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Regulatory Models in E-Sports

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Abstract

The paper provides an analysis of regulatory models in e-sports with the purpose of identifying regulatory gaps and ways to address them. The methodology of the study embraces the general philosophical method (analysis, synthesis, logical and systemic methods) and specifically legal methods (including formal legal analysis). The study comprises two stages: firstly, examination of regulatory gaps in e-sports from the doctrinal perspective; secondly, case studies arising in the course of and/or in connection with e-sporting events and causing enforcement problems. The authors identify the following doctrinal gaps: nature of relationship between the concepts of computer sports and e-sports, and other related concepts involved in virtual reality contests; delimitation of the public and private spheres in the legal regulation of e-sport; feasibility of e-sports law as a complex branch of sports and digital law; two regulatory approaches/models: self-regulation of e-sports by approving gaming rules, gaming codes of conduct etc. versus external regulation, with the existing legal institutions and legal provisions applicable to disputes at the nexus of virtual and actual reality; rules and methods of applying real law to virtual reality; limits of applying sports provisions and rules to relations in e-sports.The authors identify the following enforcement gaps: legal status of e-athletes from the perspective of labour and civil law; taxation of the income gained in the course of or in connection with an e-sporting event; legal status of computer games as an object of civil law; legal regulation of game streaming; legal status of book-makers in the e-sports market. Based on the findings, the authors conclude the explosive growth of the computer game market argues in favor of detailed regulation of legal relations in e-sports.

Keywords

e-sports; computer sports; computer games; e-athlete; e-sports relations; legal regulation.

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Background

An explosive growth of digital technologies has resulted in the expansion of gaming industry taking a major share of the world market [Galkin D.V., 2007: 58].

While e-sports date back to the first online contests in the United States in the early 1970s, the generally acknowledged birth date is 26.06.1997 when the Cyberathlete Professional League was established [Sutyrina E.V., 2017: 24–31].

Even with the League already in existence, it has been a long time before e-sports were officially recognized. Remarkably, this recognition happened for the first time in Russia in 2001, probably because this country has traditionally been among the leaders both in terms of the market volume and computer sports audience [Novikov I.V., 2020: 426–438].

However, e-sports were de-listed in 2006 as having failed to comply with the requirements to the All-Russia Sports Register, only to be re-listed 10 years later and officially recognized again. Thus, the listing procedure for e-sports started off in Russia already in 2001 and ended with the Ministry of Sports Order of 2017 "On Recognizing and Listing Computer Sports in the All-Russia Register".[1]

Similar trends to officially recognize computer sports are observed in other countries such as the United States, Malaysia, China, South Korea.

[1] Ministry of Sports Order No. 183 of 16.03.2017 "On Recognizing and Listing E-Sports in the All-Russia Sports Register and Amending. All-Russia Sports Register"// Available at: http://www.pravo.gov.ru (accessed: 25.08.2023)

And the countries where e-sports have yet to be recognized by law (for example, CIS countries) are actively promoting e-sports associations. Thus, computer games have evolved from teenager pastime to an officially recognized sport over a relatively short period. Despite a short history, e-sports develop at an explosive rate and are likely to be recognized among the Olympic sports.

Meanwhile, despite of legal efforts in this area, regulatory framework applicable to the relationships in cyberspace is a laggard. The paper proposes an analysis of the major regulatory gaps in e-sports and the prospects to overcome them.

1. Doctrinal Regulatory Gaps in E-sports Relations

1.1. The Delimitation Aspect of Related Definitions

The terminological ambiguity is a key regulatory gap in e-sports because it hampers adequate enforcement.

Firstly, the terminological problem is rooted in different understanding of the terms computer game and e-sports from the perspective of technological and legal categories.

The content of the terms computer game and e-sports has been evolving as computer games become different, more complicated and improved in terms of their engine, interface and technology. While the same term describes computer games of 1990s and 2010s, the level of technological sophistication achieved in 20 years offers no point for comparison.

