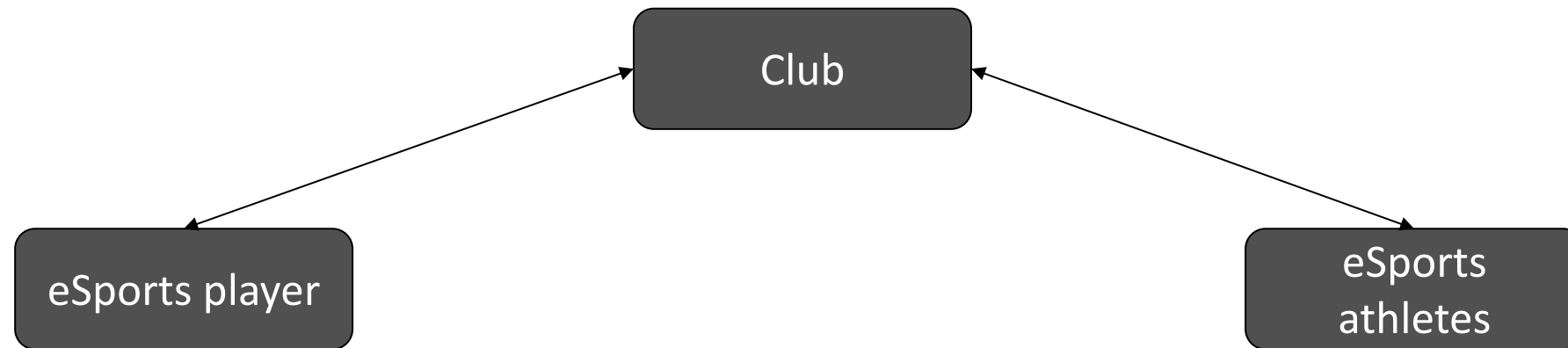




Legal basis – III

Legal relationship between eSports players and clubs



Membership (+)

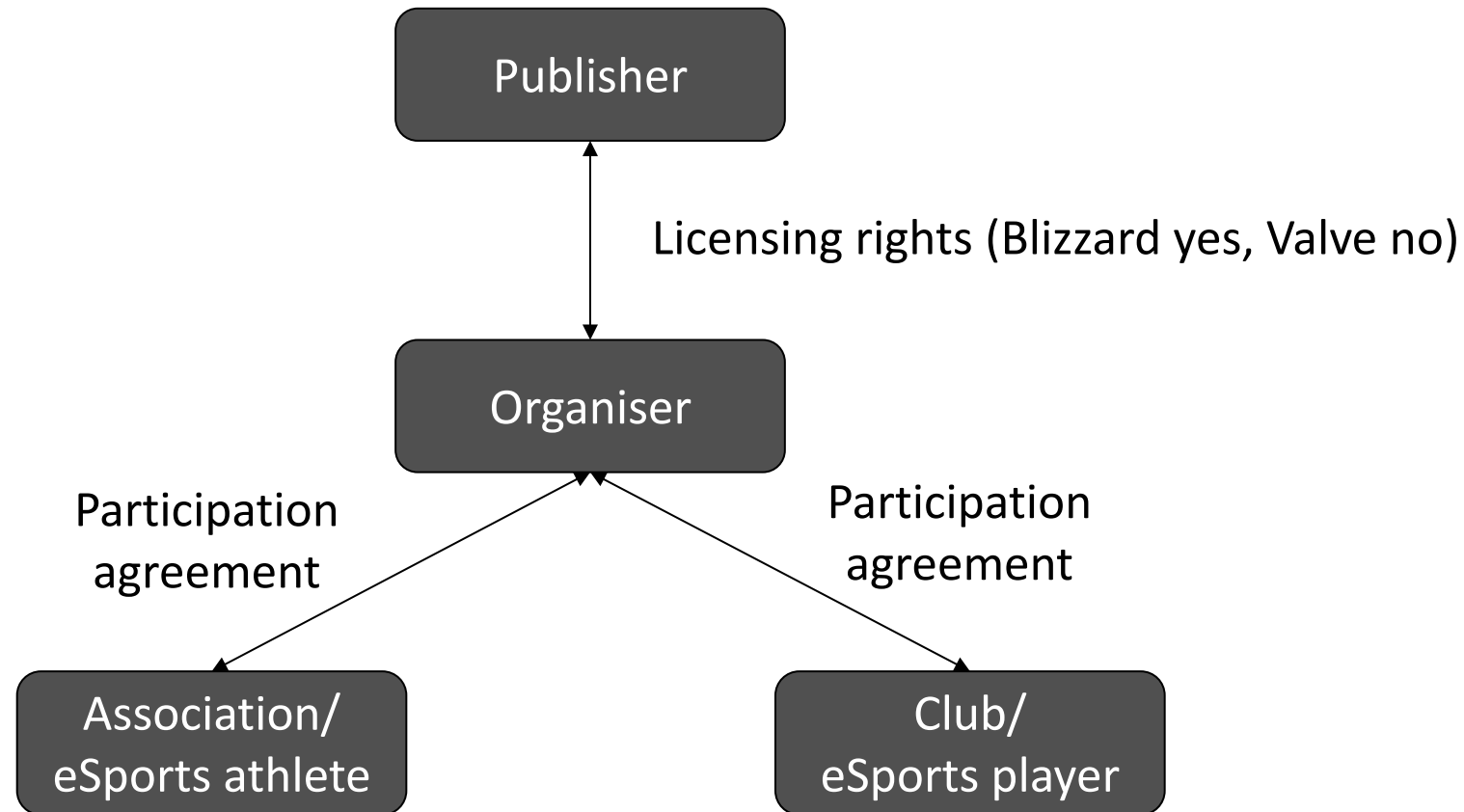
(P): Employment contract pursuant to Section 611a of the German Civil Code (BGB)

