

Shadows in the Spotlight: Predatory Agency Contracts targeted at Video Game Streamers

By Priscilla Chan & Akash Ray



Instructions



How would you categorize a game streamer's profession?



Pro Gamer = E-Sports Athlete + Entertainer

- Athletes may be streamers
- Streamers are entertainers!
- Athletes - Shorter Careers (Less \$\$)
- Streamers - Longer Careers (More \$\$)

Agent, Manager or Team?

- Agent: represents streamer
- Manager: takes care of logistics
- Team: could be both



	Twitch Streamer	Total Payout from A
1	CriticalRole	\$9,626,712.16
2	xQcOW	\$8,454,427.17
3	summit1g	\$5,847,541.17
4	Tfue	\$5,295,582.44
5	NICKMERCS	\$5,096,642.12
6	ludwig	\$3,290,777.55
7	TimTheTatman	\$3,290,133.32
8	Altoar	\$3,053,839.94
9	auronplay	\$3,053,341.54
10	LIRIK	\$2,984,653.70
11	__unknown__	\$2,863,780.63
12	Gaules	\$2,844,985.18
13	HasanAbi	\$2,810,480.11
14	AaronGold	\$2,551,618.72

Imagine...

You start streaming...

⚠️ TRADE OFFER ⚠️

i receive:

7%
Stream Revenue;
15%
Sponsor Income

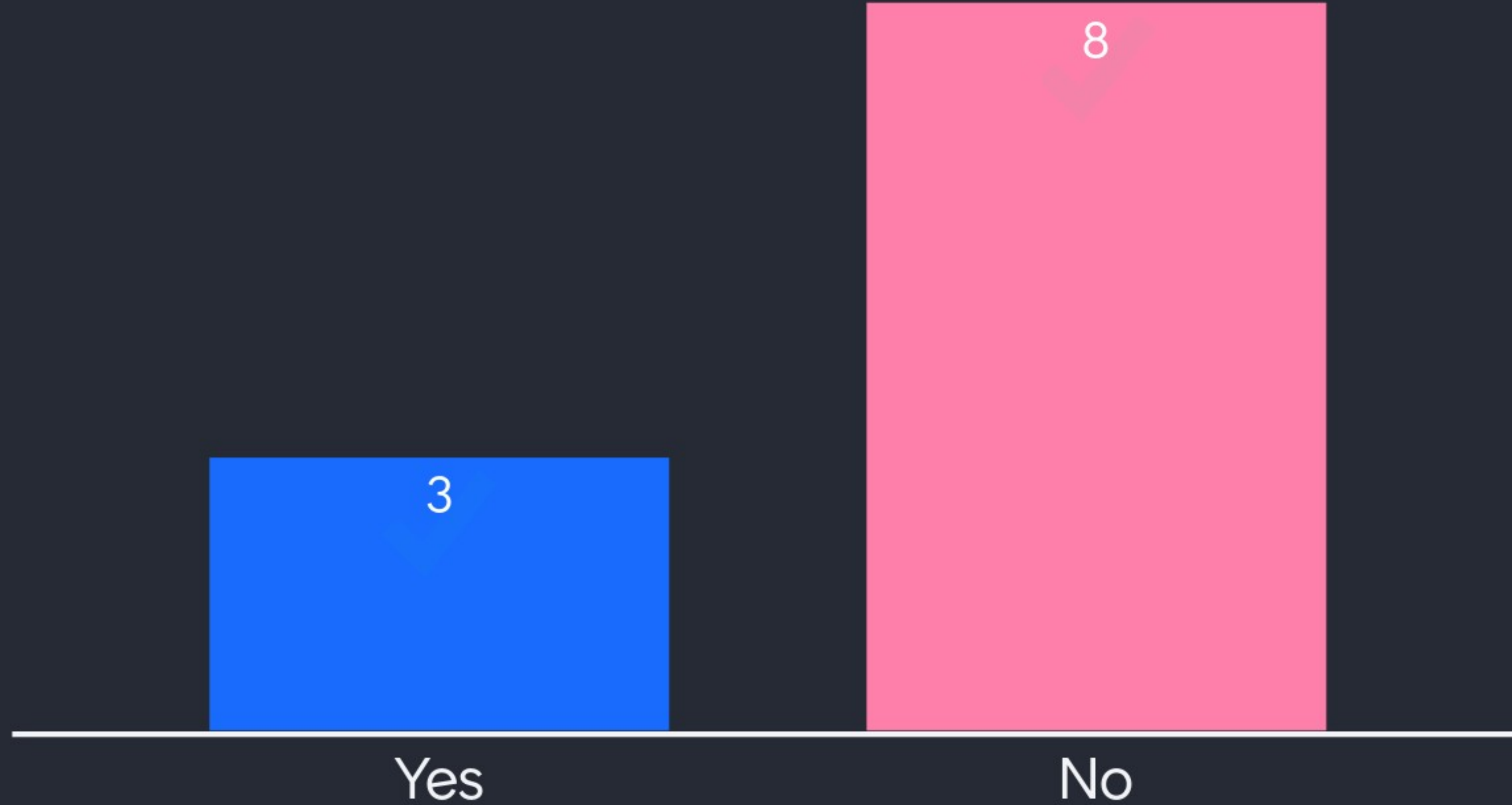
you receive:

\$10,000;
More sponsors;
Advice

Agent / Management Co.



Will you sign the contract?



What could go wrong?



5.5

Long Exclusivity Periods

6.8

Onerous non-compete clause

6.3

Sign away Right to own and market your image or work

4.8

Agent is receiving kickbacks behind the scene

2.8

You will end up paying the agent more than they made you

2.5



So it turns out...

The sponsorship deal was for \$100,000. You waived your right to know. Company got \$91,500 out of that deal. You get \$8500.

You waived the right to know the sum total compensation of multi-influencer deal brokered by the company.

True story.





Exploitation is common

Even for star players in big esports franchises



Tfue v Faze

- “oppressive, onerous and one-sided” 3-year “Gamer Agreement”
- 80/20 split in favour of Faze Clan for revenue from 3rd parties
- anti-competitive provisions
- Faze Clan not registered under California's Talent Agency Act (TAA)



Compensation

"\$2,000 per month" as a fixed fee, plus "other income"

"In-game/sticker (creator code income) 50% to Gamer and 50% to Company;

Brand deals featuring the Gamer that exist on Gamer or Company's content creation platforms (e.g. Twitch/YouTube) or social media sites, if the deal is brought to Company by Gamer:
50% to Gamer and 50% to Company;

Brand deals featuring the Gamer that exist on Gamer or Company's content creation platforms (e.g. Twitch/YouTube) or social media sites, if the deal is brought to Gamer by Company:
20% to Gamer and 80% to Company;

All income generated by Gamer from cash prizes (each, a "Prize" and collectively, "Prizes") won in any Tournaments and/or Matches shall be split (after any payments to the Team coach) as follows: 80% to the Gamer, and 20% to the Company."



Exclusivity Period / Matching Rights

Tfue shall not "unless Gamer has obtained Company's prior written consent ...

- (i) provide services or otherwise work for or be employed by a gaming company or other gaming brands or any companies that already have an agreement with Company;
- (ii) appear in, sponsor or be sponsored by, or otherwise promote or endorse, directly or indirectly, any brands, products or services other than the brands, products and services approved in writing by Company;
- (iii) promote, sponsor, endorse (using Gamer's Name and Likeness or otherwise) or render services for or on behalf of any companies with products or services competitive with a product or service of Company or a sponsor or advertiser of Company."



Exclusivity Period / Matching Rights

"Gamer receives an offer from another 'Fortnite' team to join such team upon lawful termination of the Agreement by Gamer ("Offer"), Gamer shall be obligated to provide the Offer to Company and the identity of the party providing the Offer, and Company shall have the right to match such Offer during a period of fifteen (15) business days following Company's actual receipt of the Offer (the "Matching Right"). If Company elects to exercise the Matching Right, Company shall inform Gamer within said fifteen (15) business day period, and Company shall, automatically have exclusive rights to Gamer's services on the same terms as the Offer, as supplemented by all of the terms and conditions of the Agreement."