Thus, at the early stage of computer gaming, e-sports were understood as a sphere where people would develop their mental or physical abilities through the use of ITC technologies.

More modern definitions proposed by M.V. Demchenko and A.D. Shvedova treat computer sports as a contest between individuals or groups using computer simulation of a given virtual reality [Demchenko M.V., Shvedova A.D., 2019: 88–93] while J. Hamari and M. Sjoblom define them as sports where the main aspects are mediated by electronic systems, with the player/team input data just as e-sports output data mediated by a man–machine interface [Hamari J., Sjoblom M., 2017: 112].

Thus, today's e-sports are a combination of virtual reality with competition [Arkhipov V.V., 2018] marked by the following integral features:

competition; virtual reality; equal opportunities for the competing parties; non-randomized outcome [Tarasenko V.A., 2018: 148].

Secondly, the researchers of computer game problems disagree on how the connected concepts relate to each other and whether the concepts of cyber sports, e-sports, computer sports are synonymous.

Under the Statute of the Computer Sports Federation of Russia approved by the Federation's Constitutive Congress on 24.03.2000 (hereinafter — Statute), computer sports are a kind of contest and special training practices based on computer and/or video games, with the game providing the interaction medium for the objects under control by ensuring a level field for competition between individuals or teams.[2]

Moreover, the related terms such as cyber sports, computer sports, e-sports, electronic sports are deemed identical to avoid legal uncertainty.

A similar legal approach is found in the Computer Sports Rules approved by Ministry of Sports Order No. 22 of 22.01.2020.[3]

Meanwhile, it is just computer sports that have been listed in the All-Russia Sports Register pursuant to Ministry of Sports Order No. 470 of 29.04. 2016 On Recognizing and Listing Sports in the All-Russia Sports Register and Amending the All-Russia Sports Register and Ministry of Sports Order No. 606 of 17.06.2010 On Recognizing and Listing Sports in the All-Russia Sports Register.[4]

From the formal legal perspective, e-sports have also been recognized since it is underlined in the Computer Sports Rules that computer sports and e-sports are synonymous.

Meanwhile, the concepts of computer sports and *e-sports* have a different doctrinal interpretation.

The former is understood as the sports pursued through the use of computers [Goncharenko D.I., Brovkin A.P., 2022: 84–91].

A.V. Gapanovich and I.V. Gapanovich underline that the meaning of cyber sports is carried by the prefix cyber which means in Greek "the art of control" [Gapanovich A.V., Gapanovich I.V., 2023: 28–33].

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[2] Statute of the All-Russia Civil Society Organization "Computer Sports Federation of Russia" //Available at: https://resf.ru/about/resf/ (accessed: 25.08.2023)

[3] Ministry of Sports Order No. 22 of 22.01.2020 "On Approving the Rules for Computer Sports" // https://www.consultant.ru/document/cons_doc_LAW_345045/ (accessed: 25.08.2023)

[4] Available at: http://www.pravo.gov.ru (accessed: 25.08.2023)

Norbert Wiener was the first to apply the term with the prefix *cyber* to data technologies to designate self-regulated mechanisms [Wiener N., 1983].

Thus, what makes computer sports principally different from other sports is the use of computer as indispensable for the pursuit of this kind of activity.

However, the virtual world is more important for holding multi-user online games than any device whatsoever [Sutyrina E.V., 2019: 13], with mobile devices and game consoles as much usable in e-sports as computers [Alekseev S.V. et al., 2020: 5–10]. Thus, the concept of e-sports has a wider meaning than that of computer sports.

1.2. Associating E-sports with a Particular Branch of Law

A.V. and I.V. Gapanovich note that the Computer Sports Rules assume public regulation aimed at adjusting computer sports to traditional sports by identifying the procedure for sporting events. In other words, the Rules do not regulate e-sports from the perspective of civil law elements.

Hence, the concept of computer sports only fits into the category of public law aimed at identifying its the legal status from the perspective of athletic and sports law. The concept of e-sports covers that of computer sports, as was defined in the previous paragraph.

