

Esports Bar Association Journal

Volume 2019

Journal Management

Editor-in-Chief
RYAN FAIRCHILD
Brooks Pierce Law Firm

Editor-in-Chief
MICHAEL ARIN

Publication Committee Chairman
HARRIS PESKIN
ESG Law

Journal Editors

Managing Editor
Michael Rivera

Gregory Lu

Brian King

Emma C. Smizer

Justin Ho

Table of Contents

Prefaceii

Thirty-Five Years Without Player Rights in Gameplay: Is a New Challenger Approaching?
by Ryan Fairchild 1

Unionization in Esports
by Harris Peskin 8

Diversity in Esports
by Anna Chang, Krista Hiner, Jessica Linton & Carly Manger..... 20

Esports & Employment After Dynamex
by Michael Arin 27

Diversity in Esports

By Anna Chang, Krista Hiner, Jessica Linton & Carly Manger†

Introduction

Esports has grown exponentially over the last decade, both as a hobby and as a profession. With that growth comes growing pains. For many, video games were a safe place to escape the stresses of everyday life. With the advent of the Internet and online multiplayer gaming, however, video games have, for some, morphed from a place of refuge to a place of hostility. Consequently, esports news stories are replete with reports on inappropriate, sexist, or discriminatory comments and behavior.

To facilitate discussion on best practices to address discrimination, online and in the workplace, in esports, the Esports Bar Association (EBA) requested anonymous testimonials from minorities in the esports community about their experiences with discrimination. The overwhelming response highlighted key challenges faced by underrepresented groups. Each testimonial, while unique, had the same underlying theme: there is a systemic problem with how people treat one another in esports, and that problem has a powerfully negative effect on both the lives of affected individuals and the development of this nascent industry.

This article focuses on the experiences of marginalized members of the esports community, as described by those members, in two separate arenas: in-game and in the workplace. By highlighting what are often otherwise silenced experiences, the EBA hopes to spark more dialogue about how to make esports welcoming to all and how to prevent behavior that drives valuable community members away from the hobby or profession they love.

I. The Online Disinhibition Effect

Anonymity plays a major role in how members of minority and marginalized groups are treated online. Under the Internet's cloak of anonymity, actors are free to express themselves without concern for perception or repercussions in real life. In fact, online anonymity is put forth as one of the reasons why esports communities that originated almost entirely online (e.g., PC-based games) are more entangled with overt discrimination than the fighting game community (FGC), which originated in arcades where players stand mere inches from each

† The authors wrote this article on behalf of the Diversity Committee of the Esports Bar Association. Copyright © 2019 Esports Bar Association.

other.¹ (This is not to say, however, that the FGC is free of discrimination.)

The cloak of anonymity lowers the inhibitions of bad actors. This “online disinhibition effect” or “toxic disinhibition,” as coined by John Suler, Ph.D.,² clears the way for hateful and prejudicial communications, especially those targeting members of minority or marginalized groups. Many illustrations of this were reported by the testimonials the EBA received, including the following:

I am . . . Jewish[.] After the events of the synagogue shooting last year I played a few games where folks were talking about it. It was upsetting and I asked them to stop. They asked why, I said I was Jewish . . . my team chose to express their frustrations with the concept of circumcision. I asked them to again stop. They did not. I left voice chat. And they started typing hateful things to me. I left the game.

It sucks to see people be called ‘gay’ or ‘faggot’. I don’t mention I’m queer out of fear.

Language used in ‘gamer’ spaces is awful and alienates all groups of people.

I am...autistic...and seeing others being called retarded and being called retarded myself is a cruel reminder that [to those people] I am nothing more than a punchline.

These experiences illustrate how those persons targeted by discrimination are silenced and intimidated. But this silence and intimidation often extends to bystanders. As reported by The Washington Post: “With no clear methods to effectively monitor, halt or eliminate toxic behavior, many in the gaming community have simply tried to ignore it and continue playing anyway.”³ The result is that the aggressor’s behavior goes unchecked.

I [am a female and] started playing Overwatch when I was 16. Every time I would talk [in in-game chat], then make a

¹ Mitch Bowman, *Why the Fighting Game Community is Color Blind*, POLYGON (Feb. 6, 2014, 12:01 PM), <https://www.polygon.com/features/2014/2/6/5361004/fighting-game-diversity>.

