

There is a Price for Athlete Data

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On August 4, 2011, the NFLPA and the NFL entered into a collective bargaining agreement (CBA) that would control the NFL's fate for a decade. At the time, many outsiders focused on the agreement's novel rules for rookie compensation (Article VII), or on the leagues revenue model split (Article XII). Indeed, many hailed the 10-year agreement as an opportunity to provide much needed stability for owners and athletes. However, that agreement failed to capture revenue opportunities that the digital world would soon provide. A review of the 316-page agreement shows that the word "data" appears only four times, and little of it directly deals with the monetization of data. By stark contrast, the new NFL CBA passed on March 15, 2020 contains over 140 references to "data," reflecting the league's focus on the importance and monetization of data.

Since the 2011 CBA, the value for athlete data, including data related to biometrics, has grown. However, that growth became exponential after the Supreme Court's decision in *Murphy*. As an example, NBA and MGM Resorts announced a unique agreement that involved data and legalized sports wagering. Over the three-year term of the agreement, the NBA would supply a verified, accurate and official data feed for \$25 million. After the NBA's agreement with MGM, other leagues, including the NHL, MLB and NFL, entered into partnerships for the sale of official data. While the leagues have entered into numerous data deals, some players have demanded they be entitled to some revenue from data.

The fight over data rights has been a constant battle in the sports arena. In 1997, the NBA and Motorola engaged in substantial litigation about the distribution of real-time live scoring data. Several years later, the PGA Tour sought to enforce its data rights from live scoring publication by news organizations that did not pay for those rights. While these fights have not directly impacted players, they have certainly demonstrated the value of data rights. If one fast forwards to the current iteration of the NFL's collective bargaining agreement, the value of data rights will be shared between the parties. A revised Article XII,

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which deals with the accounting and calculation of the salary cap, states that all revenue includes any revenues generated from gambling, gambling-related sponsorships, and any “player data.” Under this CBA, player data, which includes sensitive information such as biometric information, may be shared with broadcast partners. As such, it is likely that player biometric information will be displayed on the next broadcast, or that such biometric information will be utilized in sports wagers.

Until this iteration of the CBA, data monetization opportunities were missed by players, teams, and leagues. Now, it is widely understood that data can be manipulated into content, and that same content can be monetized. As such, data has a value, and that value will be shared between teams and players.

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