International Journal of Innovation

e-ISSN: 2318-9975
Received: 03 Feb. 2022 - **Approved:** 02 Apr. 2022
Evaluation Process: Double Blind Review
https://doi.org/10.5585/iji.10i2.21570

Check for updates

E-SPORTS AND THE APPLICATION OF SPORTS AND LABOR LEGISLATION

E-SPORTS E A APLICAÇÃO DA LEGISLAÇÃO DO ESPORTE E DO TRABALHO

E-SPORTS Y LA APLICACIÓN DE LA LEGISLACIÓN DEPORTIVA Y LABORAL

Breno Medeiros[1]
Ricardo Sayeg[2]

Cite as – American Psychological Association (APA)

Medeiros, B. & Sayeg, R. (2022, May/Aug.). E-sports and the application of sports and labor legislation. *International Journal of Innovation - IJI*, São Paulo, *10*(2), 212-240. https://doi.org/10.5585/iji.v10i2.21570.

Abstract

Objective: The present study aims to describe the similarities between e-Sports and the conventional Sports, in order to emulate the viability of conventional Sports law to regulate the relations formalized with cyber athletes, at least until the emergence of a specific legal regulation on e-Sports. The interaction between Labor Law and those relations will be focused too, in order to confer social rights security, especially constitutional human rights involved on that debate.

Methodology: The article is a theoretical approach that seeks to recognize how the dynamics of e-Sports encompass the legal science of Sports Law, based on the deductive method, supported by market analysis, legal research and bibliographic review.

Originality/Relevance: Nowadays some discussions suggest a controversy about the e-Sports legal framework at Brazil, especially about the application of the conventional Sports Law and interaction with the Labor Law discipline. This controversy is not justifiable, either because e-Sports constitute a sport in the authentic sense, or because all work relationships in this field are bound to the legal parameters of adjudication of social rights provided for in the Constitution. This constitutional approach is important because the legitimacy of e-Sports initiatives depends on that, putting on the core of the business consider the real legal limits emerging of the State regulations applicably incidents on contracts signed with cyber athletes. In the course of Revolution 4.0, those approximations between conventional ways and electronic ones will be the tonic of the society transition onto technological new way of life. Describing those interactions is essential to provide new ways of State´s legal regulations, attributing liberty on business dynamics and ensuring social rights on the labor relations. The parameters of ethics on business here emerges as exigencies by ESG (Environment, Social and Governance) administration models, which is embraced by relevant theories, as the John Elkington´s one, especially on his concept of triple bottom line.

Main results: The activity that has been called e-Sports and its vertiginous growth puts pressure on the legal system to reach appropriateness solutions for the controversies that arises from the relationships between players, clubs, associations and all of stakeholders rounding this innovative market. Immediately, the application of Sports and Labor Law emerges as a palliative solution, but specific new regulations are necessary, in order to provide development ways to the businesses, focusing on liberty for the market dynamics and on security for the social rights.

Theoretical/methodological contributions: The article seeks to emulate the attraction of sports and labor legislation for e-Sports regency, guaranteeing legal certainty to the already established

[1]PhD student in Law – UNINOVE, Minister of the Superior Labor Court. São Paulo, SP – Brazil. gmbm@tst.jus.br
[2]Program Director and Professor, Master's and Doctorate in Law – UNINOVE. Professor – PUCSP. São Paulo, SP – Brazil. r.sayeg@uni9.pro.br

relationships, and developing increase ways for business on this market, with citizens social rights preservation, especially constitutional ones.

Keywords: Electronic sport. Legal regency. Analogy. Legal certainty. Legislative innovation.

Resumo

Objetivo do estudo: O presente estudo tem como objetivo descrever as semelhanças entre os e-Sports e os esportes convencionais, a fim de emular a viabilidade do direito desportivo convencional para regular as relações formalizadas com os ciberatletas, pelo menos até o surgimento de uma regulamentação legal específica sobre e-Sports. A interação entre o Direito do Trabalho e essas relações também será enfocada, a fim de conferir segurança aos direitos sociais, especialmente os direitos humanos constitucionais envolvidos nesse debate.

Metodologia/abordagem: O artigo é uma abordagem teórica que busca reconhecer como a dinâmica dos e-Sports abrange a ciência jurídica do Direito Desportivo, com base no método dedutivo, apoiado em análise de mercado, pesquisa jurídica e revisão bibliográfica.

Originalidade/Relevância: Atualmente algumas discussões sugerem uma polêmica sobre o arcabouço legal do e-Sports no Brasil, especialmente sobre a aplicação do Direito Desportivo convencional e a interação com a disciplina de Direito do Trabalho. Esta polêmica não se justifica, quer porque os e-Sports constituem um desporto em sentido autêntico, quer porque todas as relações de trabalho neste domínio estão vinculadas aos parâmetros legais de adjudicação dos direitos sociais previstos na Constituição. Essa abordagem constitucional é importante porque a legitimidade das iniciativas de e-Sports depende disso, colocando no cerne do negócio considerar os reais limites legais emergentes das regulamentações estatais aplicáveis aos contratos firmados com cyber atletas. No decorrer da Revolução 4.0, essas aproximações entre as formas convencionais e as eletrônicas serão a tônica da transição da sociedade para o novo modo de vida tecnológico. Descrever essas interações, no cenário empresarial e jurídico, é essencial para fornecer novas formas de regulação jurídica do Estado, atribuindo liberdade à dinâmica empresarial e assegurando direitos sociais nas relações de trabalho. Os parâmetros da ética nos negócios surgem aqui como exigências dos modelos de gestão ESG (Environment, Social and Governance), que é abraçado por teorias relevantes, como a de John Elkington, especialmente em seu conceito de triple bottom line.

Principais resultados: A atividade que vem sendo chamada de e-Sports e seu crescimento vertiginoso pressiona o ordenamento jurídico a buscar soluções adequadas às controvérsias que surgem das relações entre jogadores, clubes, associações e todos os stakeholders que cercam esse mercado inovador. De imediato, a aplicação do Direito Desportivo e do Trabalho surge como solução paliativa, embora sejam necessárias novas regulamentações específicas, de forma a proporcionar caminhos de desenvolvimento aos negócios, com foco na liberdade para a dinâmica do mercado e na segurança dos direitos sociais assegurados por normas constitucionais.

Contribuições teóricas/metodológicas: O artigo busca emular a atração da legislação esportiva e trabalhista para a regência do e-Sports, garantindo segurança jurídica às relações já estabelecidas, e desenvolvendo formas de ampliação de negócios neste mercado, com preservação dos direitos sociais dos cidadãos.

Palavras-chave: Esporte eletrônico. Regência legal. Analogia. Segurança jurídica. Inovação legislativa.

Resumen

Objetivo de estudio: El presente estudio tiene como objetivo describir las similitudes entre los e-Sports y los deportes convencionales, con el fin de emular la viabilidad del derecho deportivo convencional para regular las relaciones formalizadas con los cyber deportistas, al menos hasta que surja una normativa legal específica sobre los e-Sports. También se enfocará la interacción entre el Derecho del Trabajo y estas relaciones, con el fin de dar seguridad a los derechos sociales, en especial a los derechos humanos constitucionales involucrados en este debate.

Metodología/enfoque: El artículo es un abordaje teórico que busca reconocer cómo la dinámica de los e-Sports engloba la ciencia jurídica del Derecho del Deporte, a partir del método deductivo, apoyado en el análisis de mercado, la investigación jurídica y la revisión bibliográfica.

