DIGITAL LAW

GAMES, FANTASY GAMES AND ESPORTS: MAIN ASPECTS

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In this second article in the series "Gaming, betting and eSports Law: what do you need to know?" we look at the legal aspects of games and electronic games.

Games. This category includes practices and electronic games whose main element is to entertain users, regardless of the type of game: sports, action, adventure, strategy, role playing games (RPG), racing, simulators etc.

The number of users, the profile of the players (children, teenagers, adults, the elderly) and even the platforms ou gadgets used (consoles, computers, smartphones, tablets, among others) are not relevant elements to categorize the practice as games or electronic games.

Documents from the European Parliament, for example, propose classifying games as:

> video games: broader category involving games played on mobile and other devices - such as computers and consoles.
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> mobile games: category of games played on mobile devices - such as smartphones and tablets.
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> online games: this category includes all games in which elements are played online. It allows, for example, interaction between players in multiplayer games.

If the game involves, in addition to entertainment, the elements that characterize the practice of gambling (identified later in our series of articles), it will fall into this category for the purposes of regulation, compliance and risks.

Legal Framework for Games (Bill 2.796/21). The Chamber of Deputies approved this bill in October 2022. The text proposes to regulate the manufacture, import, marketing and development of electronic games in the country. The bill is currently being considered by the Federal Senate.

The creation of the Legal Framework for Games is important for legal certainty in the sector. It provides important definitions, proposes initiatives to foster development, reinforces the role of the state as an incentive for the segment and does justice by bringing the tax treatment of electronic games into line with that of computer products.

It also recognizes the growth of eSports (see below) and encourages the creation of technical courses and innovation. It also proposes establishing legal limits for the practices, as long as they are not strictly characterized as games of chance.

Fantasy games. This is a sub-category of games. Fictitious teams or groups are assembled virtually, using real people or companies as a reference. The results of real games directly influence the results and winnings of electronic games.

In addition to the entertainment element, the results and winnings or prizes of electronic games - which can be exclusively financial - reflect what happens in reality. In some cases, elements of gambling or games of chance are present. When this occurs, these practices are characterized.

The best known are the so-called fantasy sports, in which players field fictitious teams made up of professional athletes from the real world. In these games, statistics accumulated from the performances of real athletes, teams and results are used.

One of the best-known examples of this category in Brazil is Cartola FC, operated by the company Globo Comunicação e Participações S.A. The game Rei do Pitaco is another example. There are many games of this type abroad, including NBA Fantasy and NFL Fantasy in the United States and Fantasy Premier League in England.

eSports. This is the so-called electronic sports, in which players compete professionally in games. They are real sporting competitions. Players act as professional athletes, compete against each other - individually or in groups - and are watched by a large audience - in person or remotely - on platforms or even on sports channels.

The main professionals involved include:

> pro players (those who perform the competitive function and play directly - the faces of the teams);
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> coaches (responsible for training pro players and teams);
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> designers (responsible for creating and managing the teams' visual identities);
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> data analysts (responsible for analyzing data and producing statistics for the teams);

- social media professionals (responsible for the teams' social media); and
- managers (responsible for the administrative and operational coordination of the teams).

This is a strong and booming market, in which Brazil occupies a prominent position. The relationships associated with the practice have highly relevant commercial impacts and require more and more legal measures to guarantee the legal certainty necessary for its development.

In terms of legal regulation, there is no definition of "eSport" in the country or specific regulation for the practices.

The Pelé Law (Federal Law 9.615/98) defines, in its Article 1, that "Brazilian sport encompasses formal and non-formal practices" and defines formal sporting practice as that "regulated by national and international standards and by the rules of sporting practice for each discipline, accepted by the respective national sports administration bodies" (Article 1, §1).

Non-formal sports practice, on the other hand, is defined as "characterized by the playful freedom of its practitioners" (Art. 1, §2).

The law therefore delegates the definition to the specific regulations of the entities responsible or, on the other hand, accepts generic practices based on people's daily lives.

This year, the General Sports Law (Law 14.597/23) was passed, which did not deal with the issue and defined sport as "any form of predominantly physical activity which, in an informal or organized way, aims to practice recreational activities, health promotion, high performance sport or entertainment." (Art. 1, §1).

At the same time, Bill 70/22, which proposes regulating e-sports, is being processed in the Chamber of Deputies. According to the substitute approved this year, the practice would be included in the General Sports Law and eSport or electronic sport defined as "the activity that requires eminently intellectual exercise and dexterity, in which people or teams compete in virtual games, with predefined rules, through the internet or a set of networked computers".

In the next article in the series, we'll deal with two other fundamental issues: so-called loot boxes and play-to-earn practices.