**NATIONAL SPORTS LAW   
NEGOTIATION COMPETITION 2018-19**

**ROUND TWO**

*“Gambling on New Frontiers”*

**GENERAL FACTS FOR BOTH TEAMS**

Underthe Professional and Amateur Sports Act (PASPA) of 1992, sports gambling was declared illegal under federal law. With the exception of a few “grandfathered” states that had successfully lobbied for an exemption to PASPA, sports gambling was effectively banned. However, on May 14, 2018, the U.S. Supreme Court ruled that PASPA unconstitutionally violated states’ rights by allowing the federal government to force states to pass legislation prohibiting sports gambling.[[1]](#footnote-1) This decision opened the floodgates to all 50 states to legalize sports gambling, if they so choose.

As of this writing, eight states have passed and enacted legislation legalizing sports gambling, and two additional states have passed, but not yet enacted, similar bills.[[2]](#footnote-2) Predictably, the creation of new legal markets for sports betting has already led to widespread entrepreneurship and innovation within the industry. Large gambling enterprises, like Caesars Entertainment and MGM, have quickly moved to offer in-person betting opportunities at their casinos. Daily fantasy sports companies DraftKings and FanDuel quickly abandoned their once emphatically stated positions that their products were not gambling and have jumped headlong into the industry with online and mobile sports gambling applications.

While the four major sports leagues—the National Basketball Association (NBA), the National Football League (NFL), the National Hockey League (NHL), and Major League Baseball (MLB)—along with the National Collegiate Athletic Association (NCAA), had been fighting in the Supreme Court for PASPA’s survival, all have now in varying ways sought to profit from sports gambling’s legalization. Since *Murphy* was decided MLB, the NHL, and the NBA have all signed deals making MGM an official sports gaming partner of the leagues. The NHL and the NBA have signed similar deals with FanDuel as well. These deals are proving to be quite lucrative for the leagues—for example, the NBA’s deal with MGM was worth a reported $25 million over three years. Aside from direct sponsorship deals, it is projected that the leagues will see substantial revenue increases from the legalization of sports gambling; according to Nielsen Sports, the NFL can expect as much as $2.3 billion in annual growth from gambling-related advertisement buys, sponsorships, and data rights sales.

Of those increased revenue sources, data rights are expected to be a particularly viable new market for the sports leagues. Data can be important to gambling because it can be used to enable different types of bets. And access to real-time data allows bettors to effectively “predict the future” by placing bets before the information is absorbed by others, including odds-setters.[[3]](#footnote-3) Given how important speed is to bettors, access to real-time data is of vital importance to gambling agencies to both give their clientele the widest array of potential bets, and to be able to set odds to protect themselves from excessive loss.

Following the *Murphy* decision, all of the sports leagues have implemented different ways to offer officially-licensed game data. For example, starting in 2019 the NHL will be placing trackers in game-used pucks to track puck speed throughout the course of the game and in the players’ gear to track their speed during games as well. While the NHL sees a wide variety of advantages to this technology for player analytics, the league has made no secret of its desire to eventually sell this data to gambling agents.

In order to capitalize on this new frontier of intellectual property rights, in November 2018 the NBA signed non-exclusive deals with two data collection services—Sportradar and Genius Sports—allowing them to distribute “official” betting data to licensed sports gambling operators, including the aforementioned “official gaming partners” of the league such as MGM. At the same time, the leagues have also lobbied various legislative bodies to require licensed gambling operators to use “official” betting data. The leagues originally argued that restrictions were needed on prudential grounds. Ensuring that data packages are accurate and safe, the leagues argued, will guard against the nefarious influences inherent in some aspects of the gambling industry. So called “integrity fees” for official data, the leagues contended, ensured that the sports are not negatively affected by the risks of game fixing.