Originalidad/Relevancia: Actualmente, algunas discusiones sugieren una controversia sobre el marco legal de los e-Sports en Brasil, especialmente sobre la aplicación del Derecho Deportivo convencional y la interacción con la disciplina del Derecho del Trabajo. Esta polémica no se justifica, ni porque los e-Sports constituyan un deporte en sentido auténtico, ni porque todas las relaciones laborales en este campo estén vinculadas a los parámetros legales de adjudicación de derechos sociales previstos en la Constitución. Este enfoque constitucional es importante porque de él depende la legitimidad de las iniciativas de e-Sports, poniendo en el centro del negocio considerar los límites legales reales que emanan de las normas estatales aplicables a los contratos firmados con los cyber deportistas. Durante la Revolución 4.0, estas aproximaciones entre formas convencionales y electrónicas serán la nota clave de la transición de la sociedad hacia la nueva forma de vida tecnológica. Describir estas interacciones, en el escenario empresarial y jurídico, es fundamental para brindar nuevas formas de regulación jurídica del Estado, dando libertad a la dinámica empresarial y asegurando los derechos sociales en las relaciones laborales. Los parámetros de la ética empresarial surgen aquí como requisitos de los modelos de gestión ESG (Environment, Social and Governance), que es acogido por teorías relevantes, como la de John Elkington, especialmente en su concepto de triple bottom line.
Principales resultados: La actividad que se ha denominado e-Sports y su vertiginoso crecimiento presiona al ordenamiento jurídico para buscar soluciones adecuadas a las controversias que surgen de las relaciones entre jugadores, clubes, asociaciones y todos los stakeholders que rodean este innovador mercado. De inmediato, la aplicación del Derecho del Deporte y del Trabajo aparece como una solución paliativa, aunque son necesarias nuevas regulaciones específicas, a fin de brindar vías de desarrollo a las empresas, con un enfoque de libertad para la dinámica del mercado y la seguridad de los derechos sociales garantizados por normas constitucionales.
Aportes teóricos/metodológicos: El artículo busca emular la atracción de la legislación deportiva y laboral para la regencia de los e-Sports, garantizando seguridad jurídica a las relaciones ya establecidas, y desarrollando formas de expansión de negocios en este mercado, preservando los derechos sociales de los ciudadanos, especialmente los constitucionales.

Palabras llave: Deporte electrónico. Regencia legal. Analogía. Certeza legal. Innovación legislativa.

1 Introduction

The comparison between e-Sports and traditional sports is of great relevance in the legal area, in the absence of specific legislation for the activity of the former, which is emerging as a promising branch of entertainment worldwide. In 2018, Brazil had the third largest audience for e-Sports in the world, accounting for 11.5 million spectators, which corresponds to almost half of the spectators in all Latin America, which revolves around 23.7 million people, as explained by Laóz (2018). In 2019, the Brazilian e-sports audience multiplied, reaching the impressive mark of 21.2 million people, in Newzoo numbers, which keeps Brazil in third place in the ranking of viewers, losing only to China and the United States according to Sommadossi (2021). This number is well reflected in the audience for the LBFF 4 final, that took place in March 2021, which increased by 93% compared to the 2020 edition. Most of this audience is made up of men (53,7%) (Sommadossi, 2021).

The legislative void in face of the dimension, doesn't escape the Law, despite the discomfort that the legal scope can arouse in many segments. It's not surprising. Since Thomas

Aquinas, "Law is a rule and measure of acts, by virtue of what man is induced to act or is prevented from acting" (Aquino, 2002, p.51).

Brazil has a relevant team of League of Legends (LoL), one of the most important and well-known virtual games, and a Brazilian Confederation of E-sports (CBDEL), which regulates, manages, organizes, promotes, and coordinates E-sports in the country. This entity, however, had its certification suspended by the Ministry of Sports in December 2018 due to non-compliance with the legislation regarding the transparency of its management, and it still lacks recognition by the main institutions linked to national electronic sport (Sommadossi, 2021). Nevertheless, the Brazilian Confederation of E-sports (CBEE), founded in 2006, claims responsibility for supervising and inspecting E-sports in Brazil. In 2016, Brazilian e-Sports clubs founded the Associação Brasileira de Clubes de E-Sports (ABCDE), which works with promotion and professionalization of e-Sports and is responsible for organizing the championships (Laóz, 2018).

Brazilian cyber athletes are young people between 17 and 25 years old (Pereira, 2014). They have many fans, salaries around 3 thousand to 20 thousand reais, being able to earn even more income and attract sponsors in the practice of streaming, in addition to the awards of the victories achieved, these are not modest amounts. The growth of the activity, including in Brazil, requires legal support, whether to produce specific legislation or to attract existing sports legislation, a sine qua non condition to provide legal certainty to investments and commercial partnerships that are presented.

The present study aims, therefore, to compare the dynamics of E-sports with that of conventional sports, to demonstrate the similarities between them, to encompass it in the norms of Sports Law, until a specific norm arises.

In addition to the sports issues involved, which suggest a stir in the configuration of e-Sports as an effective category of sport, there is also a lack of legislation regarding this new type of entertainment, and it is these dimensions this article investigates.

2 Brief history of e-sports

The arcade platform, "which allows the user to access a specific electronic game, usually at the cost of a few coins – inserted into the machine itself", taking as examples Computer Space and Atari (Pereira, 2014, p.9-11), allowed the realization of the first e-Sports competitions. These devices (or consoles) were already coupled to the TV, which was improved by Nintendo,

whose machine had new 8-bit graphics technology accompanied by a cartridge with the game Super Mario Bros.

E-Sports emerged in 1983, in Dallas (USA), as a competition of the first World Video Game Championship (Pereira, 2014), performed using the arcade platform, which includes the electronic game called Pac Man, developed with more intensity after the advent of the PC (personal computer) and the internet - which allowed greater organization of players.

The emergence of the PC and the internet made it possible to organize competitions, held at home (1993) and later through face-to-face meetings (1996). The technological leap did not take long, as the new machines came with 16, 32 and 64-bit graphics, the latter in the Nintendo 64 version (1996) and then Playstation 5, Nintendo Switch and Xbox One S. In 1997, there was a Quake championship in Atlanta, sponsored by Microsoft, in which 2,000 players participated, with the winner being awarded a Ferrari 328 GTS. Due to the great repercussion of this event, the organizer of electronic game championships CPL (Cyberathlet Professional League = Professional League of Cyberathletes) was created (Laóz, 2018).

With the turn of the millennium, these competitions reached the professional level, which involved a high degree of organization and increasingly large awards, making their players true celebrities that generated the massification of e-Sports. The biggest growth in e-sports took place in 2011, with the creation of a social network called Twich TV, which enabled live broadcasts of matches and training (streams), responsible for part of the player's earnings (Laóz, 2018).

3 The sports law nature of e-sports

A lot is discussed about the Sports Law nature of e-sports[1]. Such controversy is not justified, as the few distinctions that exist between electronic and conventional sports do not legitimize a distance between them, nor will they resist the natural evolution of their practice and their vertiginous growth nowadays, in the pace of the 4.0 Revolution.

It is necessary to understand that the uproar involving the sporting framework of e-Sports in the traditional definition of sport is of lesser importance to the businesses involved than the very definition of the type of economic activity that characterizes their professional practice. This is because it seems quite visible that the sporting framework of this new form of

[1] Recovered in 11/03/2022, of https://hdl.handle.net/20.500.12178/186451, also in 11/03/2022, of https://hdl.handle.net/20.500.12178/186470

competitive entertainment does not interfere so significantly in its economic dimension, evaluated in terms of the potential of this new business as a "profitable product".

It is as a work/profession that this question of framing may suggest some problems as an obstacle to the full development of this professional practice. It must be taken into account that the current context of the ESG (Environment, Social and Governance) management model imposes the establishment of civilizing levels that confer socio-environmental sustainability to new expanding businesses.

On the other hand, the absence of a precise legal definition for the framework of this activity stresses the relationship between the new entrepreneurs, the workers involved and the institutions responsible for the application of justice. This results in a natural tendency of labor jurisprudence towards the adaptation of the legal discipline of this professional activity to the existing legislative paradigms (in this case, the CLT and the Pelé Law - Law nº 9.615/1998), which can create obstacles to the full development of this profession as a new activity.

In principle, the essence of conventional sports, unlike e-sports, is the physical effort involved, although it is not uncommon for traditional sports where intelligence is the focus of activity, such as chess. This closer observation of the problem, therefore, suggests the fragility of this traditional concept of sport, linked to physical effort, which has been one of the barriers imposed by international regulatory bodies for the equalization between traditional sports and e-Sports.

Sports physiology is not limited to the muscular effort of the activity, as it also involves agility, coordination, sharp reflexes (biomechanics), cognitive and communicational capacity to trace and combine strategies, that is, aspects that are recognized as relevant and unrelated to tonus, resistance and to the muscular capacity of the practitioners. Modalities such as sport shooting, for example, require much more power of concentration than physical capacity and, nevertheless, they are outside the regulatory framework of sports (it is even included within the Olympic program).

