

CONVERSATION WITH AN EXPERT: THE BUSINESS OF ESPORTS AND GAMING

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The world of esports and gaming has become a true power industry, vastly different from how it was even a decade ago. New developments in technology and communications have built up a strong infrastructure for making dynamic changes. As the legal landscape around esports continues to evolve and public support for events and products grow, many have taken note. As with any booming industry, learning about the ins and outs of the diverse and fast-growing sector can be overwhelming.

To take a closer look at the latest developments and trends in this business, we have turned to one of the region's leading authorities, Dennis Ehling of Blank Rome LLP, who graciously weighed in.



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Q: FROM YOUR PERSPECTIVE, IN WHAT WAYS HAS THE COVID-19 PANDEMIC CHANGED THE GAMING LANDSCAPE?

Prior to COVID-19, there had been a steady move of gaming in the United States to online. In the last decade, with a few notable exceptions (e.g., Virginia), nearly all of the growth in the gaming market has been online. Since 2018, legal sports betting has expanded to nearly 30 states and the overwhelming majority of state legislatures have also authorized online sports betting. COVID-19 accelerated that trend. Stakeholders have seen through the experience of New Jersey and Pennsylvania that these new gaming operations can be done quickly, efficiently, and safely, bringing new revenue to existing casino and racing facilities and new taxes to the state. With restrictions on public gatherings and the hesitance of customers to return to crowded spaces, legislatures, governors, and regulators have realized that allowing gaming online—primarily sport, but also increasingly casino—is essential to generate the tax revenue that governments expected when they expanded legalized gambling. As just one example, when Illinois passed its Sports Wagering Act in

been possible if it were dependent on live, in-person events. Still, it will be very interesting to see whether the inability for many months to put on large-scale in-person esports tournament events that were growing in 2018-19 will put a lasting dent in the growth of that model. Will fans come back to those events as enthusiastically as they have for other sports events, such as NFL and NBA games, or will fans be slower to come back to esports events? Will it make a difference that esports events were not as established, and are not as consistently supported by leagues as well-known as the NFL, MLB, NHL, NBA, and MLS? How much does a nearly two-year pause stunt the growth of those types of live events and what, if any, effect does that have on the growth of the popularity of esports generally? Will there be pressure to coordinate and combine existing esports leagues in order to foster growth in in-person events? It will definitely be interesting to observe how the industry grows and morphs over the next 12-24 months.

Q: HOW HAVE THE BUSINESSES YOU WORK WITH RESPONDED TO THE PANDEMIC AND WHAT HAVE YOU COUNSELED THEM TO DO?

As with many other businesses, gaming companies, and particularly online gaming companies, showed that they could migrate their workforce to largely remote working environments. Many of these companies have already been multi-national, with teams and resources scattered across primarily the United States, Europe, Asia and Australia. Moreover, given the huge need for talent in these growing companies, being able to attract that talent who can work remotely from different geographies, even just within the U.S., is a great advantage in a tight labor market. So, in some ways, the move to remote working environments has not been as challenging as it might be in more geographically limited industries. In times of rapid expansion, such as what the gaming space in the United States is experiencing now, most organizations find that building a cohesive team is critical to keeping up. I have seen some of my clients struggle to develop a balance of remote working and maintaining cohesiveness as their teams grow. Throughout the COVID-19 pandemic, Blank Rome has regularly gathered and shared with our clients intelligence on what other companies and industries are doing to navigate remote working and return-to-the-office strategies.

Q: WHAT IS YOUR PROJECTION FOR BRICK-AND-MORTAR GAMING BUSINESSES MOVING FORWARD?

As I have said, brick-and-mortar retail gaming operations provide a lot more to their customers than just gaming. They provide shopping, dining, and entertainment, all of which customers have shown that they want. They employ lots of people, which makes policy makers happy. I do not see that going away any time soon, and certainly not in my lifetime. But the smart operators are also innovating how they make their in-person gaming experience different and attractive at a time when legal online gaming offerings are becoming plentiful and looking how to integrate in-person and online into a more complementary entertainment experience. I do not think that brick-and-mortar operators are going to be able to consistently capture the business of someone who just wants to put a bet on their favorite team; but there is a social aspect to gaming, particularly in the United States, that brick-and-mortar operators can continue to capitalize upon.

Q: WHAT ARE THE PROS AND CONS TO BEING BASED IN LOS ANGELES OR CALIFORNIA?