Recently, however, the leagues have shifted their position to argue that even if those risks could be addressed in other ways, the leagues must still be compensated for official data that comes from games because such data is the exclusive intellectual property of the leagues hosting that host the games. Indeed, shortly after the *Murphy* decision MLB commissioner Rob Manfred accused gambling operators of “free-riding” on MLB’s product and intellectual property. However, many feel that the leagues’ claim to intellectual property rights in data is on shaky grounds. The Second and Eighth Circuit Courts of Appeals have each ruled that game data is not protected by copyright or the right of publicity, though those rulings have not yet been extended into the context of gambling and data rights.[[4]](#footnote-4)

The leagues’ lobbying to mandate that gambling services license official data has had some tentative positive effect for the leagues at both the state and federal level. The New York and Missouri legislatures have both considered requiring the use of official data in their sports gambling bills, and a bipartisan bill offered to the U.S. Senate in December 2018, the Sports Wagering Market Integrity Act of 2018, would essentially create a new intellectual property right for sports leagues to their real-time data.[[5]](#footnote-5) This bill was introduced with strong support from the four major professional sports leagues, the NCAA, and the PGA Tour.

The league’s success in the legislative arena remains tentative, however. Neither Congress or any state has actually passed legislation requiring the use of officially licensed data. And one of the federal bill’s two co-sponsors, Orrin Hatch (R-Utah), retired just two weeks after the bill’s introduction, and the other co-sponsor, Chuck Schumer (D-New York), has stated that he feels the bill is merely a “placeholder” for the next legislative session to debate and tweak—with or without the new intellectual property rights attached.

In the current uncertain legal environment with respect to data use, various data companies have been established that offer unsanctioned betting data. These companies generally obtain their data from operators who sit in the stands and collect information through the use of mobile devices. This process is often referred to as “courtsiding.” While leagues and teams have made efforts to find courtsiders and ban them from stadiums and arenas, enforcing restrictions on courtsiding is like a never-ending game of “Whac-A-Mole.” Even if one courtsider is found, thrown out of the stadium, and banned from future events, several others take their place. These “unofficial” data companies—many of which operated before sports gambling was actually legalized—are thus able to collect data with only a slight delay at a much lower cost than the gambling companies would have to pay to sign deals with the leagues to obtain official data.

DataMiners is one of these “unofficial” data companies. DataMiners, a European firm founded five years ago, has gained a reputation for providing reliable data with a surprisingly quick turnaround compared to other unofficial sources. Instead of employing courtsiders for every ongoing game, DataMiners’ founders—three former stock brokers with extensive backgrounds in statistics, computer programming, and database design—developed a proprietary algorithm that crawls various Internet sources for real-time data on games, including scores and basic statistics.

While DataMiners’ founders admit to a slight delay compared to official data sources, and an inability to provide more advanced statistics for their clients, their data has proven to be significantly faster and more reliable than other unofficial sources, particularly those that use courtsiders to collect data. Furthermore, since DataMiners does *not* have to employ courtsiders and to date it has not paid the leagues for the “official” designation, DataMiners has been able to undercut many of their competitors’ prices. As a result, DataMiners has already signed 45 bookmakers across the United States to NBA data deals, even though their NBA operation has only been running for just over six months.

Last month, NBA Properties (NBAP; the entity managing the league’s intellectual property, including the IP rights of all 30 teams) served DataMiners with a cease-and-desist order, (1) claiming that the use of NBA statistics, trademarks, and other game data violated the league’s intellectual properties rights; and (2) threatening a federal lawsuit should DataMiners continue the collection and sale of this data. After discussions with counsel, DataMiners’ founders decided to take no action on the cease-and-desist, believing that the company had been complying with the existing intellectual property laws as applied in the *CBC* and *Motorola* cases.

Instead of filing the threatened lawsuit, counsel for NBA Properties decided to reach out to counsel for DataMiners in the hopes of avoiding litigation and reaching an amicable settlement between the two parties. Both parties’ operators (DataMiners’ founders and NBA commissioner Adam Silver) have given counsel full authorization to be creative to reach a mutually beneficial agreement, if an agreement is possible.

