RESPONSE

SPORTS BETTING DATA PROPERTY: RESPONSE TO GRIMMELMANN AND MULLIGAN

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In this Response, the Author applies the findings of James Grimmelmann and Christian Mulligan's Data Property *to an emerging context: sports betting. In the wake of a 2018 U.S. Supreme Court ruling that allowed for expanded legalized sports wagering nationwide, such application is timely, with roughly three-fourths of the states now offering some form of regulated sports gambling. The Author keys in on the non-exclusivity of Grimmelmann and Mulligan's data property framework and suggests three near-future litigation examples that could result. The Author also explains how existing torts—such as conversion and misappropriation—potentially fit within the concept of data property as applied to sports betting. The Author concludes by tying existing precedent to high-tech sports wagering and argues that existing remedies are sufficient to address plausible claims surrounding data usage in sports gambling. Despite coordinated lobbying that says otherwise, the Author posits that no new remedial options are needed to address data property issues in the growing legalized sports betting landscape.*

In *Data Property*,[1] Professors James Grimmelmann and Christina Mulligan comprehensively propose "the extension of existing torts to protect against the wrongful loss of data."[2] The authors accurately posit

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1. James Grimmelmann & Christina Mulligan, *Data Property*, 72 AM. U. L. REV. 829 (2023).

2. *Id.* at 882.

that "[o]wnership of data does not confer rights over the information in it as such . . . ."[3] Instead, Grimmelmann and Mulligan emphasize the non-exclusivity inherent in their theory of data property.[4] The result is profound. The authors' thoughtful framework correctly avoids spawning any novel form of intellectual property while simultaneously attaching to several concrete examples.[5] In this Response, I extend Grimmelmann and Mulligan's data property framework to a timely real-world application not discussed by the authors: sports betting.

With data fueling the rapid state-by-state expansion of legalized sports gambling in the wake of the Supreme Court's 2018 ruling in *Murphy v. National Collegiate Athletic Ass'n*,[6] applying the authors' concept of data property to the emerging area of sports betting provides a revealing test case.[7] I begin this Response by outlining how data are used in the sports betting industry and explaining how certain states have attempted to regulate such data. I then turn to how Grimmelmann and Mulligan's "recognition of a new kind of property—data property"[8]—could manifest itself against the backdrop of a state-level sports wagering regulatory patchwork that has given rise to antitrust,[9] due process,[10] equal sovereignty,[11] criminal law,[12]

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3. *Id.* at 834.

4. *See id.* at 881 ("Because data property is non-exclusive, other people can also have possession of that information . . . .").

5. *See id.* at 867, 869, 873–74 (discussing how the data property framework applies to conversion, bailment, personal property, and trade secrets).

6. 138 S. Ct. 1461 (2018). The Supreme Court concluded that "Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own." *Id.* at 1484–85.

7. *See* James Glanz & Agustin Armendariz, *When Sports Betting Is Legal, the Value of Game Data Soars*, N.Y. TIMES (July 2, 2018), https://www.nytimes.com/2018/07/02/sports/sports-betting.html [https://perma.cc/A4AY-7U6C] (describing data as "the lifeblood of sports betting," which is required to "monetize sports betting fully").

8. Grimmelmann & Mulligan, *supra* note 1, at 834.

9. Ryan M. Rodenberg, *Antitrust Standing After* Apple v. Pepper*: Application to the Sports Betting Data Market*, 64 ANTITRUST BULL. 584, 584–85, 592–93 (2019).

10. Ryan M. Rodenberg, *Due Process, Private Nondelegation Doctrine, and the Regulation of Sports Betting*, 9 U. NEV. L. V. GAMING L.J. 99, 109–11 (2019).

11. Ryan M. Rodenberg & John T. Holden, *Sports Betting has an Equal Sovereignty Problem*, 67 DUKE L.J. ONLINE 1, 38–39 (2017).

12. Ryan M. Rodenberg, *Transmitting Sports Betting 'Information' and Data: A Response to Edelman, Holden, and Wandt*, 83 OHIO STATE L.J. ONLINE 53, 60–61 (2022).

intellectual property,[13] publicity rights,[14] and free speech[15] concerns. I conclude this Response with a prediction of how sports betting data property issues could emerge as legalized sports gambling continues to proliferate nationwide.

