



Welcome to the new interview of '[Digital Coffee Break in Arbitration](#)' by [Svenja Wachtel](#). I am an attorney and arbitrator in the field of international arbitration and the founder of Digital Coffee Break in Arbitration, an initiative creating a debate around digital transformation in international arbitration. In this series, I discuss the latest trends in the field, covering topics such as the use of technology, digital transformation, and digitalization. Digital Coffee Break in Arbitration invites you to grab a drink, sit back and enjoy first-hand insights from General Counsel, arbitrators, legal scholars and other practitioners from all over the world of international arbitration.

Mr. [Leonid Shmatenko](#) is a vital member of Eversheds Sutherland's data protection and technology law team. His expertise spans regulatory and general issues in eSports and Blockchain. He advises eSports associations, clubs, and crypto startups on legal matters, including ICOs. Additionally, Leonid specializes in international arbitration, representing parties in various esteemed organizations. He currently pursues a PhD in international law and serves as an external lecturer at the National Law University of Ukraine. With bar admissions in Switzerland and Germany, he previously worked at leading law firms in Geneva, Munich, and Paris.



**T**hanks a lot for joining me today, Leonid. It has been some time since you and I last spoke about eSports, so I wonder: What is new? What has changed? But before we go into detail, I would like to cover a few basics for those who are not familiar with eSports yet. What is eSports?

Thank you for having me back to talk about eSports. It's always a pleasure to discuss this rapidly evolving field, especially with someone who shares the same enthusiasm, Svenja. Indeed, a lot has changed in eSports since our last conversation.

For those new to the concept, eSports is essentially competitive video gaming at a professional level. It involves organized tournaments and leagues where players and teams compete in various video games. What started as a niche activity has now blossomed into a global phenomenon, complete with massive audiences, substantial prize pools, and major corporate sponsorships.

One of the most notable changes in the eSports world is the diversification of games that are drawing attention. While traditional favorites like 'League of Legends,' 'Dota 2,' and 'Counter-Strike: Global Offensive' remain popular, we're seeing an upsurge in other genres. For instance, battle royale games like 'Fortnite' and 'Apex

Legends' have created their own niches in the eSports realm.

Another significant development is the increasing integration of eSports into mainstream culture. We're seeing more collaborations between gaming companies and non-gaming industries, be it fashion, music, or even sports. This has helped in broadening the audience and making eSports more accessible to a wider demographic.

The way eSports events are being organized has also evolved. With the pandemic's challenges, there was a massive shift towards online formats. This not only ensured the continuity of tournaments but also introduced innovations in broadcasting and viewer engagement, making the experience more immersive for remote audiences.

Lastly, the investment and infrastructure around eSports have grown exponentially. We're seeing more dedicated eSports arenas, sophisticated training facilities for players, and educational programs focusing on various aspects of gaming, from playing to event management.

Is eSports just a hot topic or do you think that eSports is becoming even more relevant in the future?

eSports is far more than just a hot topic; it's a rapidly growing industry that I believe will become even more relevant in the future. This relevance is not only limited to the gaming community but extends to various sectors including entertainment, technology, and even education.

Firstly, the audience for eSports is expanding dramatically. It's not just gamers who are interested in eSports anymore; it's becoming a mainstream form of entertainment. With platforms like Twitch and YouTube, people from all walks of life can easily access and enjoy eSports content. This broader audience base is a strong indicator of its growing relevance.

Secondly, the technological advancements in gaming, such as improved graphics, faster internet speeds, and the rise of virtual and augmented reality, are making eSports more immersive and engaging. As technology continues to evolve, so will the appeal and accessibility of eSports.

Moreover, the industry is seeing significant investments from major companies and sponsors, which fuels its growth and cements its importance in the entertainment sector. This financial backing not only boosts the production value of eSports events but also helps in nurturing talent and developing the infrastructure required to sustain long-term growth.

Another aspect to consider is the educational and career opportunities emerging in eSports. Universities are beginning to offer scholarships and courses in eSports, recognizing its potential as a professional career path. This educational integration is a clear sign of its increasing relevance and legitimacy.

Finally, the impact of eSports on traditional sports cannot be ignored. Many sports organizations are launching their own eSports teams or leagues, recognizing the potential to reach new audiences and

stay relevant in a digital age.

