
CHAMBERS GLOBAL PRACTICE GUIDES

Sports Law 2024

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USA: Law & Practice

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USA



Law and Practice

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Herrick, Feinstein LLP provides a full range of legal services to its clients worldwide from its offices in New York City, Newark, New Jersey and Pittsburgh, Pennsylvania. Herrick's Sports Law Group works in conjunction with the firm's complementary practice groups on corporate, real estate, tax, IP, restructuring, employment, government relations and litigation aspects of sports law. Its attorneys have guided stakeholders in professional sports as they have entered into transactions to access capital, invested in professional sports teams, entered into concession services agreements and invested in mixed-used developments. Herrick's work

spans league and team formation and operation, arena and stadium financing and development, naming rights, sponsorships, media rights, team acquisitions and investments and more. Herrick has represented major athletic teams and affiliated entities in transactions totalling over USD125 billion.

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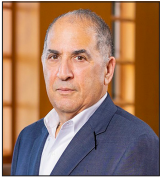
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1. Regulatory

1.1 Anti-doping

Doping is a criminal offence in the USA. On 4 December 2020, the Rodchenkov Act was enacted, which enables US authorities to pursue criminal penalties against those involved in doping conspiracies at international events involving American athletes, sponsors or broadcasters. The Rodchenkov Act gives prosecutors the power to seek fines of up to USD1 million and prison time of up to ten years, as well as restitution to victims.

The World Anti-Doping Agency (WADA) expressed concern that the Rodchenkov Act would destabilise the global anti-doping effort by extending US jurisdiction beyond its own borders. Now, the Department of Justice (DOJ) must develop a robust programme, co-operating with the US Anti-Doping Agency (USADA) and international law enforcement.

Eric Lira, a “naturopathic” therapist, was the first person charged under the Rodchenkov Act. Lira was charged by the DOJ with obtaining and distributing various performance-enhancing drugs to athletes in advance of the 2020 Olympic Games in Tokyo – which convened in the summer of 2021. The case was investigated by the FBI’s Integrity in Sports and Gaming Initiative. Lira pleaded guilty in May 2023 and was sentenced on 21 February 2024. Although the maximum term of imprisonment under the Rodchenkov Act is ten years, Lira was only sentenced to three months’ imprisonment and one year of probation. Lira was also to forfeit the USD16,410 that he received in connection with the violation. In December 2023, two track and field coaches, O’Neil Wright and Dewayne Barrett, were charged as Lira’s co-conspirators.

WADA

Since 2004, WADA has published an annual list of prohibited substances and methods (the Prohibited List), which is updated at least annually, with the new list taking effect on 1 January of each year. The list identifies the substances and methods prohibited in and out of competition, and for particular sports. The list is divided into two sets of substances and methods.

- Those that are prohibited at all times (including but not limited to):
 - (a) substances such as hormones, anabolics, EPO, beta-2 agonists, masking agents and diuretics, and any pharmacological substance not currently approved for human therapeutic use; and
 - (b) methods such as blood transfusion or manipulation, gene editing or intravenous injections in some situations.
- Those that are prohibited only in competition, including but not limited to stimulants, marijuana, narcotics, glucocorticosteroids, and, in particular sports, beta-blockers.

A substance or method can be added to the Prohibited List if it is deemed to meet two of the following three criteria:

- it has the potential to enhance or enhances sporting performance;
- use of the substance or method represents an actual or potential health risk to the athlete; and
- use of the substance or method violates the spirit of sport.

Athletes are responsible for knowing what substances and methods are considered banned by the Prohibited List. Under World Athletics Rules, the presence of a prohibited substance in an athlete’s sample, or the use of a prohibited

substance or prohibited method, constitutes a doping offence. WADA's Code provides a global framework for the anti-doping policies, rules, and regulations within sports organisations and among public authorities. USADA, the national anti-doping organisation in the USA for Olympic, Paralympic, Pan American, and Parapan American sports, is a signatory to the Code. USADA is charged with managing the anti-doping programme including testing both in and out of competition.

US Professional Sports Leagues

With respect to individual sports leagues in the USA, doping matters are generally handled internally by the leagues. Each league, through collective bargaining with players' associations, implements procedures and guidelines for the administration of drug testing and the determination of banned substances. Pursuant to its recent collective bargaining agreement, the National Basketball Association (NBA) has removed marijuana from its drug testing programme. These procedures usually consist of collecting random blood or urine samples that are tested by an independent laboratory.

1.2 Integrity

In May 2018, the US Supreme Court struck down the federal Professional and Amateur Sports Protection Act (PASPA), which had effectively prohibited individual states from legalising sports betting, with a few exemptions. The ruling provided a pathway for individual states to legalise sports gambling. More than 30 states have legalised sports betting, with many others introducing proposed legislation.

With the legalisation of sports betting, there is an increased risk of match-fixing and in-play manipulation. The legislation that has emerged, however, does not include provisions criminalis-

ing match-fixing. In large part, both states and the federal government appear to be relying on existing penal code provisions to preserve the integrity of athletic competition.

The Sports Bribery Act is the federal criminal law that targets the manipulation of athletic competition. The act makes it a felony to "... influence, in any way, by bribery any sporting contest, with knowledge that the purpose of such scheme is to influence by bribery that contest".

This act does not cover other non-bribery concerns such as extortion, blackmail, tipping of inside information, or betting on games by someone who can affect the outcome. Private sanctions for misconduct also exist.

1.3 Betting

Across the USA, sports betting is part of popular sports culture and many states have passed, and are continuing to pass, legislation to legalise sports betting in varying forms. Such forms include mobile sports betting with multiple sportsbooks options, one mobile betting option, in-person online betting (ie, proximity to brick-and-mortar sportsbooks) and only physical sportsbooks. Some states restrict sports betting to only in-person betting, while others allow both in-person and mobile betting options. Currently, almost 40 states allow sports betting in some form, with over half of states allowing mobile betting. While the legalisation of sports gambling is still growing in the USA, it has solidified as a new norm. In 2023, the amount wagered in the USA on sports increased by approximately 25% year over year.

Sports Governing Bodies Sharing Information With Betting Operators

US sports leagues license their data to sports betting operators via exclusive or co-exclusive

distributors to provide accurate, real-time data for an agreed upon fee. Sportsbooks operate outside of the sports, but often license from the sports organisations, as opposed to a third-party organisation. Sports organisations enjoy the win-win of earning fees for the data collection already underway and protecting the integrity of the sports wagers by ensuring accurate results. Certain states (eg, Illinois and Tennessee) require that operators use official data for certain sports wagers, namely props or in-play betting.

Recent Noteworthy Betting Cases/ Disciplinary Actions

There are few examples of disciplinary action for sports betting violations. The most notable actions are the disciplining of former baseball player Shoeless Joe Jackson and former baseball player and manager Pete Rose. However, in 2019, for the first time since the 1980s, the National Football League (NFL) disciplined a player for wagering on NFL games. Josh Shaw, an Arizona Cardinals cornerback, was indefinitely suspended for betting on multiple NFL games. Jacksonville Jaguars wide receiver Calvin Ridley (at the time a member of the Atlanta Falcons) became the first NFL player to be suspended since Shaw. Ridley was suspended for the 2022 season after placing a legal mobile bet in Florida in 2021 that included a bet on the Falcons to win, but has since been reinstated for the 2023 season. Since then, the NFL has suspended a total of ten players for betting on NFL games over the last two years, a marked increase in these types of violations and corresponding punishment.

