



<https://www.kaskus.co.id/thread/583a7a7b529a4501798b4569/pengertian-esports/>

# OUTLINE OF MY PRESENTATION

1. The e-Sport ecosystem
2. A legal framework?
3. Selected legal issues



<https://emojiterra.com/fr/jeu-video/>



## MY FIRST IMPRESSION...



Yves Klein, *Le Saut dans le Vide*, 1960

## 1. THE E-SPORT ECOSYSTEM

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- Swiss Interactive Entertainment Association: 1.5 M gamers (hardcore gamers + casual gamers) in Switzerland
- Federal Statistical Office: in 2014, 30% of the population played more than once a week
- Significant economic impact: according to PwC, the sale of video games should reach CHF 485 M this year
- E-Sport attracts greater interest
  - See the Swiss Federal Council's report of March 21, 2018
- Arrival of e-Sport in soccer (Swiss League): St. Gallen (2016), FC Servette (2017), Lausanne-Sport (2017), FC Sion (2017) and FC Bâle (2017)
- But Switzerland is still a small e-Sport market compared to South Korea, the US, Germany and France

# 1. THE E-SPORT ECOSYSTEM

[PI]<sup>2</sup>  
Pôle de propriété intellectuelle  
et de l'innovation

This list represents the top players of the specified country in esports who won prize money based on information published on the internet. Sources include news articles, forum posts, live report threads, interviews, official statements, reliable databases, VODs and other publicly-accessible sources that preserve "historical" information.

[Top 100](#) | [101 - 200](#) | [201 - 300](#) | [301 - 400](#) | [401 - 500](#)

## Highest Earnings for Switzerland

	Player ID	Player Name	Total (Overall)	Highest Paying Game	Total (Game)	% of Total
1.	Maniac	Mathieu Quiquerez	\$63,630.02	<i>Counter-Strike: Global Offensive</i>	\$62,885.91	98.83%
2.	Sebastien Buemi	Sebastien Buemi	\$20,000.00	<i>rFactor 2</i>	\$20,000.00	100.00%
3.	Yukie	Alain Huber	\$15,123.20	<i>PLAYERUNKNOWN'S BATTLEGROU...</i>	\$15,123.20	100.00%

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[Top 100](#) | [101 - 200](#) | [201 - 300](#) | [301 - 400](#) | [401 - 500](#)

## Highest Earnings for China

	Player ID	Player Name	Total (Overall)	Highest Paying Game	Total (Game)	% of Total
1.	iceice	Li Peng	\$1,998,972.63	<i>Dota 2</i>	\$1,998,972.63	100.00%
2.	y	Zhang Yiping	\$1,966,123.52	<i>Dota 2</i>	\$1,966,123.52	100.00%
3.	Faith_bian	Zhang Ruida	\$1,966,063.10	<i>Dota 2</i>	\$1,966,063.10	100.00%

## 2. A LEGAL FRAMEWORK?

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➤ Is e-Sport a sport?

- Legal basis

- The Sport Promotion Act of June 17, 2011

- The Ordinance on the Sport Promotion of May 23, 2012

✓ Art. 6 Conditions d'admission des sports dans J+S

« <sup>1</sup> Peuvent être admis dans J+S les sports dont la pratique contribue à l'amélioration des aptitudes physiques et psychiques des enfants et des jeunes, afin notamment de favoriser leur développement général.

<sup>2</sup> En déterminant les sports, on veillera à ce que:

a. la santé et la sécurité des participants, de même que l'environnement, ne soient pas menacés;

b. les objectifs théoriques et pédagogiques de ces sports soient conformes aux principes éthiques reconnus.

(...) »

## 2. A LEGAL FRAMEWORK?

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### ✓ Art. 7 Demande d'admission d'un sport

« <sup>1</sup> Les fédérations sportives peuvent demander à l'OFSPPO d'admettre un sport dans J+S. L'OFSPPO peut l'admettre provisoirement, pour 3 ans. Au terme de cette période, le DDPS décide définitivement de l'admission.

<sup>2</sup> Ne sont pas admis:

- a. les sports motorisés et les sports aéronautiques;
- b. les sports dans lesquels les enfants et les jeunes doivent mettre l'adversaire k.o.;
- c. les sports qui comportent un risque considérable pour les participants, notamment les sports visés à l'art. 1, al. 2, let. c à e de la loi fédérale du 17 décembre 2010 sur les guides de montagne et les organisateurs d'autres activités à risque<sup>1</sup>. »

→ e-Sport is not on the sports list of Youth+Sports

## 2. A LEGAL FRAMEWORK?

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- Sports definition
  - According to SportAccord, sport is as an activity that:
    - includes the element of competition;
    - does not rely on any element of “luck” specifically integrated into the competition;
    - is not judged to pose an undue risk to the health and safety of its participants;
    - not harmful to any living creature;
    - does not rely on equipment provided by a single supplier.
  - Art. 2 §1 let. a of the European Sports Charter of the Council of Europe (1992):

“Sport’ means all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels.”



