



Perchstone & Graeys  
SOLICITORS, ADVOCATES & ARBITRATORS

# NEWSLETTER



## SPORTS LAW BULLETIN

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### EDITOR'S NOTE

Welcome to the latest edition of the Perchstone and Graeys' Sports Law Bulletin. Recently, the English Football Tribunal delivered an Arbitral Award on a reference submitted by Manchester City Football Club Limited against the Premier League. In the reference in question, the English Champions, MCFC, a member of the Premier League, challenged both the original 2021 Associated Party Transaction Rules and their 2024 amendment. The club argued that the rules breached parts of the Competition Act 1998, specifically sections 2 and 18, and failed to meet public law standards of procedural fairness. Additionally, Manchester City contested the Premier League's rulings on its sponsorship agreements with First Abu Dhabi Bank, Emirates Palace, and Etihad Aviation Group. The club argued that the Premier League Board misapplied the APT Rules, did not follow fair procedures, and made decisions that no reasonable Board would make if properly considering all relevant issues. Manchester City also claimed the Board took too long to reach these decisions, exceeding the time limits set out by the APT Rules.

This edition highlights the findings made by the Tribunal in its Award as well as the competition law implications of the decision. We also delved into a legal perspective on the issue of fans, ticketing and commercialization thereof within the Nigeria football context.

Lastly, this edition also contains our 'e-Sports segment' where we analyze the tenuous issue of player avatars and legal considerations for copyright ownership in E-sports. Specifically, we have highlighted two key decisions of the United States Circuit Court on the issue.

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Email: [editor@perchstoneandgraeyes.com](mailto:editor@perchstoneandgraeyes.com).

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# An Overview of the Manchester City Football Club Limited vs. The Football Association Premier League Limited Arbitration Award and Legal Implications for Associated Party Transactions by Premier League Clubs.

**T**he Football Association Premier League Limited, commonly referred to as the Premier League, operates as a private entity with its ownership held by the 20 clubs currently in the league and the Football Association (FA), which holds a unique "special share." Each club functions independently within this structure but must follow the rules set by the Premier League, The FA, UEFA, and FIFA, and is subject to both English and European law. Every club has one share, granting it equal voting power on issues and a stake in the distribution of revenue from broadcasting and sponsorship deals. The FA's special share means it has a final say on specific decisions, like appointing or reappointing Board Directors.

Shareholder meetings are the main forum for Premier League decision-making, with the Annual General Meeting (AGM) held at the close of each season. During the AGM, shares are transferred from relegated clubs to the newly promoted teams from the English Football League Championship. Clubs can propose rule adjustments at these meetings, with each club holding one vote. For any rule change or significant financial proposal to pass, it must be approved by at least 14 of the 20 clubs. Once passed, these rules (just like shareholder agreements of companies) form a binding agreement that governs the relationship between the Premier League and its clubs. In line with these governance practices, the Premier League introduced Associated Party Transaction (APT) Rules in 2021, followed by an amendment in 2024. The purpose of these rules is to strengthen financial transparency and equity among clubs, particularly through Financial Fair Play (FFP) measures. The APT Rules seek to prevent clubs from inflating reported income through transactions with related entities—those financially linked to club ownership, such as sponsors and



In the arbitration at hand, Manchester City Football Club, a member of the Premier League, challenged both the original 2021 APT Rules and their 2024 amendment. The club argued that the rules breached parts of the Competition Act 1998, specifically sections 2 and 18, and failed to meet public law standards of procedural fairness. Additionally, Manchester City contested the Premier League's rulings on its sponsorship agreements with First Abu Dhabi Bank, Emirates Palace, and Etihad Aviation Group. The club argued that the Premier League Board misapplied the APT Rules, did not follow fair procedures, and made decisions that no reasonable Board would make if properly considering all relevant issues. Manchester City also claimed the Board took too long to reach these decisions, exceeding the time limits set out by the APT Rules.

