ATHLETES DIGITAL REPLICAS

How do things play out in practice?
A tour d'horizon of contracts,

Dr. María Balsa Cadenas

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ATHLETES DIGITAL REPLICAS

- The WIPO Conversation on IP and Frontier
- Technologies
- How do things play out in practice?
- A tour d'horizon of contracts

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WHAT IS A DIGITAL REPLICA?

"Digital replica" is "a video, image, or audio recording that has been digitally created or **manipulated to realistically but falsely depict an individual.**

An example: highly realistic avatar performing actions

Report of the register of copyrights

US Copyright and Artificial Intelligence, Part 1 Digital Replicas Report

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DIGITAL REPLICA OPPORTUNITIES

- Rightsholders **could enhance fan experience** through athletes digital replicas
  - -Innovative content: 4D animated content
  - -Immersive experiences
  - -Players Activations : Avatar, digital twins

-New licensing rights and sponsoring opportunities

-New revenues streams for rightsholders and player

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DIGITAL REPLICA CHALLENGES

- **A transparent** Data Processing for a sustainable business.

- If player´s data processing is not consistent with GDPR standards or similar standards, claims may increase significatively

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CLAIMS: SCAMS USING ATHLETES DIGITAL REPLICAS ATHLETHES SEEMING TO ENDORSE GAMES, APPS AND PROJECTS

Oversight Board

WHO WE ARE OUR IMPACT WHAT YOU CAN DO

NEW CASE ON SCAMS FEATURES AI VIDEO OF BRAZILIAN SOCCER LEGEND RONALDO SEEMING TO ENDORSE ONLINE GAME

February 6, 2025

https://www.welivesecurity.com/es/estafas-enganos/alerta-deepfake-messi-utilizado-promover-aplicacion-fraudulenta/

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welivesecurity BY eset

Noticias, opiniones y análisis de la comunidad de seguri

CONSEJOS DE SEGURIDAD SEGURIDAD PARA EMPRESAS INVESTIGACIONES TEMAS

Estafas Y Engaños

Alerta por deepfake de Lionel Messi para promover una aplicación fraudulenta

Estafadores recurrieron al deepfake para superponer la voz de Lionel Messi en un video público, haciéndolo promover una aplicación que promete ganancias irrealmente altas podemos reconocer y prevenir estos engaños?

Martina López

25 Mar 2024 • 3 min. read

La imagen del jugador colombiano fue usada para robar a los usuarios en Instagram. (Instagram)

Para crear el contenido, los ciberdelincuentes toman registros de voz del futbolista y de la presentadora de noticias, para generar copias cercanas a las voces reales.

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CLAIM: IMAGE RIGHTS IN VIDEOGAMES OF EX-FOOTBALLER

https://iusport.com/art/121578/un-exfutbolista-del-braga-reclama-778000-por-usar-su-imagen-en-el-fifa?utm

Lunes, 27 de Octubre de 2025
ACTUALIZADA LUNES, 27 DE OCTUBRE DE 2025 A LAS 14:05:25 HORAS

Iniciar sesión | Regístrate

iusport

Actualidad | Tribuna deportiva | Tribuna jurídica | Dossier Iusport | Latinoamérica | Más Iusport | Agenda

Un exfutbolista del Braga reclama 778.000€ por usar su imagen en el "FIFA"

EFE / IUSPORT

Lunes, 02 de Enero de 2023

El Sheffield Wednesday, de la segunda inglesa, en venta tras declararse insolvente

