

ESPORTS CHAMPIONSHIPS, COMPANIES AND ORGANIZATIONS IN ELECTRONIC SPORTS AND THEIR REGULATORY AND COMPLIANCE CHALLENGES WITH THE BRAZILIAN STATUTE OF CHILD AND ADOLESCENT (ECA)

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Abstract: This paper aims to analyze the legal status of esports in Brazil, with a particular focus on the participation of minors in the competitive landscape of electronic sports and the regulatory challenges faced by this market regarding underage cyber athletes. Esports have grown considerably since 2010, and it is currently a niche within the electronic games industry with an estimated revenue of US\$1.084 billion in 2021. The study focuses on two popular games, Fortnite and Garena Free Fire, which are free-to-play, labeled as violent by the Ministry of Justice, fully translated into Portuguese, and available on mobile devices. As esports reach more people, debates arise about the impact of electronic games on society and the need for state regulation. Legislative proposals are in progress, but most of them lack a contextual vision of the sport and the participation of civil society. Inadequate regulation can lead to losses for everyone involved in the growing market. The paper provides an overview of the evolution of esports and the analysis of organizations in the Brazilian scenario, followed by the subsumption of Law 9615/98 to contracts signed with cyberathletes. It also addresses the perspective of minors regarding their use of electronic games and analyzes the regulatory challenges that child and adolescent cyber athletes may face. The study aims to provide insights for policymakers and stakeholders to ensure adequate regulation that promotes a safe and fair competitive landscape for all participants.

Keywords: Esports; Brazil; children; regulation; competitive landscape.

INTRODUCTION

Esports (electronic sports), despite being present in the competitive landscape since the 1990s, have grown considerably since 2010. Currently, esports is a niche within the electronic games industry, with an estimated revenue of US\$1.084 billion for the year 2021 and optimistic projections for the coming years. Esports involves players, teams, organizations, game developers, game publishers, live streaming, stardom, sponsorship, and an

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audience as engaged and enthusiastic as any traditional sports.

There are, on the market, several games being used in the professional competitive landscape. For methodological purposes, this article will focus on two of them: Fortnite (Epic Games) and Garena Free Fire (Garena)¹, they are from the genres FPS (First Person Shooter) and Battle Royale² and will be used in this study because they are free, that is, free-to-play, were labeled as violent by the Ministry of Justice, are fully translated into Portuguese, and, at least in January 2021, are available for mobile devices such as smartphones³.

In a niche expected to grow that reaches more and more people, especially children (individuals up to 12 years of age, according to Article 2 of the Statute of Child and Adolescent (ECA) and adolescents (those between 12 and 18 years old), debates arise about the impact of electronic games on society and what aspects that can - or should - be regulated by the state, to exercise some sort of control and provide greater security to those involved in this universe.

There are legislative proposals in progress aiming to regulate esports, but most of them still lack a contextual vision of the sport and they also lack the participation of civil society to bring relevant contributions and shape the bills so that they are appropriate to reality. Inadequate regulation can lead to losses for everyone involved in a market that is already established and is growing increasingly.

The objective of this research is to understand the legal status of esports in Brazil and the participation of minors in the competitive landscape of electronic sports, and to analyze the regulatory challenges of the market regarding underage cyber athletes. The article will be organized as follows: the first chapter will bring an overview of the evolution of esports, followed by the analysis of organizations in the Brazilian scenario and the subsumption of Law 9615/98 to contracts signed with cyberathletes.⁴ Then, this article will address the perspective of minors regarding their use of electronic games to

¹ These two titles were chosen because they have a juvenile appeal such as in the characterization of the characters and because they are “shooting games”, an element that can have repercussions regarding regulation and access to minors. The choice was not guided by the greater public or revenue generated in competitive esports, since this information is unstable, and constantly subject to changes.

² For information purposes, there are many other genres such as MOBA (Multiplayer Online Battle Arena), Real Time Strategy (RTS), Sports (simulating traditional sports like football), Fighting, Racing, and Card Games.

³ Fortnite had, until the beginning of 2021, a considerable impact and revenue from mobile platforms, but then it was removed from the Apple Store and Google Play due to being the subject of a lawsuit filed by the company Epic.

⁴ There is no consensus on the right way to refer to electronic sports, and terms such as e-sports, e-Sports, and esports can be identified. This work will use esports as a synonym for electronic sports since it is more common.

analyze the regulatory challenges that child and adolescent cyber athletes may face".

I. ESPORTS: FROM THE BEGINNING TO THE CURRENT COMPETITIVE LANDSCAPE

Electronic games are rooted in the social context since their popularization in the 1980s, and have become even more popular thanks to the internet, the diffusion of content creation, greater accessibility and the adoption of engagement systems that hook the consumer to a product or service.⁵ Due to the difficulty of precisely defining electronic games⁶, this article will consider those that can be played "thanks to an audiovisual apparatus and which can be based on a story", with which the player interacts via computer, videogame (console), mobile smartphone or tablet⁷.

With all due respect to the research seeking to outline the historical context of the emergence of electronic games, going back to the first patent registered in 1940, or to Space Invaders and Pong, and the already outdated debate about whether esports can be considered sports, this work is relevant to explore the emergence of the competitive landscape of electronic games, the age group of players that fit the methodological framework, and the growth of the niche over the years.

