Athlete IP: How Can Athletes Protect and Profit from Their Signature Celebrations?

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In Part I of this two-part series on Athlete-Controlled Intellectual Property, we examined how athletes are asserting greater control over their intellectual property—and how teams, leagues and sponsors can evolve through joint IP ownership structures, NIL collectives, and multi-tiered IP licensing models. In Part II, we explore the next frontier: how athletes can protect and commercialize the expressive elements of their personal brands—particularly signature celebrations—through copyright and trademark law.

Athletes are now full-fledged brands, and one of the ways they distinguish themselves is through signature celebrations. From home run bat flips to touchdown dances, athletes increasingly use celebrations as a personal brand statement—think Billy "White Shoes" Johnson's "Funky Chicken" or Elbert "Ickey" Woods' "Ickey Shuffle." Just as wearing a hat or sneakers featuring an athlete's logo offers fans a way to show support, mimicking a signature celebration—on the field, in a video game or on social media—has become a part of the fan experience. But as these moments become part of the athlete's commercial identity, they require commensurate legal protection.

Copyright Protection

Dances, poses, and celebrations would appear to fall squarely within the ambit of U.S. copyright law. The Copyright Act of 1976 specifically lists "pantomimes and choreographic works" as protectable subject matter. Under this framework, a dance may be eligible for copyright protection if it includes:

- Rhythmic movements of one or more dancers' bodies in a defined sequence and spatial environment, and
- A series of dance movements or patterns organized into an integrated, coherent, and expressive compositional whole.

Historically, copyright jurisprudence favored longer forms of choreography, such as ballets, stage productions, and extended routines. That left athletes, brands and teams

with little clarity on how to protect short-form celebrations following a three-pointer or a goal.

Enter *Hanagami*. In 2023, the Ninth Circuit assessed the copyrightability of short-form choreography in *Hanagami v. Epic Games, Inc.*, 85 F.4th 931 (9th Cir. 2023). There, choreographer Kyle Hanagami brought suit against the creators of the popular video game *Fortnite* for including a brief snippet of his choreography as a virtual animation in the game. The Ninth Circuit held that even short-form choreography—as brief as two seconds—can qualify for copyright protection.

The court emphasized that although individual dance elements may not be protectable in isolation, a choreographer's "selection and arrangement" of those elements may be. The court identified various factors to consider in assessing a piece of choreography's protectability, including body shapes, body positioning, transitions, tempo, use of space and energy.

Although *Hanagami* involved a professional choreographer rather than an athlete, the decision provides a roadmap for how athletes, along with their teams, leagues and licensing partners, might assert copyright protection over their signature celebrations. While it's not a guarantee, the decision opens the door to obtaining copyright protection for short, iconic celebrations and enforcing those rights against unauthorized commercial use.

Trademark Protection

Copyright protection is not the only legal tool athletes can use to protect their celebrations. Trademark law offers an alternative pathway, particularly for signature poses or static images tied to a player's brand.

Athletes or their representatives can create a logo depicting a celebration pose and register that logo as a trademark of their brand. For example, Real Madrid forward Kylian Mbappé registered a trademark for his iconic goal celebration pose, which shows him standing tall with his arms crossed and his thumbs up near his shoulders. Former NFL tight end Rob Gronkowski and Olympic sprinter Usain Bolt have also registered trademarks for their "Gronk Spike" and "Victory" celebrations. With these registrations in place, these athletes can monetize merchandise bearing the image

of their celebration and take legal action against unauthorized commercial uses.

Protecting Athlete Celebrations in the Age of AI

While athletes now have viable pathways to protect and profit from their celebrations, the contours of these protections are still being defined—especially in the context of generative artificial intelligence and automated media.

The U.S. Copyright Office recently issued guidance clarifying that works generated entirely by artificial intelligence, where expressive elements are determined by a machine, are not eligible for copyright protection. However, AI-assisted works may be protected if a human's creative expression remains evident. This can include AI-generated film sequences, social media content or even promotional material, provided the human user shaped the creative direction meaningfully.

