CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW

CWRU School of Law's Spangenberg Center for Law, Technology & the Arts

CWRU's Athlete Data Lab

HOW COLLEGIATE-ATHLETES CAN TAKE CONTROL OVER THEIR PERSONAL DATA IN COLLEGE ATHLETICS

Nathan Arnholt

Annabelle Lincoln

Trey Quillin

July 2024

Table of Contents

I. Abs

How Collegiate-Athletes Can Take Control over their Personal Data in College Athletics

Nathan Arnholt, Annabelle Lincoln,

opportunities to leverage their Name, Image, and Likeness (hereafter, “NIL”) to create revenue streams for themselves has been a first step in grabbing a larger slice of the revenue pie. However, advancements in tech⁋

particular has 372 NCAA Universities as clients, including the University of Virginia and the University of Louisville.[10] Universities are also funding and implementing their own initiatives that focus on w

The decision in reflects the Supreme Court's resolute commitment to steering college athletics away from antiquated compensation paradigms and toward a more equitable system[19] and in particular, a system that aligns with the contemporary landscape shaped by technological and economic advancements.[20] In recognizing the transformative impact of these changes, the Court's ruling not only addresses the monetary concerns surrounding NIL, but also serves as a beacon signaling a departure from traditional norms.[21] By affirming the need for a comprehensive rule of reason analysis, the Court acknowledges the evolving nature of collegiate sports, where technological innovations and economic shifts have reshaped the dynamics between universities and student-athletes.[22] As made clear in Justice Kavanaugh's concurrence, this decision marks a pivotal moment in the pursuit of fairness, positioning college athletes to receive compensation that more accurately reflects their value in today's dynamic and competitive collegiate sports environment.[23]

Since , the landscape for collegiate athletes has shifted dramatically.[24] Collegiate athletes at major institutions have capitalized on the burgeoning collegiate NIL industry through paid partnerships with local, regional, and national organizations. In 2022, the first full year after the decision, collegiate athletes secured $917 million in partnership deals.[25] Although the change in NIL policy occurred rapidly leading to some collegiate athletes having added financial security from their NIL compensation, the collegiate model still recognizes collegiate athletes as amateurs – or, in this case, student-athletes of the university.

The concept of the "student-athlete" arose in 1955 when the widow of Ray Dennison, a college football player, sued for workmen's compensation In

a “student-athlete.”[29] By grounding its decision on the concept of a student-athlete, the Colorado Supreme Court erected the barrier that has since been the impediment to athlete’s obtaining employment benefits, capitalizing on revenue earned at their programs, and limiting their use of their NIL.[30] While the ruling enabled athletes to capitalize on their NIL, the decision far from resolves the myriad of issues surrounding collegiate athletes.[31] Of particular concern are the unresolved issues concerning the use of an athlete’s personal data by univer to

or voice of the student-athlete."[35] As an example, under the Illinois Student-Athlete Endorsement Rights Act, an NIL student-athlete's 'name' is considered to be part or all of the athlete's name, their nickname, or any name that reasonably makes a person connect a name to the specific athlete.[36] The Illinois law further considers 'image' to be any visual depiction of the athlete and specifically includes a rendering under this definition.[37] Lastly, the law defines 'likeness' to mean "a physical, digital, rendering, or other depiction or representation of a student-athlete, including a student-athlete's uniform number or signature, that reasonably identifies the student-athlete with particularity."[38] In some cases, personal data can be used to create such digital representations, including within video

Currently, there have been proposals from the NCAA Division I Council to help bolster NIL protections for players.[43] The NCAA makes rules and regulations to govern university athletics in America in order to ensure fairness and competitiveness, and the Division I Council can be thought of as the board of directors, managing day-to-day operations for Division I of the NCAA.[44] Among these proposals is the desire for standardized contract terms and education for the student athlete.[45] Standardized terms such as exclusivity obligations and recommended term lengths included in form contracts provided to athletes could provide athletes with a more transparent understanding of their rights and could therefore mitigate the risk of exploitation or unfair treatment from sponsors or other entities.[46] The proposals include provisions that address the education of student athletes not only in the applicable law, but also in navigating the NIL deals that are available to them.[47] These proposals show that the NCAA is open to a more fair, standardized, and consistent system that protects the athletes from exploitation by their respective universities.[48]

Multiple states have data privacy laws that may directly interfere with the NCAA proposals in one way or another. In such cases, these state laws supersede any NCAA rules or guidelines.[49] To further illustrate this lack of uniformity and its irreconcilable effects, laws such as the Illinois Student Athlete Endorsement Rights Act categorically prohibits student athletes from obtaining sponsorship deals from entities in certain areas of business including gambling.[50] This may seem well intentioned, but examples like Michigan State University contracting with Caesar's Sportsbook to advertise on campus seem to contradict such mandates.[51]

Professional athletes in various sports in the United States and other countries can collectively bargain for rights that go beyond what the law can provide for the use of their

---

[44] Megan Durham Wright, NCAA (Jan. 10, 2024, 7:56:00 PM),

NCAA (Oct. 3, 2023, 6:43 PM) https://www.ncaa.org/news/2023/10/3/media-center-di-council-introduces-proposals-to-boost-student-athlete-nil-protections.aspx.

[46] .

, ROPES & GRAY (Feb. 14, 2024), https://www.ropesgray.com/en/insights/alerts/2024/02/nil-round-up-new-ncaa-di-student-athlete-protections-policy-proposals-enforcement-actions.

[48] (stating that the purpose for the DI Council proposals was to reduce exploitation of athletes and bad actors).

[49] Michael H. LeRoy, 2023 U. ILL. L. REV. 53, 70–71 (2023) (illustrating the various restrictions and regulations in different states that may conflict with NCAA proposals and guidelines).

[50] 110 Ill. Comp. Stat. Ann. 190/20 (2021).