In the sports gambling sector, "data" consist of news and information relevant to placing wagers, creating odds, monitoring lines, or grading bets.[16] The most common data point is the score of a sporting event in-progress or upon its conclusion, with real-time data being disseminated worldwide on a low-latency basis.[17] Other data pertinent to sports betting run the gamut from individual player performances[18] and referee calls[19] to high-tech metrics generated from microchips implanted in balls or attire.[20] The possibilities are nearly endless, but all such possibilities utilize data as a valuable commodity from a wagering perspective.[21]

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13. *See* Ryan M. Rodenberg, Anastasios Kaburakis & John T. Holden, *"Whose" Game Is It? Sports-Wagering and Intellectual Property*, 60 VILL. L. REV. TOLLE LEGE 1, 2 (2014).

14. Ryan M. Rodenberg, *College Athletics and Disseminating Sports Betting Data*, 13 J. APPLIED SPORT MGMT. 24, 26 (2021).

15. Ryan M. Rodenberg, John T. Holden & Asa D. Brown, *Real-Time Sports Data and the First Amendment*, 11 WASH. J.L., TECH. & ARTS 63, 101 (2015).

16. In this Response, the words "data," "information," and "news" are treated as synonyms, with the word "data" to be primarily used moving forward. Similarly, the words "gambling," "wagering," and "betting" are used interchangeably as synonyms herein.

17. *See* Rodenberg, *College Athletics*, *supra* note 14 (discussing the antitrust issues surrounding the dissemination of game scores and player-level data in real time); Rodenberg, *Transmitting Sports Betting "Information,"* *supra* note 12 (concluding that every actor in a sports betting scheme could face liability under the Wire Act if involved in the transmission of data).

18. *See The Data Revolution in Sports Betting*, WORLD LOTTERY ASS'N, https://www.world-lotteries.org/insights/editorial/blog/the-data-revolution-in-sports-betting [https://perma.cc/3GTK-46EG] (discussing how technology has broadened what athlete data can be collected, such as biometric information).

19. *See* Matt Rybaltowski, *Looking for an Edge in College Football Betting? Start Studying Officiating Trends*, SPORTS HANDLE (Sept. 4, 2019), https://sportshandle.com/college-football-officiating-trends-betting [https://perma.cc/9QPZ-2ATZ] (discussing how officiating crew assignments can affect sports wagers).

20. Vince Guerrieri, *How RFID Chips Are Bringing Next-Gen NFL Stats Right to Your Couch*, POPULAR MECHS. (Aug. 23, 2022), https://www.popularmechanics.com/technology/a40848969/rfid-chips-next-gen-football-stats [https://perma.cc/B9J6-JMFC].

21. Andrew Nixon, *Data Collection from Sports Events: A Nonexclusive Future?*, LAWINSPORT (Aug. 9, 2018), https://www.lawinsport.com/topics/item/data-collection-from-sports-events-a-nonexclusive-future [https://perma.cc/QXV8-X8DD]

Treating sports betting data as pecuniary started in earnest a few years before the Supreme Court's 2018 ruling in *Murphy*, which held the Professional and Amateur Sports Protection Act—a federal statute that restricted state-regulated sports betting to Nevada and a few other grandfathered-in states—to be unconstitutional under the Tenth Amendment's anti-commandeering doctrine. At that time, some journalists observed that "[sports] leagues are partnering—openly and in secret—with oddsmakers, betting prognosticators and data providers that make sports wagering possible in the digital age."[22] Prior to that time—when sports gambling was largely confined to Nevada and a vast network of illegal neighborhood bookies and offshore operators—sports betting data flowed worldwide with the scant involvement of the sports leagues.[23] But growing aspirations to monetize sports wagering data altered the landscape.[24] While sports leagues could sell betting data directly, virtually all have opted to partner with a third party on an exclusive or semi-exclusive basis.[25] Such third parties are data disseminators who act as intermediary middlemen with a business model premised on selling something that they neither own nor control.[26]

Through extensive lobbying, U.S.-based sports leagues have nudged various state lawmakers to enact sports betting data-focused laws that

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("Anyone close to the commercial side of sports content is likely to know that certain leagues, competitions or event organisers see the data generated during the course of their events as an important part of their commercial portfolios, and understandably so: data, and in particular live data, collected from a sports event has become a valuable commodity from a media perspective, and from a betting perspective.").

22. Steve Fainaru, Paula Lavigne & David Purdum, *Betting on the Come: Leagues Strike Deals with Gambling-Related Firms*, ESPN (Jan. 28, 2016), https://www.espn.com/espn/otl/story/_/id/14660326/nba-nfl-mlb-nhl-striking-various-business-deals-gambling-related-firms [https://perma.cc/65GZ-8RZL].