Bill 383/17, after amendments, defines electronic sports as "the sports practice in which two or more people or teams compete in a game mode developed with information and communication technologies resources". More simply, competitive electronic games or esports can be defined as a "direct competition between human players using suitable video and computer games on various devices and digital platforms under defined rules"⁸. The rules can be defined by companies setting up the championships or by those who hold the exploitation rights of the competition's electronic game. In some cases, rules can also be established by an association specific to electronic sports.

The NewZoo report defines esports as "professional or semi-professional competitive gaming in an organized format (tournament or league) with a specific goal/prize, such as winning a championship title or prize money and

⁵ Regarding this, I recommend reading Anderson, Devin *et al.* An exploration of esports consumer consumption patterns, fandom and motives. *International Journal of eSports Research*. Issue 1. January-June 2021. The authors mapped the motivations to consume e-sports and many of them are similar to those used by fans of traditional sports.

⁶ This article used the term "electronic games" instead of "digital games" because it is more widespread in Brazil's market and academia.

⁷ Woodcock, Jamie. *Marx at the Arcade: Consoles, Controllers, and Class Struggle*. Translated by Guilherme Cianfarani. Haymarket Books Autonomia Literária, 2020.

⁸ Block, Sebastian, and Florian Haack. eSports: the new industry. *SHS Web of Conferences* 92. 2020.

a clear distinction between players and teams competing against each other”⁹. Although it does not specifically mention the establishment of rules, it contextualizes electronic sports from the organization of teams and competition.

One of the first records of competitions in the video game landscape took place in 1972. The Intergalactic SpaceWar Olympics brought together students from Stanford University to play SpaceWar¹⁰. Years later, in 1980, Atari, a company already famous, organized the Space Invaders Championship, the first competition on a national scale with thousands of participants throughout the United States, which shows the spread of video games at the time. In 1990, Nintendo, seeking to gain space in the United States market and consolidate the brand in the country, launched the Nintendo World Championships¹¹, a competition that, although held in the United States, brought together competitors of various nationalities.

The competitions bring the main elements that distinguish e-sports from sports, here referred to as traditional sports: independent and decentralized organizations. The first competition was organized by students and concerned a game also developed by students. The following championships were organized by the developers who owned the games being played. They licensed their products and established participation rules for the competitions.

In the last ten years, there has been a growing boom of electronic sports marked by international level competitions, definitively consolidating esports as a new means of competition within the consumer society and as a sport. With the new generation of consoles and the use of the internet in gaming systems, there was a robust change in the competitive landscape of electronic games as geographic barriers were being overcome.

Following the Olympic Agenda 2020, the International Olympic Committee (IOC) announced, this April, the creation of the first Olympic event focused on esports, the Olympic Virtual Series, aimed only at games simulating traditional sports, and focusing on specific games like Gran Turismo¹². The IOC did not include FPS and Battle Royale games in the

⁹ Newzoo's: *Games, Esports, and Mobile Trends to Watch in 2021*. Relatório de Pesquisa. Amsterdam: Newzoo, 2021. Available at: <https://newzoo.com/insights/trend-reports/newzoos-2021-trends-to-watch-games-esports-mobile/>.

¹⁰ Farokhmanesh, Megan. *First game tournament, 'Intergalactic Spacewar Olympics' held 40 years ago*. Oct, 2012. Found at: <https://www.polygon.com/2012/10/20/3529662/first-game-tournament-intergalactic-spacewar-olympics-held-40-years>.

¹¹ The documentary GDLK (Netflix, 2020), has an episode specifically about video game tournaments in the early 90s.

¹² Olympics. *Olympic Virtual series: everything you need to know*. Jan, 2021. Found at: <https://olympics.com/pt/noticias-destacadas/olympic-virtual-series-everything-you-need-to>

categories, but this is still a big step forward for esports and cyberathletes¹³.

A. The structure of esports organizations in Brazil

Esports organizations work intensively, promoting actions to engage consumers and promote the fan community culture for the organization and its game. Developers and distributors promote seasonal championships, license products for sale, encourage the creation of content based on their products and services, and regularly create activities related to their games. They aim to engage their public in social networks and live transmissions (streaming)¹⁴ by hiring electronic games celebrities or allocating their cyberathletes to create content, thus exploiting the professional's image rights¹⁵. Streaming is, therefore, a primary method of attracting viewers and creating engagement in a fan community¹⁶ and allows the content produced to reach any type of audience, both those who consume video games and those who do not - for social or economic reasons.

To achieve large-scale consumption, accessibility is fundamental. Electronic games required, for many years, video game consoles or computers to be played. The popularization of games for mobile platforms (such as smartphones) in the last decade has made it possible for thousands of people to access this new consumer good and has also impacted the esports landscape, mainly due to games like Garena Free Fire and Fortnite. It is no wonder that the 2021 Game Brasil Survey (Pesquisa Game Brasil, 2021) determined that 72% of the people interviewed have contact with electronic games¹⁷, which can be attributed to the smartphone market's size, since 41.6% declared using it to play. Moreover, 78.9% of interviewees stated that games are among the main entertainment activities, showing how the Brazilian consumer public has been receptive to electronic games.

The game Garena Free Fire, released by Garena in 2017, is a free Battle

know.

¹³ Usually, the professional esports athlete is called in Brazil a "pro player", but cyberathlete is the term mostly used in academic productions in the country.

