

Ownership of the Self in the New NBA CBA

By: David Sella-Villa*

On April 1, 2023, the NBA and the NBA Players Association (NBAPA) announced that they had reached agreement on a new [Collective Bargaining Agreement](#) (CBA). If ratified, the deal will keep the NBA operating with labor peace for at least the next six years. Collective bargaining agreements try to advance an array of interests for the league itself, the team owners, and the players. Some features of the new NBA CBA reveal that one such interest is a shared sense of ownership of the NBA between team owners and players.

Under the new CBA, NBA players would be allowed to own [minority stakes](#) in NBA and WNBA teams through investment vehicles held by private equity firms. This is the first time that a major U.S. sports league will allow its current players to own even a portion of any team. The use of private equity firms to facilitate player ownership speaks to one concern that may have prevented current player ownership of teams in the past – a potential conflict of interest. Presumably, a player's main interest is to win games and maximize his personal earnings while playing during his comparatively short career. Those goals, at times, can be in direct conflict with interests of team owners who aim to maximize team financial value over the long run. Because of a combination of revenue sharing arrangements, draft rules, and salary cap constraints, team owners are not always incentivized to win games or pay the players a true reflection of the value they provide a [franchise](#). If players own portions of teams, it at least calls into question the players performing at their best because an ownership interest may be perceived to influence them to do something other than win games. This could undermine the spirit of competition that forms the basis of every major sports league.

By allowing NBA players to own portions of teams indirectly, it tells a different story: the competitive effort of each individual player is the fuel that runs the entire [\\$10+ billion NBA machine](#)—not to mention all the industries that rely on the NBA like media groups, shoe companies, and legalized gambling services. That fuel gets transformed into NBA revenue through the significant efforts of the teams and the league. The players then receive a portion of that revenue through the salaries paid by the teams. But, without the players' talents and efforts, the teams and the league are not successful. The indirect ownership mechanisms help avoid the perceived conflict of interest. By owning portions of the team, the players can realize more of the financial value of their talents and efforts. In short, the players own more of a piece of themselves.

Another feature of the new CBA is that the NBA's licensing revenue counts towards the salary cap. The anticipated financial effect of this is a [\\$2,000,000](#) jump in each team's payroll. This mechanism helps players realize the benefits of ownership not simply through the capital gains of team value, but also through images and information the league corrects and creates based on the players' talents and efforts. In short, the players are getting to share more directly in the indicia of the NBA brand. That brand, in many ways, is an extension of the players. Through this mechanism, NBA players have more ownership in another piece of themselves.

But the players may not have gone far enough in this new CBA. The NBA and its teams seek to become increasingly competitive by mining existing data about the game and exploring new sources of data. The richest of those sources is data about the players [themselves](#) – their biomechanics, their behavior patterns, even how much water they drink. The now-expiring CBA makes some mention of players' rights in some of their biometric personal data. From current

reporting, it does not appear that the new CBA will advance an important ownership interest that each NBA player may want to have – data about themselves.

In the coming years, [eSports](#) and gambling may push the NBA to share increasingly personal information about the players. In golf, players' heart rates are displayed on a [screen](#) as they take important shots. It is not farfetched that live biometrics could impact in-game betting odds. By not addressing the NBA's potential use of such data, the NBAPA may have missed the chance to further player ownership in the league by exercising more control over data about themselves. In recent years WNBA players spearheaded social justice efforts and NBA players picked up the cause. Though social justice initiatives are an important part of the NBA [fabric](#), the NBAPA may have missed an opportunity to show leadership on an increasingly important social issue – data privacy.

* David Sella-Villa, Chief Privacy Officer, South Carolina Department of Administration; Adjunct Professor, University of South Carolina School of Law & William & Mary Law School. The views and opinions expressed here are those of the author in his individual capacity, and do not reflect the opinions, policies, or positions of any of his respective employers or affiliated organizations or agencies.