1.4 Disciplinary Proceedings

The steps taken by the different governing bodies of sports with respect to doping, integrity, and betting offences vary by sport and violation. For example, pursuant to MLB's Joint Drug Prevention and Treatment Program (the JDPT

Program), a player who tests positive for a performance-enhancing substance is subject to an 80-game suspension for a first violation, a 162-game suspension with 183 days of pay suspension for a second violation, and potential permanent suspension from major and minor league baseball for a third violation. This contrasts with other sporting bodies, such as the NFL which, although having a shorter season, has slightly different punishments for similar violations. For example, a player who violates the NFL's policy on performance-enhancing substances can be penalised, depending on the consumed substance, from anywhere between two and eight regular and/or postseason games for a first violation, between five and 17 regular and/or postseason games for a second violation, and with a multiple-season suspension for a third violation.

With respect to gambling and integrity violations, Major League Baseball (MLB) has – in effect – clear guidance, through MLB Rule 21, which can provide, depending on the offence, for up to permanent ineligibility based on a single offence. The MLB's clear guidance on the penalties' specific offences contrasts with other leagues' guidelines, such as the NFL's, where the league or the Commissioner may analyse violations on a case-by-case basis, with the resulting disciplinary actions including severe penalties, up to and including a fine, termination of employment and/or banishment from the NFL for life.

2. Commercial Rights

2.1 Available Sports-Related Rights

Aside from sponsorship and broadcasting rights (discussed elsewhere in **2.2 Sponsorship** and **2.3 Broadcasting**), key sports-related rights include merchandising, hospitality, events and ticketing. While these rights all involve sports

teams' licensing, they primarily relate to the use of a team's stadium or third-party facilities.

Commercial rights to merchandising most commonly relate to retail sales of a wide variety of products, including team logos and player references. To make use of these rights, teams or leagues will typically enter into agreements with retail goods companies for design and production of gear. Those contracts often include intellectual property licences of team trade marks and copyrights, in exchange for a fee or percentage of sales. Teams and players may also engage in more specialised merchandising, including sales of memorabilia used in-game at pivotal or record-setting moments, often by way of auction or private sales to collectors.

Use of stadiums and sports facilities can be a significant commercial right that sports organisations monetise, which includes provision of hospitality services and concessions. To provide concessions at their facilities, sports organisations contract with suppliers. Alternatively, some teams form their own hospitality organisations to control both the quality of the concessions available at their events, and the profits to be made therefrom.

Teams also monetise unique offerings in their stadiums and facilities, including specialty seating for games or higher-end restaurants. Sports organisations may even use their facilities for special events such as concerts, either charging a fee for use of the space or including some split of ticketing profits in agreements with event organisers.

Teams profit from the sales of tickets and the accompanying sales of concessions and merchandise. Increasingly, sports organisations are facilitating secondary ticket sales and combat-

ting illegal sales through e-ticketing and apps dedicated to purchasing, storing and producing tickets for safer access to games.

2.2 Sponsorship

Sponsors use sport to enhance and promote their brand primarily through advertising and title rights. Sports organisations attract sponsors through the creation of advertising space and marketing title rights. The primary contract terms typically revolve around payments and intellectual property rights.

Sports organisations provide sponsors with a wide variety of opportunities for advertising, including on billboards, on the field or court, or even on the players' uniforms. Broadcast of events provides an advertising opportunity by promoting different brands through commercial segments between periods of play. Additionally, sports organisations can provide sponsors with title rights as the "official" service provider of the team in the sponsor's industry, complete with in-game announcements or broadcasting tie-ins. Title rights may even extend all the way up to the large-scale sponsorship right over naming a stadium. For food and drink sponsors, stadium advertisement can be tied to exclusive sales of sponsors' products in concessions at the team's stadium or facility.

Contracts between sports organisations and sponsors inevitably focus on payment and intellectual property rights. Sports organisations will often have some input on the advertising material that may be displayed by the sponsor, as well as some level of veto or control over the material displayed. Sponsors will look for strict intellectual property rights reservations and controls, to ensure ownership over all trade marks, copyrights, or other intellectual properties of the sponsor displayed by the sports organisation.

2.3 Broadcasting

Holders of sports rights will package broadcasting rights for broadcasters, and broadcasters in turn monetise their broadcasts of games and other content. Wrapped up in these arrangements are agreements for broadcasting regionally versus nationally, licensing interactive media, and rights to access venues by broadcasters.

Broadcasters use the broadcasting rights they receive through advertising, subscription services, and licensing previously broadcast games for future programmes. The primary exploitation of broadcast rights comes through advertising. Broadcasters sell airtime to a variety of sponsors for advertising during live sporting events. Increasingly, broadcasters leverage their rights to provide content through streaming platforms, deriving subscription income from viewers. Additionally, subject to compliance with any applicable league copyright regulations, broadcasters can license out their previously recorded broadcasts for use in replays, future programming and content.

Sports rights-holders traditionally package their broadcast rights by the season. Within each season, different broadcasters will pay for the right to broadcast a certain number of games. In many sports, packages are split between regional and national broadcasters. In such a split, regional broadcasters will purchase rights to a larger number of games, with a smaller select number of games going to national broadcasters. Increasingly, sports rights-holders package these television rights while still reserving the right to broadcast games over the internet and through interactive media, to increase both the audience for their games and their ability to profit from selling broadcast rights for different distribution mediums. While teams have made use of broadcasting rights for league-specific broadcast services for a more extended period

of time (for example, NFL teams broadcasting via NFL Game Pass), teams are increasingly providing broadcasting rights to other television streaming services, such as Hulu, Apple TV+ and Amazon Prime, to increase the fees received for broadcasting rights and audience accessibility. More tangible examples of this trend have recently emerged, with Apple TV acquiring the exclusive rights to certain Friday Night Baseball games from MLB, Amazon Prime and Paramount Plus broadcasting NFL games, and NBA games being broadcast on certain premium Hulu packages. Continuing the expansion into this territory, 2024 saw the first ever NFL play-off game broadcast exclusively on a streaming platform through Peacock.

Broadcasting arrangements provide not only for fees, but also for certain access rights and intellectual property concerns. Broadcasters need to bargain for the rights to access venues where sports occur, to ensure that their cameras and media equipment are present, alongside their announcers and commentators in commentary booths and on the field or court. Intellectual property rights are a large concern in these arrangements, as broadcasters retain rights over their final broadcasts while using them to showcase trade marks and other intellectual property of the sports rights-holders.

3. Sports Events

3.1 Relationships

There are multiple proprietary rights in a sports event. These include:

- copyrights in the actual broadcasts (TV, cable, streaming, download, pay-per-view, etc);
- athletes' individual rights of publicity, including sponsorships and depiction of sponsor

names/logos in association with individual players; and

- trade mark rights in teams and leagues' names, logos and other marks, and trade mark rights in the names of certain sports events themselves.

In addition, any music or other third-party content that will be played at an event must be properly licensed by the team, league and/or venue.

Under US copyright law, sporting events in themselves are deemed to be performances that are not protected by copyright in the absence of such events being “fixed” in some media, including by digital means. Accordingly, US broadcasts of college and professional sporting events are therefore simultaneously recorded.

Physical spectator access to event venues is controlled by ticketing, which creates a contract with the ticket purchaser. Tickets typically contain printed restrictions on filming and photography. An increasing number of US sporting events are broadcast over cable TV channels and through dedicated streaming apps and web channels, where user access is controlled through service subscription and terms of use agreements.

Sporting event organisers/leagues are significantly concerned about illegal streaming/pirating of sporting events. This is addressed through copyright and trade mark enforcement proceedings, including copyright “take down” notices issued to internet service providers under the Digital Millennium Copyright Act.

3.2 Liability

Sports events organisers generally owe a duty of care to both participants and spectators to ensure that the stadium and playing field are

reasonably safe and to avoid creating dangerous conditions.