23. *See generally* Becky Harris, *Regulated Sports Betting: A Nevada Perspective*, 10 U. NEV. L.V. GAMING L.J., 75, 76–77 (2020) (discussing Nevada's early experience with legal regulated sports betting).

24. *See* Fainaru, *supra* note 22.

25. Ryan M. Rodenberg, *Regulating Sports Gaming Data*, 11 U. NEV. L.V. GAMING L.J. 9, 13 (2020) ("[S]ports leagues may partner with a third-party data broker on an exclusive or nonexclusive basis, with the partner paying the league for the 'right' to disseminate data. [This] route has been the most popular to date . . . .").

26. For a deeper dive into the sports betting data industry, see generally *id.* for a discussion of regulatory issues surrounding sports betting data in the United States and globally.

are restrictive in nature and that assist with their monetization efforts.[27] Most prominently, sports leagues such as the National Football League ("NFL"), National Basketball Association ("NBA"), Professional Golf Association Tour ("PGA Tour"), and Major League Baseball ("MLB") have prodded legislators to pass so-called 'official data' laws.[28] In Ohio, a PGA Tour representative urged lawmakers to pass a law mandating that "for live betting . . . the data should [only] come from the official source, the leagues, and not from pirated sources like web scrapers and on-site operatives."[29] A small number of states, including Illinois, Michigan, and Tennessee, have enacted such laws.[30] Other states, such as Indiana, have enacted regulations focused on restricting the "method of data collection."[31] Finally, a law firm representing various NFL and MLB teams wrote a letter urging the Illinois Gaming Board to protect a five-block exclusive sports betting 'bubble zone' around certain sports stadiums.[32]

Against this backdrop, I forecasted—while testifying before Congress in 2016—that "real-time data are the fuel for burgeoning live

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27. *See* Brian Windhorst, *How the NBA, MLB Are Lobbying States to Cash in on Sports Betting*, ESPN (May 14, 2018), https://www.espn.com/nba/story/_/id/22847790/nba-mlb-preparing-profit-supreme-court-ruling-new-jersey-gambling-case [https://perma.cc/DA7R-QXHR] (discussing NBA and MLB efforts to secure part of the legalized sports betting revenue stream).

28. *See Official League Data*, LEGAL SPORTS REP., https://www.legalsportsreport.com/official-league-data [https://perma.cc/2BT2-YWJA].

29. *Legalize and Regulate Sports Gaming/Tax Sports Gaming Businesses: Hearing on H.B. 194 Before the H. Fin. Comm.*, 2019 Leg., 133rd Reg. Sess. 2 (Ohio 2019) (statement of Andy Levinson, Senior Vice President of Tournament Administration, PGA Tour) (on file with Author).

30. *See* Bennett Conlin, *Tennessee's Official League Data up for Debate and Could Have National Implications*, SPORTS HANDLE (Mar. 27, 2023), https://sportshandle.com/tennessee-official-league-data-discussion-legislature [https://perma.cc/9JLR-FMDW]. Tennessee subsequently expunged its law mandating that sports betting data only be acquired via 'official' channels. *See* Bennett Conlin, *Industry Experts Applaud Removal of Tennessee's Official League Data Mandate*, SPORTS HANDLE (May 18, 2023), https://sportshandle.com/tennessee-removes-official-league-data-mandate [https://perma.cc/LXM2-7KWT] (discussing the popularity of the Tennessee law's repeal among operators).

31. Matt Carey, *Recent Regulations Show How Official Data Debate Evolving*, GAMBLING COMPLIANCE (Sept. 12, 2019) (noting examples of state-instituted restraints on data collection, such as Iowa's requirement that operators disclose sources and Michigan's provision barring scouting when it is contrary to the event's terms of admittance).

32. Letter from Donna More, Fox Rothschild LLP, to Marcus Fruchter, Adm'r, Ill. Gaming Bd. (Sept. 27, 2019) (on file with Author).

wagering and in-game fantasy sports."[33] I also argued that the Supreme Court erroneously allowed standing-less sports league plaintiffs to further a case which will now be cited incorrectly "as a *de facto* grant of a sports betting property right"[34] and complicate how data are treated in the emerging regulated sports gambling market.[35] In a formal statement submitted to the Federal Trade Commission, I further posited that "the extent to which sports betting data are available raises a host of complex legal matters."[36] Such complexity dissipates, however, when analyzed under the lens of Grimmelmann and Mulligan's streamlined data property approach.