¹⁴ There are numerous streaming platforms today, the most popular being Twitch, Facebook Gaming, and YouTube. It is worth mentioning Booyah (Garena), a streaming social platform focused on Garena Free Fire (although it is compatible with other games).

¹⁵ The production of content by cyberathletes for organizations is currently intrinsic to the employment relationship signed, as identified by Prof. Thiago Mourão (Regras do Jogo #102 – esports: Lazer, Trabalho Digital, Precarização e Colonialidade. Interviewee: Thiago Falcon. Interviewers: Fernando Henrique, Gamer Antifascist. Holodeck: 26 May. 2021. Podcast).

¹⁶ Anderson, Devin *et al.* An exploration of esports consumer consumption patterns, fandom and motives. *International Journal of eSports Research*. Issue 1. January-June 2021.

¹⁷ The Game Brasil research adopts the term "digital games" (jogos digitais, in Portuguese) to refer to what in this article is called "electronic games".

Royale for mobile platforms, classified as a “survival shooting game”. In it, fifty players, with customizable characters, are placed on an island and battle for their survival in a ten-minute round. Due to the game's mechanics, the player needs to be fast to choose the best items distributed on the map and eliminate opponents, as the winner is the one who survives. Currently, the game has over ninety-four million reviews on Google's app store¹⁸. According to PEGI¹⁹, responsible for content age ratings in Europe, the game is recommended for ages 12 years or older and over because it contains moderate violence, and the ESRB in North America gave it a Mature 17+ rating, meaning the game is commended for ages 17 and over. According to the Brazilian Apple App and Google Play stores, the game is recommended for ages 12 and 14, respectively.

Fortnite, a game released by Epic Games in the same year, is also a survival shooting game, mechanically similar to Garena Free Fire, in which one hundred players, individually or in teams of up to four people, are airdropped at a map with the goal of surviving. The game has additional elements such as characters inspired by major franchises, like DC Comics and Marvel superheroes, and regular live events with celebrities. According to PEGI²⁰, the game is recommended for people 12 years old or older, receiving the content descriptions “violence” and “in-game purchases”, that is, the game presents the player the option to purchase digital goods or services. ESRB recommended the game for people over 13 years old. In Brazil, the game received the same age recommendation as in Europe.

The age ratings allow us to infer that the two mentioned games are consumed by minors. It can also be inferred that the profile of the public consuming streaming and content related to these games' competitive landscape is also of the same age, as well as those dreaming of becoming esports professionals.

In Brazil, organizations play various roles in the scenario. There are actual teams and there are those that mediate the relations between clubs, professional teams, and potential cyberathletes. This work is carried out by companies that keep track of the players, and provide a training environment or a link with professional teams to facilitate hiring. Once linked to an organization as a team, and depending on the operational structure they have, the cyberathlete will have at their disposal a good environment for high-level training, fulfilling working hours and requirements that are equivalent to those of a work contract.

¹⁸ Google Play. *Garena Free Fire*. Found at: https://play.google.com/store/apps/details?id=com.dts.freefireth&hl=pt_BR&gl=US.

¹⁹ Rating according to PEGI (Pan European Game Information). PEGI. Age Ratings. Available at: <https://pegi.info/page/pegi-age-ratings>. Access at: 14 May. 2021.

²⁰ *Ibidem*.

The available structure may consist of establishments known as gaming houses, in which players and coaches reside in the place as a way to intensify the results and increase immersion and they can be a good option for players who do not reside in the city where training takes place. There are also gaming offices, which, although they have the same purpose as the gaming houses, have routines close to regular offices, with set schedules for work hours²¹.

The subjects involved in electronic sports are not, therefore, just cyberathletes and trainers (coaches). Organizations have people producing content for social media and streaming, selling licensed products, and have a support staff providing direct support to cyberathletes, such as psychologists, nutritionists, physiotherapists, and physical trainers. Without ignoring the extent of the people required for the existence of the e-sports market, this work will focus only on the legal bond created between organizations and cyberathletes.

II. UNDERSTANDING THE COMPETITIVE LANDSCAPE OF ESPORTS IN BRAZIL

Alongside the requirements for the practice of high-performance sports brought in Bill 9.615/98 and the debate about the federalization of esports in Brazil, it is important to understand how the competitive landscape has been established over the years and whether the current regulation is insufficient to include the new reality created by electronic sports. The way competitions are organized is one of the most important examples of this.

Article 26, sole paragraph, of the Pelé Law defines that a professional competition, in legal terms, consists of one that seeks to obtain income and promote competition for professional athletes whose remuneration stems from a sports employment contract. In the electronic sports fields, requirements for the adoption of an employment contract are recent, included even in rules and regulations for certain competitions.

However, the competitions' structure in electronic sports goes beyond the definition provided by law. Author Tarsila Machado Alves²² explains, from the structure of traditional sports, how electronic sports are organized based on two types of models. The first of these is the European (or pyramidal) model, the inspiration for Brazilian legislation, in which there is a single structure that encompasses integrated - but independent - levels of

²¹ Abreu, Victor de. *Gaming house or gaming office? Entenda diferenças e tipos de treinos*. Nov, 2018. Found at: <https://www.techtudo.com.br/noticias/2018/11/gaming-house-ou-gaming-office-entenda-diferencas-e-tipos-de-treinos-esports.ghhtml>.

