



NEW TECHNOLOGIES AND BIG DATA CAPABILITIES ARE CHANGING SPORTS

# ATHLETES NEED A DATA BILL OF RIGHTS

Athletes are Most at  
Risk for Losing Out on  
Rights & Revenue

LEADING THE WAY IN SPORTS DATA RIGHTS

## Sports Industry is a Leader in Biometric Data Collection & Use

Exciting possibilities are created by wearable, injectable, and implantable technology combined with player tracking data (PTD) and athlete biometric data (ABD). Sensor technology and big data fuel innovations that will elevate the level of individual athlete performance, team gameplay and fan engagement. The sports industry is a leader in this field. It can have a significant impact on big data practices and the development of the Internet of Things (IoT). Also, by embracing technology and becoming early adopters, professional sports leagues are providing exciting entertainment experiences for sports fans.

*Athlete data is making its way into X Reality experiences, fantasy sports, sports betting, social media, and other fan engagement products.*

## New Products and Revenue Streams Are Fueled by Data

These new products rely on data collected from athletes. It is provided to leagues, teams and their data partners, then it is used to improve athlete and team performance. This data is also used in game broadcasts, mobile apps, in-stadium fan experiences and video games. It is also making its way into XR – that

is, virtual, augmented, and mixed reality – experiences, fantasy sports, sports betting social media, and other fan engagement products. Each of these represents a new revenue stream for leagues and teams to generate dollars using PTD and ABD.

PTD encompasses all data collected from athletes that track movement, agility, physical health and stamina and other individual indicators of performance. ABD is a subset of PTD that pertains only to biometrics: behavioral and biological characteristics that identify a specific individual.

## New Data Types and Uses May Leave Athletes Vulnerable

This raises complex questions. Athletes have privacy and intellectual property rights in ABD and PTD. Typically, players associations protect publicity and other rights of athletes in the league, so they also have a stake in the sports data game.

The NFLPA is the first players association to contract with a data collector – WHOOP – and license rights to use the data to third parties. Leagues and teams can also claim some right of ownership in this data and the corresponding right to use PTD and ABD for certain purposes related to an athlete's ability to perform on the job.

But who ultimately holds the rights to ownership, use and consenting to the use of

PTD and ABD by others? Do these rights extend to collecting PTD and ABD then selling it for entertainment? Who should receive financial compensation?



Another question is whether athletes are comfortable contributing personal health information that is typically not made publicly available and that could disadvantage them. Should they be required to divulge information that may be used to determine their contract value, the amount of play time they get in a game, the length of their career and their genetic predisposition to be an elite athlete?

## Will dystopian uses for data curb athlete contribution?

This data reveals information that trainers can use to develop personalized plans for athletes to improve their performance. How much influence should a performance plan have on an athlete's daily choices during the off-season or when he or she is not in practice or playing the sport? To what extent may teams and leagues require athletes to contribute

PTD and ABD? Or to conform to performance plans? Should teams and leagues be allowed to use the PTD and ABD that is collected to improve athlete and team performance for monetized purposes – say to sell it to fantasy sports operators and VR content creators?

Should athletes be required or compelled to contribute PTD and ABD as a function of their job or in exchange for the opportunity to participate in a sport they love? Is this the best approach? Collecting and using granular private health information available today and in the future as innovations improve can be invasive. How can athletes be incentivized to contribute their PTD and ABD, so they do not feel coerced or mined for data? Leagues and teams would be wise to consider ways to incentivize and reward athletes for contributing their personal health and biomechanical information.

## Bill of Rights and Other Solutions

While these questions are sorted out, there are several things athletes and others in the sports industry can do.

Athletes and their agents must be educated regarding the collection, use, dissemination and protection of PTD, ABD and other related rights. Players associations can protect athlete rights; however, they have their own interests at stake. Players associations are incentivized to license ABD to leagues, teams, and content creators. These parties include broadcasters, sponsors, fantasy sports



operators, virtual/augmented/mixed reality experience creators, video game makers, social media companies and others who create content and programming around professional athletes and incorporate PTD and ABD in their own product offerings. Each must contemplate the risks and rewards associated with using PTD and ABD.



