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# Rising Potential for Alternate Dispute Resolution in Esports Industry

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## ABSTRACT

*In the last couple of years, the esports and gaming industry has seen to be carving out a place for themselves globally. The rising popularity of this sector has also led to it making a niche for itself in the financial world. This paper analyses the rapid growth of the esports industry while delving deep into the booming Indian esports industry. While the success/rise/growth of esports has crossed all leaps and bounds, it has inevitably been followed by disagreements and controversies. The rising disputes in the industry has gathered the concern of many, including, players, organisers and sponsors and hence, it is important to adopt a mechanism which can lead to effective resolution of such disputes. The paper explores the various conflicts that are likely to arise in the industry, given its unique nature. It further establishes the lack of expertise and insufficiency of traditional litigation systems in dealing with such issues. The disputes relating to esports and online gaming are often complex in nature, involving multiple jurisdictions. Finally, the paper proposes the various platforms that are available in the gaming and esports industry for resolution of disputes through alternative dispute resolution mechanisms.*

**Keywords:** Esports, Online Gaming Industry, Alternate Dispute Resolution, WIPO ADR, ACES.

## I. INTRODUCTION

Esports are “a form of sports where the primary aspects of the sport are facilitated by electronic systems; the input of players and teams as well as the output of the esports system are mediated by human-computer interfaces.”<sup>3</sup> The world of online gaming and esports has witnessed a meteoric rise in recent years. The importance of this industry, in terms of consumer popularity; revenue generation; and their value in the global economy, is likely to continue to grow.<sup>4</sup> Millions of players participate in the esports and spectators tune in from across the globe to watch their favourites. This further attracts sponsorship, which fuels this multi-billion-dollar

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<sup>3</sup> Juho Hamari & Max Sjöblom, *What Is eSports and Why Do People Watch It?*, SSRN (4 February 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2686182](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2686182).

<sup>4</sup> *World Intellectual Property Organization and Esports Integrity Commission Announce Groundbreaking Collaboration*, WIPO, <https://www.wipo.int/amc/en/center/specific-sectors/videogames/esic.html>.

industry. The rise in the popularity of esports and the growth of the industry have inevitably been followed by a subsequent rise in disputes in the industry as well. These conflicts, ranging from player conduct to contractual terms have the potential to disturb the industry's seamless functioning. While the traditional litigation system may be competent for dispute resolution in many industries, it might not be well equipped to handle disputes related to esports, primarily due to the unique nature of the industry and its disputes.

Alternate Dispute Resolution (ADR) Mechanisms, specifically arbitration has proved to be a good way to resolve such disputes arising in online gaming and esports. With no formal governing body or dispute resolution body present in the world today regarding esports, several organisations have established arbitration courts for dealing with disputes related to it. WIPO Arbitration and Mediation Centre has started dealing with mediation and arbitration in esports. The WIPO Mediation, (Expedited) Arbitration and Expert Determination Rules are well suited for video games and esports disputes.<sup>5</sup> It also collaborated with Esports Integrity Commission for better avenues for arbitration in esports. Other institutions include Court of Arbitration for Sports, a specialized institution independent of any sports organization, providing services to facilitate settlement of sports-related disputes through arbitration or mediation and WESA's Arbitration Court for Esports (ACE), an independent arbitration court opened by WESA to tackle legal issues and disputes unique to the world of Esports.<sup>6</sup>

## II. RISE OF ESPORTS AND GAMING INDUSTRY

Esports, or electronic sports, takes online gaming to a new level altogether by transforming casual gaming into thrilled and organised competition. At a high level, esports competitions are similar to sports, with qualifying matches, playoffs and finals.<sup>7</sup> Players either play individually or as teams in multiplayer matches depending upon how the game is designed. For instance, in video games belonging to the category of MOBA (Massively Online Battle Arena), two teams, each consisting of five members, compete against each other (e.g. League of Legends) while some video games belonging to category of FPS (First Person Shotter) involve games played with single, double, or four-player teams, with the goal of being the last person or team alive on the game map (e.g. Pubg and Call of Duty: Warzone).<sup>8</sup> The tournament structure of esports

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<sup>5</sup> *ibid.*

<sup>6</sup> Chris Kerr, *First eSports arbitration court opened by WESA*, Game Developer (3 November 2016), <https://www.gamedeveloper.com/business/first-esports-arbitration-court-opened-by-wesa#close-modal>.

