Law

Insight into Dr. Disrespect's Ban

In late June 2020, popular Twitch streamer Dr. Disrespect, known for his provocative persona and armed with lucrative exclusive two-year contract, mysteriously disappeared from the platform.[1] Dr. Disrespect, whose real name is Guy Beahm IV, was one of Twitch's top content creators. Dr. Disrespect's streams consistently attracted an average of over 21,000 viewers, and he remained loyal to the platform even as many of his peers migrated to other streaming services.[2] Many fans pointed to Beahm's controversial history.[3] Yet, the truth is much more problematic than these speculations – the root of Dr. Disrespect's suspension was the "inappropriate" messages that he sent to a minor in 2017.[4]

Fast forward to 2024. A Twitch employee, who worked for the company for eight years, explained that Beahm was caught using Twitch's private chat feature to interact with a minor.[5] Allegedly, he even planned on meeting up with her at Twitchcon.[6] To mitigate public backlash, Dr. Disrespect argued that the interactions were not illegal and that he had never met the individual.[7] Twitch contended that Dr. Disrespect had violated the site's community guidelines or terms and services, emphasizing the need to hold him accountable despite his status and prominence on the platform.[8] After Twitch released its statement, several of Dr. Disrespect's partners and sponsors began pulling their endorsements. For instance, Midnight Society, a gaming studio that Beahm co-founded, has officially cut all ties with the streamer.[9] Even non-gaming entities, such as the San Francisco 49ers, ended their partnership with Beham, who had most recently announced the team's third-round pick in the 2022 draft.[10] Other streamers and friends of Dr. Disrespect condemned his actions, stating that he needed to "re-evaluate" his life. [11]

Dr. Disrespect's scandal is emblematic of the persistent challenges Twitch has faced challenges in safeguarding its platform against exploitation since its inception in 2011. As streaming continues to grow as a common commercial activity, companies may be unprepared to address the complex risks that accompany this medium. Numerous accounts on the platform have been accused of predatory behavior towards minors.[12] According to some, child predators are attracted to Twitch's messaging feature, Whispers, which makes it possible for users to message each other across the site privately.[13] To address these concerns, Twitch has partnered with the National Center for Missing and Exploited Children, which works with global law enforcement agencies to limit content that promotes, encourages, or admits participation in the sexual exploitation or sexualization of youth.[14] This partnership is a step in the right direction, but additional precautions are necessary to combat the platform's child predator and grooming problems.

Twitch's Shortcomings

In 2022, Bloomberg published a report stating that over 1,900 child predators were using Twitch to systematically find and follow young users.[15] In response, Twitch created phone verification requirements and deleted accounts made by users under the age of 13.[16] Yet,

1   *See* Jacob Kastrenakes, *Twitch Reckons with Sexual Assault as it Begins Permanently Suspending Streamers*, The Verge (June 25, 2020), https://www.theverge.com/2020/6/25/21303185/twitch-sexual-harassment-assault-permanent-bans-streamers

2   *See* Patrick Shanley, *Streamer Dr. Disrespect Signs Multiyear Deal to Stay on Twitch*, The Hollywood Reporter (March 12, 2020), https://www.hollywoodreporter.com/news/general-news/dr-disrespect-signs-multi-year-deal-stay-twitch-1283878/

3   *See* Jacob Kastrenakes, Supra Note 1

4   *See* Conor Murray, Dr. Disrespect Controversy: *Youtube Reportedly Suspends Monetization After Streamer Admits Sending 'Inappropriate' Messages to Minor*, Forbes (June 28, 2024), https://www.hollywoodreporter.com/news/general-news/dr-disrespect-signs-multi-year-deal-stay-twitch-1283878/

5   *Id.*
6   *Id.*
7   *Id.*
8   *See* Jacob Kastrenakes, Supra Note 1
9   *See* Conor Murray, Supra Note 4
10 *Id.*
11 *Id.*

