

Building momentum

CFC's **Jade Giltrap** looks at the ways in which IP exploitation is driving a booming esports industry, particularly in the wake of Covid-19



While traditional sports experienced a difficult 2020 as a result of the pandemic, the momentum behind the esports movement continued to gain pace and it seems like this sector's growth potential is uncapped. According to esports analytics and market researcher Newzoo,¹ the industry is set to hit \$1.084bn in 2021, up 14% on 2020, and generating revenues of \$947.1m.

However, as countries gradually emerge from lockdown, major live events such as Euro 2020 and Wimbledon have started to welcome fans back through the doors. This is also true in the esports world with some mega esports events still to come including the League of Legends World Championship 2021 in China.

Traditional sports and esports finally have live events in common again and though they may seem like different spaces, the intellectual property (IP) infrastructure of each is actually very similar.

Fundamentally both have much in common in terms of the ecosystems in which they exist from the games, fans and spectators to the associations, leagues, and governing bodies, the teams, players and influencers.

These ecosystems also extend to the

broadcasters and the financial stakeholders including owners and investors and those providing commercial sponsorship, advertising spend, collaborations and endorsement deals.

And when it comes to revenue, one of the biggest streams within both areas is the monetisation, exploitation and optimisation of IP rights.

The major difference between the two in terms of IP rights ownership and control is that in the traditional sporting world, there are many owners and controllers of IP rights such as teams, leagues, and associations. In esports, there are far fewer major IP owners as most of the overarching IP rights belong to the games publishers, who allow all other participants within the space to use this IP at their discretion.

The two worlds also diverge when it comes to broadcast. Within traditional sports there are fewer broadcasters who have negotiated with the IP rights owners and those broadcasters retain tight control of the distribution rights. In esports, there are many broadcasters from leagues and in-game multiverse streaming to influencers who create content around the games, and even players who may also stream the games on their own channels.

There is a constant stream of new entrants within esports who wish to broadcast content

around the games. It could be a league which may be run by the games publisher or a third party responsible for managing the league. It could be an esports team such as Fnatic and its players running commentary on their social media platforms. It could be an influencer who is a fan and streams the game play, alongside their commentary and together with comments from their followers within the content. Of these, it is likely that none of them apart from the league and the team have any form of contract with the IP rights owner.

The games publishers' incentive is to continuously engage with fans and players around the world and the esports leagues form a part of this overall business model – with the digital space and gaming ecosystem creating this demand rather than it being the predetermined strategy at the outset. Anyone with access to the internet and a streaming platform including social media channels can be a broadcaster of esports content. So, while the tournaments and games are lucrative, the real goal is to catch the attention of at-home players who buy the game and play all day in the non-professional leagues. If the publishers can hook them in via competitive gaming, influencers and players streaming, why wouldn't they?

Activision Blizzard, who operate franchises

such as *World of Warcraft* and *Call of Duty*, wants to make money within its overarching business model and it would of course take major issue with another developer/publisher creating a similar game – but it does not have an issue with the fan-based access model of all parties streaming its content. Last year it posted a net income of \$2.2bn on \$8.1bn revenue.² Net income rose 46.2% and revenue grew 24.6% on the prior year. This is multiples of the revenues of esports.

All the major publishers experienced an uptick in users last year and social media influencers played a huge role despite not being immediately in contract with the IP owner. Esports influencers – whether teams, players or other content creators – can buy a media insurance policy where relevant to protect themselves from claims relating to IP infringement, defamation and privacy among other things, and it is generally accepted by the media insurance market that they will not have been granted rights from the IP owner.

In the world of traditional sports, the media insurance market would be unlikely to offer a policy to a broadcaster who did not have IP rights, although it may consider influencers depending on the legal context – for example, a golf star acting as a commentator for a major broadcaster.

In the traditional sports world, major leagues work with broadcasters to partner with one another to produce large scale events and generate advertising revenue. The teams own and manage their first party IP rights and monetise those in many ways including sponsorship deals, endorsement deals, licensing agreements, collaborations, and merchandising deals. Sports licensing arrangements and IP rights transfers are very much an established aspect of this industry, and it is understood generally who owns what and contracts are managed to suit that environment.