[51] Synnott, C. Kevin, SSRN (Mar. 20, 2023), https://ssrn.com/abstract=4394642 ("in 2021 Caesars Sportsbook agreed to pay Michigan State University $8.4 million over five years to promote gambling on campus").

personal data or NIL.[52] Collegiate athletes, however, cannot collectively bargain for personal data protections based on their status as student-athletes.[53] Currently, college athletes are not considered employees of the universities for which they play,[54] and the uncertain status of the employer-employee relationship between universities

bargaining for these individual rights to personal data on a larger uniform scale.[61] Thus, one problem that could foreseeably arise out of college athletes' current inability to unionize is a rise in forced consent to rights agreements.[62] Complicating matters further, the courts' inconsistent stance on data ownership, including ownership of derivative data, adds another layer of complexity to the regulatory landscape.[63]

Intellectual property concerns, particularly copyright concerns, are not hard to imagine for collegiate athletes attempting to brand and market themselves. As the landscape of collegiate sports evolves, the intersection of their athletic prowess and personal branding has created a complex legal environment.[64] With the newfound opportunity to profit from their own images and identities, athletes often grapple with navigating the intricacies of licensing agreements, potential conflicts with their university's branding, and the broader web of copyright protection.[65]

There are numerous differences between the GDPR and US data privacy law, and while they are similar in some instances, they should not be treated as such. For example, the standard mandated by the California Consumer Privacy Act (hereafter, “CCPA”) is that individuals can opt out of data collection or sharing while the GDPR standard is that the individual has to opt into the collection and sharing of their data.[69]

In California, data controllers bear the brunt of the responsibility under data privacy laws including disclosing what the data is being used for and [illegible] Generally, data controllers are defined as “a person [or organization] that, alone or jointly with others, determines that the purposes for and means of processing personal data.”[71] In college athletics, examples of a data controllers could the individual athlete or the university themselves.[72] Some universities collect data in many categories such as competition data, training data, physical health data and more specific medical identifiers and metrics.[73] These entities are tasked with overseeing the processing of personal data, ensuring compliance with relevant data protection regulations, and upholding the privacy rights of individuals.[74] By inditse

in the Colorado Privacy Act, there is no limitation on the data controller's motive for processing data.[81] The majority of the current United States' data privacy laws focus more on the responsibility to the individual from whom the data is collected and, subsequently, enabling the free market to regulate the kinds of activities that data controllers engage in.[82]

In line with the CCPA's guidelines, data processors in the data

institution must provide athletes with financial literacy, tax, social media, and entrepreneurship training.[90] Additionally, the institution must report the specific NIL activities of athletes.[91]

Second, institutions must provide satisfactory support to inform athletes of specific NIL activities, which the NCAA separates by permissible and impermissible activity.[92] Permissible activities include, but are not limited to, providing athletes with information about NIL opportunities of which the school is aware, promoting an athlete's NIL activity, providing athlete relevant contact information for NIL entities, such as collectives, and engaging NIL entities to provide a marketplace for the athlete that does not involve interference by the institution.[93] In essence, an NIL entity is any group whose primary function is to represent the athletic department's interest by cultivating relationships with donors – individuals, large corporations, small businesses, non-profits, and others alike – who desire to support collegiate athletes through NIL.[94] NIL entities quite often take the form of NIL collectives.[95] NIL collectives are groups, usually comprised of prominent alumni, that pool together funds from donors to make them.[96] These collectives are subject to restrictions articulated by the NCAA.[97]

Third, the NCAA outlines permissible and impermissible activities concerning institutional support for the NIL collective.[98] Namely, permissible activities include a staff member assisting the NIL entity to raise funds for the NIL entity through appearances at fundraisers or donated memorabilia, orchestrating meetings between donors and the NIL entity.

Each area of guidance is noticeably vague and

court; those that have made it have dealt with

that is not covered under HIPAA.[120] Under the WA Act, if data is collected from non-covered HIPAA entities, it is not provided the same protection as if it was collected by a healthcare provider.[121]

Washington."[131] This may include any college athlete, from any state, playing or training in Washington.

Washington's new law is broad and seems to provide student athletes rights and protection over various forms of their personal data. The WA Act's opt-in requirement is different from the well-known CCPA, which provides the consumer the right to opt-out, also known as ability to withdraw consent.[132] The CCPA was amended on December 16, 2020 and took effect on January 1, 2023.[133] California was the first state to enact a comprehensive data privacy act, following the GDPR footsteps.[134] The CCPA makes it clear that a business must provide notice that it is collecting personal information from a consumer; in this context, personal information includes biometric information.[135] The CCPA specifies that biometric information includes physiological information as well as health or exercise data that contains identifying information.[136] Various forms of student-athlete personal data collected from wearables or non-wearable devices today would likely be classified as biometric data or sensitive personal information. Under the latter, "personal information collected and analyzed concerning a consumer's health" qualifies and requires notice to be provided and ability to opt-out.[137] Notably, Washington does not specifically provide direction to data being transferred in and out of the state; however, it does cover the collection of the data.[138] Many states have utilized California's data privacy act as a framework for its own laws.

The Illinois Personal Information Protection Act ("Illinois Act") is another seminal statute for data protection. The Illinois Act applies to data collectors such as organizations, businesses, or other entities that collect, handle, or store non-public personal information. The Illinois Act's important elements include breach notification, data disposal, and security requirements. The breach notification provision requires that covered organizations notify Illinois residents when any of their personal data has been compromised. The data disposal provision requires organizations to dispose of information that is not necessary for the organization's services or operations. Finally, the security requirements provision requires data collectors to formulate and preserve "reasonable security measures" to protect an individual's record from a potential breach. Unlike other state statutes, the Illinois Act includes a private right of action for violations of the law.[139] A private right of action means that a private citizen can sue to enforce the Illinois Act. In contrast, other states maintain enforcement through public officials such as state agency representatives or attorneys general.

---

138 Wash. Rev. Code Ann. § 19.373.005-900 (West).

139 , CLARIP, https://www.clarip.com/data-privacy/data-privacy-and-the-private-right-of-action/#:~:text=The%20BIPA%20is%20a%20law,a%20private%20right%20of%20action.

their personal information.[148] The GDPR applies to all individuals within the EU, regardless of citizenship, meaning it covers non-citizens residing in the EU.[149] For a US college athlete, this regulation would apply if they participate in activities involving the EU, such as international competitions, training, or activities in EU territories. In light of these, athletes need to be aware of how their personal data is collected, processed, and stored under GDPR rules. Compliance may require additional measures for data protection, impacting how they share their information with organizations, sponsors, and other entities operating within the EU.

