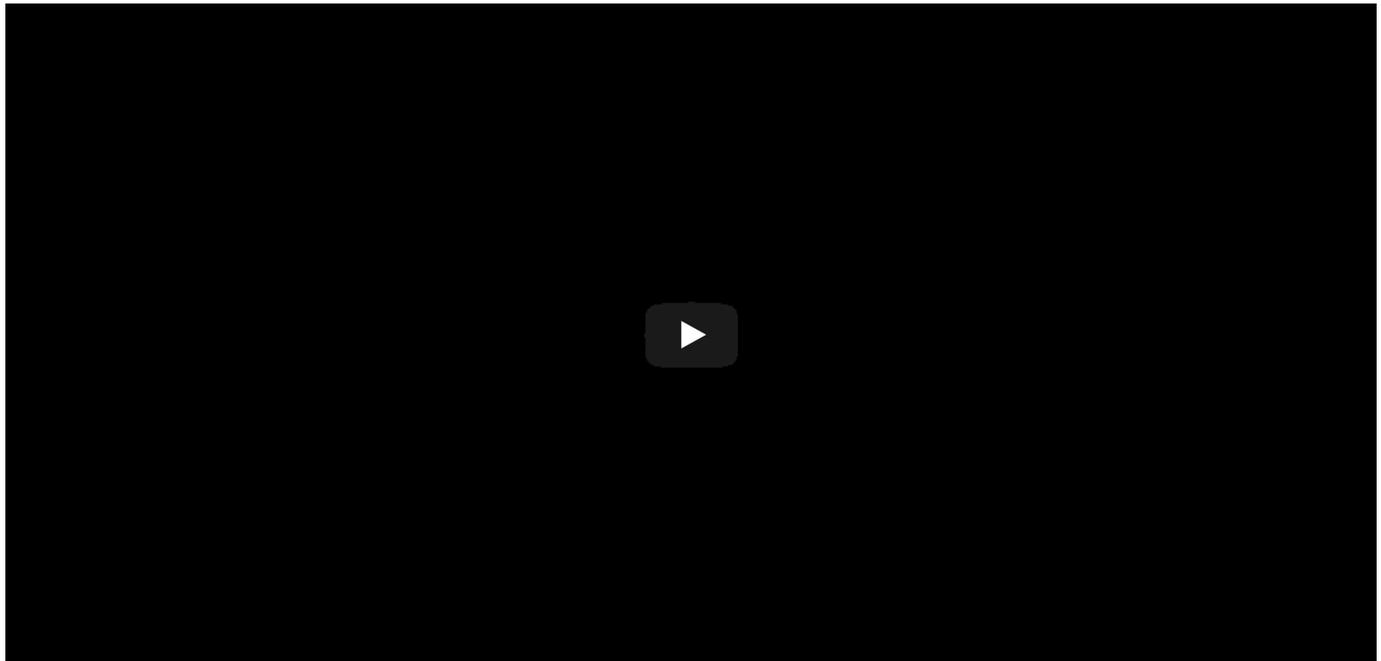


# S1:E9 - Investing in Esports: Putting Your Money Where Your Mouse Is

ESPORTS AND ELECTRONIC GAMING | MEDIA, ENTERTAINMENT, MUSIC & SPORTS | TECHNOLOGY & TELECOMMUNICATIONS | JUNE 5, 2019



**Adam T. Smith**



Join Steve and Nick as they discuss the spectacular rise of esports, as well as various ways companies are investing in esports. They are joined by startup and venture capital investor and advisor to the firm Adam Smith, who highlights some of the concerns unique to investing in esports and businesses in this space.

## **Transcript:**

**Steve:** Welcome to the LAN Party Lawyers Podcast, the podcast that features two lawyers tackling issues at the intersection of video games, law, and business. My name is Steve Blickensderfer and with me is my co-host, Nick Brown.

**Nick:** Hello.

**Steve:** And through debate, discussion and interviews, our episodes explore issues facing everyone in the fast-developing video game industry. Connect with us on our social media, including Instagram, or on our webpage LANPartyLawyers.com. Nick, on today's episode, we'll be talking about esports, specifically the legal and practical implications of investing in esports, but you already knew that. We've invited our colleague, Adam Smith, to join us and discuss some of these issues. He is a venture investor, advisor, and a former in-house lawyer with considerable expertise in the tech space with investing, with startups and primarily based out of our Miami office here. During our interview, we're going to be going over a couple of scenarios. We thought it best to illustrate some of the points we'll be talking about, to go through some case studies. So, we'll be going through that with Adam, but first, Nick, let's get started. What do we mean when we're talking about esports? What is esports?