How did you get personally involved in eSports and made a link to your profession in international arbitration? What was there first in your life: eSports or arbitration?

My journey into eSports has been quite an interesting and unique one, intertwined with my professional life in international arbitration. It all started with my passion for gaming, which predates my legal career. Between 2004 and 2007, I ran 'Pocketgaming.de,' a website dedicated to reviewing games for Pocket PC, the precursor to the iPhone. This was my first foray into the gaming world, and it laid the foundation for my enduring interest in this area.

In 2006, while I was deeply immersed in the gaming world, I began my studies in law. This new academic pursuit opened up a different path – one that led me to participate in the Willem

C. Vis Moot court in 2008/2009. This experience was pivotal in shaping my career in international arbitration. It was here that I recognized the potential for combining my passion for gaming with my legal expertise.

After my initial involvement in the Vis Moot court, arbitration became a significant part of my professional life. However, I never drifted away from gaming. I continued to engage with games, most notably with Hearthstone, which kept me connected to the evolving world of eSports.

The link between my profession in international arbitration and eSports became more apparent over time. As eSports grew, so did the complexity of its legal landscape – ranging from player contracts to intellectual property rights and dispute resolution. My background in law and my firsthand experience with gaming put me in a unique position to understand and navigate these legal intricacies.

In essence, gaming was first in my life, a passion that

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started well before my legal career. However, it was my professional experience in arbitration that allowed me to view eSports through a legal lens and contribute to this field in a meaningful way. This blend of personal interest and professional expertise has been incredibly fulfilling, allowing me to stay true to my passion while applying my legal acumen to a field that continues to grow and evolve.

When researching the questions for our interview, I came across prize money in the amount of USD 3.6m. These figures are extraordinarily high and I assume that a dispute is not far off the road when we talk about big money?

Indeed, the significant prize pools in eSports, such as the USD 3.6 million figure you mentioned, highlight the substantial financial stakes involved in this industry. With such high amounts of money on the line, disputes are almost inevitable. The combination of high stakes, diverse stakeholders, and the global nature of eSports means that the potential for disagreements and legal challenges is considerable.

What are the key factors that lead to a dispute?

Several factors contribute to the likelihood of disputes in eSports. Firstly, the structure of eSports organizations and the relationships between players, teams, and sponsors can be complex. Contractual disputes are common, often revolving around issues like player transfers, sponsorships, and revenue sharing.

Secondly, the intellectual property rights associated with games and broadcasts can lead to legal challenges. As the eSports industry grows, so does the need to navigate these rights carefully, especially in a digital environment where content can be easily replicated and distributed.

Additionally, with the global nature of eSports, jurisdictional issues often arise. Different countries

have varying legal frameworks, which can complicate dispute resolution. This is where my background in international arbitration becomes particularly relevant. Arbitration offers a neutral, efficient, and flexible means of resolving cross-border disputes, which is crucial in a global industry like eSports.

Also, as the stakes in eSports continue to rise, so does the scrutiny on issues such as match-fixing, cheating, and doping. These integrity issues not only have legal implications but also affect the reputation and credibility of eSports as a whole.

I am intrigued to understand how 'doping' in eSports plays out. But before we dive into that I would like to

know what are the disputes that arise in eSport?

Disputes in eSports are as diverse and complex as the industry itself. These disputes can arise from various aspects of the eSports ecosystem, involving players, teams, organizers, sponsors, and game developers. Here are some of the key types of disputes that commonly occur:

**Contractual Disputes:** These are perhaps the most common and involve

issues related to contracts between players and teams, sponsorship agreements, and rights to streaming and broadcasting. Disputes often arise over contract terms, player transfers, salary, and sponsorship deals.

**Intellectual Property (IP) Rights:** Given that eSports revolves around video games, IP rights play a crucial role. Disputes can arise over the unauthorized use of game content, streaming rights, and branding. These disputes become more complex when multiple jurisdictions are involved.

**Employment Issues:** eSports players may face issues similar to traditional employment disputes, including unfair dismissal, working conditions, and compensation. As the line between independent contractors and employees blurs in this industry, such

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disputes are increasingly coming to the fore.

**Cheating and Fair Play:** Cheating, doping, and match-fixing are significant concerns in eSports. Disputes arise over allegations of unfair play, use of unauthorized software or hardware, and other actions that compromise the integrity of competitions.

