

10 Legal Challenges for the Sports Industry in 2024

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[RICHARD L. BRAND](#), [ERIC FISHMAN](#), [CHRIS L. BOLLINGER](#), [D. REED FREEMAN JR.](#), [SCOTT L. GATES](#), [JUSTIN A. GOLDBERG](#), [DAN JASNOW](#), [AMY \(SALOMON\) MCFARLAND](#), [STEPHEN P. HANSON](#), [FELICIA A. XU](#)

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The sports industry experienced a year of considerable change in 2023, presenting new opportunities for athletes, team owners, and corporate sponsors. One common theme is how technology and intellectual property are continuing to play an ever-increasing role in the sports industry — issues relating to artificial intelligence (AI), data privacy, and the new wave of media are front and center in 2024, as are some of the new kids on the block, including name, image, and likeness (NIL) deals and sports betting.

Some of the traditional aspects of the sports industry, such as sponsorships and financings, are creating new challenges and opportunities. The sports landscape is ever-changing, and we expect opportunities to continue to present themselves as we see sports betting expand and team ownership now attracting private equity and sovereign wealth funds as major investors. With these new areas of focus and opportunities come significant legal challenges that have the potential to upend the industry. With 2024 underway, we highlight 10 of the most pressing legal issues facing the sports industry this year, but given the wide range, we could have highlighted 20 or more issues.

1. NIL Laws

In the modern sports landscape, an athlete's NIL can provide opportunities for personal branding, endorsement deals, and revenue generation. However, with different state laws governing college athletes' compensation and no federal legislation, the NIL landscape is less than clear. National Collegiate Athletic Association (NCAA) President Charlie Baker has acknowledged the challenges and uncertainties surrounding NIL rights and proposed "giving schools more latitude to determine how they can best support their student-athletes and the ability to be more directly involved in NIL licensing programs." In early January, the NCAA Division I Council adopted new NIL rules that cover increased student athlete protections, disclosure requirements, education, standardized contracts, and school involvement in NIL activities.

2. Use of AI in Sports

AI is playing an increasingly crucial role in the sports industry, from enhancing player performance and injury prevention to improving fan engagement and media consumption. The National Basketball Association (NBA), for example, **unveiled** “NB-AI” during the 2024 All Star Game, an NBA-trained voice assistant that uses generative AI (GenAI) technology to personalize live game viewing. Similarly, during the 2023 Wimbledon Tennis Championships, the All England Lawn Tennis Club **used** generative AI technology from IBM to produce tennis commentary and captions for all video highlights packages. The tool allowed the All England Club to make commentary available for matches outside of Wimbledon’s Show Courts, which already have live human commentary. Leagues and teams considering AI-related applications, however, should proceed cautiously and deliberately. Among other things, AI tools implicate sensitive legal issues such as athlete publicity rights, data privacy considerations, and copyright protection. And while it offers many benefits, GenAI technology is ripe for abuse. The National Football League’s (NFL) chief information security officer, for instance, has **expressed** concern about the possibility that AI-generated deepfakes of popular NFL personalities could be used for phishing attacks or other forms of fraud, with significant adverse consequences for consumers, players, and the league. It is critical for stakeholders to consider these issues as they integrate AI into their operations and develop strategies to mitigate AI-related risks.

3. Generative AI Technology

Generative AI technology presents significant opportunities, as well as challenges, for athletes. Among other things, GenAI offers new ways for athletes to commercialize their publicity rights, such as by licensing the use of their AI likeness for product endorsement deals, gaming, and other marketing purposes. A well-crafted marketing strategy could allow an athlete to increase his or her endorsement earnings while reducing the total time commitment. To do so, however, athletes will need to develop proactive strategies to protect their GenAI revenue streams and deter infringement. This might include reviewing existing endorsement agreements to assess whether, and to what extent, they may limit future AI-related licensing opportunities; carving out AI-related uses in future agreements as a separate endorsement category; implementing a brand protection strategy to detect and prevent infringement; and registering intellectual property assets.

4. Rights of Publicity

Athletes and their legal counsel must consider the state-by-state patchwork of publicity laws, which can make enforcement a challenge. Currently, more than 30 states recognize the right of publicity, either by statute or common law. The scope of rights in these states varies, with at least one state (Michigan) refusing to protect voices, and several others refusing to recognize post-mortem publicity rights. Jurisdiction can therefore have significant ramifications for the athlete, at least for now. Moreover, the rise of deepfakes and advances in GenAI have raised concerns about the easy ability to mimic likeness and voice, and Congress has taken notice. A discussion draft circulated by US Senators in October 2023 entitled the “NO FAKES Act of 2023” would create a federal cause of action against anyone who uses a “digital replica” of a real person’s image, likeness, or voice without consent, with some exceptions. A bill introduced in the US House of Representatives in January, the “No AI FRAUD Act,” would create a federal cause of action for certain conduct involving “digital depictions” and “digital voice replicas” of real people without their consent. These proposed bills would not preempt existing state publicity laws but would create a powerful federal remedy for certain unauthorized uses of a person’s likeness.