**Nick:** Well, esports means different things to different people, but right now it essentially means, it's competitive gaming at a professional level. Usually, it involves tournaments that are either public or private and they have a specific goal like narrowing the pool of competitors down, either in teams or individual competitors, down to produce a final champion. Some games really are more conducive to esports than others because they're very well made, they have very few bugs and

glitches, and they're very predictable in terms of how the mechanics work. And certain games have really taken off in the esports scene. Some really popular genres for esports are MOBAs, which is short for multiplayer online battle arena, and that's you League of Legends and your DOTAs, and your Heroes of the Storm. There's also a bunch of esports that take place with competitive shooter, first-person shooters, like Counter Strike, Global Offensive, and you also see, my personal favorite are RTS games, like StarCraft II, where you command a whole battle from a top-down view.

**Steve:** You really like, you really like Roller Coaster Tycoon. That's your real time strategy game.

**Nick:** It's, yeah I do. I've never been able to get that, you know, my Roller Coaster Tycoon skill to a competitive level, but you know, I'm still grinding.

**Steve:** I can just see everybody in your park just throwing up all the time with those green faces.

**Nick:** Alright, well, you're not invited.

**Steve:** Well, one thing I wanted to ask you about this, because when you think of esports, you think of competitions, official rules and regulations, but what's to say me setting up a LAN party, which is a local area network for those who don't know, where all computers are connected and I throw \$50 down, is that an esports competition? I mean, where's the line?

**Nick:** I mean, technically that's a competition. I don't know how many people would show up to claim your \$50 prize, but...

**Steve:** Money's money.

**Nick:** Any kind of competitive gaming is technically an esports. Yeah, it'll be the difference between, you know, playing a pick-up game of basketball and going to an NBA game, I suppose.

**Steve:** Well, one thing my, I think my question highlights is that this is such an amorphous term, perhaps, that esports to you isn't necessarily the same esports to me. I don't know if there's a general consensus other than a competitive level of video games. So anyway, I'm just putting that, put a pin in that, Nick. We'll probably hit that a little later in the podcast as we talk about esports.

**Nick:** Okay well, philosophy aside, as an industry, we can be certain that esports is just really blowing up. Newzoo says that by 2020, it's going to be a \$2.4 billion industry by revenue. Goldman Sachs recently did a report back in October on esports. It's called, I believe it's called Esports Hits the Big Leagues. And they estimated that in 2018, esports have 167 million monthly audience, but by 2022, it's going to be a 276 million monthly audience, which would be on par with the NFL. Right now, they estimate that the combined Youtube and Twitch audience is bigger than the combined audiences of HBO, Netflix and ESPN. So, this is no small phenomenon. It's attracting a ton of attention.

**Steve:** And it's also seeing a lot of high-profile investments.

**Nick:** With attention and media coverage and popularity follows high-profile investments and we've been seeing a ton. I don't know what your world is like, but in my world, it seems I don't go more than a couple days without seeing some big, new investor stepping into the esports stage. You've got entertainers, like traditional entertainers, like the musician, Drake, the actor, Ashton Kutcher...

**Steve:** J. Lo.

**Nick:** Multitalented J. Lo.

**Steve:** Yeah.

**Nick:** Will Smith is in it and Puff Daddy—P. Diddy, Diddy—I don't know what he goes by now. I sometimes call him Dr. Jinx because I'm an It's Always Sunny fan, but he's...

**Steve:** Good show.

**Nick:** He's dipped his toe into the pool, as well. In addition, traditional sports athletes have jumped in too, Stephen Curry, Shaq, A-Rod.

**Steve:** Rick Fox probably started this whole thing with Echo Fox.

**Nick:** Maybe.

**Steve:** There you go, L.A. Laker fans out there.

**Nick:** Shaq has invested. A-Rod has invested. Michael Jordan and also other traditional sports folks that aren't athletes themselves like Mark Cuban and Jerry Jones have gotten into it. So, there's a whole bunch of high-profile investments being made into esports right now and we think it's only going to take off even further.