Apart from that, in sports that use the ball as the main instrument, it is noticeable that, alongside physical resistance, equally complex tactical skills emerge, focusing on the aforementioned cognitive and communicative skills.

The cyber athlete, in turn, must enjoy a lot of agility and reflex, in addition to demonstrating strategic ability, as e-sports "require precise hand-eye coordination and keen reflexes. The importance of a low reaction time is so high that it is the main reason which leads cyber-athletes to retire at 30" (Pereira, 2014, p.90-91). This characteristic is compatible with

the game under the focus of conventional sport, as Rezende teaches: "Reaffirming, the game – in principle – had (and still has) a meaning always based on the precision of the movement combined with strategic reasoning (...)" (Rezende, 2016, p.54).

The legal concept of sport, in its conventional modality, was stamped in art. 2 of Law nº 6.251/1975: "For the purposes of this Law, sport is considered to be predominantly physical activity, with a competitive purpose, exercised according to pre-established rules".

Law nº 8.672/1993, in its art. 3, revoking the aforementioned rule, referred to "predominantly physical and intellectual activity". In the third generation of the regulation, art. 3 of Law nº 9.615/1998, the legislator gave up on conceptualizing sports activity, limiting itself to classifying it. The intentional absence of legal specification around the nature of the effort undertaken in the sporting activity is symptomatic of the evolution in the understanding of the sport as an activity that transcends the merely physical effort and reaches its conjunction with the intellectual exercise, which allows to cover hypotheses such as e-Sports, in which manual coordination and the immediate response of reflexes are fundamental elements for its practice.

E-sports, in turn, are conceptualized as "video games that can be played competitively" (Pereira, 2014, p.21), or, in common sense, as "organized electronic game competitions, especially among professionals" (p.22).

Organized Electronic sports in a competitive mode, in addition to pre-established rules, oblige the practitioner, whether during their training for competitions, or during the championships, forces practitioners to spend many hours sitting in front of the computer, in frantic coordination between eyes and hands, injuries often arise from this concentrated repetitive strain (carpal tunnel syndrome and radial tunnel syndrome), requiring prevention and preparation regarding physical – aspects that allow the achievement of a better performance of the cyber athlete, as in any conventional sports activity.

The cyber athlete faces an extensive journey of training and preparation, which is not limited to the individual scope, as tests of tactics are necessary through collective training. Training, in turn, encompasses not only the games themselves, but also the exhibition of those already carried out, to detect errors and different strategies. This method of work is used in practically all aspects of sport today. There is formation of teams, which have coaches, physical trainers and nutritionists, as well as gaming houses, where players are concentrated in full regime (confinement) and whose structure is financed by sponsors of teams organized in divisions, as in football, for example, something that equates to conventional sports training centers.

Most e-Sports competitions are online, although it is currently not uncommon for face-to-face tournaments to be held, especially in international competitions, in which the existence of a delay can compromise the performance of players, thus requiring physical proximity for its realization. International tournaments have the same characteristics as any traditional sports competition: opening ceremony, interviews, narrators, commentators and big prizes, like the first and second Dota 2 tournaments, held in August 2011 and August 2012, which totaled 1.6 million dollars in prize money in each tournament (Pereira, 2014).

The sponsorship of e-Sports is essential for its status as a sport and already has major brands such as Intel, American Express, Coca-Cola, RedBull, Nissan and Ax deodorant (Pereira, 2014). At this point of observation, it is already possible to glimpse the added value of this new sport, calling into question the perspective of Alves (2018), for whom the low adherence of countries to the International E-Sports Federation, created in 2008, would be an obstacle to full development. of this modality as a sport, impacting the conditions of approximation of the stakeholders, which would be, in Freeman's philosophical conception (2010), the financial agents or people directly impacted by this expanding market.

The economic numbers of electronic sports testify against this thesis. In fact, precisely demonstrating this expansion of the attractive character of this business in relation to its stakeholders, it is clear that the phenomenon of creating players' own brands is also present, so that brands are not limited to investors or sponsors, which is a strong indication that the agents impacted in this new market is already moving around rapidly as an expanding novelty, increasing the capillarity of fundraising in this market.

In this context, the player's personal brand is confused with the athlete's own figure, who ends up becoming a celebrity, adding new values through marketing and relationship initiatives, such as the so-called fan clubs, with an economic dimension in many cases of exploration of the personal image as a brand linked to the gamer personality style, inserting in this model of interaction with the public commercial purposes similar to those that occur today with the sports stars of traditional sports around the world. Some eSports stars reach millionaire salaries, in addition to receiving income through training streaming, which can reach up to 800 thousand dollars a year (Pereira, 2014).

Electronic sports today move large sums of money. There is news that a Dota 2 World Tournament awarded the winner $9,139,002.00 (Laóz, 2018). Epic Games promoted the first Fortnite *World Cup* in 2019, where, at the age of 16, Kyle “Bugha”, from the United States,

took home the $3 million prize, becoming champion of the Battle Royales, electronic games consisting of real and survival battles (Estrella, 2019).

According to Senator José Medeiros (PODE-MT), Rapporteur of the PLS (Sustainable Logistics Plan) 383/2017[2], pending in the Federal Senate, "in August 2015, for example, 12,000 people went to the Allianz Parque stadium, in São Paulo, to watch live a match of the online game League of Legends (...) it is estimated that, currently, e-sports generate revenue around US$ 700 million worldwide, expected to reach US$ 1.5 billion in the year 2020"[3]. Indeed, the newspaper *El País*, edition of 08/21/2017, reported these data:

> Newzoo, an audience research and analysis company specializing in digital markets and games, estimates that e-sports generate revenues of around US$700 million worldwide. For 2020, this amount is estimated to reach 1.5 billion dollars. It is a significant market, which continues to grow. (Pazuelos, 2017)

The financial phenomenon is so attractive that investors in competitions and teams are not limited to players or companies in the field, reaching investors from different fields, retired sportsmen, such as Zlatan Ibrahimovic (Manchester United), who joined two other entrepreneurs in an investment of US$ 1.3 million in a company that maintains structure for *Counter-Strike* competitions.

In Brazil, many companies from different fields are partnering with companies that manage teams of eSports players, such as Cursor eSports and PokerStars, and even Flamengo has dived into creating a LoL team. Given the growing interest in the e-Sports segment, traditional and specialized media outlets have turned their attention to events linked to it. But the internet is still the most used vehicle – where e-Sports has more space than conventional sport –, mainly due to the ease of transmission of training to all types of spectators (casual and frequent). Like conventional sports athletes, the cyber athlete retires around the age of 30, due to the natural loss of reflexes, which compromises his performance. After that, the athlete can become a coach, a commentator or a narrator.

An important distinction between e-sports and conventional sports is the lack of recognition by society, including family members, in relation to the former. There is a whole stereotype to be fought in the way of social acceptance of e-gamers, who, in general, are considered addicts, incapable of socializing, lonely and isolated. The conventional sportsman, on the other hand, enjoys prestige in society, precisely because his practice provides popularity,

[2] Recovered in 02/01/2022, of https://wscom.com.br/pls-383-entenda-por-que-famosos-do-setor-de-esports-sao-contra-ao-projeto-de-lei-que-pretende-regulamentar-a-pratica-esportiva-eletronica/

[3] Recovered in 02/01/2022, of https://www12.senado.leg.br/noticias/materias/2018/06/29/ce-vota-regulamentacao-dos-esportes-eletronicos

regardless of the existing competitiveness. Not infrequently, especially in the United States, this appreciation is reflected in scholarships for athletes from various segments.

However, recently, American universities have also decided to invest in e-Sports players, extending such scholarships to this sports segment, whose aid ranges from U$ 2 thousand to U$ 24 thousand.[4]. With such volume of investments orbiting electronic sports activity, the tendency is for this distinction to disappear.