**Governance and Regulatory Disputes:** As eSports lacks a unified global governing body, disputes related to governance, including the enforcement of rules and regulations, can be challenging. Different organizations and events may have their own set of rules, leading to inconsistencies and disputes.

**Prize Money and Revenue Sharing:** With large prize pools, disputes over the distribution of winnings are common. These disputes can involve players, teams, and organizers, particularly where the terms of distribution are not clearly defined.

**Jurisdictional and Cross-Border Issues:** Given the global nature of eSports, cross-border disputes are common. These can involve questions about which country's laws apply and which courts or arbitration bodies have jurisdiction.

In my role, drawing on my experience in international arbitration, I often deal with these disputes by providing legal advice, drafting fair and comprehensive contracts, and representing parties in arbitration proceedings. The goal is always to find a resolution that is not only legally sound but also respects the unique culture and dynamics of the eSports world. As the industry continues to mature, the development of more standardized legal practices and dispute resolution mechanisms will be crucial to addressing these challenges effectively.

**Are these disputes usually solved in an arbitration or are these disputes litigated?**

In the eSports industry, the resolution of disputes tends to lean more towards arbitration rather than traditional

litigation, though both methods are used.

Recently there were two significant arbitrations in the eSports realm:

- The Bahrain Esports Federation (BESF) filed an appeal to the Court of Arbitration for Sport (CAS) over a refereeing decision during the Asian Games, which they believed unfairly deprived their team of a medal. ([Bahrain Files Esports Dispute to the TAS/CAS](#)).
- Bungie's legal battle against AimJunkies was resolved through arbitration. The arbitration process was conducted privately, and Judge

Ronald Cox ruled in favor of Bungie, awarding them damages and fees totalling USD 4.3 million. This case involved allegations of DMCA anti-circumvention provisions, trafficking violations, breach of contract, and other issues. Some aspects of the dispute, particularly those related to copyright infringement, are scheduled for trial, indicating a combination

of arbitration and litigation in this case. ([Bungie Triumphs in USD 4.3m Arbitration Case Against AimJunkies](#))

The preference for arbitration over litigation is due to several factors that make it more suited to the unique nature of the eSports environment.

**What are the key factors to use arbitration as dispute-solving tool?**

**Speed and Efficiency:** Arbitration is generally faster than court litigation. In the fast-paced world of eSports, where the resolution of disputes can be time-sensitive (especially during ongoing leagues or tournaments), the efficiency of arbitration is highly valued.

**Expertise:** Arbitrators with specific expertise in eSports and related legal issues can be chosen. This specialized knowledge is crucial in understanding the nuances of disputes in this field, which might be challenging for a traditional court.

**Flexibility:** Arbitration allows for more flexibility in terms of procedure and scheduling, which is advantageous given the international nature of eSports and the varying schedules of players and organizations involved.

**Confidentiality:** Arbitration proceedings are private, which is often preferred in the eSports industry to protect the reputations of the parties involved and to maintain confidentiality over sensitive commercial matters.

**Enforceability:** Arbitral awards are generally easier to enforce internationally than court judgments, thanks to treaties like the New York Convention. Given the global nature of eSports, with players, teams, and companies often based in different countries, this is a significant advantage.

### Is there a special arbitral institution for disputes in the area of eSports?

Yes, there is a growing recognition of the need for specialized arbitration institutions to handle disputes in the eSports arena. This has led to the emergence of arbitration bodies specifically tailored to address the unique aspects of eSports disputes. One notable example is the World Esports Association (WESA)'s Arbitration Court, established to offer an independent means to resolve disputes within the eSports industry.

The WESA Arbitration Court is designed to handle a wide range of disputes, including contractual issues, employment matters, and intellectual property rights, among others.

However, WESA has been involved in various aspects of eSports governance but faces criticism for not effectively addressing the need for a specialized arbitration court. WESA, along with other entities, has not sufficiently tackled the issues of unclear disciplinary procedures, conflicts of interest, and disputes between players and organizations (see [eSports is in a dire need of arbitration court - here's why](#)).

### What makes eSports arbitration different to a commercial arbitration for example?

eSports arbitration, while sharing some fundamental principles with commercial arbitration, has distinct characteristics that set it apart. These differences stem from the unique nature of the eSports industry, its

stakeholders, and the types of disputes that arise. Here are some key aspects where eSports arbitration differs from typical commercial arbitration:

**Subject Matter Expertise:** eSports arbitration requires arbitrators to have a specific understanding of the gaming industry, including knowledge of the games themselves, the culture of gaming, and the dynamics of eSports competitions and organizations. This level of expertise is not typically required in standard commercial arbitration.