It is important to note that these challenges do not question the actual substance of the Premier League's decisions; the APT Rules do not permit an in-depth review of the initial decision's findings or factual basis. Appeals are limited strictly to procedural or legal grounds, focusing on whether proper processes were followed rather than on whether the final decisions were fair or factually correct.

This article presents an overview of the evolution of the Associated Party Transaction (APT) Rules and provides an analysis of the arbitration award in

Manchester City's case against the Premier League. It highlights key legal and regulatory insights and explores how this ruling may influence Associated Party Transactions by Premier League clubs in the future

### Transition from Profit and Sustainability Rules (PSR) to Associated Party Transaction (APT) Rules: An Overview of Associated Party Transaction (APT) Regulations.

#### *Pre-Associated Party Transactions Rules.*

In response to the financial struggles experienced by Portsmouth Football Club during the 2009/2010 season, which ultimately led to its insolvency, the Premier League considered implementing financial regulations aimed at ensuring club profitability and sustainability. This involved limiting aggregate losses over a three-year period. In December 2012, Premier League clubs expressed non-binding support for a profitability and sustainability test. However, concerns arose regarding "related party transactions" (RPTs), which could potentially be manipulated to inflate profits and create a misleading illusion of profitability.

By April 2013, two-thirds of Premier League clubs voted in favor of the Profit and Sustainability Rules (PSR), inspired by UEFA's Financial Fair Play (FFP) regulations. These rules aim to foster financial fairness and long-term stability within European club football. A key principle of both the FFP and PSR is to protect sustainability by limiting the extent to which a club's football-related expenditures can exceed its revenue. The PSR established a £105 million limit on the aggregate loss a club may incur over a three-season period, provided it is covered by secure funding, primarily in the form of equity rather than debt. Additionally, the Premier League Board is authorized to adjust the value of transactions in a club's accounts from any RPTs to reflect fair market value (FMV). RPTs are defined as transactions disclosed in a club's annual accounts as related party transactions or that would have been disclosed as such except for an exemption under relevant accounting standards.

While the PSR does not explicitly define what constitutes an RPT, it encompasses not only sponsorship agreements but also shareholder loans, covering both revenue received and costs incurred by clubs. The determination of FMV is described as the amount for which an asset could be sold or a service rendered between knowledgeable, willing parties in an arm's length transaction. Under the PSR, clubs are responsible for identifying RPTs in their accounts. Therefore, the Premier League Board's ability to adjust these transactions

depends on clubs and their auditors recognizing them as RPTs. Assessments of FMV for RPTs occur only after a club identifies a transaction as such, a process described as *ex post* in this context.

*The Associated Party Transactions Rules 2021.*

Due to the inefficiency of the PSR—particularly in policing FMV transactions—because assessments occur only after a club identifies a transaction, the Premier League consulted with clubs in 2021 to amend the PSRs. Consequently, the Associated Party Transactions (APT) rules were passed in December 2021.

The APT rules, specifically Rules E.55-57, provide that each Associated Party Transactions must be submitted to the Board in the required form and detail for a Fair Market Value Assessment and the submissions must be made to the Board either before executing the agreement governing the Associated Party Transaction or within two clear working days after execution. If a club opts to execute an Associated Party Transaction before receiving written confirmation from the Board, the receipt of any consideration must be expressly subject to the Board's approval of the transaction. In other words, clubs are prevented from receiving agreed consideration from an Associated Party until the APT is approved by the Board.

The rules expressly exclude shareholder transactions from APTs defines "transaction" as any agreement or transfer of resources, rights, services, or obligations, except for loans or securities provided by individuals within the same group of companies or persons holding more than 5% of the club's shares.

Rule E.58 makes it clear that when an APT is submitted or discovered, the Board will conduct an FMV assessment. FMV is defined in Rule A.1.94 as the amount for which an asset, right, or other subject matter of the transaction could be sold, licensed, exchanged, or settled between knowledgeable, willing parties in an arm's length transaction. The emphasis on "could" rather than "would" signifies the requirement to assess potential sale values.