**Steve:** And there have even been companies that have made public offerings and you can buy stocks in these companies. One such company, actually, the first such esports company is Super League Gaming, which had a \$25 million dollar IPO earlier this year, which...

**Nick:** That's a lot of money.

**Steve:** That's a lot and it was found, a 2015 company which, really, their MO is they hold local competitions, arguably, esports competitions in local areas, local, you know, movie theaters or whatnot and...

**Nick:** It's definitely esports competitions.

**Steve:** Yeah, so they work with individuals to grow the competition of video games and esports and they work with brands to come in to sponsor these events, like, Logitech, I think, is one of their current sponsors and that brand gets an exposure to all these players and maybe they use the brands. I don't know, but interesting model, you know, I think the biggest news is just that it was an esports company that had, you know, an IPO of that size and magnitude.

**Nick:** Yeah, I understand that the share value's gone down a bit since their IPO and, you know, that's really not too shocking. The IPO market for tech companies overall can be volatile and there's been some economic and trade instability in the past few months that may have contributed to that as well, but the bottom line is a lot of people are watching Super League to see how it goes and to decide if they want to jump in themselves and invest further into the esports scene.

**Steve:** Yep, and it does show you, though, there is just a tremendous appetite for investment in this space. You know, you rattled off a bunch of high-profile, A-list celebrities' names, but there are also a lot of high-profile, A-list investor companies, investment companies that are investing in this space behind a lot of these artists which is notable in and of itself.

**Nick:** Yeah, and maybe the best example of that is the Overwatch League which is put on by Blizzard. It's a professional esports league for a game made by Activision Blizzard called Overwatch and the Overwatch League follows the model of traditional American professional sports teams. You'll remember, we talked about this a little bit on the floor of Ultimate Gamer, when we talked to Arda Ocal.

**Steve:** Who has a great podcast on esports, by the way, The Business of esports podcast. Check it out. It's a really good one if you're just interested in the business side of esports.

**Nick:** Agreed.

**Steve:** Just a shameless plug right there.

**Nick:** So, the Overwatch League, just like traditional American professional sports teams, they have permanent city-based teams, like the San Francisco Shock or the Toronto Defiant. And the teams, just like traditional sports like football or baseball, they're privately owned. And some are owned by, in fact, owners of traditional sports teams, like The Kraft Group who's affiliated with the New England Patriots owner, Robert Kraft. They have regular seasons and playoffs like traditional sports. The games are played live and broadcast online and on TV. Fun fact: Blizzard actually is using the old NBC studio where Johnny Carson's Tonight Show was recorded. They converted into an arena for this purpose.

**Steve:** It's also a misconception about these competitions, like the Overwatch League, there are actually players in the physical stadium. They're not, like, playing at home and you're seeing it at a random location where everybody gathers. You have, literally, two teams that are up on the stage, or wherever, and they're sitting there at a computer and you're watching their screen and the caster is casting on top of it. So, it's like it's an actual event and I say that because I've had a number of questions about the layout and format of these events and whether there's anybody actually there and there definitely are. So, you'll probably have many people on this, listening to this, that've probably seen Overwatch on TV, which is another way through which these, some of these leagues are being, esports competitions are being published, which is pretty neat to see.

**Nick:** Yeah, the Grand Finals, last year, sold out New York's Barclay Center and it was also, just like you said, it was broadcast on ESPN, so you may have been just clicking through the channels and you may be able to see someone playing Overwatch, which is pretty cool.

**Steve:** It's actually because of the success of the Overwatch League that we have another esports competition. Another example of how this works is the NBA's partnership with Take-Two, a large game publisher, to form the basketball esports league, The NBA 2K League.

**Nick:** Right.

**Steve:** And so this is a different, instead of just everything being tied to Blizzard's IP, in this instance, you have a traditional sports-based team, like the Knicks Gaming or Cavs with their Cavs Legion GC, putting out these, there are these teams and they draft these players, which is pretty neat. Just like you draft a basketball player, you could trade players across teams. So, this began, actually, just last year, 2018, with 17 franchises represented and now they're in their second season and the goal is to have all the franchises represented and it's just, it seems like there's a lot of the funding that came for this is from the team ownership, whereas compared to the other Overwatch League, which is maybe more private equity in tradition with, you know, the Krafts of the world, so.

**Nick:** And I think there's similar moves being made in NHL, too. They also have a parallel kind of esports league that...

