

2023

## The Cost of Being Cracked: Why the Call of Duty League Should Implement A Stricter Study Drug Regulation Policy

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### Recommended Citation

Christopher Bennett *The Cost of Being Cracked: Why the Call of Duty League Should Implement A Stricter Study Drug Regulation Policy*, 35 Loy. Consumer L. Rev. 1 ().

Available at: <https://lawcommons.luc.edu/lclr/vol35/iss1/2>

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# THE COST OF BEING CRACKED: WHY THE CALL OF DUTY LEAGUE SHOULD IMPLEMENT A STRICTER STUDY DRUG REGULATION POLICY

*Christopher Bennett*

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## ABSTRACT

The video game industry is one of the fastest growing and most lucrative markets in the United States and globally, which has in turn driven the growth of the competitive leagues for the industry’s most popular titles.<sup>1</sup> Electronic sports (esports) are loosely defined as “professional video game matches where players compete against each other before an audience, whether in person or online.”<sup>2</sup> While various forms of esports have been around since the 1980s, the explosion of the industry in the past decade has allowed for significant sums of prize

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<sup>1</sup> Tom Wijman, *The Games Market and Beyond in 2021: The Year in Numbers*, (Dec. 22, 2021), <https://newzoo.com/insights/articles/the-games-market-in-2021-the-year-in-numbers-esports-cloud-gaming/>.

<sup>2</sup> John T. Holden & Thomas A. Baker III, *The Econtractor? Defining The Esports Employment Relationship*, 56 AM. BUS. L.J. 391, 393, (2019).

money and projections for esports to be a multi-billion dollar industry in the future.<sup>3</sup>

As in any other sport, the competitors in esports leagues face their own set of challenges concerning health and safety issues when trying to gain a competitive edge over their opponents. The most common health concern for esports competitors is compulsive gaming, which can lead to sleep deprivation and a dependency on “study drugs” to boost their focus and gaming abilities.<sup>4</sup> These study drugs include amphetamines like Adderall and Ritalin that are prescribed to treat Attention Deficit Hyperactivity Disorder (ADHD).<sup>5</sup> The various ADHD drugs are preferred among esports competitors because they boost cognitive function, reduce mental fatigue, and cause players to react quicker to what they see on the screen.<sup>6</sup> As opposed to the use of performance-enhancing drugs (PEDs) in sports such as football and baseball that increase strength and endurance, gaining an advantage in esports revolves around increasing a competitor’s mental acuity and ability to remain focused and alert while looking at a screen for hours at a time.<sup>7</sup>

Because of the exhaustive mental demand that accompanies competitive video gaming, there have been several high-profile instances of study drug abuse in esports leagues.<sup>8</sup> One of the most famous and controversial of these instances involved the Call of Duty League (CDL) superstar Cuyler “Huke” Garland. Huke and the Dallas Empire won the 2020 Call of Duty World Championship and just months after this victory, he released a video on his YouTube channel detailing his use of Adderall during that championship run.<sup>9</sup> Despite the ubiquitous use of study drugs in esports, Adderall is a Schedule II

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<sup>3</sup> Angela Scott-Briggs, *Esports Industry Forecasting: How Much Will Esports Grow in 2021?*, TechBullion (Jan. 26, 2021), <https://techbullion.com/esports-industry-forecasting-how-much-will-esports-grow-in-2021/>.

<sup>4</sup> Holden & Baker, *supra* note 2, at 414.

<sup>5</sup> John T. Holden, Anastasios Kaburakis & Joanna Wall Tweedie, *Virtue(al) games—real drugs*, 13 *SPORT, ETHICS & PHIL.* 19, 21 (2019).

<sup>6</sup> Ryan M. Rodenberg & John T. Holden, *Cognition Enhancing Drugs (‘Nootropics’): Time to Include Coaches and Team Executives in Doping Tests?* *BRIT. J. OF SPORTS MED.* (Jan. 25, 2016), <http://bjsm.bmj.com/content/early/2016/01/25/bjsports-2015-095474.full>.

<sup>7</sup> James Gatto & Mark Patrick, *Overview of Select Legal Issues with Esports*, 6 *ARIZ. ST. SPORTS & ENT. L.J.* 427, 446 (2017).