Holding certain sporting events during the COVID-19 pandemic involved additional potential liability exposure for event organisers. For example, claimants might allege that they became infected with COVID-19 while attending a particular event due to the organiser's non-compliance with certain safety or mitigation requirements. Such claims might be difficult to prove given the prevalence of the virus, but any person who entered a venue, including athletes, staff, spectators and vendors, were potential claimants. If a person is injured at a sporting event, whether that person has a valid cause of action against the organiser will depend on whether they can prove all of the following three elements:

- the person was owed a duty of care by the organiser;
- the organiser breached this duty of care; and
- the injury resulted from that breach.

To determine whether the event organiser breached its duty of care, a court will apply a test of “reasonableness”. A court may consider whether the organiser implemented risk management policies and procedures to minimise risks and/or maintained its facility at reasonably expected standards.

How Can Liability Be Limited?

Courts have repeatedly emphasised that event organisers are not required to guarantee the total safety of guests.

The most common argument used in defending negligence claims involving injuries at sporting events is the “assumption of risk” doctrine. This doctrine can preclude recovery for injuries resulting from an activity in which the plaintiff realised

the risks, and nevertheless voluntarily participated in and accepted those risks. Assumption of risk can be express (eg, a waiver signed by the plaintiff), or it can be implied from the voluntary participation in the activity.

To prevail on the assumption of risk defence in a spectator's personal injury action, the defendant is required to demonstrate that the injury-causing events were known, apparent, or reasonably foreseeable consequences of attending the game.

It is not uncommon for event organisers to include disclaimer language in small print on the reverse of the ticket. Whether these disclaimers are valid is an issue of state law, and states differ as to the enforceability of these waivers.

MLB and its clubs have largely avoided financial responsibility for foul ball accidents, since every MLB ticket contains a disclaimer that fans enter at their own risk. US courts have generally upheld the "Baseball Rule", which provides that a baseball facility has met its duty of care to spectators by providing seating that is protected from projectiles that leave the field of play.

Another reason why an owner's liability may be limited is the requirement that the owner's negligence must be the cause of the injury.

What Liability Cannot Be Excluded?

While disclaimers and waivers are valid in many states, they do not necessarily protect facility owners from their own negligence. Despite the disclaimers on the reverse of ticket stubs, stadium owners still have an obligation to act reasonably to minimise the risk of injury to spectators. Waivers are also not effective if the sports organiser is found to be grossly negligent or to have intentionally harmed the claimant.

How Can Athletes Be Liable to Spectators?

Athletes who engage in typical activities associated with a sport will not usually face liability for any resulting injuries that occur during the game. However, in limited cases, an athlete may bear liability for a spectator's injury where, for example, an athlete behaves aggressively or fails to act according to the rules of the game.

How Are Sporting Events Kept Safe From Violence and Disorder?

Sports organisers have a duty to keep the sporting stadium/facility reasonably safe, which may include a duty to take precautions if it is foreseeable that a third party will commit a criminal or violent act causing injury to a player or spectator. There are certain steps that can be taken to reduce that risk and potential liability:

- adopt and enforce internal disciplinary policies for players and coaches setting forth standards of conduct and impose penalties for violations which are applied consistently;
- review and strengthen, if necessary, policies and local laws on the serving and consumption of alcoholic beverages;
- work closely with police and security to identify and deter the potential for violence and other unruly behaviour, and to implement a plan to discourage and respond to spectator violence if it occurs, including a strong, visible police presence;
- install video equipment in the seating area to help deter misconduct and identify spectators in the event of fan violence;
- have a designated area in the stadium for visiting team's spectators; and
- make public announcements before and during the game emphasising standards of spectator behaviour.

Each sporting institution should review and examine its culture, prior experiences and resources to prepare for sporting events and to reasonably ensure their safety.

4. Corporate

4.1 Legal Sporting Structures

Entity selection is an important concern that must be addressed early in connection with formation of any professional and non-professional sports clubs (amateur athletics) and sports governing bodies. In all instances, limiting liability against legal claims will be of paramount importance and in the USA will be provided for by resorting, basically, to use of any of the following entities:

- limited liability company;
- limited partnership; and
- corporation (publicly or privately owned).

Each of these types of entities are presently represented in all areas of professional and non-professional sports.

In the absence of ownership by persons or entities that are non-resident in the USA, the limited liability company form is likely the prevailing form of ownership and operation. These are frequently referred to as “pass-through entities” for purposes of taxation, providing for a single level of income taxation while affording their owners the ability to construct creative and sometimes unusual distribution “waterfalls”, directing how various revenue-streams are distributed. The limited liability company is governed by a limited liability company operating agreement and the state laws where that entity has been formed. Essentially, the operating agreement is a contract that provides for nearly unlimited variations

of rights and remedies among its owners, which may consist of traditional common equity investors, those with preferred equity investments, and those holding hybrid securities (which may be combinations of debt and equity securities). The applicable state law statutes are structured to defer to contractual rights of ownership and operation negotiated by the owners.

4.2 Corporate Governance

Governance in sports spans many participants, including players, clubs, local, national and international organisations, spectators, the media, commercial (sponsors), non-commercial interests, and educational and training bodies. Enhancing governance in sports has undoubtedly been a priority in response to the public scandals at the highest levels and bears similarities to the evolved corporate governance standards and expectations applicable to business corporations in the public capital markets. However, in the USA there is no “one size fits all” approach recommending or prescribing governing principles and, as a result, codes of conduct abound at all levels (eg, professional, collegiate and youth). This stands in contrast to, for example, the UK’s Code for Sports Governance, with broad application to all that seek government and lottery funding.

These governance codes must be updated to address ever-changing matters, such as laws governing online gambling, the ongoing debate over compensation for college athletes, and the increasing number of substances banned for use by athletes.

In the USA, sports leagues are most often governed according to rules and internal regulatory procedures set forth in league organising documents. Most typically, these consist of league constitutions and by-laws and agree-

ments between the sports league and member teams. Transfers of ownership interests in teams, with or without changes in control, are often scrutinised, requiring prior approval. In many cases, these documents establish a board of governors comprising team owners or their representatives. These documents provide for establishing and managing league governance and regulatory policies and typically provide for appointing a league commissioner. The league commissioner serves as a chief executive officer and is typically responsible for overseeing the day-to-day league operations. League organisational documents and collective bargaining agreements (CBAs) set forth player and coach codes of conduct.

4.3 Funding of Sport

Federal agencies and state and local governments often turn to public-private partnerships to structure and execute the development of stadiums and other sports-related facilities. Often this is done in conjunction with redevelopment of real estate located in areas qualifying for tax status as a Qualified Opportunity Business Zone with special tax advantaged attributes.

In connection with professional stadium finance projects, separate private revenue streams are identified and evaluated. They consist of and include the following: ticket sales, personal seat licences, club seats, luxury seats, stadium tours, concessions, merchandise sales, advertising (including signage, virtual advertising, sponsorships, naming rights and pouring rights), parking, and other exclusive arrangements.

Stable revenue streams are of paramount importance to funding transactions. Declines in event attendance during COVID-19 were due to capacity and social distance restraints imposed by governments rather than a decline

in measured demand for tickets. While there is some uncertainty about the pace at which the live events industry will recover, the shift in consumer spending from product to experience is increasing and is expected to be robust in the medium to long term.

4.4 Recent Deals/Trends

US leagues have begun to modify ownership regulations to allow new investment opportunities for funds to acquire minority interests in multiple clubs. In 2019, MLB modified its rules to allow such funds to acquire a passive minority stake in multiple clubs. Similarly, the NBA approved a plan to allow investment firms to own interests in teams. As many sports properties confront long-term cash flow and capital shortfalls, new variations on investment funds are likely to continue to develop.

