

Innovative or Invasive: How New Sports Tech Can Violate Privacy

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As sports fans tune in to almost any broadcast today, they are almost immediately bombarded with advertisements and displays of the newest technology available being put out in sports. In American Football, Amazon proudly displays its analytics tools put to the test.¹ In NCAA basketball, AI is being used for Vanderbilt players to improve their shots.² In global sports, it's hard to watch an English Football match without hearing about goal-line technology and Video Assistant Refereeing (VAR).³ So, what's the problem? Outside of the occasional plunder (looking at you VAR), what could possibly be wrong with introducing more technological aids and utilizing analytical data to improve the game? The answer lies in privacy.

In November and December 2022, Qatar hosted the 2022 World Cup.⁴ With the world's biggest sport being played on the biggest stage, all manners of state-of-the-art technology were on display. Each stadium was equipped with 12 cameras utilizing 4D optical tracking and a sensor in each ball to be used in the games, collecting information from 29 points on players' bodies in order to aid referees with quick, semi-automated decisions throughout the tournament.⁵ In the same tournament, more than 15,000 cameras were used across 8 stadiums to monitor the millions of fans through biometric technology.⁶ FIFA, amongst others, boasted the success of this technology, claiming that with their camera usage, they were able to cut down the time to make referee decisions by 70 seconds (a huge amount of time in a game where the clock only stops for halftime and the final whistle).⁷ Clubs across the world utilize similar fan-monitoring technology as part of their surveillance methods.⁸ Danish club Brønby has utilized facial recognition as part of their ticketing process since 2019.⁹ French club FC Metz experimented with identifying fans banned from their stadium back in 2021.¹⁰ English and Spanish clubs Manchester City and Valencia FC have both contracted biometrics companies in order to employ the technology in their stadiums.¹¹

¹ Amazon, *NFL on AWS*, AWS.AMAZON.COM, <https://aws.amazon.com/sports/nfl/> (last visited Apr. 5, 2024).

² Celeste Malone, *Coaching Through Technology: Vanderbilt researchers use artificial intelligence to help basketball players improve their shots*, VANDERBILT UNIVERSITY RESEARCH NEWS (Mar. 22, 2024) <https://news.vanderbilt.edu/2022/03/24/coaching-through-technology-vanderbilt-researchers-use-artificial-intelligence-to-help-basketball-players-improve-their-shots/>.

³ Inside FIFA, *Goal-Line Technology*, INSIDE.FIFA.COM <https://inside.fifa.com/technical/football-technology/football-technologies-and-innovations-at-the-fifa-world-cup-2022/goal-line-technology> (last visited Apr. 5, 2024); Utathya Nag, *Explained: What is VAR in Football*, OLYMPICS.COM, (Dec. 25, 2023) <https://olympics.com/en/news/what-is-var-in-football>.

⁴ FIFA, *Qatar 2022: Groups, fixtures, stadiums, squads, tickets and more*, FIFA.COM, (Nov. 15, 2022) <https://www.fifa.com/fifaplus/en/articles/qatar-2022-all-qualified-teams-groups-dates-match-schedule-tickets-more>.

⁵ Catherine Stupp, *Soccer Technology Raises Privacy Risks for Players*, WSJ.COM, (Dec. 16, 2022) <https://www.wsj.com/articles/soccer-technology-raises-privacy-risks-for-players-11671139897>.

⁶ Vas Panagiotopoulos, *Soccer Fans, You're Being Watched*, WIRED.COM, (Nov. 3, 2022) <https://www.wired.com/story/soccer-world-cup-biometric-surveillance/>.

⁷ Stupp, *supra* note 5.

