

Takeaways From 2024's Emerging IP Licensing Trends

By **Ryan Udell, Scott Marty and Harry Levin** (January 6, 2025)

With the start of the new year, we look back at some of the significant trends influencing intellectual property licensing in 2024. These themes highlight key considerations for navigating the evolving landscape of IP licensing.

AI Reshaping IP Licensing

Reflecting one of 2024's dominant trends, artificial intelligence has significantly affected IP licensing across industries and is poised to do so going forward.

In life sciences, specialized AI systems are revolutionizing drug discovery, pharmaceutical development and therapeutic applications, creating new markets for data, spurring partnerships between AI providers and life sciences companies, and accelerating healthcare advancements.

Meanwhile, technology companies are increasingly positioning themselves as AI-driven, leveraging chatbots, machine learning algorithms and large language models. In 2024, the Federal Trade Commission cracked down on AI washing — a marketing strategy that exaggerates or misrepresents the use of AI in a given product or service — and the use of AI technology used in deceptive and unfair ways.

AI has made significant strides in the field of predictive analytics, particularly when it comes to patent licensing. By analyzing historical data alongside current trends, AI can predict the potential value of patents and their licensing opportunities. This empowers companies to make more strategic decisions on which patents to license and on what terms. This approach, driven by data, can greatly enhance the efficiency of patent licensing strategies, ensuring that resources are directed toward the most valuable prospects.

IP law continues to evolve, particularly regarding ownership and protection of AI-generated works and inventions. Many works created with AI currently receive limited protection under existing IP law, and as policymakers tackle complex issues of authorship, inventorship, originality and IP's role in fostering innovation, IP protections may shift. For licensors and licensees, staying informed on these developments is essential, as they could affect asset ownership and licensed rights.

Additionally, recent case law from licensing disputes underscores the importance of clarity in agreements. The mechanics of financial terms, scope of the license, termination and dispute resolution are some of the highly litigated parts of a license agreement when the parties' relationship has soured.[1]

Practitioners are reminded to reduce ambiguity, carefully define carveouts and ensure alignment of parties' intentions when drafting terms to prevent potential negative outcomes.



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For example, when interpreting contracts, many courts view the use of different terms in the same agreement to imply that each term should be afforded a different meaning.[2] Practitioners should carefully use terms consistently throughout an agreement.

While traditional licensing considerations — such as ownership allocation, grants of rights and usage restrictions — remain central, AI brings unique issues to the table. AI providers, for instance, must address protection for data and methodologies used to train AI models, ownership of model weights, and user rights in generated outputs. Meanwhile, AI users must consider protection against inaccurate or infringing outputs, ownership of input prompts, and whether usage can be tracked for analytics or model retraining.

Rise of Name, Image and Likeness

New industries are also reshaping the IP landscape, notably the rise of name, image and likeness rights in collegiate sports. Since the NCAA's 2021 policy change allowing student-athletes to monetize their NIL, athletes are actively engaging in endorsement deals, social media partnerships and brand collaborations. Colleges and universities are increasingly supporting athletes with resources for managing contracts, branding and tax issues.

NIL rights introduce unique IP considerations, as athletes seek to establish and protect their personal brands within the highly regulated world of amateur sports. Key questions are emerging around the intersection of NIL with trademark rights, the boundaries of endorsement contracts, and the evolving relationship between athletes and their academic institutions.

For example, one area of inherent conflict relates to the overlap of the student athletes' NIL and the school's intellectual property, which may include jerseys, logos or team colors. The student can likely receive a higher licensing fee if the student endorses a product in a school jersey, but will likely need to obtain permission from his or her school to use any school intellectual property. Schools are taking various approaches to these demands, which may include actively negotiating the NIL deal with its representatives and/or seeking a percentage of the licensing fee.

The evolution of NIL deals has opened the doors to new professional opportunities. Collectives (groups of boosters or fans) and NIL agencies have emerged to facilitate NIL deals for athletes, providing access to resources, opportunities and legal guidance. These entities often work to connect athletes with brands, helping them navigate the complexities of contracts, compliance and tax implications.

For example, in April 2024, the NCAA voted to allow schools to assist student-athletes with seeking and arranging NIL agreements with third parties, which allows schools to bring NIL specialists in-house. And in August, the NCAA launched an NIL resource center, designed to connect student-athletes with potential service providers, which also includes a dashboard with anonymized NIL deal data.

Some of the early data shows that most NIL deals are small: More than half of NIL deals are valued at \$100 or less, and the median total athlete earnings was \$590 as of Oct. 31, 2024. Football and men's basketball make up a majority of the NIL deals.

However, women's sports are emerging, with women's basketball, softball, volleyball and soccer collectively making up 22.2% of NIL deals as of Oct. 31. Some NIL experts believe the success of women athletes will continue to grow because some women student-athletes are more adept at building lucrative audiences on social media.

Expansion of Cross-Border Licensing and Specialized Licensing

Globalization and international trade agreements have increased the need for cross-border IP licensing. As markets become more interconnected, companies are licensing IP across multiple jurisdictions, which requires careful attention to international laws, regulations and the complexities of enforcing IP rights in different countries.

With the increasing specialization of industries and markets, licensing agreements are becoming more niche, targeting specific technologies, geographic areas or market segments. This trend is particularly evident in sectors like biotech, pharmaceuticals and gaming.

The regulatory landscape for cross-border agreements continued to evolve in 2024, with a sweeping executive order issued by the Biden administration in February aimed at protecting bulk sensitive personal data or data related to the U.S. government that could have national security implications, especially with respect to countries of concern — e.g., China, Russia, Iran, North Korea, Cuba and Venezuela.

Bad actors within countries of concern sometimes create shell companies in other foreign jurisdictions to attempt to evade sanctions and other regulatory restrictions. As a result, thorough due diligence on licensees has become a greater emphasis in cross-border deals.

Focus on Licensing Compliance and Risk Management

As IP licensing becomes more complex, businesses are placing greater emphasis on compliance, monitoring and enforcement. The risk of infringement or disputes has led to a focus on ensuring that licensing terms are clearly defined, and royalty structures are transparent and fair.

Many licensors are evaluating their existing agreements as well as revising standard agreements to pivot with legal and political changes. We have seen a heightened focus on financial and legal risk as licensing agreements come up for renewal. Licensors will scrutinize old terms and seek a new form of license agreement with stronger protections both in the financial structure of the arrangement and legal remedies.

Conclusion

Change and uncertainty are central themes in IP licensing for 2024. Looking to 2025, further developments may shape IP licensing dynamics, with new industries, technologies and legal frameworks continuing to influence relationships between licensors, licensees and their agreements.

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[1] See e.g., *Matter of D.P.I. Imports, Inc v. Q4 Designs, LLC*, 2024 N.Y. App. Div. LEXIS 6229, *3; *Applied Ballistics, Inc. v. Sheltered Wings, Inc.* 2024 U.S. Dist. LEXIS 82080, *10; *Wedel Software USA Inc. v. Assn.*, 2024 NYLJ LEXIS 1825, *14; *BRS Landscape Architecture, LLC v. Selena Souders Design, LLC*, 2024 U.S. Dist. LEXIS 10965, *11.

[2] See *Nielsen Consumer LLC v. Circana Grp., L.P.*, 2024 U.S. Dist. LEXIS 153584, *7.