12 *See* Jacob Kastrenakes, Supra Note 1
13 *Id.*
14 *See Our Ongoing Work to Combat Online Grooming*, Twitch, (November 22, 2022), https://safety.twitch.tv/s/article/Our-Work-to-Combat-Online-Grooming?language=en_US
15 *See* Cecilia D'Anastascio, *Child Predators Use Twitch to Systematically Track Kids Livestreaming,* Bloomberg (September 21, 2022), https://www.bloomberg.com/graphics/2022-twitch-problem-with-child-predators/?sref=P6Q0mxvj&embedded-checkout=true#headline-start
16 *See* Levi Winslow, *Report: Predators Are Using Twitch 'Clips' To Spread Child Abuse*, Kotaku (January 5, 2024), https://kotaku.com/twitch-clips-feature-predators-child-abuse-tiktok-1851144631

some users are finding new ways to circumvent these barriers by using Twitch "clips." These 20-second snippets of a live stream are being proliferated online, and often depict graphic activity.[17] These "clips" remain the least moderated portion of the platform.[18]

Instead of adopting more advanced models to detect child grooming activity, Twitch relies on its moderators to create and manage the online community. Moderators are expected to identify potential troublemakers and prevent them from spreading hateful or harmful content.[19] However, most of these moderators are unpaid and unprepared for the emotional toll that accompanies the position. Studies have shown that moderators lack the cognitive and emotional capabilities to handle the situations that arise from interactions on Twitch.[20] Thus, moderators struggle when it comes to handling difficult content such as the exploitation of children. Child predators are not deterred by moderators, as they pose little to no threat in their goal to take advantage of young users.

Potential Liability

In 2020, Wired investigated the average age of Twitch users. While Twitch's terms of service state that one must be 13 or older to stream on the platform, dozens of accounts were seemingly operated by children under that age.[21]

The magazine went on to suggest that Twitch could employ a better approach that would better protect the safety of its users. The investigation described the specific precautions that Twitch's competitors, YouTube and Facebook, were taking to protect their users. For instance, YouTube had restrictions in place to prevent live streaming from mobile devices and Facebook carefully monitored channel discovery.[22] On the other hand, Twitch did not take an active interest in the moderation of its site. Instead, they assumed that users would use the site's reporting tools or contact law enforcement when something criminal occurred.[23]

Streaming platforms can be held accountable under both federal and state laws if they neglect to implement sufficient protections for minors. While Section 230 of the Communications Decency Act (CDA) offers certain protections to online platforms, it is not absolute.[24] For instance, in *T.V. v. Grindr, LLC* (2024), the court recognized that §230 does not exempt platforms from all potential liabilities, particularly when state laws mandate proactive measures to safeguard children from harmful activities.[25] Furthermore, various statutes impose harsh penalties on platforms that fail to prevent the sexual exploitation of minors.[26] Beyond legal consequences, neglecting the safety of minors can result in substantial reputational damage and financial losses for these platforms.[27]

Some observers believe Twitch may face liability for failing to take appropriate action.[28] Since Twitch is aware of the activity that takes place on its platform, it could potentially be held liable.[29] Twitch could avoid liability by actively going out of its way to prevent aforementioned activities.[30] Currently, Twitch users do not need to have an account to upload content, subscribe to channels, or interact with other accounts.[31] In other words, all users, regardless of age, can use all of the platform's features without signing up.[32]

Potential Solutions

While there is no single fix-all measure that Twitch can take to completely eradicate the problems discussed above, there are precautions the platform is looking towards to mitigate the possibility of children encountering potentially harmful users. For instance, the company recently announced that they are

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17 *Id.*

18 *See* Jacob Knutson, *Report: Twitch Feature is Used to Record and Share Child Abuse*, Axios (January 5, 2024), https://www.axios.com/2024/01/05/report-twitch-feature-record-and-share-child-abuse

19 *See* Nicole Carpenter, *Moderators are the Unpaid Backbone of Twitch*, Polygon (October 20, 2023), https://www.polygon.com/23922227/twitch-moderators-unpaid-labor-twitchcon-2023

20 *See* Donghee Yvette Wohn, *Volunteer Moderators in Twitch Micro Communities: How They Get Involved, the Roles They Play, and the Emotional Labor They Experience*, CHI '19: Proceedings of the 2019 CHI Conference on Human Factors in Computing Systems (2019)