Moreover, as a social and legal phenomenon, e-sports are placed at the nexus of public and private law.

Thus, legal relations in e-sports embrace the following groups of relations:

covered by the concept of computer sports and regulated by sports law and the Computer Sports Rules;

labour and/or civil law relations between players and e-sports entities;

civil law relations applicable to the protection of computer game authors and copyright (intellectual property) holders; contractual and delictual relations arising from e-sporting events being held.

Thus, regulation of e-sports combines private and public law. Meanwhile, computer sports understood by the regulator as a kind of sports covered by athletic and sports law are subject to public law regulation. Other legal relationships arising before, in the course of or in connection with e-sports events are subject to private law regulation.

Currently only computer law, that is, the public domain of e-sports law, has been regulated albeit in a fragmented way with the private domain still outside any specific legal regulation.

Meanwhile, legal prerequisites for the development of special (sectoral and comprehensive) regulation of e-sports relations are apparently absent today.

Firstly, it is yet unclear whether it is objectively possible to regulate social relationships of this kind. Whereas the code of conduct is universally applicable in traditional sports, the e-sports rules are defined in each case by the machinery of each particular game. Hence e-sporting events are often regulated on the principles established by computer game copyright holders themselves.

Secondly, the complexity of developing comprehensive legal regulation is due to the still unresolved issue of subordination and jurisdiction of disputes in e-sports. E-sporting events are rarely confined to one country but bring together the residents of different countries. Therefore, a dispute in e-sports is almost invariably complicated by the involvement of foreign residents, only to make supranational regulation more feasible than the development of domestic rules.

Thirdly, it is not the gaming process itself but some para-gaming relations arising before or in the course of a tournament that are relevant. Moreover, labor and private law disputes arising in the course of organizing and holding e-sporting events are governed by the existing provisions envisaged by the relevant branches of law.

Meanwhile, the complicated range of relationships in e-sports cannot always be coherently regulated, with certain regulatory problems to be conceptualized by the doctrine and resolved through legislation and/or enforcement.

1.3. Regulatory Approaches to E-sports Relations

The regulatory approaches to e-sports relations adopted in literature could be conventionally described in terms of two models:

self-regulation of gaming world based on the principles of non-interference with the gaming and para-gaming relations;

national and/or supranational regulation of relations involved in e-sporting events.

The feasibility of such delimitation is obvious and beyond doubt. However, the legal problem is to determine what are the limits of interference with gaming relations and whether real law can possibly apply to virtual legal relations.

The feasibility of applying "real law" to computer games was analyzed by V.V. Arkhipov, prominent author of research papers on the Internet law, who noted that, once we apply real law to the virtual environment of computer games, it can cause an intuitive sensation of strangeness and abnormality despite formal compliance [Arkhipov V.V., 2018: 80–92]. Law should not cross the line of common sense [Fuller L., 2009: 313].

Meanwhile, the circumstances sometimes force judiciary bodies to apply the provisions of real law to virtual relationships.

In this regard, one approach to address the problem is the magic circle test that serves to find out whether the user was aware of real implications of his virtual actions [Castronova E., 2004: 185–210].

Thus, where virtual actions deliberately assume real implications, real law should be deemed fully applicable. One example is an exchange of valuables in a computer game mediated by "real" money while beyond the scope of statutory regulation [Arkhipov V.V., 2014: 105–117].

Meanwhile, the proposed rules fail to provide perfect regulation.

Thus, many legal issues arising in the course of gaming tournaments are not coherently addressed, for instance, whether a player can be made delictually liable for violating the implicit code of virtual conduct if his actions inflicted losses on the respective computer sports organization. In this case it is barely possible to substantiate a causal link between virtual non-physical actions and real physical consequences.

Another legal controversy arises where experienced players help their less experienced counterparts to increase their rating by accessing the game from their accounts. This method of bumping up one's rating appears to be unfair, with the player's account to be blocked.

However, that legal sanction, albeit legitimate, is not admissible.