California is, in some ways, the largest untapped (or under-tapped) gaming market in the world. In both the sport and online wagering spaces, there is tremendous opportunity for growth here. There is also great

potential for the gaming industry to influence, and be influenced by, the film, television, and music industries, as well as the video game industry. Yet there are few experienced gaming lawyers here in California, let alone Los Angeles. I think that gives our team at Blank Rome the opportunity to positively impact anything significant that happens in gaming in California. On the other hand, although California already has a strong retail gaming industry with tribal casinos, horse racing, and licensed card rooms, it has long been overshadowed in the perception of the

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industry by Nevada, New Jersey, and of late, other gaming states. So as gaming lawyers we need to be active across the country. Fortunately, Blank Rome is one of the few firms with a truly nationwide gaming practice, so we are involved in just about every U.S. gaming jurisdiction today.

Q: WHAT KEEPS GAMING COMPANIES UP AT NIGHT HEADING INTO 2022?

Without doubt, the three challenges I hear from my clients are: "How do I keep up with the rapid expansion in multiple states across the U.S. and not miss out on any opportunities along the way?"; "How do I manage operating what are effectively 20+ discrete but parallel businesses, because each state requires something different and requires them to be stand-alone operations (and the federal Wire Act largely limits multi-state operations)?"; and "What legal issues haven't we had time to think about?" The challenge for any business in a rapidly expanding market is scalability, and a lot of these companies have focused tremendously on the scalability of their technology. But scalability of people and parallel organizations is a whole other challenge. We are an asset to our clients as they scale into multiple jurisdictions because we know their businesses so well and are familiar with the different legal and regulatory requirements from state to state. Our clients lean on us for help with the legal, operational, and regulatory challenges they face as they continue to expand.

Q: WHAT ADVICE WOULD YOU OFFER TO AN EARLY-STAGE GAMING OR ESPORTS COMPANY SEEKING GROWTH CAPITAL FOR 2022?

This is definitely a time to be aggressive in seeking growth capital. A year ago, money was flowing into the gaming space at a record pace. It still is coming in, but the unrestrained exuberance has started to calm down. Early-stage companies in gaming and esports need to show more progress toward their business goals to attract capital, and later stage companies are in the first wave of what I think will be multiple waves of consolidation. As that consolidation plays out among the middle- to late-stage companies, more capital will be available to be reinvested in emerging companies. But the gaming and esports markets are more mature so capital seeking high-reward opportunities are going to be more discerning. Founders need to be aggressive at this stage in distinguishing features of their business compared to others in the space, identifying what is needed to achieve their near-term and mid-term business goals, and obtaining the capital (financial and human) to be well positioned to attract second, third, and fourth rounds of funding.

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2019, even though it authorized online sports wagering, it initially required customers to establish their accounts in person. By the time Illinois was ready to launch sports wagering in March 2020, visiting a retail sports wagering outlet to register for a mobile wagering account was impractical because of COVID-19. So, the Illinois governor issued an emergency order to allow accounts to be created online, which later became part of the permanent regulations of the Illinois Gaming Board. No doubt this experience influenced legislators in other states over the last two years as they looked to expand legal wagering in their states.

Q: WHICH OF THE CHANGES TO THE GAMING LANDSCAPE ARE TEMPORARY AND WHICH ARE HERE FOR THE LONG TERM?

I think the move to more gaming being available online is a long-term shift. From an entertainment business' perspective, there will always be a need for the customer gambling "experience" in physical facilities. There will also always be some interest in protecting investment in retail, bricks-and-mortar casino operations. As a practical matter, those facilities generate employment at a higher rate and create more opportunities for shopping and entertainment offerings. That is seen as a social "good" that governments are going to continue to foster. The competition to be a market leader in the online space is very expensive and challenging for gaming companies, so some casino operators have already begun to position their online offerings more for how they can complement their retail operations than for how they can leverage the strength of their retail brand into the online environment. But there is no doubt that, as with so many other consumer markets, growth will continue to focus on the online space in the next several years and, likely, decades.

Q: DID THE PANDEMIC HAVE A SIGNIFICANT EFFECT ON ESPORTS?

In some ways, yes, certainly. As with other forms of entertainment, the ability to watch and participate in esports online, socially distanced, no doubt allowed the industry to continue to grow in 2020-21 in ways that would not have