

COMMENTS

Online Abuse of Athletes in International and Domestic Sport: Global Sport Stakeholders Grapple with Digital Death Threats, Racist Tweets, and Inbox Obscenity

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I. INTRODUCTION

The meteoric rise of social media has provided unprecedented access to collegiate and professional athletes across the world. The positive impact of this affinity is twofold: Athletes have been offered a remarkable opportunity to leverage their star power¹ beyond the courts and fields that

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1. Leonard Armato, *The Power of Athletes to Become Media Companies and Transform the Game*, FORBES (May 31, 2023, 12: PM), <https://www.forbes.com/sites/leonardarmato/2023/05/31/unleashing-the-power-of-athlete-media-companies-how-todays-athletes-are-transforming-the-game/?sh=40b827c95a68>.

they grace with their talents, and sports fans can experience a new level of connectivity to their idols. However, the risks associated with online sports fandom abound. Sport has long served as a vessel from which social and cultural issues have originated, and the eminence of these matters has loomed large alongside the growth of the Internet.² Athletes face heightened “scrutiny, criticism, and ridicule”³ based not only on their athletic performance, but on their alignment with brands, engagement with other creators, and their personal lives. Even more concerning are the burgeoning instances of hate speech and abuse being directed at athletes.⁴ International sports organizations and sport-governing bodies have worked to fight back against the prejudices perpetuated against their athletes, with some going as far as creating legislation in the interest of online safety.⁵ Nonetheless, a recent report conducted by the International Olympic Committee (IOC) reinforced the conclusion that online abuse of athletes worldwide has spiked, “with up to one-third of posts now containing negative content targeted towards sporting stars.”⁶

Undeniably, the emotional damage and potentially long-lasting personal complications that athletes can incur due to abusive online messaging are worrisome, but there is also a rising fear that sport will lose some of its star competitors if measures are not taken to better protect them.⁷ The United Against Online Abuse (UAOA) campaign recently took the charge on a survey of several international sporting federations, and the collective response shows that sport’s biggest stars are facing persistent abuse and threats that put their careers in jeopardy.⁸ The study

2. Colm Kearns, et al., *A Scoping Review of Research on Online Hate and Sport*, 11 COMMUNICATION & SPORT 402, 404 (2022).

3. Terry Collins, *Athletes and Celebrities Can’t Escape Social Media Scrutiny No Matter How Much They Want to*, CNET (Mar. 22, 2016, 5:00 PM), <https://www.cnet.com/tech/services-and-software/athletes-and-celebrities-cant-escape-social-media-scrutiny-no-matter-how-much-they-want-to/>.

4. Kearns, et al., *supra* note 2, at 403.

5. *Id.*

6. Press Release, Loughborough University, *Online Abuse Aimed at Elite Athletes on the Rise—New Study* (Jan. 25, 2024), <https://www.lboro.ac.uk/media-centre/press-releases/2024/january/online-abuse-aimed-at-athletes-on-the-rise/#:~:text=%E2%80%9COur%20research%20confirmed%20that%20online,abuse%20from%20a%20safeguarding%20perspective.>

7. *Online Abuse Puts Sports at Risk of Losing Stars—UAOA Survey Finds*, FÉDÉRATION INTERNATIONALE DE L’AUTOMOBILE (Jan. 2, 2024), <https://www.fia.com/news/online-abuse-puts-sports-risk-losing-stars-uaoa-survey-finds>.

8. Jenna Fryer, *FIA-Commissioned Report Takes Aim at Social Media Companies for Not Curbing Online Abuse in Sports*, SEATTLE TIMES (Feb. 1, 2024, 1:01 AM), <https://www.seattletimes.com/sports/soccer/fia-commissioned-report-takes-aim-at-social-media-companies-for-not-curbing-online-abuse-in-sports/>.

was conducted in the wake of numerous noteworthy online incidents perpetrated against celebrated athletes, several of which involved attacks on the basis of race or gender.⁹ In the wake of these developments, the UAOA and similar international organizations have called for online service providers to do more to police user behavior on their platforms.¹⁰ Such calls to action invoke inspection of the global jurisdictional inequalities plaguing online speech legislation. Prominent figures in sport have taken the stance that “[a]thletes should not have to accept abuse as an inevitable consequence” of the choice to curate a social media presence.¹¹ The role and influence of players’ associations, like the Fédération Internationale des Associations de Footballeurs Professionnels (FIFPRO),¹² is consequently worthy of examination, as these organizations exist to support and advance the interests of their representative athlete members.

This Comment aims to examine the possible contributing factors and effects of online abuse and hate speech against collegiate and professional athletes, while analyzing the contrasting approaches taken by various international sport-governing bodies, players associations, and legislatures to combat this alarming trend. Part II addresses the work done principally on behalf of the United States to improve athlete safety and well-being online, including the efforts of the National Collegiate Athletic Association (NCAA), domestic professional sports players’ unions, and the standing federal regulatory framework. Part III addresses the efforts of international sporting organizations and foreign legislatures to regulate and sanction abusive and threatening speech on the Internet, with a focus on how the covered jurisdictions’ approaches differ from those of the United States. Finally, Part IV identifies the shortcomings of current regulations, and advocates primarily for proactive issue resolutions to ensure both that global sports are accessible and that decisions are being made in the interest of preserving an atmosphere of respectful competition.

II. CHAMPIONING ATHLETE SAFETY: U.S. INITIATIVES

The United States has struggled to keep up with the torrent of online abuses committed against its athletes, and this crisis is best illustrated by

9. *Id.*

10. *Id.*

11. *Online Abuse of Athletes Increased at 2023 World Championships—Study*, REUTERS ATHLETICS (Dec. 22, 2023, 5:35 AM), <https://www.reuters.com/sports/athletics/online-abuse-athletes-increased-2023-world-championships-study-2023-12-22/>.