On the one hand, these actions could be qualified as remunerable services. Under V. Arkhipov's rule, both players are in this case outside the gaming world and thus subject to the real world's law, so blocking of the account will constitute an illegitimate restriction of the player's rights [Arkhipov V.V., 2018: 92].

On the other hand, player ratings provide guidance for gaming firms. In this regard, if a company's decision to contract a player was based on such rating, the *magic circle* is broken, and such contract can be regarded as made on the basis of material misrepresentation and hence void.

Therefore, we can formulate the first regulatory rule for e-sports — assessing whether the real world's law is applicable to virtual relationships depending on the impact of virtual action on real implications.

1.4. The Applicability of Sports Law to E-sports Relations

Federal Law of 04.12.2007 No. 329-FZ On Fitness and Sports makes no mention of computer sports and/or e-sports. However, listing computer sports in the All-Russia Sports Register assumes that this Federal Law equally applies to computer sports. In particular, the general, economic and social foundations and principles of organizing sporting activities apply to computer sports.

Thus, it is vital to stress the importance for e-sports of the combination of public regulation of the underlying relations with self-regulation by sports subjects.

This principle established by Federal Law No. 329-FZ[5] appears to be especially crucial for building the legal model of non-interference with the gaming and para-gaming relationships.

Another aspect of sports law's applicability to relationships in e-sports is the approval of the federal athletic performance standard in computer sports[6], and of the sample extracurricular training programme in computer sports[7], both in force since 01.01.2023.

These regulatory decisions apparently pave the way for the introduction of mandatory programmes in academic institutions and for mainstreaming of specific higher education programmes.

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[5] Available at: https://www.consultant.ru/document/cons_doc_LAW_73038/ (accessed: 25.08.2023)

[6] Ministry of Sports Order No. 900 of 02.11.2022 On Approving the Federal Athletic Performance Standard for Computer Sports // Available at: https://www.consultant.ru/document/cons_doc_LAW_433183/ (accessed: 25.08.2023)

[7] Ministry of Sports Order No.1116 of 30.11. 2022 On Approving the Sample Extracurricular Training Programme for Computer Sports // Available at: https://www.consultant.ru/document/cons_doc_LAW_435078/ (accessed: 25.08.2023)

The federal athletic performance standard in computer sports evidently takes into account specific details applicable only to e-sports. For example, it approves the list of equipment and gear required to undergo e-sports training.

Particularly, such gear covers a personal computer with input/output device, video game installed and Internet access provided, a monitor, TV set, full-fledged keyboard, gaming console with a set of peripherals, wired headset with full-sized headphones and regulated microphone, operating system matching the video game specifications, armchair, table, etc.

Moreover, universal parameters and characteristics are established for each item of the gear.

Meanwhile, a comparison of the said federal athletic performance standard and the extracurricular training programme in computer sports with those in other sports suggests that the programmes for computer sports and traditional sports are identical in terms of structure and content.

The said standard, like other federal standards of this kind, contains identical requirements to the content of training programmes, their implementation subjects and participants, as well as to the outcomes of implementation, list of performance points etc.

On the one hand, the identity of training programmes and federal standards for sports in general and computer sports in particular is a mark of self-sufficiency of computer sports that equates them with traditional sports. Another positive thing, that is adoption of the regulations mentioned provide broader opportunities to establish departments (branches) for implementing extracurricular training programmes in computer sports under federal standards.

On the other hand, the standard structure of the instruments approved by the Ministry of Sports assumes that general physical and specific performance points are identical for athletes in both traditional and e-sports.

While computer sports appear to be an inclusive activity, a study of the text of the federal standard gives rise to a concern that its requirements could result in unequal access to e-sports of persons with unequal physical abilities in spite of the fact that they are not decisive in e-tournaments.

Another problem of legalizing e-sports and attempting to bring them under a common umbrella — federal standard is a lack of technical facilities to provide training in e-sports under the rules envisaged by the standard.

The federal standard is thus fully implementable only at large clubs capable of providing athletes with the required gear, premises, etc.