21 *See* Cecilia D'Anastacio, *Children Stream on Twitch- Where Potential Predators Find Them*, Wired (July 30, 2020), https://www.wired.com/story/children-stream-twitch-potential-predators-exploitation/

23 *Id.*

24 The Communications Decency Act, 47 USCS § 230 (LexisNexis, 2024)

25 *T.V. v. Grindr, LLC*, 2024 U.S. Dist. LEXIS 143777

26 Sexual exploitation of children, 18 USC § 2251 (2008)

27 *See. Eisner v. Meta Platforms, Inc.*, 2024 U.S. Dist. LEXIS 114725

28 *See United States v. Williams*, 553 U.S. 285 (2008).

30 *See* Alexander Lee, How Twitch lost its grip on, and way with, the Streaming Community, Digiday (April 3, 2023), https://digiday.com/marketing/how-twitch-lost-its-grip-on-and-way-with-the-streaming-community/

31 *See How video-sharing platforms (VSPs) protect children from encountering harmful videos*, Ofcom (December 14, 2023), https://www.ofcom.org.uk/siteassets/resources/documents/online-safety/information-for-industry/vsp/reports/2023/child-safety/how-video-sharing-platforms-protect-children-from-encountering-harmful-videos/?v=330584

32 *Id.*

updating the privacy settings on their messaging platform, Whispers. The setting "block Whispers from strangers" will now be turned on by default.[33] Moreover, Twitch has also modified its "off-service policy" giving them the right to remove users from the platform based on suspicious behavior.[34] Twitch hopes these changes will deter potential predators while shielding its users from the dark side of online gaming.

Conclusion

As the esports and streaming industries continue to evolve, the challenges of safeguarding platforms like Twitch against predatory behavior remain pressing. The industry will likely continue to grapple with the specific issues surrounding Dr. Disrespect, who recently hinted at a return to streaming through a social media post.[35] With Dr. Disrespect's impending return, coupled with reports of a lucrative contract offer from rival streaming service Kick, the focus for all streaming platforms must be on critical concerns, like the safety of minors.[36]

35 Paul Tassi, *Dr. Disrespect Threatens A Return, Raising Questions Like How And Why*, Forbes (August 15, 2024) https://www.forbes.com/sites/paultassi/2024/08/15/dr-disrespect-threatens-a-return-raising-questions-like-how-and-why/

36 Olivia Richman, *Is Dr Disrespect Going to Stream on Kick?* Esports Illustrated (August 9, 2024) https://www.si.com/esports/news/is-dr-disrespect-kick

Examining NIL issues in Esports

By Rashan E. Isaac, Ph.D. Candidate- University of New Mexico (Sport Administration)

Since its inception in 1906, the National Collegiate Athletic Association (initially known as the Intercollegiate Athletic Association) has long served as the governing body for collegiate athletics. Generating roughly $1 billion annually [1], the fiscal success of NCAA (stemming from tv marketing rights/fees, championships and NIT tournaments, investment income, sales/services, and private contributions) has long been criticized due to questions arising over the distribution of funds for student athletes. O' Bannon V. NCAA [2] is noted at the forefront of NIL legislation in collegiate athletics and served as the catalyst in enabling collegiate athletes to receive compensation for use of their name, image, and likeness. The avenue created for current (and former) collegiate athletes to be compensated has extended into the multi-million-dollar industry that is esport. As esport is well established as a competitive and social phenomenon rivaling that of traditional sport, NIL issues have extended into the esport ecosystem due to the amount of revenue generated by the industry.

Arrival of NIL in Esports

Tracing the history of esports provides a roadmap for the rise of NIL throughout the industry. The first noted compensation for esport players occurred during a competition held on October 9, 1982; where students competed against each other in the title Spacewar! at Stanford University's Artificial Intelligence Library. The winnings (a year's Rolling Stone Magazine subscription) pale in comparison to those of esport athlete Kyle "Bugha" Geirsdorf: earning $3 million in winnings from the *2019 Fortnine World Cup*. With this year's Fortninite World Cup set to feature a prize pool of $7,675,000 a single question arises: with the inception of NIL at the collegiate level, how will this policy impact esports?

