

# Hit the Beach: Esports Is Here To Stay

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► **The esports debate – sport or not a sport – misses the point. It’s transcendent entertainment, and already in the big-money mainstream.**

**O**n a recent trip to Folly Beach near Charleston, South Carolina, I found myself people watching. For me, there is something about simply observing other people going about their business that spurs deeper thought and provokes self-reflection. Folly Beach was laden with people from widely varying backgrounds – different socioeconomic statuses, different languages, different races, the list goes on. Yet as I waded in the water and looked back at the masses on the shore, each person had one unwaveringly constant characteristic. Everyone was happy.

This seems to be true every time I go to any beach. But what is it about the ocean that makes people happy? Is it nostalgia – a temporary return to the joys of when we were careless and young? Is it biological – a subconscious reminder of the weightless rhythms and sensations of the womb? Is it religious – a baptismal cleansing of the year’s struggles? I suppose the answer may be unique to each person.

As I reflected on these questions, it occurred to me that when their business is broken to its purest elements, many, if not all, of McNees’ clients are in the beach business: Whether it is a completed product or a component part that is fed into the stream of commerce, each is in the business of attempting to dispense a product which, at bottom, is ultimately intended to bring satisfaction and joy to customers. As counsel to these clients, I see

that their core pursuit speaks to McNees – its values and its purpose. Looking through broken clouds from a bed of the Atlantic, I realized that McNees, whose mission is to enhance our clients’ success, exists to help clients deliver happiness, catharsis and renewal in their own unique mediums. It is why we do what we do.

This was true at the time the firm was founded more than 80 years ago. Back then, it was helping the Hershey Company. Since then, whether it is representing Harley-Davidson or Triple Crown winners, the purpose has not varied. It remains immutable today.

In June, McNees announced the formation of a practice group dedicated to the esports industry. Many who hear of esports for the first time are incredulous, often getting bogged down in the debate of whether esports is a “sport.” The debate

misses the point. The industry is mainstream. In 2018, it will be a \$900 million industry and breach the billion dollar point next year. Goldman Sachs predicts that the industry will approach \$3 billion by 2022. That is \$2 billion in industry growth in a three-year period. There is increasing discussion that esports will be included in the Olympics, either in Tokyo in 2020 or Paris in 2024.

As is clear by these numbers, the industry is not composed of people playing video games in their basements, as you may envision. There are professional teams with professional players and coaches, whose franchise rights cost \$20 million. In our city, Harrisburg University has created a collegiate esports program, recruited the best players from across the globe and given full scholarships to those players. Other colleges and universities across



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the United States are starting to do the same thing. With all of these teams and events, there are new venues and arenas becoming devoted to the industry.

The interest and growth is driven by simple demographics. Just like generations before, people became fans of the sports they grew up playing. Historically, this has meant baseball, football, basketball, hockey, etc. Today, those sports have started to give way to esports. Instead of traditional sports, young males play video games and watch others compete. Just as fans of traditional sports attempt to mimic the moves of their favorite players, esports fans watch others compete in hopes of learning new tools to beat their opponents. The result – the males between ages 15 and 25 watch less television and more video gaming on services like Twitch and YouTube. At any given time, Twitch (which is owned by Amazon) will show several hundred thousand people watching video games.

As with the emergence of any new industry, a host of legal issues develop. One of the most

discussed topics at the moment is unionization and whether players will create associations like those of traditional sports. This is not to mention issues of compensation, employee versus independent contractor, and discriminatory and harassing behavior. Intellectual property rights are omnipresent – with issues such as who owns the rights to broadcasting tournaments and whether use of a specific game is properly licensed. Of course, as advertisers begin to realize that money spent on traditional marketing venues (television) is not effectively reaching the intended audience, they have started adjusting their approach, raising sponsorship, commercial and media contract issues.

One area of particular interest across the country is gambling. The explosion of the esports industry and the timing of the Supreme Court decision on sports betting seems like fate. Since the Supreme Court struck down the Professional and Amateur Sports Protection Act, or “PASPA,” which stood as the last major legal

impediment to sports wagering in the United States, the time is ripe for industry stakeholders and states themselves to capitalize on their ability to offer esports betting and the chance to capture the elusive millennial audience.

The esports betting site Unikrn estimates that legal wagering on esports, done outside the U.S., has amounted to about \$2 billion in wagers and the illegal cash wagering on esports is a market worth about \$8 billion. Currently, there are no uniform integrity standards or regulations, just a hodgepodge of individual leagues and tournaments policing themselves. There is a clear need for more cohesive organization and for government regulators to enter the space.

Nevada is the only state to offer esports on its sportsbook. It is so popular there that the Luxor Las Vegas hotel and casino constructed a state-of-the-art esports venue on its premises. At least one other state that permits sports wagering has expressly prohibited esports on the sportsbook, but other



states that authorize sports betting have either expressly permitted it or have not indicated a position. At the time of this writing, the New Jersey legislature has specifically prohibited esports wagering in the state. West Virginia, on the other hand, has specifically authorized esports wagering in recently published regulations, although their sportsbook has not gone live yet. New York, Mississippi, Connecticut and Pennsylvania have also begun to issue sports wagering regulations,

but none have indicated whether esports will be expressly added or otherwise permitted on the sportsbooks.

Lack of knowledge about esports and the absence of clear authority designating esports as “sports” seem to be reasons esports wagering exists in a gray area. Proponents have pointed to the U.S. Citizenship and Immigration Services issuance of P-1 visas, which are intended for “individual athletes,” to overseas esports athletes playing in the U.S. as evidence of esports’ legitimacy as a sport.

Additionally, the serious consideration given to including esports in future Asian and Olympic games supports the argument. These designations are important because they signal to regulators whether this significant black-market activity should stay in an unregulated zone, or if government oversight is needed to protect consumers.

Regulation provides a level of confidence in the entire industry by ensuring integrity in all facets of the esports ecosystem. Without

the constant threat of corruption, underage gambling, financial crimes and other manipulation, the industry can continue to thrive and those states that have not yet decided whether to include esports on their sportsbooks would do well to educate themselves on the esports phenomenon and engage with the industry to create appropriate regulatory schemes for their jurisdictions. Doing so serves to benefit the gaming industry as well as the public. Government and the gaming industry should bet on esports wagering to have a huge impact in the years to come.

Regardless of the legal issues that arise, the esports industry is here to stay. It is the future of sports and entertainment. It is the new Folly Beach, providing enjoyment that transcends socioeconomic status, race and language for reasons unique to each person. As it develops, McNees Esports will be there, fulfilling the mission envisioned by our founders so many years ago. ■