²² Alves, Tarsila Machado. Considerações sobre os modelos de exploração dos esportes profissionais aplicados ao e-Sports. *Revista Síntese Direito Desportivo*. Ano VII. n. 41. Apr-Jun 2018.

professionals and organizations. In Brazilian soccer, there is a base composed of athletes and clubs and, above clubs, regional associations, federations, confederations, and an international organization that has a monopoly on the sports activity and regulatory competence. This structure facilitates the equitable distribution of income among sports clubs, encourages mass participation, and seeks to ensure competitive balance, but, on the other hand, generates a certain inequality between teams, since organizations that raise more money offer better salaries to players and have chance a to monopolize athletes.

The second is the North American (or horizontal) model, in which franchises join teams to create a league and organize a competition, unrelated to other championships and therefore without promotion or relegation. It is a business model that has its own rules and aims to bring financial stability to the teams, since those interested must acquire a spot in the championship²³. This model has been used by RIOT Games since 2018 and has been commonly adopted by other organizations²⁴.

Competitions have been organized by the developers themselves, who own the intellectual property rights related to the competition's game, or by other organizers, and have been guided by both the European and North American models²⁵. Garena and Epic Games organize official championships, but also provide guidelines, inspired by the European model of promotion and relegation so that interested organizations can create their own competitions. However, there are legislative efforts asking for the federalization of esports in Brazil and to legally recognize the new sport.

One of the initial steps was taken by the Special Secretariat for Sports linked to the Ministry of Citizenship with the creation of the Brazilian

²³ Alves says that "In esports, we have different developers, such as competition's games rule-making entities, who will be responsible for authorizing the use of their intellectual property creations and brands by the third parties. This point represents an essential and decisive differentiation between traditional sports and, in my view, has been the source of many questions among the directors of the International Olympic Committee to effectively treat eSports as a sport" (Alves, Tarsila Machado. Considerações sobre os modelos de exploração dos esportes profissionais aplicados ao e-Sports. *Revista Síntese Direito Desportivo*. Ano VII. n. 41. Apr-Jun 2018, 27).

²⁴ *Primocast 79: eSports: Como funciona a indústria profissional dos games*. Interviewed: Lucas Almeida, Marina Leite, Miah Campos and Caco Antunes. Interviewers: Thiago Nigro, Lucas Zafra and Kaique Torres. Jul, 2020. Podcast. Found at: https://open.spotify.com/episode/6feQtnHlQsi67WGkpKMZwu?si=kO7ceds0RbqWKvzAfpyfwA&dl_branch=1.

²⁵ *Primocast 79: eSports: Como funciona a indústria profissional dos games*. Interviewed: Lucas Almeida, Marina Leite, Miah Campos and Caco Antunes. Interviewers: Thiago Nigro, Lucas Zafra and Kaique Torres. Jul, 2020. Podcast. Found at: https://open.spotify.com/episode/6feQtnHlQsi67WGkpKMZwu?si=kO7ceds0RbqWKvzAfpyfwA&dl_branch=1.

Confederation of Electronic Sports (CBDEL), established by Ordinance n. 115/18. Although the confederation gathers little information on its website regarding its activities and is not publicly recognized by various organizations and players operating in the area, it reflects the efforts of the public authorities to establish minimum parameters for competitions to take place in accordance with the law.

III. PROFESSIONALIZATION OF THE CYBERATHLETE FROM LAW 9.615/98

The career of a cyberathlete can be guided by processes similar to those present in athletic careers in traditional sports, mainly considering the application of Law 9.615/98, popularly known as “Lei Pelé”. This law institutes general rules for sport, formal or non-formal, and although it was created to regulate relations within the universe of professional football, it applies to all sports practiced in the country, wherever possible. It is currently the most suitable law for esports, even though in Brazil there is no binding law binding clubs and affiliations to federations and confederations so that they can participate in tournaments and competitions²⁶.

Like traditional employment contracts, special sports employment contracts ruled by the Pelé Law and, secondarily, by the Consolidation of Labor Laws (CLT), demand the presence of requirements for the formation of the employment relationship such as personal nature, habit in providing of services, onerosity, continuity and legal subordination²⁷. The employer must necessarily be a sports entity, which in Brazil, are either traditional clubs creating electronic sports teams, such as Flamengo or Cruzeiro, or dedicated organizations such as Team Liquid, paiN, or Black Dragons, or even organizations that were born in the esports and currently have expanded the scope to traditional sports, such as LOUD²⁸.

The sport can be performed in four modalities, according to art. 3rd: educational sport practiced in education systems to promote individual development; participation in sport voluntarily exercised for leisure, health, and education purposes, without professional scope; training sports aimed at acquiring technical knowledge that will enable the improvement of recreational or professional sports and, finally, high-performance sports practiced in accordance with the law and the rules of sports practice.

²⁶ Riva, Amalia de La. E-sports: mucho más que un juego. *Revista de Direito do Trabalho*. Vol. 1. Jun, 2019. Thomson Reuters.

²⁷ Riva, Amalia de La. E-sports: mucho más que un juego. *Revista de Direito do Trabalho*. Vol. 1. Jun, 2019. Thomson Reuters.

²⁸ Reis, Gabriel. *LOUD vai às Olimpíadas representada por Pedro Quintas e Luiz Francisco*. jul, 2021. Found at: <https://www.theenemy.com.br/esports/loud-vai-as-olimpiadas-representada-por-pedro-quintas-e-luiz-francisco>.