After all, there remains only one relevant characteristic that distinguishes e-Sports from conventional sports: the existence of intellectual property in electronic games, an aspect well perceived by Dennys Eduardo Gonsales Camara, Giuseppe Mateus Boselli Lazzarini and Pamela Michelena De Marchi Gherini:

> As the organization of professional sports practice is not exclusive to specific entities, each entity is free to draw up the regulation of the competitions it promotes, which includes the rules of the game itself. At this point, an important difference between traditional sports and e-sports becomes evident: the latter have owners.
>
> No entity 'owns' football, basketball athletics, or any other traditional sport. On the other hand, electronic games adopted as e-sports are the intellectual property of their respective developers or publishing companies (publishers, as they are commonly known). These entities have control over the use and distribution of the games, being the only ones legally capable of altering their internal working mechanisms. (Camara, Lazzarini & Gherini, 2018, p.14)

It is known that 22 nations already officially recognize the sporting nature of e-Sports, including Malaysia, South Korea, Italy, Russia, China and Denmark (Laóz, 2018).

As stated at the beginning of this article, the official recognition of the sporting nature of e-Sports has not been an obstacle to its upward trajectory of economic projection, which leads us to think that traditional sports agents would benefit more than e-sports agents. Sports with this recognition, since the public of these electronic sports practices does not stop growing and, along with that, the figures around this billionaire business.

Regarding the legal regulation of this activity, the absence of certainty can have a negative impact on business, which is the focus of the intended approach in the next lines of this article.

4 Brazilian sports law and e-sports

Sports Law is related to several branches of Law. In general terms, this branch has a seat in the discipline of Constitutional Law, since the regular development of legal relations in the sports field is subject to founding principles of the democratic political order, which outline

[4] Recovered in 02/01/2022, of https://www.metropoles.com/entretenimento/game/universidades-dos-eua-ofertam-bolsas-de-estudo-a-jogadores-de-e-sports

some conditions for the dignity of the human person to give legitimacy to the activity, economy above all, unconditional respect for fundamental rights and guarantees. In this sense, issues related to the health and safety of practitioners, copyright or intellectual property, the minimum civilizing levels of social relations and, equally, the defense of the environment and children and youth permeate the entire dynamic that links electronic sports. to an effort to professionalize its practitioners.

These normative premises of sustainable governance, which are directly linked to the so-called triple bottom line developed by Elkington (1997), present in ESG (Enviroment, Social Governance) management models, are the heart of the political appeal of the legal feasibility of these new sports. It is by the criterion of sustainability of an economic practice that it is possible to insert a business model in the business environment as something rational and profitable. This notion of balance and sustainability is a market trigger for expanding the ability to raise funds from investors in the so-called green market. From a marketing focused on the values involved in this new sport, it is fully feasible to trigger this fundraising with the practice of e-Sports.

This happens because the notion of values, linked to traditional sports, acts as a capital of sustainability added to sports modalities. At this point of reflection, it can be seen that, despite the lack of consensus around the classification of e-Sports as a sport category, it has not been an immediate obstacle to its growth so far, this classification can be very well used by stakeholders as a resource. of marketing to attract new social segments, since the approximation between its practices and relevant socio-environmental values in the market is a field of expansion still available in this new market niche.

Issues such as discipline, loyalty, resilience, teamwork, health and early economic-financial emancipation can be emphasized in the context of e-Sports practice, with increasing levels of adhesion by new practitioners, leagues and sports entities. There is, therefore, a culture of ethical values linked to sport that may well work in favor of the expansion of e-Sports, and this links in a very interesting way with the concept of sustainable governance professed by new approaches to contemporary business management. In the field of constitutional law, the path seems to be open for this business experience, since there is a normative matrix based on the valorization of ethical premises, both in norms that attribute individual and collective rights, and in the prediction of principles related to the environmental balance of the free entrepreneurial initiative.

The art. 170 of the Federal Constitution is lavish in emphasizing this link between the freedom of entrepreneurial initiatives and the constitutional values of social and environmental appeal. At the same time, the constituent legislator emphasizes the freedom of forms of undertaking (sole paragraph of art. 170), it lists a comprehensive list of principles that need to be observed in order to consider the exercise of this freedom legitimate, as described in items III, V, VI and VII of said device. These requirements are within the reach of new forms of business, which are in tune with the requirements of the common good, which finds its source of inspiration in the most modern management approaches, focused on sustainability and socially aggregated values to business. From this great constitutional inspiration, the normative influence of other fields of law also derives, with significant contributions in each of its specific fields.

In Civil Law, essential issues are dealt with such as contractual capacity (relevant in the case of athletes under 18 years of age), in addition to the legal discipline of contracts and civil liability for contractual or extra-contractual damages, given that, at this point, the world of business is already sufficiently established, as there are always such legal disciplines in the models for formalizing economic activities. Business Law borrows the concepts and forms of its legal expertise as a source for the creation of sports management associations and entities (the so-called "SAF – Sociedade Anônima de Futebol" – a kind of company that manages the sports club, provided by the capital of investors).

On the other hand, Labor Law, as it permeates in a more comprehensive way the legal discipline of human dignity in professional relationships, finds a vast field of action in this dawn of new sports modalities with potential for economic development, as is the case of e-Sports. The sports labor legislation nicknamed "Pelé law" provides for the special sports employment contract (article 28), whose regulation was born as a political claim of the soccer branch, which wanted to overcome the paradigm represented by the previous law (Law nº 8.672/1993 – the so-called "Zico law").

This special employment contract provides for a compensation clause for sports entities and professional athletes for premature termination of the relationship (items I and II of article 28 of Law n. 9.615/1998), as well as suggesting the supplementary application of the other rules on common labor rights, insofar as it elects by exception the provisions of the CLT (Brazilian principal labor law) that would have the incidence removed in the face of the contracts disciplined by it, in the form of articles 28, § 10, and 30, sole paragraph, of Law n. 9.615/1998.

Thus, common rights legally provided for employment contracts continue to be governed by general legislation, which, despite simplifying the debate on legal regulations, ends up attracting some practical problems, especially with regard to the fractionation of athletes' individual gains, which are usually divided between contractual salary and accessory rights, such as image rights and participation in awards for achievements of the club or associative entity.

Law nº 9.615/1998 also does not define as mandatory the application of the special employment contract in all sports, but only in soccer contracts (article 94), which disfavors the legal security of other relationships with athletes from other modalities.

The legal separation of remuneration gains, based on exclusively contractual provisions, is something that, in the light of prevailing jurisprudence, may constitute fraud against labor legislation, under the terms of art. 9 of the CLT, which, once enacted, brings with it all the consequences arising therefrom, including the judicial establishment of exorbitant labor liabilities, resulting from judicial convictions.

The legal separation of remuneration gains, based on exclusively contractual provisions, is something that in the light of prevailing jurisprudence may constitute fraud against labor legislation, under the terms of article 9 of the CLT, what brings with it all the consequences arising therefrom, including the judicial establishment of exorbitant labor liabilities as a result of the judicial convictions.

Therefore, the warning signal that lights up in this market niche is the need to curb the fields of political intervention in the freedom to contract, which must be limited only by the constitutional principles that founds the economic order and by the minimum social rights expressly provided for in the Federal Constitution, wiping away all excess regulation in these developing areas.

To illustrate the argument, it can be imagined that for a successful athlete some predictions of the labor legislation, such as the rigid weekly schedule modules, as well as the fixed vacation windows and the static remuneration based on rigid contracts seem to clash with the fluidity of methods and gains that their free contracts can potentially achieve due to the results regime inherent to this new business model (which aggregates remuneration in several different ways, such as awards, streaming, sponsorships and the subsistence allowances established in the contract for all athletes, which are important for professionals hired at the beginning of their careers, but not so interesting to the established ones).

These variables cannot be properly weighed by the static structures of common contracts (nine-to-five model, static remuneration and ordinary productivity measurement ways), especially because in many cases personal gain, which can even be disconnected from the professional contract with the association, merges with his contracted work window. This is common, for example, when the number of hours of streaming appears as an extra income incentive for that athlete who, under legal contract limits, would not be obligated to excessive training time. On this case, the excessive hours on players activity can be caused by his own interest in showing its itinerary to the fans, and not because of an imposition that comes from the contract signed, which implicate in legal responsibility troubles for the sports entities, if theses differentiations doesn´t sound too clear for the authorities.