<sup>7</sup> Dr. Alexander Schudey, Pavel Kasperovich, Adeel Ikram, David Panhans & Lyudmila Matviets, *Let the Game Begin: How Esports Is Shaping the Future of Live Entertainment*, BCG (28 September 2023), <https://www.bcg.com/publications/2023/how-esports-will-become-future-of-entertainment>.

<sup>8</sup> Tunahan Aslan, *Types of Games Subject to Esports*, Medium (13 November 2023), <https://medium.com/@tunahanaslan/types-of-games-subject-to-esports-5d1990f69056>.

substantially varies from that of traditional sports. Depending upon the title, a tournament can be structured as Round Robin where every team plays against every other (e.g., Dota 2), or, as Swiss Round in which winners play with winners and losers with losers after the 1st stage (e.g., StarCraft II), or as Single/Double Elimination where losers are eliminated after one or two losses respectively (e.g., CS:GO, Rocket League, Hearthstone).<sup>9</sup> Battle Royale has a unique format at each tournament stage level, with all teams playing with each other multiple times in a row (the players/teams with the most points advance).<sup>10</sup> It's a world where interactive entertainment is transformed into a fiercely competitive battleground, where players from various backgrounds converge to test their skills.<sup>11</sup>

In the past decades, esports have grown to become a part of the society, establishing itself in many countries around the globe. With prize money having increased significantly over time, and with the number of events growing every year, a small niche has become a market worth billions that now attracts investors from all over the world and from a wide range of industries.<sup>12</sup> Similar to professional athletes, esports teams are able to secure endorsement deals that increase their overall market value.<sup>13</sup> Competitive gaming growth continues to surge as esports establishes itself as a key player in the confluence of technology, media, and culture.<sup>14</sup> E-Sports is a cultural phenomenon that is one of the most significant drivers of the youth demographic worldwide; it transcends culture and ideologies.<sup>15</sup>

The online gaming industry has grown manifold in the recent years. During the Covid-19 pandemic, when most people were stranded at home with plenty of free time on their hands, video game and interactive media sectors, a part of the entertainment industry had reached unprecedented heights. The gaming market was valued at USD198.40 billion in 2021, and is expected to reach a value of USD339.95 billion by 2027, registering a compound annual growth

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<sup>9</sup> Dr. Alexander Schudey, Pavel Kasperovich, Adeel Ikram, David Panhans & Lyudmila Matviets, *Let the Game Begin: How Esports Is Shaping the Future of Live Entertainment*, BCG (28 September 2023) <https://www.bcg.com/publications/2023/how-esports-will-become-future-of-entertainment>.

<sup>10</sup> *ibid.*

<sup>11</sup> *The Rise of the ESPORTS Industry: Competitive Gaming*, ECG Productions (8 January 2024), <https://www.ecgprod.com/the-rise-of-the-esports-industry/>.

<sup>12</sup> Gian Luca Vitale & Disht Advani, *Teams & Esport Athletes: The spearhead of the ecosystem*, PWC, <https://www.pwc.de/en/technology-media-and-telecommunication/digital-trend-outlook-esport-2020/teams-esports-athletes.html>.

<sup>13</sup> *Different Types of Esports*, Maryville (5 April 2022), <https://online.maryville.edu/blog/different-types-of-esports/>.

<sup>14</sup> *The Rise of the ESPORTS Industry: Competitive Gaming*, ECG Productions (8 January 2024), <https://www.ecgprod.com/the-rise-of-the-esports-industry/>.