² John Suler, *The Online Disinhibition Effect*, 7 INT’L J. OF APPLIED PSYCHOANALYTIC STUD. 321–26 (2004).

³ Noah Smith, *Racism, Misogyny, Death Threats: Why Can’t the Booming Video-game Industry Curb Toxicity?*, WASH. POST (Feb. 26, 2019), https://www.washingtonpost.com/technology/2019/02/26/racism-misogyny-death-threats-why-cant-booming-video-game-industry-curb-toxicity/?utm_term=.deb531c2ad60

mistake, people would tell me to ‘get raped’ or to stop showing my [genitals] for boosts. I learned to get good at the game and never talk in voice chat. Not once did anyone defend me.

Anonymity makes it easy for some bystanders to ignore toxicity aimed at other individuals, passively allowing toxicity to persist. But unconventional uses of anonymity can provoke toxicity, too. Earlier this year, a male gamer known as “Punisher” leveraged anonymity to conduct a so-called “social experiment”. Punisher masqueraded as a female Overwatch player, “Ellie,” who, despite being previously unknown and playing on a newly created account, quickly began to climb the leaderboards and was signed by Second Wind, a team in the Blizzard-sanctioned Overwatch Contenders League. Almost as quickly, Ellie drew criticism. Some criticisms were legitimate, questioning whether a male player of Ellie’s skill would have been so quickly signed (indeed, Punisher had not been signed to any teams). Others repeated the age-old question of whether a girl could actually be a skilled gamer. (Kim “Geguri” Se-yeon, the first female to play in OGN Overwatch Apex and the Overwatch League, faced similar criticisms⁴ and was forced to prove on stream that she was, indeed, as skilled as she demonstrated during tournament play.) Such criticisms snowballed into harassment and threats of doxxing. Though Second Wind defended Ellie’s decision to stay anonymous, Ellie eventually quit her team.

Punisher was later outed as Ellie, igniting debate over the challenges faced by females in gaming as well as accusations that women receive special treatment based on gender. While Punisher may have shed more light on the unique adversity faced by female gamers, he likely did more damage than good. Indeed, by assuming the identity of Ellie, Punisher has given more anecdotal ammunition to bad actors who target women and minorities.

II. Battle Royale: Office Edition

Unsurprisingly, discrimination in esports is not limited to the recreational side of the industry. Workplaces in corporate America have consistently failed to reflect the diversity of America’s population. Although many companies proclaim strong commitments to diversity,

⁴ Young Jae Jeon, *Geguri to Become First Female Competitor in Overwatch APEX*, ESPN (Aug. 6, 2017), http://www.espn.co.uk/esports/story/_/id/20269551/geguri-become-first-female-competitor-overwatch-apex. (Se-yeon’s entry into the world of competitive Overwatch was fraught with controversy because of her gender. Her gameplay as Overwatch character Zarya in 2016 was so precise that her male tournament opponents accused her of cheating. She livestreamed her Zarya gameplay within a monitored studio setup to disprove her accusers.)

Women in the Workplace 2018,⁵ a study published by LeanIn.Org and McKinsey & Company, reveals that progress across industries has effectively stalled. This systemic lack of progress, coupled with the online esports culture discussed above, has led to everyday discrimination against women and minorities in esports workplaces. Indeed, at least one esports title publisher, Riot Games, has identified a correlation between an employee's in-game toxicity and their workplace toxicity.⁶ Simply put, online toxicity spills over into the real world, affecting esports workplaces everywhere.

Last year, Kotaku published an exposé on what it termed the “culture of sexism” at Riot Games.⁷ The article prompted a number of Riot Games employees and former employees to share with their own experiences with sexism and “bro culture” at Riot Games. In response, Riot Games issued an official apology and pledged to expand its Culture, Diversity, and Inclusion Initiative; hire consultants to help reshape its work culture; improve its internal reporting and investigation process; increase anti-harassment training; and hire a Chief Diversity Officer. In November 2018, two women sued Riot Games for gender discrimination.⁸ The case is still pending.

The testimonials that the EBA received from esports professionals mirror the experiences of those referenced in the Riot Games exposé. Those testimonials further validate the prevalence of discrimination as reported by Women in the Workplace 2018 and, predictably, indicate that discrimination is not limited to one company. Rather, discrimination is pervasive throughout the esports industry. A common theme in the testimonials is the implication that women are employed in esports, not because of their specialized skills, experience, aptitude or acumen, but only because they used sex (either with male coworkers or prospective bosses) as a currency to obtain their positions.