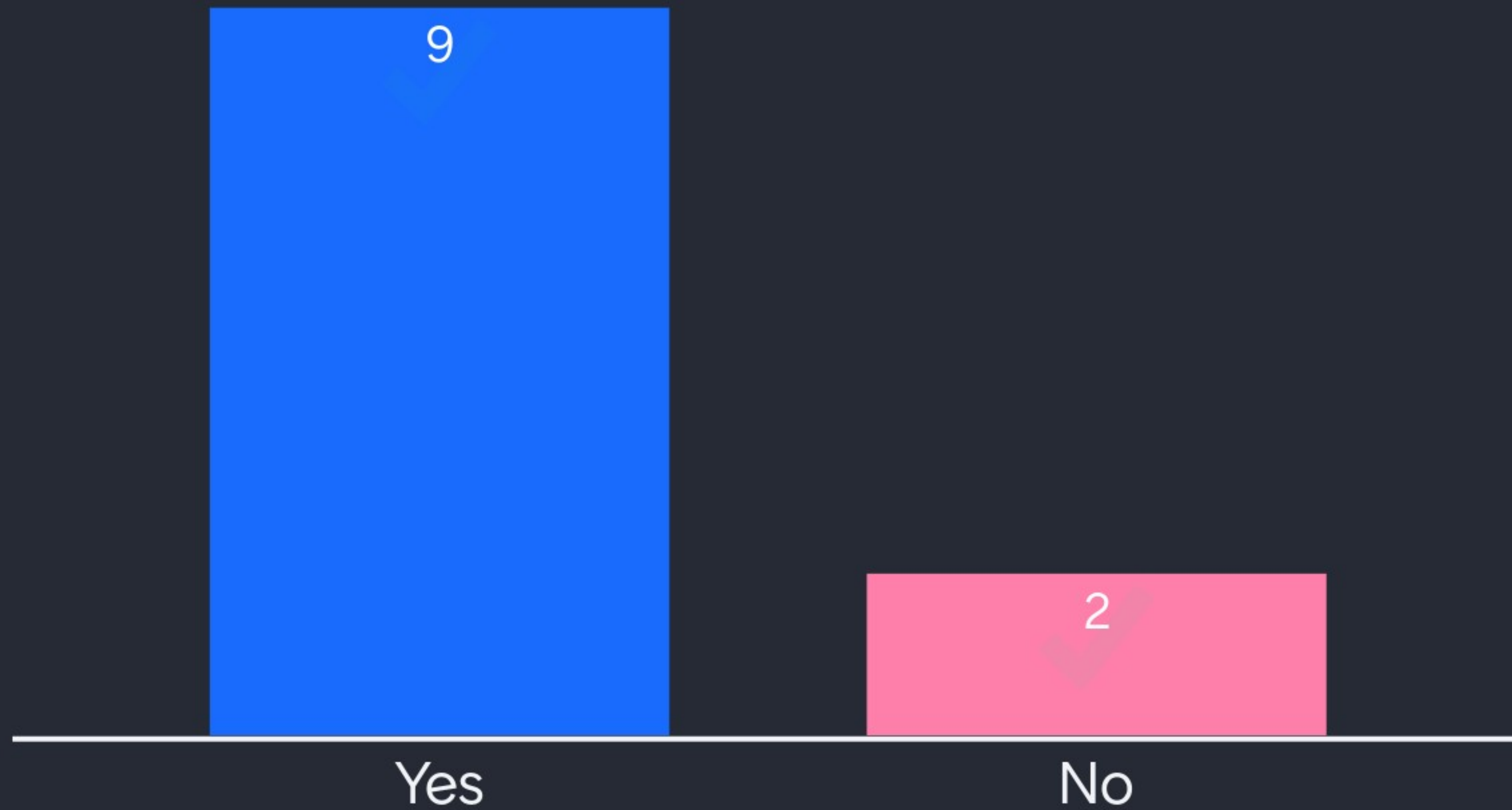


Termination

"In the event of termination for a Gamer Material Breach, Gamer shall be prohibited from playing video games publicly (on-line or in live tournaments) or professionally for a period of six (6) months from the effective date of such termination."



Should Tfue's Contract be void?



We Don't Know

-(ツ)-



What we do know...

- Forum Selection Clause (New York Law) was upheld
- BUT Tfue's statutory rights under Californian law are non-waivable
- TAA is applicable
- Non-compete provisions are void





PROPOSED SOLUTIONS

So what can we do about it?



1. Seek legal counsel!

- Seriously
- Please
- Just do it, trust me, I am a lawyer (almost)!