While the structure of the sports betting data market is nuanced, the authors' findings dovetail perfectly with the Supreme Court's conclusion in *Feist Publications, Inc. v. Rural Telephone Service Co.*[37] that "facts are not copyrightable."[38] With "originality [as] a constitutionally mandated prerequisite for copyright protection,"[39] the Supreme Court in *Feist* rejected the "sweat of the brow" theory to protect news, information, and facts.[40] In so doing, the Supreme Court left a gap in coverage that Grimmelmann and Mulligan have expertly filled.

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33. *Daily Fantasy Sports: Issues and Perspectives: Hearing Before the Subcomm. on Com., Mfg., & Trade of the H. Comm. on Energy & Com.*, 114th Cong. 42 n.48 (2016) (statement of Ryan M. Rodenberg).

34. Ryan M. Rodenberg, *The Defect in the Supreme Court's Sports Betting Decision*, 32 J. LEGAL ASPECTS SPORT 121, 126 (2022) (emphasis added).

35. *See id.* at 127 (discussing how 'official data' mandates would treat sports data as property that would require sportsbook operators to license that data from monopoly providers, i.e., the sports organizations).

36. PRIVACY, BIG DATA, AND COMPETITION: HEARINGS ON COMPETITION AND CONSUMER PROT. IN THE 21ST CENTURY BEFORE THE FED. TRADE COMM'N, 6TH SESS. (2019) (statement of Ryan M. Rodenberg). In accord, the co-sponsor of federal sports betting bill introduced seven months after the Supreme Court ruling described sports betting data as "[one] of the difficult issues to be considered as a part of the sports wagering discussion." 115 Cong. Rec. S7930 (daily ed. Dec. 19, 2018) (statement of Sen. Orrin Hatch for himself and for Sen. Charles Schumer). Senator Hatch also questioned "the basis for requiring the use of so-called official league data." *Id.*

37. 499 U.S. 340 (1991).

38. *Id.* at 344.

39. *Id.* at 351.

40. *Id.* at 353.

> [F]acts do not owe their origin to an act of authorship. The distinction is one between creation and discovery: The first person to find and report a particular fact has not created the fact; he or she has merely discovered its existence . . . . The same is true of all facts—scientific, historical, biographical,

Recognizing that "the same data could be instantiated in numerous diverse and scattered copies,"[41] Grimmelmann and Mulligan explain that "[p]ossession of data is a little different, because information is non-rival and non-excludable. The only way to keep exclusionary control over information as such is to never reveal it to anyone else . . . ."[42] Betting-relevant data from sporting events, of course, is instantly revealed to thousands of spectators at the venue and near-instantly revealed to many thousands (or millions) more viewing the broadcast remotely.[43] Unless the underlying sporting event takes place in a privately-owned venue with no spectators present, there would be no exclusivity, copyright, or other indicia of ownership attaching to most types of data emanating from the sports contest.

As such, Grimmelmann and Mulligan's takeaway is particularly germane: "[D]ata property law does not give a data owner any right to exclude others from using the same data; it does not grant intellectual-property-style *exclusive* rights. Rather, data property law protects an owner's ability to use data that is under their control from interference by others."[44] The authors pinpoint the tort of conversion, an apt focus

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> and news of the day. "[T]hey may not be copyrighted and are part of the public domain available to every person."

Id. at 347–48 (quoting Miller v. Universal City Studios, Inc., 650 F.2d 1365, 1369 (5th Cir. 1981)).

41. Grimmelmann & Mulligan, *supra* note 1, at 840.

42. *Id.* at 851.

43. *See NFL Regular-Season Rating down 3% over Last Season*, ESPN (Jan. 13, 2023 9:15 PM), https://www.espn.com/nfl/story/_/id/35441447/nfl-regular-season-ratings-3-last-season [https://perma.cc/3NYN-8MQH] (noting that "[NFL] regular-season games averaged 16.7 million viewers"); Brad Adgate, *The 2022–23 NBA Season in Review and a Look Ahead*, FORBES (Apr. 19, 2023, 2:34 PM), https://www.forbes.com/sites/bradadgate/2023/04/19/the-2022-23-nba-season-in-review-and-a-look-ahead [https://perma.cc/F2U8-BH7H] (noting that the 2022–23 NBA regular season averaged 1.59 million viewers); Katie Hughes Martin, *ESPN's 2023 Major League Baseball Game Viewership up Seven Percent from Last Year*, ESPN (June 14, 2023), https://espnpressroom.com/us/press-releases/2023/06/espns-2023-major-league-baseball-game-viewership-up-seven-percent-from-last-year [https://perma.cc/78G2-D8V9] (noting that MLB averaged nearly two million viewers); Christopher Powers, *PGA Championship Turns in Surprising Sunday TV Viewership Numbers*, GOLF DIG. (May 23, 2023), https://www.golfdigest.com/story/pga-championship-2023-sunday-tv-ratings-cbs [https://perma.cc/TQ5E-JYX8] (noting that the 2023 PGA Championship final round averaged 4.5 million viewers).