As a woman, I constantly was asked who I slept with to get my position. My own boss treated me as lesser than my

⁵ *Women in the Workplace Study 2018*, LEAN IN, <https://leanin.org/women-in-the-workplace-report-2018/men-still-outnumber-women-at-every-level#> (last visited Apr. 25, 2019).

⁶ *Riot Games: Assessing Toxicity in the Workplace*, RE:WORK, <https://rework.withgoogle.com/case-studies/riot-games-assessing-toxicity/#results> (last visited Apr. 25, 2019) (Riot Games reviewed *League of Legends* in-game logs for its employees, and determined that employees who demonstrated unusually high in-game toxicity were more likely to demonstrate an affinity for passive aggression and intimidation in the workplace. Riot Games reportedly used data to confront employees directly, which sparked some employees to become more considerate).

⁷ Cecilia D'Anastasio, *Inside the Culture of Sexism at Riot Games*, KOTAKU (Aug. 7, 2018, 3:00 PM), <https://kotaku.com/inside-the-culture-of-sexism-at-riot-games-1828165483>.

⁸ *McCracken v. Riot Games, Inc.*, No. 18STCV03957 (filed Nov. 15, 2018), <https://www.classaction.org/media/mccracken-et-al-v-riot-games-inc.pdf>.

male counterparts. I was ignored, and my opinions were invalidated. [They] made me feel like I was less; like I was unworthy of my position.

Over the four years I worked with the organization, I endured massive amounts of sexual harassment by the CEO. Unnecessary lewd comments were peppered into nearly every conversation with him. . . . [After an incident involving unwanted touching,] [t]he sexual remarks lessened for a short period of time, but unfortunately came back. [U]pon my inquiry into being able to go to an event in order to cover it for the website[,] [t]he CEO met my request with a scoff, telling me the only way I could be flown out is if I would sleep with someone on the team. I knew in that moment he would never take me or my work seriously. . . . It felt as though I was only kept around as a source of entertainment. It was humiliating. After summoning the courage to distance myself from the organization and cut all ties, I still find it troubling to have confidence in my work. I'm fearful I may never be taken seriously.

One thing I find difficult in navigating the industry as a woman is receiving/dealing with/rejecting romantic advances from male counterparts. . . . I've felt like I have to avoid directly/deliberately shooting down colleagues in the industry who flirt/dm me (luckily nothing more than flirting) out of fear that it could affect my career in a negative way. . . . [N]ot feeling like you're able to openly tell someone 'sorry I'm not interested in you romantically at all and find this way of speaking to another professional in the industry grossly inappropriate' is frustrating at best, utterly disempowering at worst. Romance in the workplace is a fact of life. Plenty of people who work in the same office, let alone the same industry, enter into romantic relationships. . . . I don't think that these men are bad people. All of them dropped it once they got the hint and have either treated me with respect or left me 100% alone after getting it. . . I'd prefer it if they talk[ed] to me about the down and dirty of League of Legends. Whether I think Korea actually has a chance at worlds this year. Ask me how I feel about Caps leaving Fnatic and Perkz role swapping to bot. Ask me about my itemization preferences for a certain ADC or what I think a team's macro problems were in the games this weekend. . . . Just ask me ANYTHING besides 'were you the girl I thought was cute at the *insert event name here* party?' I am a

hardworking, League obsessed writer, manager, assistant, and translator who has worked just as hard (if not harder) to be in this industry.

Another common theme in the testimonials is that women, even if they are in a position of authority, are often the target of microaggressions. Microaggressions are more covert acts of discrimination, such as “subtle snubs, slights, and insults” directed at, and default disregard of minorities, women, and other historically stigmatized groups.⁹ Microaggressions are demeaning and discourage inclusivity. The following testimonials are replete with examples of microaggression:

I am a [woman of color]. . . . I constantly have to prove to everyone that I know what I'm doing. At work, every time I meet someone new, I have to build trust and respect from the ground up. Meanwhile, that new person automatically trusts and respects the white man who has the same title as me (despite the fact that I am the team lead). I have to prove that I know things about the game I work on all week, and that I know things about the players in the league I work on. I have to prove that I'm a "real" gamer—that I am playing "real" games despite already spending [more than]40 hours of my week on games at work. It's frustrating and makes me feel like I'm not accepted—having to prove that I belong rather than belonging by default, especially given my company's extremely rigorous hiring process. I'd imagine passing that process would be enough to prove to people that I belong here, but even after working here for more than two years, it's a constant struggle.