<sup>8</sup> Hugh Langley, *Sex, drugs and Counter-Strike: esports is fighting its demons*, TechRadar (Apr. 1, 2016), <https://www.techradar.com/news/gaming/sex-drugs-and-counter-strike-esports-is-fighting-its-demons-1318109>.

<sup>9</sup> Cuyler Garland, “Huke YouTube Channel,” (Jun. 9, 2021) <https://www.youtube.com/watch?v=wre9yVQY0uk>.

drug, categorized along with cocaine and fentanyl.<sup>10</sup> Because of this classification, all American sports leagues ban Adderall and other amphetamines.<sup>11</sup> However, there are concerns that esports organizations are not doing enough to protect their players. David Howman, a former head of the World Anti-Doping Agency (WADA), thinks that esports is the “Wild West” because of the lack of a uniform anti-doping scheme and enforcement issues.<sup>12</sup>

Because of its widespread popularity and recent struggles involving the use of study drugs among its competitors, the CDL is the ideal example to focus on how esports organizations can better implement changes to prevent unfair competition and better protect competitors. Call of Duty’s publishing company, Activision-Blizzard, posted a revenue of \$8.8 billion in 2021, with the Call of Duty title bringing in well over \$1 billion.<sup>13</sup> With such a massive potential for growth for the CDL, the league should create and enforce strict banned substance policies that are comparable to other sports leagues such as the National Football League (NFL).<sup>14</sup> Stricter policies will allow the CDL to protect both its players and its brand, as players winning championships while on these study drugs damages the integrity of the league and could lead to a loss of interest.

Part I of this article provides a brief history and overview of competitive Call of Duty video gaming and some of the more unique challenges that the competitors and CDL face regarding regulation. Part II provides an analysis and comparison of the anti-doping policies of other professional sports leagues and what the CDL might be able to learn and implement based on how the other traditional leagues are regulated. Finally, Part III will highlight the benefits that of an enhanced regulatory scheme and discuss the future of the CDL and its potential moving forward.

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<sup>10</sup> Drug Scheduling, United States Drug Enforcement Administration, <https://www.dea.gov/drug-scheduling> (last visited Apr. 14, 2022).

<sup>11</sup> Simon Parkin, *Winners might use drugs—Does esports have a doping problem?*, EuroGamer (Apr. 8, 2015), <https://www.eurogamer.net/articles/2015-04-08-winners-might-use-drugs>.

<sup>12</sup> Alan Baldwin, *Targeted tests having an impact in esports, says Verroken*, Reuters (Apr. 17, 2019, 2:15 PM), <https://www.reuters.com/article/us-sport-doping/targeted-tests-having-an-impact-in-esports-says-verroken-idUSKCN1RT2D4>.

<sup>13</sup> Samuel Tolbert, *Activision Blizzard hits \$8.8 billion in 2021 revenue despite lackluster Call of Duty sales*, (Feb. 3, 2022), <https://www.windowscentral.com/activision-blizzard-q4-2021>.

<sup>14</sup> Rebecca R. Rosenthal, *A Tough Pill To Swallow: Making The Case For Why Esports Leagues Must Adopt Strict Banned Substance Policies To Prevent Disability Discrimination*, 20 VA. SPORTS & ENT. L.J. 76, 79, Spring 2021.

## HISTORY OF COMPETITIVE CALL OF DUTY AND ITS CHALLENGES

### *Competitive Call of Duty through the Years*

While Call of Duty gained its fame and icon status as a campaign focused single player first person shooting game, its popularity skyrocketed with the implementation of a multiplayer system that allowed players to compete against each other over the Internet.<sup>15</sup> The first Call of Duty title was released in 2003 and focused on a single player experience, but a dedicated player base grew out of the multiplayer modes, leading to the creation of Major League Gaming.<sup>16</sup> Major League Gaming was the original organizer of competitive Call of Duty. This happened by growing and purchasing the website Gamebattles, which allows players to form competitive teams and play against other formed teams in private game lobbies instead of relying on standard multiplayer matchmaking.<sup>17</sup> This allowed players who are now legends in the Call of Duty community, such as Anthony “Nameless” Wheeler and Matthew “Nadeshot” Haag, to make a name for themselves as the top players in the world.<sup>18</sup>