2. Protect Minors: Right to Disaffirm Contracts

- A. Common Law Right
 - A contract of service with a minor must be to the benefit of the minor.
 - Question of fact - Courts consider the contract as a whole + balance between the beneficial and onerous elements of the agreement



2. Protect Minors: Right to Disaffirm Contracts

- *A. Infants' Act* (BC Law - Statutory)
- **Section 19(1) - Generally unenforceable UNLESS**
 - contract is specified under ANOTHER ENACTMENT to be enforceable
 - AFFIRMED upon reaching the age of majority
 - PERFORMANCE within one year of reaching majority
 - NOT REPUDIATED within one year of reaching majority
- **Section 21 - *Application to the BC SC* by litigation guardian**





3. LABOUR LAWS

- A. REGULATION - California's Talent Agencies Act (TAA) MODEL LAW
 - Registration of Agents
 - Scrutiny of contracts by Commissioner
 - Income capped to 10% of artist's gross earnings
- B. UNIONIZATION / ASSOCIATIONS / COLLECTIVE BARGAINING /



4. Invalidating Non-Competes: Competition Law

A. Competition Act - Conspiracy relating to professional sport

S. 48 (1)(b) Every one who conspires, combines, agrees or arranges with another person *to limit unreasonably* the opportunity for any other person to negotiate with and, if agreement is reached, to play for the team or club of his choice in a professional league

is guilty of an indictable offence and liable on conviction to a *fine in the discretion of the court or to imprisonment* for a term not exceeding five years or to both.



4. Invalidating Non-Competes: Common Law

B. Common-Law to the rescue:

- Non-compete clauses are generally deemed invalid unless there is a need to protect business interests.

So...

- aren't non-solicitation clauses are adequate?
- non-compete clauses must be reasonable (duration, geography, scope of activities)
- THE CATCH - Streamers aren't employees



5. Employee Status to streamers

- Control Test:

assessing the presence or absence of control a manager or supervisor

- The Fourfold test:

(1) control; (2) ownership of the tools; (3) chance of profit; (4) risk of loss.

- The integration test:

If the service being provided is:

an integral *part of the business*,

or

done on behalf of the business but not integrated into that business.



What's the solutions do you think were the most feasible?





6. Disclosures about sponsorship agreements

- Hiding behind NDAs
- A problem with no solution

Thanks for listening! Any questions?

0 questions

0 upvotes

REFERENCES

Playing video games as a professional: Who is a video game streamer?

- [Gaming – Athletes vs Entertainers](#)

What is the relationship between video game streamers and their agents/manager/team?

- [Shady Contracts, Raw Deals: Inside the Industry of Managing Video Game Stars](#)
- [The dangers of esports contracts: Don't sign before you read this](#)
- [The Econtractor? Defining the Esports Employment Relationship by John T. Holden, Thomas Baker :: SSRN](#)

What are some common terms in a streamer's contract that are oppressive or unfair? What legal issues would arise?

- ['Fortnite' Gamer Tfue's Contract with FaZe Clan Finally Revealed](#)
- [How not to Draft an Esports Contract – Dota 2 Edition](#)
- [Issues with Minors Entering into Esports Contracts](#)

Case Study: Tfue v FaZe Clan

- [A New Lawsuit Could Transform How the Influencer Industry is Regulated](#)
- [This 'Fortnite' Pro's Lawsuit Could Change How Streamers Do Business](#)
- [Fortnite Star Tfue Settles Dispute With FaZe Clan, Ending Esports' First Major Employment Lawsuit](#)
- [FaZe Clan sues Fortnite star Tfue, claims he earned more than \\$20 million from streaming - The Verge](#)

What can we do about these oppressive streamer contracts?

- [The Costs of Squabbling Up: Determining the Employment Status of High Profile Esports Streamers](#)
- [Did Twitch actually buy a talent agency? Good Game highlights legal conundrums for esports](#)
- [Competition Act \(R.S.C., 1985, c. C-34\)](#)
- [restrictive covenants in employment contracts.pdf \(osler.com\)](#)
- [Restraint of Trade: Breathing New Life Into an Old Legal Doctrine - Sport Law](#)
- [Exercising Parens Patriae Jurisdiction to Approve Minors' Contracts | Minor Matters: Ensuring The Enforceability of Contracts with Minors in the Entertainment Industry | CanLII](#)