5. Data Privacy

Since 2018, when the European Union’s (EU) General Data Protection Regulation (GDPR) took effect, and when California enacted the California Consumer Privacy Act (CCPA) (later amended by the CCPA of 2020 and supplemented by over a dozen similar laws around the United States), privacy issues have taken a front row seat for sports teams, leagues, and their sponsors and vendors. The GDPR (and its counterpart in the United Kingdom (UK)), as well as US state privacy laws, impose specific contract requirements when sports teams, leagues, and sponsors exchange personal information with one another or transfer

personal data from the EU and UK, and other jurisdictions, to the United States. There is also a large and growing trend involving private privacy litigation and regulatory enforcement in the United States. Teams and leagues, and their sponsors, can find themselves defending these cases where they employ third-party chatbots, cookies, pixels, and other tracking technologies, videos, session replay technology, biometric information such as AI-enabled facial recognition technology, and common analytics and advertising services. Now, more than ever, it is important to review your contracts and to identify and remediate these issues on your digital properties to avoid regulatory and private privacy enforcement.

6. Sports Betting

On February 11, Las Vegas hosted its first Super Bowl — a noteworthy achievement given Nevada's once exclusive status as the sole state permitting legal sports betting. Since the US Supreme Court's decision to overturn the Professional and Amateur Sports Protection Act (PASPA) in 2018, 38 states, alongside Washington, DC, and Puerto Rico, have legalized sports gambling, with many permitting mobile betting through applications like DraftKings and FanDuel. The legalities surrounding sports gambling are complex and vary significantly from state to state. Issues such as data rights, integrity fees, and the potential for the federal government to enact overarching legislation pose considerable challenges. Additionally, the advent of mobile and online betting raises concerns about consumer protection and geolocation verification. There have been highly publicized instances of professional players betting on sports, and in particular, their own sport. In addition, there have been an increasing number of articles and social media postings concerning some of the ill effects of sports betting, including the possibility of it leading to gambling addiction. Consequently, there has been a significant rise in backlash against sports betting due to these and other issues. These issues are emerging challenges, which stakeholders will need to be prepared to address and ensure that they are fully complying with all legal requirements.

7. The Future of Sports Media Rights and Entry into Streaming

The sports media landscape is experiencing increasing fragmentation with the rise in streaming services and digital platforms. We have seen a decline in the traditional modes of broadcasting. Gone is the old model of having 82 games broadcast on a combination of over the air and cable broadcasters. In 2024 and beyond, the competition to broadcast professional league content will continue to increase, with streaming services and digital platforms willing to pay a premium for these rights. This trend has already led to further realignment of the sports media landscape, as evidenced by the 2023 bankruptcy petition filed by Diamond Sports Group, which provides regional television broadcasts for teams in the NBA, National Hockey League, and Major League Baseball. As leagues enter into partnerships, rights holders must carefully consider how to allocate their rights to maximize revenue.

8. Sponsorship, Naming Rights, and Promotional Agreements

2023 saw a rapid expansion in both the number of large naming rights and sponsorship transactions, as well as an increase in the level of fees being paid. More and more entertainment venues have decided to monetize assets that historically were not considered to be a source of major revenues. We expect this post-COVID-19 boom to continue and accelerate in 2024 and beyond, particularly with the number of new venues and entertainment properties — both large and small — in the development and construction phase. Additionally, we have seen the types of naming rights and sponsorship transactions expand from primarily team and venue-related types to campus-wide deals (in the case of universities), entertainment districts, and other sport and non-sport related properties. We have also seen a rise in the number of project-wide digital signage networks to include entire multi-use projects rather than just venues. For all these reasons, we expect to see a significant increase in the number and complexity of these types of deals this year. With this increase in opportunities will come an increased demand for attorneys well-versed in the legal and business details of sponsorships, naming rights, and promotional agreements.

9. Institutionalization of Sports Investment

As franchise values have soared, the pool of individuals who can afford to own a professional sports team has shrunk to include only the ultra-wealthy. Spurred by changes to league rules and with returns that, by some measures, have significantly outperformed leading index funds, professional sports entities have become an attractive asset class for private equity funds and, more recently, sovereign wealth funds. Since 2019, all major American sports leagues, except the NFL, have adopted rules allowing private equity funds to buy minority stakes in teams. At its annual meeting in March 2024, the NFL is **reportedly** considering approval of a plan to allow private equity funds to acquire minority stakes in NFL franchises. 2023 saw five investments by private equity firms in sports teams, including acquisitions by Arctos Sports Partners, a firm with a portfolio of investments in professional sports franchises, of minority stakes in Paris Saint-Germain (valuing the club at about \$4.3 billion) and Tampa Bay Lightning (valuing the club at \$1.4 billion). In a new trend in 2023, sovereign wealth funds also became active participants in American sports. In June 2023, the PGA Tour reached a framework agreement with Saudi Arabia's Public Investment Fund to form a new governing body for men's professional golf, and the Qatar Investment Authority purchased a 5% stake in Monumental Sports & Entertainment (the parent company of the Washington Wizards, Mystics, and Capitals). The latter investment came after the NBA expanded its ownership rules to allow for minority investments in clubs by sovereign wealth funds, university endowments, and pension funds. As many owners seek liquidity for their significant, unrealized returns or for other purposes, such as new stadiums or succession planning, 2024 is likely to see increased activity from a variety of institutional investors in professional sports entities.

10. Expanded College Football Playoff and Conference Realignment

The 2024-25 NCAA College Football Season will be the first to feature an expanded 12-team College Football Playoff, up from four teams previously. This season will also showcase for the first time the expanded SEC (with Texas and Oklahoma joining), Big Ten (with USC, UCLA, Oregon, and Washington joining), Big 12 (with Colorado, Arizona, Arizona State, and Utah joining), and ACC (with University of California, Berkeley and Stanford joining). This continued expansion of major conferences will continue to have ramifications in 2024, with negotiations for the College Football Playoff and Mountain West Conference broadcast rights up for renewal. These expansions and conference realignment could raise numerous legal issues in 2024.