It is a very different environment in esports. While there are clear IP owners, the ecosystem operates in a way that means that many parties are given access to and enabled to use the IP rights of others without a contract being in place stipulating this. It also means that big sport brands have many sponsorship avenues including influencers who are separate to and aside from the overarching legal landscape as well as the previously discussed plethora of broadcasters.

The entity owning the IP assets in traditional sports will likely want to protect itself with an IP policy and this may include defence and pursuit costs. The major broadcasters (or possibly the newer emerging online disruptor broadcasters/streamers) who license with the relevant sporting leagues will generally have

a media liability policy in place and will rely on it for any IP infringement allegations that arise, along with other exposures such as defamation and privacy rights infringements. Both within esports and within traditional sports brand collaborations IP transfers are driving new risk management requirements including insurance purchases.

Epic Games, which operates *Fortnite*, has created an entire multiverse where gamers experience the most imaginative world and get to communicate with their friends who also play, even hang out with them to catch a movie or a concert. It's become a place where people socialise with friends all around the world. And at a time when many artists were struggling during the pandemic, Epic came up with some clever rights deals with the rapper Travis Scott to produce a groundbreaking live concert that enabled him to release his new track within the *Fortnite* universe. There were 45.8m views for this event.³

Unsurprisingly celebrities and brands have woken up to this opportunity to connect with a demographic that is usually very hard to reach and so we should expect more of these collaborations. Epic will have worked with Scott's team on relevant contracts and risk transfer mechanisms which will have undoubtedly included media policies or IP licensing agreement policies.

Brands that have collaborated within the esports ecosystem include Disney, DC Comics, NFL, NBA and the list goes on. Louis Vuitton⁴ collaborated with League of Legends using in game skins – a graphic or audio change which customises a character in game – enabling players to purchase a version with ordinary currency or earn a prestige skin via points during the event. The winner of the World Championship Finals in Paris was given a custom Louis Vuitton trunk designed to hold the winner's trophy, linking the in-game and the real-world experience.

This real world and in-game licensing being brought together through custom Louis Vuitton pieces is a great example of an experiential esports licensing arrangement. A licence agreement will have been in place with both entities to protect all parties and an insurance solution can be purchased as a risk transfer mechanism in the form of an IP licence agreement policy or possibly a media liability policy. Although broadcasting rights tend to be more fluid in esports than traditional sports, commercial arrangements are managed under contract.

Esports have become instrumental in enabling brands to connect with Gen Z and millennial consumers. Teams and influencers have had major collaborations with non-endemic brands such as Gucci, Nike and BMW

while Puma has inked four deals in esports over the past 18 months including with Gen.G,⁵ the leading esports organisation connecting the US and Asia, and ranking number 6 in the 2020 Forbes list of the world's most valuable esports companies. This included dressing the team in Puma jerseys and creating a co-branded clothing line. Again, the IP rights will have been managed under contract and insurance requirements as previously mentioned will be requested.

Vogue describes esports as “fashion's new playground”.⁶ It notes monetisation is also on the horizon for luxury brands as players could be keen to bring their penchant for Louis Vuitton through to real-world as well as their in-game purchases. With female gamers on the rise, future collaborations to cater to this growing demographic are likely and as with traditional sports, fandom means allegiance, which means consumerism and spending!

There are many new and emerging IP rights transfer agreements coming to the fore for both traditional sports and the esports industries and some of these include NFTs, merchandising deals, stadium naming rights and large scale, in-person events – the list is endless. It's such a highly growing space that these opportunities will likely continue to develop in both worlds.

Footnotes

1. <https://newzoo.com/insights/trend-reports/newzoos-global-esports-live-streaming-market-report-2021-free-version/>
2. <https://www.investopedia.com/how-activision-blizzard-makes-money-4799286>
3. <https://www.nbcnews.com/think/opinion/fortnite-s-travis-scott-concert-was-historic-he-s-not-ncna1195686>
4. <https://www.geeky-gadgets.com/louis-vuitton-league-of-legends-prestige-skins-31-10-2019/?nowprocket=1>
5. <https://geng.gg/pages/about>
6. <https://www.voguebusiness.com/technology/fashion-esports-gaming-monetisation>

Author



Jade Giltrap is media team leader at CFC, responsible for underwriting full package multimedia liability, intellectual property, professional indemnity and cyber liability for film, TV, media and entertainment businesses based in the UK, the US, Canada and Australia.