12. FIFPRO, <https://www.fifpro.org/en> (last visited Apr. 18, 2024).

the U.S. Women's National Soccer Team (USWNT). In the 2023 Women's World Cup, FIFA and FIFPRO reported that the USWNT received twice as many disparaging social media messages as any other nation participating in the tournament.¹³ Utilizing a social media protection service (SMPS) tool, the two bodies found that players were widely subjected to homophobic and misogynistic messaging, with sixty-seven percent of the total online abuses being posted from North and Central America throughout the event.¹⁴ Furthermore, the report singled out the consequences to athletes stemming from the comments of national political authorities.¹⁵ Notably, former USWNT star Megan Rapinoe appeared to have been the object of a disparate amount of online hate, much of which seemed to be politically motivated.¹⁶ FIFA and FIFPRO remarked on the ability of senior U.S. politicians to aid in dispelling hate speech against the USWNT by voicing their support for the team as "a useful preventative measure."¹⁷

The plight of the USWNT is one of several examples of U.S. athletes dealing with the toxicity of online sports fandom, yet the United States does little to offer these victims redress. Legal remedies are slim, and whatever precautionary measures exist are clearly not enough to combat the surge of online offenses that users mask as free speech. Perhaps this is due, in part, to the existence of Section 230 of the Communications Decency Act of 1996.¹⁸

A. *Section 230: Dealing a Blow to Platform Policing Proponents*

Section 230(c)(1) states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."¹⁹ Essentially, this language ensures that social media companies, concerned for years with the possibility that they would face legal consequence for the objectionable speech of their users, are *generally* statutorily immune

13. Ben Church, *US Women's Soccer Team Received Most Online Abuse at Women's World Cup*, CNN SPORTS (Dec. 12, 2023), <https://www.cnn.com/2023/12/12/sport/us-womens-abuse-world-cup-spt-intl/index.html>.

14. *Id.*

15. Meg Linehan, *One in Five Women's World Cup Players Targeted by Online Abuse, Report Finds*, THE ATHLETIC (Dec. 11, 2023), <https://theathletic.com/5128677/2023/12/11/womens-world-cup-uswnt-online-abuse/>.

16. *Id.*

17. *Id.*

18. 47 U.S.C. § 230.

19. *Id.* § 230(c)(1).

from tort liability based on the speech uploaded by their private users.²⁰ Telecommunications companies, like social media platforms, were able to successfully lobby Congress for the immunity enshrined within Section 230 for two reasons: First, Congress desired to maintain robust online communication with as little government interference as possible; second, the legislation was intended to encourage interactive service providers to willingly regulate the spread of offensive material across their services.²¹ In essence, Congress “neither increased nor decreased government authority over speech on social media”²² with the enactment of Section 230, opting instead to gift social platforms the autonomy to police or not police offensive speech at their convenience.

Thus, an interactive computer service provider, unless it acts as the sole creator of published content online, will not be held liable as an interactive content provider.²³ Applying this concept to online abuse targeting athletes, the thousands of hostile messages that the USWNT received during the Women’s World Cup have virtually no legal bearing on platforms like X (formerly Twitter) or Facebook. Of course, although social media platforms have no affirmative duty to monitor and block content under Section 230, they almost universally do so voluntarily.²⁴ For example, under Facebook’s community standards, hate speech, defined by the platform as “direct attacks against people—rather than concepts or institutions—on the basis of . . . protected characteristics (PCs): race, ethnicity, national origin, disability, religious affiliation, caste, sexual orientation, sex, gender identity, and serious disease,” is not allowed and enforcement involves removal of the post once Facebook becomes aware of it.²⁵ Content moderation practices like this necessarily can run afoul of users’ First Amendment rights, and on the flip side, laws that infringe upon a social media platform’s ability to moderate user content can run afoul of the sites’ “First Amendment rights to decide what

20. Valerie C. Brannon, CONG. RSCH. SERV., R45650, FREE SPEECH AND THE REGULATION OF SOCIAL MEDIA CONTENT (2019).

21. John Samples, *Why the Government Should Not Regulate Content Moderation of Social Media*, 865 CATO INST. POL’Y ANALYSIS 1, 4 (Apr. 9, 2019), https://www.cato.org/sites/cato.org/files/pubs/pdf/pa_865.pdf (articulating the reasons that Congress passed Section 230 of the CDA).

22. *Id.*

23. § 230(c)(1).

24. Spandana Singh, *Everything in Moderation*, NEW AMERICA, <https://www.newamerica.org/oti/reports/everything-moderation-analysis-how-internet-platforms-are-using-artificial-intelligence-moderate-user-generated-content/legal-frameworks-that-govern-online-expression/> (last updated July 22, 2019).

25. *Objectionable Content: Hate Speech*, FACEBOOK COMMUNITY STANDARDS, <https://transparency.fb.com/policies/community-standards/hate-speech/>.

content they publish and promote.”²⁶ The balance of rights is precarious, but as it stands, the legislation in place in the United States does not adequately protect its athletes, especially in light of recent developments that have contributed to the pervasiveness of online hate directed at them.

B. Legalized Sports Gambling as Ammunition for Internet Trolls

In a landmark 2018 decision, the United States Supreme Court struck down a federal law in place since 1992 that made it unlawful for most states to permit sports gambling under individual state laws.²⁷ In a 6-3 ruling, the majority cited the importance of adherence to the anticommandeering doctrine, and reasoned that the Professional and Amateur Sports Protection Act (PASPA) had violated this doctrine by placing “state legislatures . . . under the direct control of Congress.”²⁸ Justice Alito established that the legalization of sports gambling was not a decision that should be left up to the courts, but one instead for either Congress or the individual states to regulate.²⁹ In doing so, the Court paved the way for the current “patchwork” of state laws regulating the industry, with thirty-eight states legalizing sports gambling since the decision.³⁰

The impact of the *Murphy v. NCAA* decision on the behavior of some sports gamblers has been disturbing, to say the least. Former Green Bay Packers receiver Marquez Valdes-Scantling said it best after a subpar personal performance against the Atlanta Falcons in 2020: “[W]hen you get people’s money involved, you start getting all sorts of hate mail.”³¹ This sentiment was perhaps most notably expressed in the case of “Parlay Patz,” a young man from California who was sentenced in federal court in 2021 after pleading guilty to sending threatening messages via social

26. Will Henshall, *The Supreme Court Could Determine the Future of Social Media Content Moderation*, TIME (Feb. 22, 2024, 2:45 PM), <https://time.com/6762361/supreme-court-social-media-moderation/>.