https://bura.brunel.ac.uk/bitstream/2438/20150/1/FullText.pdf

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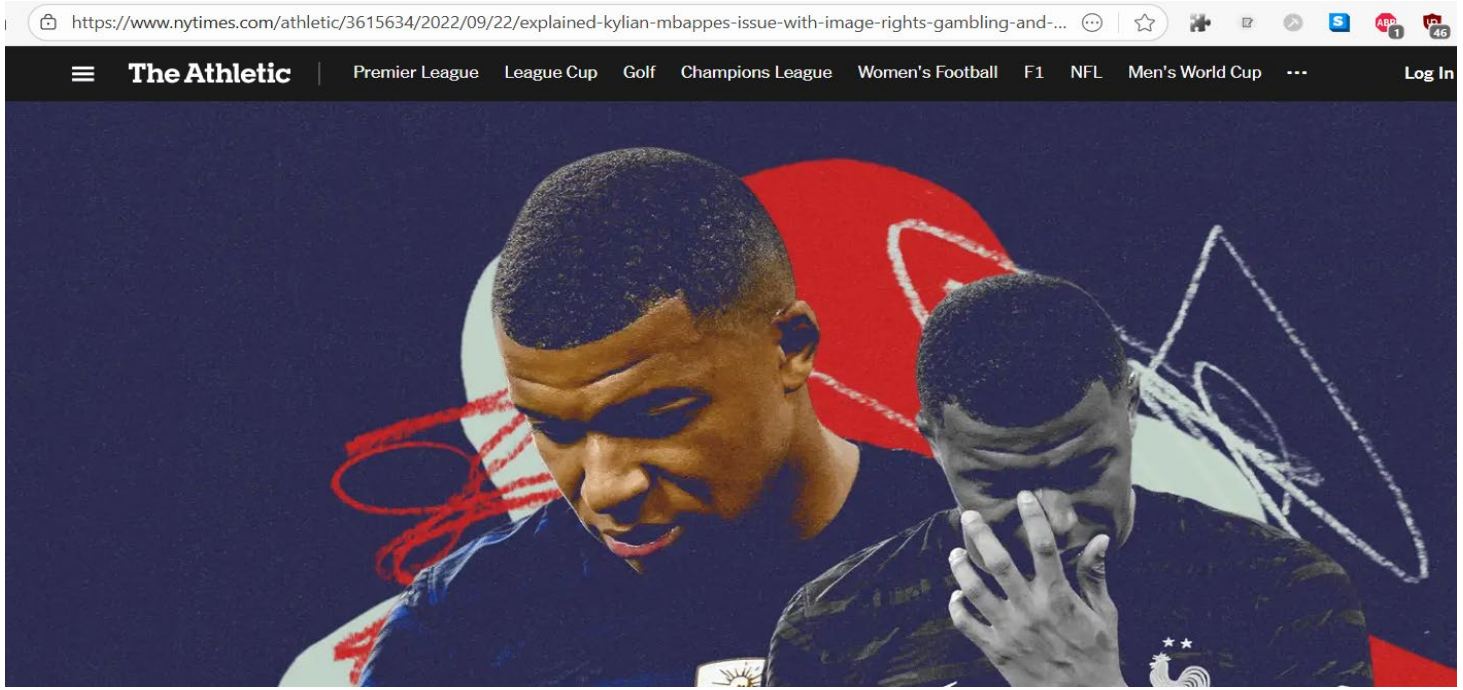
CLAIM IMAGE/LIKENESS NOT TO BE ASSOCIATED WITH GAMBLING WEBSITES AND FAST FOOD CHAINS

Mbappe and other players refuse to take part of commercial activities, associating their image with gambling websites and fast food chains.



https://www.nytimes.com/athletic/3615634/2022/09/22/explained-kylian-mbappes-issue-with-image-rights-gambling-and-kfcA major athlete (Mbappé) was asserting control over his image — specifically the kinds of brands with which his likeness could be associated.

CLAIM IMAGE/LIKENESS
COMERCIAL APPEARANCE IN SOCIAL-MEDIA POSTS.

Danish footballers receive compensation at High Court after successful representation by Spillerforeningen - FIFPRO World Players' Union

BET365 social media

Examples of posts from 2019 - 2021

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CLAIM MORE CONTROL OVER PERSONAL DATA PROJECT RED CARD STOP SHARING FOOTBALLERS PERSONAL

tps://www.digit.fyi/footballers-give-performance-data-sharing-a-red-card/

Share

Footballers Give Performance Data Sharing a Red Card

Elizabeth Greenberg
17 April 2025, 11.51am

Footballers and other sports people are challenging the personal data collected by third parties without their consent.

