



The evolving landscape of personal data in international sports: athlete activism and commercial monetisation

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The ever-increasing volume of data being collected with more stringent data protection regulation, such as GDPR, has presented the sports industry with significant challenges around the collection and use of player data, as well as opportunities for sports organisations to monetise sports data.

One central issue is whether athlete consent is required for data utilisation, given that personal data encompasses anything from performance metrics to health information and that this data must be processed lawfully, fairly, and transparently. While consent is a cornerstone of lawful processing, sports organisations often use the data without explicit consent relying on the fact such processing is necessary for the legitimate interests of the organisation. This is permissible under GDPR.

However, this is far from a settled case. Players and representative bodies have begun to challenge the practices of the organisations, not least due to the sensitivity and potential commercial value of an individual's data.

Athlete activism

"Project Red Card" encompasses claims made by professional footballers against betting and gaming companies about the use of players' data. As of January 2024, more than 2000 professionals have joined the claims. It is reported that the players' case relates to statistical and performance data used for betting purposes and analytics and whether restrictions on the use of such data are being enforced. This includes medical data which is considered "special data" under GDPR and therefore is prohibited from being processed unless strict conditions are adhered to.

Project Red Card represents a potential turning point in sports tracking and analytics. As athletes strive to regain autonomy over their data, this case brings to the forefront vital issues regarding

consent, ownership, and ethical handling of such data.

Developments in relation to sports data in the UK

Sporting bodies and businesses commercialise in-play activities, bolstered by advances in mobile technology. This has turned live sports betting into a €2.8 billion industry annually. Lucrative contracts between sporting bodies and data companies are a key factor.

In the UK, TRP v SIS involved a dispute over the use of betting and race day data. TRP had agreements in place with certain racecourses to collect and distribute live betting and racing data to bookmakers. SIS held similar rights but continued to distribute the data after their agreement expired, using data provided by the tote.

The central issues at play in this action were whether SIS could be liable for the misuse of the data, and whether this misuse met the requirements of 'unlawful means conspiracy' under UK law (that being an agreement to deprive a person of something which is theirs, or to which they are or would be entitled, by deception).

The Court of Appeal held SIS liable for breaches of the relevant terms and conditions constituting unlawful means conspiracy, causing injury to TRP.

Unofficial scouts violating terms and conditions could be committing trespass, shifting the enforcement from merely disrupting unauthorised data collection to potential legal action for breach of confidence and unlawful means conspiracy.

The Sportsradar case in the UK revisited arguments similar to those in TRP v SIS. In this instance, Sportradar sought to challenge whether the appointment of a single exclusive data rights agent was anticompetitive. However, the cases settled without a definitive answer and Betgenius retained exclusive rights for a five-year period, with Sportradar agreeing not to scout those matches and accepting a secondary data feed from Betgenius instead.

In the ongoing case of IMG Arena v Stats Perform, IMG had been given exclusivity to collect and supply fast data for betting purposes for 44 football competitions across Europe. IMG has accused Stats Perform of sending unauthorised scouts to collect and allow Stats Perform use that data across the relevant competitions. IMG invoked arguments of unlawful means conspiracy and inducing breach of contract. The outcome of this dispute remains pending, with a trial date to be confirmed.

Developments in Ireland

In Ireland, the Data Protection Commission (DPC), announced in February of 2024 that it plans to send a survey questionnaire to a representative sample of voluntary and professional sports clubs

across Ireland. The focus of the survey will be on the use of technology to collect and analyse player-performance data, the awareness of clubs regarding their data protection obligations, and whether players are being informed of the processing of their personal data, with particular focus on young athletes and children.

The survey marks what could be the beginning of a new strategy by the DPC aimed at enhancing the understanding and implementation of GDPR within the Irish sports sector.

Conclusion

The intersection of digital rights and the sports industry has given rise to novel and complex legal issues, leading to a heightened emphasis on consent, transparency and providing lawful bases for processing, particularly in the context of sensitive personal data (i.e. heart rate, injuries and medical conditions). The monetisation of sports data by sports organisations, particularly to gambling companies, illustrates the commercial value that the data can hold.

Growing athlete activism demonstrates an improved awareness of data rights, highlighting the challenges associated with relying solely on consent for the processing of personal data. With that, there is certainly potential to have personal player data as a type of IP in that it could be licensed and commercial value derived from it - this may become a budding athlete economy.

How Ogier can help

Ogier is the leading sports law firm in Ireland and advise on all challenges that arise for sports organisations, including advising on sponsorship, broadcasting and venue agreements, and investment in sports organisations, contact our team for more information or visit [Sports | Ogier](#).

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