27. Ariana de Vogue & Maegan Vazquez, *Supreme Court Lets States Legalize Sports Gambling*, CNN POL. (May 14, 2018, 3:45 PM), <https://www.cnn.com/2018/05/14/politics/sports-betting-ncaa-supreme-court/index.html>.

28. *Murphy v. NCAA*, 584 U.S. 453, 473-74 (2018); see 28 U.S.C. § 3702.

29. *Murphy* 584 U.S. at 486.

30. Brian Pempus, *States Where Sports Betting Is Legal*, FORBES BETTING (Feb. 20, 2024, 6:00 AM), <https://www.forbes.com/betting/legal/states-where-sports-betting-is-legal/#:~:text=There%20is%20a%20patchwork%20of,states%2C%2029%20permit%20wagering%20online>.

31. Alex Prewitt, *The Blame Game*, SPORTS ILLUSTRATED (Aug. 9, 2021), <https://www.si.com/betting/2021/08/09/gambling-issue-the-athletes>.

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media to numerous collegiate and professional athletes.³² Patz first rose to prominence in the online sports gambling community due to his extraordinarily successful parlay strategy.³³ However, his name is now forever connected to a 2020 criminal complaint issued by the Department of Justice, in which an FBI special agent recounted facts supporting the issuance of an arrest warrant against Benjamin Patz for the crime of “transmitting threats in interstate or foreign commerce.”³⁴ According to the complaint, Patz threatened to decapitate a professional baseball player, to maim another athlete and his wife, and to harm a third athlete’s daughters, among several other violent messages.³⁵

During the investigation, spearheaded by the FBI’s Integrity in Sport and Gaming Initiative,³⁶ it became clear that Patz’s motive for sending the messages was likely his excessive, not always successful gambling on players’ performances and/or the outcomes of certain games.³⁷ He was an extravagant spender, and a search of his records with the gambling company William Hill demonstrated a correlation between losing bets and subsequent threatening messages sent to amateur and professional athletes.³⁸ The complaint stated that “[h]is substantial and persistent online sports wagering suggests that PATZ may have threatened athletes who played in games on which he had unsuccessfully wagered and lost money.”³⁹ Ultimately, Patz plead guilty to the charges and was sentenced in federal court to thirty-six months of probation.⁴⁰ He was also ordered to abstain from gambling in any manner.⁴¹ While Parlay Patz may evidence an extreme example of the crisis at hand, his situation is especially unique in that it was caught and prosecuted. This is not often the case for athletes abused online, and many years have passed since

32. David Purdum, *Sports Bettor Sentenced After Pleading Guilty to Threatening Tampa Bay Rays Players*, ESPN (June 3, 2021, 12:33 PM), https://www.espn.com/chalk/story/_/id/31560031/sports-bettor-sentenced-pleading-guilty-threatening-tampa-bay-rays-players.

33. *Id.*

34. Crim. Complaint ¶¶ 1-3, U.S. v. Patz (M.D. Fla. 2020) (No. 8:20MJ1209TGW).

35. *Id.* ¶¶ 9-14.

36. Purdum, *supra* note 32.

37. *Supra* note 34, at ¶ 36.

38. John Holden, *Looking Back on What ‘Parlay Patz’ Allegedly Has Done and What It Means*, LEGAL SPORTS REPORT (Mar. 25, 2020), <https://www.legalsportsreport.com/38911/parlay-patz-florida-holden/>.

39. *Supra* note 34, at ¶ 36.

40. Dan Sullivan, *Gambler Gets Probation for Threatening Tampa Bay Rays Players*, TAMPA BAY TIMES (June 3, 2021), <https://www.tampabay.com/news/tampa/2021/06/03/gambler-gets-probation-for-threatening-tampa-bay-rays-players/>.

41. *Id.*

Patz's case was tried with little done to prevent similar issues from occurring.

Unfortunately, the “toxic online cauldron” that Patz’s victims were subjected to has snowballed into a serious concern for NCAA tournament athletes.⁴² There are countless examples of collegiate athletes in America enduring the hostility of sports fans, and college basketball players are especially familiar with the consequences of their team earning a bid to March Madness.⁴³ In what should arguably be one of the most important and exciting times in their careers as student-athletes, college players face scrutiny of their every mistake and victory,⁴⁴ due largely in part to the frustrations that online sports bettors experience when they lose money on proposition (prop) bets.⁴⁵ Even the surging popularity of the women’s NCAA basketball tournament, which saw its 2024 championship game round up a larger television audience than the men’s tournament for the first time in its history,⁴⁶ has been tainted by Internet trolls sexualizing, criticizing, and threatening star players like Louisiana State University’s Angel Reese and the University of Iowa’s Gabbie Marshall, spurring postgame press conference tears and breaks from social media altogether.⁴⁷ Perhaps the decision to stay off of social media as an avoidance tactic was a reasonable suggestion a decade or more ago, but with the present-day boom of name, image, and likeness (NIL) opportunities, it seems impractical to encourage student-athletes to give up their greatest resource for self-promotion and monetization.⁴⁸ Yet the question remains: How can the NCAA protect these teens and young adults from the vitriol of the Internet, a place where keyboard warriors

42. Eddie Pells, *College Athletes Struggle with Online Hate During March Madness*, KGW8 (Mar. 29, 2023, 9:38 AM), <https://www.kgw.com/article/sports/march-madness-online-hate-athletes/283-c5e3e0f7-756d-4cfc-99b9-d8f16bad1d9f>.

43. *Id.*

44. *Id.*

45. All Things Considered, *Amid Growing Harassment Against Players, NCAA Calls for Ban on Prop Bets*, NPR, at 00:27 (Apr. 6, 2024, 4:58 PM ET), <https://www.npr.org/2024/04/06/1243276529/amid-growing-harassment-against-players-ncaa-calls-for-ban-on-prop-bets>.