A growing number of football players are issuing "stop processing" orders to data processing and gambling firms over the use of their personal data, citing ethical dilemmas on how their health,

ComputerWeekly.com | IT Management | Industry Sectors | Technology Topics | Search Computer Weekly

Home > Big data analytics

NEWS

Footballers object to processing of performance data

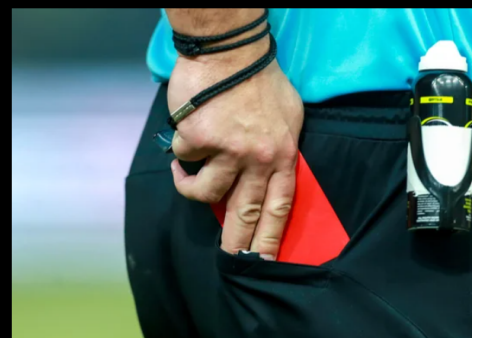
Football players are seeking to gain more control of their performance data through 'stop processing' requests, in an attempt to strike a better balance between firms' commercial interests and the data rights of footballers

https://www.legalsportsreport.com/67676/project-red-card-data-battle-us-implications/

LSR | MISSOURI | BETTING SITES | STATES | ONLINE CASINOS | SWEEPS CASINOS | NEWS | ABOUT US

Sports News

How Project Red Card Data Fight Could Affect US Sports Betting



Written By:

Published on:

CONTROL THE CREATION, USE, ALTERATION OF DIGITAL REPLICAS ACROSS DIFFERENT JURISDICTIONS

Across jurisdictions legislation may recognize athletes with the **right to control the use** of their own image, or other personal attributes (such as voice, name, likeness) , performance data and biometric or volumetric data.

These rights protect **inseparable legal assets**

1- **an inner manifestation** of the persona, integrity and respect for persona

2-an **incorporeal asset** with a commercial value **(**of the digital replica of a person)

Legal frameworks **may remain fragmented and inconsistent** including different rights for the refer assets protection: Rights of publicity and right of privacy (US), passing off, defamation, Privacy rights(UK) Outside the Us, personality rights, image rights, remuneration rights **and more recently** personal incorporeal Data Protection rights **(GDPR Standards).**

The basis of this right may be: international treaties (human rights), constitutional or legal basis.

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CONTROL THE CREATION, USE, ALTERATION OF DIGITAL REPLICAS ACROSS DIFFERENT JURISDICTIONS

-**Violation or such rights may occur when** someone:

fixes, creates, reproduces, disseminates, or alters a digital replica of an athlete without his/her consent affecting this assets.

-Violation of such rights **may overlap** the violation of other rights, such as identity, intimacy or privacy, and or honor.

The rights recognized may coexist with other rights recognized to clubs, sports events' organizers, producers, or other companies, such as **copyright** on the audiovisual work, **neighboring rights, trademarks, or other**

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The right to control the creation, use, alteration of Digital Replicas under GDPR or similar data protection standards

- GDPR defines personal data as any information relating to an identified or identifiable natural person ('data subject'), who can be identified, directly or indirectly,

- **Name, image/likeness, voice, body features** (tattoos, height, etc.)

- **Special category of personal data- biometric, volumetric, or health data**, such as: heart rate, respiration, and body temperature, o biomechanical measurements of athletes, such as joint angle, movements, force, muscle activations

  - Example: analytics companies track over 5,000 datapoints per game and that this information is being used for example by video games developers
  - There's a big fight brewing over the Premier League's player data | WIRED

  - These data points processing needs to be informed to players and consented by players or by associations or Federation acting on player´s behalf sufficiently legitimated.

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GDPR ´s Net effect: Right to control : Power to license on a commercial basis.

- **Raised the bar and homogenized athletes' protection for creation dissemination and alteration of the digital replica of their performance**
- **In Europe and countries with GDPR standards,** recognize players have
  - **the right to control the processing of their personal data and thus license it and receive its commercial value.**

  - Even if **no special legislation granted players a special proprietary right or** intellectual property in the data itself, as stated by *Nic Couchman*, a sports lawyer at *Charles Russell Speechlys*: ***"the net effect of the data protection laws"*** is that *"if a data subject refuses to give consent, a third party can't legally use certain types of data"* and that **gives athletes *"the power to license the exploitation of their data in certain situations, on a commercial basis."***

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GDPR: Principles

- **Data processing under GDPR:**

Conditions:

Lawful basis: Consent, contractual necessity (documented), legitimate interest (documented)

Art. 6(1) a, b, c GDPR

-Document not only consent for specific processing but also the grounds for a lawful basis without consent.

7 essential principles for personal data processing (Art. 5):

- **"lawfulness, fairness and transparency"**, "**purpose limitation**", "**data minimization**", "**accuracy**", "**storage limitation**", "**integrity and confidentiality**" and "**accountability**".
- Under this principles players cannot renounce their right to their image or other personal data but only grant or license some uses, in a short measure, temporarily.