This context of multiple business possibilities involving e-Sports highlights that common regimes and disciplines of the employment contract are a little outside of the interest center of these athletes and the associations that recruit them into competition teams. The State regulation of these relationships should have these variables accounted so, in order to the law does not serve as an obstacle but as a facilitator for the economic development on these new modalities. Therefore, legislative intervention here must be restricted to the level of strict protection of health, hygiene and safety at work, and the merely private interests of contractual partners must not be confused with legislative matters. Thus, the excess of private activities of exclusive interest to the athlete, for example, cannot be equated with violations of the employment contract signed with sports entities, or the viability of such contractual relationships will end up severely limited by excessive regulation.

This issue becomes even more sensitive because at the same time that some modalities are less visible and aggregate less economic value, requiring a firmer intervention by the State to guarantee rights of minimal dignitary dimension, others are extremely popular and surf ease in raising funds and distributing their results among practitioners, which reveals that the law in these cases should not figurate as an obstacle to the frank economic development that these modalities naturally are able to promote, from their own initiatives.

Rezende explains:

> In view of the diversity of information sources and different legal implications, it becomes evident that the definition of the principles applicable in the scope of Sports Law, and the consequent legal regime pertinent to its interpretation, must take into account the rule applicable to the specific case, starting from the isolation of the legal fact, when then we can properly position it, for example, as a fact attributable or not criminally; with or without tax incidence; as a consumption relationship or not; as a civil or labor right. This legal dichotomy already reveals how challenging Sports Law is (Rezende, 2016, p. 165)

Another relevant point is the norm scripted on Constitution of the Republic, in its art. 217, which imposes on the State the duty to promote formal and non-formal sports practices, as a right of each one. The same norm is guaranteeing the autonomy of sports entities, especially about allocation of public resources for the promotion of sports at an educational level (training), at the highest level. income (professional) and that focused on leisure (participation), in the case of a true social investment.

As e-Sports are not fully institutionalized, the issue of allocating public resources in this sport seems problematic, given that, at least so far, the private initiative seems to play a more relevant role than the State in promoting these activities. new sports practices, which is healthy, since the dispute for the framing of e-Sports among the sports modalities necessarily involves the interests that involve the state promotion of other modalities. Perhaps this willingness of e-Sports to raise funds outside the state is a weapon for its development, and not an obstacle, that's the point.

There´s something that should also be noted in the constitutional scope, which is the fact that article 5, XXVIII, subparagraph "a" of the Major Law ensures "the protection of individual participation in collective works and the reproduction of the human image and voice, including in sports activities", which has a direct implication in these e-Sports relationships, because e-Sports contracts privilege the sharing of results by displaying the images of the athletes that make up the competition teams.

It is important to mention that, under the terms of article 24, IX, of the Federal Constitution (with the wording provided by Constitutional Amendment 85/2015), the legislative competence on the matter of sport is concurrent, which means that it belongs to the Union, the States, and the Federal District, since the aforementioned constitutional provision expressly imposes on these entities legislate in politic´s themes related with "education, culture, teaching, sport, science, technology, research, development and innovation."

The right to practice sports in Brazil, therefore, is elevated to a constitutional level, which reveals that a more immediate attachment to infra-constitutional structures of legislative provision in these relationships is dispensable, as occurs with the Pelé Law, which in its article 3 provides:

> Art. 3 Sport can be recognized in any of the following manifestations:
> I - educational sport, practiced in education systems and in unsystematic forms of education, avoiding selectivity, hypercompetitiveness of its practitioners, in order to achieve the integral development of the individual and his training for the exercise of citizenship and the leisure practice;
> II - participation sport, on a voluntary basis, comprising the sports practiced with the purpose of contributing to the integration of practitioners in the fullness of social life, in the promotion of health and education and in the preservation of the environment;
> III - performance sport, practiced according to the general rules of this Law and rules of sports practice, national and international, with the purpose of obtaining results and integrating people and communities in the country and these with those of other nations.
> IV - training sport, characterized by the promotion and initial acquisition of sports knowledge that guarantee technical competence in sports intervention, with the aim of promoting the qualitative and quantitative improvement of sports practice in recreational, competitive or high competition terms.

With the vertiginous growth of the practice of e-Sports in Brazil, it is desirable to classify it as a sporting activity, especially due to the legal aspect of regulating labor relations. It´s important because, in spite of economic development has surpassed any barrier created by state regulation misses, the professional work relationships in this field of electronic sports can gradually emerge as an obstacle to the progress of the modalities, even when rights and duties are not clear between players and stakeholders. So, it is necessary to establish its framework, giving security to the enterprises that have been emerging in this field, emulating new forms of jobs and opportunities related to e-Sports.

Dennys Eduardo Gonsales Camara, Giuseppe Mateus Boselli Lazzarini and Pamela Michelena De Marchi Gherini says that there is no problem in applicate sports Law on e-Sports relationships. For them: “Brazilian legislation does not seem to be an obstacle to the recognition of e-sport as a sport in the national territory” (Camara, Lazzarini & Gherini, 2018, p.4).

What is important in this debate is that the reduction of the electronic sport employment relationship to the rigid models provided for in common legislation, such as the CLT, would have the most immediate consequence of discouraging investment in this new market niche, to the detriment of all actors involved. Therefore, in addition to its sports framework, it is necessary to seriously think about specific regulation of its contract models, giving more freedom and security to the parties involved.

On politics, it´s noticiable that Legislative Power has discussed several motions of law issuing the recognition of e-Sports as a sport practice. The motion of law named PL 3450/2015 adds item V to article 3 of the aforementioned Pelé Law to recognize virtual sport as a fifth manifestation of sports practice. There is an unfavorable opinion of the Sports Commission (CESPO), which suggests an inclination for its rejection. The opinion of rejection here has been support on the argument that "electronic games are included in each of the four aforementioned

manifestations, depending on the characteristics and the context in which they are practiced. It is not, therefore, a new sporting event, as this proposal intends."[5]

PL 7747/2017, another motion of law attached to PL 3450/2015, institutes virtual sport, on the initiative of Deputy Mariana Carvalho, from PSDB/RO, was presented on 05/30/2017, limiting itself to providing for the applicability of article 3rd of Law n. 9.615/1998 to what he calls "virtual sport".

Finally, the PLS 383/2017, authored by Senator Roberto Rocha, from PSDB/MA, which regulates electronic sports, is limited to conceptualizing electronic sports – specifying its competition system and the technology used. -, confer the name of athlete on the practitioner, define its social objectives, give legitimacy to the promotion of sports activity by parastatal entities and institute the sports day e electronic (June 27), whose choice coincides with the anniversary of the founding of the iconic American company Atari, which took place in 1972[6].

Addressing one of the points of this question, the authors mentioned below emphasize that:

> As the legislation does not provide for the existence of entities holding legal rights over the sports themselves, the promotion of the professional practice of e-sports becomes different, as the organizations that organize professional competitions need authorization from the publishers for the use of the electronic games brand and software in their events. In the same sense, the organizers of competitive events and administrative sports entities are not free to change the rules of the games (Camara, Lazzarini & Gherini, 2018, p.6).

Referred scholars understand that "This peculiarity of e-sports limits not only the organization of competitions, but also the exercise of other institutes of sports law" (Camara, Lazzarini & Gherini, 2018, p.7). However, the legislative silence regarding intellectual property constitutes another legal aspect to attract general rule (Law nº 9.279/96).

This law has provisions that seem to satisfactorily absorb some of the business interests related to the issue of ownership of the invention, trademarks and patents involved in the development of these games, although it does not add anything to the issue relating to freedom of contract in sport.

To exemplify the insufficiency of the currently existing regulation, attention can be drawn to a confusion created within the scope of the aforementioned Pelé Law, which describes on the article 42 the called "arena rights", that is a provision to sharing with athletes involved the economics results of competitions transmissions, something that is including pay per view

[5] Recoverd in 02/01/2022, of https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra;jsessionid=D8BF6A65A7FAA9FCDC49FD6101E8FD0D.proposicoesWebExterno1?codteor=1519134&filename=Tramitacao-PL+3450/2015

[6] Recoverd in 02/01/2022, of https://legis.senado.leg.br/sdleg-getter/documento?dm=7224197&disposition=inline

and free audience. In this provision, the "arena rights" is defined as a prerogative granted to sports entities to "negotiate, authorize or prohibit the capture, fixation, emission, transmission, retransmission or reproduction of images, by any means or process, of sporting spectacle in which they participate" (wording given by Law nº 12.395/2011).