The collegiate athletic arms race: a catalyst for NIL in Esports

Adaption of the current NIL policy [3] by the NCAA opened the door for NIL in collegiate esports. Preceding this movement, the collegiate athletic arms race served as a catalyst for the rise of NIL in esport. Similar to traditional sport, the recruitment of elite collegiate esport athletes may result in lucrative financial opportunities stemming from the success of a program. As the revenue generating potential of esport is now understood by colleges and universities, the last decade has seen engagement in an inevitable arms war to provide the best experience for prospective athletes; a precedent set in 2018 by Full Sail University's $6 million, 11,200 square foot eSport facility built in collaboration with multiple industry stakeholders. Following a similar blueprint, Illinois State University funded its expansion at the national level though partnership with PIVOT Industry in which CEO Ben Shapiro expressed excitement about the opportunity to "be at the forefront of the role gaming can play for student well-being" and "the opportunity to leverage experience in both esports and naming rights to secure the right brand partnership for a state-of-the-art facility" [4]. College's engagement in the

athletic arms race to fund esport programs has created two crucial circumstances for the state of NIL in esport currently: the inclusion of current issues and framework for recent successful deals.

NIL issues in Esport

Legal issues related to Esport NIL deals largely fall into three major categories including:

1) **Player Representation and Agency**

Moist Esports lawsuit v. U.S. Department of Immigration [5]

● Contest of denial for multiple team-member's visas

2) **Contractual and Financial Challenges**

Tenney v. Faze Clan [6]

● Complaints over breach in contract for financial agreements (i.e. tournament income, merchandise revenue, brand payouts)

3) **Legal and Ethical Concerns**

NCAA esport policy

● NCAA's stance as a "hands off" approach and policy in regard to esport governance

A lack of consensus governing body for collegiate esport has set the stage for some Title IX concerns currently existing within the industry.

Future of NIL in Esport

Despite the challenges stemming from recent NIL legislation, NIL serves as a lucrative option in the esport ecosystem. A recent trend includes leveraging the popularity of collegiate athletes by major players in the video game industry; with Activision paying former UCLA quarterback Dorian Thompson-Robinson to promote the title *Crash Bandicoot 4: It's About Time* [7]. This is a trend that has been featured heavily in the successful launch of the title College Football 25, in which multiple student athletes (including cover athletes Travis Hunter- University of Colorado, Quinn Ewers- University of Texas at Austin, and Donovan Edwards- University of Michigan)

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have leveraged the use of social media to promote the game.

The success of NIL in esport is not only seen at the Division 1 level in collegiate athletics, as Taylor Thimmesh of Johnston Community College set a new standard for the industry: being the first esports player to sign with R3V Sports. Despite a Grand Champion II ranking, Thimmesh stated the greatest part of his success is "Pioneering...for other NJCAA athletes in basketball, football, or whatever sport" [8]. The intermingling of NIL success in esport, and its overlapping of op- portunities with traditional sport, provide a range of opportunities for future opportunities in esport.

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Cyberbullying and Sexual Harassment Rampant in Esports

Despite women making up 46% of the world's 3 billion video game players, those who turn professional are likely to be bullied or sexually harassed.

It's one of the fastest growing industries globally, raking in millions for the best players and attracting a huge fanbase, but a new Australian study has revealed the dark side of professional video gaming: cyberbullying and sexual harassment.

Even though the esports industry is a diverse community, cyberbullying is rampant in this virtual world, and cis-gendered and trans-gendered women players are disproportionately more likely to be sexually harassed than men.

Despite women making up 46% of the world's three billion video gamer players, according to a new paper published in Entertainment Computing, women who play professionally (16% of esports competitors and content creators) are the most vulnerable to cyberbullying and sexual harassment.

University of South Australia (UniSA) psychology PhD candidate Louise Trudgett-Klose and Dr Sarven McLinton authored the paper, surveying 145 videogame players from 14 countries, 96% of whom said they had been cy-berbullied in the previous 12 months.

Almost half of the bullying (49%) came from co-workers (other players) and the other half from the public.