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GDPR Lawful basis: Consent conditions

Freely given:

- It cannot be assumed from an employment contract, because the imbalance of power makes "free consent" questionable). Players association may contribute to avoid this lack of balance in the negotiation. In *"collective bargaining agreements*, ensuring that *employers adhere to the same fair standard across the industry."* 7, par. 4 GDPR

Specific:

- Article 6(1)(a) GDPR establishes that the consent of the data subject must be given in relation to *"one or more specific"* purposes. **(Purpose limitation & data minimization principle)**
  - It can only be obtained for a specific project. The producer cannot obtain blanket consent to use the digital replica in other projects .
  - Even if an athlete gives consent for a specific commercial replica (e.g., advertising), the content cannot lawfully be repurposed (e.g., used in memes or other promotions).
  - SAG AFTRA: Contract Bulletin - A.I. Digital Replicas.pdf

Explicit:

- Sensitive data (health performance data, express statement. Written (art. 4.11 GDPR)

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GDPR Lawful basis: Consent conditions

-Unambiguous:

- Consent should be taken *"clearly distinguishable from other matters, in an intelligible and easily accessible form, using clear and plain language" (art. 7 GDPR)*

-Informed: If players are not informed of each of the particular scopes of their personal data processing, they will not be able to exercise their right to control the processing. (art. 5, 13 y 14 GDPR)

- The informed consent cannot be buried in the "standard terms and conditions" of your contract or background voucher.

Sag Aftra -It can be in your contract (or a separate rider), but it has to be clear and conspicuous, such as BOLD AND ALL CAPITALS, and you have to specifically sign or initial the section.

Contract Bulletin - A.I. Digital Replicas.pdf

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Lawful Basis based on Consent: Chain of Title

- Each participant in the rights acquisition chain of title, must verify the chain of title so the user can acquire sufficient rights for a lawful processing.

- Neither Federations, nor Unions, nor Clubs can communicate, share, or commercialize athlete digital replica to third parties if they have not been authorized by the athlete with all the consent conditions referred for the specifically purpose pretended, to act on player ´s behalf

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GDPR Lawful basis: “Contractual Necessity”

- Interpreted restrictively considering the principles governing data protection:
- *“privacy by design”*, *“privacy by default”* and *“data minimization”*.
- data processing by a processor for the performance of an employment agreement, the data subjects’ rights should **suffer the least possible sacrifice possible**

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GDPR Lawful basis: Legitimate interest not overridden by the interest of the data subject (athlete)

For example when:

- processing involves the processing of sensitive data (example biometric)
- processing may affect the players' person, reputation or goodwill.
- there is no compensation for data processing or the compensation is not fair, considering the market value.

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The right to control the creation, use, alteration of Digital Replicas in the US: Right of Publicity

- In Us the *right of publicity* protects a person's commercial interest in the **identifiable aspects of their identity**, generally their name, image, likeness, and sometimes their voice, to protect against commercial exploitation of their identity.
- **Currently,** *there is no federal right of publicity*. States recognize this right, sometimes *recognizing similar rights under a right of privacy*.

The boundaries of a right of publicity claim vary greatly from state-to-state.

(The types of identifiable aspects of identity covered (**Name, likeness, voice, photograph, signature,**), the duration of the right (life/post mortem), and how the right is protected (transferability, etc) varies greatly by the *patchwork of state right of publicity laws*.

The *U.S. Copyright Office* has urged for federal legislation to protect the right of publicity including among others::

Secondary Liability. including a **safe harbor mechanism that incentivizes online service providers to remove unauthorized digital replicas after** receiving effective notice or otherwise obtaining knowledge that they are unauthorized.

- Licensing and Assignment. Individuals should be able to license and monetize their digital replica rights, **subject to guardrails, but not to assign them outright.** Licenses of the rights of minors should require additional safeguards.