46. Press Release, Katie Callahan, ESPN Press Room, *ESPN Platforms Deliver Unprecedented Viewership Success During NCAA Division I Women’s Basketball Season* (Apr. 6, 2024), <https://espnpressroom.com/us/press-releases/2024/04/espn-platforms-deliver-unprecedented-viewership-success-during-ncaa-division-i-womens-basketball-season/>.

47. Etan Thomas, *Social Media and Gambling Have Made Death Threats Routine for College Athletes*, THE GUARDIAN (Apr. 10, 2024, 6:00 PM), <https://www.theguardian.com/sport/2024/apr/10/angel-reese-death-threats-gambling-college-sports-ncaa>.

48. Pells, *supra* note 42.

feel secure enough to propose that a twenty-something should be “dead in a ditch” after a tough loss on the court?⁴⁹

C. *The NCAA Lobbies Against Prop Betting, Employs AI*

Charlie Baker, the president of the NCAA, is well aware of the dangers posed by sports betting to the mental health of student-athletes, characterizing private team strategies and confidential player health data as “not just chatter anymore but currency for some and inside information for others.”⁵⁰ Backed by evidence that one out of every three student-athletes has experienced some form of abuse by sports bettors, Baker is calling on states that allow college prop bets to impose a ban on such bets moving forward.⁵¹ In a statement shared on social media, Baker described prop bets as a “threat[] [to] the integrity of competition” that “lead[s] to student-athletes . . . getting harassed.”⁵² What sets prop bets apart from a straightforward moneyline bet is that they have no relation to the final score or overall outcome of a sporting contest.⁵³ If a fan so chooses, they can place a prop bet on the number of assists they expect a basketball player to be credited with by the final buzzer, or on the first team they foresee reaching twenty points, “instead of or in conjunction with a game’s outcome or spread.”⁵⁴

While this style of micro-wagering is undoubtedly attractive to fans and adds a certain level of refreshing excitement to sporting events, its staying power is wavering as the NCAA mounts attacks against it.⁵⁵

49. *Id.*

50. Jeff Smith, *NCAA President Charlie Baker Points to Progress, Future Action in First State of College Sports Address*, NCAA MEDIA CTR. (Jan. 10, 2024, 8:28 PM), <https://www.ncaa.org/news/2024/1/10/media-center-ncaa-president-charlie-baker-points-to-progress-future-action-in-first-state-of-college-sports-address.aspx>.

51. *Supra* note 45.

52. NCAA News (@NCAA_PR), TWITTER (Mar. 27, 2024, 8:22 AM), https://twitter.com/NCAA_PR/status/1772977545534726499?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1772977545534726499%7Ctwgr%5Ef92a0894f4c6adfa6ba8a834291db4e7f3bfeec4%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fsports.yahoo.com%2Fnaaa-set-to-push-states-with-legalized-sports-betting-to-ban-prop-bets-for-all-college-sporting-events-141503923.html.

53. Devon Platana, *What Is a Prop Bet?*, FORBES BETTING (Mar. 8, 2023, 9:00 AM), <https://www.forbes.com/betting/guide/prop-bet/>.

54. David Ubben, *NCAA President Charlie Baker Wants Ban on Prop Bets in College Sports*, THE ATHLETIC (Mar. 27, 2024), <https://theathletic.com/5372615/2024/03/27/ncaa-president-charlie-baker-prop-betting/>.

55. Dennis Dodd, *Why the NCAA’s Push to Ban Prop Bets on College Sports Has Merit Despite an Uphill Battle Nationwide*, CBS SPORTS (Apr. 4, 2024, 2:36 PM), <https://www.cbsports.com/news/why-the-ncaa-push-to-ban-prop-bets-on-college-sports-has-merit-despite-an-uphill-battle-nationwide/>.

Safeguarding the well-being of young student-athletes is not the NCAA's sole motivation for lobbying against prop bets in collegiate athletics; the Association is also apprehensive of student-athletes deliberately manipulating their performances to impact betting lines.⁵⁶ Despite no significant instances of this occurring in the NCAA thus far, the risk exists that student-athletes overcome with online hate speech and threats will be induced to alter their play out of fear.⁵⁷ Accordingly, in the interest of curbing the abhorrent social media abuses confronting student-athletes, “[s]everal states sports betting regulators” are considering the adoption of policies that would ban college player prop bets across all betting markets in that state.⁵⁸ By urging a nationwide prohibition on college prop bets, the NCAA appears to be doing its part in “foster[ing] [the] lifelong well-being” of its member student-athletes,⁵⁹ but it remains to be seen if individual state gaming regulatory agencies will demonstrate a similar commitment to the welfare of these vulnerable young people.

Influenced by its dedication to athlete safety, and invigorated by calls from the public to do more to protect students, the NCAA announced in December 2023 that it had commissioned the work of Signify Group and its artificial intelligence service, Threat Matrix, to monitor and analyze cases of online abuse targeting NCAA championship participants.⁶⁰ The operation, which was launched ahead of the 2023-24 NCAA championships, asserts to respond to online abuses by reporting them to interactive computer service providers as well as law enforcement, when necessary.⁶¹ Threat Matrix also specifically studies threats made by social media account holders who are potentially motivated by their gambling interests to target individual athletes.⁶²

cbssports.com/college-basketball/news/why-the-ncaas-push-to-ban-prop-bets-on-college-sports-has-merit-despite-an-uphill-battle-nationwide/.

56. Nick Robertson, *NCAA Will Push States to Ban Prop Bets on College Athletes*, THE HILL (Mar. 27, 2024, 12:08 PM), <https://thehill.com/blogs/blog-briefing-room/4559420-ncaa-push-states-ban-prop-bets-college-athletes/>.

57. *Id.*

58. Robert Linnehan, *States Exploring College Player Prop Betting Bans*, SPORTS BETTING DIME (Apr. 2, 2024, 1:46 PM), <https://www.sportsbettingdime.com/news/betting/states-exploring-college-prop-bans/>.

59. *Mission and Priorities*, NCAA, <https://www.ncaa.org/sports/2021/6/28/mission-and-priorities.aspx> (last visited Apr. 18, 2024).