In addition, sports and entertainment venues have, in recent years, paired with and become integral components of mixed-use development projects. These projects often take the form of public-private partnerships revitalising downtown areas and have resulted in the rehabilitation or creation of entertainment spaces, hospitality ventures (including hotels, bars and restaurants), residential projects (including affordable housing), and office and innovation workplace lab spaces, tailored for changing modern workplace norms. While diminishing as a tax benefit incentive, many urban projects were subject to special federal income tax benefits if the projects were located within qualified opportunity zones, often associated with urban renewal projects. This was particularly useful as direct taxpayer support for new stadiums and arenas has been waning.

College athletes are now able to exploit their own name, image and likeness (NIL). This is the result

of some new state laws, as well as a change to the National Collegiate Athletic Association (NCAA) rules providing collegiate athletes for the first time with the right to profit by licensing their NIL rights. This monumental change for college athletes has raised burgeoning issues and opportunities. (see **5.3 Image Rights and Other IP** and **9.1 Women's Sport Overview**).

5. Intellectual Property, Data and Data Protection

5.1 Trade Marks

Trade mark rights in the US are based on use of a mark (be it text, designs/logo, slogans, or a combination thereof) in US commerce for specific goods/services. Registration is therefore not necessary to protect and enforce trade mark rights, although registration provides certain meaningful benefits (discussed below) and enhanced litigation remedies. Unregistered but otherwise protectable marks (ie, common law use) may be enforced against junior users of the same or confusingly similar marks for the same or closely related goods/services.

Registration is available at the federal level for marks that are used in US interstate commerce. All 50 states also have state trade mark registrations for marks used only within their respective states. The US is also party to the Madrid Protocol and accepts WIPO international applications designating the US.

Word marks that are generic can never be registered. Marks that are merely descriptive also cannot be registered on the Principal Register or enforced until, and if, they obtain secondary meaning (also known as acquired distinctiveness). Marks cannot be registered if they are confusingly similar to any prior filed application or issued registration for related goods/services.

While registration is not necessary to enforce valid trade mark rights, under the US Trademark Act (also known as the Lanham Act), the advantages of federal registration include:

- legal presumption of validity of the mark and its ownership;
- constructive nationwide notice of registration; and
- potential for enhanced damages in infringement cases, especially for counterfeit merchandise.

Changing Controversial Team Names

Of interest is the recent trend for sports teams to change their names where the names reflect historical bias or racist content that is offensive to one or more societal groups. For example, in 2020, the professional NFL Washington Football Team (an interim name used until early 2022) dropped its long-standing "Redskins" name and all related marketing and merchandising in deference to Native Americans, who, along with many other groups, for many years had viewed the "Redskins" name as highly offensive. After soliciting fan suggestions for new names and conducting thorough trade mark clearance searches, in early 2022 the team was formally re-named the "Washington Commanders". In December 2020, the Cleveland Indians professional baseball team announced they would do the same, following decades of opposition to the "Indians" name; in July 2021, the team rebranded as the "Cleveland Guardians".

5.2 Copyright/Database Rights

US copyright law is exclusively governed by the 1976 Copyright Act, which is a very lengthy and complex statute with additional enabling regulations. The USA is a member of the Berne Convention. Registration is not required to protect copyright, which exists from the moment of

creation of an original work of authorship that is otherwise protectable by copyright.

However, except for non-US Berne Convention works, registration is still required as a prerequisite to sue for copyright infringement in the USA. In addition, if a registration is issued within three months of a work's first publication, in a subsequent infringement action the copyright owner may seek both statutory damages (in lieu of a need to prove actual damages or an infringer's profits) and legal fees if successful. Although non-US Berne Convention country copyright owners are exempt from the registration requirement as a pre-condition of suing for infringement, they cannot seek statutory damages or legal fees unless a US registration is effective before an act of infringement begins.

Common defences include lack of personal jurisdiction, statute of limitations, absence of infringement based on non-substantial similarity of copyright-protectible elements, public domain, lack of copyrightable subject matter, *scènes à faire*, idea-expression merger, and statutory fair use.

The applicability of the Copyright Act's three-year statute of limitations will be addressed for the first time by the US Supreme Court in 2024, in a case that will assess the length of time over which a plaintiff may seek copyright damages where the plaintiff first discovered an infringement more than three years after it first occurred.

Databases can be protected by copyright and/or trade secret laws under both state and federal laws. Trade secrets are typically protected by confidentiality and non-disclosure agreements. Copyright does not protect facts, such that factual data within a database cannot be protected; however, the original structure, sequence and

organisation of a database (ie, the schema) can be protected if it is original.

5.3 Image Rights and Other IP

There is legal recognition for image rights for individual athletes, but generally only at the state level under statutory and common law rights of publicity. As this is governed by the laws of 50 individual states, it is a complex area of US law. Some states do not recognise a right of publicity, while many others recognise such right by statute and/or common law. Some states also recognise a post-mortem right of publicity that extends beyond a person's death and which can be enforced by the deceased person's heirs.

The rights of college athletes to be able to financially exploit their own name, image and likeness (NIL) experienced a ground-breaking moment in 2021, when some new state laws and National Collegiate Athletic Association (NCAA) rules changes provided such athletes, for the first time, with the right to profit by licensing their NIL rights. In the past, NCAA rules prohibited college athletes from accepting any such compensation as a condition of being able to compete as an "amateur".

In addition to publicity rights, well-known and famous athletes may develop trade mark rights in their names and persona, providing additional intellectual property protection under federal and state law. The concept of "passing off" is a form of trade mark infringement and unfair competition under the federal Trademark (Lanham) Act and state laws, regardless of whether an athlete's rights are registered. However, athletes would only have enforceable trade mark rights in their names or other aspects of their persona if such persona were in fact used as a brand to market and sell goods/services in the USA.

5.4 Licensing

Licensing is a primary revenue generator of team and league revenues. In the USA, the professional major sports leagues generally control and administer all member team trade mark rights and the licensing thereof (see **2.1 Available Sports-Related Rights**). Licensing revenues are shared with teams based on contractual formulas.

Athletes are generally free to enter into direct sponsorship and licensing agreements, typically through their agents, provided such acts do not otherwise violate their team and league policies and any player contract provisions.

There are no legal restrictions on assigning IP rights to third parties, with the only statutory exception that an “intent to use” federal trade mark application can only be assigned to a successor of the underlying business. Restrictions on assignment of IP rights to third parties is generally a matter of contract. In the absence of any such restriction, contractual rights may generally be assigned except for personal service contracts; however, this is a matter of state law and is therefore subject to specific applicable laws of the 50 states.

5.5 Sports Data

Sports in the USA are heavily reliant on massive amounts of data and statistics respecting players’ performance and health, training, competitive team positions and information, scouting reports, team competition, and fans. Major sports leagues and their teams employ sophisticated technology to capture real-time game data, such as MLB’s StatCast system, an artificial intelligence (AI) tool that uses radar and high-speed cameras to record all movements made by players and tracks the flight and velocity of baseballs. Similar systems are installed in NFL

and NBA arenas, and are being implemented by the National Hockey League (NHL). The NFL, in collaboration with Amazon Web Services, has created the Digital Athlete, an AI tool that creates a virtual representation of an NFL player, using TV footage and sensors in football gear, to enhance player safety and better predict and prevent player injuries.

There are many commercial opportunities presented by sports data, particularly for third-party developers who create and license sports-related applications and application programming interfaces (APIs) using data that focus on a myriad of sports-related uses, such as athletes’ health and nutrition, athletes’ performance, training regimens, scouting reports, player-trading decisions, statistics for game broadcasts, fantasy sports, sports betting, video gaming, e-sports competitions, and predictive modelling.