**Nature of Disputes:** The disputes in eSports often involve elements unique to the industry, such as game mechanics, player behavior, and tournament rules, which are not commonly found in traditional commercial disputes.

**Speed of Resolution:** Given the fast-paced nature of eSports, with continuous competitions and rapidly changing team dynamics, there is often a need for quicker dispute resolution compared to traditional commercial arbitration. Delays in resolving disputes can have immediate impacts on ongoing competitions or player careers.

**Global and Cross-Jurisdictional Issues:** eSports is inherently international, often involving parties from different countries and legal systems. This global aspect requires a more nuanced approach to jurisdiction, applicable law, and enforcement of awards than what might be encountered in more localized commercial arbitrations.

**Technological Aspects:** eSports arbitrations may involve complex technical issues related to software, online platforms, and digital rights, which are less common in general commercial arbitration.

**Youthful Demographic and Community Engagement:** The eSports audience and player base tend to be younger. This demographic can impact everything from the communication style to the types of issues that arise in arbitration. Moreover, community perception and engagement play a significant role in the eSports world, which can influence dispute resolution processes and outcomes.

**Integrity Issues:** Issues like cheating, doping, or match-fixing, while not exclusive to eSports, have unique manifestations in this context, often requiring specialized knowledge and investigation methods.

When someone decides to enter the field of eSport and arbitration, what are the must-read decisions in eSports?

The *Bungie Inc. v. Aimjunkies.com* arbitration (JAMS Arbitration No. 5160000075) is a pivotal decision in the context of eSports and arbitration. This case, revolving around issues like intellectual property infringement and contractual disputes within the gaming industry, is a significant example of how arbitration is utilized to resolve complex legal matters in eSports.

For someone entering the field of eSports and arbitration, studying this case would provide valuable insights into the types of legal challenges faced in the industry, as well as the nuances of handling such disputes through arbitration. The decision illustrates the application of laws like the Digital Millennium Copyright Act (DMCA) in the gaming context, demonstrating the legal intricacies unique to this sector.

How can one stay up-to-date in this ever-evolving industry?

Keeping up to date with recent and relevant decisions is crucial in this rapidly evolving field. Websites like [EsportsLegal.News](#) offer a valuable resource for staying informed about the latest developments, rulings, and discussions in eSports law and arbitration. Regularly consulting such platforms will help anyone entering this field remain knowledgeable about current trends, landmark cases, and significant legal precedents shaping the world of eSports arbitration.

What surprised you the most when having your first arbitration case in eSports?

What surprised me the most during my first arbitration case in eSports was the unique combination of complex legal issues with the intricacies of the gaming world. This blend presented challenges and nuances that are quite distinct from more traditional legal disputes.

**Depth of Industry Knowledge Required:** The level of specific gaming and industry knowledge required was more extensive than I initially anticipated.

Understanding the nuances of the particular game involved, the culture of its player community, and the specific norms and practices of the eSports ecosystem was crucial. This level of detail goes beyond what is typically required in general commercial arbitration.

**Technological Complexities:** The case involved intricate technological aspects that were central to the dispute. This required a deep dive into the technicalities of gaming software, online platforms, and digital rights management. The technological aspect of eSports disputes can be quite complex and differs significantly from traditional arbitration cases.

**Speed of Proceedings:** The pace at which the eSports arbitration needed to move was another surprising aspect. In the eSports world, where player careers and competition schedules are on the line, there is an urgency to resolve disputes quickly and efficiently. This contrasts with the often slower pace of traditional legal processes.

**Global and Cultural Diversity:** The international nature of the case was striking, involving parties from different countries with diverse legal backgrounds and cultural perspectives. Navigating these cross-border and multicultural aspects added an additional layer of complexity to the arbitration process.

Overall, my first arbitration case in eSports was a learning experience that highlighted the unique blend of legal, technological, and cultural elements in this field. It reinforced the need for arbitrators in eSports to not only have a solid legal grounding but also a comprehensive understanding of the specific dynamics of the gaming world.

- End of Part 1 of 2 -