"There was a definite link between the level of professional gaming and the incidence of cyber bullying, and sexual harassment for women players," says Trudgett-Klose. "The more professional a player becomes, the more they are exposed to hostile behaviour, which affects their mental health."

Cyberbullying involves name calling, derogatory comments, excluding specific players and restricting access, verbal threats and manipulative tactics, whereas sexual harassment includes being sent explicit messages and images and unwanted sexual comments.

"It's not just an isolated incident. The fact that 96% of players – professional or otherwise – experienced cyberbullying in the previous 12 months suggests that toxic behaviours are prevalent in the gaming community."

Gaming professionals who attracted the most fame – characterised by having a large fan base and presence on platforms like Twitch and YouTube – were exposed to the worst levels of cyberbullying.

"It is important to note that playing video games itself is not the is-sue," Dr McLinton says. "However, the culture around gaming is hyper masculine and very much targeted towards heterosexual men. Anyone who falls outside that group is more vulnerable."

Most professional players are independent and not protected by an organisation, leaving them without a governing body to enforce safety and protection.

"New avenues need to be explored to better support emerging professionals in this contemporary era of gaming work, protect their mental health, and create a safer virtual environment for everyone," Dr McLinton says.

The UniSA researchers are part of a new research group called HIGH-ER (Healthy Inclusive Gaming, Hobby & Esports Research) that aims to better understand players, performance, culture and workers in the burgeoning esports industry.

Their research includes all aspects of esports competition; mental health and wellbeing of players; the inclusion of esports in schools and the community; cyberbullying and online safety; gender and sexuality in gaming; the role of gaming in work/life balance; and how emerging technology such as AI impacts the esports industry.

Gamers Say They Hate 'Smurfing,' But Admit They Do It -- Study Reveals Complexity Behind Some 'Toxic' Gaming Behaviors

Online video game players believe the behavior known as "smurfing" is generally wrong and toxic to the gaming community – but most admit to doing it and say some reasons make the behavior less blameworthy, new research finds.

The new study suggests that debates about toxicity in gaming may sometimes be more complex and nuanced than is often acknowledged, according to the researchers.

Online video games use what are called "matchmaking systems" to pair players based on skill. "Smurfing" is when players cheat these systems by creating new accounts so that they can play against people lower in skill.

The practice has become controversial in the gaming community, with some people defending it while others say it ruins the game.

This study suggests the practice is common, even though many players claim to hate it, said Charles Monge, lead author of the study and a doctoral student in communication at The Ohio

State University.

"Gamers say they really don't like smurfing. They also say they do it, but they're not ruining games and they only do it for valid reasons," Monge said.

Monge conducted the study with Nicholas Matthews, assistant professor of communication at Ohio State. The research was published recently in the journal New Media & Society.

"Gamers put smurfing in the bad category, but bad has nuance," Matthews said. "It was really quite interesting to see people say they were being 'bad' by smurfing, but only a little – unlike others whose behavior was much worse."

The research started with a baseline study of 328 people from gaming-specific subreddits on the social media site reddit and a gaming club at Ohio State. Participants reported playing video games slightly more than 24 hours a week on average.

Results showed that participants perceived smurfs as more likely than other players to be toxic – such as trolling and flaming the weaker players that they dominated.

But 69% reported that they smurfed at least sometimes, and 94% thought other people smurf sometimes. Still, relative to themselves, participants thought that other gamers were more likely to be toxic when they smurfed.

But the researchers were surprised by the responses they received when they asked participants at the end of the study if they had any comments.

"There was this outpouring of comments saying basically, 'Hey, I do smurf sometimes, but really it is not bad all the time,'" Monge said.

"It got us interested in trying to figure out more about what made smurfing OK in their minds and in what circumstances."

In a second study, the researchers aimed to explore how gamers determined blame for smurfers. They had 235 participants from reddit who were heavy gamers complete an online experiment where they evaluated smurfing in competitive team-based video games.

Participants were given various

reasons for smurfing to evaluate. Some reasons were less blameworthy – such as wanting to play with friends who were less experienced at the game. Other reasons were more blameworthy – such as just wanting to "crush a bunch of [lesser skilled players]."