5.6 Data Protection

In the USA, there are no specific data protection laws at the federal level regarding sports. However, various states have enacted data protection and security laws that protect personally identifiable information. The California Privacy Rights Act (which became effective on 1 July 2023 and amended the pre-existing California Consumer Privacy Act) is currently the most extensive consumer data privacy law in the US and is modelled in part on concepts included in the GDPR. In addition, all 50 states have data breach-reporting laws, which require formal notice to be given to consumers impacted by data breaches that compromise their personal data.

There have been multiple cyber-attacks on sports leagues and teams, which remain vulnerable. For example, in 2021, Major League Baseball’s computer system was hacked. In 2022, a

major ransomware attack hit the San Francisco 49's NFL football franchise, targeting financial information.

If personal health-related information of individual athletes is collected, maintained or provided by medical practitioners, healthcare institutions or their business associates, such data is protected under the federal Health Information Portability and Accountability Act (HIPAA).

In one notable example, in 2015–16, the FBI investigated MLB allegations that the St Louis Cardinals hacked into the internal networks of the Houston Astros, including the baseball club's proprietary competitive databases of scouting reports, trades and proprietary statistics. A Cardinals' scouting director ultimately pleaded guilty to unauthorised access to an Astros computer.

6. Dispute Resolution

6.1 National Court System Internal Regulation and Arbitration

US sports leagues are typically governed according to rules and internal regulatory procedures set forth in league constitutions and by-laws. In many cases, a league commissioner serves as a chief executive officer and is responsible for overseeing the day-to-day operation of the league. Although the organisational structure of each league differs, the commissioner generally has plenary authority to enforce league rules.

Jurisdiction over sports-related disputes depends on the nature of the dispute. In professional sports, an arbitration clause is often found in a CBA between a players' association and the league or team. Under most CBAs, it is common for grievance, salary, and contract disputes to be resolved through binding arbi-

tration. League constitutions and by-laws often require that disputes between the league, players, member teams, officials, or shareholders be resolved through arbitration, with the league commissioner serving as arbitrator.

Dispute Resolution Before the Courts

It is a common requirement under most governing documents that the internal arbitration process be exhausted before a dispute can be heard in court. While it is unusual for a player to appeal their suspension, the most well-known and highly publicised example of this process is the “Deflategate” scandal. Following the 2015 AFC Championship game, the NFL investigated claims that the New England Patriots and quarterback Tom Brady deflated footballs. Following the investigation, NFL Commissioner, Roger Goodell suspended Brady for four games. Under the terms of the NFL CBA, before Tom Brady could bring an appeal of his suspension to federal court, he was required to exhaust his internal NFL appeals. After the NFL Commissioner, Roger Goodell heard Brady's appeal and upheld his suspension, Brady then appealed to federal court. After a lengthy appeal process at the league level and in federal court, the suspension was upheld, and Brady served the suspension.

There are cases in which disputes involving leagues or teams may be heard initially in state or federal court. This usually occurs when a litigant is not party to the league's operating agreements and is not bound by an arbitration provision contained in those governing documents.

6.2 ADR (Including Arbitration)

League constitutions and by-laws typically require that disputes between the league, players, member teams, officials or other internal league stakeholders be resolved through arbi-

tration, in many cases before the league commissioner as arbitrator.

MLB

One type of arbitration is the “baseball arbitration”, which originates from a methodology that was used to resolve baseball players’ salary disputes. In this type of arbitration, each party submits to an arbitrator an amount that represents the party’s last, best offer. The arbitrator then must pick one of the submitted figures. MLB CBA still requires “last, best offer” arbitration. This system usually causes good faith bargaining and results in a high percentage of settlements.

NBA

The NBA utilises arbitration to resolve issues pertaining to the CBA. The CBA provides for arbitration of disputes relating to player grievance and selected articles within the CBA. Issues involving income, salary cap, and minimum team salary are subject to arbitration under the CBA. Some disciplinary determinations issued by the NBA commissioner are binding upon the player. If the disciplinary determination meets certain criteria, it may be appealed to a grievance arbitrator for a final determination.

NFL

The NFL CBA provides for arbitration of what are essentially labour disputes between the team and a player including salaries and whether an injury that precluded a player from performing was sustained as a result of play.

6.3 Challenging Sports Governing Bodies

Following a league-issued decision, there is typically an internal appeals process that is set forth in league-governing documents. This internal appeals process is typically the final adjudica-

tory step available at the league level. After an arbitration award is issued, a party seeking to enforce the award must file a petition in federal court to confirm such award within one year of the date the award was issued. As noted in **6.1 National Court System**, after exhausting their appeal options at the league level, players or teams may appeal the league’s determination in federal court under a narrow set of circumstances set forth in the Federal Arbitration Act (FAA) or under the Labor Management Relations Act (LMRA). An appeal sought from an arbitration award in the labour and employment context will result in an appeal under the LMRA. Otherwise, the FAA’s appeal procedures are likely to apply.

The standard for vacating an arbitration decision is high and courts are generally deferential to arbitration decisions since the parties agreed to arbitration in lieu of using a court to settle the dispute. Courts will generally uphold the decision unless the arbitrator acted with bias, corruption or fraud, or exceeded their authority under the terms of the CBA. Similarly, under the FAA, a party may seek to vacate an arbitration award where:

- the award was procured through corruption or undue means;
- there was evident partiality or corruption among the arbitrators;
- the arbitrators were guilty of misconduct and the rights of a party was prejudiced; or
- the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

7. Employment

7.1 Sports-Related Contracts of Employment

Relationships between athletes and sports organisations in football, basketball, baseball, hockey, and soccer are typically handled by employment contracts, commonly referred to as Standard Player Contracts or Uniform Player Contracts (SPK). An SPK is typically a form document which has been negotiated between the league and the players' union pursuant to a CBA. Most CBAs require that the league does not approve an individual player's SPK unless it has been negotiated with an agent registered with the player's union or the player has negotiated the contract themselves. Generally, the Commissioner of the league has the power to reject an SPK if the agreement violates any provision of the CBA, including its salary cap and registered agent provisions.

Typical Terms of the SPK

The standard SPK typically requires the player to:

- participate in meetings, training camps, workouts, practice sessions, regular season games, exhibition games, and postseason games;
- license the player's name(s), image, likeness, and other identifying information and characteristics to the team for promotional purposes and seek the team's consent before engaging in any media or public appearances;
- participate in reasonable activities promoting the team and league as directed;
- maintain good moral character, good citizenship, good sportsmanship, and integrity, including by not betting on games, accepting anything of value to attempt to fix a game, or using or providing others with prohibited substances;

- maintain good physical condition and notify the team of injuries and illness, including notifying the team of injuries incurred as a result of the player's employment with the team;
- abstain from playing other sports or engaging in activities that may involve a substantial risk of personal injury without the consent of the team; and
- accept an assignment of the SPK in the event the team trades the player to another team, and faithfully perform the duties as required by the SPK for the new team.

While CBAs may restrict the subjects on which teams and individual players may negotiate in an SPK, the parties are generally permitted to negotiate the player's signing bonuses, contract restrictions on trading the player, and compensation in the event of injury, among other provisions. The SPK may also specify the team's option to retain a player for another year after the conclusion of the SPK, or the player's option to become an unrestricted or restricted free agent. As an unrestricted free agent, the player may opt to remain with their current team for another year or accept offers from other teams. As a restricted free agent, the player may receive offers from other teams, but must allow their original team an opportunity to meet or exceed any offers.

CBAs between players' unions and sports organisations also typically require the league and teams to spend a guaranteed amount on player compensation.