Performance sports can be professional, formalized through an employment contract, or non-professional, in which case the perception of material incentives of a civil nature is established, such as exploitation of image rights or sponsorship²⁹ or even the right to the arena provided for in art. 42 of the Law³⁰. The incentive contract is used to formalize links with cyberathletes who have not yet reached the minimum age for the professional contract.

The athlete's employment contract, in general terms, consists of a special employment relationship with the application of the general rules defined in labor and social security legislation. It is called a special contract of sports work in art. 28 of the Pelé Law and must contain, obligatorily, a sports indemnity clause in the case of exclusivity and a sports compensatory clause. Other particularities of this type of employment contract are in paragraph 4 of the same article, such as the maximum period of training, weekly paid rest preferably after a match, and annual vacation of 30 (thirty) days coinciding with recess from sports activities.

Professional players or those who intend to become professionals and join this universe are encouraged to carry out free labor, which is different from ordinary voluntary work: here there is an apparently banal or ludic activity for which there is manpower and harvesting value (for someone and may not be for the player)³¹. Mussa, Falcão, and Macedo (2021) point to a logic: there is a range of minors playing or training in the expectation of being elite players, given that the C series of the Brazilian Free Fire League (LBFF) for example has an age limit of 14 years old³². The authors conclude that this ecosystem of competitive and high-performance games offers underage players the hope of joining an apparently meritocratic system where they can rise from amateurism to professionalism, whereas, in fact, it is a universe permeated by risks and marked erosion between leisure and work.

²⁹ Leite, Carlos Henrique Bezerra. *Curso de direito do trabalho*. 9th. ed. São Paulo: Saraiva Education, 2018, 263.

³⁰ Delgado, Mauricio Godinho. *Curso de direito do trabalho: obra revista e atualizada conforme a lei da reforma trabalhista e inovações normativas e jurisprudenciais posteriores*. 18th ed. São Paulo: LTr, 2019, 926.

³¹ Mussa, Falcão, and Macedo state that Free labor, or free work, incorporates value production and extraction systems into banal and supposedly playful activities – such as the production of free content that many users create for platforms such as YouTube or Instagram, which in turn create profit from the circulation of these products. done on an unpaid basis. It is not a question here of comparing this involuntary and casual work with the professionalization of competitive players, which consists of a much more rigid process of turning playing into a source of income. Rather, it is about arguing that the very conception of the platform game encourages its subsequent conversion into productive activity and, therefore, into work. (Mussa, Ivan, Thiago Falcão, and Daniel Marques. *A corrosão do lazer: exploração do trabalho infantil nos Esports*. Compós. Anais 2021, 14).

³² Mussa, Ivan, Thiago Falcão, and Daniel Marques. *A corrosão do lazer: exploração do trabalho infantil nos Esports*. Compós. Anais 2021.

The law has not yet adapted to the new forms of work that have emerged with the massive use of technology, mainly related to digital labor, and which have presented new challenges to labor law. After all, as Amalia de La Riva³³ points out, for a new type of work, it is necessary to think of a new labor law to be applied.

IV. THE PERCEPTION OF ELECTRONIC GAMES FOR CHILDREN AND ADOLESCENTS

One of the biggest concerns about children and teenagers engaging with electronic games is related to the possible impacts on their social relationships and cognition. The fact is that access to electronic games by minors exists and occurs on a global scale, facilitated by the diffusion of mobile games - or games for mobile platforms such as smartphones and tablets. A survey conducted by IBGE relating to data from 2018 and 2019 shows that about 77.7% of children and adolescents between 10 and 13 years old already have internet access, with smartphones being the most used device. Although the research does not consider the age distinction provided by the ECA, the collected data are important to understand the consumption profile and access of minors to new technologies.

There are recent studies in Brazil that seek to collect data and analyze the relationship between children and adolescents with electronic games and their respective impacts. The Game Brasil survey, for example, accounted for the profile of players aged over 15 (fifteen) years, which can occur due to several hypotheses: either because of the small consumer market - which seems unlikely -, or because the minimum age for games like Free Fire and Fortnite is theoretically 12 years old, which hinders data from developers and publishers who do not measure the real age of consumers, or it may be due to the difficulty of obtaining information directly from parents or guardians due to possible stigmatization of electronic games.

A recent and unprecedented study in Brazil was carried out by Livia Scienza³⁴, in which she analyzed the profile of children aged 9 to 12 years to understand the impacts of electronic games on social relationships based on the frequency with which they play, the type chosen game and whom they play with³⁵. According to the survey conducted in the research, 65% of the

³³ Riva, Amalia de La. E-sports: mucho más que un juego. *Revista de Direito do Trabalho*. Vol. 1. Jun, 2019. Thomson Reuters.

³⁴ Spritzer, Daniel T., Philip Picon, and Victor Breda. Dependência de jogos eletrônicos em crianças e adolescentes. In: *Psiquiatria, saúde mental e a clínica da impulsividade*. 1st ed. Editora Manole. 2015.

³⁵ The research conducted, although aimed at identifying the relationship of electronic games in specific categories of the behavior of the interviewed children.

interviewees play on smartphones, and 45.6% play daily. Among the favorite games cited is Fortnite in the first place and Garena Free Fire in fourth. The conclusion identified positive effects in cooperative games and a reduction of negative effects of violent games when played in groups. This can reflect on the reduction of possible impacts of instigating violent behaviors pointed out in contact with violent games.

