[US] Electronic Arts' ("EA") use of former National Football League players' likenesses in their video games is an unauthorized use of their likenesses.

IRIS 2015-2:1/33

Jonathan Perl
Locus Telecommunications, Inc.

The United States Court of Appeals for the Ninth Circuit was asked to balance the right of publicity of former professional football players against EA's First Amendment right to use their likenesses in its video games. The Court's arguments centered on whether the use was incidental, which would enable EA to use the likenesses without their permission. To find a use incidental the Court looked at four factors which it had developed in a ruling on 6 January 2015. These factors are (1) whether the use has a unique quality or value that would result in commercial profit to the defendant; (2) whether the use contributes something of significance; (3) the relationship between the reference to the plaintiff and the purpose and subject of the work; and (4) the duration, prominence or repetition of the name or likeness relative to the rest of the publication. The Court concluded that the former players' likenesses have unique value and contribute to the commercial value of Madden NFL, particularly since EA goes to substantial lengths to incorporate accurate likenesses of current and former players and pays millions of dollars to license the likenesses of current players. It thus found that that EA's use of the former players' likenesses is central to EA's main commercial purpose of creating a realistic virtual simulation of football games involving current and former NFL teams.

Ruling of the United States Court of Appeals for the Ninth Circuit, 6 January 2015

http://www.scotusblog.com/wp-content/uploads/2015/11/12-15737.pdf

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026