Caputo Bastos conceptualizes the right to the arena as a "percentage of the amount contracted by sports entities with the media – in its entirety – and which is passed on to athletes by the trade unions" and warns: "only athletes participating in the football event broadcast on television or radio are entitled to the percentage provided for in article 42, § 1, of the Pelé Law" (Bastos, 2014, p.17). Despite the reference to football, I do not see any difficulties in its applicability to any sporting activity.

Despite the more immediate reference of the Pelé Law to the football modality, in the absence of another legislative provision, there are no difficulties in applying the device to e-Sports, as provided for in by the sole paragraph of article 94 of this law. Now see the problem of logic that is created here: if most sporting events take place in a virtual environment, and only major competitions have arenas set up to host the matches of the contested championships, how could the discipline of "arena rights" encompass the claims of the actors involved in this new sport, if streaming (provided on own personal transmissions) already occupies a privileged place in this virtual games transmissions?

Said indoctrinator also alerts to the existence of confusion between the right of arena and the right of image, stating that they are autonomous institutes, and distinguishes: the right of image "Consists, therefore, of the athlete's right not to have his image exposed and/or commercialized, without your consent" (Bastos, 2014, p.86), what is different of "arena rights", which discipline the individual participation on the economics results of the transmission rights sold to pay per view services or to free TV channels. As observed so far, a freedom of contracting or a mitigated regulation of image rights would make much more sense for e-Sports than the provision of an arena right, since the concept of arena, although present in some events, is smaller than the concept of streaming, more linked to the reality of the economic uses of the athletes' image rights. For them, the freedom to act in this field of digital content production seems to be more interesting than the regulation of an arena right, because each professional use to have his own audience, regimented in the form of followers and fans. On this case, don´t make much sense for them, outside of the official tournaments that count on the assembly of an arena, talk about sharing their individual earnings with the private transmissions of trainings, games and tournaments.

Therefore, the locus of incidence of arena rights would be more linked to these official broadcasts of the tournaments, and not to the production of digital content aggregated by the professional athletes on their personal platforms for dialogue with the public, which is the preponderant interest toward the parties involved on these e-Sports initiatives.

In any case, what has to be clear here is that the image right is based on art. 5, V and X, of the Constitution of the Republic and aims to preserve the athlete's privacy, avoiding the unauthorized placement of his individual image, that is, outside the context of participation in the sporting event. This finding reinforces the conclusion that streamings are not technically included in this prediction of arena rights, not being properly covered by the text of article 42 of Pelé Law.

This distinction is important, because while the right to the arena is destined to the sports entity (club, team), of which only 5% is transferred to the athlete - provided that he has participated in the broadcast event -, the image right, in turn, belongs to the athlete, whose exploitation by the sporting entity will depend on the conclusion of a license agreement for the use of its image upon payment.

Therefore, it´s not allowed for e-Sports entities prohibiting the private production or commercialization of athletes streaming contents without proper contractual provision for compensation for the exclusive use of their image rights, because of this practice of restriction would violate the constitutional right in question. On this case, as it seems, the legal protection of the worker must come in the sense of guaranteeing a minimum expression of a fundamental right provided for in the constitutional order, and not in the uncomfortable form of an extended legislation that embarrasses contractual possibilities and promotes an overlapping of the legislator decisions to the will of the parts.

As the evolution of electronic sports brought it to the stage of international competitions, at a professional level, having even boosted in some tournaments the mobilization of large spaces to house the sporting events of this modality, it is feasible to conclude that the absence of legal provision for the equality between e-Sports and conventional sports cannot serve as an obstacle to the subsidiary application of the legislation that governs the arena rights in Brazil, although this application does not even remotely resolve the issues related to image rights.

5 The professional practice of e-sports

Victor Biazotti Laóz states that, currently, cyber athletes sign sponsorship or service contracts, most of which would fall under the employment contract, given the requirements and

obligations imposed on players (Laóz, 2018). A relevant clarification about professional sports practice consists in the assertion that the "professional" qualification does not correspond to the sport itself, but to the athlete who practices it (Bastos, 2014).

This observation is important in a double sense: first, because no other legal nature is considered for these relationships between cyber athletes and sports entities beyond the work relationship, and, secondly, this finding should not be confused with an invitation to imprison these new relationships in the restrictive field of employment typology described on CLT (ordinary Labor Law), for all the reasons mentioned above, which point very clearly to the peculiarities of this new type of sport, which demands new work relations types too.

Another relevant point about professional sports is raised by Maurício de Figueiredo Corrêa da Veiga, who, citing Álvaro Melo Filho's lesson, clarifies that the sports entity "comprises, in ascending hierarchical order: sports associations (clubs) , leagues, federations and confederations, which are national in scope." (Veiga, 2017, p. 67). The Brazilian Association of E-Sports Clubs (ABCDE) signed an agreement with the game provider Riot Games Brasil, in which a commitment was made to the registration of the CTPS (formal labor registry document) of cyber athletes and coaches of teams participating in the League Championship of Legends, following the guidelines of the Pelé Law. It is an important step, although the journey is still long towards the legal security of these relationships. (Laóz, 2018).

As stated above where, the absence of a more immediate regulation of e-Sports tends to tie its legal relationships to already established paradigms of norm, what has been happening with the professional contracts of the League of Legends in Brazil. In spite of this picture is not the most promising scenario in terms of business developments, because of the excess of limitations on CLT, it is an initiative towards the legalization of its practices, which reinforces the commitment of electronic sports to the ethical values of sport, reflected in the concern with the minimum civilizing levels of the social rights on their work relationships.

In the absence of a legal provision for the business to resort to freer contractual forms on labor relationships, the ordinary labor law (CLT), identified by its typological concept of employment, ends up being the repository intuitively used by businessmen to formalize such relationships. This initiative depart from the perception of investment timing, what signalizes for businessmen about waiting for legislative delays to develop their business models is a mistake, what enforce them to play with the cards that are available on the time.

As a movement towards the professionalization of electronic sports practice, this is important, because it accentuates a distinction of greater importance for business, which is the separation between the concepts of athlete (professional) and sportsman (amateur).

To introduce this conceptual distinction, the following passage by Ricardo Georges Affonso Miguel is important. For him, the athlete has "a more professional concept than the sportsman", which is "the individual who practices physical exercises with a connotation of fun and leisure" (Miguel, 2013, p.65). He clarifies, then, that "for educational and participatory sport modalities, the individual who performs them is, in fact, the athlete, while in the case of performance sport, the person who practices it is an athlete". And he concludes: "every athlete is a sportsman, but not every sportsman is an athlete" (p.66). He conceptualizes an athlete as being "the individual who practices performance sport, that is, one practiced in the search for results and integration of people and nations, in compliance with national and international legislation (...)" (p.68). This distinction is important, considering that it emanates from the Federal Constitution itself, which differentiates, in art. 217, III, treatment for professional and non-professional sport. Said scholar understands that art. 26 of the Pelé Law linked the definition of professional athlete to the definition of professional competition, on this way:

> Art. 26. Athletes and sports entities are free to organize their professional activity, whatever its modality, in compliance with the terms of this Law.
> Single paragraph. For the purposes of this Law, professional competition is considered to be that promoted to obtain income and competition for professional athletes whose remuneration derives from a sports employment contract.

For him, "the CLT rules are applied to the professional athlete (...) but they do not apply to non-professional and autonomous athletes, as well as to those in training", concluding, however, that the Labor Court is competent to prosecute and judge cases. between "professional and non-professional, self-employed athletes, of individual or collective sports, and athletes in training and their respective entities (...), because if the relationship is not employment, it will be work" (Miguel, 2013, p. 145).

The most important point here is to establish the premise that, being a work relationship, the professional practice of e-Sports through sports entities and clubs is linked to the branch of Labor Justice and needs a legislative approach to height of the challenge of state regulation that this theme places in the Brazilian scenario. In the absence of a legislative response, the risk is to convert all relationships of this type into simple employment contracts, when, in fact, the work dynamics in this new market is much broader, as we could see. This approach to freer work relationships has strategic importance in the process of expanding e-Sports in the

Brazilian market, because would confer to businessmen initiative capabilities, which is compatible with the aspirations of stakeholders, maximizing the potential for earnings accessible in this market niche. Stuck in static structures of the CLT model, e-Sports stakeholders would see their alternatives for economic exploitation be seriously harmed by the constraints of rigid hiring models, configuring this an unpredictable labor liability, as such as a duty not linked to the contractual forecasts signed by partners.