60. Press Release, NCAA Media Center, *NCAA Launches Ground-Breaking Initiative to Study and Understand Online Abuse in College Sports* (Dec. 11, 2023, 12:00 PM), <https://www.ncaa.org/news/2023/12/11/media-center-ncaa-launches-ground-breaking-initiative-to-study-and-understand-online-abuse-in-college-sports.aspx>.

61. *Id.*

62. *Id.*

Armed with the capacity to analyze over thirty-five languages and emojis, this data science firm is tasked with providing the NCAA with a big-picture understanding of the online abuse phenomenon, which will then be leveraged to mend the social media community for college athletes.⁶³ At a time in college athletics characterized by uncertainty and unease, the decision by Charlie Baker to employ a groundbreaking data analytics tool formerly utilized by the National Basketball Players Association (NBPA) and the Women's National Basketball Association (WNBA) is a commendable step in the right direction.⁶⁴

D. Players' Unions Signify the Inadequacy of Current Measures

In the realm of American professional sports, the majority of athletes in the major leagues are members of their respective players associations.⁶⁵ The general role of a players association is to serve as a representative on behalf of professional athletes in negotiations regarding that league's pertinent collective bargaining agreement.⁶⁶ More specifically, these unions work to "amplify [players'] voices as leaders,"⁶⁷ "enhance[] and defend[] the image of players and their profession,"⁶⁸ and "creat[e] player safety initiatives."⁶⁹ While most of the active professional players associations in the United States likely were not imagining social media training and safety protocols at their inception, players are now constantly faced with the dangers of online abuse, and league unions have been forced to adapt to these concerns.

In an early instance of a domestic players association working to protect its athletes' online personas, the NFL Players Association (NFLPA) partnered with K2 Intelligence in 2016 "to provide players and their families with a list of online and social media protections and capabilities," as well as resources to neutralize perceived threats to

63. *Id.*

64. Conor Murphy, *NCAA President Uses Inaugural Address to Highlight Threats on Social Media Linked to Sports Betting*, CDC GAMING REPORTS (Jan. 11, 2024, 2:26 PM), <https://cdcgaming.com/ncaa-president-uses-inaugural-address-to-highlight-threats-on-social-media-linked-to-sports-betting/>.

65. *Collective Bargaining Agreements in Sports Leagues & Their Legal Scope*, JUSTIA SPORTS L. CTR. (July 2023), <https://www.justia.com/sports-law/collective-bargaining-agreements-in-sports-leagues/>.

66. *Id.*

67. *Overview & History*, NBPA, <https://nbpa.com/about> (last visited Apr. 18, 2024).

68. *How the NFLPA Works*, NFLPA, <https://nflpa.com/about> (last visited Apr. 18, 2024).

69. *What We Do*, NHLPA, <https://www.nhlpa.com/the-pa/what-we-do> (last visited Apr. 18, 2024).

Internet safety.⁷⁰ This collaboration with K2, a risk advisory and cyber defense firm,⁷¹ was prescribed in response to extensive hacking of professional athletes' data.⁷² While these cybersecurity threats may seem a bit detached from the occurrences of online harassment and hate speech permeating the Internet today, they presented a true peril to player safety and continue to intimidate even the most secure sites.⁷³ Thus, the NFLPA was proactive in its steps to insulate players from unwanted exposure, equipping them with an education and the means to resolve breaches when necessary.⁷⁴

Building on its commitment to player well-being, the NFLPA announced in 2021 that players and teams would "have the ability to anonymously and securely report any and all issues with regard to player health and safety" to the association as issues arose.⁷⁵ This effort was made possible due to the NFLPA's implementation of RealResponse, an anonymous communication platform that the league first utilized during the COVID-19 pandemic.⁷⁶ Recognizing the successes of RealResponse in bringing players' interests to the forefront, the NFLPA took advantage of the platform's customization features to offer players further opportunities to share their concerns with the league confidentially.⁷⁷ On its face, the plan may seem geared towards players who report team leadership actions that occur behind the scenes and invoke fear of retribution if disclosed, such as disdain for ownership or athlete mistreatment.⁷⁸ However, as safety concerns mount for NFL players who are repeatedly attacked on social media, RealResponse can reasonably serve as another mechanism for leagues to identify Internet threats and strategically respond as a collective, rather than leaving players to fend for themselves online.⁷⁹

Of course, the NFLPA does not stand alone in the effort to ensure professional athlete safety. In 2022, the National Basketball Players

70. Bob Wallace, *Tackling Tech: NFLPA Brings Cyber Security & Social Media Aid to Members*, NEW ENGLAND PATRIOTS NEWS (June 15, 2016, 9:00 PM), <https://www.patriots.com/news/tackling-tech-nflpa-brings-cyber-security-social-media-aid-to-members-264066>.

71. K2 INTEGRITY, <https://www.k2integrity.com/> (last visited Apr. 18, 2024).

72. Wallace, *supra* note 70.

73. *See id.*

74. *Id.*

75. Press Release, George Atallah, NFLPA, RealResponse, NFLPA Announce Landmark Issue Reporting Platform for Professional Sports (July 29, 2021), <https://nflpa.com/press/realresponse-nflpa-announce-landmark-issue-reporting-platform-for-professional-sports>.

76. *Id.*

77. *Id.*

78. *See id.*

79. *See id.*

Association (NBPA) and the Women’s National Basketball Players Association (WNBPA), both of which are based in New York, New York, combined with the Netherlands-based FIFPRO to authorize a unified report examining incidences of online abuses targeting professional athletes around the globe.⁸⁰ Using the machine learning service Threat Matrix, created by Signify Group, the research initiative utilized publicly available data from social media platforms, identifying “targeted online abuse,” which the report defines as “threats to life or family, discriminatory language based on race, religion, sexuality, and other factors as well as any specialized terms with defined intent to be abusive in the context of the specific player, team or region.”⁸¹ The collaboration arose, in part, due to the fact that basketball and football (also called *fútbol*, or soccer) are the largest team sports worldwide; thus, a great measure of the offenses transpiring online directly affect athletes in these sports.⁸²