**In conducting a Fair Market Value Assessment, the Board must consider:**

1. An assessment produced by an independent expert.
2. Relevant information provided by the club, including any assessments the club has produced.
3. Comparable evidence of similar transactions that is appropriate, relevant, and readily available.

On timelines, Rule E.64 requires the Board to conclude the FMV Assessment within ten working days of receiving the associated party transaction submission, unless exceptional circumstances necessitate additional time. If the Board determines that an APT is evidently not at FMV, Rule E.65 mandates that the club may not execute the APT, and if executed, the club must either terminate or amend the APT to ensure that consideration does not exceed FMV.

*The Amended Associated Party Transactions Rules 2024.*

In February 2023, the Football Club Advisory Group (FCAG) was reconstituted with terms of reference that included evaluating the impact and effectiveness of the new system for Associated Party Transactions (APTs), considering any necessary amendments, and assessing the monitoring and enforceability of the system. During its inaugural meeting on July 20, 2023, FCAG

Among the amendments relevant to the arbitration under reference, the term "could" was replaced with "would" in the definition of Fair Market Value (FMV), and the phrase "normal market conditions" was added. The revised definition of FMV now reads: "Fair Market Value" means the amount for which an asset, right, or other subject matter of the Transaction would be sold, licensed, or exchanged; a liability settled; or a service provided between knowledgeable, willing parties engaging in an arm's length transaction under normal market conditions".

Another significant change was the lowering of the standard of proof by removing the qualifier "evidently" from the requirement in Rule E.65, which previously stated that the Board's determination should confirm that the relevant transaction was not at FMV. Additionally, the burden of proof was shifted so that the responsibility now lies with the club submitting an APT to demonstrate that it meets FMV, rather than requiring the Board to establish that it does not.

Lastly, the time frame for concluding an FMV assessment when the Board requires further information or discussion was extended from ten days to a maximum of thirty days for standard commercial and player APTs, provided that the club supplies the requested information in a timely manner.



# Overview of the Tribunal's Award and Its Implications for the Premier League and Its Clubs.

Relying primarily on the December 21, 2023, judgment by the Court of Justice of the European Union in *Case C-333/21 (European Superleague Company SL v. UEFA & FIFA)*, Manchester City Football Club contended that both the Associated Party Transaction (APT) rules of 2021 and the 2024 amendments breach competition law on several grounds, including the exclusion of shareholder loans by the rules. The club argued that these regulations have both the object and effect of preventing, distorting, or restricting competition, thereby violating Chapter I and/or Chapter II prohibitions under the 1998 Act.

Furthermore, Manchester City Football Club asserted that the rules are procedurally unfair or lack transparency for several reasons. First, a club is not provided with the databank material considered by the Board prior to the Board's assessment of Fair Market Value (FMV). Additionally, a club has no access to the databank and cannot determine whether there is any additional material not identified by the Regulatory Team that would assist the club in the FMV assessment. Moreover, before the Board's provisional or final assessment of FMV, a club does not receive a copy of the report sent by the Regulatory Team to the Board. Lastly, a club lacks access to the Independent FMV Assessor's repository of comparable transactions.

In addition to these claims, the club also challenged the Premier League's decisions regarding the First Abu Dhabi Bank, Emirates Palace, and Etihad Aviation Group transactions, citing concerns over procedural fairness and the timelines involved in delivering these decisions.

After considering the arguments presented by both parties, the evidence before the tribunal, relevant laws, and the principles regarding the prevention, distortion, or restriction of competition as established in *European Superleague Company SL v. UEFA & FIFA* and other case laws, the tribunal acknowledged the overall objectives of the rules. However, it ruled that the exclusion of shareholder loans from both the Associated Party Transaction (APT) Rules and the Amended APT Rules, as well as the pricing adjustments made in the Amended APT

Rules, are unlawful due to their infringement of Chapter I and II prohibitions. All other challenges, however, were dismissed. In essence, while the rules themselves do not restrict competition, the exclusion of shareholder loans and the pricing changes in the Amended APT Rules are deemed unlawful.