To bring another perspective on the relationship between children and adolescents with consumer goods, we propose an incursion into the cognition theory developed by William Fritz Piaget. For the psychologist, cognitive development is inseparable from affective and social development, as they together are the result of a continuous and independent adaptation of the individual³⁶.

Inspired by Piaget's theory, Deborah John (1999) elaborated a model of consumer socialization based on three layers³⁷. At the percentage stage (from 3 to 7 years old), children have a perceptual limit that focuses on one of the dimensions of objects and events, limiting their decision-making power as informed consumers. According to this line of thinking, at this age, just like with advertising, the child cannot perceive, within the context of an electronic game, that the elements presented there are fictitious and that they are an agent different from the character with whom they interact and make decisions.

At the next stage, called analytical (from 7 to 11 years old), the child develops the ability to analyze products according to more than one dimension beyond the one presented to them, and may therefore have a more accurate perception of the things that happen within an electronic game. Finally, in the reflective stage (11 to 16 years old), the adolescent has a mature understanding of the products that result in a relatively sophisticated knowledge about the intent of the advertisements.

Regular exposure to technology can interfere with the way individuals develop their skills and perceive the world. When we look at children interacting with electronic games, it is premature to assert, at first, that they do not understand the fictional context with which they are interacting. This does not mean, however, recognizing some degree of autonomy for these individuals concerning the acts of civil life they practice.

Another aspect that has raised concerns is the possible dependence of children and adolescents on electronic games since there is evidence that in some individuals it can lead to serious harm to health, social life, and school

³⁶ Faria, Analia Rodrigues. *Desenvolvimento da criança e do adolescente segundo Piaget*. São Paulo: Editora Ática, 1989.

³⁷ John, Deborah Roedder. Consumer Socialization of Children: A Retrospective Look at Twenty-Five Years of Research. *Journal of Consumer Research*, Volume 26, Issue 3, December 1999, Pages 183–213.

life. According to Spritzer *et al*³⁸ (2015), an eventual diagnosis should not only take into account the time of exposure to the game, but also personality characteristics, clinical illnesses, psychiatric disorders, and other comorbidities, as well as evaluation of the individual's social aspects. Only the contact of children and adolescents with electronic games is not enough to cause harm to health, and cognitive development, or even develop an addiction³⁹.

On the other hand, there is evidence that points to the beneficial role of electronic games in the development of children, as they can contribute to the management of feelings, the experimentation of new identities, teamwork, and frustration management, especially when directly or indirectly related to social skills that the individual already has⁴⁰. This indicates that even with early contact with electronic games, something inherent to the generation of Brazilian children and adolescents who have access to smartphones, computers, or video game consoles, it is not possible to state that these individuals will have their cognitive or social skills compromised, nor that only the contact with electronic games may trigger the development of disorders or dependence.

This point is of great relevance because, as will be analyzed below, if socially typical behaviors and the effects of consumer contracts entered into by relatively incapacitated individuals are taken into account, it may be that these individuals already possess the expected abilities of them as they go through the formal operational cognitive stage. This does not reflect, in any way, that the recognition of autonomy - albeit relative - to these individuals as a way of supporting their decisions to be recognized even when not assisted, but the starting point should not be one that considers the child or adolescent as an individual incapable of making any kind of decision.

V. THE RELATIONSHIP BETWEEN CHILDREN AND ADOLESCENTS, ELECTRONIC SPORTS AND WORK

The Nintendo World Championships features players from around the world and of various ages, and includes titles such as Super Smash Bros,

³⁸ Spritzer, Daniel T., Philip Picon, and Victor Breda. Dependência de jogos eletrônicos em crianças e adolescentes. In: *Psiquiatria, saúde mental e a clínica da impulsividade*. 1st ed. Editora Manole. 2015.

³⁹ According to the authors: "The emergence of new technologies tends to increase the importance that games have as entertainment media for children and adolescents. Although the majority of young people can enjoy the games healthily, a small portion of them will experience significant damage as a result of this activity".

⁴⁰ Scienza, Livia. *Jogos digitais e cognição social de crianças: um estudo experimental*. Programa de Pós Graduação em Psicologia da Universidade Federal de São Carlos/SP. Master's degree. Advisor: Prof. Dr. Deborah Holanda Souza. 2020.

Splatoon2, The Legend of Zelda: Breath of the Wild and Super Mario Odyssey, which are non-violent games or games that do not endorse violence directly. The official championship website recorded the list of participants of 2017's edition, listing the players classified for the qualifiers, separated by age: classified with up to 12 years old and classified with age above 13 years old. It is a strong proof of the presence of children and adolescents in the competitive landscape.

Epic Games, the company responsible for Fortnite, has a trademark license agreement available for the organization of competitive events that meet the minimum requirements set by the publisher. As a rule, Epic Games does not impose an age limit for those who want to organize or participate in competitions involving its products⁴¹. However, to play the games and in accordance with the official competition rules, which are also available on the website, a minimum age of 13 years old is required, which is based on the end user agreement term and the Children's Online Privacy Protection Act, "COPPA".