⁸ Panagiotopoulos, *supra* note 6.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

While the interest in using these forms of tech might be very well-intentioned, identifying troublemakers and improving games, this technology has come with very real blunders and potential consequences. In 2017, more than 2,000 fans were falsely identified as possible criminals during the 2017 Champions League Final held in Cardiff.¹² Other examples include a fan falsely identified as a perpetrator of violent conduct back in 2019, leading to the club banning him before realizing their own mistake.¹³

While fans struggle with misidentification and false accusations, players face fears of this technology affecting their careers. Most paramount is the concern that this vast new array of tech could have an unbalanced effect on contract negotiations.¹⁴ Particularly in the European Union (EU), which provides strong safeguards for employee data usage, the collection and utilization of player data begins to grow dangerously close to violating privacy laws.¹⁵ Specifically, regulators in the EU have ruled that employees cannot freely consent to have employers connect their data due to a power imbalance.¹⁶ In a situation where your answer may affect your next contract, it is understandably going to be much harder to turn down.

In theory and in some cases in practice, this information could prove invaluable when shared directly with the athletes. Utilizing analytics to understand your own performance and how you can improve is an obvious advantage and benefit. However, while this technology could be aiding players, FIFPRO, a trade union that represents footballers across the entire globe, released a survey showing that 80% of the 119 players surveyed want to access their own data, but neither have it nor know how it is even being stored.¹⁷

But what's so bad about clubs gaining this data anyway, should it not be fair for them to make decisions based on player performance and previous injuries? If a player has consistently struggled with injuries affecting the time they get out onto the field, should that not affect the negotiations of a contract that could likely last the next half a decade? While these would be fair questions supporting the data's usage, much of the concern lies with the predictive abilities of this tech.¹⁸ Jonas Baer-Hoffman, general secretary of FIFPRO, argues that the "technology will be doing things that we cannot really imagine yet", and thus we must put in place regulations that separate this information from contract negotiations themselves.¹⁹

Due to many of these concerns FIFA has since implemented new rules and claimed to have followed Europe's stringent GDPR privacy scheme.²⁰ In the 2023 Women's World Cup held in Australia, players were given the choice of whether they would wear GPS tracking devices during matches and were also given the opportunity to view and commercialize the data should they so choose.²¹ Sports leagues in the United States -- like the NHL, NFL, MLS, and

¹² *Id.*

¹³ *Id.*

¹⁴ Stupp, *supra* note 5.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Matthew Hennessy, *Professional sports may run afoul of privacy law in collecting player biometric data*, DENTONS.COM, (Sept. 28, 2023) <https://www.dentons.com/en/about-dentons/news-events-and-awards/news/2023/october/professional-sports-may-run-afoul-of-privacy-law-in-collecting-player-biometric-data#:~:text=FIFA%20has%20recognised%20the%20potential,wearable%20tracking%20devices%20and%20giving>

²¹ *Id.*

MLB -- all have adopted some form of regulation into their collective bargaining agreements with their players.²²

While leagues appear to be attempting to adapt to the emergence of this technology, concerns remain. Specifically, pressure will likely always build for clubs and leagues to utilize this sports data. This is due to studies like the one conducted by the Australian Football League (AFL), which involved a wearable device that measures concussion symptoms and thereafter showed that concussions lasted 12 days past the date that symptoms disappeared.²³ This goes to show that while the technology may have its benefits, we as fans must continue to call for more protections. The same system that falsely identified those 2,000 fans in the 2017 Cardiff Champions League final was initially thrown out by South Swansea police due to a court decision, only to be later reinstated back in 2022.²⁴ As the people who bring in the revenue for sports across the planet, it is important to understand the risks that come with the innovation of sports technology. While countless benefits can be derived that improve the quality of the game and the safety of players and fans, we cannot neglect the consequences should this technology be regulated improperly.

²² Kevin Forbes, *A New Era in Professional Sports: CBA and Data Privacy*, MOVELLA.COM, (Jan. 31, 2019) <https://www.movella.com/resources/blog/sports-data-privacy>.

²³ Hennessy, *supra* note 20.

²⁴ Panagiotopoulos, *supra* note 6.