Regarding the fairness of the procedures used to assess whether an associated party transaction is at fair market value, the tribunal found that Manchester City's inability to comment on the comparable transaction data relied upon by the Premier League before the determination of FMV was procedurally unfair. All other challenges related to procedural fairness were dismissed.

Manchester City Football Club's challenge to the Premier League's determination that the Etihad Aviation Group transaction was evidently not at FMV was not upheld by the tribunal. However, the tribunal ruled that the Premier League's failure to allow Manchester City the opportunity to respond to the Benchmarking Analysis before reaching its decision and the club's lack of access to the underlying data in the databank regarding the excluded compound growth rate constituted procedural unfairness.

The tribunal upheld Manchester City's challenge concerning the Premier League's decision that the First Abu Dhabi Bank transaction was evidently not at FMV, ruling it was procedurally unfair. This decision was based on the fact that Manchester City was not provided with the databank transactions of other clubs, which the Board referenced in its final determination. Additionally, the tribunal found that there was an unreasonable delay of three months in reaching this decision, in violation of Rule E.64. Regarding the challenge to the Emirates Palace transaction decision, the tribunal concluded that the Premier League had also caused an unreasonable delay of approximately two months in making its decision, thus breaching Rule E.64.



## Conclusion

The evolution of these financial regulations demonstrates a commitment to fostering sustainability and fairness within the Premier League. By addressing concerns related to financial mismanagement, these regulations aim to create a more transparent framework for transactions between clubs and associated parties. The introduction of the Associated Party Transaction (APT) rules represents a proactive effort to enforce compliance and enhance accountability in club finances. This award implies that, aside from the specific provisions identified as violating competition law and the procedural elements deemed unfair as highlighted in this analysis, Premier League clubs remain obligated to adhere to the current associated party transaction rules and procedures when engaging in associated party transactions.

We anticipate that the Premier League will take further steps to amend the existing APT rules in line with the tribunal's decision, which has highlighted certain provisions as anticompetitive and pointed out the procedural unfairness in the current methods for determining fair market value. These amendments are essential to establish a comprehensive body of rules that fulfill the overarching objectives of the APT regulations as previously discussed.

Clubs must pay close attention to the provisions of the APT rules and their amendments, staying informed about any updates that may arise in response to the tribunal's ruling. We commend the parties involved for agreeing to waive their rights to confidentiality in the arbitration, allowing for the release of a redacted version of the award.

## THE NPFL: A LEGAL PERSPECTIVE ON THE FANS, TICKETING, AND COMMERCIALIZATION OF THE DOMESTIC FOOTBALL LEAGUE

### Introduction

**F**ootball or soccer? Whatever you call it, there's one thing that doesn't change, and that is the fans. "You need a solid football ticketing system in place to ensure that everybody who wants a ticket can get one". There would be no such thing as professional football, or any professional sport for that matter, without the fans. And making sure they can get their hands, on tickets easily and at a reasonable price is an essential part of building a fanbase.

In Europe, football is undeniably the number 1 sport where European football clubs attract millions of fans to the match venue every week thereby increasing the revenue stream of those clubs generated from the sale of tickets and merchandise. The reverse is, however, the case in Nigeria. The Nigerian Professional League (NPFL) players, week-in week-out, trade tackles in front of near-empty stadia; thereby making it difficult, if not impossible for football clubs to generate substantial revenue from the sale of tickets. This article attempts to provide a working solution to the problem associated with a lack of revenue generated from ticket sales in the NPFL.

"Having been displaced as Europe's second-richest league by La Liga in 2016/17, the German Bundesliga's total revenue increased to almost €3.2 billion; back ahead of its Spanish rivals in 2017/18. La Liga (7%) and the Bundesliga (13%) surpassed Premier League revenue growth (6%), as both slightly narrowed the gap to the top revenue-generating league in the World. In the 2017/18 season, it was reported that the return of Stuttgart and Hannover 96 to the German Bundesliga affected the attendance of fans in the stadiums on matchdays, and subsequently increased club revenues by 7% from €500m to €538m. According to a 2020 Deloitte Report, 16% of \$959,300,000, the total revenue generated for the season by Spanish soccer giant FC Barcelona was from matchday ticket sales making it the sport's biggest cash-generating club for the first time".