Antitrust and Anti-competitive Concerns

Employment contracts between sports teams and players requiring loyalty to the player's team and league do not unreasonably restrain competition. Additionally, the non-statutory labour exemption to antitrust laws insulates agreements in the CBA from antitrust challenges. In particular, anti-competitive provisions in a CBA

may be entitled to the non-statutory labour exemption where:

- “the restraint on trade primarily affects only the parties to the collective bargaining relationship”;
- “the agreement sought to be exempted concerns a mandatory subject of collective bargaining”; and
- “the agreement sought to be exempted is the product of bona fide arm’s-length bargaining”.

Such protections may not extend to league-wide rules having an anti-competitive effect that have not been negotiated between the players’ union and the sports organisation. One case ruled that the non-statutory labour exemption does not apply to the National Women’s Soccer League age rule – requiring players to be at least 18 – because it was not the result of collective bargaining negotiations.

With respect to student athletes, NCAA rules limiting education-related benefits, such as scholarships for graduate school, payments for academic tutoring, or paid post-eligibility internships, violate the Federal Antitrust Act.

7.2 Employer/Employee Rights Anti-discrimination Protections

Under Title VII of the Civil Rights Act of 1964 (Title VII), Title I of the Americans with Disabilities Act of 1990 (ADA), the Age Discrimination in Employment Act (ADEA), Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), and analogous state and local laws, sports organisations are prohibited from discriminating against or harassing their athlete-employees on the basis of race, colour, religion, national origin, sex, sexual orientation, disability, age, and genetic information. Generally, player-

employees are also protected against retaliation for engaging in protected activities, such as complaining of unlawful discrimination; filing a charge of discrimination; and/or participating in an investigation, lawsuit, or other proceeding concerning discrimination. State and local laws may provide protections based on additional protected characteristics.

Americans With Disabilities Act

Pursuant to Title I of the ADA, and state and local disability laws, employer sports organisations have a duty to not discriminate against player-employees on the basis of disability, to keep player-employees’ medical information confidential, and to provide a reasonable accommodation to player-employees with disabilities absent an undue hardship. The extent to which player-employees may be entitled to reasonable accommodations in a profession based on physical ability and competition has not yet been outlined by the courts.

Sports organisations may also have a duty to not discriminate against players on the basis of disability if they are public accommodations. See *PGA Tour, Inc v Martin*, 532 US 661, 681 (2001).

Age Discrimination

The ADEA and state and local counterparts prohibit discrimination on the basis of age, with the ADEA and many states protecting individuals aged 40 and above. However, sports organisations should ensure that their practices are compliant with the requirements of an applicable state and/or local laws with a lower protected age or which does not specify an age threshold.

Gender Discrimination

Recently, disparities in pay and working conditions between men and women athletes has become the subject of significant public atten-

tion and litigation. See, *Morgan v United States Soccer Fed'n, Inc* granting soccer federation summary judgment on women soccer players' discrimination claims as to pay under the Equal Pay Act and Title VII and as to field surfaces under Title VII, and denying summary judgment on their claim of discrimination in the provision of charter flights. Following this litigation, the US Soccer Federation reached a settlement to pay the US Men's National Team and the US Women's National Team equally, along with other considerations. However, claims of gender discrimination in employment by athletes are rare because a prima facie case of discrimination requires a showing of different treatment between the sexes by a singular employer, and most sports organisations employ players of the same sex.

Race, Colour, and National Origin Discrimination

Under Title VII and analogous state and local laws, employer sports teams are prohibited from discriminating against players on the basis of their race, colour, and national origin, among other protected characteristics. However, where a sports organisation acts on the basis of a protected characteristic with the goal of remedying its past discrimination, there is generally no violation of Title VII.

Protection of Genetic Information

Oftentimes, and as directed by the terms of a CBA, employer sports organisations have a role in managing player-employees' health and collecting their medical information. Pursuant to Title II of GINA, employer sports organisations are prohibited from discriminating against player-employees on the basis of their genetic information; requesting, requiring, or purchasing genetic information about player-employees; disclosing genetic information about player-

employees, subject to limited exceptions; or retaliating against player-employees for protected conduct under GINA. GINA also requires that employer sports organisations keep player-employees' genetic information confidential. Employer sports organisations seeking to take advantage of increased accessibility of genetic testing and advancement of wearable technologies may be limited by GINA's requirements.

Wage and Hour Law

The Fair Labor Standards Act of 1938 (FLSA) and state and local wage and hour laws require that employer sports organisations pay all players the minimum wage and most players overtime premiums for hours worked over 40. Although there is no explicit exemption from the FLSA's overtime provisions for athletes generally, the FLSA carves out an exemption for baseball players during the regular championship season as long as they are paid at least the minimum wage for 40 hours weekly.

Collective Bargaining

Under the National Labor Relations Act of 1935 (NLRA), player-employees are entitled to unionise, collectively bargain with their employer sports organisations, and participate in protected concerted activity. Under the NLRA, a sports organisation may not take unilateral action on terms affecting "wages, hours, and other terms and conditions of employment", such as free agency, first refusal provisions, salary arbitration, the college draft, salary caps, minimum individual salaries, and fringe benefits, because these are mandatory subjects of bargaining. See 29 USC § 158(d).

Despite student athletes not being classified as employees, in late 2023, the Service Employees International Union filed a petition with the National Labor Relations Board (NLRB) seeking

to represent members of the Dartmouth College men's basketball team in collective bargaining, which action was challenged by the college. In 2024, a regional director of the NLRB issued a decision determining that all basketball players on the men's varsity basketball team constituted a unit appropriate for collective bargaining. Earlier in 2023, following the filing of an unfair labour practice charge, the NLRB issued a complaint alleging that the University of California, the Pac-12 Conference, and the NCAA misclassified student athletes as non-employees, in order to intentionally deprive the student athletes of their rights under the NLRA. Further legislation has been proposed to define student athletes as employees entitled to protections under the NLRA; similar prior legislative efforts have been unsuccessful.

Unemployment Benefits

The Federal Unemployment Tax Act requires the Secretary of Labor to reject any state's unemployment programme if it provides unemployment benefits to professional athletes who are not playing between seasons if they are expected to play the next season. See 26 USC § 3304(a)(13).

Workers' Compensation

Whether and the extent to which a professional athlete is entitled to workers' compensation for injuries sustained while working varies from state to state.

Worker Adjustment Retraining Notification Act of 1988 (WARN Act)

The WARN Act and its state analogues require employer sports organisations to provide employees, their representatives, and certain governmental officials with advance notice of closings and layoffs affecting a threshold number of employees. Under federal law, and in many

states, employers including sports organisations are not required to provide WARN notices for lockouts during labour disputes.

7.3 Free Movement of Athletes

The IRCA

The Immigration Reform and Control Act (IRCA) prohibits employers from discriminating on the basis of an individual's real or perceived citizenship or national origin. These IRCA protections do not apply to employers with three or fewer employees, to claims already under consideration with the Equal Employment Opportunity Commission under Title VII, or to situations where citizenship status is required by law or by government contract. The IRCA protects citizens and aliens actively pursuing citizenship and prohibits employers from enacting blanket hiring policies restricting employment to US citizens. The IRCA preserves employers' rights to prefer citizens over equally qualified aliens.

Immigration and Visas

The Immigration and Nationality Act (INA) governs immigration laws as they pertain to professional athletes. There are both immigrant and non-immigrant options for foreign athletes seeking entry to the United States. Some of these are discussed below.

EB-1 – employment-based first preference immigration

A professional athlete who can demonstrate, by extensive documentation, extraordinary ability in athletics through sustained national or international acclaim may apply for an EB-1 Visa. While an employment offer is not required, the athlete must provide evidence showing they seek entry to the USA to continue to work in their field of expertise.

B-1 – temporary business visitor

An athlete visiting for a professional or commercial purpose may apply for a B-1 Visa. This visa generally limits the visitor to a six-month period (with the opportunity to apply to extend the stay to a maximum of one year), and prohibits the visitor from engaging in productive labour and employment while in the USA. Types of foreign national athletes that can enter the United States using a B-1 Visa include individual professional athletes who will receive no salary, other than prize money, and athletes of foreign-based teams that belong to international leagues or competitions, whose salaries are principally earned in the foreign country.