<https://kotaku.com/witness-the-fastest-hands-in-esports-1524999887>



## 2. A LEGAL FRAMEWORK?

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➤ Multitude of stakeholders

- Game developers
- Game publishers
- Event organizers
- Players
- Intermediaries

→ One association stands out: the Swiss eSports Federation (SeSF)

## 2. A LEGAL FRAMEWORK?



Hello!

J'ai juste une question:

le tournoi s'appelle swiss championship parce qu'il est lié à une fédération ou c'est juste un nom comme un autre?



Hearthstone Swiss Championship

Hello,

Pour le moment le championnat est juste lié à Blizzard (point de qualification pour les championnats du monde). En ce qui concerne la SeSf, les discussions sont en cours pour le championnat par contre la pré-saison se déroule sous l'autorité de Blizzard actuellement. Mais à ta question est-ce que nous sommes un championnat officiel ou non, nous le sommes.



<https://wesports.ch/news/swiss-championship-%C3%A0-tout-va-la-l%C3%A9gitimit%C3%A9-des-tournois-nationaux-dans-lesport-suisse/>

## 2. A LEGAL FRAMEWORK?

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Could the SeSF be described as the national federation?



Swiss e-Sports Federation  
Schweizerischer e-Sports Verband  
Fédération Suisse d'e-Sports  
Federazione Svizzera di e-Sports

<https://sesf.ch/>

## 2. A LEGAL FRAMEWORK?

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- Could the SeSF be member of Swiss Olympic?
  - Conditions to be part of Swiss Olympic
    - Art. 2.2.1 §1 of the Swiss Olympic Statutes:
      - An association (art. 60ss. Of the Swiss Civil Code of December 10, 1907)
      - Of national importance
      - Minimum existence of 5 years (exceptions are allowed)
      - Affiliated with an international federation which is recognized by the IOC.  
Or: promotion of sport in the sense of an individual motor activity, management of a national competition system and with respect to ethical values.



## INTERMEDIATE CONCLUSION

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- Currently, there is no e-Sport Swiss legal framework
- Therefore, application of ordinary legal regulations
- The SeSF is not described as a national federation

### 3. SELECTED LEGAL ISSUES



SwitzerLAN 2016

<https://www.redbull.com/ch-fr/!%E2%80%99e-sport-en-suisse-de-marginal-%C3%A0-populaire>

## 3.1. MAIN CONTRACTS IN E-SPORT

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- Employment contract (art. 319ss of the Code of Obligation of March 30, 1911)

Art. 319 CO:

“<sup>1</sup> By means of an individual employment contract, the employee undertakes to work in the service of the employer for a limited or unlimited period and the employer undertakes to pay him a salary based on the amount of time he works (time wage) or the tasks he performs (piece work).

<sup>2</sup> A contract whereby an employee undertakes to work regularly in the employer’s service by hours, half-days or days (part-time work) is likewise deemed to be an individual employment contract.”

→ Could the gamer be qualified as an independant worker? (agency contract: art. 394ss CO)

- Sponsoring contracts

→ major financing source

- Transfer agreements?

## 3.2. E-SPORT AND INTELLECTUAL PROPERTY LAW

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- Preliminary remark: intellectual property law protection for the video game
- The Copyright Act of October 9, 1992 (CopA) protects video games (= mix of hardware and software)
- See the Swiss Federal Court decision ATF 133 III 273

„Das hier zu beurteilende Computer-Videospiel "Enter the Matrix" sei als audiovisuelles Werk zu qualifizieren.“ (See recital 3.1)



## 3.2. E-SPORT AND INTELLECTUAL PROPERTY LAW

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- Intellectual property law and publishers
  - Publishers own the IP to their games
- Intellectual property law and gamers
  - Rights of performers (art. 33 CopA)?
- Intellectual property and event organizers
  - Could organizers be qualified as a producers of audiovisual fixations?  
→ art. 1 § 1 let. b CopA
  - Broadcasting rights? (art. 37 CopA)

## 3.2. E-SPORT AND INTELLECTUAL PROPERTY LAW

### Terms of use agreement “League of Legends” (last modified: March 5, 2018)

#### 3.2. Can I do stuff with Riot’s intellectual property? (We reserve all the rights to our IP, but do allow for some personal, non-commercial uses like fan art.)

