

## **Image Rights of Sportspersons: Increasing the Ambit of Privacy**

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### **Abstract**

*Image rights represent the ability of an individual to control the use or portrayal of their identity in public, something which should ideally be within the sole control of that individual. However, the presence of miniscule legislative backing along with the views of large corporations have shown otherwise. Image rights, especially of players, present an attractive commercial opportunity, often forming a huge source of earnings for clubs, national teams and even video game franchises. However, the protection and treatment of image rights of athletes has started a controversy where players are now recognizing the value of these rights and the lack of control they possess over their use. Large corporations such as EA Sports have shown an utter disregard for the right of a player to control or even cash in on the use of their image, bringing forth the question whether the current protection of image rights is sufficient. This study has uncovered the sheer lack of protection available to these rights in most countries, with some jurisdictions failing to recognize the right of a player to control their identity. This study has analyzed and brought forth the flaws in the system, whilst highlighting the immense economic potential for both athletes and clubs.*

**Keywords:** Image Rights, Sports, Players, Contractual Rights, Protection of Rights.

### **Introduction**

The right to privacy has been enjoying the spotlight in recent times, being the newest addition to the Fundamental Rights enshrined in Part III of the Constitution of India.<sup>4</sup> Even on an international scale, authorities have been grappling with the demand for an ever-increasing list of rights under the ambit of privacy. To fuel the fire, we are in the age of the internet, where information transcends national boundaries with the ease of communicating with a next-door neighbor, highlighting the need to upgrade the protection available to this information. Privacy has always revolved around the protection of sensitive personal data, but the evolution of technology begs the question about whether it is time to look beyond sensitive personal data and protect other aspects of data available on the internet including the use of an individuals' identity. The exception to the protection of sensitive personal data is if it is available on a public platform.<sup>5</sup> However, it is now time to look beyond this hindrance and find a way to protect the use and portrayal of an individuals' image and identity on public platforms, especially without the consent of the individual.

In today's world, athletes are nothing less than celebrities, with likes of Cristiano Ronaldo amassing a whopping 320 million followers on Instagram. Much like any other celebrity, the association of an athlete's name with a brand or entity can drastically increase the entity's following and popularity. Even though information or even a picture of an athlete is easily

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<sup>4</sup> Justice K.S. Puttaswamy and Ors. v. Union of India and Ors., AIR 2017 SC 4161.

<sup>5</sup> Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011, Gazette of India, pt. III sec. 3(i) (Apr. 11, 2011), Rule 3.

available on the internet, does this mean that anyone can use this to associate these athletes with any brand or entity. This boils down to the protection available to image rights of athletes, and the ability to prohibit its non-consensual use.

### Collective Image Rights v. Individual Image Rights

The High Court of England and Wales, in *Proactive Sports Management v. Wayne Rooney*<sup>6</sup>, defined image rights as:

*“Image Rights means the right for any commercial or promotional purpose to use the Player’s name, nickname, slogan and signatures developed from time to time, image, likeness, voice, logos, get-ups, initials, team or squad number (as may be allocated to the Player from time to time), reputation, video or film portrayal, biographical information, graphical representation, electronic, animated or computer-generated representation and/or any other representation and/or right of association and/or any other right or quasi-right anywhere in the World of the Player in relation to his name, reputation, image, promotional services, and/or his performances together with the right to apply for registration of any such rights.”*<sup>7</sup>

This definition, no doubt a step in the right direction, borders on vague and can become complicated for athletes with respect to the ambit of rights covered under this definition. Nevertheless, this definition does outline two categories of rights available: (a) personal rights; and (b) property rights. While on one hand personal rights are non-transferrable and involves the players right to privacy, property rights are transferrable and can be granted to other parties through licensing and other contractual agreements.

The use of image rights is seen in various facets of the sporting industry, be it product advertising, TV shows and movies, and even video games. Even the FIFA series, the world’s foremost football video game launched by the Electronic Arts Sports Division (“**EA Sports**”) over two decades ago, has faced a myriad of disputes with the usage of image rights. EA Sports is no fresh face when it comes to controversies, its most recent being the ‘loot box’ gameplay model which allowed players to purchase additional upgrades. This gave an unfair advantage to users with large spending capabilities, leading to antitrust issues, particularly with games like FIFA and Star Wars. EA Sports did try to correct some these issues in the newly launched FIFA 21 but this has not stopped some of the biggest icons in the gaming industry from speaking out.