<sup>15</sup> Jeff Benz, *Esports and Dispute Resolution: It's time to have a serious conversation*, Daily Journal, (1 April 2019), <https://www.dailyjournal.com/articles/351739-esports-and-dispute-resolution-it-s-time-to-have-a-serious-conversation>.

rate of around 10 percent over 2022-2030.<sup>16</sup>

Around 46 countries including Korea, Thailand, Finland, Italy, Brazil, Nepal, Indonesia, Turkmenistan, Macedonia, Sri Lanka, Pakistan, South Africa, Serbia Uzbekistan, Kazakhstan, Malaysia, Vietnam and Georgia also recognised esports as regular sport.<sup>17</sup> The International Olympic Committee has acknowledged esports' growing popularity, even conducting an "Olympic Virtual Series" in the runup to the 2020 summer Games in Tokyo, Japan; The 2024 Summer Olympics in Paris will likewise feature virtual events.<sup>18</sup>

### III. THE BOOMING INDIAN ESPORTS INDUSTRY

The Indian Esports Industry is also growing at an extremely high rate. The Indian gaming industry is set to grow from \$3.1 Billion in the year 2023 to around \$7.5 Billion by the year 2028, according to State of India Gaming Report FY23 from Lumikai.<sup>19</sup> The report anticipates that the industry will grow at a CAGR of 20%, driven primarily by growth in-app purchases in casual and midcore games and growing in-game advertising revenues.<sup>20</sup> Factors such as the increasing penetration of smartphones, accessibility to gaming, and the rise of social media and streaming platforms have contributed to this growth.<sup>21</sup> The rise and coming of internet providers like JIO in India have recently turned the entire internet scene causing a telecom revolution, creating internet access and cable in most parts of the country, and the increasing popularity of these with the general population.<sup>22</sup>

Additionally, the endorsement of governmental support has led to multiple sponsorships and brand endorsements, further fostering the development of infrastructure and professionalism within the industry.<sup>23</sup> The relatively young demography of India with a median age of 28.2 years is also boosting the prospects of Esports in the country.<sup>24</sup> The Ministry of Youth and Affairs and the Prime Minister of India have also acknowledged the potential of the gaming industry in

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<sup>16</sup> *Gaming, esports & dispute resolution: a brave new world*, Crefovi, <https://crefovi.com/articles/gaming-esports-dispute-resolution/>.

<sup>17</sup> *What is Esports*, eSports Federation of India, <https://esportsfederation.in/#about-us>.

<sup>18</sup> *Esports and Arbitration*, Watson Farley & Williams (18 January 2023), <https://www.wfw.com/articles/esports-and-arbitration/>.

<sup>19</sup> *Indian gaming industry poised for strong growth: projected to reach \$7.5 Bn by FY28*, Lumikai (2 November 2023), <https://www.lumikai.com/post/indian-gaming-industry-poised-for-strong-growth-projected-to-reach-7-5-bn-by-fy28>.

<sup>20</sup> *ibid.*

<sup>21</sup> *eSports in India – A Rising Phenomenon and A New Career Path*, Hero Vired, <https://herovired.com/learning-hub/blogs/esports-in-india/>.

<sup>22</sup> Rushabh Gurav, *Contemporary Issues in E-sports Law: ADR, Development and Regulation and the Esports Bill*, International Law Management & Humanities (2021), <https://doi.org/10.1000/IJLMH.112003>.

<sup>23</sup> *ibid.*

<sup>24</sup> Deepak Aravind Padmanabhan, *The Rise of Esports in India: A look at the growing popularity and industry developments*, The Times of India (3 July 2023), <https://timesofindia.indiatimes.com/blogs/voices/the-rise-of-esports-in-india-a-look-at-the-growing-popularity-and-industry-developments/>.

India.