## THE CLUB'S LIABILITY TO TICKET HOLDERS

It is pertinent to consider the liability of a football club to fans who have purchased tickets on match days. At common law, it is generally accepted that a ticket is simply a limited license to enter a premises, and accordingly, a venue operator or event organizer may impose terms and conditions on that ticket and its ticketholder. However, this principle has been supplanted — or at least supplemented — in many countries by statutes governing the sale and resale of event tickets. Manchester United in the penultimate week traveled to Austria to play the first leg of the round of 16 games in the UEFA Europa League against LASK and following the announcement by UEFA that the game would be played behind closed doors, refunded the ticket costs to its over 2000 traveling fans. While a lot of people commended this gesture by the club, this might as well be due to the terms of the contract contained in the tickets or in compliance with the consumer protection legislation in the UK. It is noteworthy, however, that it is the only club that took this step.

The common law principle of privity of contract would prevent a ticket holder who re-purchased a ticket from a prior holder (secondary holder), from claiming a refund. Accordingly, only fans and spectators who purchased from the club or authorized agents would be able to get a refund. However, such fans and spectators of a canceled event may be able to recover directly from the other unauthorized resale outlets depending on what the refund policy says.

“Provided that a football club's ticket terms and conditions contain an express provision banning an original purchaser of a ticket from selling on that ticket to a third party (unless such sale is made to a duly authorized agent or intermediary of the football club) any sale of a ticket in contravention of that football club's conditions can be the basis for an action for breach of contract against the original purchaser”.

In the event that the original purchaser succeeds in selling on a ticket to a third party or if he or she chooses to advertise a ticket on a third party's ticket exchange website, it may also be possible to bring an action against that third party for breach of contract if they seek to sell on that ticket either on behalf of the original purchaser or itself. One of the relatively recent decisions on a ticketing dispute is the case of *The Rugby Football Union v Viagogo*, where the English Court of Appeal granted a Norwich Pharmacal Order against Viagogo requiring it to provide the RFU with the names and addresses of all individuals who had sold tickets on its website during

## THE CHALLENGE OF SECONDARY TICKETING

Secondary ticketing refers to the practice of reselling tickets for an event, such as a rock concert or a football match.

The law regarding the secondary sale of football tickets is clear: it is illegal unless the club has given express authorization, such as Manchester City's partnership with *Viagogo*. However, it is still perfectly legal to resell tickets for other events such as gigs and concerts, as long as the sale abides by consumer protection laws.

In the UK and most countries in Europe, the secondary market was dominated by street-based touts operating outside venues, buying tickets cheaply from people who had spares and selling them on to last-minute buyers. While street touts still exist, most commercially astute clubs have through technological innovation revolutionized the ticketing system and made it more attractive and consumer-friendly.

These days the secondary market is dominated by four major players in the UK – StubHub, Viagogo, Seatwave and GetMeIn – which provide online platforms for people to sell on tickets, often at inflated prices, for artists such as Adele and Metallica. Manchester City is just one of the Football Clubs that has entered into strategic partnerships with the major players in the secondary market. Usually, the issue regarding authentic purchases of tickets never comes up until a match is canceled and the fan asks for a refund.

“While many of the people using these sites are genuine fans who cannot attend an event and want to recoup their money, in recent years the practice has become increasingly dominated by a relatively small group of “arm-chair touts”.

the autumn international matches, played at Twickenham stadium in 2010 and the following Six Nations matches played at the same venue in 2011 to enable the RFU to take action against those individuals. This was one of the test cases filed to combat the challenges posed by secondary ticketing which shows that even where there is an existing agency relationship, the margins for infraction remains highly probable.