Signify Group’s study concentrated on “flagged posts that [were] directed at . . . a player so that player might see the message and suffer the impact of the abusive content.”⁸³ It came as no surprise to the participating players unions that Threat Matrix easily detected a shocking volume of online abuses directed at athletes over a relatively short period of time.⁸⁴ However, the project’s comprehensive findings highlighted the following issues as particularly notable: instances of abuse tend to discourage athletes from sharing their true personalities online, athletes “who express solidarity for social issues” are more likely to be attacked, and the current measures in place to counteract these problems are inadequately implemented and regulated.⁸⁵ Integral to the report are the responsibilities that it impresses upon online service providers, the sports industry, and the public to support professional athletes and shield them from harmful online content.⁸⁶ Signify encourages online platforms to bridge the gap in content moderation by removing users’ entire accounts, rather than singular posts, when they are repeatedly flagged for violations involving

80. *FIFPRO, NBPA, and WNBPA Launch Collaboration to Strengthen Player Protection Against Online Abuse*, NBPA (May 31, 2022), <https://nbpa.com/news/fifpro-nbpa-and-wnbpa-launch-collaboration-to-strengthen-player-protection-against-online-abuse#>.

81. *Id.*

82. *Id.*

83. Signify Group, *Decoding Online Abuse of Players: Collective Responses by Players and Unions*, FIFPRO RSCH. REP. at 2 (May 31, 2022), https://fifpro.org/media/ntie13bw/fifpro-nbpa-wnbpa-decoding_online_abuse.pdf.

84. *Id.* at 13.

85. *Id.* at 8.

86. *Id.* at 37-48.

hate speech or harassment.⁸⁷ It advises leagues and teams to educate athletes about the possible risks of publicly associating with progressive campaigns or commercial partners, and it highlights in particular the vulnerabilities arising from team-organized content creation.⁸⁸ Finally, with respect to the United States specifically, the report calls out the abysmal regulatory framework in place, deeming it “the weakest of all the jurisdictions covered in this study.”⁸⁹

On the same day that the report was published, the NBPA uploaded a video to accompany its findings, and the leadership of the NBPA, WNBA, FIFPRO, and Signify Group all took part in sharing their motivations and takeaways from the project.⁹⁰ NBPA’s former executive director Tamika Tremaglio considers her role with the NBA to involve the protection of players beyond their positions as athletes to encompass who they are as individuals, and she classified the over-accessibility and commercialization of players as an impediment to this goal.⁹¹ Jonas Baer-Hoffmann, the FIFPRO general secretary, explained that his objective for the study was to “build public discourse,” and to determine the “shared responsibility” of players’ representative organizations and online platforms in the effort to increase athlete safety.⁹² Ultimately, Signify CEO Jonathan Hirshler shared his belief that the primary problem facing players is that “the only solutions . . . in place are victim net solutions”, meaning it is left up to the victim of online abuse “to report[,] . . . to fill out a witness impact statement[,] . . . to go to their team, [and] to expose what’s going on.”⁹³ On the whole, the film indicated that every relevant stakeholder has a desire to invest in and implement the joint action items recommended in the report.⁹⁴ Consequently, although it certainly appears that the most popular leagues in America are on the right track, professional athletes are rightfully concerned about their well-being and will remain so until the leagues have produced strategic, tangible results in the fight against online abuses.

87. *Id.* at 42.

88. *Id.* at 44-45.

89. *Id.* at 48.

90. National Basketball Players Association, *Decoding Online Abuse of Players* [FIFPRO x NBPA x WNBA], YOUTUBE (May 31, 2022), <https://www.youtube.com/watch?v=IXJmIpQsLv4>.

91. *Id.* at 8:21-9:03.

92. *Id.* at 2:13-2:39.

93. *Id.* at 6:24-6:47.

94. *See id.*

III. TACKLING ONLINE THREATS: GLOBAL EFFORTS

Social media platform regulatory schemes vary from country to country, making content moderation a perilous trail to trek.⁹⁵ As the existence of Section 230 makes clear, the United States employs a liberal, permissive model of content moderation, providing platforms far-reaching immunity from liability for the speech of third-party users.⁹⁶ On the other side of the coin is the model adopted by China, one that holds platforms strictly liable for failing to keep a close eye on content running afoul of Chinese law.⁹⁷ Sitting somewhere between these adverse approaches are those countries that apply either a “conditional liability” or “conditional immunity” regulatory scheme.⁹⁸ Under a “conditional liability” approach toward content moderation, a social media site will incur liability only if, after receiving a notice of infringing material and a take-down request, the platform chooses not to remove the content at issue.⁹⁹ Inversely, in a country applying a “conditional immunity” approach, a platform can be afforded immunity so long as it meets certain statutorily-prescribed requirements.¹⁰⁰ Thus, there are several legislative intentions affecting content moderation globally, and they all exist along a spectrum, generating a jurisdictional hodgepodge of legal outcomes for victims of online hate.

A. Foreign Social Media Legislation

If lawmakers in the United States were to look toward Europe, they would see several countries working to legislate in the interest of safer social media, and attempting to model a game plan in the global campaign against online athlete abuse.¹⁰¹ In 2022, several provisions of the European Union’s Digital Services Act (DSA), self-described as the only “legislative act in the world having this level of ambition to regulate social

95. Akhilesh Pillalamarri & Cody Stanley, *Online Content Regulation: An International Comparison*, GEO. WASH. U. L. SCH.L INT’L AND POL’Y BRIEF (Dec. 8, 2021), <https://studentbriefs.law.gwu.edu/ilpb/2021/12/08/online-content-regulation-an-international-comparison/>.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. See Marietje Schaake, *Europe Is Changing Social Media for the Better—the US Can Do It, Too*, THE HILL (Aug. 24, 2023, 8:30 AM), <https://thehill.com/opinion/technology/4165412-europe-is-changing-social-media-for-the-better-the-us-can-do-it-too/>.

media,” went into effect.¹⁰² Under the DSA, online platforms must create and maintain tools available to users that allow for “sufficiently precise” reporting of inappropriate content.¹⁰³ Once a notice has been reported to the platform’s host, it is then duty-bound to review the submission and provide the complaining user with a response detailing “the decision taken, the facts and circumstances relied on in taking such a decision[,] . . . reference to the legal or contractual ground relied on[,] . . . and information on the redress available.”¹⁰⁴ This enhanced level of transparency is groundbreaking due to the requisite degree of information that a platform is expected to provide a complaining user.¹⁰⁵ Now, users have greater leverage to object to the content moderation protocols of social media sites, meaning that, in essence, the DSA has effected a valuable ongoing dialogue between online service providers and users.¹⁰⁶ For athletes, the hope is that the DSA’s systematic regulatory plan will deter violators from using the Internet as a means of directing their hate.