44. Grimmelmann & Mulligan, *supra* note 1, at 856.

given that "[c]onversion has been extended to rival intangibles in a straightforward way . . . ."[45]

Beyond conversion—an extreme claim that arises "when another uses the owner's property in a way that completely prevents the owner from making any beneficial use of it"[46]—the common law claim of misappropriation is relevant to data property law in the context of sports betting.[47] Misappropriation is generally defined as a cause of action involving the unauthorized use of "a competitor's intangible assets, including those that are released to the public domain without patent, trademark, or copyright protection."[48] Misappropriation also fits well with Grimmelmann and Mulligan's data property framework. In most cases, misappropriation lawsuits arise when the plaintiff concedes that an intellectual property right does not exist,[49] which is almost always the situation in the sports betting data realm.[50]

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45. *Id.* at 854 (discussing *Kremen v. Cohen*, 337 F.3d 1024, 1026–27 (9th Cir. 2003)). Grimmelmann and Mulligan's data property theory would also potentially support a viable claim of trespass to chattels to protect against certain interference with sports betting data. *See* HiQ Labs, Inc. v. LinkedIn Corp., 31 F.4th 1180, 1201 n.21 (9th Cir. 2022) ("[I]t may be that web scraping exceeding the scope of the website owner's consent gives rise to a common law tort claim for trespass to chattels, at least when it causes demonstrable harm.").

46. Grimmelmann & Mulligan, *supra* note 1, at 854.

47. For academic treatment of misappropriation, see Richard A. Posner, *Misappropriation: A Dirge*, 40 HOUS. L. REV. 621 (2003) for a discussion on misappropriation's functions in intellectual property law.

48. Edmund J. Sease, *Misappropriation is Seventy-Five Years Old: Should We Bury It or Revive It?*, 70 N.D. L. REV. 781, 781 (1994) (discussing the Supreme Court's establishment of the "misappropriation doctrine").

49. *See generally* Michael E. Kenneally, *Misappropriation and the Morality of Free-Riding*, 19 STAN. TECH. L. REV. 289 (2015) (noting that the morality of free-riding depends on the individual free-rider).

50. *See generally* Gary R. Roberts, *The Scope of the Exclusive Right to Control Dissemination of Real-Time Sports Event Information*, 15 STAN. L. & POL'Y REV. 167, 186–87 (2004) ("The question here is whether there is a[n] . . . overriding justification with respect to rights of sports event promoters to control the information about their events. It appears that except in the case of a promoter that can prove that a 'hot news' situation exists, there is no such an overriding public interest . . . . Once the promoter can profit sufficiently from expending the effort and resources to produce, market, and sell its sports entertainment product, there appears to be no public benefit from allowing the promoter to use the legal system offensively to reap competitive profits by restricting the flow of information the public wants . . . . Only statistical data specially compiled by the promoter about a sports event that is broadcast live will remain within the promoter's exclusive commercial control. That is no doubt far less than most sports leagues and governing bodies would like.").

The leading sports data-specific misappropriation case is *NBA v. Motorola, Inc.*[51] This Second Circuit case involved a pager system co-developed by Motorola and a data dissemination firm that tracked in-game developments from NBA contests and transmitted such data to subscription-based customers.[52] The NBA sued and alleged, among other things, a violation of New York's claim for "'hot news' misappropriation."[53] The 'hot news' doctrine "refers to a cause of action for the misappropriation of time-sensitive factual information that state laws afford purveyors of news against free riding by a direct competitor."[54] The Second Circuit offered a five-element test for a finding of hot news misappropriation:

> (i) a plaintiff generates or gathers information at a cost; (ii) the information is time-sensitive; (iii) a defendant's use of the information constitutes free riding on the plaintiff's efforts; (iv) the defendant is in direct competition with a product or service offered by the plaintiffs; and (v) the ability of other parties to free-ride on the efforts of the plaintiff or others would so reduce the incentive to produce the product or service that its existence or quality would be substantially threatened.[55]

