

Name, Image, Likeness, and its Impact on College Athletics

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Abstract

Gavin Newsom, the governor of California, signed the Fair Pay to Play Act on September 30, 2019, making it illegal for institutions to revoke an athlete's scholarship if they decide to make money from their name, image, or likeness (NIL). This was a turning point in collegiate athletics as multiple lawsuits against the NCAA had been brought by athletes who had competed in the past and were still competing because of the unfairness of "amateurism." (Fresh). After California started the process, the NCAA retracted its regulation, saying that student-athletes may not commercialize their NIL. The Supreme Court added pressure on the NCAA to modify its antiquated practices. While this was a significant advancement in paying players for the time and effort they devote to their sport, it also raised several issues that need more investigation, including how this may affect non-revenue-generating sports.

On the surface, this is a fantastic chance for collegiate players. However, because of the disparity in popularity and profitability between sports that generate income and others that do not, student-athletes need to be on a fair playing field to profit from their name, image, or likeness. There will be an even more significant gap between these two categories of university sports when non-revenue-generating sports fall further behind. Although all collegiate athletes have the potential to make money off of their name, image, and likeness, it is unlikely that these athletes could compete on an even playing field, mainly due to gender. Additionally, a new set of guidelines for recruiting strategies and the need to get more powerful athletes have entirely changed how many view college athletics.

The consequence of NIL is that sports that produce more famous athletes would receive more funding since more people will be paying attention to the individual players. Because it will continue to establish a distinction between sports that generate cash and those that do not, this will leave lesser revenue-generating sports in the dust. A gap will be made by giving money-making sports more attention and respect while relegating less important sports farther behind.

Introduction

Between 2011 and 2024, the March Madness Basketball Tournament, which spans three weekends, is expected to bring in \$11 billion in revenue for the NCAA (Mykl). The money earned is made from college athletes who have put in countless hours of blood, sweat, and tears to be on basketball's biggest stage, yet they were not receiving a cent. The amateurism rule, in place, since the Intercollegiate Athletic Association was established in 1906, prevented collegiate athletes from accepting any of these revenues. According to the NCAA, "an amateur... is someone who does not have a written or verbal agreement with an agent, has not profited above his/her actual and necessary expenses or gained a competitive advantage in his/her sport" (Fresh).

However, the protracted debate has been about whether collegiate players should be paid for their athletic prowess. Student-athletes can now use their name, image, and likeness to make money without risking their eligibility after California became the first state to enact the Name, Image, and Likeness (NIL) bill in 2019. Florida passed a law in 2020, taking effect on July 1, 2021, following California's lead. The NCAA has permitted student-athletes to make money off their NIL, but as things stand, the states are each responsible for passing their laws. Federal law needs to be in place to standardize this new NCAA regulation.

The fact that states can write their regulations for their NIL legislation creates problems since it gives some jurisdictions a recruitment edge. Additionally, specific state regulations favor revenue-generating sports more, widening the gap between them and non-revenue-generating sports nationwide. The effects of this new rule's hasty implementation without consideration of the ramifications of the absence of a comprehensive federal law have yet to be studied. This additional independence in NIL might exacerbate the gap between collegiate sports, which

already exists between revenue-generating and non-revenue-generating sports due to the enormous disparities in access to resources.

History of the NCAA

The National Collegiate Athletic Association was founded in 1906 to create guidelines for the first college football games and other sports (Litan). Football was a risky and loosely regulated sport then. President Theodore Roosevelt made no secret of his distaste for the risky game, which increased pressure on institutions to institutionalize the activity. However, since so many institutions played football, a regulating body had to be established in 1905 to provide uniform regulations for the game nationwide.

Before adopting its present name, the NCAA was once known as the Intercollegiate Athletic Association. Although they established rules for collegiate athletics, they did not develop the capacity to exert significant control over the field until 1942. Ten years later, the NCAA began to fully assume control of college football on television to prevent the developments in broadcasting from affecting stadium attendance (Litan). College athletics gained popularity as time passed, and institutions began investing more money in their athletic departments. While more prominent colleges prospered, smaller universities needed help to keep up with the rising costs of college athletics and a shortage of donations. To deal with this problem, the NCAA divided all schools into three categories: Division 1, Division 2, and Division 3. These schools became divided based on school size and budget, which allows colleges and universities to be competitive in their separate divisions.

The Education Amendments Act of 1972, known as Title IX, was enacted, dividing the schools into divisions. According to this federal legislation, "no person in the United States shall, based on sex, be denied the benefits of, be excluded from participation in, or be subjected to

discrimination under any education program or activity receiving Federal financial assistance" (NCAA, 1972). This outlawed not only sex-based discrimination in the educational system but also ensured that each institution had an equal distribution of athletic scholarships for men and women. The first national championships for women's teams were contested in 1981, a few years later.