“In sum, and from a legal point of view, a ticket is a contract between the producer or broadcaster of the show and the audience member. Any change related to the show, therefore, means that the producer/broadcaster does not fulfill his end of the contract, and must refund the viewer if they so wish. The fact that the show is postponed or moved forward (day or time) or that the venue has changed does not alter this reasoning. Ultimately, the holder of a ticket may recover for a total failure of consideration”.

“Typically, football clubs generate revenues from three broad sources, namely broadcasting, commercial activities, and ticket sales. Ticket sales are the most controllable revenue stream for football clubs and charging the right price for a ticket can drive revenues and profits up without any upfront investment”. Hence, to ensure continued growth, football clubs and football leagues need to take advantage of revenue potentials embedded in football ticket sales. The importance and commercial value of fans' presence at football venues cannot be over-emphasized. Steve Parish, a part-owner and the Chairman of Crystal Palace FC, has equally stressed that in an age of broadcast billions, fans who file through the turnstiles remain the *"lifeblood of the game"*. According to him, *"they create all the intrigue, the interest, and all the commercial value is generated first and foremost by those who love football and come to the stadium."*

From the foregoing, therefore, it can be accurately gleaned that the commercial value of ticket sales is a major driver in boosting the total revenue generated by football clubs of successful leagues in the world. Driving this home, the million-dollar question that has remained on every sports analyst's lips is how football clubs playing in the NPFL can optimize revenue from ticket sales. An attempt to answer this question will be futile without first answering the underlying question of *how do we make the game of football attractive enough for the fans to watch live football matches in the stadiums?*

## THE NIGERIAN FAN CONUNDRUM

In the past decade, the Nigerian Premier Football League has suffered a chequered history. Driving through the streets of some of the major cities in Nigeria, one would see teeming fans donning the jerseys of their choice European clubs at drinking joints or haphazardly constructed shanties misnomerly called football viewing centres. The very passionate fans would usually be seated with their attention firmly riveted on the television screen. Others could be seen pacing excitedly and bantering away with opposing fans. The celebration of a goal or a major highlight of the game is often heralded by animated screams that would give the erroneous impression that the national football team was playing. On the other hand, a peep at the football stadium hosting one of the domestic games shows the exact opposite. The various stadia are usually filled with empty seats in the stands with some of the clubs forced to open their gates for the few willing fans to come and watch the game *free of charge*. If Nigeria has this strong football following, why do the stadia continuously remain short of football fans? Several factors have been blamed for this malaise from poor security, dilapidated stands and quality of the games in the domestic league. The *win at home* syndrome of the league for many years which has culminated in questionable officiating has been touted to be one of the major factors affecting the growth of the league.

Unsurprisingly, the agony of watching a live match at a poorly constructed stadium, with bad seats and unusable convenience, kills the passion many have for the game; the bad condition of the stadia has taken the excitement away from the game. Coupled with this is the fact that insecurity at football stadia is on the rise. The fear of being attacked by hooligans hired by home teams keeps many people away from the stadium vicinities during league games. One major factor responsible for the poor management of stadiums and the league itself is the ownership of NPFL clubs. In the past, all the major clubs were owned by business minds whose desire to make profits from the game of football necessitated huge capital investments and better management strategies in running football clubs. Sadly, today they have all been taken over by state governments and are run as political tools. This problem has brought about mismanagement of club funds and poor business development strategies. Flowing from the foregoing, many of the teams are ignorant of the commercial benefits of ticketing in football as a primary revenue stream. The gates of the stadia are opened with reckless abandon. Where there is a ticketing system in place, it is poorly administered and often marred by the activities of ticket touts and hooligans. These practices stunt the growth of the domestic league and drive away foreign investment.



## THE REGULATORY ISSUES

The Regulators of the football leagues have over time, huffed and puffed in enforcing its own rules. Issues of insecurity and fan unrest such as the incident between Kano Pillars and Katsina United in Katsina sometime ago shows a body that lacks the political will to enforce its own rules. Most of the time, major broad cast deals signed by the various leagues do not drive the visibility intended by the league organizers. The broadcast deals either gets abruptly terminated or altogether, abandoned. A case in point is the current NPFL/Startimes TV deal which was abruptly terminated by Startimes citing breaches by the NPFL. This has affected commercialization and investment and would, ultimately, deepen fan apathy.