With respect to image rights, EA Sports faced backlash in early December of 2020, when Zlatan Ibrahimović, current striker for AC Milan took issue with the use of his image in FIFA without consent. This football legend stated that he had never consented nor was he aware of either FIFPro (International Representative Union Federation of Footballers) or his current club, AC Milan, granting authority to use his image as part of the FIFA video game.<sup>8</sup> This sentiment was resonated by other players such as Welsh International and Real Madrid player, Gareth Bale.<sup>9</sup> This, along with allegations by Zlatan that EA Sports was illicitly profiting from

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<sup>6</sup> *Proactive Sports Management Ltd. v. Wayne Rooney and Ors.*, [2010] EWHC 1807 (QB).

<sup>7</sup> *Id.* at 187.

<sup>8</sup> Ali Humayun, *Zlatan Ibrahimovic hits back at EA Sports over image rights row*, THE ATHLETIC (Dec. 3, 2020, 11:36 PM), <https://theathletic.com/news/fifa-21-zlatan-ibrahimovic-ea-sports/TGrSxY75FMv>.

<sup>9</sup> Gaurav Bhatt, *Explained: Why Ibrahimovic and Bale are questioning the use of their images in FIFA 21*, THE INDIAN EXPRESS (Nov. 26, 2020, 9:49 AM), <https://indianexpress.com/article/explained/fifa-21-video-game-series-zlatan-ibrahimovic-gareth-bale-image-rights-7068569/>.

the unauthorized use of his image has rocked the sporting world, drawing attention to the misuse of an athletes' image.

In response to Zlatan's allegations, EA Sports stated that the company acquired licences for image rights from various leagues and teams. This was later rebuffed by Zlatan who claimed that he was referring to individual rights of players, and not the collective rights which EA Sports was relying on. Later Mino Raiola and Jonathan Barret, who have been and currently are agents for some of the biggest football stars, including Zlatan and Bale, stated that FIFPro and FIFA are unfairly profiting from the unauthorised use of image rights of players.<sup>10</sup>

To make matters complex, FIFPro's involvement in the matter was questioned as pre-existing legislations governing the use of image rights have stated that organisations, such as FIFPro, have the authority to sell and licence image rights only of those players who belong to countries which are members of FIFPro. In case a player belongs to a nation which is not a member of, or does not have any such agreement, with FIFPro, players' names and image rights belong to the player themselves or to the club, the leagues they play under or the national federation of the country they represent.<sup>11</sup> Therefore, in order for a football game such as FIFA to be using the image rights of players, they either require a specific agreement with the players or their clubs, as they can't per se acquire these rights through deals with leagues, barring the English Premier League which has such a contract in place.<sup>12</sup>

EA Sports has consistently maintained the stand that they have contracts in place with all English Premier League clubs, including Tottenham Hotspurs, in the case of Bale, and a direct agreement with AC Milan, in the case of Zlatan, for the use of image rights of players.<sup>13</sup> This has led a pandemonium regarding the effective right of players to control the use of their own identity. Contrary to the stand of EA Sports, the Universal Declaration of Player Rights, as implemented by FIFPro in 2017<sup>14</sup>, prescribes that every player is duly authorised to have their name, image as well as their performance protected, which may only be utilised commercially after seeking voluntary consent.<sup>15</sup>

### **Brand Football: The Contractual Nature of Image Rights**

The English Premier League, on the other hand, has opted for a different approach, choosing to commercialize these rights and sell them as a bundle to entities such as EA Sports. The Premier League Handbook, which is the primary source for contractual obligations of a player, defines image rights to include the name of the player, their nickname, their overall repute and fame, as well as their image, signature, voice and film and photographic portrayal, which may be a virtual and/or electronic portrayal. In addition, it may also include their reputation, replica,

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<sup>10</sup> Tom Hopkinson, *Zlatan Ibrahimovic and Gareth Bale 'right to pursue FIFA 21 over image rights breach*, MIRROR (Nov. 28, 2020, 7:38 PM), <https://www.mirror.co.uk/sport/football/news/zlatan-ibrahimovic-gareth-bale-right-23083406>.