In November 2009, Call of Duty: Modern Warfare 2 was released, which marked a turning point in the competitive scene.<sup>19</sup> Several different esports organizations started to make a real investment in Call of Duty during the life cycle of this game, the most famous and still most popular of which is OpTic Gaming, founded by Hector “H3CZ” Rodriguez.<sup>20</sup> In September 2011, Activision sponsored a massive tournament for Call of Duty: Modern Warfare 3 with a grand prize of \$400,000, marking the first time the parent company of the title heavily invested in the competitive community.<sup>21</sup>

From 2011 to 2016, competitive Call of Duty enjoyed a golden age that propelled the growth of the community, and many of the most famous players solidified their legacies during this period.<sup>22</sup> Things changed drastically in 2016 when Activision purchased Major League

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<sup>15</sup> Jalen Lopez, *History of Professional Call Of Duty*, Hotspawn, (Feb. 25, 2020, 4:12 PM), <https://www.hotspawn.com/call-of-duty/guides/history-of-professional-call-of-duty>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

Gaming and established the Call of Duty World League, which gave professional and amateur players alike a platform to display their skills and compete for a \$3 million prize pool throughout the 2016 season.<sup>23</sup>

The Call of Duty League was introduced in 2020 and marked the beginning of a city-based franchise league.<sup>24</sup> This provided benefits for fans and players alike; players were guaranteed a base salary of \$50,000 per year with benefits and were guaranteed at least half of the prize money won throughout the season and the city-based structure allowed fans to find teams nearby them and helped establish identities and local communities.<sup>25</sup>

### *Unique Challenges of Esports*

In traditional professional sports, players receive a salary regardless of the outcome of a game or season.<sup>26</sup> Until recently, esports players have not enjoyed the same luxury, and even in the CDL players must consistently place highly in competitions to earn salaries in excess of \$100,000 per year.<sup>27</sup> Because of this dynamic that ties top earning capacity with consistently finishing among the top of the leaderboards, esports competitors have additional financial incentives to exploit any advantages they can find.<sup>28</sup> This phenomenon is exacerbated by the shorter average career length of esports competitors compared to traditional professional athletes.<sup>29</sup> The human brain's ability to react quickly to virtual situations starts to decline after age twenty-four, and lightning-quick reflexes are what often separates a good Call of Duty player from a great one.<sup>30</sup>

Due to these factors, similar to how traditional physical athletes may take steroids or other PEDs to lengthen their careers, esports competitors turn to study drugs to in order to allow them to compete past

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Emily Caron, *How Much do NFL Players Make During the Playoffs?*, Sports Illustrated (Jan. 5, 2019), <https://www.si.com/nfl/2019/01/05/how-much-do-nfl-players-make-during-playoffs-postseason-payout>.

<sup>27</sup> Gehrig Rosen, *Should E-sports be considered real sports?*, The Telescope (Nov. 14, 2017), <https://www.palomar.edu/telescope/2017/11/14/should-e-sports-be-considered-real-sports-pro/>.

<sup>28</sup> Sok Min Yun, *A Comparative Overview of Esports Against Traditional Sports Focused in the Legal Realm of Monetary Exploration, Cheating, and Gambling*, 37 CARDOZO ARTS & ENT. L.J. 513, 530 (2019).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

the normal life of their careers.<sup>31</sup> Dr. Brendon Boot, a neurology professor at Harvard Medical School, has concerns about the rampant use of study drugs in esports and is worried that players will escalate the use of the substances by mixing them with highly caffeinated drinks or using them in other ways that are more dangerous, such as snorting or injecting them.<sup>32</sup> Highly motivated by relatively short career lengths and compensation being directly tied to performance, esports players abuse study drugs to gain whatever edge possible when competing.<sup>33</sup>

### *The Uncertainty Surrounding Regulation and Enforcement*

The massive explosion in the popularity and profitability of esports leagues necessarily raises questions regarding the rules and regulations of the various leagues on the use of study drugs. The Electronic Sports League (ESL) is the world's largest esports league, and it is the only major league with a banned substance policy.<sup>34</sup> This came in the wake of a player admitting that he took Adderall while competing for a \$250,000 prize for the game *Counter-Strike*<sup>35</sup>, and the ESL relied heavily on WADA's 2015 Prohibited List, which banned steroids, cocaine, marijuana, Ritalin, and Adderall.<sup>36</sup>