All these and many more have taken away the excitement and the enthusiasm of football fans in Nigeria to follow the game and visit the stadia to watch their teams play. How then can clubs optimize profit from the presence of fans at the stadium when they are not encouraged to come to the stadiums to watch the game live?



## RECOMMENDATIONS & CONCLUSION

Government ownership of football clubs remains an albatross to the development of football in Nigeria. Clubs have now become appendages of state Governors and their lackeys who would stop at nothing to use them for selfish political gains.

Interestingly, the LMC (now defunct) Framework Rules provided that the divestment of government ownership should be completed before the end of the 2015/2016 season. Four years down the line, football club ownership remains the white elephant projects of politicians in Nigeria.

Profitability remains a major driver of commercialization. Private investment is the catalyst for a functional league system. A league system where the owners can agree on effective rules and enforce the same. A league system populated by private owners would drive commercialization and revive the interest of the fans by instilling an appropriate and efficient ticketing culture that would put the fans first. This, in turn, would increase ticket sales on matchdays and ultimately entrench a viable fan culture that would be characterized by merchandising and fan engagements. Until then, the development of our professional football league would remain a mirage.

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*Player Avatars and proprietary rights in E-sports*

## PLAYER AVATARS AND PROPRIETARY RIGHTS IN E-SPORTS

E-sports tournaments employ a variety of commercial game titles; tournament games span a range of formats and organizational conventions, including both single and team play. Some games depict or mimic physical sports activities, like the FIFA football (soccer) game. This title depicts team football, including the rules used in international professional football, and the display resembles the broadcast of a virtual international football competition. Thus, the display takes a third-person view of the gamer avatars, the field of play, and the action, sometimes from a close-up perspective, sometimes from a “pull back” perspective. Other games, particularly those in the first-person shooter (FPS) genre, typified by the game Counter-Strike, are oriented toward action or combat activity. FPS games depict an armed character traversing a landscape punctuated by obstacles and barriers, shooting at, and generally being shot at by, human or computer-controlled opponents. The games are designated “first-person” because the interface is somewhat unusual, generating a player's eye view of the action, as would be seen by an individual in the field of play, rather than an objective bird's eye or “god's eye” view of the game action.

There have been animated debates on who owns the copyright to casual E-sports performances. Most legal scholars however, opine that whatever the intellectual property status of player characters and performances might otherwise be, the question is most often rendered moot by a game's terms of service. Computer games, including online games, are typically fitted with some type of adhesion contract that purports to allocate to the game publisher any copyright or similar rights accruing to the player. Nonetheless, scholars agree that this is largely a moot point, simply because there is usually not enough at stake for anyone to seriously challenge it. Players are often emotionally and perhaps even legally attached to their online depictions, but that attachment is seldom monetized, and the cost of clarifying the rights to the average person's avatar is likely too high to make the venture worthwhile. The landscape changes when the performance has demonstrable worth because the human behind the avatar is a professional player, who attracts the attention of fans, advertisers, and sponsors; and who generates revenue for his team and his league by means of his performances.

The first question that agitates the mind when mulling copyright considerations for video games is, what type of work is generated during esports play, and how the copyright statute distributes the rights in that particular kind of work. We take the view that the logical place to look for an answer is in copyright cases dealing with video games. Unfortunately, extant video game cases that concern player authorship are generally not helpful on the question. For example, in *Stern Electronics, Inc. v. Kaufman*, the Second Circuit considered the question of player contribution in the context of an infringement suit regarding an arcade-type video game. The defendant in the suit, who produced an allegedly infringing game, challenged the plaintiff's copyright on the grounds that players were in fact the authors of the game's video output. The court, however, reasoned that the players generated only a variation on the plaintiff's game, and declined to consider what degree of player control would be necessary before the game producer would not have contributed enough to the output to be considered an author. Subsequent courts facing the same issue adopted a similar stance, emphasizing the limited number of choices available to the player. A more recent decision, dealing with a desktop game, may point in a different direction, although the reasoning is also somewhat suspect. The dispute in *Micro Star v. FormGen, Inc.* arose out of authorized additions to a computer game.