Meanwhile, e-sports are represented in Russia today by numerous but small computer clubs which by and large fail to comply with the said standard.

We believe that in view of e-sports specifics the federal athletic performance standard for computer sports should be more flexible.

Ministry of Sports Order No. 900 of 02.11.2022 On Approving the Federal Athletic Performance Standard for Computer Sports also provides for the following requirements to students' participation in tournaments:

students' compliance with the rules of procedure in terms of age, sex and qualifying standards;

medical opinion on admission to tournaments;

compliance with anti-doping rules;[8]

The issue of compliance with anti-doping rules is apparently ambiguous.

Thus, the use of doping agents to increase the physical abilities of athletes in sports is prohibited. Unlike traditional sports, the doping agents in e-sports could include brain stimulants (such as adderall widely used by players).

Meanwhile, the doping control in e-sports is problematic because the player is an *avatar* rather than man in the physiological sense. A lack of direct contact will undoubtedly make it more difficult to prove the effect of drugs on the outcome of computer game. Moreover, for lack of specific programmes the doping control in e-sports is guided by practices adopted elsewhere. This visibly wrong approach opens up huge opportunities for evasion.

Apart from classical doping practices involving drugs to artificially improve the player's abilities and thus bolster up his performance, it is currently relevant to regulate the so-called technical doping.

The technical doping is to be understood as the use of software to artificially gain an advantage in competition.

It is worth noting that the legal fight against classical and technical doping practices in e-sports should be preceded by extensive efforts by phar-

[8] Ministry of Sports Order No. 900 of 2.11.2022 On Approving the Federal Athletic Performance Standard for Computer Sports …

macologists to make a list of drugs capable of affecting the cyber-athlete's performance as well as by IT experts to identify and block any software capable of affecting the outcome of tournaments.

These efforts are yet to be made in the respective fields.

While sports standards and rules generally apply to legal relationships in e-sports, it is nevertheless crucial to account for the specific features of e-sports to amend accordingly the regulations that govern the procedure and organization of sporting activities in computer sports.

2. Enforcement Gaps in Regulating E-sports Relations

2.1. The Issue of the Cyber-Athlete's Legal Status

The cyber-athlete's distinctive features arise in the first place from the need to seek the copyright holder's consent for admission to a gaming tournament, and, secondly, from avatar-mediated participation. Thus, sponsors often value the avatar as a virtual *alter ego* rather than the cyber-athlete himself as a real person.The cyber-athlete's status is thus of dual nature.

Moreover, the cyber-athlete as a virtual personality (avatar) operates in the virtual reality generally immune from any national and/or supranational regulatory interference until real consequences occur. However, the cyber-athlete's actions as a real person are subject to national and/or supranational legal regulation.

The player's legal status depends on the nature of relationships between the cyber-athlete and the e-sports organization which may be subject to labour or civil law.

The study of literature reveals a number of options to formalize the relations between the athletes and their organizations: contract for the purchase of services, surety contract, agency contract [Sutyrina E.V., 2019: 18–23], registration of the athlete as a private entrepreneur [Ivanov V.D., 2020: 59–63].

Contracts for the purchase of services and employment contracts provide the most widespread forms used in e-sports between organizations and athletes.

Apart from contractual duties under a contract for the purchase of services or functions to be performed at their e-sports clubs, athletes will often assume public relations functions (participation in native advertising and

promotional events as well as in meetings with fans, sponsors etc.). In such cases, athletes are contracted under an agency contract whereby they undertake to perform certain legally binding actions on behalf of the e-sports club. The contract for the purchase of services appears to be the most rewarding for e-sports organizations and thus the most widespread.

This contract allows to e-sports organizations to maximize the advantages of irregular and time-bound activities of cyber-athletes and to evade the provisions and requirements of the labour law.

Moreover, cyber-athletes, once under a civil law contract, lose a number of social guarantees (paid leave including in the event of temporary disability, right to rest, employment record-keeping, etc.).

