



## The Industry's Next Big Gamble:

By Michael K. Morton

# How Esports has Turned Itself from an Arrest for a Pinball Machine into Nevada's Next Gaming Frontier

It is no secret that Las Vegas has exploded as a sports hub since the Vegas Golden Knights were announced as an expansion team for the National Hockey League (NHL) in June 2016.<sup>1</sup> Since then, the Silver State has become home to the Las Vegas Aces<sup>2</sup> of the Women's National Basketball Association (WNBA) and the Las Vegas Raiders<sup>3</sup> of the National Football League (NFL). Las Vegas can now boast that it is the only city that has hosted both the NFL Pro Bowl and the NHL All-Star Game in the same weekend,<sup>4</sup> as well as the only city ever to be awarded the right to host the NFL Draft, Pro Bowl, and Super Bowl.<sup>5</sup> And, on a night in November 2023, Formula 1 will hold the Las Vegas Grand Prix right on the Las Vegas Strip.<sup>6</sup>

Even with all that growth, there is more. If one digs a little deeper into the virtual rather than just the physical world, another expansive industry exists here in Nevada: esports. Las Vegas is home to the Las Vegas Inferno, an esports team that, according to its website, "wants to be recognized and supported as the official Las Vegas gaming team."<sup>7</sup> The Luxor Hotel & Casino houses the HyperX Arena Las Vegas, an esports entertainment venue right on the Las Vegas Strip.

The esports industry is big business. In 2020, the industry was worth nearly \$140 billion and generated almost \$1 billion in revenue that same year.<sup>8</sup> As the hospitality and entertainment capital of the world, it makes sense for Nevada's largest industry to seek ways to more fully integrate esports into Nevada's economy. The most obvious way – at least from the perspective of legalized gambling – is wagering on esports competitions. Although the first legal wager made in Nevada on an esports competition in 2016, the market has remained virtually nonexistent since then. To provide a complete picture of the state of the wagering market, one must look at how the industry grew to where it is today, how the landscape has changed in recent years, and what next steps must occur in order to provide the regulatory framework necessary for this new market to flourish.

## A Brief History

Esports and gambling have a much longer history than one might think. Legal commentators and experts in the video game industry point to the rise of pinball in the 1930s and 1940s as the origin of esports in America.<sup>9</sup> Pinball and gambling met at a crossroads on March 6, 1948, when a plainclothes New York City police officer tried his hand at an early pinball machine in a cigar store. One of his paid games landed him a free play at the machine, at which point he arrested the store owner for unlawful possession of a gambling machine.<sup>10</sup> It wasn't until 1974, after years of legal wrangling coupled with the mechanical evolution of pinball machines, that the California Supreme Court ruled in *Cossack v. Los Angeles* that pinball machines

were, in fact, games of skill rather than games of chance. In part, the court opined:

Whether a game is a game of skill or a game of chance depends upon which factor predominates...In the present case, the trial court found, supported by substantial evidence, that the games in question are predominantly of skill...although pinball machines which are predominantly games of chance are prohibited by...the Penal Code, pinball machines equipped with flippers, permitting manipulation of the ball by the player, are predominantly games of skill.<sup>11</sup>



Before any more readers grown at a possible discussion on skill-based gaming and its interaction with pure games of chance, the question for this article is not necessarily whether a certain act – in this instance, a pinball machine or 21st century video game taking place in the metaverse – is or is not gambling. The question that needs to be answered is, would anyone bet on this skill-based event? In 1969, The Who told us about this pinball wizard and how adept he was at manipulating a pinball machine,<sup>12</sup> but was his talent good enough to place a wager on the outcome of one of his pinball games? Would someone have enough trust in the talent of a professional video game player in the championship of a *League of Legends* tournament?

These questions are no different than the ones any patron at a sports book asks him or herself before placing a wager on the outcome of an NFL or WNBA game, or on who will win the NHL's James Norris Memorial Trophy. Sometimes, those questions do not even get asked before the wager is placed. There are countless wagers placed by individuals who have no expert – or even casual – knowledge on the specific sporting event on which the wager is placed. However, what those patrons do have is trust. They have trust in the betting product – the league, the odds, and integrity in the result of the event.