Shortly after the DSA was promulgated, the United Kingdom’s Office of Communications (Ofcom) implemented the UK Online Safety Act (OSA).¹⁰⁷ The Act, which imposes on online companies the expectation to “mitigate content risks while protecting free expression and privacy,” provides Ofcom with sweeping enforcement powers.¹⁰⁸ Similarly to the DSA, the OSA makes online service providers prioritize user reporting tools.¹⁰⁹ The OSA requires platforms to manage risk to users by frequently assessing for the existence of harmful content, although Ofcom recognizes that it is unrealistic to “expect[] providers to eradicate” such content.¹¹⁰ Ultimately, a key distinction in the scope of the OSA is its focus on protecting children from accessing unsafe content

102. *Digital Services Act (DSA)|Updates, Compliance*, THE DIGITAL SERVICES ACT (DSA), <https://www.eu-digital-services-act.com/#:~:text=Under%20the%20Digital%20Services%20Act,right%20to%20freedom%20of%20expression>.

103. Gail E. Crawford, et al., *The Digital Services Act: Practical Implications for Online Services and Platform*, LATHAM & WATKINS LLP at 7 (Mar. 2023), <https://www.lw.com/admin/upload/SiteAttachments/Digital-Services-Act-Practical-Implications-for-Online-Services-and-Platforms.pdf>.

104. *Id.*

105. *Questions and Answers on the Digital Services Act*, EUR. COMM’N (Feb. 23, 2024), https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2348.

106. *See id.*

107. Noah Bialos & Natasha Amlani, *UK Online Safety Act Becomes Law: What to Expect Next*, PERKINS COIE (Nov. 3, 2023), <https://www.perkinscoie.com/en/news-insights/uk-online-safety-act-becomes-law-what-to-expect-next.html>.

108. *Id.*

109. *Id.*

110. *Id.*

online.¹¹¹ One subset of content identified as detrimental to those under the age of 18 is that which “is abusive and targeted at, or incites hatred against, people on the basis of protected characteristics.”¹¹² Thus, the consequences of the OSA will be particularly manifest for underage athletes. Although the DSA and OSA were not born solely from a desire to protect Europe’s athletes, both pieces of legislation have ramifications that will spill into the lives of those athletes with online presences, and therefore both acts provide countries everywhere with a blueprint after which similarly effective laws can be modeled.

B. FIFA and FIFPRO and FIA, Oh My!

The stakeholders truly applying elbow grease to the task of protecting athletes online are the governing bodies of sport and athletes themselves. In a poignant gesture, a group of British soccer clubs were joined in 2021 by “European soccer’s governing body UEFA, British Cycling, the Rugby Football Union (RFU), the England and Wales Cricket Board (ECB),” the International Tennis Federation (ITF), and several other parties for a boycott of social media sites.¹¹³ This alliance of ideals arose in response to horrific racist abuses endured primarily by Black soccer players on their social media pages.¹¹⁴ The goal of the boycott was clear: to send platforms the message that they were not doing enough to create an atmosphere of safety and respect online.¹¹⁵ To an extent, that message was taken seriously. Twitter released a statement saying that it was aware of racist and abusive Tweets directed at British soccer players, and that it had taken down a segment of those posts.¹¹⁶ Facebook substantiated its claim of commitment to anti-discrimination by announcing the release of direct messaging tools intended to hide abuses received from anonymous users.¹¹⁷ Although temporary, the boycott was a deliberate spotlight on the Internet harassment afflicting athletes globally.

It should come as no surprise that professional athletes are likely to experience social media abuse during championship play, especially those who participate in international tournaments like the FIFA World

111. *See id.*

112. *Id.*

113. Martyn Herman, et al., *Sport Unites for Social Media Boycott Against Online Abuse*, REUTERS (Apr. 30, 2021, 2:38 PM), <https://www.reuters.com/article/idUSKBN2CH2JI/>.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

Cup.¹¹⁸ On the United Nations International Day for Countering Hate Speech, FIFA released a report commissioned in preparation for the 2022 World Cup in Qatar.¹¹⁹ The research shows that, during international play, more than half of soccer players are abused online, mainly by racist and homophobic messages.¹²⁰ FIFA President Gianni Infantino voiced his hope that FIFA's collaboration with FIFPRO would lead to "social media platforms . . . actively support[ing] us in being part of the solution."¹²¹ As an acknowledgement of the striking statistics outlined in the report, FIFA and FIFPRO chose to institute a content moderation mechanism capable of identifying hate speech posted to soccer athletes' accounts.¹²² The tool obscured comments containing hate speech from the view of the intended recipient, as well as his or her followers, thus lessening the emotional impact to a player during competition.¹²³ In spite of this acute development, the organizations, along with the rest of the worldwide soccer community, have acknowledged the demand for initiatives aimed at hate speech deterrence and the facilitation of justice for athletes inevitably affected by online offenses.¹²⁴

Over the last decade, Formula One (F1) racing has matured into the largest motorsport championship on Earth, and with that popularity has come a burst of conversation about the sport online.¹²⁵ Between 2016 and 2022, talk of F1 on the Internet escalated rapidly, "making it the fastest growing sport on social media."¹²⁶ Much of that jabber naturally turned negative, spurring motorsport's governing body, the Fédération Internationale de l'Automobile (FIA), to join the movement of sporting stars denouncing online hate speech directed at athletes.¹²⁷ In advance of the 2023 F1 season opener, the FIA shared its plans to address online abuses at a World Motor Sport Council meeting in Bahrain.¹²⁸ Outlined

118. *FIFA and FIFPRO Join Forces to Combat Social Media Hate Speech*, INSIDE FIFA (June 3, 2022, 12:30 PM), <https://inside.fifa.com/media-releases/fifa-and-fifpro-join-forces-to-combat-social-media-hate-speech>.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Have We Reached Peak F1 Popularity?*, BUZZ RADAR (Sept. 27, 2023, 3:15 PM), <https://buzzradar.com/blog/have-we-reached-peak-f1-popularity>.