In addition, while the worker can terminate his employment contracts at any time, the contractor has to perform his obligations under a contract for the purchase of services until losses to the customer are fully reimbursed.

In 2016 a cyber-athlete was convicted in Russia for the first time for having violated the provisions of contract with Arcade eSports. The contract required the player to stay with the organization for three months — a period during which the player started to negotiate with other e-sports organizations. As a result, the player was required by the court to pay approximately 115,000 rubles in compensation[9]. This outcome could have been avoided in the event of employment contract entered with the e-sports organization.

In addition, under Article 15 of the Labour Code, civil law contracts cannot be used to regulate employment relationships between workers and employers.[10]

This is why the actual relations between athletes and e-sports organizations, in spite of civil law contracts, can be qualified as those of employment and entail the underlying rights and obligations.

2.2. Taxation of the Cyber-Athlete's Income

The legal form of relationships with cyber-athletes directly affects the tax rate applicable to income from wins and prizes awarded by e-tournament organizers.

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[9] Cyber-athlete convicted in Russia for the first time for violating contractual terms // Available at: https://www.dota2.net/ (accessed: 25.08.2023)

[10] Available at: URL: https://www.consultant.ru/document/cons_doc_LAW_34683/823fdde09a529d3735916aa9fc1fe8d29ee04afb/ (accessed: 25.08.2023)

In a letter of 10.06.2021 on taxes payable from cyber-athlete income[11], the Ministry of Finance explains that the awarded win is an income subject to personal income tax. Moreover, travel, accommodation and subsistence costs paid by the e-sports organization are also considered as income received in kind. The duty to collect and transfer the personal income tax (hereinafter — PIT) should be assumed by a tax agent (in this case either the e-tournament organizer or the cyber-athlete).

Importantly, the PIT rate applicable to wins gained at e-tournaments depends on the status of the sporting event in question.

While the PIT rate of 13 percent will apply to income under 5 million rubles gained from e-tournaments over the taxable period (year), it will rise to 15 percent if the amount of income gained from e-tournaments over the taxable period (year) exceeds 5 million rubles. Meanwhile, wins and prizes in excess of 4,000 rubles a year gained at e-tournaments organized for promotion of goods or services are taxable at the rate of 35 percent. Income under 4,000 rubles gained at such events is exempt from tax.[12]

The Russian regulatory approach to taxation of e-athletes' income obviously fails to account for the fact that e-tournaments tend to be held outside Russia, only to expose cyber-athletes to double taxation.

For example, a cyber-athlete winning USD 1,000 in an e-tournament held in the United States will pay income tax in the United States at the rate of about 30 percent and another 13 percent under the Russian law, only to lose almost one half of the gained income through double taxation.

If we count the fees charged by e-sports organizations at the rate between 10 and 30 percent, the cyber-athlete will end up with less than one half of USD 1,000 he won.

Thus, since e-sporting activities extend beyond national borders, it is crucial to envisage a mechanism to avoid double taxation of cyber-athletes' income gained at e-tournaments.

2.3. Legal Status of Computer Games under Civil Law

Under Article 128 of the Civil Code of Russian Federation things at law include physical assets and other property such as ownership rights; out-

[11] Available at: URL: https://www.garant.ru/products/ipo/prime/doc/402515998/ (accessed: 25.08.2023)

[12] Tax Code of Russia // Available at: URL: https://www.consultant.ru/document/cons_doc_LAW_28165/9b06776ae7a39546ad4e3ba04bebef14baabf8d2/ (accessed: 25.08.2023)

comes of work and services; protected intellectual assets and equivalent elements of visual identity; intangible assets.[13]

Computer games are treated as intellectual assets.

Under Article 1225 of the Civil Code intellectual assets include: works of science, literature and art; computer programmes (software); databases; recorded performances; phonograms; over-the-air or cable broadcasting; inventions; utility models; pre-production prototypes; selection inventions; integrated circuit layouts; industrial secrets (knowhow); brand names; trademarks/service marks; geographic names; designations of origin; business designations[14].