FormGen, the publisher of the PC game Duke Nukem 3D, made available to its players the tools to develop alternate game levels that would provide a more challenging experience beyond those distributed with the game. FormGen encouraged players to share such “MAP” files via a forum on the company's web site. The instructions in the MAP files would “call up” and sequence, arrange, and display the electronic source art library images provided with the game. The MAP files thus operated together with other components of the Duke Nukem game, but could not themselves independently generate game output. The alleged infringer, Micro Star, compiled collections of the user-created MAP files from the web site, and marketed them on compact discs without either the authorization of the players who created the files or of the game publisher, FormGen. FormGen argued that the MAP files constituted authorized derivative works that contained expression from their game, giving it standing to sue for infringement. Micro Star asserted that the files incorporated no protected expression from the game, because they did not entail a concrete or permanent alteration to FormGen's original expression, but only instructions for arranging material from the game library. In a well-considered ruling by Judge Kozinski, the Ninth Circuit rejected Micro Star's defense, reasoning that the alternate game levels constituted a type of “narrative” regarding the Duke Nukem character and his story. Because the MAP files dictated the placement and sequence of Micro Star's graphics, the court held that they in effect comprised the plot of a new story about Duke Nukem. In other words, by describing the placement and sequence of game graphics, the MAP files were derivative works incorporating protected expression from the game. Essentially, the opinion held that a description of a derivative work is equivalent to a derivative work. Sequencing and arrangement of the game elements via computer coding was recognized as a derivative work, even if sequencing and arranging of the game elements via a joystick or game controller was not. We take the view that despite the somewhat contradictory decisions in these cases, the question of avatar authorship is probably best characterized as one of adaptation or derivative work. Game publishers could be characterized as granting express or implied permission for players to alter or adapt their audiovisual work, resulting in a derivative work of the game as it would be executed without player manipulation. The regulatory landscape for E-sports in Nigeria is largely non-existent, even as the commercialization of E-sports in the country remains a novel concept. Accordingly, disputes on sophisticated issues such as copyright

ownership would only arise when the commercialization potentials of E-sports are realized in Nigeria. We, therefore, reckon that in the absence of a robust regulatory framework, these decisions, albeit persuasive, would form the basis for resolving the copyright issues in E-sports in future.

## REFERENCES

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See Brett Hutchins, *Signs of Meta-Change in Second Modernity: The Growth of E-Sport and the World Cyber Games*, 10 *NEW MEDIA & SOC'Y* 851, 857 (2008)

*Counter-Strike*, originally released in 1999, actually began as a modification (or “mod”) of another FPS, *Half-Life*, created by two *Half-Life* players. See Walt Scacchi, *Computer Game Mods, Modders, Modding, and the Mod Scene*, *FIRST MONDAY*, no. 5, May 2010,

See Jason Gregory, *Game Engine Design* 13 (2009).

See Emma Witkowski, *On the Digital Playing Field: How We “Do Sport” with Networked Computer Games*, 7 *GAMES & CULTURE* 349, 349 (2012)

See Dan L. Burk, *Authorization and Governance in Virtual Worlds*, *FIRST MONDAY*, no. 3, May 2010, <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/2967/2527>.

See Burk, *supra* note 6, at 44.  
669 F.2d 852 (2d Cir. 1982).

See *id.* at 855.

See *Midway Mfg. Co. v. Artic Int'l, Inc.*, 704 F.2d 1009, 1011-12 (7th Cir. 1983); see also *Williams Elecs. v. Artic Int'l, Inc.*, 685 F.2d 870, 874 (3d Cir. 1982).

154 F.3d 1107, 1109 (9th Cir. 1998).  
See Burk, *supra* note 6