In some cases, the researchers tried to bias the judgments of participants by suggesting scenarios in which the reasons players gave for smurfing might be ignored.

In general, the study found that participants fairly evaluated people who smurfed based on the reasons they gave – and did not show strong evidence of bias in any scenario.

The response by participants in this study is in line with what scientists call the "socially regulated" perspective on blame, which suggests there can be some nuance, that there are reasons that can make an action more or less blameworthy.

That's not what the researchers thought would happen.

Based on what most online research predicts, the response the researchers expected is called a "motivated-blame perspective," and it considers what is blameworthy to be black and white, Matthews said.

"This perspective says if something is wrong, it doesn't matter your reason for doing it, it is always wrong."

Monge added: "The idea is that it shouldn't matter if you were just smurfing so you can play with your friends, you made me lose this game and now I am mad."

A third study involved a group of non-gamers, to see if they would have the same perspectives on blame even though they were not so invested in the importance of the games. It turns out they did – they also used the socially regulated perspective.

The issue of smurfing in the gaming community has only grown recently, the researchers said. Valve, the company behind the gaming platform Steam, banned 90,000 smurf accounts in their game DOTA2, publicly declaring that "smurfing is not welcome."

But this study makes it clear that many gamers may have a more complex relationship to smurfing and that saying it is not welcome may be an oversimplification for them, the researchers said.

The issues explored in this study may have broader applicability beyond gaming, the researchers explained.

"Games may offer a really potent tool to test things that are not about games," Monge said. "How we attribute blame in an online context may allow us to understand how people place blame more broadly."

Matthews added: "Social scientists can use virtual game environments to test human interactions at mass scale. We can understand people in these social contexts when usually the mind is a black box."

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and the highly immersive nature of modern video games.[4]

Dark patterns[5] are design choices in software and online platforms intended to manipulate users into making decisions that may not be within their best interest. These patterns exploit cognitive biases and psychological triggers to drive engagement, increase spending, or retain user attention.[6] Common examples of these patterns include:

Obfuscation[7]: Hiding critical information or making it difficult to find.

Forced Action and Continuity[8]: Making it difficult to cancel subscriptions.

Gamification[9]: Using game-like elements to encourage continuous engagement.

FOMO (Fear of Missing Out)[10]: Creating a sense of urgency or scarcity to drive immediate action.

In the context of esports and gaming, dark patterns are often employed to maximize player retention and in-game spending.[11] This issue has become rampant since the popularization of "live service" games, or games that receive ongoing updates to add additional content instead of being packaged and sold as a complete product.[12] Many competitive esports games fall into this category of video game.

Addiction, particularly in gaming, is characterized by compulsive engagement in an activity despite negative consequences.[13] The mechanics of gaming addiction can be understood through several psychological concepts:

Reward Systems[14]: Games, especially competitive-based multiplayer games, often use variable reward schedules similar to those found in gambling, which create unpredictable outcomes that work to keep players hooked.

Social Interaction[15]: Multiplayer games offer social rewards and community belonging, which can be powerful motivators for continued play.

Achievement and Progression: The sense of accomplishment from completing specific tasks or leveling up can drive addictive behavior.

Dark patterns in video games (mostly live service games) exploit these psychological mechanisms through several avenues, attempting to enhance player engagement and spending. For example:

Loot Boxes[16]: Randomized rewards that can be purchased, tapping into the gambling-like thrill of unpredictability.

Premium Currency[17]: Virtual money that obscures the real-world cost of purchase, making it easier for players to spend more.

Time-Limited Events[18]: Also

4   *Id.*

5   *See* Eric Ravenscraft, *How to Spot-and Avoid-Dark Patterns on the Web*, Wired (July 2020), https://www.wired.com/story/how-to-spot-avoid-dark-patterns/ ("The term 'dark patterns' was first coined by UX specialist Harry Brignull to describe the ways in which software can subtly trick users into doing things they didn't mean to do, or discouraging behavior that's bad for the company").

6   *See* Arunesh Mathur, Jonathan Mayer, and Mihir Kshirsagar, *What Makes a Dark pattern… Dark?*, (Jan 2021), https://arxiv.org/pdf/2101.04843.