Some initial considerations for addressing these challenges include:

- Athletes and their agents must be educated about athlete rights in relation to PTD and ABD and understand (1) who is collecting it, (2) the purposes for collection, (3) the impact on athletes and (4) how PTD and ABD are being controlled, processed and protected.
- Athletes must understand what constitutes consent – by athlete action and inaction – and its impact on the retention or erosion of certain legal rights.
  - An Athlete Bill of Rights can be utilized to outline, among other things, an athlete's rights to:
    - control his or her data and how it will be used,
    - have access to easily understandable information about privacy and security practices in relation to PTD and ABD,
    - expect that use of PTD and ABD will be limited to uses that do not unreasonably limit the athlete's right to use the data for his or her own purposes – including to generate revenue – and his or her privacy and property rights or ability to earn a living,
    - rely upon secure and responsible handling of PTD and ABD by those collecting, using, disseminating and protecting it,

- ensure accuracy of PTD and ABD and protect it from the risks of adverse consequences,
- reasonably limit PTD and ABD collection and retention, and
- be assured under contract that their PTD and ABD are handled by data controllers who comply with generally-accepted information security practices.



## Real wins come from managing PTD and ABD

### ATHLETE TAKEAWAYS

Athletes and their agents need to know about athlete rights in data and how to protect them. They must also know that even if an athlete does not give express written or verbal permission to collect and use data, silence may be considered consent. Athletes and their agents can protect privacy rights, property rights and revenue by ensuring contracts include terms from an Athlete Bill of Rights.

## WIN-WIN SCENARIOS



## Leagues and Teams

Understand emerging issues related to privacy, publicity, and other rights belonging to sports organizations, athletes and data partners. Poll athletes to learn how they view data collection and what will incentivize them to contribute data. Collaborate with athletes and unions to identify how data use may be optimized while simultaneously protecting each party's rights.



## Professional Associations

Proactively protect athlete privacy and property rights, as well as current and future revenue streams resulting from new technologies that will increase data collection and use. Leverage athlete rights in labor, player contract and collective bargaining agreement discussions. Incorporate technological solutions to manage data and corresponding rights.

## FAST FACTS

NBA

2017 CBA creates a "Wearables Committee"

MLB

2017 CBA states player use of wearables is voluntary & athletes must receive names of individuals who will receive data collected

NFLPA

First pro union to license player data

# COLLABORATION

## Athlete, League and Union Collaboration is Key

All organizations that collect, process, distribute and use PTD and ABD must be diligent to stay informed, shape the discussion, propose solutions surrounding ABD, ensure they are preserving rights, and comply with the law as it evolves. Solutions can mitigate risk while allowing for optimization of data use and revenue. Further, when each stakeholder proactively participates in the discussion and practices governing data collection and use, each is in a better position to protect its interests and the corresponding compensation for the value it brings to the sports industry.

How ABD is collected, used, disseminated and protected will continue to evolve. As it does, sports industry players can take a collaborative approach to mitigate legal risk and optimize opportunities for revenue generation for all parties who are involved in the contribution, collection, use and dissemination of ABD. Property and privacy rights can be balanced when encountered by sports industry players. Additionally, those parties involved with determining the treatment of ABD are encouraged to use their collective efforts to define ABD and its attending rights and responsibilities.



## Implementing Strategies Now Will Protect Stakeholder Interests in the Future

To resolve the inherent tensions that exist, leagues, teams and players associations can implement best practices for the collection, use, dissemination and protection of PTD and ABD that respect the rights of athletes who contribute it.



Athletes and their agents are wise to obtain as much information as possible to understand the implications of contributing PTD and ABD, control its use, and protect the athlete's rights. All sports industry players will benefit from putting contracts in place to memorialize rights and obligations with respect to the collection, use, dissemination and protection of PTD and ABD. All parties can implement strategies now to promote best practices for the commercialization of this data. Challenges are ahead; however, utilizing well-reasoned solutions and a collaborative approach will increase successful adoption of new technologies and maximize the benefits to the sports industry and its fans.



## Data Partners & Content Creators

Ensure that the right to use athlete PTD and ABD is both authorized by the athlete and licensed to your organization through the proper channels. Additionally, confirm that your organization has the right to use PTD and ABD for all purposes for which you plan to use and actually use this data. As a best practice, consider the rights of athletes and consider incorporating your own business practices that conform to an Athlete Bill of Rights.

**Contact Us for More Information**  
For strategies to protect and capitalize on your data, contact [Kristy@SportsDataStrategies.com](mailto:Kristy@SportsDataStrategies.com)

©2017 Sports Data Strategies, LLC