For esports wagering to gain a foothold in the market, the esports industry must ensure that the integrity of its product – in this case, matches and events that can be wagered upon – is unmatched. Such a level of integrity is key to attaining a regulatory framework that allows for deemed approval of such events that have the highest level of integrity.

## Esports in Nevada's Gaming Industry

The first legal wager on esports was taken by a sports book in Nevada – and the United States – occurred in downtown Las Vegas in November 2016.<sup>13</sup> During the 79th Session of the Nevada Legislature in 2017, Senate Bill No. 240 was passed and approved, providing the legislative authority for the Nevada Gaming Control Board (“Board”) and Nevada Gaming Commission (“Commission”) to establish the regulatory framework for approval of wagering on “other events.”<sup>14</sup> The regulatory

framework in Nevada Gaming Commission Regulation (“Regulation”) 22.1201 is currently how operators gain approval from the Board to take wagers on esports events.

Even with the legislative and regulatory schemes in place to facilitate wagering on esports, the current process in Regulation 22.1201 has not resulted in esports wagering gaining any sort of recognizable market share. In the six years of legal wagering on esports, 18 events have been submitted to the Board, the Board has approved 17 of the requests, and Nevada sports books have reported less than \$200,000 in handle on those events.

The Nevada Legislature made a second attempt at opening up this sector of the gaming market during the 81st Session of the Nevada Legislature in 2021 with the passage of Senate Bill No. 165, sponsored by then-Senator Ben Kieckhefer. After a couple of amendments, the bill in its final form created the Esports Technical Advisory Committee (“Committee”) within the Board. The statutory charge of the Committee is to formulate and make regulatory recommendations to the Board that would ensure integrity in esports competitions that would be wagered upon in Nevada. The Committee is comprised of individuals, appointed by the Board, from various sectors of the esports industry.<sup>15</sup> The Board made its initial appointments to the Committee in November 2021<sup>16</sup> and February 2022.<sup>17</sup>



## Integrity is Key. Efficiency is Necessary

The first meeting of the Committee was held on March 1, 2022, and was illuminating to what issues relating to integrity the industry is currently working to eradicate. According to the Esports Integrity Commission (“ESIC”), there are four significant threats to integrity in esports: 1) cheating to win using software cheats; 2) online attacks to slow or disable an opponent; 3) match-fixing; and 4) doping.<sup>18</sup> Specific to legal wagering, 92% of match-fixing is caused by betting fraud. Much of this betting fraud occurs because the vast majority of wagering on esports takes place in unregulated or illegal markets. The Committee heard testimony by ESIC stating that, in 2020, there was less than \$20 million in handle in “visible” wagering markets worldwide, while there was an estimated \$130 million wagered on esports in “invisible” markets.<sup>19</sup> In order for wagering on esports competitions to attain any measure of success in Nevada, those numbers in the visible and invisible markets obviously need to flip.

The fight to end match-fixing has changed in recent years in the esports industry, as more jurisdictions across the globe legalize wagering on esports. Prior to regulated wagering in the industry, it was incumbent upon third parties to publicize incidents of match-fixing, such as law enforcement agencies, internal whistleblowers, or industry media. Now, with legalized wagering, match-fixing is called out much in the same way that legacy sports betting eradicated widespread match-fixing from its leagues – suspicious wager monitoring by the sports books writing the tickets.<sup>20</sup> The Commission has required sports books to file a suspicious transaction reports if it recognizes a suspicious transaction in a wager with the Board for over twenty years, and this would not change if widespread esports wagering took hold in Nevada.

However, even in a perfect world where match-fixing did not exist, betting fraud never happened, and unregulated wagering was just a note in history books, the current statutory and regulatory framework prevents esports wagering from entering the mainstream betting markets. Earlier this year, the New Jersey Division of Gaming Enforcement approved a transactional waiver to the Esports Entertainment Group to legally accept wagers on esports competitions in New Jersey.<sup>21</sup> The Esports Entertainment Group provided testimony to the





Committee regarding its experience in New Jersey, as well as its recommendations on how to increase the market share of esports wagering in jurisdictions in the United States where it is legal:

**Now, a really important logistical element that we believe could be ironed out better...is the process of getting events approved to be wagered on. Currently the process in New Jersey, as I now know is the case here in Nevada as well, is manual, slow, and cumbersome for operators as well as regulators. Each event and bet type must be signed off and approved on a case-by-case basis. This creates a poor user experience for players because there's not enough to bet on or...event must be approved without lead time to properly market to attract customers.<sup>22</sup>**

Currently, the Enforcement Division of the Board evaluates requests filed pursuant to Regulation 22.1201 by investigating whether an esports event is jurisdictional to a legitimate sanctioning body with an express, enforced integrity program, reviewing intelligence reports of alleged match-fixing, as well as reviewing limits of the timing and amount of requested wagers. While this review is necessary to ensure the integrity of wagering here in Nevada, just as is done for all other types of wagering here in the Silver State, the creation of a process for certain games, events, or tournaments to be deemed approved – much like wagering on the WNBA, NFL, or NHL – may lead to greater interest in sports books taking wagers on esports events.

## We've Seen This Before, But...

There have been many “next big things” in the regulated gaming industry – entity wagering, skill-based gaming, and online poker come to mind. It is easy to dismiss wagering on esports to the proverbial dust heap, especially since legacy sports wagering creates a small share of gross gaming revenue here in Nevada. However, as a younger demographic in casino patrons has eluded operators in recent years, it is incumbent upon the industry and those in the economic development space writ large to take this industry – and the money it brings in – seriously. It is not unfathomable that regulated, widespread esports wagering is an amenity to the larger esports market that makes Las Vegas and Nevada the next esports entertainment capital of the world.



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The views expressed in this article are solely those of the author, and do not represent the views of his employer.

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- <sup>7</sup> Las Vegas Inferno. <https://lvinferno.com/about>.
- <sup>8</sup> Edelman, Marc, *et al.* Esports and the Law: A Game Plan for Business and Legal Trends 15 (2022).
- <sup>9</sup> *Id.* at 1 (citing Ashely Sanders Lipson & Robert D. Brain, Videogame Law: Cases, Statutes, Forms, Problems & Materials 6 (2d ed. 2015)).
- <sup>10</sup> See Klein, Christopher. That Time America Outlawed Pinball. HISTORY. August 22, 2018, available at <https://www.history.com/news/that-time-america-outlawed-pinball>.
- <sup>11</sup> 523 P.2d 260, 264 (1974).
- <sup>12</sup> See The Who. Pinball Wizard. Tommy, IBC London (1969).
- <sup>13</sup> Oakes, Ryan. William Hill's sports book at Downtown Grant becomes first sports book in U.S. to take wagers on esports." WILLIAMHILL.US. Nov. 18, 2016, available at <https://www.williamhill.us/william-hills-sports-book-downtown-grand-becomes-first-sports-book-u-s-take-wagers-esports/>.
- <sup>14</sup> See Nev. Gaming Comm'n Reg. 22.1201 (2019).
- <sup>15</sup> See Nev. Rev. Stat. § 463.830 (2021).
- <sup>16</sup> In the Matter of Esports Technical Advisory Committee. Order. Nov. 3, 2021, available at <https://gaming.nv.gov/modules/showdocument.aspx?documentid=18189>.
- <sup>17</sup> In the Matter of Esports Technical Advisory Committee. Revised Order. Feb. 24, 2022, available at <https://gaming.nv.gov/modules/showdocument.aspx?documentid=18479>.
- <sup>18</sup> See Smith, Ian. Integrity in esports for NGCB Esports TAC. Presentation to the Esports Technical Advisory Committee. March 1, 2022, available at <https://gaming.nv.gov/modules/showdocument.aspx?documentid=18492>.
- <sup>19</sup> *Id.*
- <sup>20</sup> *Id.*
- <sup>21</sup> Luongo, Cody. Esports Entertainment Group granted New Jersey betting license. ESPORTS INSIDER. Jan. 24, 2022, available at <https://esportsinsider.com/2022/01/esports-entertainment-group-granted-new-jersey-betting-license/>.
- <sup>22</sup> Testimony of Jeff Cohen, Esports Entertainment Group. Meeting of the Esports Technical Advisory Committee, March 1, 2022. Meeting Transcript at p. 78.