With the objective to promote and encourage Esports in India, Electronic Sports Federation of India (ESFI) has been established. The ESFI is member of many international esports organisations including International Esports Federation (IESF), Global Esports Federation (GEF) and Asian Esports Federation (AESF). In the recent years India has also been involved in organising many major gaming tournaments which have attracted international attention. Battlegrounds Mobile India Pro Series (BMPS) and Battlegrounds Mobile India Series (BMIS) are two of the biggest events ever hosted in the country.<sup>25</sup>

#### IV. DISPUTES IN ESPORTS

In the last couple of years, esports around the world have attracted many new players, viewers, and investors. Though this growth has led to significant economic development of the industry, on the flip side, it has also led to a huge surge in disputes. These disputes can range from mere contractual disagreements to allegations of e-doping and cheating.

The growing and lucrative esports industry will likely increase the need for contracts between players, which will, in turn, increase the probability of contract disputes,<sup>26</sup> thus making player contracts a common domain for disputes. These disputes may revolve around salaries, bonuses or terms of revenue sharing present in the contract. Intellectual Property disputes may also arise in addition to contractual disputes. These can arise in various forms, from copyright (e.g., of a game's storyline and gameplay) to trademarks (e.g., of a game's logo), patents (e.g., consoles and accessories, in-game mechanics, gamepads, and virtual reality headsets), and licensing agreements.<sup>27</sup>

The esports industry has also witnessed disputes related to antitrust laws, cheating and e-doping. In August 2020, Epic games filed lawsuits against Apple and Google alleging that they displayed antitrust and anti-competitive behaviour by delisting Epic Games' 'Fortnite' from their App Stores. Esports platform Skillz accused rival platform AviaGames of using bots to cheat its players. Furthermore, Riot Games and Bungie accused Gatorcheats of developing cheating softwares.

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<sup>25</sup> Abhimanu Das, *The Biggest Gaming Tournaments Hosted in India*, AFKGaming (1 April 2024), <https://afkgaming.com/esports/originals/the-biggest-gaming-tournaments-hosted-in-india-2#:~:text=The%20booming%20Indian%20esports%20scene,ever%20hosted%20in%20the%20country.>

<sup>26</sup> Ryan Boonstra, *Player 3 Has Entered the Game: Arbitration Comes to the eSports Industry*, Arbitration Law Review (2018), <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1245&context=arbitrationlawreview>.

<sup>27</sup> Alexia Gkoritsa, Leandro Toscano & Oscar Suarez, *Resolution of Video Games and eSports Disputes through WIPO ADR: A Game Changer*, Kluwer Arbitration Blog (18 June 2023), <https://arbitrationblog.kluwerarbitration.com/2023/07/18/resolution-of-video-games-and-esports-disputes-through-wipo-adr-a-game-changer/>.

The financial backbone of the esports industry – sponsorships and advertising deals – is another potential breeding ground for conflict. Esports sponsors include a wide range of companies and organisations, from game publishers and hardware manufacturers to fast food franchises, clothing brands and energy drink companies.<sup>28</sup> Thus, given the distinct and diverse nature of disputes that are likely to arise in the gaming sector, it is essential that a dispute resolution mechanism such as arbitration is established to deal with them.

### **(A) Why Arbitration?**

Aaron Swerdlow was one of the first person to call attention to the need for arbitration in esports, given the industry's uniqueness and need for specialists.<sup>29</sup> For example, the concept of cheating, according to its definition, is determined by the rules of the game and breaking said rules.<sup>30</sup> Presumably, an esports arbitration court would have a more thorough understanding of specific games and their rules and be able to reach the appropriate decision in cheating allegations.<sup>31</sup> Arbitration is also desirable for parties seeking a quick solution to their dispute while maintaining confidentiality of the same. Further, Arbitration is cheaper than regular litigation which becomes extremely expensive over time due to the lengthy nature of such proceedings. Finally, so long as impartiality is maintained, arbitration provides parties with a neutral decision-maker.<sup>32</sup>

## **V. PLATFORM FOR ADR IN ESPORTS**

### **(A) WIPO Arbitration and Mediation Centre**

United Nations specialized agency World Intellectual Property Organisation (WIPO) focuses on intellectual property (IP) protection and dispute resolution. As the online gaming and esports industry flourishes, WIPO ADR (Alternative Dispute Resolution) services can play a crucial role in addressing the growing number of disputes within this sector.