**CONFIDENTIAL FACTS FOR NBA PROPERTIES**

NBA Executives and owners will never admit it publicly, but privately they know that the situation with DataMiners represents something of a failed bet—at least for now. The NBA has always been at the very forefront of the sports gambling legalization movement; even while they were defending the *Murphy* (then *Christie*) lawsuit in 2014, NBA commissioner Adam Silver was penning an opinion piece for the *New York Times* calling on Congress to legalize and regulate sports betting.[[6]](#footnote-6) Throughout the *Murphy* litigation, NBA owners and NBAP executives were planning for sports gambling’s inevitable legalization. The *Murphy* decision and PASPA’s demise accelerated the timeline more than the NBA would have preferred. Nevertheless, the NBA is, by far, the most prepared league for this battle among the other major professional sports leagues.

Commissioner Silver’s position on legalizing sports betting has always included the concurring needs to both legalize sports betting and give control to the sports leagues. Commissioner Silver feels that one of the most underrated accomplishments of the career of his predecessor, David Stern, was convincing PASPA author Orrin Hatch (R-UT) and sponsoring Senator Bill Bradley (D-NJ) to include a provision in the legislation giving leagues the right to enforce the law if the Department of Justice failed to do so. This allowed the NBA—along with the other leagues and the NCAA—to sue New Jersey when the state tried to legalize sports gambling without league input. The long-running *Christie/Murphy* litigation at least bought time for the leagues, even while the Department of Justice refused to enforce PASPA on its own.

The leagues all knew that sports betting would be an incredibly lucrative market moving forward, which is why they have been pushing to get a cut of sports gambling revenue at both the state and federal levels even before *Murphy* was decided. However, efforts to mandate “integrity fees” through state legislation have been met with substantial resistance and scorn from lawmakers and other industry stakeholders. Accordingly, the leagues have shifted their strategy to a more intellectual property-focused position, claiming that data rights, an essential component of sports books’ operations, are the leagues’ proprietary intellectual property that must be licensed through the leagues themselves to be used by betting enterprises.

Is game data actually the leagues’ intellectual property? At this point, top NBA executives and counsel are not sure. It is true that the 1997 *NBA v. Motorola* case represented a major loss for the league. When that case was decided, commissioner David Stern privately acknowledged that the court loss had negative implications for future sports betting. Current Commissioner Silver, however, feels that the *Motorola* case is limited in scope to the most basic statistics and does not apply to real-time data. Silver and league counsel understand that DataMiners will almost certainly disagree. Convincing the DataMiners team that a key divide exists between the current issue and the *Motorola* precedent will likely be key to receiving a better deal.

Indeed, the NBA’s claim to rights over real-time data may be largely dependent on federal legislation giving them what would in essence be a new intellectual property right. Commissioner Silver has personally lobbied several friends in Congress to advance the Sports Wagering Market Integrity Act of 2018, but progress has been slow. Even with powerful senators at both sides of the aisle sponsoring the legislation, Commissioner Silver worries that the retirement of one of the two sponsors (Senator Hatch), and the presence of an unpredictable president who has a longstanding grudge against an NBA lobbying and litigation partner (the NFL), makes passage of this legislation unlikely in the near future.

Although the NBA recognizes the level of unpredictability, its executives are wary of acknowledging any uncertainty about their claimed IP rights. And in all events, the NBA is loath to be pushed around by a small data company.

The NBA’s deal with Sportradar for primary NBA data gives the NBA $250 million over six years and includes Sportradar’s services in the league’s data monitoring for potential integrity issues. This is thus the established price for primary data, and the owners are unwilling to agree to anything less from DataMiners for fear of jeopardizing their preexisting relationships with other data companies and setting the market lower than where the league feels it should be. Access to primary data should be a premium product, and the NBA wants to treat it that way.

If DataMiners is unwilling or unable to pay that price, the NBA is willing to entertain the idea of potentially offering a lower tier of license that would allow DataMiners to continue to use NBA intellectual property (including data rights, names, and logos) as they currently are through their proprietary algorithm. In addition to a sublicense legitimizing DataMiners use of the data, the league could add the sweetener of a sublicense to use team names and logos, which the league believes would have significant value for DataMiners.