**Steve:** Yeah.

**Nick:** ...that is affiliated with some of the actual teams, the traditional teams.

**Steve:** And we're only going to see more of this over time in, perhaps, baseball and in other traditional sports formats and you're going to see other just stand-alone esports competitions. We didn't go into Fortnite is currently undergoing it's world championships right now and you've got CS:GO is another good one, but we could go on. There's lots of examples. We just chose to talk about those, but let's shift gears right now. It's because those are important, Nick. That's why we talk about...

**Nick:** They are important.

**Steve:** We're going to shift gears now and introduce Adam, and we're pleased to have him with us from our Miami office. He works with a lot of startups and he's also plugged into the gaming industry and its unique issues. So, we thought it was best, best way to showcase the issues here would be to talk about some specific examples to help illustrate how businesses are getting into the "game" of esports. You like my pun there?

**Nick:** Yeah, it was great.

**Steve:** Nick, why don't you start us off?

**Nick:** Adam, thank you for joining us. We're really pleased to have you.

**Adam:** Great to be here.

**Steve:** Awesome. So, first example I can think of would be the traditional startup, Adam, since you have experience with startups, looking to get into esports. You imagine this could be anything, but one that came to mind is kind of something that maybe we can talk about, like an analytics company. So, I've seen some of these companies, that they'll measure or monitor your eye movements and your clicks per second or minute and track your, I guess, your analytics as you're playing a game. You have a tech startup with that business model in mind. Could you maybe explain some of, what advice you would give to a business like that as it relates to, you know, esports and investment purposes?

**Adam:** Yeah, sure. I mean, look, one of the things that you see, especially when you have a growth area like this is these areas popping up that are ancillary, right? So, you're not necessarily building a game, but you're building either analytics or payment systems or other systems that add to the experience for the users, right? And so, in the case of this analytics example that you gave, you know, one of the things that comes to mind is, with startups you typically, you don't have any money, right? And so...

**Nick:** That's a problem.

**Adam:** That's always an issue and in the case of, because we're using this example, one thing you have to think about is what are you analyzing and what sort of information are you going to have because there, or where there normally aren't regulatory issues, here there might be because you're going to be collecting information about the users of this particular gaming system. So, you need to understand what, day one, you need to know and what are the barriers to entry for getting into that sort of service. So, I think the first thing is to, it sounds great, to do analytics for video games, but as a startup, when you get into a potentially regulated industry, or area I should say, it gets kind of difficult. So, one of the first things I would want to do is understand what is the information that they're analyzing from these games. What are the platforms that they're going to be providing this service to? Is it, as you guys discussed, there's franchises now, just like the NFL, there's that Overwatch League, and then there's also individually games that are out there, either for mobile or otherwise, that are not specifically tied to leagues and what are the rights that you need to have to be able to collect this information? Who are you contracting with? As a startup, you're going to be providing useful information, but who owns that information, right? And are they able to provide it to you or is it owned by somebody else? And those are just, you know...

**Steve:** Right.

**Adam:** ...real quick off the top of my head.

**Steve:** I can imagine, in the esports, in the digital context when you have these startups, the IP is super important, protecting your IP and your rights. You obviously have, startups sometimes can struggle to get that stuff in order because it's expensive sometimes to file patents or copyrights or whatnot, but that is when you're dealing with digital assets, it's super important to protect those, I'd imagine. And that'd be part of the conversation, is what kind of digital product are you creating and how best to protect it.

**Adam:** Right, because as a, like we said, you don't have a lot of money, so you're going to try figure out, either what you need to do to position yourself for investment or what you need to do position yourself to start generating revenue as quickly as possible. In the case of an analytics company, my suspicion is it would be about the games that you are providing this information to, to be able to provide advertising, information to advertisers and those that would want to know who's playing the game, how often they're playing it, and a variety of other informational things about the player. So, that's where you need to be able to accurately provide data about specifically what you're able to provide, because you might find that you can't do it for one platform when you can do it for another. There's some technical limitations in doing that sort of, and then into the weeds on analytics, but...

**Steve:** Right.

**Adam:** There are...

**Steve:** What about the idea that there's just so much buzz around something, right? And in this case, esports. If this particular business owner went into a room and pitched, I've got an esports analytics company, and all the people in the room just had to hear that and they're super excited to invest. I guess, are there concerns about, with buzz, and excitement, and a lot of money? There should be some caution and maybe, I guess, I'm trying to flesh out what are some of the legal or practical implications of being in such a hot space? And you've got a startup. You've got a great idea about the influx of money which could be easy to get. Easier than, perhaps, in another context. Does that create any concerns?