Through mechanisms like the right to access, rectify, and erase personal data, as well as the right to

international law obligations.[157] In essence, the GDPR has a broad reach, affecting all people in the EU whether or not they are citizens and providing a framework for similar laws around the world.[158]

The enactment of the GDPR has had ripple effects globally as a model legal framework for collection processing, and use of personal data.[159] While the GDPR is not the governing law in the United States and likely only affects a marginal number of collegiate athletes because most college athletes are American citizens and most events do not take place in Europe, familiarity with the law can be useful in navigating currently enacted and upcoming data privacy laws.[160]

Under GDPR, "personal data" is defined as "any information relating to an identified or identifiable natural person…an identifiable natural person is anyone who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person[.]"[161] Underneath this broad definition of "personal data" are subsections of data specifically mentioned including "genetic data," "biometric data" and "data concerning health."[162] These data are notable under GDPR as they have different requirements for data controllers and processors related to consent and other relevant areas. The GDPR's sweeping definition of personal data[163] illuminates the European Union's

making available, alignment or combination, restriction, erasure or destruction."[167] Additionally, the regulatory scope covers actions like alignment or combination of data, imposition of restrictions, as well as the critical aspects of erasure or destruction.[168] This exhaustive delineation underscores the GDPR's intent to comprehensively regulate and safeguard the diverse processes involved in handling personal data.[169]

Although there are more definitions that are relevant, an additional definition to focus on is how "pseudonymization" is defined.[170] This term refers to the methodical processing of personal data in a manner that severs its direct link to a specific data subject without obliterating its utility.[171] Through "pseudonymization", the personal data remains functional for intended purposes but becomes detached from immediate identification.[172] However, to uphold the integrity of this privacy safeguard, the supplementary data must be subject to rigorous technical and organizational measures.[173]

Many important actors, including the NCAA President, Charlie Baker, have called for Congress to pass comprehensive NIL legislation to solve the patchwork of state laws on the issue.[174] However, little progress has been made, and prospects of material change are unknown until there is more political appetite or consensus on the issue of NIL.[175] Nevertheless, several draft bills from the House of Representatives and the Senate provide insight into Congress's thinking on the subject. First, Senator Chris Murphy and Congresswoman Lori Trahan have advocated for a bill that would essentially create an unimpeded market for endorsement deals in college athletics.[176] Senator Cory Booker proposed a bill that would create the College Athletics Corporation, an independent body that would have investigative and supervisory

Commerce Committee, Tommy Tuberville and Joe Manchin, proposed the Protecting Athletes, Schools, and Sports (PASS) Act which included the following changes: reallocating federal funds, such as pell grants, away from college athletics, requiring the NCAA to maintain a uniform standard to properly enforce NIL, requiring NIL entities and boosters to be affiliated with college or university, creating a "Uniform Standard Contract" for student-athlete use in NIL deals, and prohibiting NIL agreements associated with alcohol and drugs, or in conflict with "existing school or conference licenses."[178] Additionally, the PASS Act would require anonymized NIL data to be published on a publicly accessible website.[179]

However, another pending bill is far more expansive as it addresses a systemic issue in collegiate sports: the employment status of a collegiate athlete. Senators Bernie Sanders of Vermont and Chris Murphy of Connecticut introduced the
("Athlete Act").[180] The Athlete Act would amend the to expand the definition of employee to include, "any individual who participates in an intercollegiate sports for an institution of _ ń Or

prevent companies from monetizing personally identifiable health and

employee to collect personal or biometric data.[195] This Privacy Act has since stalled and has not yet been enacted.[196]

The Security Industry Association (hereafter, "SIA"), a security solutions trade organization, was one of the leading organizations that opposed the Privacy Act.[197] The SIA opposed the Privacy Act's potential harm to effective law enforcement operations – namely, the impact on the use of facial recognition technology.[198] The SIA asserted that the law imposed a "blanket ban" on biometric and image analytics technologies, which could stymie U.S. innovation in these crucial emerging technological arenas.[199]

This discussion delves into how these factors intersect and shape the experiences and opportunities for college athletes today.

The world of college athletics and monetary compensation has come a long way since 2015. In , a former UCLA college basketball player and an Arizona State football player were unaware that they had been depicted in an NCAA video game, and upon finding out, they sued the NCAA and the Collegiate Licensing Company ("CLC"), the entity that licenses the trademarks of the NCAA and some schools.[206] The district court entered judgment for the plaintif

athletic related activities and class scheduling policies, that indicated it was plausible that there might be an employer-employee relationship between the universities and the student-athletes.[216] Similarly, the court used the primary beneficiary test in to determine whether the athlete or the university is the primary beneficiary of the relationship.[217] Specifically, the court in emphasized the significance of the control exercised by universities over their student-athletes, delving into areas such as training regimens, team rules, and the extent of supervision during athletic activities.[218] By scrutinizing the nuances of class scheduling policies, the court hinted at a potential nexus between academic obligations and the athletes' status as employees.[219] While the ruling did not conclusively establish a precedent, it underscored the evolving nature of the debate surrounding the employment status of college athletes.[220] The decision's exploration of these factors opens the door to further legal deliberations on the intricate dynamics between universities and their student-athletes, paving the way for potential shifts in the broader landscape of collegiate sports labor law.[221]

is now pending in the Third Circuit where its resolution could have reverberating effects on the employment status of collegiate football players.

Since the case, however, there has been a noticeable shift in student-athletes-as-employees debate. Following the holding, the National Labor Relations Board (hereafter, “NLRB”) issued updated guidance on collegiate football players as employees.[222] Specifically, the NLRB’s General Counsel, Jennifer Abruzzo, stated that the “student-athlete” label for Division 1 Football Bowl Subdivision (hereafter, “FBS”) players is a misclassification such that it violates § 8(a)(1) of the National Labor Relations Act.[223] To reach such a conclusion, the NLRB referenced the common law definition of “employee”: a person ‘who performs services for another and is subject to another’s right of control.”[224] Here, as the Abruzzo explains, athletes provide a service by playing football and generating millions of dollars in return for a full-cost-of-attendance scholarship and a stipend for such performance.[225]

Jennifer A. Abruzzo, NLR

223

224 at 3.
at 4.