Commissioner Silver, however, opposes including NBA trademarks in the license and would be willing to take less money that other services have paid if DataMiners would be willing to accept a deal without the marks. Entering a limited data agreement would enable the NBA to strengthen its legal case that it has IP rights in the real-time data that DataMiners uses in their algorithm by bringing DataMiners within the licensing structure while differentiating the “primary” data rights deals given to Sportradar and Genius Sports—which both include trademarks—from a less expensive deal with DataMiners.

If DataMiners refuses to agree to any deal without NBA names and logos, the NBA would want a mechanism within the underlying license contract that allows it monitor and regulate the clientele with whom DataMiners would share the league’s intellectual property rights. The NBA knows that DataMiners’ business model probably makes its product line attractive to the seedier gambling entities, and the NBA wants to ensure that its valuable trademarks are not associated with these disreputable elements of the still-suspect sports gambling market.

Commissioner Silver has authorized a flexible approach towards the contours of monitoring and regulating trademark use because it is impossible to define precisely what types of entities should be avoided without knowing exactly with whom DataMiners is working. But Silver wants to retain as much control as possible over league marks—preferably to the point of allowing the NBA to block DataMiners from using marks in its dealings with certain potential or even current clients.

Furthermore, the NBA wants to make it abundantly clear that DataMiners’ services—while “official” if an agreement is reached— would remain the collection of delayed secondary data. DataMiners cannot call itself an “official gaming partner” of the league and cannot call the data they are offering to sublicensors “official” data. The NBA is willing to be flexible with the terminology within reason, but these details must be worked out before any deal is signed. This point is critical to the league. While the NBA would be willing to take less money a license that either (1) does not include trademarks or (2) grants the NBA monitoring and refusal rights, the license that DataMiners receives must be *clearly distinguishable* from the deals that the NBA has made with Genius Sports and Sportradar to ensure that the fees the league earns from those deals are not put in jeopardy.

As for financial compensation, the NBA is flexible to a point; this license would be a new service but would set a precedent for future secondary data licensors. At a minimum, the NBA should receive $25 million per year for this license—or $20 million without giving up access to NBA trademarks or with marks but a right of refusal. A yearly license fee as close as possible to the “official” data cost would be ideal.

NBA executives would be more willing to settle closer to the $25 million minimum if DataMiners were to offer the NBA the right to use DataMiners’ data monitoring services as Sportradar has done. If DataMiners would be willing to act as a second “pair of eyes” that may be monitoring different sources of data, their services in this regard would be valuable towards the NBA’s goal of maintaining integrity in the betting market.

While there is certainly no barrier to completing a deal now, NBA executives know that their leverage will increase substantially if a federal bill is passed that clearly grants them intellectual property rights to game data. While they feel that they have a good case justifying their claims of game data intellectual property ownership rights under current law, a federal bill that clearly defines these rights to would give unprecedented weight to the argument that the NBA has put tremendous effort into establishing.

As such, given the possibility of the passage of a federal bill formalizing their intellectual property rights to game data, the NBA would like to limit its grant of any type of license to DataMiners through the use of an opt-out clause that can be triggered if the bill is signed into law. Such a clause would be essential to the NBA agreeing to any secondary rights deal that gives the league less money than what they are receiving from Sportradar and Genius Sports in order to distinguish the types of licenses.

If DataMiners is not amenable to an opt-out clause, the NBA would require a substantial escalator that makes the deal more valuable to the NBA once legislation removes all doubt about the validity of the league’s IP data rights. Such a clause is necessary to account for the considerable increase in bargaining power and legal security in their intellectual property rights that the legislation would produce. At minimum, the deal should be limited in term to no more than five years to minimize what money the NBA may lose if the bill passes and is signed within that timeframe.