Other major esports leagues, including the CDL, do not have a firm policy regarding the regulation and enforcement of banned substances.<sup>37</sup> This is a problem for the CDL especially, because as recently as 2020 their most important event was delegitimized with Garland's admission of using Adderall while winning the 2020 CDL Championship.<sup>38</sup> Additionally, in February 2020, former Call of Duty world

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<sup>31</sup> *Id.* at 531.

<sup>32</sup> Hal Hodson, *Esports: Doping is rampant, industry insider claims*, NewScientist (Aug. 13, 2014), <https://www.newscientist.com/article/dn26051-esports-doping-is-rampant-industry-insider-claims/>.

<sup>33</sup> Yun, *supra* note 28, at 530.

<sup>34</sup> Coleman Hamstead, *Nobody talks about it because everyone is on it: Adderall presents esports with an enigma*, Washington Post (Feb. 13, 2020, 10:27 AM), <https://www.washingtonpost.com/video-games/esports/2020/02/13/esports-adderall-drugs/>.

<sup>35</sup> Emanuel Maiberg, *Counter-Strike Esports Pro: 'We Were All on Adderall'*, Vice (July 14, 2015, 8:20 AM), [https://www.vice.com/en\\_us/article/gvy7b3/counter-strike-esports-pro-we-were-all-on-adderall](https://www.vice.com/en_us/article/gvy7b3/counter-strike-esports-pro-we-were-all-on-adderall).

<sup>36</sup> Saira Mueller, *Esports Drug Testing Update: ESL Announces List of Banned Substances Including Adderall, Cocaine, Pot, Steroids And More*, International Business Times (Aug. 12, 2015, 10:28 AM), <https://www.ibtimes.com/esports-drug-testing-update-esl-announces-list-banned-substances-including-adderall-2050245>.

<sup>37</sup> Holden, Kaburakis & Tweedie, *supra* note 5, at 22.

<sup>38</sup> Garland, *supra* note 9.

champion Adam Sloss discussed the abuse of Adderall in esports and in competitive Call of Duty specifically, saying “nobody talks about it because everyone is on it.”<sup>39</sup> He was also concerned about the detrimental effects of the drug abuse on the players and cited it as the primary reason for his retirement from professional gaming.<sup>40</sup>

The primary incentive for esports leagues to ban PEDs is to maintain the competitive integrity of the game and curb any unfair advantages players may try to seek. With that goal in mind, groups like the Esports Integrity Coalition (ESIC) and the World Esports Association (WESA) were created in the mid-2010s to help regulate competitive gaming.<sup>41</sup> However, membership in these organizations is optional, and so far, the only member of the organizations is the ESL, leaving the rest of the esports world largely unregulated.<sup>42</sup>

Esports, and Call of Duty in particular, is built on the pillars of “competition, fan loyalty, and spectatorship,” with fans being particularly endeared to the players themselves over the actual teams.<sup>43</sup> A large portion of CDL fans watch the competitors’ personal streams via Twitch and other streaming platforms and feel a personal connection through the close-knit communities they belong to.<sup>44</sup> Twitch and the CDL allow the players to gain additional income to supplement their player contracts and endorsements by giving fans a platform to subscribe and support their favorite players.<sup>45</sup> This provides additional incentive for the CDL to protect the integrity of the game because both fans and corporate sponsors alike would be less attracted to the league if they do not see the game as fair.<sup>46</sup>

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<sup>39</sup> Hamstead, *supra* note 34.

<sup>40</sup> *Id.*

<sup>41</sup> Jacqueline Martinelli, *The Challenges of Implementing A Governing Body for Regulating Esports*, 26 U. MIAMI INT’L & COMP. L. REV. 499, 506 (2019).

<sup>42</sup> See *supra* note 37.

<sup>43</sup> Katherine E. Hollist, *Time to be Grown-Ups About Video Gaming: The Rising Esports Industry and the Need for Regulation*, 57 ARIZ. L. REV. 823, 827 (2015).