As part of its comprehensive support for the sector, the WIPO Center offers ADR procedures tailored to address disputes in the world of video games and esports.<sup>33</sup> These procedures include

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<sup>28</sup> *Esports and Arbitration*, Watson Farley & Williams (18 January 2023), <https://www.wfw.com/articles/esports-and-arbitration/>.

<sup>29</sup> Aaron Swerdlow, *Cheating And Gambling In Esports: Reform Is Needed*, LAW360 (18 April 2017), <https://www.law360.com/articles/914509/cheating-and-gambling-in-esports-reform-is-needed>.

<sup>30</sup> Ryan Boonstra, *Player 3 Has Entered the Game: Arbitration Comes to the eSports Industry*, *Arbitration Law Review* (2018), <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1245&context=arbitrationlawreview>.

<sup>31</sup> THOMAS CARBONNEAU, *ARBITRATION LAW IN A NUTSHELL* 24 (West Academic, 4th ed. 2017).

<sup>32</sup> Jacob Wolf, *SK Gaming, Luminosity Locked in Contract Disputes After SK Attempted to Poach Luminosity Players*, ESPN (28 May 2016), [https://www.espn.in/esports/story/\\_/id/15774305/sk-gaming-luminosity-locked-contract-disputes-sk-attempted-poach-luminosity-players](https://www.espn.in/esports/story/_/id/15774305/sk-gaming-luminosity-locked-contract-disputes-sk-attempted-poach-luminosity-players).

<sup>33</sup> Alexia Gkoritsa, Leandro Toscano & Oscar Suarez, *Resolution of Video Games and eSports Disputes through WIPO ADR: A Game Changer*, Kluwer Arbitration Blog (18 June 2023),

WIPO Mediation, Arbitration, Expedited Arbitration, and Expert Determination or a combination of these options.

### **(B) Court of Arbitration for Sports (CAS)**

Unlike in traditional sports, where the Court of Arbitration for Sport (CAS) provides the ultimate forum for many clashes, esports has yet no overarching body established itself for this purpose.<sup>34</sup>

The Court of Arbitration for Sports ('CAS') has proved to be a specialised arbitration platform for various sports disputes which has about 300 arbitrators from 87 countries, with specialised knowledge of Arbitration and sports law.<sup>35</sup> Considering the similarity between traditional sports and e-Sports, CAS is often treated as an obvious platform for e-Sports disputes.<sup>36</sup> In a recent turn of events, The Bahrain Esports Federation (BESF) has lodged an appeal to the Court of Arbitration for Sport (CAS) after being left "bewildered" over a refereeing decision that cost the team a medal at the Asian Games.<sup>37</sup>

### **(C) Esports Integrity Commission (ESIC)**

The Esports Integrity Commission (ESIC) was established in 2016 to take responsibility for disruption prevention investigation and prosecution of all forms of cheating in esports, including, but not limited to, match manipulation and doping.<sup>38</sup> It is by far the most competent entity to resolve disputes and disciplinary violations.<sup>39</sup>

Recently, ESIC collaborated with WIPO to enhance Alternate Dispute Resolution Mechanisms within online gaming and esports. This partnership symbolizes a pioneering step towards providing the necessary, fit-for-purpose infrastructure suited to addressing and mitigating disputes in these rapidly growing industries.<sup>40</sup>

### **(D) Arbitration Court for esports ("ACES")**

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<https://arbitrationblog.kluwerarbitration.com/2023/07/18/resolution-of-video-games-and-esports-disputes-through-wipo-adr-a-game-changer/>.