The Federal Constitution already offers the necessary safeguards to avoid the circumvention of minimum social rights, so that in the legislative field intervention should take place in the sense of attributing to the instances of justice a qualitative assessment of the contractual provisions around these relations. On this way, constitutional minimum is compulsory and the earnings and benefits are potentially unlimited, as such as linked with individual freedoms of negotiation and practical realization. While this scenario that is more favorable to the safe expansion of labor relations and investments in the area of e-Sports is not designed by the Legislative Power, it is necessary to put in practice the existing institutes of the ordinary labor legislation, especially the legislation of sports, but always bearing in mind the promotion of freedoms, giving a potential for social emancipation to these new forms of labor partnership.

The reflected assimilation of some common norms in the sport relationship is already foreseen in the article 28, § 4, of Pelé Law. This norm provides the subsidiary application of the general rules of labor legislation and Social Security, except some peculiarities contained in the Pelé Law, such as the concentration period (which is a training camp organized for clubs to concentrate athletes before the matches), weekly rest paid, vacations and sports work hours. These themes are already sensitive for conventional sports, but they gain different relevance contours for e-Sports, due to all the issues related to variable individual earnings, which are driven by private activities of cyber athletes, as such as the streams. Not confusing all the time spent by the cyber athlete with self-promotion, digital content production and the time really destined to work under contract is essential in this field, otherwise this would generate a structural problem of linking sports entities to liabilities that in fact not ought to be their responsibilities, exactly because they are related just to the athlete's private initiatives.

Good contracts can solve these problems, through fair compensation clauses to partners and to the Social Security itself, for example, but for that there must be legislation that allows this expansion of the legal spaces of individual intervention by negotiated relationships, based just on clauses of contract, the which still needs to be implemented due to the absence of

legislative proposals in this theme. The motions of law under discussion, as seen, only deal with peripheral issues and tangential to the structural problem focused here, related to the framing of e-Sports activity in the category of sport, or, at most, the application of ordinary precepts of common legislation from work or sport to these professional contracts, which is little in the face of all the complexity and emerging potential of these new working relationships in the field of e-Sports economic activity.

In the absence of more precise laws, some more immediate issues need to be resolved with the legislative material available to market agents. In this sense, for example, with regard to the work of children and adolescents, the Pelé Law takes care to limit the professional practice of the sport only from the age of 16, which seems to be reasonable considering the need to reconcile the market aspirations with the adequate treatment of the question of the socio-emotional development of the new generations. At this point of reflection, it is relevant to note that work involves responsibilities that, excessively dimensioned by the large flow of money involved in e-Sports, can harm the full development of these young people engaged in this sport, especially when, instead of having fun, they already have at an infant age a set of obligations incompatible with their emotional structure and psychological development.

Article 29 of Pelé Law seems attentive to these variables, as it provides for:

> Art. 29. The sports organization that trains the athlete will have the right to sign with him, from 16 (sixteen) years of age, the first special sports employment contract, whose term cannot exceed 5 (five) years old.

This age limit for youth professionalization, by the way, is something with immediate provision in the Constitution, which suggests that, at this point, the protection of young people does not depend on the sports law. In the words of Miguel (2012), the legislator's view when editing norms in this sense is exactly to "prevent exploitation. If this work represents an opportunity formalized through a contract signed by the competent judicial authority, the violation of the constitutional precept is excluded" (Miguel, 2012). Veiga (2017), on the other hand, argues that the right to education and leisure must prevail, since work will necessarily remove adolescents from school, compromising their professional future (Veiga, 2017, p.74). Said indoctrinator clarifies that the practice of sport should be encouraged for children under 14, framing them in the form of educational sport, that is, training (p.77), pursuant to Decree No. 7,984/2013.

Of course, considering the current constitutional limit for the work of adolescents – 16 years old –, in e-Sports this limit will also have to be observed in terms of professional work, which, at first, does not seem to be a problem, since, as previously mentioned, Brazilian

professional cyber athletes, in 2014, were young people between 17 and 25 years old (Pereira, 2014). In 2019, the age of gamers was between 25 and 34 years old. Research carried out in 2021 by Game Brasil places this age group between 25 and 29 years old [7]. However, when considering the profile of generation "Z", formed by people born between 1995 and 2010, a profile that is essentially characterized by digital immersion, this initial age tends to be reduced to the point of making it relevant to face the debate.

Therefore, in the training modality, e-Sports would also benefit from the rules regarding the basic categories, in the form of art. 29 of Law nº 9.615/98 (with the wording given by Law nº 12.395/2011), although it's imperative, as already explained, is limited to football. It is important to emphasize that the so-called gaming houses, where, as we have already stated, players are concentrated in a confinement regime, can perfectly serve to promote electronic sports among the basic categories, training players for future professionalization.

Fabiano Oliveira da Costa advances the concept of a training athlete and considers that a youth athlete who signs a training contract is a performance athlete, even if in a non-professional category. He claims:

> (...) when training an athlete in training, the purpose of football clubs is substantially different from the objectives of pure and simple promotion of the individual and formation of their citizenship exercise (educational sport), in the same way that they do not if it is exclusively aimed at integrating social life or simply promoting health and education (participation sports), it should be noted that it is not the main purpose of clubs, although they may be present. Thus, in a clear syllogism, it is evident that the sports activities of young people in training in football clubs aim at results and that, therefore, they can and should be considered as performance sports, provided for in item III of art. 3 of Law No. 9,615/98 (Costa, 2014, p. 71).

The provisions of article 29 of the Pelé Law, as aforementioned, allows the perception of financial assistance in the form of a learning grant for the practice of non-professional sports, which turns interesting this classification proposed by the author cited above.

Costa even reports the existence of public civil actions brought by the Labor Attorney asking for the suspension of any activity to adolescents under 14 years old, in view of the controversy over the minimum age for the practice of the training sport, and concludes:

Thus, as long as the admission of athletes under fourteen years of age in the basic categories of clubs does not impose physical and mental effort on young people incompatible with their age, as well as these practices are not configured in the hypotheses of art. 405 and

[7] Recovered in 02/01/2022, of https://canaltech.com.br/games/pratica-de-esports-aumenta-no-brasil-e-mais-da-metade-do-publico-e-atleta-187914/#:~:text=Novos%20dados%20da%20Pesquisa%20Game,pontos%20percentuais%20comparado%20a%202020.&text=O%20p%C3%BAblico%20que%20joga%20%C3%A9,42%2C8%25%20de%20mulheres

art. 406 of the CLT, there is nothing, from a legal and practical point of view, that prevents this non-professional activity (art. 5, II, of CF/88).

The divergence of understanding, regarding the age for starting the activities of the training athlete, is still considerable and the confusion of framing, in practice, with the athlete of results in the non-professional modality arouses distrust of much of the doctrine around the safety and protection of the child athlete. The defense of these dimensions of protection for children and youth is one of the nodal points that deserve the regulatory attention of the State, more than the freedom of contract between the entities and adult athletes. In the relation with adults, the ability to discern and choose reciprocal interests is more in line with the degree of maturity of the parties involved, which is not expected when young people are involved with the contract negotiation. Minors under 16 years of age are even authorized to sign a sports training contract, provided that they are assisted by their legal representatives, being able to obtain financial assistance in the form of a learning grant and being authorized to participate in competitions, without the so-called bond of job. The legitimacy of these relationships is also conditioned to the preservation of their schooling, as well as the promotion of family coexistence, under the terms of article 29 of the Pelé Law.

In summary, emulate learning skills through electronic sports is a fruitful path for the personal development of children and adolescents, provided that the dignified dimensions of childhood and youth are preserved, for which state regulation must be attentive, in order to avoid the frustration of fundamental rights of this essential segment of society.