**Adam:** I would say it used to, but it's less so now, because we just discussed we have these top-tier investors making investments in the space. So there's going to be less concern about whether or not this information, for example, these analytics that you're providing here is going to be useful. So you sort of, there's this initial hurdle of, you know, this is, I spent a lot of time with the blockchain and cryptocurrency team here, and so, that's a nascent area, right? And so, there's still skepticism. With gaming, there may be skepticism still, maybe more in the United States than in Asia about, you know, are tens of thousands of people going to be watching games. We know that they are, but other than the Overwatch League on TV, maybe you don't get a lot of just general population exposure to these things. But, I think you're in a better position today, certainly, than you were three or five years ago, walking in a room and talking about services you're providing as a startup to the gaming industry or to a particular game or to one of these franchises or to a league, because that data is vitally important to them, because they're also trying to gain customers and raise money.

**Steve:** Great.

**Nick:** And there could be, like, legal landscape changes, right? Like yes, gaming is a little more established now than it was a few years ago and maybe more so than blockchain right now, but, for example, there's a U.S. senator that just announced that he's planning on regulating loot boxes and microtransactions and so, it would be a real bummer to have just put a bunch of money investing into some loot box company only to hear this legal change that is coming. It could rip the rug out from under you. I'd imagine that would be part of the due diligence you'd want to do before getting involved like that and putting, laying down your money, right?

**Adam:** Yeah, I mean, look, we can flip to the investor view on this stuff a little bit. So certainly, there are just, I can think of two things that are just different about games and that is kids play them. So, you have people under 12 and you have people under 18 playing these games and providing personal information, communicating, and, in some cases, either receiving prizes or earning prizes and making payments on the system. And, so that implicates a number of different regulatory areas, right? Because you're trying to protect children. You're trying to regulate payments. You're trying to manage information that you're collecting. So, all of those things need to be understood, certainly from an investor perspective, you would need to know what this particular game, maybe it's a game, I'll switch to being an investor and perhaps a game that's being developed, what they're doing to control the information and protect it. If it's looking at a team or a league, there's a whole host of other issues that haven't even been addressed yet, but it's...

**Steve:** So, let's switch gears there, because that's the next example that I was going to try to help us focus on, which is investing in the esports team and in the esports infrastructure that surrounds the team. What are some of the unique considerations there and can we analyze it in the context of something traditional, like investing in a traditional sports team?

**Adam:** Absolutely, yeah. So, that's where you start and then it, and then it digresses a little and you have to kind of find your way, right? So, the first thing we know is that we've discussed, especially the folks like Jerry Jones or Mark Cuban, who have invested, who are team owners. That is an incredible signal to investors that people who know the sports space are now moving into esports and see incredible value there. So, when you look at investing in teams, I think the first thing is to understand some basics. For example, a lot of teams are created around a corporate entity that owns several teams. Are you investing in one team? Are you investing in all the teams? Are you going to be able to diversify yourself so that, maybe, one team plays Overwatch and another plays League of Legends or what have you? So, the question is, are you investing in a particular game? Are you investing in a particular technology platform?

**Steve:** Right, because more often, more than any other, I guess, professional sporting competition is that this game could be here today and gone tomorrow versus baseball or whatever that'll last a number of years.

**Adam:** Exactly.

**Steve:** And Heroes of the Storm is a classic example that we always return to, which is Blizzard announcing suddenly that it would withdraw its support from this game, which caused some esports teams to, basically, fire their players and just regroup.

**Adam:** Right.

**Steve:** So, is it going to be...

**Nick:** That was after a bunch of people had really made some real reliance in investments...

**Steve:** Significant investments, exactly.

**Nick:** Planning on, you know, practicing and investing time and money, relationships, and to getting into this game, only to have the developer of the game say, you know, Thank you for your interest....

**Steve:** Right.

**Nick:** ...but we are not planning on continuing to support this. They're still supporting it, obviously, but not at the same level...