Moreover, the NCAA exercises

Since Abruzzo's memo, the NLRB has been regionally active on the issue of collegiate athletes as employees but has not issued any authoritative decisions. As of now, the NLRB has not established whether student-athletes are employees. Instead, regional offices have issued decisions on the employment topic. In one example, Laura Sacks, the regional director of NLRB's Region 1, issued a decision deeming Dartmouth basketball players as employees given the work performed by the student-athletes on behalf of Dartmouth.[240]

Copyright law is designed to protect the original works of authors, creators, and artists, providing them with exclusive rights to control the use and distribution of their creations in order to promote creativity and innovation.[241] This body of law encompasses a broad spectrum of creative expressions, including literary works, music, visual arts, and software. By granting creators the exclusive rights to reproduce, distribute, perform, and display their works, copyright law incentivizes the production of original content while ensuring that creators can benefit economically from their intellectual endeavors. While copyright law is essential for safeguarding creative expressions, it may also apply to athletes and their NIL and personal data.

Data is commonly perceived as factual information within the realm of copyright. In accordance with copyright law, the distinction

copyright protection. However, not every compilation of facts is copyrightable.[247] The Court goes on to explain how there must be some minimal degree of creativity and originality in the arrangement of the facts.[248] The company failed to meet the creativity requirement because it was simply an arrangement of names and addresses of individuals.[249]

The decision in offered three elements that must be met when determining the copyrightability of a compilation of otherwise uncopyrightable facts.[250] These three requirements are "(1) the collection and assembly of pre-existing material, facts or data; (2) the selection, coordination, or arrangement of those materials; and (3) the creation, by virtue of the particular selection, coordination, or arrangement, of an 'original' work of authorship."[251] These three requirements ensure that copyright protections are limited to works of authorship and not mere facts.

The decision continues to stand as the definitive authority on the copyrightability of compilations of facts.[252] The Supreme Court's decision in is still cited often in cases involving the copyrightability of any kind and clarified the nuanced distinction between facts and compilations.[253] This landmark decision provides essential guidance in navigating the delicate balance between protecting intellectual property and preserving the free flow of factual information in the public domain.[254]

While there are no intellectual property rights in plain facts, a database will be protected by copyright law in markets like the United Kingdom (hereafter, "UK") if the selection or arrangement of its contents constitute the creator's own intellectual creation (section 3A(2) of the Copyright, Designs and Patents Act 1988).[255] This means that if an individual selects, assembles, and arranges data in an original way, the individual could claim database rights under copyright law related to the arrangement of information, but not ownership rights via copyright law to the underlying information itself. For example, according to the publication "

" by UK law firm Anthony Collins Solicitors, "an alphabetical list of traders within a particular area would in itself be unlikely to attract copyright protection."[256] However, if the traders were also graded for several other criteria by means of research carried out by the compiler of the database, including, for example, by reference to

customer satisfaction (i.e., the author’

leveraging a sensor to generate an athlete's heart rate beat per minute (hereafter, "BPM") value, one could argue that the underlying raw data used to generate such a measurement could be considered a fact, even though the raw

Related to the issues surrounding copyright law are the cases that concern sports betting. Since the Supreme Court struck down the federal ban on sports gambling in in 2018 states have swiftly legalized sports gambling in a myriad of forms.[273] In , the Supreme Court decided the issue of whether Congress could directly order state legislatures to refrain from passing legislation that legalized sports betting.[274] Congress had prohibited states from legalizing gambling on sports through the Professional and Amateur Sports Protection Act of 1992 ("PASPA").[275] The Supreme Court held that the law was unconstitutional under the anti-commandeering doctrine, which prohibits the federal government from commandeering a state to comply with specific legislative requirements.[276] The Court decision solidified state control over sports betting and opened the industry of sports betting to previously reluctant states.[277]

Since the decision, the significant growth of sports betting has spawned the increased use of league and player data by sports betting companies.[278] As betting companies have increased the amount and sophistication of the data used, several states have countered by passing laws which require betting companies to purchase their sports gambling data directly from the leagues from which they obtain the sports information.[279]

While in some cases the data used by sports betting operators must be official league data, such a mandate is subject to the data being available at a "commercially reasonable" acquisition cost from the league. For example, in Michigan, if official league data is not provided on commercially reasonable teams, sports betting operators can use other approved data sources. Michigan lists multiple factors when determining whether official league data is offered on commercially reasonable terms including: (1) whether the data is available from more than one authorized source under materially different terms; (2) the availability and cost of comparable data from other sources; (3) the market information about the data available to sports betting operators; (3) characteristics of official league data and alternate data sources regarding the nature, quantity, quality, integrity, completeness, accuracy, reliability, availability, and timeliness of the data; and (4) the extent to which sport governing bodies have made such data available to settle such bets.[280] Similarly, Illinois requires that companies purchase official league data for any play-in wager or bet, except for data that concerns the final score of the game. In both states, the data must be available on "commercially reasonable terms."[281] Commercially reasonable terms

[273] Murphy v. NCAA, 138 S. Ct. 1461 (2018).

[274]

[275]

[277]

[278] , LSR https://www.legalsportsreport.com/official-league-data/ (Dec. 14, 2023).

[279]

[280] Matthew Kredell, LEGAL SPORTS REPORT (Apr. 30, 2020), https://www.legalsportsreport.com/40454/michigan-sports-betting-draft-rules/.

[281]

are those

individual from such privacy intrusions depends on “whether the

Consequently,

In contrast to

Act (hereafter, “BIPA”) have resulted in substantial settlements, including a $500 million settlement with Facebook, that may be useful to gauge the monetary value potentially at stake.[328]

States like Illinois have established a few landmark cases regarding consumer data privacy violations.[329] Illinois passed BIPA in 2008 that focuses on biometrics for businesses and security screening, such as using a finger-scanner at stores and cafes.[330] An Illinois supreme court case decided in early 2023 provided a high amount of damages for violating the BIPA. In

mandatory.[338] Following the trial, in September 2023, it was reported that BNSF Railway agreed to settle rather than go back to trial.[339]

An important distinction compared to FERPA is that BIPA includes a private right of action. Though the damages could be the same if the state is bringing suit, the user would not get the benefit or have the ability to bring the charges themselves.[340] While these cases are not specific to biometric data violations or for athlete data specifically, the damages awarded for similar privacy violations could potentially be similar.