O-1A – individuals with extraordinary ability or achievement

An athlete who possesses extraordinary ability and has been recognised nationally or internationally for those achievements may be eligible for an O-1A non-immigrant visa. The initial period of stay granted under an O-1A visa is three years.

P-1A – athlete

A foreign athlete seeking temporary entry to the USA for the sole purpose of competing at a specific athletic event may seek entry under the P-1A Visa. To qualify, the individual must be an individual or part of a team at an internationally recognised level of performance or a professional athlete. The INA defines a professional athlete as one employed by a team that belongs to an association of six or more teams whose total combined revenues exceed USD10 million per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage, or any minor league affiliated with such an association.

Impact of COVID-19

Non-citizens who are non-immigrants travelling to the USA by air are currently required to establish proof of full vaccination with a Centers for Disease Control and Prevention-approved vaccine, with some limited exceptions. This requirement was contained in a Presidential Proclamation on 25 October 2021, and took effect on 8 November 2021.

8. Esports

8.1 Esports Overview

The Esports industry continues to suffer some growing pains as part of a maturation phase since the end of the COVID-19 pandemic. In 2023, esports leagues, such as the Overwatch League, ended while other esports organisations were acquired, resulting in lay-offs across the industry. Driving these changes is the inability of the industry to meet the lofty expectations that were set when esports was being touted to potential investors as a revenue opportunity on par with traditional sports. It has become clear that this prediction is either not attainable, or at the very least, the esports industry revenue models are not developed enough to measure up to traditional sports.

Investors continued to tighten the purse strings in 2023 due to lack of bottom-line profitability. Traditionally, the revenue model for esports has relied heavily on sponsorship dollars. However, as sponsorship brands realised that they were not getting the return on investment that was expected, they began turning to other platforms such as TikTok to reach the same demographic, putting further pressure on the cash flow being generated from esports organisations. As a result, even the most popular esports titles, such as League of Legends, have not yet turned a profit.

Due to these financial struggles, and the resulting lower valuations of esports industry assets, many esports teams have become attractive candidates for acquisition. Microsoft's USD68.7 billion acquisition of Activision Blizzard closed in October 2023. Mid-sized esports organisations such as Version1 actively sought to be purchased this year. After laying off all its staff, Counter Logic Gaming (one of the most popular North American esports organisations) was purchased by NRG.Esports. Faced with a collapsing share price, FaZe Clan was purchased by GameSquire, the Texas-based esports company backed by Dallas Cowboys' owner Jerry Jones. As the esports industry faces some tougher times, there will be pressure to consolidate, as the industry players that can weather the more challenging financial environment and growing pains of a young industry buy up those industry players that cannot withstand such conditions.

Despite some of the immediate challenges, the long-term prospects for esports are still seen by most industry experts as positive. Industry consolidation and challenges will force the esports organisations that survive to be more efficient and to adjust their strategies to be more sustainable over time. Additionally, the esports player base is still growing worldwide. For example, Counter-Strike; Global Offensive hit a record 1.3 million concurrent players in 2023. Although the next three to five years may still see some high volatility in the esports market, many investors believe the industry has the fundamentals to pull through as macro trends such as virtual reality, the metaverse and digital asset valuation continue to take hold globally.

9. Women's Sport

9.1 Women's Sport Overview

The continuing evolution of the sports business and media landscape has created new opportunities for women athletes as well as for women's sports generally.

The recent ability of college athletes to monetise their name, image and likeness (NIL) has provided new opportunities for women athletes. NCAA women's basketball remains one of the top collegiate sports in generating NIL revenue.

Professionally, investment in women's sports properties continues to grow. In 2022, the Women's National Basketball Association (WNBA), a high-profile professional women's athletic league, completed one of the largest ever capital raises for a women's sports property. The league has continued to focus on modernising its distribution and merchandising strategies and securing new partnerships to continue to grow the sport. The ongoing trend of appreciating franchise valuations has also carried over to women's sports, as two franchises in the National Women's Soccer League (NWSL) were sold in 2024 for record valuations.

The ongoing competition for sports programming has also created opportunities for women's sports content. The Women's Sports Network, a streaming service which debuted in 2022, provides continuous coverage of female athletes on and off the field along with original programming, live sporting events competitions and studio shows modelled after ESPN's SportsCenter. Media rights for women's sports have also increased significantly in value. In 2023 the NWSL announced a multi-year media deal with CBS Sports, ESPN and Amazon Prime Video for USD240 million, representing a 40-times multiple of the NWSL's previous agreement.

Despite these new opportunities, several challenges remain for women in sports. The participation of transgender women in women's sports has driven conversation regarding maintaining competitive balance while respecting and recognizing transgender rights. Funding discrepancies and disparate treatment at universities continue to be a source of controversy. Professionally, the salary gap between male and female athletes remains. The recent settlement agreement to establish equal pay for the men's and women's US national soccer teams in the new CBAs represents an important step towards equality.

10. Non-fungible Tokens (NFTs)

10.1 Non-fungible Tokens (NFTs)

Non-fungible tokens (NFTs) are unique digital assets that use blockchain technology to record ownership. Each NFT has a unique identifier that is recorded on a blockchain database, which acts as a public ledger to verify ownership and transfers. NFTs can reflect a variety of tangible and intangible objects, such as images, videos, songs and art. NFTs are distinguished from other digital assets that use blockchain technology, such as cryptocurrencies, by the "non-fungible" nature of NFTs. Each NFT represents a specific and unique item and is not valued on a one-for-one basis.

In sports, NFTs have been created for the ownership of video clips, highlights, images of iconic moments and player trading cards. One of the earliest and most significant NFT ventures in sports is the NBA's Top Shot product. Top Shot is an NFT marketplace for digitised NBA-related content. The NBA licenses highlights and images to a third party which digitises the footage and creates NFTs, each with its own blockchain authenticity. Fans can then buy and sell the NFTs,

and transfers are recorded on a blockchain ledger for verification. The NFL's NFL All-Day product and the Ultimate Fighting Championship's UFC Strike product are additional examples of sports leagues creating officially licensed NFTs to be sold on similar marketplaces.

NFTs also provide teams and leagues with additional opportunities to enhance fan relationships, and allow for real-world applications beyond investment. For example, holders of NFTs may be granted special in-person experiences or discounts on merchandise. In another example, a European soccer league established an NFT market for fantasy sports, enabling fans to create fantasy line-ups using NFTs they own. Holders of NFTs have also been able to vote on governance and other team decisions such as player awards.

NFTs also provide individual athletes with ways to reach a broad consumer base with their own licensed NFTs, such as athlete designed artwork or images. Players have paired the sale of their own NFTs with the opportunity to meet them in person and attend games. The ability of athletes to continue marketing their own individual NFTs may become a point of further discussion with leagues and teams going forward.

The NFT market poses significant risks for both investors and creators. Little regulation currently exists, and it remains to be seen how regulatory authorities will look to assert control over the market. Class action lawsuits have been filed, including against Top Shot, alleging that the products sold on its marketplace are unregistered securities. Furthermore, investing in NFTs is speculative in nature with limited historical information to make informed decisions. Trading volume and valuations, based heavily on demand and scarcity, have fluctuated widely,

even on established NFT marketplaces. Finally, many NFT purchases are made with cryptocurrency, which imposes risks of its own including price volatility, security risk and high transaction fees. The developing security and valuation issues in the broader cryptocurrency market may also cause teams, leagues and other players to reassess their use of NFT, given cryptocurrency's status as a common currency for NFT purchases and the overlapping use of blockchain technology in both cryptocurrency and NFTs.