We (and our licensors) own and reserve all intellectual property rights and other rights and title in and to the Riot Services, and all data and content included therein, including, user accounts, computer code, titles, objects, artifacts, characters, character names, chat logs, Game recordings and broadcasts, locations, location names, stories, dialog, catch phrases, artwork, graphics, structural or landscape designs, animations, sounds, musical compositions and recordings, Riot Points (defined below), Blue Essence (defined below), Hextech Items (defined below), Virtual Items (defined below), audio-visual effects, character likenesses, methods of operation and gameplay (collectively, “**Game Content**”). You can’t create any work of authorship based on the Game Content or Riot Services except as expressly permitted by us. For more info about what uses we currently permit, please read our [Legal Jibber Jabber policy](#).

You also agree that unless we grant you a license, in a signed written contract, you may never use any of our trademarks, service marks, trade names, logos, domain names, taglines, or trade dress. Any reproduction, redistribution, or modification of the Riot Services, or use of the Riot Services not in accordance with this Agreement, is expressly prohibited and may result in severe civil and/or criminal penalties.

## 3.2. E-SPORT AND INTELLECTUAL PROPERTY LAW

Terms of use agreement “League of Legends” (last modified: March 5, 2018)

### 4.5. Can I submit ideas for improving the Game to Riot? (Please don't. If you do anyways, we'll have the absolute right to use it forever.)

We value your feedback on the Riot Services, but please don't submit any creative ideas, suggestions or materials to us (collectively, “**Unsolicited Ideas**”). This policy is aimed at avoiding potential misunderstandings or disputes when the Riot Services might seem similar to Unsolicited Ideas that people submit.

If you submit Unsolicited Ideas anyway, then you grant us a worldwide, perpetual, irrevocable, sublicenseable, transferable, assignable, non-exclusive, and royalty-free right and license to use, reproduce, distribute, adapt, modify, translate, create derivative works of, publicly perform, publicly display, digitally perform, make available to the public, communicate to the public, sell, offer for sale, and import your Unsolicited Ideas, including all copyrights, trademarks, trade secrets, patents, designs, industrial rights, and all other intellectual and proprietary rights related thereto, in any media now known or hereafter developed, for any purpose whatsoever, commercial or otherwise, including giving the Unsolicited Ideas to others, without any compensation to you. To the extent necessary, you agree that you undertake to execute and deliver any and all documents and perform any and all actions necessary or desirable to ensure that the rights to use the Unsolicited Ideas granted to us as specified above are valid, effective, and enforceable. You also give up any claim that any use by us or our licensees of your Unsolicited Ideas violates any of your rights, including moral rights, privacy rights, rights to publicity, proprietary or other rights, and rights to credit for the material or ideas set for therein.

### 3.3. E-SPORT AND TAX LAW

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- Taxation implications for the e-Sport associations
  - Tax exemptions?
  
- Taxation implications for the event organizers
  - Analogy with the taxation articles applicable to sport?  
E.g. art. 21 § 2 ch. 17 Federal Act on Value Added Tax of June 12, 2009



### 3.3. E-SPORT AND TAX LAW

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- Taxation implication for gamers
  - Income tax
    - Article 17 of the OECD Model Tax Convention on Income and on Capital

#### Artistes and Sportsmen

“1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.”

## 3.4. FIGHT AGAINST DOPING

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- Competent authority
  - Antidoping Suisse?
- Antidoping rules
  - Would it be a good idea to mirror the WADA Code and the Swiss Doping Statute or would it better to create specific rules?
  - Cheating: certainly, the most serious threat for the integrity of competitions

## MY FINAL IMPRESSION...

- Is it necessary to have an e-Sport legal framework?
- The Swiss legislative branch is not seen as interventionist
- But institutionalization of the Swiss e-Sport is required





Capitales Formes ICI

Page d'accueil

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| [Paramètres liste de résultats](#)

### Liste de résultats au format « Aperçu registre » [Informations générales sur cette liste de résultats](#).

#### Commandes

Titre de protection

Info

PDF (A4/portrait), PDF (A4/paysage)


Générer un fichier PDF de la liste de résultats

#### Critères de recherche

Marque=esport

#### Résultats

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Marque	Statut	Classes de Nice	Numéro ▲	Titulaire
	X	16, 24 - 25, 28, 32, 35 - 36, 38 - 39, 41 - 42	<u>490999</u>	Schweizerischer Olympischer Verband (SOV), Laubeggstrasse 70, 3000 Bern

**THANK YOU FOR YOUR ATTENTION!**



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