<sup>44</sup> Brett Molina, *Why watch other people play video games? What you need to know about esports*, USA Today (Jan. 12, 2018, 10:02 AM), <https://www.usatoday.com/story/tech/news/2018/01/12/more-people-watch-esports-than-x-dont-get-here-basics/1017054001/>.

<sup>45</sup> Roshan Patel, *Esports, Player Positions, and the Benefits of Unionization*, 18 DUKE L. & TECH. REV. 232, 242 (2020).

<sup>46</sup> Jake Tucker, *Esports Has to Grow Up, and Drug-Testing Its Players Is an Important Step*, Vice (Aug. 3, 2015, 11:45 AM), [https://www.vice.com/en\\_us/article/9bgz97/esports-has-to-grow-up-and-anti-doping-measures-are-an-essential-step-930](https://www.vice.com/en_us/article/9bgz97/esports-has-to-grow-up-and-anti-doping-measures-are-an-essential-step-930).



## COMPARISON TO REGULATION OF TRADITIONAL SPORTS LEAGUES

### *What is a Sport?*

In 2017, the International Olympics Committee (IOC) recognized video gaming as a sport because esports players “prepare and train with an intensity comparable to athletes in traditional sports.”<sup>47</sup> Additionally, the National Collegiate Athletic Association (NCAA) defines a sport as an “institutional activity involving physical exertion with the purpose of competition versus other teams or individuals.”<sup>48</sup> While the NCAA itself has yet to decide if it will hold esports championships, many colleges across the United States have esports teams, which suggests that the NCAA would be interested in governing those events as well.<sup>49</sup> Some schools even offer scholarships for esports players, such as the University of California at Berkeley for skilled League of Legends players.<sup>50</sup>

Additionally, there is American case law to support that esports fall squarely within the definition of a sport and should thus be regulated like one. In *Biediger v. Quinnipiac University*,<sup>51</sup> the Second Circuit Court of Appeals analyzed whether competitive cheerleaders could be considered varsity athletes. The Second Circuit found that Quinnipiac’s cheerleading team did not qualify as a sport because: “(1) no off-campus recruiting process existed; (2) no formal set of rules governed the team; (3) the team competed against ‘a motley assortment of competitors’—not just other varsity cheerleading teams; and, (4) the team had no post-season like other competitive sports.”<sup>52</sup> In *Noffke v. Bakke*,<sup>53</sup> the Wisconsin Supreme Court defined a sport as “an activity involving physical exertion or skill,” or a game or contest “involving individual skill or physical prowess on which money is staked.”<sup>54</sup> Both

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<sup>47</sup> Martinelli, *supra* note 41, at 503.

<sup>48</sup> Daniel Kane & Brandon D. Spradley, *Recognizing Esports as a Sport*, The Sport Journal, <https://thesportjournal.org/article/recognizing-esports-as-a-sport/>.

<sup>49</sup> Tom Schad, *NCAA tables possibility of overseeing esports*, USA Today (May 21, 2019, 2:59 PM), <https://www.usatoday.com/story/sports/college/2019/05/21/ncaa-and-esports-not-just-yet-organization-tables-possibility/3751122002/>.

<sup>50</sup> *Id.*

<sup>51</sup> *Biediger v. Quinnipiac Univ.*, 691 F.3d 85 (2d Cir. 2012).

<sup>52</sup> Rosenthal, *supra* note 14, at 87.

<sup>53</sup> *Noffke ex rel. Swenson v. Bakke*, 2009 WI 10, 315 Wis. 2d 350, 760 N.W.2d 156.

<sup>54</sup> *Id.* at 172.

of these decisions found that a sport requires some kind of physical exertion involving a formal set of rules in competition against other that participate in the same activity.<sup>55</sup> Esports players make several hundred inputs a minute on their hardware and must be in constant communication with each other in order to perform effectively in their game.<sup>56</sup> Furthermore, the heartbeats of esports players range between 160 and 180 beats per minute, which is comparable to the average person running a marathon.<sup>57</sup>

### *How the ESL and the CDL Compare to the NFL*

Because the CDL does not have any firm policy banning certain substances, it is helpful to compare the NFL to the ESL to provide a bridge to how the CDL could implement a comprehensive banned substances policy.