**Steve:** Right.

**Nick:** ...that they were when they were expecting it to go on to blow up as an esports.

**Adam:** But that's where I see it digress a little, is where the NFL, certainly the owners, have the control and the input on a variety of things. If you own a team in the Overwatch League, the question is, what input do you have with regard to the

game and its features and the tournaments and what have you, and I don't know the answer to that question. But that's certainly something...

**Steve:** Probably nil.

**Adam:** Yeah, and so, that's something, as an investor you have to understand and try to diversify. So, I see this as several different areas. You want to understand the corporate structure that you're investing in. You want to also understand the technology platform in-game that's being focused on, multiple games, one game. What is the, is it a mobile game? Is it a game that's only on PS4? Is it only on Xbox? Is it on both? Is it a PC game? Is it all three? Is it interoperable? What is it that you're investing in that this team is playing and who controls it? Because, as opposed to some traditional sports, this is a whole new world where there is a level of control, I mean, we just saw the Chinese Government make a change to a game that millions of people were playing in China.

**Steve:** You're referring to PUBG porting over to China?

**Adam:** Exactly.

**Steve:** And I think, what was it called? Game of Friends...

**Nick:** Yeah, or some...

**Steve:** ...or Peace or something like that.

**Nick:** It's got a really weird name.

**Adam:** They changed their name. So, but, so I use that as an example, but, Blizzard could do that same thing.

**Steve:** Right.

**Adam:** It's their game.

**Steve:** I think I remember hearing the other day that Tencent, their value, because that's the company behind, that was bringing, I think that was bringing PUBG into China, or it might be something else, I don't know. But there was a company that their valuation was directly affected by a large markets holding up their rights to push a game through to the consuming public in that area...

**Adam:** Right, right.

**Steve:** ...being China, and there's others actually, just recently, banned Fortnite. I think we might talk about Government regulation of games in another episode, in the future. But, it's definitely something I'm hearing you say, that if you're seeking to invest or you're a business in this space, it needs to be part of the due diligence that goes into whether or not something's viable.

**Adam:** Right, so you got the corporate structure. You got the, sort of, the platform, and the team, and then the talent, which initially starts off like, you know, your typical talent in professional sports. Right? And there's certainly a lot of established law, a lot of established contracts, a lot of agents that understand how this all works, and it's very much like the standard, entertainment industry, because there were a lot of with teams, as you can imagine, ancillary IP rights that goes along with that, whether it's...

**Steve:** Hoodies.

**Adam:** ...hoodies, t-shirts, hats...

**Steve:** Yeah, those are not cheap either.

**Adam:** ...what have you. And the talent having to do a certain number of hours in front of the press, or whatever they might have in their contracts. This gets a little more interesting, because you can play remotely, you can...

**Steve:** Well some people even question whether or not those houses are necessary when you can all just play remotely.

**Adam:** And that's often in their contracts, where they're providing them housing and so, you need to sort of understand what the team is doing and what the contracts with these employees, who are the team members, what they say and...

**Steve:** As a lawyer, what would you be looking at?

**Adam:** So, I think I would want to understand how much of what that, these individual players are doing? How much of it is controlled and what's owned by the team. So, for example, just to use a real traditional sports example, Steph Curry or Tom Brady aren't wearing GoPros during games, right? Clearly that would be something, that if they did, both the NBA and the NFL would have to approve, and the team would approve, and the team would get the revenue from whatever that was. But, you can go home and record streaming if you're a star player, and the question is, does the team own that stream? Right?

**Steve:** Right

**Adam:** If you're playing for fun, if you're playing, so there's a number of different aspects to this that are a little bit different than traditional sports.

**Steve:** And that's, and the friction between, I guess the player and what they own, and what the team would own, especially

in an area like esports, where your star could rise pretty quickly, your brand could take off, when you're streaming at home and you're doing your own thing. I mean, Tfue's lawsuit against FaZe Clan is a classic example of when things go south. When you've got someone who has risen to fame, on his own, at the same time he joined a clan and so there's kind of a direct correlation there. And then turning around eventually and suing his clan, and alleging that they were acting as an unlicensed talent agency. It just shows you the types of problems that if you're not preparing for them and purposefully building these thoughts into your equation when you're developing the contracts, you have to...