<sup>11</sup> Hopkinson, *supra* note 7.

<sup>12</sup> *Id.*

<sup>13</sup> James Dutton, *Zlatan Ibrahimovic and Gareth Bale are going into battle with EA Sports for using their images in FIFA video games. The case could involve thousands of players and a multi-million pound court case*, MAIL ONLINE (Nov. 25, 2020, 2:31 PM), <https://www.dailymail.co.uk/sport/football/article-8985623/What-exactly-going-war-FIFAs-image-rights.html>.

<sup>14</sup> FIFPro, *FIFPro Supports Universal Player Rights*, FIFPRO (Jan. 28, 2020), <https://www.fifpro.org/en/about-us/fifpro-supports-universal-player-rights..>

<sup>15</sup> World Players Association, *The Universal Declaration of Player Rights*, Apr. 7, 2017, Art. 12, <https://www.fifpro.org/media/md2efzpd/universal-declaration-of-player-rights-english-version.pdf>.

and all their other characteristics such as shirt number, etc.<sup>16</sup> It is also mandatory for players to sign an image contract which has been defined in the Handbook as, “*any contract whereby a Player transfers to any Person the right to exploit his image or reputation either in relation to football or non-footballing activities.*”<sup>17</sup> Further, every player in the league is mandatorily under an obligation to comply with ‘any reasonable request’ made on behalf of the league in regards to the players image being used to enable the league in furthering its commercial goals and objectives, such as broadcasting (both nationally and internationally), commercial contracts, radio contracts etc.<sup>18</sup> However this license is subject to certain restrictions being that the Premier League should not use the images of less than four players contracted to the Premier League clubs, each from a different club, on any one product (where the size of the product so permits).<sup>19</sup>

Apart from this, Premier League players are required to sign the Standard Premier League Players Contract that grants the club the right to take photographs of the player, which may either be individually or even as a player of the squad, and in turn, utilise the same for the purpose of promotion of the club and the Premier League. This includes the right to manufacture, sale, distribute, advertise, market, and promote football related products (including the strip) as well as services (including those which may be endorsed or produced under an existing licence from the club).<sup>20</sup>

These collective licensing agreements show the lack of recognition of image rights in the United Kingdom.<sup>21</sup> There is a disregard for the privacy rights associated with the ability to control personal portrayal and is instead protected with a patchwork of intellectual property legislations. However, there still exists a ray of hope, in the form of a landmark tax appeal in *Sports Club v. H.M. Inspector of Taxes*<sup>22</sup> where the popular London club, Arsenal FC, successfully established that payment made by the club to offshore entities with the object of exploiting the commercial image rights of their players, David Platt and Dennis Bergkamp, would amount to capital gains and therefore be non-taxable in the UK as part of income.<sup>23</sup>

### Commercial Value of Image Rights

It also must be understood that image rights constitute a significant portion of the contractual value of a player. For instance, Paris Saint-Germain (“PSG”) had earned nearly one million euros from selling jerseys of Brazilian superstar Neymar on the first day of his presentation.<sup>24</sup> In addition, both Cristiano Ronaldo and Lionel Messi have their own brands that sell clothes, undergarments and even perfume. This along with their significant social media presence enables their respective clubs to amass huge amounts through the sale of merchandise. The enormous potential to earn from these applications of image rights has led to the belief that

<sup>16</sup>PREMIER LEAGUE, HANDBOOK, 2020-21 EDITION (Football Association Premier League Limited, 2020), Art. 1.141, <https://resources.premierleague.com/premierleague/document/2020/09/11/dc7e76c1-f78d-45a2-be4a-4c6bc33368fa/2020-21-PL-Handbook-110920.pdf>.

<sup>17</sup> *Id.* at Art 1.89.

<sup>18</sup> *Id.* at D.2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at Clause 4.6, Form 14, English Football League Contract.

<sup>21</sup> Hopkinson, *supra* note 7.