An additional concern to league executives is clarifying DataMiners’ understanding of what data it can access under any deal. Under no circumstances will the league agree to grant DataMiners access to advanced data and statistics that are already unquestionably the proprietary intellectual property of NBAP. This includes advanced statistics like that come from formulas developed by the individual teams for their exclusive use.

Biometric tracking data is also off the table, as the current collective bargaining agreement with the players only allows the league to explore further opportunities to commercialize this data and bargain with the players in good faith on the issue in the next round of collective bargaining.

The NBA wants to ensure that DataMiners understands that it has no right to access NBA intranet servers to access this data. It is thus of particular importance to NBA executives and Commissioner Silver to ensure that DataMiners understands exactly what data is included in this license. The NBA has given Sportradar and Genius Sports access to its proprietary advanced data and statistics and a right of first refusal when the league finally convinces the union to allow for commercial sale of biometric data. A company that would likely be a “secondary” licensor could not have access to the same information because providing it would dilute the value of the existing deals and make it difficult for the NBA to renew those deals at the same favorable prices. As such, if DataMiners is insistent on including the NBA’s proprietary advanced tracking and statistics in the agreement, it will have to agree to become a primary licensor, or at least agree to pay the same price that Sportradar and Genius Sports paid for the data.

**CONFIDENTIAL FACTS FOR DATAMINERS**

It is difficult for the three founders of DataMiners (Jonas Rothstein, Katherine Baker, and Earl Samuelson) to see the NBA as anything more than a group of con artists trying to sell something that they do not own. While none of the three founders are attorneys or have any legal training, they have all read the *Motorola* and *CBC* cases and are knowledgeable enough about the industry to be reasonably firm in their conviction that the NBA has no ownership rights to most forms of game data— “official” or otherwise.

On the other hand, Rothstein, Baker, and Samuelson all realize that the NBA has lobbying power that they do not possess, and an act of Congress to grant the NBA the intellectual property rights that it thinks it already has is a very real possibility. Still, the three founders have read the tea leaves. They know that the possibility of a bill formalizing data IP rights passing Congress—let alone holding up in court—is fairly slim in the near term. Nevertheless, DataMiners knows that their legal position would effectively be devastated if Congress does in fact pass a bill that grants the NBA a new intellectual property right and that bill is signed and holds up to an inevitable constitutional challenge. DataMiners founders thus see any action they may take today as—to use the industry parlance—hedging their bets. Given the success of their business model to date, and the grave risk legislation poses (even if remote), hedging their bets is something worth doing for the DataMiners’ founders, if the price is right.

As they enter the negotiations, Rothstein, Baker, and Samuelson suspect two things: first, that this bill (however remote passage may be) will be at the forefront of the minds of NBA executives when it comes to dealing with any “unlicensed” entities like DataMiners; and second, that these same executives will likely know more than the founders do in regards to the progress and probability of success of the bill. So while all public indications are that current bill before Congress is unlikely to pass in its current form or anytime soon, the founders feel that NBA executives are likely to want a specific termination clause in the agreement that accounts for the possibility that Congress will grant the NBA intellectual property rights to real-time game data.

The founders are willing to entertain some sort of clause along these lines. They would, however, strongly oppose a firm opt-out clause allowing the NBA to terminate the deal immediately upon passage of a bill. The founders would prefer a provision allowing DataMiners to “phase out” of NBA operations if necessary. The founders also would not agree to any escalator clause in the event the bill passes that would bring the license cost past their current budget for such an agreement. Most importantly, the founders would vastly prefer that any termination agreement only trigger if a federal court declares the new law constitutional, as opposed to having the agreement simply terminate as soon as the bill is passed and signed by the President.

While hedging their bets makes sense, the founders have no interest in an “official” data rights package for three reasons.

First, an official rights package will be much too expensive for DataMiners to afford. And the value the company could get out of such a package could never be worth the money spent given DataMiners’ business model. Unlike Sportradar and Genius Sports, DataMiners is operating at a fairly slim profit margin. Current projections have them receiving $65 million over the next five years for NBA data deals, but they need to budget at least $35 million per year for infrastructure, compensation, overhead, and research and development to ensure that the algorithm is constantly improving and stays at the top of the market. This does not include a $5-$10 million cushion for client non-payment. With its status as a “low cost” data company, such a cushion is necessary as many of DataMiners’ clients tend to be at the bottom of the reputational barrel, and can be inconsistent in payment, often requiring aggressive motivation (i.e. lawsuits) to get them to pay.