7   *Id.* at 6.

8   *Id.*

9   *See* Tobias Nystrom, *Exploring the Darkness of Gamification-You Want it Darker?*, Intelligent Computing: Proceedings of the 2021 Computing Conference (2021), https://www.diva-portal.org/smash/get/diva2:1518853/FULLTEXT01.pdf ("dark gamification design could be defined as the craft of purposefully designing gamification that do not have the well-being of the user in mind.").

10 *See* Fiona Westin and Sonia Chiasson, *Opt out of Privacy or "Go Home": Understanding Reluctant Privacy Behaviours through the FoMO-Centric Design Paradigm* (2019), Association for Computing Machinery, New York, NY, USA, 57–67. https://doi.org/10.1145/3368860.3368865

11 *See* Papa_Lamp, *What is a Dark Pattern in Video Games?*, WordPress (Aug 2014), https://gurusability.wordpress.com/2014/08/28/what-is-a-dark-pattern-in-video-games/

12   *See* Tim Brookes, *What are Live Service Games (and Why are They so Polarizing?)*, How to Geek (Mar 2024), https://www.howtogeek.com/what-are-live-service-games-and-why-are-they-so-polarizing/.

13 *See* Cleveland Clinic, *What is Video Game Addiction?* https://my.clevelandclinic.org/health/diseases/23124-video-game-addiction

14 *See* Robert Warner, *How Video Games Keep Us Invested: The Reward Cycle*, Medium (May 2019), https://medium.com/@rjwarner98/how-video-games-keep-us-invested-the-reward-cycle-672b485f3ff4 ("It's clear that simulated rewards are a large part of why games are able to keep the player engaged. That rush of dopamine and sense of accomplishment from achieving a goal set by the game or the player is what keeps them coming back").

15 *See* Helena Cole and Mark Griffiths, *Social interac-*

tions in Massively Multiplayer Online Role-Playing Gamers, PubMed (Aug 2007) ("MMORPGs were found to be highly socially interactive environments providing the opportunity to create strong friendships and emotional relationships").

16 *See* Dark Pattern Games, *Gambling / Loot Boxes*, https://www.darkpattern.games/pattern/38/gambling-loot-boxes.html ("Players purchase Loot Boxes using money or premium currency and when they open the box they get a random chance at getting an item. Valuable items are less likely to appear than regular items, and the number and quality of the items can be variable. Randomizing the rewards gives players an incentive to keep trying until they get the prize they want").

17 *See* Dark Pattern Games, *Premium Currency*, https://www.darkpattern.games/pattern/16/premium-currency.html#:~:text=One%20of%20the%20most%20common,or%20otherwise%20play%20the%20game ("The exchange rate between real money and the premium currency often disguises the real price of items that you purchase in the game. This is compounded by the fact that purchasing larger bundles of premium currency often gives you a better exchange rate").

18 *See* Dark Pattern Games, *Playing by Appointment*, https://www.darkpattern.games/pattern/10/

commonly known as "Playing by Appointment," these events create urgency and FOMO, encouraging players to log in frequently and spend money in an effort to not miss out on exclusive rewards.

These tactics can lead to excessive gaming and spending, contributing to addiction in players.

The use of dark patterns in esports and gaming raises significant ethical concerns.[19] On one hand, game developers and companies are driven by profit motives and the need to keep their player base engaged. On the other hand, these practices have the potential to exploit vulnerable individuals, particularly young players, leading to addiction and financial harm.[20] This ethical dilemma centers on the balance between business objectives and the well-being of players. As the video game industry continues to grow, the responsibility of game developers to prioritize ethical design practices becomes increasingly important.