<sup>22</sup> *Sports Club and Ors. v. H.M. Inspector of Taxes*, [2000] STC (SCD) 443.

<sup>23</sup> *Id.*

<sup>24</sup> Fernanda Chamusca, *Image Rights of Footballers*, LEX SPORTIVA (Aug. 23, 2019), <https://lexsportiva.blog/2019/08/23/image-rights/>.

there should be a free and fair approach while allocating rights in player contracts, instead of cutting out the player from the potential to earn significantly more.

In the present day, most players can earn as much as 20 percent of his basic salary through the licensing of his image rights, which can cost clubs tremendous amounts of money that clubs hope to recover through commercial deals of the clubs that the players endorse.<sup>25</sup> Hence overregulation of such activities can prove to be extremely burdening for both the clubs and players.

### Image Rights and Brand Consistency

Image rights of players representing their national teams presents an interesting conundrum. Given that most football players represent both club and country, this brings about the issue of brand consistency. There are stars like Harry Kane (Tottenham Hotspurs and England) and Virgil van Dijk (Netherlands and Liverpool FC) who wear Nike for both club and country. This presents an attractive opportunity for Nike as they get to cash in on the image rights of the player for both club and national team merchandise. However, athletes like Lionel Messi are caught in between conflicting brand endorsements as Nike is the sponsor of FC Barcelona whereas the Argentine National team is sponsored by Adidas. Technically, wearing either Adidas for Argentina or Nike for Barcelona could open him up to liability under contract violation by the other brand.<sup>26</sup> However, this issue was addressed by the European Court of Justice in the case of *Christelle Delière v. Ligue Francophone de Judo et Disciplines Associées ASBL*<sup>27</sup> whereby the Court opined that the relationship between a player and the National Federation is independent of any contractual obligations associated with the player's club.

### Foreign Legislations Governing the Use of Image Rights

Despite the significant financial importance, and increased awareness about the value of image rights there are no international standards or framework for the same. Unlike the Berne Convention for the protection of intellectual property on an international scale, image rights find protection only under certain domestic legislations. Even among the countries actively known for their dominance in sports, only certain countries like USA and France have legislations for image rights, while the likes of UK have not even given direct recognition to these rights.<sup>28</sup> This was clearly stated in the case of *Douglas & Ors. v. Hello! & Ors.* where it was held that, "*under English law it is not possible for a celebrity to claim a monopoly of his or her image, as if it was a trademark or brand. Nor can anyone (whether celebrity or nonentity) complain simply of being photographed.*"<sup>29</sup> Hence, the alternative that most people resort to is using the damage of passing off through a tort suit as can be seen in a recent court of appeals case involving Rihanna and Topshop where the court decided that the Topshop had wrongly misinterpreted Rihanna's endorsement of the product.<sup>30</sup>

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<sup>25</sup> DANIEL GEEY, *DONE DEAL: AN INSIDER'S GUIDE TO FOOTBALL CONTRACTS, MULTI-MILLION POUNDS TRANSFERS AND PREMIER LEAGUE BIG BUSINESS* (Bloomsbury Sport, 2019).

<sup>26</sup> *Id.*

<sup>27</sup> *Christelle Delière v. Ligue Francophone de Judo et Disciplines Associées ASBL*, C-51/96, C-191/97, [2000] ECR I-2549.

<sup>28</sup> Dr Corinna Coors, *Are sports image rights assets? A legal, economic and tax perspective*, 15 THE INTERNATIONAL SPORTS LAW JOURNAL 66, 64-68 (2015).

<sup>29</sup> *Douglas and Ors. v. Hello Limited*, [2001] 2 WLR 992.

<sup>30</sup> *Fenty & Ors. v. Arcadia Group Brands Ltd & Anr.*, [2015] EWCA Civ 3.