The United States federal statutes covering data privacy also have a few examples of damages awarded. In 2023 Microsoft settled with the U.S. Federal Trade Commission (the "FTC") for violation of the U.S. Children's Online Privacy Protection Act.[341] The settlement amount was reported as $20 million.[342] Similarly, Equifax agreed to $671 million in a settlement with the FTC after a 2017 Equifax data breach.[343]

Other parts of the world are also handling damages for violations of data privacy rights in prospective countries. In Denmark, an online gambling service, Bet365, was brought to a Danish court for using names and photos of football athletes without consent.[344] Bet 365 was ordered by the court to pay $697,000 (4.7 million Danish Crowns) to athletes.[345]

With an absence of a clear legal framework surrounding the collection of personal data in college athletics, protecting the student-athlete from improper or unethical data collection and use is of the utmost importance.[346] Previously, women's basketball has had an issue with personal data and forced consent.[347] The head coach of the women's basketball team at Texas Tech University was fired after it was uncovered that, among other things, she was forcing her players

---

[338] at 8, 13.

[339] Mike Scarcella, , REUTERS (Sep. 18, 2023), https://www.reuters.com/legal/transactional/bnsf-railway-will-settle-biometric-privacy-case-after-228-mln-verdict-wiped-out-2023-09-18/.

[340] 740 Ill. Comp. Stat. Ann. 14/20.

[341] 41 No. 07 Westlaw Journal Computer & Internet 07.

[342]

[343] Corrado Rizzi, , CLASSACTION.ORG (July 14, 2022) https://www.classaction.org/blog/the-biggest-takeaways-from-the-historic-equifax-data-breach-settlement.

[344] Reuters, , REUTERS (May 8, 2023), https://www.reuters.com/sports/soccer/bet365-must-pay-compensation-danish-soccer-star-eriksen-others-court-finds-2023-05-08/.

[345]

[346]

[347] Dan Bernstein, , THE SPORTING NEWS (Aug. 5, 2020), https://www.sportingnews.com/us/ncaa-women/news/texas-tech-abuse-allegations-wearable-tech-in-sports/1lan1crzqlel81wxloz0ibzqjr.

to wear heart monitors during games and practice.[348] The resulting data would then be used in a punitive manner if a certain threshold heart rate was not reached or sustained.[349] In the aftermath, when many players on the team were asked about the ss

can effectively be signed away, or provide clear pathways for personal data distribution and usage based on informed consent.

Proposals like that of the NCAA DI Council indicate an effort to protect the players. However, without force of law or contract, they are merely proposals at this stage. Personal data collection in college athletics has become a routine part of the student-athlete experience to the point that athletes do not think twice about where that data is going or how it is being used.[361] The NCAA's belief that educating the athlete will lead to more transparency in the relationship between university and athlete is intuitive but needs more support in order to gain traction.[362]

NIL and athlete data are at the epicenter of revenue creation in sports. From broadcast to sports betting to trading cards, NIL and athlete data are the drivers for multi-billion dollar businesses, with the potential for more uses and analytical applications as technology advances. Yet, in many cases today, athletes only see a fraction of the value being created from their NIL and data.

While the exact figures are private, some analysts estimate that the EA Sports Madden NFL franchise brings in around $600 million in annual sales.[363] On the collegiate level, given the popularity of college football, EA Sports has announced that they will resume making their discontinued NCAA football game titled EA Sports College Football 25. Previously, EA Sports executive Joel Linzner revealed that the annual revenue from its NCAA football game was about $80 million.[364] Since February of 2024, EA Sports have announced that over 10,000 athletes have agreed to allow the company to use their NIL in the game in return for $600

eligible, translating to an average payout of approximately $1,600 per player after lawyers take a 30 percent share of the award.[369] The validated claims, disclosed in a letter filed by athletes' lawyers, shed light on the significant number of individuals whose names and likenesses were used without explicit permission.[370] Notably, the lawsuit against Electronic Arts and the NCAA led to the discontinuation of the college video game franchise, with NCAA Football ‘14, released in July 2013.[371]

These issues will expand in scope and become more prevalent with the advancement of software and computer technology, making the players’ NIL no longer the only valuable form of intellectual property they can contribute to video games. Since 2021, Madden NFL has used Next Gen Stats, aiming to deliver a more authentic gaming experience by enhancing player movements, including changes of direction, acceleration, and deceleration, by using players’ personal

endorse the streaming service in return for monetary compensation, apparel, and a subscription to their streaming services.[379] NIL negotiations in college sports have tended to favor athletes from larger schools with larger athletic programs, but there are examples of big NIL deals landing for athletes from small schools.[380] In 2022, a basketball team from a small school in New Jersey, the St. Peter's Peacocks, went on an unexpected and incredible winning streak in the NCAA March Madness tournament.[381] As a result, one of their players who played a major part in the team's success received an NIL deal from Buffalo Wild Wings.[382] These are but a few of the examples of NIL arrangements being made all over the country, but they exemplify the wide variety of opportunities available to athletes.

The sports betting ecosystem has also continued to benefit from the prevalent use of NIL and personal data. Since the 2018 case , legal sports betting in the U.S. has burgeoned into a robust industry that has resulted in the vast majority of states enacting some form of a gambling law.[383] Since then, it has become impossible for organizations to hide the already increasingly apparent value of the data collected from athletes.[384] Thinning the line between collegiate athletic departments and sports gambling, in April 2022, the NCAA granted schools the ability to sell competition statistics to data companies who in turn sell the aggregated data to sports betting companies.[385] At the collegiate and professional levels of sport, athletes' personal data and NIL are increasingly being leveraged by stakeholders to power the sports betting industry – one that is presently estimated to be worth tens of billions of dollars annually.[386] In some states like Colorado and Arizona, there are virtually no restrictions on athletes associating themselves with sports betting companies for NIL sponsorship agreements.[387] College athletes in these states have been able to secure NIL deals with companies like Barstool Sportsbook.[388] Conversely, other states such as New Jersey and Tennessee explicitly prohibit

---

[386] WORLD LOTTERY ORGANIZATION (last visited, June 11, 2024), https://www.world-lotteries.org/insights/editorial/blog/the-data-revolution-in-sports-betting. Importantly, the data sold to data companies must be publicly available. Thus, collegiate athletes' personal data that is not available to the public will not be included. Eben Novy-Williams,

Pratt, note 377, at 141.

[388] Pratt, note 377, at 141. However, Barstool has since shuttered its principal NIL entity, TwoYay Marketplace, citing uncertainty in the constantly evolving NIL. Dylan Manfre,

athletes from gaining cɹʊ-ʊɹȳ

The concept of ownership rights in athletes' NIL and personal data are indispensable in today's sports landscape. Beyond providing guardrails for personal data, these rights can offer essential privacy safeguards, promote individual control, and expedite financial benefits for athletes and institutions alike. Acknowledging the importance of ownership rights or fair ways for players to monetize their NIL and personal data establishes a fair and equitable balance between the commercial interests of institutions and the rights and agency of athletes, setting a precedent for responsible data management in the dynamic world of sports and technology.