But what happens when a signature celebration appears in AI-generated video or photographic content? What if an AI program generates an avatar performing NFL All-Pro Wide Receiver Justin Jefferson's "Griddy" variation or Mbappé's celebratory pose?

As we've discussed previously, large language model developers must be cognizant of scraping trademarked or copyrighted data into their training sets, and creators must avoid infringing on registered copyrights and trademarks in the outputs they generate. At the same time, athletes and rightsholders must remain vigilant in policing the use of their celebrations in public-facing content to ensure that the use does not dilute the distinctiveness of their trademarks or the value of their copyrights.

Copyright and trademark holders may also find common ground by collaborating with those seeking to use their works or marks in AI-generated content. Just as musical artists pay licensing fees to "sample" musical elements of copyrighted works, content creators and generative AI users could pay licensing fees to athletes to "sample" copyrighted choreography and celebratory poses in AI-assisted projects. Modified or "sampled" choreography could still reference the original work, while introducing new creative expression. For example, athletes have been increasingly using the "Griddy" as a celebration. Allen Davis, the creator of the "Griddy," could claim a copyright and register the dance's choreography under the *Hanagami* framework to profit from the dance's fame. Jefferson puts his own twist on the choreography, shaping his index fingers and thumbs into circles and places them over his eyes. Should this variance of "the Griddy" be protectible as a possible derivative work or "sample?" Both Davis and Jefferson could hold rights in the dance with respect to their unique creative elements, and each profit from its widespread use and acclaim. For athletes and their commercial partners, embracing this model could transform celebratory choreography into a recurring source of licensing income, particularly in the digital and AI-assisted media economy.

Integrating Signature Celebrations into Joint Ownership and Licensing Models

If athletes increasingly protect their signature celebrations through copyright and trademark registration, teams, leagues and sponsors should look for ways to integrate those rights into broader IP ownership and licensing structures. Collaboration between athletes and organizations in the realm of signature celebrations makes sense as a celebration is often intrinsically linked with team-and-brand-owned IP elements appearing on athletes' jerseys. Joint ownership arrangements could allow athletes and organizations to co-develop new assets and share in licensing revenue.

Relatedly, multi-tiered licensing frameworks could streamline sponsors' access to league, team and athlete IP for integrated marketing campaigns. Sponsors could seamlessly produce advertisements with athletes in uniform performing iconic celebrations, associating their product or service with the excitement that follows a touchdown, goal or slam dunk.

These approaches would help align incentives and reduce friction around ownership disputes, especially as more athletes assert ownership over expressive elements of their brand. It would also allow stakeholders to develop sustainable, collaborative models that reflect the evolving reality of athlete-driven IP.

Key Takeaways

- Athletes, agents, sports leagues, and franchises should assess whether any widely recognized celebrations may be eligible for copyright protection when negotiating collaborative models such as joint IP structures and multi-tiered licensing arrangements.

- Athletes gaining visibility for a celebration or pose should consider seeking copyright registration protection or registering trademarks to maximize commercial opportunity.

- Content creators and media companies must evaluate whether choreography or celebratory imagery included in monetized content is subject to copyright or trademark restrictions.

- Collaboration between rightsholders and creators, particularly in the AI space, can lead to innovative, mutually beneficial licensing structures mirroring existing practices in the music industry.

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In today's sports and entertainment ecosystem, a signature celebration isn't just a moment of expression—it's a brand asset. As copyright and trademark law adapts to short-form choreography and dynamic media, athletes and their business partners have new tools to protect the IP embedded in those moments.

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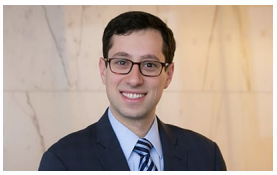

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