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The right to control the creation, use, alteration of Digital Replicas in the US: Right of Publicity

- New York's Digital Replicas Law: An Evaluation of New Protections for Performing Artists – Cornell Journal of Law and Public Policy
- **Two new California laws**, AB 2602 and AB 1836, offer certain protections against unauthorized digital replicas both during **a person's lifetime and posthumously**.
  - California AB 2602 (2024):
    - Declares void **as against public policy** any contract clause requiring an individual to **waive *all future rights* in digital replicas** (no perpetual or blanket waivers).
    - Ensures consent must be specific, knowing, and time-limited.
- In
- California referred legislation to authorize digital replicas
  - (A) **By legal counsel** who negotiated on behalf of the individual licensing the individual's digital replica rights, and the commercial terms are stated clearly and conspicuously in a contract or other writing signed or initialed by the individual.
  - **(B) By a labor union representing workers who do the proposed work, and the terms of their collective bargaining agreement expressly addresses uses of digital replicas.**

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The right to control the creation, use, alteration of Digital Replicas in the US: SAG-AFTRA AI Agreement (2023)

Includes a Codified Basic Agreement for licensing of "digital (for principal performers Contract Bulletin - A.I. Digital Replicas.pdf

- Distinguishes **employment-based** replicas (created in connection with a performance under a contract) vs. **independently created** replicas.
- **Informed consent** is required before creating or using a replica, with clear, specific terms.
- Consent must be obtained **again for each new project or use**
- **Performers** must be **paid**.
- Requires separate, specific consent and separate compensation for each use of a digital replica.
- **Protects against reuse** beyond the scope of consent, and requires disclosure to performers.
- **Digital alterations** (modifying an existing performance) also **require informed consent**, except for minor technical fixes

•Safeguards apply for storage, (Replica Studios Agreement), there are a myriad of state laws that govern the safe storage and use of personally identifiable information.
• Contract Bulletin - A.I. Digital Replicas.pdf

- DigitalReplicas.pdf

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Transparency requisites for Digital Replicas

AI ACT (Europe)

Deployers of an AI system that generates or manipulates image, audio or video content constituting a deep fake, shall **disclose that the content has been artificially generated or manipulated**.

Article 50.4: Transparency obligations for providers and deployers of certain AI systems | AI Act Service Desk

The California AI Transparency Act (SB 942) is designed to make the **identification of AI-generated content more transparent** to users by requiring **developers of widely used AI systems to provide certain AI-detection tools and watermarking capabilities**

YouTube has launched a new tool for creators to detect & act on deepfakes/misuse of their likeness.

YouTube no quiere que te clonen: así es su nuevo sistema para detectar deepfakes que usan tu imagen

No AI FRAUD Act and the *NO FAKES Act*, to protect this right.

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FIFPRO CHARTER OF PLAYER DATA RIGHTS

- **Player centric data policy**: starting point to make sure **everyone can benefit** in an adequate and safe manner from the most recent technology and new opportunities."
- **Following collective standards, and tailored player solutions**.

-Appropriate safeguards for data use, depending on data's sensitivity.

Collection and use:

- Identify:
  - **Type of player data processed**
  - **Intended purpose** for which player data will be used, communicated to the player in an accessible, clear and plain language.
  - **Environment in which it is collected.**
  - Commercial exploitation of player data must ensure the **adequate and direct financial participation of players.**
  - **Type of digital replicas use: require legal counsel o labor unión representation.**
- Require collective representation (Unions and Federation).
- https://fifpro.org/media/31intkan/fifpro-policy-position_player-data_eng.pdf

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FIFPRO CHARTER OF PLAYER DATA RIGHTS

- The Charter of Player Data Rights establishes that footballers should have:
- • The Right To **Be Informed**
  • The Right To **Access**
  • The Right To Revoke
  • The Right To Restrict Processing
  • The Right To Data Portability
  • The Right To Rectification
  • The Right To Complain
  • The Right **To Erasure**

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When drafting a license of a Digital Replica Informed consent for digital replica consider (art. 5, 13, 14 GDPR)

- 1. Th*e controller's identity:*
- Who is creating/using/ the digital replica (club, sponsor, videogame developer, AI company). Contact details of the data protection officer (DPO), if one is appointed.
- 2. *The purpose of each of the processing operations* for which consent is sought, Important: Purposes must be specific, not generic ("for commercial use" is insufficient). Clearly define why and what for the replica will be made:
  - e.g.advertising campaign, videogame avatar, training simulation, fan engagement in the metaverse, ai training?
- Media format (film, videogames, VR/AR, advertising, merchandising).
- Type of replica: Type of replica (voice clone, 3D avatar, motion capture, facial scan
- 3. **Categories of Data Processed**: facial scans, voice recordings, body movement/motion capture, biometric templates, other identifiers.
- 4. **Legal Basis of Processing** : clarify that consent is voluntary and not a condition of employment. And that explicit consent is necessary considering the type of data to be processed (Art. 6(1)(a) and Art. 9(2)(a) GDPR).
- 5. **Recipients or Categories of Recipients**: Who will have access to/use the replica: internal departments, sponsors, broadcasters, videogame developer, third-party service providers.