Although Garena Free Fire (Garena) is recommended for ages 12 and up, the authorized competition regulations provided by Garena have different age requirements. Copa F.F., for example, determines that players and coaches must be at least 16 years old on the first day of the competition, and that during the competition everyone must have valid contracts with the team in accordance with Brazilian law. The Brazilian League of Garena Free Fire (LBFF) 2021 established, in addition to the contract requirement, that players and coaches from series A and B must be at least 16 years old, which is not a requirement to compete in Series C - unless the team manages to change series. The Taça das Favelas - Garena Free Fire, whose last edition took place in 2020, established as a rule for participation the year of birth, allowing only those born until 2006 - which, at the time of the competition, would correspond to 14 years.

The minimum age requirements apply to participation in competitions considered official, that is, those authorized by developers and publishers. However, cyberathletes who have not yet met this requirement can be hired for professional teams, as happened with Bruno Lima, who was a professional Counter Strike player since he was 11 years old: Global Offensive, popularly called CS:GO⁴², and Victor "Zenon", who has been playing since he was 4 years old and at 9 signed with Detona Gaming as a

⁴¹ Point 1 "c" reinforces, in fact, that if the person responsible for the event is a minor, accepting the terms also binds the legal guardians at the same time.

⁴² Gutierrez, Bárbara. *Pro player desde criança, brasileiro diz que não levaria vida sem eSports*. Dec, 2016. Found at: <https://www.uol.com.br/start/ultimas-noticias/2016/12/01/pro-player-desde-crianca-brasileiro-diz-que-nao-levaria-vida-sem-esports.htm>.

professional player, even though he cannot participate in the competitive circuit⁴³. It should be noted that the aforementioned players stood out for their performance in games with first-person shooter mechanics. On the one hand, it is considered acceptable for adolescents above 12 years old to participate in electronic gaming competitions. It is presumed that in order for these individuals to achieve a competitive level of excellence, their contact with electronic gaming occurred well before this age.

Furthermore, the requirements contained in current competition regulations demonstrate the concern of the organizers in establishing minimum legal standards by requiring athletes to have formalized contracts with teams. Translation: However, even though this implicitly covers minors and observes the provisions of articles 4th, 74, and the following of the Statute of Child and Adolescent (ECA), there is still a lack of specific regulations regarding competitive practice of minors that ensure basic rights in the absence of a sports employment contract.

By force of International Labor Organization (ILO) Convention No. 138, the Brazilian Federal Constitution was amended in 1998 by Amendment No. 20, which raised the minimum age for admission to employment to 16 years old and the minimum age for apprenticeship to 14 years old⁴⁴. As the minimum age established is a constitutional provision, it has been observed in other laws such as the Consolidation of Labor Laws (CLT), the Statute of Child and Adolescent (ECA), and the Sports Law.

Pelé Law brings the figure of the autonomous athlete which, according to article 28-A, is a professional from an individual modality 16 years old or older who, even if they participate in competitions on behalf of a sports organization, does not have an employment relationship with it and earns income through other material incentives agreed in a civil contract.

The non-professional athlete who is in training and between 14 and 20 years old can work in the sports organization and receive financial aid in the form of a learning grant. Also, from the age of 16, the athlete may sign a special sports work contract with a term of up to 5 years with the sports formation entity. The possibilities authorized by the law allow for the work of minors in clear parallel with the Constitution, the ECA, and the CLT.

⁴³ Oliveira, Gabriel. “Free Zenon”: jogador de 9 anos é banido de Fortnite e provoca comoção. May, 2020. Found at: <https://www.uol.com.br/start/ultimas-noticias/2020/05/05/free-zenon-jogador-de-9-anos-e-banido-de-fortnite-e-provoca-comocao.htm>.

⁴⁴ The ILO has already expressed the view that only those work situations that harm the development and education of children should be considered “child labor”, which is different from other forms of work. ILO. *Eliminating the worst forms of child labor*: a practical guide to Convention No. 182. Geneva, 2002. https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-lisbon/documents/publication/wcms_714675.pdf

VI. ESPORTS REGULATORY CHALLENGES FOR UNDERAGE CYBERATHLETES

The debate about the regulation of esports should, above all, understand the impacts of electronic games being consumed in Brazil, especially those that are used for competitive purposes and involve children and teenage participation.

Although it is duly recognized in the market as a professional activity, cyberathletes face problems usual to the game developing area in general, the main one being the lack of regulation and the precariousness of service provision. Among the challenges, there is difficulty in elaborating the legal construction of the figure that depends on the recognition of an employment relationship for this new sport modality and the delimitation of the field of study, especially when it comes to subordination⁴⁵.

Informality is another impasse: it is a sector dealing with millions of Reais a year, highly informal and, although some players may have substantial revenues, they lack social protection and the protection of the most varied rights such as those guaranteed in contractual termination. The fact that the players are very young people who leave their studies aside and undergo heavy training routines that can compromise their health and well-being contributes to the informality. There is a considerable number of underage players, and this is a problem when contrasted with the minimum age allowed for work⁴⁶.

Brazil has started to publicize the debate about the recognition and regulation of esports in recent years, most prominently the proposed Bill 383/17 and the attempts to federalize the practice of electronic sports⁴⁷. The project had public discussions broadening the debate, but so far it has not been voted on. Despite the customary use of the Pelé Law to regulate cyberathletes' work contracts nowadays, the debate about regularization still remains active in the community as a way to ensure rights to a new sport modality and organize it under federative rules, without delving deeper into the link between athlete and organization and without any care in relation to minors practicing the sport.