**Adam:** Streaming revenue, prize money, revenue created on Twitch, all of these things. And then, what are the benchmarks? What are the performance characteristics? You know, how many touchdowns does someone have to score? We all know, what is it when you're playing League of Legends? Right? And so, that's a whole different thing, but I think to emphasize for everyone listening, I suspect it's generally people that understand this, but this is serious, this is, a hundred million people watch the Super Bowl, 75 million people watch League of Legends, in the last championship. So, this is real serious business. This is not something that we are waiting to grow, this is sort of...

**Steve:** And not a single Budweiser ad.

**Adam:** And so, it's just going to, and the NFL has been around for a while, and so you can imagine over time that that's going to, in fact I think you mentioned, that there's, or one of you mentioned, that there's a statistic that is going to certainly surpass a hundred million viewers over time. So, this is really important for everyone to understand, because it's...

**Steve:** Right.

**Adam:** ...going to...

**Steve:** I mean, you don't want to invite problems, right? So, if you wait too long to do something, as we're seeing with the loot box, microtransaction scandal, I'm going to call it a scandal, which is, you know, the government might step in and do something about it. So, if you're not doing something to, I guess if you're introducing, I guess really oppressive terms within your organization and this industry, or what have you. I don't know. If it just smells bad, people might take a look, take stock especially now that it's so much money on the line. Investors will be looking at this, this FaZe Clan lawsuit, I'm sure. People who are looking to invest, they're going to be saying okay, well how does that situation compare with what you're having me invest in, because then I don't want to invest in the other thing, perhaps. I don't know.

**Adam:** The other thing that's unique, I think, to this space, and I don't know if it's a legal issue or not, is that while we have international leagues right? We have, certainly, North America, we have baseball, and basketball and hockey, this is a global phenomenon. This is people playing on teams, challenging each other on a global basis, like the Olympics. So, whether or not those multiple jurisdictions come into play here, and in effect, what you, even as an investor, what you're able to do with a team you invested in, is also another interesting area that obviously we need to learn about more over time...

**Steve:** Right.

**Adam:** ...but it's going to continue in a way, that I think, for a traditional sports, there's a little bit of, kind of, you know, football is a U.S. sport, you know soccer is...

**Steve:** Right.

**Adam:** ...more Europe and South America, although we play it here. There's less of that, I think, in this space, and that's why it's growing so fast.

**Nick:** Totally.

**Steve:** The next example, I just wanted to switch gears to, is an investment in game development. So, you've got indie, small-time, game developers and you've got the giant big box game developers. And so I wanted to think about, or wanted to talk to you about, some of the pain points, or pressures, or thoughts that an investor would have to consider from a legal standpoint, in investing in a game company. So, what would some of those considerations be?

**Adam:** So, generally they wouldn't be much different than standard software development. Where it goes off and becomes a little more interesting is, you need to understand, when you're developing a game, where are your users going to play that game, and what is your ability to develop on that platform? And what IP rights do you need to have? What access rights do you need to have, whether it's from Microsoft, or from Sony, or from Apple? What is that you need to make that game a reality and what are you going to need to do? What sort of revenue sharing are you going to be doing through the Apple Store? Developing games is just like developing any other software, at the beginning. And then, it gets complicated quickly, but there are basic things, like you might have developers across multiple jurisdictions who are subject to different laws, who are sending encrypted...

**Nick:** Sometimes irreconcilable laws.

**Adam:** Correct, who are sending encryption, encrypted packages back and forth, which could implicate certain U.S. laws, because they're developing software and they're sending information back and forth in a way that might create issues from a regulatory perspective. There's the standard things you have, as far as remote workers, right, and that's often what you see. Although, in gaming, you typically have the teams closer together. But, I think, as an investor, looking at investing in someone who says, hey I'm going to, and most, just in my experience, it's typically developers of mobile games...

**Steve:** Right.

**Adam:** ...that you see. It is more about how they think. What is their revenue model? Right? And how are they going to project that revenue model into Apple, Android, and how is going to work? Is it going to be free? Is it going to be, are there going to be loot boxes are you going to...

**Steve:** Well I could think about, you know, also the new California privacy statute is affecting how, and the European GDPR is affecting how data is being processed. So, what used to be free and make money before, I don't, you know, may not work if it's based on a model that monetizes personal data, as the law understands that term to mean. So, that would be something else to consider in the equation.

**Adam:** Well certainly, and that's why I mentioned mobile games, because mobile games typically are often driven by advertisement revenue. Which means you could be sharing information with those advertisers, you could have children using those mobile games, and so that opens up an issue as an investor you need to thoroughly analyze.