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When drafting a license of a Digital Replica Informed consent for digital replica consider (art. 5, 13, 14 GDPR)

- 6. **International Data Transfers**: If data will be transferred outside the European Union, the contract must state: which countries, under what legal safeguards (For example: adequacy decision, Standard Contractual Clauses, Binding Corporate Rules).
- 7. **Retention Period**: For how long the replica will exist or be used. "As long as the campaign runs" is not enough – a clear period must be stated (e.g., 2 years, renewable).
- 8. **Rights of the Data Subject** (the Athlete/Individual)

Right to withdraw consent at any time,-Right to access, rectify, erase, restrict processing, and data portability, **Right to object to certain uses,** - Right not to be subject to fully automated decisions.

- 9. **Existence of Profiling or Automated Decision-Making**
- If the replica will be used in AI simulations, profiling, or automated decision-making, this must be explicitly disclosed.
- 10. **Right to Lodge a Complaint**: Inform the player that they can lodge a complaint with the relevant Data Protection Authority.

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When drafting a license of a Digital Replica consider:

Specificity of Consent: Should be granular:

- Type of replica (voice clone, 3D avatar, motion capture, facial scan).
- Media format (film, videogames, VR/AR, advertising, merchandising).
- Duration of consent (limit to 5–10 years, consistent with Copyright Office guardrails).

- Avoid "blanket waivers" → GDPR, California 2602 and SAG-AFTRA prohibit **them.**

- **Licensor Oversight and authorization for any** new use of the replica (new campaigns, derivative works, AI fine-tuning) .

Audit & Oversight

- Right of the athlete/performer (or their union/agent) to audit use of the replica.

- **Review & takedown:**
- Licensor can request deletion or correction of stored replica if inaccurate, misused, or unauthorized.

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When drafting a license of a Digital Replica consider:

Compensation Structure

- Separate compensation for:
  - Creation of the replica.
  - Reuse across projects or campaigns.
  - New media formats not contemplated at signing.
  - Consider royalties for ongoing use, especially in commercial endorsements.

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When drafting a license of a Digital Replica

Contextual Restrictions

- **License must state clearly *where not to use* the replica:**
  - No political advertising, adult entertainment, or harmful/defamatory contexts.
  - Align with SAG-AFTRA's requirement that consent specify each "intended use."

Labeling disclosure:

Replica must be disclosed as digital/AI-generated.

•California AI transparency act SB 942 and EU AI Act Art. 50

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When drafting a license of a Digital Replica consider

•**Digital replicas (Likeness) detection duty:**

Licensee use detection tool and Inform licensor

Example **YouTube's tool** (*)

Preserve licensor's independent rights

Termination

- Once the license expires, no new replicas may be created; only existing, authorized uses can continue.
- Right to terminate immediately in case of misuse.

Cross-Border Considerations

- Rights of publicity and digital replica protections differ widely across states and countries.
  - Choice of law & forum:
  - Consider a "minimum protective floor" (GDPR/New York/California)
  - - to be applied even in jurisdictions that lack equivalent protections.

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When drafting a license of a Digital Replica

Non-Assignment & Sublicensing

- Licensee should not be able to freely assign or sublicense replica rights.
- Require athlete/performer authorization for any third-party use.
- AB 2602 aligns with this principle (voids forced transfer of blanket rights).

AI Training & Dataset Use

- Explicitly prohibit using the athlete's digital replica or recordings for AI training without consent.
- Require disclosure if any portion of their likeness was used in generative AI datasets.

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When drafting a license of a Digital Replica

- **Storage and Security of Digital Replica**
  The Licensee shall store any digital replica of the Licensor (including volumetric scans, biometric voiceprints, or likeness models) in a secure environment that complies with industry standards of encryption, access control, and audit logging.

The Replica shall:

- Be stored only for the licensed purposes;
- Not be transferred, copied, or sublicensed without the Licensor's prior written consent;
- Be retained only for the duration of this Agreement, and deleted or returned within X days of termination;
- Be subject to immediate deletion upon Licensor's request if the Replica is misused or unlawfully disclosed.

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THANK YOU!

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