In addition to this, these cases have a very high burden of proof and only in case there is a legitimate claim of misrepresentation of a celebrity's rights can cases be brought up, as opposed to mere usage of a celebrity's image rights.<sup>31</sup> The alternative is to use a mixed bag of trademark and copyright laws, along with confidentiality, etc.<sup>32</sup> This alternative was further strengthened by certain British Dependencies such as the states of Guernsey. This is a British Dependency Island that has enacted the Bailiwick of Guernsey Image Rights legislation that allows people to register their intellectual property rights including personality rights within their jurisdictional limits.<sup>33</sup>

### United States of America

Looking at other countries such as the United States of America, personality rights were first devised as a concept by Judge Jerome Frank in 1953 in the case of *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc* whereby it was held that all players part of the Major League Baseball ("MLB") had a property right over their images.<sup>34</sup> Such rights are in turn guaranteed by the principles of recognition of the economic value of an 'individual's identity' along with 'unjust enrichment' as set out in *Cardtoons, L.C. v. Major League Baseball Players Ass.*<sup>35</sup> In this case, it was laid down that everyone's economic rights of individuality should be protected, and further that other people should not enrich themselves at someone else's expense.

### Germany

Alternatively, looking at Germany, the first and second article of the German Constitution protect against infringement of personality rights, as propounded in the case of *Kahn v. Electronic Arts GmbH*, where retired Germany and Bayern Munich legend Oliver Kahn, sued EA sports for the use of his name and image without prior consent, despite him not being a member of FIFPro.<sup>36</sup>

### Indian Legislations Governing the Usage of Image Rights

The right to publicity is an inherent right guaranteed by the constitution under Article 19 and 21, as held in *ICC Development (International) v. Arvee Enterprises*.<sup>37</sup> Publicity rights are an integral part of privacy rights, as guaranteed in the Puttaswamy case<sup>38</sup>, and along with publicity rights come the right to control your image and personality rights. Even though there exists no legislative framework for the protection of image and personality rights, the judiciary has filled

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<sup>31</sup> Luca Ferrari, Stella Riberti, 'Comparing How Image Rights Laws Apply To Sport In The US, UK And Europe', LAW IN SPORT (December 22, 2015), <https://www.lawinsport.com/topics/item/comparing-how-image-rights-laws-apply-to-sport-in-the-us-uk-and-europe>.

<sup>32</sup> Ian Blackshaw, 'Understanding Sports Image Rights', WORLD INTELLECTUAL PROPERTY ORGANISATION (July 29, 2021), [https://www.wipo.int/ip-outreach/en/ipday/2019/understanding\\_sports\\_image\\_rights.html](https://www.wipo.int/ip-outreach/en/ipday/2019/understanding_sports_image_rights.html).

<sup>33</sup> 'What are Image Rights', INTELLECTUAL PROPERTY OFFICE, <http://ipo.guernseyregistry.com/article/103037/What-are-Image-Rights>.

<sup>34</sup> *Haelen Laboratories v. Topps Chewing Gum*, 202 F.2d 866 (1953).

<sup>35</sup> *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 838 F. Supp 1501 (N.D. Okla. 1993).

<sup>36</sup> *Kahn v. Electronic Arts GmbH* Unreported, 13 January 2004, OLG Hamburg.

<sup>37</sup> *ICC Development (International) v. Arvee Enterprises*, 2003 VIIAD Delhi 405, 2003 (26) PTC 245 Del, 2004 (1) RAJ 10.

<sup>38</sup> *Justice K.S. Puttaswamy and Ors. v. Union of India and Ors.*, AIR 2017 SC 4161.

this gap by taking up cases and protecting these rights under the ambit of the abovementioned constitutional provisions.<sup>39</sup>

A variety of case laws have been used to fortify this view:

In *Titan Industries v. M/S Ramkumar Jewellers*, it was observed that, “*When the identity of a famous personality is used in advertising without their permission, the complaint is not that no one should not commercialize their identity, but that the right to control when, where and how their identity is used should vest with the famous personality. The right to control commercial use of human identity is the right to publicity.*”<sup>40</sup>

In the priorly mentioned case of *Justice K. S. Puttaswamy (Retd.) v. Union of India*, the court held that, “*Every individual should have a right to be able to exercise control over his/her own life and image as portrayed to the world and to control the commercial use of his/her identity. This also means that an individual may be permitted to prevent others from using his image, name and other aspects of his/her personal life and identity for commercial purposes without his/her consent.*”<sup>41</sup>

Even looking at the commercial aspects of such usage by third party firms, the case of *The Indian Singers Rights v. Chapter 25 Bar And Restaurant* saw the petitioner plead that their performance in public was used by the respondents’ restaurant without paying royalty. The court held that the use usage was commercial, and hence royalty must be paid.<sup>42</sup>

This makes it clear that the involvement of the personality rights of a player, or any individual for that matter, for commercial purposes would require consent of that player or individual, the non-compliance would be an infringement of these rights.