Second, the founders feel that giving the NBA the satisfaction of buying into the “official” data rights trope would severely hurt their innovation opportunities moving forward. Along the same lines, agreeing to terms to “license” the NBA’s imaginary IP could potentially open DataMiners up to costly litigation if either party decides not to renew the deal at the end of the term. After all, this exact timeline led to the *CBC* lawsuit.

Third, the founders simply do not have the infrastructure to compete with other “official” data providers like the much larger and more established Genius Sports and Sportradar. Trying to play Genius Sports’s and Sportradar’s game would only lead to inevitable defeat and egress from the market.

As such, Rothstein, Baker, and Samuelson are fully prepared to walk away and take their chances in court if the NBA requires them to purchase an “official” data rights license, unless that license comes at a substantial discount from what Genius Sports and Sportradar pay. The founders have heard within the industry that the NBA’s deal with Sportradar for primary NBA data is worth $250 million over six years and includes Sportradar’s services in data monitoring for potential integrity issues. The founders have also heard that Genius Sports’ has a roughly equivalent deal. Given the company’s other interests at stake—including not giving in to the NBA’s “official” data farce—any deal for an “official” rights license should be less than $10 million per year for at least a five-year term.

Rothstein, Baker, and Samuelson realize that the NBA will almost certainly not agree to such an official data deal for fear of jeopardizing the league’s relationships with Sportradar and Genius Sports. While the founders are of course willing to agree to a confidentiality clause if they can somehow convince the NBA to take those terms, the sports data industry is still extremely small and thus it is likely that the terms of the deal would leak.

The founders believe that a more likely deal would secure DataMiners a “secondary” data license that would allow the company to operate through its current business model without fear of future litigation. The founders would be happy with such a deal.

DataMiners’ current model works; their algorithm can receive accurate data within 0.5 seconds of the “official” providers with surprising accuracy. While the half-second speed difference is worth a significant price to big-name gambling firms (like MGM, DraftKings, and FanDuel), DataMiners has already carved out a successful market for bookmakers that prioritizes price over speed. Furthermore, DataMiners has found that the inherent “second sweep” of betting data that represents the core of the algorithm’s design allows for a different way to look at the betting market from what the founders suspect Sportradar and Genius Sports can provide.

As a way to lower the cost of the deal, the founders would thus be willing to leverage DataMiners unique features to help the NBA patrol the betting market for integrity issues. If necessary, though, the founders would agree to provide this service to the NBA for free if doing so could get an otherwise desirable deal done. After all, DataMiners, just like the NBA, has an interest in keeping the betting market free from outside nefarious influences like match fixing and point shaving, particularly given the “riskier” client base in which the company tends to specialize.

Even if it is unlikely that an NBA lawsuit against them would be successful, or that a Congressional bill granting the NBA intellectual property rights in data would be enacted into law anytime soon, DataMiners founders recognize that their small company cannot afford much in terms of legal bills or potential risk. Retaining its current position in the data rights market without having to worry about NBA litigation is worth a lot to the founders. Any deal that NBA would be willing to do at a fair price would be hard for the founders to pass up.

What is critical to the founders, however, is ensuring that the NBA cannot turn around and sue DataMiners ­*CBC­*-style once the deal concludes. The founders are thus adamant that any deal of this type should not be called a “license” for any kind of real-time data rights that would expire after some period of time. Instead, the founders prefer to frame the deal as a perpetual preemptive legal settlement.