Meanwhile, this list of intellectual assets does not include anything fully comparable with a computer game.

Some authors count computer games into computer software [Grishaev S.P., 2004].

The Russian judicial practice will also sometimes qualify computer games as computer software, one example being the ruling of the Moscow City Arbitration Court on case No. A40-5470/2011.[15]

Meanwhile, a computer game apparently embraces several types of protected intellectual assets including graphics, texts, video, photo, animation, background audiovisuals, screenplay logic, original idea and characters, computer software etc.

The Russian civil law will treat such objects as "complex assets" along with motion pictures, audiovisual works, theatrical performances, multimedia products and databases.

It is feasible to add computer games to this list. However, before a provision explicitly regulating computer games as intellectual assets is made part of the civil law, it is apparently possible to categorize them as a kind of multimedia products; from Latin *multum* (many) and *medium* (center, focus).

The feasibility of this approach — equating computer games with complex assets, in particular, multimedia products — is underlined in doctrine [Kalugina E.N., 2013: 18–23].

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[13] Civil Code of Russia // Available at: URL: https://www.consultant.ru/document/cons_doc_LAW_5142/f7871578ce9b026c450f64790704bd48c7d94bcb/ (accessed: 25.08.2023)

[14] Available at: URL: https://www.consultant.ru/document/cons_doc_LAW_64629/2a4870fda21fdffc70bade7ef80135143050f0b1/ (accessed: 25.08.2023)

[15] Moscow City Arbitration Court Ruling No. A40-5470/11 of 14.11.2011 // SPS Consultant Plus.

Thus, we believe that the civil law provisions on the legal status of complex assets (multimedia products) should apply in the event of disputes on violation of intellectual property rights to computer games.

Meanwhile, the specific features of computer games give rise to concomitant copyright protection problems. Being a complex asset, the computer game often requires a creative group to come together including programmers, artists, scriptwriters, etc. And copyright under the Russian civil law does not cover ideas and concepts, only to bring forth the problem of clones whose authors will borrow the game's idea by changing only the external design.

Thus, despite that civil law contains the provisions applicable to computer games on the basis of analogy, some legal problems arising from the computer game design specifics need to be addressed by amending and/or adding specific regulatory controls.

2.4. Regulation of Game Streaming and Bookmaker Activities

Game streaming is online broadcasting of a video game by a player/streamer or organizer of an e-tournament. Streamers will gain income in a number of ways: through native advertising, paid subscriptions to the streamer's account, donations.

The legal nature of donations poses the worst regulatory problem.

On the one hand, donations are monetary transfers not conditioned by a cash consideration, that is, given away to the streamer. On the other hand, donations will sometimes serve as a way to hide what is gained from professional streaming activities.

Thus, as explained by the tax service[16], donations will be counted into the streamer's taxable income where streaming is pursued professionally as a business activity and/or where donations are exchanged for a cash consideration. So, today streaming can be a kind of professional business activity.

Meanwhile, the question is about the legal status of streaming as intellectual asset.

As was defined above, the computer game as such is a multimedia product. Therefore, a recording of the computer game (e-tournament) will be

[16] Federal Tax Service Department for Moscow Region Letter No. 16-12/021313 of 21.02.2018 // SPS Consultant Plus.

subject to associated rights in the form of public performance of a work of art. Importantly, despite a similarity between streaming and over-the-air or cable broadcasting, these information transmission techniques are not identical from the legal standpoint.

Under Article 1329 of the Civil Code, any activity related to over-the-air or cable broadcasting is reserved to specific entities to be registered exclusively as a legal person.

Streaming is thus the outcome of performing activities. However, streaming of e-tournaments is largely a self-regulated sector at the moment, with the solution of legal issues related to the use, reproduction and publication of e-sports streams depending on licensing agreements entered with computer game copyright holders.

As a general rule, streaming is effected only with the copyright holder's consent. Moreover, under Article 1270 of the Civil Code, any adaptation of video broadcasting including translation should be consented by the author.