- in the service of another person to perform work that is subject to instructions and external control in a relationship of personal dependence?
Content, implementation, time and place?
- Legal form requirement pursuant to Section 611a (1) sentence 6 BGB?

Legal basis – IV



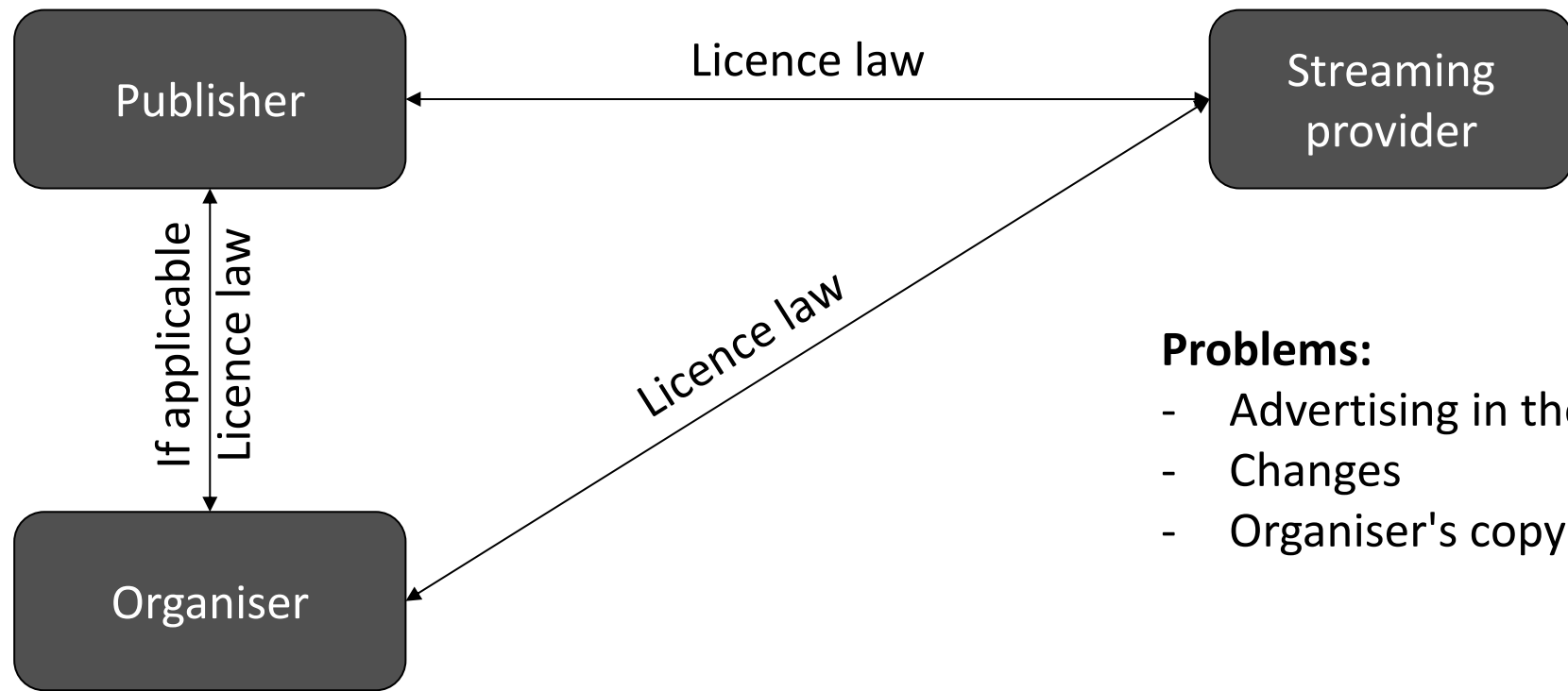
Legal relationship between publishers, organisers and associations





