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ESPORTS IN THE TIME OF PHYSICAL DISTANCING

by Jennifer J. Gaynor, Gregory R. Gemignani, Kate C. Lowenhar-Fisher, and Jeffrey A. Silver

The COVID-19 virus pandemic has been the most disruptive event to impact the gaming industry in Nevada in the past 100 years. Not since Nevada outlawed gaming in 1909 has the state’s gaming industry faced compelled closure. In fact, in the years since Nevada brought back wide-open licensed gaming in 1931, Nevada’s casinos have never been closed.

Nevada’s casinos didn’t close on or after the attack on Pearl Harbor on December 7, 1941; they didn’t close when the U.S. went on high alert after the death of Stalin in 1953; and they didn’t close after the terrorist attacks of September 11, 2001. Therefore, history was made on March 17, 2020 when the Governor of Nevada announced a general closure of all nonessential businesses, including gaming establishments, in order to slow the spread of COVID-19 in our state.

During the 2020 NFL Draft, aerial shots of the Las Vegas strip revealing no activity were broadcast to viewers around the world. To the outside world, Nevada gaming appeared to be completely dead, at least temporarily. In addition, with the NBA, NHL, and MLB pausing and then canceling all or part of their playing season and the NFL canceling its draft event, the sports wagering world in Nevada looked equally dead.

Looks may be deceiving, however. Although the sports wagering market in Nevada has been severely impacted, it is far from dead.

Since March 17th, the Nevada Gaming Control Board has administratively approved wagering on nearly a dozen esports events through Nevada licensed bookmakers. For those not familiar with the term, esports are competitive video game contests. Esports events that have been approved thus far include ELS Road to Rio (Counter Strike: Go), Call of Duty League, League of Legends European Masters, Overwatch League, North American League of Legends Championship Series, ESL One-DOTA2, Los Angeles, and others.

Although the volume of wagering on these esports events has been small compared to sports wagering under normal circumstances, wagering on esports has proven resistant to the measures taken to slow the spread of COVID-19. This is in part because competitive video gaming is a non-physical

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contact event. Therefore, it can easily meet physical distancing requirements. Likewise, because most popular games are PC-based, real-time streaming is common and streams can be watched at home, over popular streaming services (such as TWITCH, HUYA, and YouTube), and can even be adapted for streaming into limited occupancy viewing rooms to comply with distancing requirements once venues are permitted to reopen.

This durability is attractive at a time when the specter of repeated periodic industry closures looms overhead.

For years there has been a steady hum of hype surrounding esports and betting on esports events. The hype is directly related to viewership statistics. Globally, more than 100 million viewers watched the League of Legends championship – the largest global esports event – last year. To put this in perspective, 99.9 million people around the world watched the NFL Super Bowl Championship earlier this year. Additionally, tournament prizes and team salaries are significant enough to support a vibrant professional “esports athlete” community. While there is no question that esports events currently are more popular in Asian countries and European countries than they are in the U.S., viewership and participation at large events are rising rapidly in the United States.

Is Nevada ready to embrace a rise in esports? In terms of regulation, the answer is yes. In Nevada, sports pool businesses are permitted to take wagers on sporting events and “other events.”

Most major professional sports fall under the umbrella of “sporting events.” They have unifying governing bodies, and Nevada books are permitted to accept wagers on events sanctioned by such governing bodies.

Esports events are not conducted under the auspices of a unifying governing body, and often events are conducted or sponsored by game publishers, independent leagues, or independent promoters. As such, esports events are deemed to be “other events” by Nevada gaming regulators. Thus, a sports pool licensee must get explicit approval from Nevada gaming regulators before taking wagers on such “other events.”

A request for such approval must include the following:

- A full description of the event and the manner in which wagers would be placed and winning wagers would be determined.
- A full description of any technology which is necessary to determine the outcome of the event.
- Other information or documentation which demonstrates that:
 - The event is effectively supervised;
 - There are integrity safeguards in place;
 - The outcome of the event is verifiable;
 - The outcome of the event is generated by a reliable and independent process;
 - The outcome of the event is unlikely to be affected by any wager placed;
 - The event will be conducted in compliance with any applicable laws; and
 - The granting of the request for approval is consistent with the public policy of the state.
- The complete event rules and voting procedures.

In addition, although Nevada regulators do not recognize the current governing bodies of esports events like they do for many other long-established traditional sports leagues, there are memoranda of understanding with some organizations, such as the Esports Integrity Commission (ESIC). Based in the U.K., ESIC has a long-standing history of protecting integrity in esports competitions. As such, many ESIC-approved events receive approval in Nevada for the purposes of being an event on which wagering is permitted.

The approval process is thorough and the onus is on the applicant to convince regulators that wagering on the event is consistent with applicable laws and policies. Rejection (or further consideration that makes wagering irrelevant given the timing) is a significant risk.



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Moreover, the approval of wagers for esports tournaments is still done on a case-by-case basis, allowing only for straight bets on the winner of each tournament and qualifying round. The more esoteric wagers, such as number of kills or first to capture various landmarks, would have to be applied for with the appropriate proof that these events within the game, which might not necessarily determine the outcome, can be safely managed.

For these reasons, any bookmaker or event operator hoping to have wagering on an event should contact their gaming attorney right away to create a submission that has the highest chance for regulatory approval.

Once approved, Nevada regulators will publish the approval and all sports pool licensees will be permitted to accept wagers on the approved event.

Conclusion: Nevada is ready for and increasingly embracing esports. Though initial adoption has been slow, the staggering worldwide viewership numbers hold a lot of promise, and esports provide a glimmer of hope for ongoing competitive content and betting subject matter during times when physical distancing limits traditional sports events and wagering activity.

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