Legal Implications

The growing awareness of dark patterns has led to increased scrutiny from legal and regulatory bodies worldwide.[21] Several legal implications have arisen from the use of such design tactics in gaming:

- **Consumer Protection Laws**[22]: Many countries have consumer protection laws aimed at preventing deceptive and unfair business practices. Dark patterns that mislead players about the nature or cost of in-game purchases could be considered a violation of these laws.
- **Gambling Regulation**[23]: Loot boxes and other randomized reward mechanisms (commonly termed "Gachas") have been likened to gambling. Some jurisdictions, such as Belgium and the Netherlands, have banned certain types of loot boxes, classifying them as illegal gambling.
- **Data Protection and Privacy**[24]: Dark patterns that manipulate consent or obscure privacy settings may violate data protection regulations such as the General Data Protection Regulation (GDPR) in the European Union, which mandates clear and transparent user consent.
- **Legislative Action**[25]: In response to the growing concerns, some legislators have proposed new laws specifically targeting dark patterns. For example, the California Privacy Rights Act (CPRA) includes provisions against the use of dark patterns to manipulate consumer consent.

The legal landscape is evolving alongside the growth of the video game industry. Gaming companies must stay abreast of regulatory changes to avoid potential legal repercussions. Addressing the issue of dark patterns and addiction within video games and esports will require a multi-faceted approach. As esports continues to thrive, the ethical and legal implications of game design choices will come under increased scrutiny. Striking a balance between engaging gameplay and ethical design is imperative to ensure the long-term sustainability of the industry and the well-being of its players. By addressing these challenges through regulation, industry self-regulation, education, and player support systems, we can work to create a healthier and more responsible gaming ecosystem. As we navigate the future of esports, it is critical that we prioritize the welfare of players, fostering an environment where gaming remains a source of enjoyment and community without falling prey to the pitfalls of addiction and capitalistic exploitation.

playing-by-appointment.html ("Playing by Appointment means that instead of you deciding when to play, the game decides for you. If you don't play according to the game's schedule you are penalized… If you want to participate in the special events, you must play during this time window").

19 *See* Celia Hodent, *Ethics in the Videogame Industry: A Mythbusting and Scientific Approach* (Dec 2019), https://celiahodent.com/ethics-in-the-videogame-industry/.

20 *See* Jenn McMillen, *Who Uses Dark Patterns? A Breakdown of E-Commerce Bad Practices*, Forbes (May 2024), https://www.forbes.com/sites/jennmcmillen/2024/03/27/who-uses-dark-patterns-a-break-down-of-e-commerce-bad-prac-tices/#:~:text=More%20than%2040%25%20of%20consumers,and%20brands%20to%20step%20in ("More than 40% of consumers have experienced unplanned financial consequences due to dark patterns").

21 *See* Catherine Zhu, Dark Patterns – *A New Frontier in Privacy Regulation*, Reuters (July 2021), https://www.reuters.com/legal/legalindustry/dark-patterns-new-frontier-privacy-regulation-2021-07-29/#:~:text=Reining%20in%20the%20use%20of,the%20use%20of%20dark%20patterns ("the increasing use of dark patterns has caught the attention of state and federal regulators").

22 *See* Amy Lee Tan, *US Regulators Crack Down on Deceptive Practices Targeting Consumers*, Columbia Science and Technology Law Review (Feb 2024), https://journals.library.columbia.edu/index.php/stlr/blog/view/593#:~:text=In%20recent%20years%2C%20the%20Federal,Trade%20Commission%20(FTC)%20Act ("The Federal Trade Commission (FTC) has intensified its enforcement efforts against dark patterns. The FTC considers dark patterns "unfair or deceptive" business practices under Section 5 of the (FTC) Act").

23 *See* Scott Goodstein, *When The Cat's Away: Techlash, Loot Boxes, And Regulating "Dark Patterns" In The Video Game Industry's Monetization Strategies*, 92 U. Colo. L. Rev. 285 (2021).

24 *See* Amel Bourdoucen, Leysan Nurgalieva, and Janne Lindqvist, *Privacy Is the Price: Player Views and Technical Evaluation of Data Practices in Online Games* (Oct 2023), https://doi.org/10.1145/3611064.

25 *See* Alyssa Boyle, *State Privacy Laws Will Spur Action Against Dark Patterns*, Ad Exchanger (Aug 2022), https://www.adexchanger.com/privacy/state-privacy-laws-will-spur-action-against-dark-patterns/ ("Currently, three of five US state privacy laws explicitly call out dark patterns, including CPRA in California, the Colorado Privacy Act and the Connecticut Data Privacy Act").