

Nintendo is Hurting Itself and Its Most Devoted Consumers

Traditional sports, such as basketball and baseball, share many similarities with esports, those video games turned spectator sports where professional players compete for dominance and fame before entire stadiums full of onlookers.¹ Almost any aspect of traditional sports has its parallel in esports, from cameramen who ensure that focus is drawn to the most meaningful part of the action, to commentators who drive up excitement with their expertise and play-by-play, to fanbases incredibly dedicated to a particular player or team.² One of the most prominent differences between these two worlds, however, is the issue of intellectual property. Behind any esports title, there is a company that developed it and is thus the owner of the video game underlying the sport.³ Riot Games owns *League of Legends*.⁴ Blizzard owns *Hearthstone*, *Overwatch*, and *Starcraft*.⁵ Anyone can play a game of soccer or hockey without considering problems regarding licensing or copyright infringement.⁶ The same is not true for esports.

Nintendo, developer of the fighting game series *Super Smash Bros.*, (Smash) has had a complicated relationship with Smash's competitive playerbase. Competitive Smash players are devoted, practicing many hours and often travelling to compete in *Melee* tournaments, a long-beloved entry in the series released before the age of online play. Tournament organizers pour themselves into ensuring a good experience at events. In contrast, Nintendo has done relatively little to support competitive play of its games,⁷ especially when compared to other prominent esports developers such as Riot Games, who has internalized the costs of and invested over \$100 million annually into its professional esports division for *League of Legends*.⁸ In fact, Nintendo has frequently worked against the Smash competitive scene. In 2013, Nintendo exerted its copyright authority to shut down a *Melee* tournament taking place at the Evolution Championship Series (EVO)—known for running the largest and longest-running fighting game tournaments in the world—only relenting after tournament organizers and consumers pressured Nintendo to allow the tournament to continue.⁹

¹ Jonathan Tong, et al., *It's in the Game: The Esports Legal Playbook*, MILLER THOMPSON (Feb. 10, 2020), <https://www.millerthomson.com/en/publications/articles/its-in-the-game-the-esports-legal-playbook/>.

² See Indiana Black, *Shoutcasting 101*, LEARN WITH LEAGUE (Last visited Nov. 2, 2020), <https://oce.learnwithleague.com/shoutcasting-101/>; Alex Gray, *The explosive growth of eSports*, WORLD ECONOMIC FORUM (July 3, 2018), <https://www.weforum.org/agenda/2018/07/the-explosive-growth-of-esports>.

³ See Tong, *supra* note 1.

⁴ *We Are Rioters*, RIOT GAMES (Last visited Nov. 2, 2020), <https://www.riotgames.com/en/who-we-are/values>.

⁵ *Blizzard Entertainment*, BLIZZARD (Last visited Nov. 2, 2020), <https://www.blizzard.com/en-us/>

⁶ See Tong, *supra* note 1.

⁷ See Damien McFerran, *Nintendo's President Explains 'Embarrassing' Lack of Financial Support for Smash Bros. eSports*, NINTENDO LIFE (Jan. 9, 2020),

<https://www.nintendolife.com/news/2020/01/nintendos-president-explains-embarrassing-lack-of-financial-support-for-smash-bros-esports>

⁸ See David Segal, *Behind League of Legends, E-Sports' Main Attraction*, NEW YORK TIMES (Oct. 12, 2014) <https://www.nytimes.com/2014/10/12/technology/riot-games-league-of-legends-main-attraction-esports.html>; *Riot's Head of Global Esports Events Responds to Budget Concerns*, ESPORTS OBSERVER (Aug. 18, 2018), <https://esportsoobserver.com/riot-response-budget-cuts/>.

⁹ See Jenna Pitcher, *Nintendo wanted to shut down Super Smash Bros. Melee Evo Event, not just stream*, POLYGON (July 11, 2013), <https://www.polygon.com/2013/7/11/4513294/nintendo-were-trying-to-shut-down-evo-not-just-super-smash-bros-melee>.

More recently, in light of COVID-19, the Big House tournament, an annual *Melee* tournament announced its decision to operate its 2020 event remotely, using a modification, Slippi, which allows the normally local-only game to be played over the internet.¹⁰ After months of planning, organizers were forced to cancel the event two weeks prior to its would-be start date, as Nintendo had sent a cease-and-desist letter, citing piracy concerns connected with the Slippi mod.¹¹

Nintendo has effectively given players an ultimatum as far as competitive *Melee* goes: you can play locally, putting yourself and others at risk of contracting COVID-19, or you can not play at all. The risk that Nintendo loses revenue from this so-called “piracy” is minimal to nothing. *Super Smash Bros. Melee* was released in 2001, nearly two decades ago, and despite the love it receives from fans, Nintendo has not made known any plans to re-release it. Moreover, it seems unlikely that players who play competitively, for money, don’t already themselves own copies of the game.

Nintendo’s statement that it “appreciates the love and dedication the fighting game community has for the *Super Smash Bros.* series”¹² seems in total opposition to its actions. Nintendo might be distancing itself from a community that has recently come under fire from a sling of allegations,¹³ or it might be trying to promote itself as a casual, rather than competitive, game developer.¹⁴ Whatever the case may be, it is hurting a community. It is undoing countless hours of work by tournament organizers. And it is stopping people from playing a game they love, during a time when they might need it the most.

--Alexander Tu

Unlike traditional sports, esports are owned by a distinct entity, the video game’s developer. Nintendo has used its copyright authority as a developer to shut down *Smash* tournaments, putting hours of work to waste and removing the opportunity for players to compete in a game they love.

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¹⁰ See Adi Robertson, *Nintendo Shuts Down Super Smash Bros. Tournament for Using Mods to Play Online*, VERGE (Nov. 20, 2020), <https://www.theverge.com/2020/11/20/21579392/nintendo-big-house-super-smash-bros-melee-tournament-slippi-cease-desist>

¹¹ See *id.*

¹² See *id.*

¹³ Ian Walker, *Over 50 Sexual Misconduct Allegations have the Super Smash Bros. Community in Turmoil*, KOTAKU (July 9, 2020), <https://kotaku.com/over-50-sexual-misconduct-allegations-have-the-super-sm-1844328719>.

¹⁴ See McFerran, *supra* note 7.