Some laws have been crea AD and

In Continental Asia, Japan's Director General of International Cyber Policy issued guidelines for data leadership on this topic, emphasizing that contracts should be recognized as the authoritative source for data ownerships rights—particularly within commercial relationships.[410] Although non-personal data is generally unprotected by Japan's civil code, the policy guidance issued by Japan's director is another framework by which ownership can be established until the U.S. Congress and other states pass further legislation.[411] Japan has yet to codify any data ownership statutes, but the Director General's guidelines may provide a useful starting point for businesses transacting with each other.[412] These examples are merely theoretical; however, American courts are beginning to reckon with the concept of personal data ownership.

Previously, American and European Courts had rejected the personal-data-as-property concept.[413] But recent innovation has allowed courts to analyze increasingly tangible applications of such a concept. California provides an explicit example of this reversal. Nevertheless, these views have dulled in recent years in federal courts in California and other western states. Now, federal and state courts have "acknowledged that users have a

The cases in the Northern District of California summarized three theories under which a party could potentially recover losses to the value of its personal information pursuant to its ownership status under the Unfair Competition Law ("UCL"). The first theory concerned the transactional or benefit of the bargain theory.[418] Under this theory, if a user shares information with a company or individual with the expectation that such information will be protected, then the failure to protect such information decreases the value of the data and provides the plaintiff with a basis to sue for the lost value of the data.[419] The second theory is the diminished value theory, which means that the sale of one's personal data inevitably decreases the value of the person whose data has been sold.[420] The third theory is the right to exclude theory.[421] The court explained that given the predominant importance of the right to exclude in the bundle of property rights, "the unlawful disclosure of plaintiffs' sensitive financial information [or intangible property]" is a violation of their "right to exclude Meta from that intangible property.[422] Thus, the Court held that such action survived dismissal because the Plaintiff's property interest in his personal data could be violated by the "diminishment of a present or future property interest."[423]

Professional sports provide a useful framework on which to base potential safeguards for collegiate athletes and the use of their personal data and NIL. Namely, American professional sports leagues each have a CBA that governs league rules, contracts, player rights, wages, hours and other relevant topics.[424] Each American professional league's CBA has established specific provisions to protect the player's data from unauthorized use by the teams, leagues, and third parties.[425]

The National Basketball Association ("NBA") has established specific rules governing the use of personal data.[426] First, the NBA's provision concerning electronic medical records provides that electronic medical records may only be accessed via a centralized database –maintained by the league – by specific authorized academic researchers.[427] Prior to accessing

---

of district courts . . . have concluded that plaintiffs who suffered a loss of their personal information suffered economic injury and had standing.").

[418] 2024 WL 1251350, at *21.

[419]

[420] at 24.

[421] at 25.

[422]

[423] (explaining that the right to control dissemination and use of their personally identifiable financial and tax data and communications could likewise violate the plaintiffs' right to exclude—along with their right to control).

[424] Legal Institute Information, Cornell Law, https://www.law.cornell.edu/wex/collective_bargaining.

[425] Sarah M. Brown and Natasha T. Brison,

Journal of Legal Aspects of Sport 63, 68 (2020).

[426] NBA CBA, July 2023, https://imgix.cosmicjs.com/25da5eb0-15eb-11ee-b5b3-fbd321202bdf-Final-2023-NBA-Collective-Bargaining-Agreement-6-28-23.pdf.

[427]

and collecting the player's data, the NBA and its league members must give notice to and receive consent from the National Basketball Players Association (hereafter, "NBPA").[428] Additionally, the NBA gives the players access to their medical data such that players can share the data with medical professionals of their choice.[429]

Additionally, in response to the growing concern about use of wearables, the latest NBA CBA established a wearables committee to set cybersecurity standards for the storage of data that the NBA collects from wearable devices.[430] As part of those standards, the league and its teams may not mandate that a player wear a specific device.[431] Thus, the player must give express consent to wearing a particular wearable device.[432] Proper consent demands the player receive information about the following characteristics: (1) what the device will measure; (2) the significance of using each measurement; and (3) how the player will benefit from the collection of such data.[433] In essence, players maintain complete access and control over the data collected from wearable devices.[434] Furthermore, the data cannot be "considered, used, discussed, or referenced for any other purpose such as in negotiations regarding a future player contract or other player contract transaction."[435] Importantly, neither the NBA nor any of its teams can use a player's data from a wearable device for any commercial purpose or make it available to the public.[436] Likewise, the NBPA may not distribute data collected from the players by the teams.[437] To enforce these provisions, the grievance committee can issue fines for up to $250,000 for any use by a team that violates the CBA's provisions.[438]

the National Football League (hereafter, "NFL"), its

basis for the negotiations.[443] Similar to the NBA CBA, the NFL Players Association (hereafter, "NFLPA") must provide "advanced approval for collection of any data from sensors for players outside of NFL games or practices."[444]

The Major League Soccer (hereafter, "MLS") has a wearables committee model that evaluates the data collection and processing standards of each team and subsequently makes recommendations to ensure that the teams abide by the relevant MLS CBA provisions.[445] The committee, known as the "Joint Advisory Committee," consists of three representatives appointed by the MLS and three appointed by the MLSPA.[446] Similar to the NFL and NBA CBA's, the MLS and its league affiliates may not publish player data unless the MLS Player

to maintain.[451] An employer-employee relationship and unionizing would not only erase whatever optics of amateurism still remain, but also do away with amateurism completely.[452]

The ability to collectively bargain could provide college athletes with a pathway to resolve issues surrounding the collection of various forms of personal data and the leverage to negotiate for rights similar to what exists in professional sports.[453] Most, if not all, athletic leagues – including in college athletics – have some policy stating that electronic trackers that have not been approved by the league may not be worn during games.[454] The ability to negotiate the rights to the collected personal data can potentially resolve any dispute over ownership claims by other organizations (e.g., sensor companies) claiming rights to such information. Additionally, the concept of college athletes collectively bargaining as employees introduces a potential remedy to the challenge of representing a diverse group of individuals. While navigating the complexities of existing laws and potential future legislation, collective bargaining emerges as a pragmatic means for athletes to assert influence over their NIL and data without necessitating extensive legal or bureaucratic processes.[455]

While there are multiple arguments in favor of creating an employer-employee relationship in collegiate athletes, there are potential drawbacks. As it is now, the athletes have some freedom over their NIL associations in the wake of legislation and Supreme Court rulings.[456] The creation of an employer-employee relationship may limit these freedoms. For example, if student-athletes were employees of their respective university or conference, they may not be in a position to accept sponsorship opportunities offered to them if they conflict with the university's or conference's pre-existing sponsorship arrangements with another sponsor.[457] Relatedly, universities may be stricter in regulating athlete's sponsorships that conflict with the core values and mission of the university or conference. All this is to say that there is a trade-off. If the end goal is the ability for college athletes to collectively bargain for their NIL and data rights, then establishing an employer-employee relationship between the university or conference and the student athlete would be an appropriate means to that end.