I [am female and] have faced difficulty managing and supervising male students. They are dismissive of my authority, argumentative when assigned a task, and become terribly defensive and aggressive when you check up on their work. I also work closely with our scholarship players who are all male. Their managers are female and they show plenty of disrespect for them. They refuse to listen and deem their game knowledge as minimal, therefore not warranting their respect (according to their logic). When we try to address issues of toxicity, professionalism, language and behavior, the female staffers and admins are met with disdain and annoyed

⁹ Scott O. Lilienfeld, *Microaggressions: Strong Claims, Inadequate Evidence*, 12 PERSP. ON PSYCH. SCI. 138–69 (Jan. 11, 2017).

looks across the table. . . . Male students only respect and listen to our male admin and regard only his word to be final.

Many of the employees whom the EBA heard from were very quick to credit and give thanks to those male coworkers they viewed as allies (“The players often asked me if I was okay and were overall very supportive”; “I am 100% confident that if I tell someone ‘no’ for any form of romantic advances that my bosses (yes all of them) will have my back [M]y team is also full of men who ask me about my opinion on things like the Japanese esports scene, League of Legends, etc. and they don’t just hear me. They LISTEN.”) However, support from coworkers was unfortunately not enough in some cases, and several employees reported eventually leaving their jobs.

In contrast, some organizations proactively punish toxic and discriminatory conduct of their employees and affiliates. For example, in 2019, the Overwatch League committed to publishing a public list of players who are punished for toxicity (among other rules violations).¹⁰ While this exact method of discipline does not translate to every workplace, it is a good example of how accountability is a valuable tool for discouraging bad behavior, and how all actors in the space, both individuals and corporations, must take proactive measures to increase inclusivity and eliminate discrimination.

Conclusion

As the esports industry matures, actors within the industry must take proactive steps to eliminate toxicity, both in-game and in the workplace. Marginalization in any community is unacceptable. It is especially troubling to see how frequent and severe discrimination occurs in esports. Unfortunately, there is no one-size-fits-all solution. Instead, individual allies and companies must each take dedicated, consistent, meaningful actions to increase inclusion. At a minimum, we must look inward to identify how we each contribute to the problem and then take initiative to correct that behavior. In the case of the individual, this can be as simple as speaking out against witnessed discrimination. In the case of developers who provide the means to communicate, this can be as simple as more closely monitoring in-game chat.

In esports workplaces, eliminating discrimination requires allies to pay attention and respond to both overt discrimination and more subtle microaggressions. Those with authority must use their positions to determine why diversity may be lacking in certain departments or at

¹⁰ 2019 Player Discipline Tracker, THE OVERWATCH LEAGUE (Dec. 21, 2018), <https://overwatchleague.com/en-gb/news/22823906/2019-player-discipline-tracker>; Bill Cooney, *Overwatch League: Blizzard launches plater discipline tracker for 2019*, DEXERTO (Dec. 21, 2018, 6:30 PM), <https://www.dexerto.com/overwatch/overwatch-league-blizzard-launches-player-discipline-tracker-for-2019-261347>.

certain points in the company's hierarchy and take action to promote and ensure diversity at all levels. Intracompany efforts must be tailored to each company and its employees to be effective.

This problem will not be solved overnight, but before we see meaningful progress, we must see meaningful commitment.

The Esports Bar Association Journal is published annually. The Journal solicits submissions through the Esports Bar Association website, www.esportsbar.org. Citations conform to *The Bluebook: A Uniform System of Citation* (21st ed. 2020). Please cite to articles herein using the following example: Ryan Fairchild, *Thirty-Five Years Without Player Rights in Gameplay: Is a New Challenger Approaching?*, 2019 ESPORTS B. ASS'N J. 1 (2019).

Articles herein to which the author has not retained a copyright may be duplicated for classroom use provided that the author and Esports Bar Association Journal are identified, proper notice of copyright is affixed to each copy, and the Esports Bar Association Publications Committee is notified of the use.

For inquiries regarding the Esports Bar Association Journal, please contact us via email at publications@esportsbar.org.

Copyright © 2021 by the ESPORTS BAR ASSOCIATION.