126. *Id.*

127. Jerome Pugmire, *Motorsport and Others Joining to Fight Online Abuse*, AP NEWS (Mar. 2, 2023, 12:47 PM), <https://apnews.com/article/online-abuse-hate-speech-fia-motorsport-f003629b5b7acf18410552943152115a>.

128. *Id.*

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in a white paper titled “A Strategic Response to Online Hate Speech in Sport,” the plans include “becom[ing] the first governing body of sport to launch its own, dedicated research centre¹²⁹ into online hate.” Importantly, the FIA recognizes that the majority of published research on this subject is written in English, thus manufacturing a “dominant Western-cultural focus.”¹³⁰ Additionally, the federation’s research shows that most scholarly work centers on soccer and American football, confirming a gap in data for several other global sports.¹³¹ The FIA’s findings are worthy of emphasizing to other sport-governing bodies, especially because of the federation’s prioritization of “understanding the characteristics of online hate speech from a non-Western perspective,” and its concerns regarding the “ownership and organizational structure[s]” of social media platforms as channels for the dissemination of hate speech.¹³²

IV. CONCLUSION

Spectator sports have invoked the entire spectrum of human emotion as long as they have existed. Sports fandom is a nuanced betrothment between the pinnacles of athleticism and their devotees, encouraging the sensations of a great triumph and the passions of a dreadful defeat at turns. United with the staggering depths of access to athletes that fans now enjoy, it is no wonder that thirty-seven percent of U.S. sports fans at and over the age of fourteen “say that their fanhood has grown” in recent years.¹³³ Studies have shown that Gen Z sports fans in particular feel compelled to forge connections with their favorite athletes on social media, which drives these young people “to watch and attend sporting events the athlete participates in, follow brands or other athletes they interact with, and buy products they promote.”¹³⁴ Notwithstanding all the good that can come from this engagement—interactive fan experiences, sports marketing successes, and the humanization of athletes, to name a few—the inescapable nature of this communication online has cultivated

129. FIA UNIV., A STRATEGIC RESPONSE TO ONLINE HATE SPEECH IN SPORT 13 (2023), <https://fia.university/wp-content/uploads/2023/07/FIA-White-Paper-2023.pdf> [hereinafter FIA WHITE PAPER].

130. *Id.* at 8.

131. *Id.*

132. *Id.* at 10.

133. Pete Giorgio, et al., *2023 Sports Fan Insights: The Beginning of the Immersive Sports Era*, DELOITTE CTR. FOR TECH., MEDIA & TELECOMM. (June 26, 2023), <https://www2.deloitte.com/us/en/insights/industry/media-and-entertainment/immersive-sports-fandom.html> (surveying a group of over 3,000 U.S. sports fans for a sports fan insights survey).

134. *Id.*

an environment prone to hostility directed at athletes by aggrieved fans.¹³⁵ Athletes like Dutch cyclist Annemiek van Vleuten, who prematurely celebrated what she believed to be a gold medal performance in the Tokyo 2020 Olympics, but which turned out instead to be a claim to silver, have felt led to take a hiatus from social media altogether for fear of having their brutal heartbreak exacerbated by derogatory comments.¹³⁶ This is categorically unacceptable.

Collegiate and professional athletes deserve the privilege to freely engage with the public online without compromising their mental health or personal safety. Fortunately, this presumption has gained near-universal traction, and yet the preventative policies currently in place fail to satisfy the apprehension that athletes experience as a caveat of developing a social media presence. There still seems to exist a general tendency to downplay the harms that athletes face on the Internet—likely because the mistreatment occurs behind the scenes rather than playing out in a stadium—but again and again player testimony has proven that the intimate access sports fans have to athletes online is often detrimental to a player’s mental health.¹³⁷ An athlete’s ability to construct a vibrant online persona should not be foreclosed by virtue of social media platforms’ resistance to effective content moderation or the enforcement of user consequences.

If worthwhile improvements are to be made, the United States must apprise itself of the prevention and enforcement regulations adopted by other countries. It can no longer fall exclusively on the shoulders of players associations and sport-governing bodies to combat the use of social media sites as a mechanism for targeted hate speech and violence in sport. Legislators and industry actors across the globe, particularly those in the United States, should rethink the respective balance between user free speech and the obligations of online platforms, and consider the paradigm they are willing to hang their hats on. As FIFPRO President David Aganzo urges, “we must seek better cooperation amongst all stakeholders in the game to better protect those people that create the

135. Kearns, et al., *supra* note 2, at 404.

136. Ben Morse, *Gold Medal-Winning Athletes Swerve Social Media to Avoid ‘External Pressure’*, CNN SPORTS (July 28, 2021, 9:46 AM), <https://www.cnn.com/2021/07/28/sport/arianne-titmus-annemiek-van-vleuten-social-media-mental-health-simone-biles-tokyo-2020-spt-intl/index.html>.

137. See Gurpartap Mann, *Here’s How Social Media is Causing a Negative Impact on Athletes, and Sports*, LinkedIn (Mar. 8, 2023), <https://www.linkedin.com/pulse/heres-how-social-media-causing-negative-impact-athletes-mann/> (illustrating the negative impact that social media discussion has on professional athletes, including Naomi Osaka and Russell Westbrook as examples).

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game in the first place.”¹³⁸ To move beyond virtue signaling into effective, concerted action, all the major players in global sport must publicly renounce the online abuse of athletes and evidence a willingness to treat athletes with the dignity they are owed foremost as human beings.

138. *FIFPRO, NBPA, and WNBPA Launch Collaboration to Strengthen Player Protection Against Online Abuse*, *supra* note 80.