<sup>34</sup> *ESports Disputes: Choosing your battleground*, Bird & Bird (18 January 2018), <https://www.twobirds.com/en/insights/2018/global/esports-disputes-choosing-your-battleground>.

<sup>35</sup> Anumeha Smity, *E-Sports and Specialised Arbitration Mechanism*, R Associates (19 June 2023), <https://www.rassociates.in/e-sports-and-specialized-arbitration-mechanism/>.

<sup>36</sup> *ibid.*

<sup>37</sup> Geoff Berkeley, *"Bewildered" Bahrain file CAS appeal over esports controversy at Asian Games*, Inside the Games (10 October 2023), <https://www.insidethegames.biz/articles/1141595/bahrain-cas-appeal-esports-controversy>.

<sup>38</sup> *Who We Are*, ESIC, <https://esic.gg/about/>.

<sup>39</sup> Jan Łukomski, *Esports is in a dire need of Arbitration Court – Here's why*, Łukomski Niklewicz (17 September 2020), <https://lukomski-niklewicz.pl/esports-is-in-a-dire-need-of-arbitration-court-heres-why/>.

<sup>40</sup> *World Intellectual Property Organization and Esports Integrity Commission Announce Groundbreaking Collaboration*, WIPO, <https://www.wipo.int/amc/en/center/specific-sectors/videogames/esic.html>.



World Esports Association (“WESA”) was one of the first organisation to acknowledge the increasing number of disputes in the esports industry. They understood that such disputes need people with special knowledge to solve them quickly and effectively and recognised the potential of arbitration for the same. Established in 2016, WESA is primarily made up of professional esports teams and players who are attempting to restructure the representation of esports teams in legal conflicts.<sup>41</sup> WESA aims to become a governing body in the many esports available today. This is a very realistic goal given the current lack of structure in the industry and WESA’s close relation to one of the largest esports companies in the world, the Electronic Sports League (“ESL”), which gives WESA access to many teams.<sup>42</sup>

In pursuance of its goal to become a governing body over the many different esports teams, WESA established the Arbitration Court for Esports to resolve the disputes that arise in online gaming and esports. WESA lists several benefits of arbitration as the rationale for establishing ACES.<sup>43</sup> The proceedings of ACES are conducted in a confidential manner and the parties have the freedom to choose the arbitrators of their own choice. Arbitration through ACES can be held physically or even electronically and its award is enforceable in more than 150 countries. The ACES, “is designed for the resolution of a wide array of issues such as contract disputes, prize money pay-out and distribution, financial misconduct and player representation.”<sup>44</sup>

## VI. CONCLUSION

With the meteoric rise of the esports industry, the disputes are inevitably on the rise as well. Given the uniqueness of the industry, the disputes that arise are often complex in nature and require flexible and tailored solutions. It is difficult to reach solutions suited for such disputes through traditional litigation systems and therefore, alternative dispute resolution mechanisms, particularly arbitration and mediation, are preferred.

On a global level, many organisations in the past decade have set up platforms facilitating determination of disputes arising in esports through arbitration and mediation mechanisms. WIPO Arbitration and Mediation Centre, Court of Arbitration for Sports, Esports Integrity Commission and WESA’s Arbitration Court for Esports are some of the most successful international ventures in this field. Effective dispute resolution is essential for any industry’s future growth and prosperity, and in the case of the esports and gaming sector, the adoption of

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<sup>41</sup> *WESA (World Esports Association) founded*, WESA (13 May 2016), <http://www.wesa.gg/2016/05/13/world-esports-association-wesa-founded/>.

<sup>42</sup> *WESA*, WESA, <http://www.wesa.gg/>.

<sup>43</sup> *Arbitration Rules*, WESA, <http://www.wesa.gg/rr/arbitration-rules/>.

<sup>44</sup> GERHARD WEGEN & STEPHAN WILSKÉ, *GETTING THE DEAL THROUGH: ARBITRATION 2017*, (Law Business Research, 2017).

ADR mechanisms is indispensable for their long-term sustainability and success.

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