**Nick:** And with respect with the monetization model, this raises an issue that we could probably do an entire episode about, which is the change from making one complete game that fits in a box and shooting it out into the world versus the new games as a service model that we're seeing really taking over, where people are now expecting, almost, games to ship in an unfinished, nearly finished state, and then expecting them to support that game over the next one, two, three, four years.

**Steve:** Right? You buy season passes.

**Nick:** Yeah, you buy season passes. You get all sorts of additional content that really changes the model that we're used to seeing. You know, it used to be, they would sell you a cartridge, and the developer got all the money they're ever going to get from you, from that cartridge, unless you break it and have to buy a new one. But now, a lot of games ship with a certain purchase price with the full expectation that you're going to be spending money on either microtransactions in the game, loot boxes, for example, or additional content drips. And they also expect the game to be supported. And so, if business model is based on, or you're investing and you're inspecting them to ship a product and be done with it, you're going to be pretty disappointed to find out, that no, they shipped the product and then they have to keep supporting it, you know, monthly patches, whatever, with new content going forward.

**Adam:** There is a delicate balance there, as well, I think it was Battlefield II, where they, and I might be mistaken, you tell me if I'm right or wrong...

**Nick:** Nope, I think you're right.

**Adam:** They, yeah, they created a situation where you had to play several hundred hours to get to main characters that you assumed you would have day one, and created such a back lash, I think, the most downvotes ever on Reddit that they ended up changing it. So...

**Nick:** Title holder.

**Adam:** As an investor you need to look at what those plans are, and look, initially a game is like a movie production, right? You've got talent. You've got people writing a story, depending on the type of game it is. You need, you're worried about IP rights. You're worried about who's going to distribute your game. There's a whole host of things to worry about and then in addition, you add, in addition to distribution it's on what platform, and how are you upgrading the technology. You don't just, you know, when you're done with the movie, you're done with the movie. You're almost never done with the game.

**Steve:** Right.

**Adam:** So, there's considerable revenue that can continue to come in, but also work that's required.

**Nick:** On the issue of what platform, you've got to think about what generation, right? Because, now they're rolling over, you know, there's a new PlayStation every five or six years now, and it would be a shame to spend a bunch of money and time building a game, only to have it ready to ship right as the new generation's coming out and makes your game probably obsolete or whichever one you invested in.

**Steve:** Yeah, I know, that they definitely, that's something to consider for sure, how it's going to be played. What platform? What device? And also, I was going to mention, who is the audience? What's the target? And if you're going to be targeting kids, that invites a whole other ball of wax with COPPA, the Child's, Children's Online Protection, Privacy Protection Act, sorry I'd almost butchered that, where it requires consent, and depending on who you're targeting, what age group, and so, there's a lot there, and also maintaining a reasonable security practice, which all companies these days should be doing, but it does. Any one of these decisions invites a whole other host of other questions that need to be asked and looked at, both from legal and a practical investment context as well.

**Adam:** There's a significant IP component in these that needs to be understood, just because there's, and it's not just necessarily patents or trademarks, but it's ownership of rights and it's the ability to put yourself on these platforms and who owns what's been developed. So.

**Steve:** Very cool. Well, I don't have any more questions unless you do? Adam, maybe, what games are you, have you been playing recently?

**Adam:** I can't confess here to playing games, Steve.

**Steve:** Alright, there you go. No games from Adam, he pleads the fifth. Nick, you have any more questions?

**Nick:** It sounds like he's playing Fortnite to me.

**Steve:** Yeah, probably, I think so, Apex Legends. He looks like an Apex kind of guy. So.

**Nick:** The takeaway here is you really got to think it through and know what you're getting into. We know that the industry is blowing up and it's only going to get bigger as it goes and that only invites more investment, but also invites more complexity, more possible PR issues, more possible legal issues, and so, it's more important now than ever to really think about what niche to get into and how specifically you're looking to get into this, because like we said, the decision points just multiply as, particularly as more time goes on.

**Steve:** Wise words, Nick Brown.

**Nick:** There's a first time for everything. Alright everybody, that's today's episode, thanks so much for listening and a special thanks to Adam Smith for joining us today.

**Steve:** Yes, thanks Adam.

**Adam:** Thanks guys. Good to be here.

**Nick:** Until next time. Game on.

**Steve:** Game on.

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