The ESL's banned substance policy does not ban the use of Adderall and other study drugs wholesale; rather, players with valid prescriptions for those kinds of medications must notify the ESL and provide proof of prescription before the start of competition events.<sup>58</sup> In stark contrast, the NFL has strict requirements for obtaining an exception to use a drug or substance on its banned list. For an NFL player to receive an exception, the player must subject himself to an evaluation by an NFL approved psychiatrist, who conducts a full neurological assessment and uses two different ADHD diagnostic scales.<sup>59</sup> The player must also provide the NFL with all medical records that pertain to his ADHD diagnosis and treatment, including all previous test results.<sup>60</sup> Like with all policies, there is likely a happy medium between these two levels of enforcement regarding exceptions for people who have valid prescriptions, but for Call of Duty it seems that a stance closer to the NFL's should be required to facilitate a fair and level playing field and for the health and safety of the competitors.

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<sup>55</sup> Rosenthal, *supra* note 14, at 87-88.

<sup>56</sup> Martin Schütz, *Science shows that esports professionals are real athletes*, DW (Dec. 3, 2016), <https://www.dw.com/en/science-shows-that-esports-professionals-are-real-athletes/a-19084993>.

<sup>57</sup> *Id.*

<sup>58</sup> Adam Rosenberg, *The ESL details its anti-drug policy, addresses recreational marijuana use*, Mashable (Aug. 12, 2015), <https://mashable.com/2015/08/12/esl-esports-anti-drug-policy/>.

<sup>59</sup> NFL Requirements for Therapeutic Use Exemption (TUE): Attention Deficit and Attention Deficit Hyperactivity Disorders (ADHD), The National Football League, [https://nflpaweb.blob.core.windows.net/media/Default/PDFs/ADHD\\_requirements\\_2018.pdf](https://nflpaweb.blob.core.windows.net/media/Default/PDFs/ADHD_requirements_2018.pdf) (last visited Apr. 9, 2022).

<sup>60</sup> *Id.*

Using study drugs in competitive video gaming is a unique form of doping. Esports require enhanced mental acuity and response time beyond that of even football, baseball, and basketball. So, policies regarding the regulation and enforcement of study drugs in professional gaming should work differently than the traditional sports.<sup>61</sup> In esports and Call of Duty, players are required to use their motor skills to make several hundred inputs on a controller per minute while using their experience and knowledge of the game to defeat their opponents.<sup>62</sup> While traditional sports may require overall greater physical strength, speed, or size, players do not have to be afraid that a mistake lasting a fraction of a second will cost their team a victory.<sup>63</sup>

Furthermore, NFL players play football in fifteen minutes at a time, with breaks throughout the game, including a twelve-minute break at halftime.<sup>64</sup> NFL players can also be substituted in and out of the game in between plays and series. In professional Call of Duty, matches generally last for around an hour and there are no breaks unless something goes wrong with the hardware the game is being played on or a violation of some kind is reported.<sup>65</sup> Additionally, once a CDL match begins, the players in the starting lineup stay in for the entire match and are not substituted out between games, so they must remain focused for the entire time they are playing.<sup>66</sup>

Finally, esports players in general are in-season for much more of the year than NFL players.<sup>67</sup> The average length of an esports season is between twenty and thirty weeks<sup>68</sup>, while the NFL regular season lasts only seventeen weeks.<sup>69</sup> In addition, CDL players must play and practice almost constantly to remain competitive, playing anywhere

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<sup>61</sup> John T. Holden, Ryan M. Rodenberg, & Anastasios Kaburakis, *Esports Corruption: Gambling, Doping, and Global Governance*, 32 MD. J. INT'L L. 236, 269 (2017).

<sup>62</sup> Schütz, *supra* note 56.

<sup>63</sup> Abhimanyu Ghoshal, *Esports pros don't worry about younger competitors with 'faster reflexes'*, The Next Web (Mar. 4, 2017), <https://thenextweb.com/gaming/2017/03/04/esports-pros-dont-worry-about-younger-competitors-with-faster-reflexes/>.