### Remedies for The Infringement of Image Rights

Just like every other facet of the legal world, there exist several legal remedies that are available to a player in the case that their image rights are violated. These include injunctions, which may be either temporary or permanent, all the way to awarding damages. In order to assess the extent of damages, a ‘lost license fee’ rule is often made applicable in a number of European jurisdictions where the extent or quantum of the damages is arrived at by the quantum the offending party would have to pay in the case that he was actually granted for the license and could exploit the image rights of the concerned player,<sup>43</sup> i.e., the amount the party whose rights have been infringed would have got if he were selling the license. Despite the presence of this redressal mechanism, it hardly appears to be viable option for many players in Europe in contrast to other regions like USA due to the low compensation granted in European jurisdictions. For instance, in Switzerland the Swiss courts very sparsely award more than between CHF 10,000 (USD 10,053) and CHF 20,000 (USD 20,107) in cases of infringements

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<sup>39</sup> Lakshmi Kruttika Vijay, Rohan Sharma, ‘Celebrities: Just what are their personality rights?’, ANAND AND ANAND (December 27, 2016), <https://law.asia/celebrities-just-what-are-their-personality-rights/>.

<sup>40</sup> *Titan Industries v. M/S Ramkumar Jewellers*, 2012 (50) PTC 486 (Del).

<sup>41</sup> *Justice K.S. Puttaswamy and Ors. v. Union of India and Ors.*, AIR 2017 SC 4161.

<sup>42</sup> *The Indian Singers Rights Association v. Chapter 25 Bar And Restaurant*, CS (OS) 2068/2015.

<sup>43</sup> Ian Blackshaw, ‘*Understanding Sports Image Rights*’, WORLD INTELLECTUAL PROPERTY ORGANIZATION (2020), [https://www.wipo.int/ip-outreach/en/ipday/2019/understanding\\_sports\\_image\\_rights.html](https://www.wipo.int/ip-outreach/en/ipday/2019/understanding_sports_image_rights.html).

of sports image rights.<sup>44</sup>

Yet again, infringing parties like EA Sports adopt different defence strategies justifying the usage of the players. In the USA, companies using such rights also claim the defence of the 'Transformative Use' test by stating that they intend to transform the players *via* the game, or in other words, adding to the creative identity of the players through the game. Therefore, they claim that they should be protected under the First Amendment, bearing due regard to their freedom of expression.<sup>45</sup>

The other commonly used defence against violation of image rights is the defence of public interest involved in the game. Very recently, EA Sports lost a legal battle to the National Football League (NFL), where EA Sports used the image rights of NFL players without any licensing agreements in place. The court in this case rejected EA Sports' claim that the usage was incidental and in public interest and thereby deserved protection under the First Amendment of the US Constitution.<sup>46</sup>

In Brazil in June 2020, 450 Brazilian players won a settlement after the Union of Athletes of Santa Catarina brought a case against EA Sports and its game FIFA for reproducing the players images and in turn their image rights without licensing agreements.<sup>47</sup> This has importance in regards to the allegations brought forth by Zlatan and Bale, though their applicability in the UK can be questioned.<sup>48</sup> The court in this case held that the licensing agreement with FIFPro didn't involve the Brazilian players as FIFPro licensing agreements are invalid in the territory of Brazil.<sup>49</sup>

Therefore, while the matter of image rights remains an undecided issue, an international framework in the form of the Universal Declaration of Player Rights provides strong backing to contracts and has made a strong stride towards protecting the image rights of players. An important facet in the machinery of image rights for players as well as clubs involved is the valuation of such image rights of players. FIFA's Financial Fair Play Rules are relatively stricter regarding payments made towards image rights as compared to other payments under contract. The most ideal practice would be for the contracting parties, particularly the players, to carefully read and comprehend the terms of the image contracts to ensure avoiding being exploited in an age when the commercial nature of football is probably of greater importance than the aesthetic nature of the game on the field.