Another solution for student-athletes looking for control over their personal data and NIL rights is through copyright law. As is settled by law, facts themselves are not copyrightable.[458]

---

[452] Jeffrey L. Kessler & David L. Greenspan, , Competition Pol

[453] Berkowitz, note 449.

[454] Associated Press, , ESPN (Apr. 5, 2016, 2:55 PM), https://www.espn.com/mlb/story/_/id/15140478/ [illegible] proves-wearable-technology-[illegible] devices-season (documenting the MLB rules committee's first allowance of wearable devices in games with the contracts for multiple devices including wearable sleeves and bat sensors).

[455] Berkowitz, note 449.

[456] , 141 S. Ct. 2141 (2021).

[457] Cate Charron, , The Student Press Law Center (Feb. 22, 2023), https://splc.org/2023/02/everything-we-know-about-nil-law-policy-so-far/.

[458] Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340 (1991).

However, when they are compiled in a fashion that adds some level of creativity to those facts by the way they are arranged or selected, the compilation is afforded protections under copyright law.[459] While some NIL creations may obviously be protected by copyright laws, various forms of personal data collected from individual athletes are less certain. By itself, raw personal data that can be categorized as physiological data, biomechanical data, or other similar types of information about an athlete's body or the status of the game or event would likely be considered a fact. Leveraging

personal data can be used can provide new, original form of digital information that, when combined with such personal data, can create a new packaged unit of information – a new digital asset. The digital asset – a grouping of selected consent data, personal data, and contextual data – could be considered an original work given that it is assembled by the author as a result of the author's selection of data and the individual's selection for how each type of data can be used based upon the individual's own judgment (i.e., their consent). As such, a digital asset may be recognized as an ownable digital asset under copyright laws.

To execute such a proposition, one could create a framework whereby the athlete's consent (e.g., agreement) is required and collected, which could include enabling the individual athlete to establish terms, permissions, conditions for personal data and how it can be used. Such consent could then be transformed into new information (i.e., rules) provided as metadata with the relevant personal data recognized as facts under copyright law. Digital assets for commercial purposes could then be created leveraging the consent-based metadata and the associated personal data that is selected and arranged in a unique format for relevant use cases. A smart contracting system could then be implemented to enable the sale or distribution of such digital asset(s), whereby a smart contract is created for each transaction related to the sale or distribution of digital asset(s) that treat each digital asset as a form of property, enabling its sale or distribution to an acquirer for other consideration. Lastly, a digital record for each athlete could then be created which would record each transaction, enabling future transactions to contemplate previously-assigned rights.

Another solution would be for Congress to pass national NIL legislation that outlines clear guidance for employment and NIL-related issues related to collegiate athletes and allows for effective regulatory enforcement. Universities, athletes, organizations, and other parties with an interest in NIL have called for such action by Congress since the genesis of NIL after the decision.[467] At a minimum, such legislation could reduce the ambiguity of enforcement of these topics. More importantly, however, legislation would allow all athletes to harness their personal data and NIL more effectively. Such a scenario would provide business partners with more assurances that agreements entered into with collegiate athletes are supported at the federal level. At the same time, athletes would also be assured of their employment status at the university and could collectively bargain for their desired workplace benefits. As employees of the university, the university could then take an active role – in contrast to the passive, hands-off approach they are subjected to under NCAA guidelines – to ensure that their athletes are effectively represented in NIL sponsorship deals.

Since the Supreme Court's seminal holding, collegiate athletes—in all three divisions—have been given license to profit from their NIL. However, collegiate athletes still have been unable to share in the university revenue streams earned through the athlete's labor.

[467] , 141 S. Ct. 2141 (2021).

Previously, the NCAA has stridently opposed the notion of colleges and universities compensating players directly for their services, even in the face of mounting antitrust litigation.[468] Former NCAA President Mark Emmert, a steadfast opponent of revenue sharing, has referred to compensating players generally and NIL as an "existential threat" to collegiate athletics.[469] However, in 2023, the NCAA underwent a leadership change when Charlie Baker became President of the NCAA.[470] Baker, in an attempt to navigate the sea change in collegiate athletics, penned a letter proposing a revolutionary framework that would upend the NCAA's current model.[471] This framework would allow Division 1 institutions to compensate athletes directly for the use of their name, image, and likeness and to offer "enhanced educational benefits" as the schools "deem appropriate."[472] Furthermore, the new framework

have unsurprisingly been used to deceive consumers.[495] For instance, a supposed Tom Hanks was featured in a dental advertisement endorsing a specific dental plan.[496] However, the advertisement had used AI to manufacture a realistic, but a so-called "deepfake," video using Hanks' likeness without his consent.[497]

Generative AI products present unique challenges for collegiate and professional athletes concerned about the unauthorized use of their NIL and personal data.[498] Although states have passed legislation precluding universities, conferences, and the NCAA from imposing restrictions on a collegiate athlete's ability to capitalize on their NIL, state law applicability on unauthorized use by a non-human generative AI is unclear.[499] On the federal level, there is no statute that specifically limits the unauthorized use of one's image and voice.[500] Challenges could come in the form of defamation. Defamation is governed by state statutory and common law, and

athletes.[507] In particular, the areas

No Fakes Act would establish a uniform legal body to enforce violations, which is lacking at the state level since state laws differ significantly in scope.[517] California, the state with the most protections for publicity, also extends protections for 70 years after the individual's death; other states have codified no protections at all.[518] Still, the primary tension between proponents and opponents is the protection of free expression under the First Amendment and the prevention of commercial exploitation, respectively.[519] The First Amendment concern is that the bill would be an overbroad content-based ban on expressive speech.[520] The bill does attempt to carve out exceptions, such as for parodies, news broadcasts, and documentaries, to assuage First Amendment concerns.[521] However, such a bill is likely to be fiercely challenged by First Amendment groups given its breadth, scope, and penalties for expressive speech and conduct.[522]