In fact, streamers' ideas to duplicate the original broadcasting live on their channels including to provide Russian translation of an e-tournament or comment the gaming process have a legal dimension.

Moreover, according to provisions of Article 1274 of the Civil Code, no quotation, parody or other free use of an intellectual asset envisaged by law is possible unless consented by the author.

While streamers are not required to seek the consent of copyright holders to broadcast video reviews or parodies of e-tournaments as well as reviews of player actions for educational purposes, they are obliged to specify the copyright holder's name. However, it makes a video review or parody different from an adaptation may not be quite obvious. Moreover, there is no explicit legal prohibition for spectators to broadcast e-tournaments via social media. Since the audience of many social media services is comparable to that of the channels authorized by the copyright holder to officially broadcast online, such social media broadcasting poses a serious risk of copyright violation.

Thus, there is a need to approve a regulation defining both the legal status of streaming and the limits of streaming activities to avoid major ownership risks for computer game authors and other copyright holders.

Streaming activities are inseparable from those of bookmaker's offices.

Bookmaking business is subject to provisions of Federal Law No. 244-FZ 29.12.2006 On State Regulation of Gambling and on Amending Specific Regulations of the Russian Federation.[17] Bookmaker's offices can accept bets on sporting events qualified as official competitions.

Since e-sports are officially recognized, bookmaker's offices will accept bets on e-tournaments as well.

Meanwhile, the Computer Sports Rules list the following sports in Russia:

Combat arena; Competitive puzzles; Sports simulator; Real-time strategy; Tactical 3D combat; Technological simulator; Fighting.

While the list is exhaustive from a formal legal standpoint, it fails to cover the whole range of e-sports. Thus, the shooter, a popular e-tournament, is not listed among the officially recognized e-sports.

A limited list of sports for bookmaker's offices to legally accept bets brings down both the profit potential of the betting industry and the e-sports market value.

On the other hand, the development of bookmaking business has a negative side. Thus, cases of game-fixing are often reported at e-tournaments in relation with betting frauds.[18] Therefore, administrative barriers are appropriate from this perspective. Meanwhile, the ambivalence of bookmaking business in full progress at the e-sports market is fraught with risks for bona fide bookmakers.

Conclusion

E-sports are a competition between computer game players. With computer games upscaled into a major industry of the world market, e-sports gained official recognition.

With regard to doctrinal questions, the authors stress unclear correlation between concepts of computer sports and e-sports, as well as other connected concepts related to virtual reality sporting activities. A terminological analysis suggests that in spite of the legal identity between the terms e-sports

[17] Available at: URL: https://www.consultant.ru/document/cons_doc_LAW_64924/ (accessed: 25.08.2023)

[18] Cyber Legacy Team for CS accused in 322, one month after Dota 2 roster's reported involvement in the same scandal // Available at: URL: https://escorenews.com/ru/csgo/news/12846-sostav-cyber-legacy-po-cs-go-obvinili-v-322-mesyatsem-ranee-roster-organizatsii-po-dota-2-okazalsya-zameshan-v-takom-je-skandale (accessed: 25.08.2023)

and computer sports, they carry a different meaning. The term *e-sports* has a wider meaning that includes but is not limited to that of *computer sports*.

For this reason, it is proposed to delimit the said definitions by designating a regulatory field for each of them: while computer sports are subject to public law, other e-sports relations are governed by private law involving some self-regulatory practices. In delimiting the applicable regulatory models as self-regulation and public interference with e-sports relations, the authors assess the feasibility and the extent of applying sports law to the relationships in e-sports.

With regard to prospects of developing specific (comprehensive sectoral) regulation of e-sports relations, we conclude such innovations are premature now and fraught with objective difficulties.

As for enforcement, the authors analyze the cyber-athlete's legal status and related tax obligations, as well as define the place of computer games as a multimedia product among things subject to civil law.

Because of it, relationships in e-sports need more detailed regulation to avoid the aforementioned problems.

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