Legal basis – V

Legal relationship between publishers and media providers



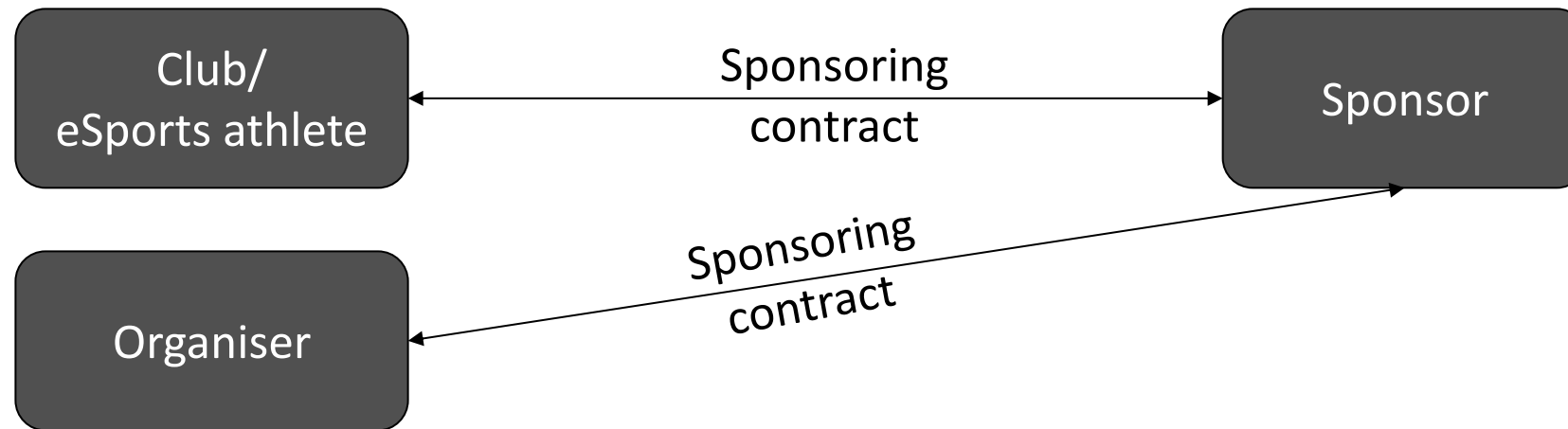
Problems:

- Advertising in the game
- Changes
- Organiser's copyright?