6 Conclusion

The comparison between conventional sport and e-Sports shows that there are many aspects in common between them, allowing the attraction of specific legislation on Sports Law, as well as a similar legal treatment to the controversial issues that permeate, almost on an equal footing, both activities. Since the law took care not to narrow the relationship between the notion of sport and physical effort, removing any reference to it, the motor skills of electronic sports, limited to coordination between the eyes and hands, are not an impediment to its equalization to conventional sport. It is necessary, however, to pay attention to the peculiarities related to the electronic environments of the games, to the lack of regulation of streaming rights, to the negotiation freedom in the division of gains arising from awards and sponsorships, as well as to the compensatory aspects related with the economic use of the athlete's image rights. The peculiarities which are at the center of interest on the contractual issues involving gamers,

entities and the labor law, as such as the daily (and weekly) workday, presuppose an adequate treatment of borderline legal situations such as the separation between activities linked to the sports entity and those ones which interests only the athlete himself, and not the contracting entity.

The Law n. 9.615/1998 (Pelé Law), as aforementioned, took care to separate the relationship between the legal description of sport and the technical concept of physical exertion, removing any immediate reference to it on the legal conception. On this way, it can be considered that the motor skills of electronic sports, linked more immediately to the coordination between the eyes and the hands, and not to the general physical effort of most traditional sports, is not an impediment to its comparison with conventional sports. In case, the element of greatest distinction between both sports segments resides in the issue of intellectual property of electronic games, which prevents the alteration of its rules by arbitration of entities and federations, as such as occurs usually on conventional sports. However, stability of rules is not uncommon in many sports, so such a distinction does not suggest an argument in favor of rejecting e-Sports as a sporting activity.

Starting from the premises that the athlete's professional condition depends directly on the formalization of the special sports employment contract, and that this is only possible from the age of 16, it is clear that the issue of the minimum age for the inclusion of adolescents under 16 years of age in the practice of sport is a sensitive element of this legal dynamic in development, attracting the attention of the doctrine to the defense of antagonistic points of view about the framework of this activity involving young people who is recruited by the training sports entities in the legal modality of non-professional income contracts. At this point a space for necessary legislative intervention opens, in order to ensure legal certainty for such relationships.

Alongside these aspects, e-Sports has evolved from the domestic environment to overcrowded gyms, where major international competitions at a professional level are held, preceded by individual and collective training and preparation, through the formation of teams that have the same infrastructure of conventional sports, including regarding not modest payments and prizes.

The similarity between conventional sports and e-Sports allows the subsidiary application of the legislation that affects the former, while a specific rule is not edited, mainly because legal relations are already moving forward in this direction. This is how Ricardo Georges Affonso Miguel concludes: “The speed of communication, globalization and the

advancement of technology lead us to a path with no return of development in the area of electronic sports" (Miguel, 2017, p.9).

In order to provide an adequate immersion in this universe of technological realization that emerge from e-Sports practices in the contemporary world, a new concept of work is needed to permeate these relationships between sports entities and cyber athletes. The inspiration on this case must be the ethical-sustainable principles of environmental and dignitary agendas scripted on humanist capitalism of the 21st century. To reach that, however, it is essential that this perspective permeates the politic debates around the state regulations of these new electronic sports modalities, what is not visualized on the motions of law debated at this time by the Brazilian´s legislators.

Authors' contributions

Contribution	Medeiros, B.	Sayeg, R.
Contextualization	X	X
Methodology	X	X
Software	-----	-----
Validation	X	X
Formal analysis	X	X
Investigation	X	X
Resources	X	X
Data curation	X	X
Original	X	X
Revision and editing	X	X
Viewing	X	X
Supervision	X	X
Project management	X	X
Obtaining funding	-----	-----

References

Alves, T. M. (2018). Considerações sobre os modelos de exploração dos esportes profissionais aplicados ao e-sports. *Revista Síntese direito desportivo*, v. 8, n. 41, p. 19-28, abr./jun.

Aquino, T. (2002) *in* MORRIS, Clarence (org.). *Os Grandes Filósofos do Direito*, São Paulo: Martins Fontes.

Bastos, G. A. C. (2014) *Direito Desportivo*. Brasília: Alumnus.

Camara, D. E. G., Lazzarini, G. M. B. & Gherini, P. M. M. (2018) *E-sports: visão geral e desafios jurídicos*. Recovered in 02/01/2022, of https://baptistaluz.com.br/institucional/esportes-eletronicos-visao-geral-e-desafios-juridicos/

Campoli, C. (2018) *Universidades dos EUA ofertam bolsas de estudo a jogadores de e-sports***.** Recoverd in 02/01/2022, of https://baptistaluz.com.br/institucional/esportes-eletronicos-visao-geral-e-desafios-juridicos/

Costa, F. O. (2014) *Questões sobre o atleta em formação e o conflito da proibição de trabalho infantil, In*: OLIVEIRA, Leonardo Andreotti P. de (coord.). *Direito do Trabalho e Desporto*, São Paulo: Quartier Latin.

Elkington, J. (1997) Cannibals with forks: the triple bottom line of 21st century business. Oxford: Capstone.

Estrella, C. F. (2019) *Kyle Bugha vence Copa do Mundo de Fortnite 2019 e conquista premiação de R$ 11,3 milhões*. Recovered in 02/01/2022, of https://adrenaline.com.br/noticias/v/59857/kyle-bugha-vence-copa-do-mundo-de-fortnite-2019-e-conquista-premiacao-de-rs-113-milhoes

Freeman, R. E. (2010) Strategic Management: A Stakeholder Approach. Cambridge: Cambridge University Press.

Laóz, V. B. (2018) A crescente mundial do esporte eletrônico: uma nova modalidade que merece mais atenção, in VILLELA, Benedito (coord.). *Direito Desportivo*, Revista Científica Virtual, 27. ed. Recovered in 02/01/2022, of https://issuu.com/esa_oabsp/docs/revista_27_-_direito_desportivo

Miguel, R. G. A. (2013) *Atleta: definição, classificação e deveres*. *In*: Belmonte, A. A., Mello, L. P. V., & Bastos, G. C. (org. e coord.). *Direito do Trabalho Desportivo*, São Paulo: LTr.

Miguel, R. G. A. (2017) *A análise dos meios de prova nas ações judiciais relativa aos atletas de esporte eletrônico no âmbito Luso-Brasileiro*. *In*: Revista Síntese. Direito Desportivo, Ano VII – nº 37.

Miguel, R. G. A. (2012) *A possibilidade de contratação do atleta menor de futebol e a utilização do instituto da antecipação de tutela para transferência do atleta de futebol,* Revista Eletrônica, Direito Desportivo. Recovered in 02/01/2022, of http://portal2.trtrio.gov.br:7777/pls/portal/docs/PAGE/GRPPORTALTRT/PAGINAPRINCIPAL/JURISPRUDENCIA_NOVA/REVISTAS%20TRT-RJ/047/REVISTA%20TRIBUNAL%20REGIONAL%20%20DO%20TRABALHO%20DA%201%C2%AA%20REGI%C3%83O%20N%2047/A%20POSSIBILIDADE%20DE%20CONTRATA%C3%87%C3%83O%20DO%20ATLETA%20MENOR.PDF.

Pazuelos, F. (2017) *Os 'e-Sports' poderão virar modalidade olímpica nos Jogos de Paris.* Recoverd in 02/01/2022, of https://brasil.elpais.com/brasil/2017/08/19/tecnologia/1503139023_302525.html

Pereira, S. K. (2014) *O videogame como esporte:* uma comparação entre esportes eletrônicos e esportes tradicionais**.** Monografia. Brasília: Universidade de Brasília, Faculdade de Comunicação.

Rezende, J. R. (2016) *Tratado de Direito Desportivo.* São Paulo: All Print Editora.

Simões, R. A. (2019) *Manifestações desportivas: o desporto educacional, de participação, de rendimento e de formação*. Recovered in 02/01/2022, of https://www12.senado.leg.br/jovemsenador/home/arquivos/textos-consultoria/tipos-de-desporto.

Sommadossi, G. (2021). *Mais da metade do público brasileiro de eSports é atleta; Free Fire é destaque*. Recovered in 02/01/2022, of https://canaltech.com.br/games/pratica-de-esports-aumenta-no-brasil-e-mais-da-metade-do-publico-e-atleta-187914/#:~:text=Novos%20dados%20da%20Pesquisa%20Game,pontos%20percentuais%20comparado%20a%2020

Veiga, M. F. C. (2017) *Manual de Direito do Trabalho Desportivo*, 2. ed., São Paulo: LTr.