11. Regional Issues

11.1 Regional Issues Overview

There are no relevant issues in US sports law not already covered in this chapter.

12. Artificial Intelligence (AI)

12.1 AI Overview

While the AI landscape has been rapidly evolving, the regulatory framework in the USA remains in its early stages. AI has proved to have many applications in athletics already, with infinite possibilities on the horizon.

Federal AI Guidance

As of January 2024, there was no formal, dedicated federal AI legislation. However, some preliminary guidance has emerged at the federal level.

The Blueprint for an AI Bill of Rights

In October of 2022, the White House Office of Science and Technology Policy (OSTP) published a white paper titled the "Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People". This paper notes that its principles do not constitute binding US

government policy or guidance on the public or federal agencies. The document proffers five key principles:

- You should be protected from unsafe or ineffective systems.
- You should not face discrimination by algorithms, and systems should be used and designed in an equitable way.
- You should be protected from abusive data practices via built-in protections and you should have agency over how data about you is used.
- You should know that an automated system is being used and understand how and why it contributes to outcomes that impact you.
- You should be able to opt out, where appropriate, and have access to a person who can quickly consider and remedy problems you encounter.

The AI Risk Management Framework

In January 2023, the US Department of Commerce's National Institute of Standards and Technology (NIST) published the "AI Risk Management Framework" (AI RMF). In March of 2023, it launched the Trustworthy and Responsible AI Resource Center, which aims "to offer a resource to the organisations designing, developing, deploying, or using AI systems to help manage the many risks of AI and promote trustworthy and responsible development and use of AI systems".

October 30, 2023 Executive Order

On 30 October 2023, President Biden issued an executive order on the safe, secure, and trustworthy development and deployment of AI. The order cited both the OSTP's Blueprint for an AI Bill of Rights and the NIST's AI RMF and requires certain federal agencies (including the Departments of Commerce, Energy, and Homeland

Security) to issue standards and guidance. It also requires certain agencies to use their existing authorities to police the use of AI. The primary topics of the executive order are:

- safety and security;
- equity and civil rights;
- privacy;
- promoting innovation; and
- industry-specific impacts including health-care.

State AI Regulation

A number of states have begun to enact measures aimed at a better understanding and regulation of AI. Certain states (including Alabama, California, Colorado, Connecticut, Illinois, Louisiana, New Jersey, New York, North Dakota, Texas, Vermont and Washington) have implemented legislation aimed at researching AI to better understand its possible consequences. Other states (including California, Colorado, Connecticut, Delaware, Indiana, Iowa, Montana, Nevada, Oregon, Tennessee, Texas and Virginia) have regulated how entities can use automated processing systems to utilise customers' personal data. A couple of other states (Colorado and New York) have enacted legislation aimed at preventing discrimination through automated or algorithmic decision-making tools. Many more states are in the process of introducing proposed legislation aimed at further regulating AI.

Applications of AI in Sports

While regulation remains in the early stages, AI has already found many applications in the professional sports world. Generative AI (eg, ChatGPT) in particular, has been seen to play a role in content creation, maximising athlete performance, advertising and marketing, and operational efficiency.

In content creation, AI has been used to automate the generation of highlight reels by ingesting footage and identifying portions with action or excitement that match the user's prompts. Another use case is exemplified by the PGA Tour, which began harnessing AI in 2018 to create automated recaps for each player. The PGA Tour's AI collaborations have evolved over the past several years, yielding AI-produced video highlights, the tour's "Every Shot live" feature, and a chatbot that can answer questions about golf history, betting odds, and tournament logistics. Further opportunities exist to develop automated commentary, which could even adopt cloned voices of celebrities, athletes, or existing newscasters – subject to licensing and/or data privacy restrictions.

AI has also been harnessed to maximise performance within the sports arena, where it is used (in some cases, embedded, into shoes, rackets, clubs or other equipment) to analyse athletes' biomechanics to optimise performance, and it has even been used to develop predictive modelling programmes to forecast (and therefore help prevent) injuries. It can also simulate game scenarios, allowing coaches to better plan training programmes and develop play strategies. AI has also been utilised to help many MLB franchises ingest large amounts of player data to generate reports, thereby helping to automate the talent acquisition process, provide analytics for sports betting, and offer comprehensive data to players, coaches and fans. It has also found applications in game analytics; for example, umpire and judge assistance in order to make more accurate decisions during play and competitions.

AI has also presented new opportunities for sports advertising. AI powered a viral advertisement engineered by a French marketing com-

pany in anticipation of the 2023 FIFA Women's World Cup; the ad used AI to generate the likenesses of France's male players over real footage of their female counterparts, demonstrating that highlight-worthy plays are not gender specific, and prompting viewers to confront their subconscious (or conscious) gender bias. AI has also been leveraged to deliver more relevant advertising to specific demographics by personalising content.

AI also promises enhanced efficiency within stadiums. Facial recognition AI has already been introduced to streamline ticketless entry features. Other current applications, such as automated checkout experiences employed by some retailers, might be utilised in sports arenas to facilitate sales of merchandise, food and beverages.

Opportunities and Risks

As with any new technology, AI presents opportunities for further evaluation and has already revealed certain risks. For example, certain generative AI tools have been reported to "hallucinate" data, meaning that they respond to prompts with invented information. Other potential stumbling blocks include licensing and other intellectual property concerns. Another main concern around AI is its potential to render the human workforce obsolete – although, as with prior industrial revolutions, it is likely that existing jobs will evolve and there will be an emergence of new job opportunities. As opportunities unfold, the regulatory framework will likely be bolstered in response.

13. The Metaverse

13.1 Metaverse Overview

The metaverse represents a tremendous development in how we interact with technology. With

the use of virtual reality and augmented reality, the metaverse is a digital world that will allow people to have fully immersive lifelike experiences. As Mark Zuckerberg said, the metaverse is "the embodiment of the web where you are part of the experience yourself, not just looking at it..."

Sports Teams

Sports teams are beginning to explore the metaverse, revolutionising the way in which we consume sports. Clubs and teams are creating virtual sports arenas where spectators can come together with their virtual avatars and watch the games and events. Through multi-view camera technology and AI, spectators will be able watch the game from anywhere in the stadium, even on the field of play itself, all from the comfort of their own home. Manchester United has virtually recreated Etihad Stadium. Sky soccer is recording soccer games with a 360-degree camera, allowing fans to enter the metaverse and have an immersive viewing experience. Last year, the NFL partnered with Roblox to create a series of virtual reality experiences ahead of Super Bowl LVII, including hosting a virtual concert for the NFL's Super Bowl LVII pregame.

Sponsors

Sponsors are also seeking to leverage the sports metaverse to drive engagement in the virtual realm. For example, the NBA 2K League partnered with Intel to create a virtual tournament for fans of the series. Furthermore, Formula E created the "Race at Home Challenge" where fans can use virtual reality to race in their own home against real race car drivers. Sponsors are also using augmented reality to switch out ad overlays in stadiums according to viewing location and real-time action (as opposed, or as a supplement, to static traditional billboards).

Legal Aspects

From a legal standpoint, one of the main challenges of the metaverse is the lack of clear legal frameworks and precedent. Aspects of the metaverse, such as virtual currencies, digital property and user-generated content are innovations to which the legal world is catching up. Sports organisations and companies, such as Nike and NASCAR, are filing trade mark applications covering virtual goods to protect their intellectual property. There has already been a lawsuit between French luxury fashion house Hermes and NFT creator Mason Rothschild, who marketed a line of NFTs digitally duplicating the Hermes Birkin bag. Hermes alleged trade mark infringement and dilutive use of the Birkin name and won in a jury trial in January 2022.

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