Legal basis – VI

Legal relationship between association/e-sports player and sponsor



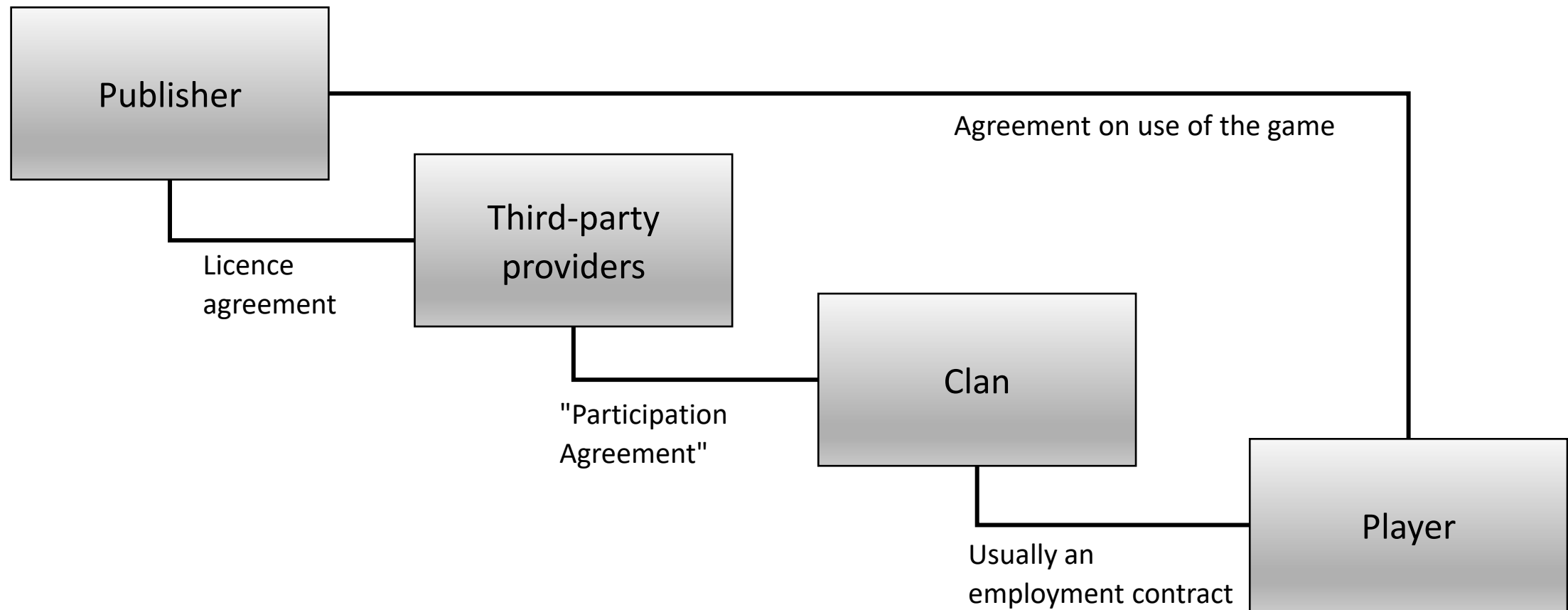
Issues similar to those in "traditional" sports:

- Exclusivity and non-competition clauses
- (P): Advertising in the game vs. advertising by the organiser
 - Section 23 UrhG – Adaptations and modifications require the author's permission
 - Section 39 UrhG Right of use – users may not make any changes



Contractual relationships

Who with whom?



Legal issues





Legal issues – I

Private international law - PIL

Which law applies?

➤ IPR

Publishers in the USA (e.g. Blizzard Entertainment)

Players from Sweden (e.g. Serral)

Clan based in London (e.g. Fnatic)

Event in Poland (e.g. IE Masters)

Organiser based in Germany (e.g. ESL)

→ No blanket answer for EVERY legal relationship to be examined in isolation.



Legal issues – II

Civil law

- eSports players = employees or service providers?
- Consequential problems
 - ArbSchG and ArbZG
- Minors' rights in contract law (e.g. purchase, Sections 112, 113 BGB)
- JArbSchG, if eSports players = employees and not athletes
 - Time limits (not on Sundays)
- Toxic behaviour (claims for damages, injunctive relief)
- Exclusion of players by publishers and/or league operators (banning)



Legal issues – III

Civil law

- Cheating (also relevant under criminal law)
- Exploiting
- Doping
- Termination in the event of suspensions
- Damages for breach of duty in teams
- Right to integrity (e.g. surreptitious advertising, Section 5a (6) UWG)



Legal issues – IV

Civil law – all intellectual property law

(P): Publisher's licence rights to the "gaming device"

Unlike sport! Section 2 (2) UrhG → no personal intellectual creation

- Computer game protected under Section 2 (1) No. 1, (2) in conjunction with Sections 69a et seq. UrhG
- Design elements: Graphics (e.g. player avatars, landscapes and the user interface as works of visual art pursuant to Section 2 (1) No. 4 UrhG), text content (as linguistic works pursuant to Section 2 (1) No. 1 UrhG) and background music (pursuant to Section 2 (1) No. 2 UrhG)
- Overall design, if applicable, cinematographic work pursuant to Section 2 (1) No. 6 UrhG or moving image pursuant to Sections 94, 95 UrhG



Legal issues – V

Civil law – all intellectual property law

The organiser "commits" an exploitation.

- Arena spectators → Right of public performance (Section 19 (4) UrhG)
- Stream or TV → Right to broadcast to the public (Section 20 UrhG)
- Video on demand → Right of public access (Section 19a UrhG)

Licence terms typically only allow limited commercial use.

- Players are generally allowed to stream free of charge
- Organisers may not

(P): The publisher is responsible for drafting the licence terms