<sup>64</sup> Official NFL Playing Rules, Rule 4 Game Timing, The National Football League, [http://static.nfl.com/static/content/public/image/rule-book/pdfs/7\\_Rule4\\_Game\\_Timing.pdf](http://static.nfl.com/static/content/public/image/rule-book/pdfs/7_Rule4_Game_Timing.pdf) (last visited Apr. 7, 2022).

<sup>65</sup> Call of Duty League Schedule, Call of Duty League, [https://callofduty-league.com/en-us/schedule?utm\\_source=cdlweb&utm\\_medium=navigation-bar&utm\\_campaign=general](https://callofduty-league.com/en-us/schedule?utm_source=cdlweb&utm_medium=navigation-bar&utm_campaign=general) (last visited Apr. 7, 2022).

<sup>66</sup> Rosenthal, *supra* note 14, at 97.

<sup>67</sup> Holden & Baker, *supra* note 2, at 409

<sup>68</sup> *Id.*

<sup>69</sup> Hollist, *supra* note 43, at 826.

from eight to fifteen hours of games per day even into the off-season.<sup>70</sup> Thus, esports and Call of Duty require a greater level of sustained concentration than professional football games, and esports demand longer hours of play, higher levels of focus, and longer seasons.<sup>71</sup> Therefore, the CDL should adopt much stricter regulations than that of the ESL and their guidelines should be more in line with that of the NFL, if not more strict.<sup>72</sup> Strictly banned substance policies that force players to meet more strenuous requirements before obtaining any kind of exception will help the burgeoning CDL galvanize its legitimacy and ensure a level playing field in the future while also accounting for competitor health and safety.

## BENEFITS OF AN ENHANCED REGULATORY SCHEME

### *Player Health and Safety*

The sustained level of intense concentration required of competitive Call of Duty along with the long and continuous format of the matches should make study drugs strictly banned substances with a high threshold for an exception.<sup>73</sup> Exceptions for Adderall and similar drugs in the CDL would allow athletes who suffer from chronic illnesses and disorder to take their legitimate medication and still participate in the league.<sup>74</sup> However, it is hard to differentiate between which medicines are used for therapeutic purposes versus enhancement purposes, and the distinction becomes even less clear regarding substances that enhance mental capability.<sup>75</sup> On the other hand, categorically banning study drugs like Adderall and Ritalin prevents Call of Duty players who have legitimate prescriptions from participating, which could lead to other legal issues.<sup>76</sup>

As with any policy decision, the correct answer is likely closer to a compromise between a categorical ban of study drugs and a low threshold regulation scheme that is easy to circumvent. In the case of

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<sup>70</sup> Graham Ashton, *What is the Optimum Training Time for Esports Players?*, The Esports Observer (Dec. 28, 2017), <https://esportsobserver.com/optimum-player-training-time/>.

<sup>71</sup> Rosenthal, *supra* note 14, at 97.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 98.

<sup>74</sup> John William Devine & Francisco Javier Lopez Frias, *Philosophy of Sport*, Stanford Encyclopedia of Philosophy (Feb. 4, 2020), <https://plato.stanford.edu/entries/sport/>.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

the ESL, only requiring proof of a valid prescription without an accompanying medical evaluation effectively allows players who use Adderall solely for competition purposes to do so without consequence.<sup>77</sup> The number of Adderall prescriptions has risen significantly in the United States over the past two decades.<sup>78</sup> In 2012, doctors prescribed 16 million people with Adderall.<sup>79</sup> Furthermore, Adderall abuse is prevalent throughout the country, not just in the realm of professional gaming. This is true especially among people between eighteen and twenty-five years old, which is the average age of an esports player.<sup>80</sup> Because of the ease with which players can obtain Adderall and the potential competitive advantages that abusing it can provide, study drug abuse in the CDL should be viewed as a constant threat and the league should implement strict policies to regulate and enforce the prevention of study drug use.<sup>81</sup>

Due to the ease of obtaining a study drug prescription and the only banned substance policy in esports, adopted by ESL, requiring a low threshold for proving a sufficient medical condition requiring the use of a banned substance, all players in CDL are in turn disadvantaged.<sup>82</sup> The purpose of accommodating an exception in the first place is help people perform the functions of their profession, not to provide competitors with an advantage.<sup>83</sup> If CDL players can easily receive an exception for study drugs without undergoing independent psychiatric testing to prove they suffer from a disorder requiring the medication, then many will abuse the system to obtain a competitive advantage.<sup>84</sup> This harms competitors who actually struggle with cognitive disorders and need the medication to get to a normal baseline of focus and reaction time to compete in the CDL.<sup>85</sup> Therefore, the CDL should adopt a strict banned substance policy with high requirements for exceptions

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<sup>77</sup> Global Rules, ESL Play (Feb. 18, 2020), <https://play.eslgaming.com/rules>.