If possible, however, the founders would like a license for the intellectual property that is undoubtedly owned by NBAP—the team names and logos—that DataMiners could turn around and sublicense to their clients for an extra charge. Most of DataMiners’ 45 current clients—particularly the bottom-of-the-barrel clients who are solely focused on their profit margins—would likely not be interested in paying extra for the use of names and logos. Several of its current clients expressed interest in these rights when DataMiners sold them their data rights package. These package purchasers were disappointed to learn they could not obtain rights to team names and logos, and they undoubtedly would pay more for a data package including these rights. Further, securing such a license could lead to more business in the future. DataMiners’ sales team reports that at least 15 other bookmakers had expressed interest in DataMiners’ package when first approached but decided to go with Sportradar or Genius Sports for the sole reason that DataMiners could not provide access to team names and logos. Collectively, the sales team estimates that DataMiners could generate an additional $10 million per year in revenue if it had the ability to sell sublicenses to the team names and logos as part of its data rights package.

Finally, the founders feel that it will be necessary to clarify exactly what types of real-time game data that they will have available to them as part of a deal with the NBA. DataMiners’ algorithm currently cannot access the more advanced tracking and statistics data that are proprietary to NBA organizations. The founders have been hard at work trying to expand the algorithm’s reach to these statistics but have found that access to this information generally requires access to internal NBA intranet databases, which DataMiners cannot legally access without NBA go-ahead. Accessing advanced statistics is not a major priority for the company since the bookmakers that DataMiners works with tend to rely solely on the basic statistics that are publicly available throughout the Internet.

Still, if the NBA can be convinced to give DataMiners access to this data as part of a secondary data deal, the founders would be interested in using that information to court more discerning clientele. This is especially true if the NBA is looking to have DataMiners provide data integrity services, as access to biometric data would allow the founders to detect when players are not giving their normal effort, which would suggest possible match fixing or point shaving issues.

The founders are guessing that the NBA’s internal advanced tracking data is only available to the more “official” data firms like Sportradar and Genius Sports. They even speculate that it might not be available at all given the existing collective bargaining agreement with the players association. The founders estimate that the ability to sell this data would net them an additional $5 million in revenue per year in the short term, with more in the future once they can figure out how to exploit the data for gambling purposes. As such, they have indicated that they will be happy to agree to a deal that pays up $5 million above their budget if this advanced data is included.

1. Murphy et al. v. Nat’l Collegiate Athletic Assoc. et al., 584 U.S. \_\_\_, 138 S. Ct. 1461 (2018). [↑](#footnote-ref-1)
2. *See* Ryan Rodenberg, *State-by-State Sports Betting Bill Tracker*, ESPN.com (Nov. 26, 2018), <http://www.espn.com/chalk/story/_/id/19740480/gambling-sports-betting-bill-tracker-all-50-states>. [↑](#footnote-ref-2)
3. Ryan M. Rodenberg, John T. Holden, & Asa D. Brown, *Real-Time Sports Data and the First Amendment*, 11 Wash. J. L. Tech. & Arts 63, 66 (2015). [↑](#footnote-ref-3)
4. NBA v. Motorola, 105 F.3d 841 (2d Cir. 1997); CBC Distribution & Marketing v. MLB Advanced Media, 505 F.3d 818 (8th Cir. 2007), *cert. denied*, 553 U.S. 1090 (2008). [↑](#footnote-ref-4)
5. *See* Mike Florio, *Senators Hatch, Schumer Introduce Bipartisan Federal Sports Betting Bill*, ProFootballTalk (December 19, 2018, 4:15 PM EST), <https://profootballtalk.nbcsports.com/2018/12/19/senators-hatch-schumer-introduce-bipartisan-federal-sports-betting-bill/>; David Purdum & Ryan Rodenberg, *What You Need to Know About the New Federal Sports Betting Bill*, ESPN.com (Dec. 20, 2018), <http://www.espn.com/chalk/story/_/id/25581529/what-need-know-sports-wagering-market-integrity-act-swmia-2018>. [↑](#footnote-ref-5)
6. Adam Silver, *Legalize and Regulate Sports Betting*, N.Y. Times (Nov. 13, 2014), https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html. [↑](#footnote-ref-6)