The Second Circuit found that the NBA failed to meet all five elements and held that Motorola's "transmission of 'real-time' NBA game scores and information tabulated from television and radio broadcasts of games in progress does not constitute a misappropriation of 'hot news' that is the property of the NBA."[56] Despite this result, *NBA v. Motorola* effectively extends a five-part invitation for a misappropriation claim to attach to sports betting data.[57] According to researchers, "the hot news doctrine is part of state common law" in at least fourteen states: Alaska, California, Colorado, Delaware, Illinois,

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51. 105 F.3d 841 (2d Cir. 1997).

52. *Id.* at 843–44.

53. *Id.* at 843. Misappropriation of a 'hot news' variety was recognized by the Supreme Court in *International News Service v. Associated Press*, 248 U.S. 215 (1918).

54. Shyamkrishna Balganesh, *"Hot News": The Enduring Myth of Property in News*, 111 COLUM. L. REV. 419, 419 (2011).

55. *NBA*, 105 F.3d at 845.

56. *Id.* at 843. In a footnote, the court also mentioned that—given its disposition on misappropriation grounds—it need not rule on Motorola's First Amendment and laches defenses. *Id.* at 854 n.10.

57. *See* Nat'l Basketball Ass'n v. Motorola, Inc., 105 F.3d 841, 845 (2d Cir. 1997) (setting forth a five-part test to determine cases where a misappropriation claim would apply, effectively creating a framework to analyze such claims in future sports information dissemination).

Maryland, Missouri, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Texas, and Wisconsin.[58]

Drawing on Grimmelmann and Mulligan's data property framework, there are three litigation scenarios that could play out in the near future. First, a sports league running a closed event solely to create betting content could sue a sophisticated hacker, web scraper, or drone-assisted scout whose collection methods effectively result in the "wrongful deprivation of [the league's] control over all their instances of the data."[59] Second, an aggrieved data dissemination firm could sue a sports league organizer who usurps constitutionally-protected speech at a public sporting event resulting in "dispossession of and interference with use of the data."[60] Third, a sports book operator could sue a firm purporting to conduct betting line integrity monitoring if such monitoring firm's unauthorized copying of the operator's lines or odds subsequently "impairs [the operator's] ability to use an instance of data."[61]

Grimmelmann and Mulligan concluded their article with an analysis of *Moore v. Regents of the University of California*[62]—a "staple of property casebooks and scholarship"[63]—and so will I. In *Moore*, the California Supreme Court ruled against a medical patient's conversion claim after doctors removed his cell tissue and subsequently used such tissue to obtain a patent for commercial purposes.[64] The underlying facts in *Moore* are somewhat analogous to athletes who acquiesce to having microchip sensors placed in playing equipment or attire.[65] If the data generated from such sensors is subsequently used commercially in sports betting,[66] Grimmelmann and Mulligan's data property framework would recognize that "data property is non-exclusive, [so]

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58. VICTORIA SMITH EKSTRAND, HOT NEWS IN THE AGE OF BIG DATA: A LEGAL HISTORY OF THE HOT NEWS DOCTRINE AND IMPLICATIONS FOR THE DIGITAL AGE 15 n.45 (2015); *see also* Sease, *supra* note 47 (noting that the creation of a misappropriation cause of action in *International News Service v. Associated Press* arose from federal common law).

59. Grimmelmann & Mulligan, *supra* note 1, at 854.

60. *Id.* at 834.

61. *Id.* at 855.

62. 793 P.2d 479 (Cal. 1990).

63. Grimmelmann & Mulligan, *supra* note 1, at 880.

64. 793 P.2d at 480; *see* Grimmelmann & Mulligan, *supra* note 1, at 881 (summarizing the *Moore* background and holding).

65. *C.f. Moore*, 793 P.2d at 880 (explaining how Moore's doctors became possessor-owners of Moore's data property by obtaining information from his cells).

66. Examples of such data are distances covered, running speed, height jumped, baseball pitch velocity, sweat rate, and tennis forehand revolutions per minute.

other people can also have possession of that information," too.[67] This result perfectly captures how Grimmelmann and Mulligan's narrow approach to data property can use existing remedies to deal with high-tech issues unimaginable at the time certain common law torts were first recognized.

67. Grimmelmann & Mulligan, *supra* note 1, at 881.