<sup>78</sup> Casey Schwartz, *Generation Adderall*, N.Y. Times (Oct. 12, 2016), <https://www.nytimes.com/2016/10/16/magazine/generation-adderall-addiction.html>.

<sup>79</sup> *Id.*

<sup>80</sup> Adderall abuse on the rise among young adults, Johns Hopkins study suggests, Johns Hopkins Magazine (Feb. 16, 2016), <https://hub.jhu.edu/2016/02/16/adderall-abuse-rising-young-adults/>.

<sup>81</sup> Rosenthal, *supra* note 14, at 98.

<sup>82</sup> Three things to Know about TUEs, United States Anti-Doping Agency (Mar. 2, 2017), <https://www.usada.org/spirit-of-sport/three-things-know-tues/>.

<sup>83</sup> Rosenberg, *supra* note 58.

<sup>84</sup> United States Anti-Doping Agency, *supra* note 82.

<sup>85</sup> Rosenthal, *supra* note 14, at 99.

in order to establish a fair playing field for all of the competitors while protecting their health and safety at the same time.

### *Importance of a Fair Playing Field*

As the CDL stands right now, at least a strong possibility exists that there is an unequitable divide between players who abuse study drugs and players who decline to use them and those that have study drugs legitimately prescribed them to manage cognitive disorders. The lack of a regulatory scheme allows non-disabled players to gain a competitive edge over both disabled players who are normalized by the medication and those players that choose not to abuse the study drugs in the first place.<sup>86</sup> The results of the lack of a scheme are troubling. First, competitors who truly struggle with cognitive disorders will never be on the same footing as those who abuse study drugs because they are only brought up to the normal baseline with the medication.<sup>87</sup> This places an impossible demand on these players and could lead to them being unfairly cut from rosters because it is not possible for them to outperform a player who is using study drugs. Additionally, there could be potential liability for the CDL itself under the Americans with Disabilities Act (ADA), because the league is fostering an unequal playing field.<sup>88</sup> Second, a lack of a regulatory scheme places non-disabled players in a difficult position: should they abuse the study drugs to gain a competitive advantage to safeguard their roster spots and maximize their earnings at the risk of their health? Or should they refrain from using the study drugs and compete at a disadvantage, potentially losing out on their livelihood?

## CONCLUSION

The realm of esports is sitting on the precipice of launching into a multi-billion-dollar industry, and the Call of Duty League is poised to be one of the organizations that can profit greatly as a result. The Call of Duty community is loyal to a fault, and the CDL itself retains and finds new stars to market every year. However, the CDL has had its fair share of embarrassments as well, with its parent company facing sweeping allegations of sex discrimination and other workplace abuses, as well as a corporate change as a result of Microsoft purchasing Activision-Blizzard. Additionally, the CDL is just two years

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Rothberg v. L. Sch. Admission Council, Inc.*, 300 F. Supp. 2d 1093 (D. Colo.), *rev'd sub nom. Rothberg v. L. Sch. Admission Council*, 102 F. App'x 122 (10th Cir. 2004).

removed from a major study drug scandal that delegitimized the league's biggest event of the year. With the sweeping changes that are likely to come with new ownership, now is the time for league executives to act and implement a new strict regulatory scheme in order to address the years-long problems that have plagued competitive Call of Duty regarding the abuse of study drugs. This will allow them to be shielded from liability from ADA discrimination suits, rehabilitate their public image to appeal to fans and corporate sponsors alike, and provide for the health and safety of their players and safeguard the rights of their disabled players at the same time. This will allow them to springboard into the future ahead of the curve, giving the Call of Duty League an advantage they have yet to wield.