Labor negotiations also constitute a complex discussion point on the unauthorized use of athlete NIL and data.[523] Professional sports has seen a meteoric rise in the use of generative AI to enhance the fan experience through real-time updates, virtual assistants, ticketing assistance, social media engagement, predictive analytics, crowd monitoring, tailored merchandise, streaming, and localized experiences through virtual reality.[524] However, such use could present concerns about the unauthorized use of NIL and athletes' personal data by professional leagues, collegiate conferences, and Division 1 schools. Similar concerns in other industries have reached the collective bargaining table.[525] Over the summer and fall of 2023, one of the main concerns of actors and writers concerned the burgeoning use of generative AI in the entertainment industry.[526] The Screen Actors Guild-American Federation of Television and Radio Artists ("SAG-AFTRA") advocated for explicit protections from entertainment companies and studios against the unauthorized use of their NIL through generative AI.[527] With the cost-effective nature of

---

517

518 CA Civil Code § 3344.1.

519 Theo Belci, THE ART NEWSPAPER (Oct. 17, 2023), https://www.theartnewspaper.com/2023/10/17/artificial-intelligence-no-fakes-act-us-legislation-non-concensual-likeness.

520 , Isaiah Poritz, BLOOMBERG L. (Oct. 17, 2023, 5:05 AM EDT), https://news.bloomberglaw.com/ip-law/ai-deepfakes-bill-pushes-publicity-rights-spurs-speech-concerns.

521

522

523 Pawan Budwar et al., HUM. RES. MGMT. J., at 626 (June 9, 2023).

524 Dan Axman, , LINKEDIN (Oct. 11, 2023), https://www.linkedin.com/pulse/game-changer-how-ai-generative-transforming-sports-industry-dan-axman/.

525 Angela Luna & Danielle Draper, BIPARTISAN POL'Y CTR (Dec 6, 2023), https://bipartisanpolicy.org/blog/hollywood-strikes-back-against-generative-ai-disruption/#:~:text=In%20June%2023%2C%20the%20Guild,performance%20is%20changed%20using%20AI.

526

527 Charles Pulliam-Moore, THE VERGE (November 18, 2023, 10:30 AM EST),

generative AI, SAG-AFTRA feared that companies could exploit the technology without compensating the artists.[528] In the sports realm, players unions have already advocated for the specific protections noted in this paper. Furthermore, with generative AI's rapid growth, the players unions may need to seek specific protections concerning player data and NIL. Since generative AI uses advanced algorithms trained on personal data, the player's unions should amend their current proposals to restrict sharing and using player's personal data for generative AI purposes. Namely, if the teams and leagues are uncertain about the scope of personal data use by the algorithms,

information based on outdated data.[536] GDPR Article 5(1)(d) specifically states that personal data shall be "kept up to date."[537] Given these challenges, the GDPR, under Article 6, provides three lawful bases for use of personal data: contract, legitimate interest, and consent.[538] Nevertheless, without objectively traceable data, such lawful purposes could be difficult to fulfill. Contract, under Article 6(1) requires that the use of the data be made for a necessary purpose to fulfill a contractual obligation.[539] Legitimate interest, refers to a data controller's legitimate business interest in the personal data that outweighs any countervailing data rights or freedoms of the individual.[540]

Educating the leagues, schools, and conferences on the ramifications of using such technologies should be a first step to mitigate such concerns over its use. Considering the looming risks, experts in data protection have advocated for a system known as "privacy by design," which merely refers to the idea that an organization should incorporate data protection into the fabric of their technological design.[541] In fact, privacy by design has gained adherence under GDPR Article 25, which expressly states that data controllers should adopt privacy by design into their technological development.[542] Article 25, § 1 states that data controllers shall "implement appropriate technical and organizational measures, such as pseudonymisation, which are designed to implement data protection principles[.]"[543] Pseudonymisation provides for sufficient data minimization so that the data controller does not use more than the necessary amount of personal data for its operations.[544] Article 25, § 2 states that the controller shall implement data minimization by limiting the personal

content and endorsements.[548] Further, such licensing could allow the athlete to capitalize on more endorsements and to generate more money with the time saved, including the use of generative AI content on social media that could enable additional content partnerships. An athlete's personal data, even in a pseudonymized or anonymized format, could have immense value as training data for big industries including sports betting, healthcare, insurance, and others. However, such usage will likely involve more data and will leave the athlete with few remedies to retrieve or erase the data that generative AI collects and distributes. With robust use of personal data, an athlete may be susceptible to invasions of his publicity and privacy rights through broad dissemination of personal information in a manner that he cannot limit or control. Nevertheless, the increased calls for privacy by design—and the use of synthetic data could give collegiate athletes assurances that their data is not used for purposes for which they did not consent.

X. Conclusion

College athletes with their newfound leverage with NIL and their soon-to-be employment opportunities may have the opportunity to retain ownership over their personal data. With the development of new legislation and implementation of state laws, athletes' personal data

their personal data.[550] Going forward, athletes could be able to collectively bargain for explicit protections that are not yet protected in a particular state, such as the right to access their data, the right to consent to the use of their data, the right to delete their data, the right to publicity, and much more. These rights could be enshrined into collective bargaining agreements agreed upon by the athletes and schools. Conversely, opponents will continue to assert challenges to these rights via First Amendment challenges, amateurism arguments, and forced contractual consent to the use of athlete's NIL and personal data. However, such challenges face an uphill battle given all of the momentum concerning data rights, NIL protections, and collegiate athlete employment.

Personal data and NIL rights are in their infancy. Opportunities that leverage generative AI, while creating entirely new revenue channels for student-athletes and Universities, will bring more complexities to an already crowded debate. As such, policymakers, businesses, schools, and athletes must learn to be stewards of personal data to avoid the pitfalls of developing technology. Collegiate athletes, in particular, must be educated on the opportunities and risks that this developing technology will present. Collegiate athletes face sizable challenges that will shape sports and broader society. Thus, it is essential for lawyers and policymakers to invoke the athlete's competitive spirit in seeking NIL and other personal data protections.

550