The project's original wording brings some problems that may hinder rather than contribute to the regulation of electronic sports. Starting with the definition itself, which is accompanied by foreign terms not widely used in the country. The project assigns the outdated term "athlete" to the player, while another expression is currently widespread: cyberathlete or

⁴⁵ Woodcock, Jamie. *Marx at the Arcade: Consoles, Controllers, and Class Struggle*. Translated by Guilherme Cianfarani. Haymarket Books Autonomia Literária, 2020.

⁴⁶ Riva, Amalia de La. E-sports: mucho más que un juego. *Revista de Direito do Trabalho*. Vol. 1. Jun, 2019. Thomson Reuters.

⁴⁷ Senate Law Project n. 383 de 2017. Author: Senator Roberto Rocha.

ciberathlete. Furthermore, it recognizes the creation of confederations, federations, leagues, and associative entities as promoters of electronic sports, which goes against the consolidated practice of business companies organizing competitive electronic games.

The project underwent three amendments, two of which were relevant to the debate. The first, presented by Sen. Davi Alcolumbre in 2018, simplified the definition of esports and its management in the country, enabling the management and standardization by leagues and also national and regional sports management entities. Presented by Sen. Eduardo Girão in mid-2019, the second and most problematic amendment proposed the insertion of a defining complement to no longer include as an electronic sport game with violent content, games propagating hate speech, prejudice or discrimination, or that advocate drug use.

The mentioned project brings general provisions that add little to the legislation already in place and brings a limiting definition of esports, which can harm existing competitions. Moreover, it does not mention anything about regulating professions involving electronic sports, nor does address underage athletes and does not consider games that contain violence as electronic sports. What defines a game as violent? The use of weapons, the story, the gameplay, the FPS genre or just the age rating received in the country? These are relevant questions when one intends to deny recognition of one of the most profitable electronic sports genres, one genre with a greater market share and the biggest public reach.

However, PL 383/17 is not the only bill under consideration at the federal level. PL 3,450/15 and 7,747/2017, which are being processed together, propose to amend Law 9,615/98 by expressly adding the recognition of electronic sports, having received favorable opinions from the specialized committees. At the state level, Legislative Assemblies have approved laws seeking to establish rules for the practice of electronic sports, however, in spite of regional initiatives, regulation at the federal level has the power to establish minimum guidelines for holding competitions, minimum structures of organizations and what legal bonds are created.

The official recognition of the sport by the government, even though a bill and the constitution of CBDEL, represented a major step for the competitive electronic games market. Other measures can be adopted by the Ministry of Sports, the top of the pyramid of the Brazilian Sports System. One of them is to openly promote research in the esports field s and present initiatives that recognize this practice as a sport. It should be noted that it is no longer a trend to talk about the professional esports landscape. Esport in Brazil is already a reality, constantly on the rise, and has become a consolidated branch in the electronic games market.

Recently influential figures from esports like streamers, players, and

professional teams, got together to publish an open letter formally opposing the federative model of esports in Brazil, proposing more space and voice for the agents of this market in discussions about regulation. For example, those responsible for the letter do not recognize the representation of existing confederations and federations and are against attempts to regulate electronic sports for fear of harming the market.

There is, on the other hand, no solid debate about the involvement of children and adolescents in the competitive landscape of electronic sports, either by the Public Authority or by the interested parties acting in the scenario. Thaís Sêco⁴⁸ argues that there is a triangulation of competencies for making existential decisions of children and adolescents: society, represented by the State; the family; and the child or adolescent, whose interests should guide any decision. The lack of legal recognition of the new sports practice further weakens the relationships established with minors working with esports and relying only on their family to help them make decisions about the career they want to pursue.

CONCLUSION

The electronic sports scenario is one of the niches with the highest projection and revenue within the electronic games market. This was boosted by the use of smartphones, the internet and streaming, and has reached an increasingly growing audience, especially children and adolescents who consume content related to esports and aim for a career in the area.

The regulations analyzed for competitions recognized by Garena, holder of the rights to Garena Free Fire, and Epic Games, from Fortnite, do not prevent the participation of children and adolescents in the competitive landscape but recommend, in the terms of use, their games to be consumed by people of 12 years old or older. Professional teams and organizations have also signed professional or non-professional contracts with underage cyberathletes, following the provisions of the Pelé Law, not encountering major obstacles in terms of regularizing the legal relationship. However, the lack of specific regulation affects all cyberathletes.

Regulation elaborated from serious debates with subjects from the field and that takes into account studies carried out on the impacts of electronic sports and how the market was established is the appropriate way to reach improvements in relation to what is currently in place. It should be noted that the minimum age for participation in competitive circuits does not always coincide with the distinction between children and adolescents established by the Statute of Child and Adolescent (ECA) or with the minimum age for a

⁴⁸ Sêco, Thaís Fernanda Tenório. Por uma nova hermenêutica do direito da criança e do adolescente. *Civilistica.com*, Rio de Janeiro, a. 3, n. 2, Jul.-Dec./2014.

sports work contract according to the Pelé Law.

There are groups that disagree with the regulation as proposed in PL 383/17 and those who advocate the regulation of esports as a way to ensure guarantees for all cyberathletes operating currently. The fact is that the lack of specific legislation opens the door for exploitation and the precariousness of service provision, especially when it involves subjects still in their development phase who are, therefore, in a situation of greater vulnerability. Discussions should be encouraged, beyond large organizations and teams, and opportunities should be created for appropriate measures to be discussed and assistance be provided in drafting a law that truly represents the market and community interests.

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