## Conclusion and Recommendations

In conclusion, it becomes clear that the question with regard to the ownership of the image rights of players is a highly contested issue that largely revolves around the contractual nature of players with their clubs or leagues, or alternatively their contractual relationship as members of various players organisations such as FIFPro, that in turn regulate its usage.

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<sup>44</sup> *Id.*

<sup>45</sup> Carolina Pina, 'The Role of IP for Athletes and Image Rights', GARRIGUES (2020), [https://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=291665](https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=291665).

<sup>46</sup> Lawrence Hurley, 'Supreme Court Lets NFL Players' Image Rights Claims Proceed', INSURANCE JOURNAL (March 21, 2016), <https://www.insurancejournal.com/news/national/2016/03/21/402495.htm>.

<sup>47</sup> Gabriel Eguinoa, 'EA Sports vs Image Rights in Brazil: Why can't I play with Brazil on FIFA 2020', LEX SPORTIVA (JULY 22, 2020), <https://lexsportiva.blog/2020/07/22/easportsvimagerightsinbrazil/>.

<sup>48</sup> Hopkinson, *supra* note 7.

<sup>49</sup> *supra* note 66.



This contractual relationship manifests itself in different forms, as seen in Brazil where none of the players were members of FIFPro and rights belonged to players, as opposed to countries like UK and Italy where leagues and clubs own the rights of their players. The cases from USA also demonstrated that image rights are much more than incidental usage of the players likeness and, therefore constitutes a violation of the players' personality rights. This makes it clear that the treatment of player contracts of various regions dictates the usage of a players' image rights.

Looking at this situation from the point of domestic legislation, there is a lack of legislations to protect image rights. The most favorable outcome would not only be to have domestic legislation, but also for legislations from all countries to have a symmetrical view. Given that players often switch clubs, requiring them to move to different leagues and jurisdictions, uniform views reduce the hassle of understanding and renegotiating the treatment and protection of image rights.

Therefore, it is in the best interest of players to understand their contractual obligations and use of personality and likeness rights before signing on with different clubs, or their national teams for that matter. This applies both in the case where players are members of FIFPro, due to their countries being members, and therefore needing to be aware that their personality and likeness rights are transferred through such a relationship, as well as players who are not members of FIFPro and sell their personality rights either individually or by signing with a club where the club or league has control over such rights. It is of utmost importance that players understand these various contractual obligations to avoid dispute and loss of economic interest in the case that could have otherwise been avoided or better negotiated. This becomes ever more important in this present day where the income earned from outside the field makes up a huge chunk of the revenue that players earn, and for some sports even overtaking their on-field payments. This can be seen from the likes of Tiger Woods where his income for 2010 being in the high 70 million for his off the course activities as opposed to a comparatively low 2 million for his on the course prize winnings<sup>50</sup>. Even in football, Cristiano Ronaldo, in 2013, earned around half his total income of 52 million in that year just from his commercial endorsements.<sup>51</sup>

In addition, such agreements are also very important to clubs where large chunks of player salaries are paid through the payment of fees for image rights and further used to avoid the payment of taxes as payments for image fees are considered to fall under capital gains and thereby not taxable income. Hence, the importance of image and personality rights is a complex yet highly interesting nuance in the field of sports law that revolves around the various contractual obligations imposed on players around the world. The better such agreements are understood, and more clarity brought to them, the more of its benefits could be availed by all the parties at hand being clubs, players and organizations alike in regards to dispute settlement and greater income realization for players.

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<sup>50</sup>David Lange, *Career earnings of Golf player Tiger Woods from 1996 to 2016*, STATISTA (Nov. 25, 2020), <https://www.statista.com/statistics/411993/earnings-of-tiger-woods/>.

<sup>51</sup> '#3 Cristiano Ronaldo', FORBES (Apr. 6, 2021), <https://www.forbes.com/profile/cristiano-ronaldo/?sh=7a1ac325565d>