However, it was via the money earned from student-athletes through the widely popular NCAA Division I Basketball Tournament that the NCAA became powerful. This competition was initially contested in 1939, and during the past 82 years, it has grown and changed (NCAA, 2021). According to Yahoo Finance, the NCAA men's basketball tournament makes up more than 85% of the organization's \$1.1 billion annual revenue (Williams). Since these Division I basketball student-athletes constitute the basketball tournament, it is unjust for the players to receive none of the revenue earned. Until July 2021, regulations set more than a century ago remained in effect, and only after several cases were brought forth did modifications begin to be implemented. California introduced Senate Bill 206 in 2019, requesting that collegiate athletes be allowed to make money off of their name, image, and likeness starting in 2021 (Fresh). This was the first step in the NCAA's shift.

The Lawsuit

One of the most significant cases in NCAA history not only paved the way for a closer examination of the NCAA's name, image, and likeness policies, but it also motivated subsequent players to pursue just recompense. This is the case of O'Bannon v. NCAA. Former UCLA men's basketball player Ed O'Bannon is the principal plaintiff in a class action case that also names the College Licensing Company (CLC), EA Sports, and the NCAA. After learning that he was being utilized in the NCAA Basketball video game by EA Sports, O'Bannon filed a lawsuit (Lodge).

For O'Bannon, it was not just about the money; he also believed it was unjust that big businesses benefitted from his unique NIL years after he stopped playing the game.

According to the New York Times, "The significance of this case appears to transcend financial reward, as it cuts to the core of the N.C.A.A.'s amateurism ideals" (Fields). In the initial lawsuit, it was made clear that only former collegiate players were affected. O'Bannon added, "When you're in school you're obligated to live up to your scholarship. But once you're done, you physically, as well as your likeness, should leave the university and the NCAA" (Fields). The plaintiff claimed that if your athletic prowess leaves college, so should your capacity to generate revenue for the institution.

Later, a judge ruled that the NCAA must pay \$44.4 million in legal expenses and an additional \$1.5 million in costs to the plaintiffs' attorneys in O' Bannon's class-action case. The verdict did not have much advantage to either side, but it did highlight how archaic the NCAA's amateurism standards are. While this incident spurred the NCAA to examine its practices and call for reform, it prompted players nationwide to think more carefully about their commitments.

The Fair Pay to Play Act, which state lawmakers passed in 2019, then forced the NCAA to act in 2019. Similar laws began to appear in other jurisdictions across the country. Thus, this led to the passing of NIL policy by the Division 1 Board of Directors on June 20, 2021. Which now allows student-athletes to be compensated for their NIL as of July 1, 2021, regardless of whether their state has a law (Kinard).

What is NIL

The three elements of an individual that enable them to sell themselves and advertise a good or service are their name, image, and likeness (NCSA, 2021). An athlete's name, image, and likeness are used for the "right of publicity" if a business, for instance, utilizes a picture of

the athlete sporting their brand and uses it for promotional reasons through a contract with the athlete (NCSA, 2021).

However, after the NCAA adopted the temporary rule on July 1, 2021, student-athletes can now use their NIL for the "right of publicity." Athletes may make money off of their name, image, and likeness in various ways, such as through autographs, trading cards, highlights, sponsorships, endorsements, attending events, social media, and selling items under their own brands.

Due to the O'Bannon Case's notoriety, the NIL Movement was launched nationally. Various states considered allowing student-athletes to make money from their name, likeness, and image. Student-athletes sued the NCAA in court in 2019. The amateurism model of the NCAA was further demonstrated to be unjust by Shawne Alston, a former running back for West Virginia, as "the U.S. Court of Appeals for the Ninth Circuit struck down NCAA caps on student-athlete academic benefits (i.e., reimbursements and pay for academic-related expenses) on antitrust grounds" (Marino). Student-athletes now have many new opportunities thanks to these two significant cases, but those chances come with a price.

Non-Revenue Generating Sports

Two male sports dominate colligate sports; men's basketball and football. These two sports combined help fund many universities and other non-revenue-generating sports. With the introduction of NIL, there is an even bigger spotlight on these top athletes in the most popular sports. This moves attention away from non-revenue generating sports, as competing with schools with the resources to keep athletes through NIL deals will only be possible.

Because NIL has only been in effect for a limited amount of time, it is hard to say precisely how much of a gap this has created between revenue and non-revenue sports teams, but

it is significant. A document expressing significant concerns about the impact of enabling athletes to benefit from the use of their names, image, and likenesses (NIL) has been signed by more than a dozen national associations in a variety of sports, including hockey, soccer, tennis, golf, swimming, and gymnastics. Reduced funding for less visible programs, the possibility of crowdfunded recruiting for boosters to pay athletes for a competitive edge, an increase in agent influence, and the viability of effective compliance monitoring by institutions are among the issues that raise worry.

Before several state versions are presented, the NCAA and the commissioners of the Power 5 conferences want Congress to enact a federal NIL bill to ensure that schools follow the same guidelines. The law commission, which is made up of attorneys, judges, legislators, and law professors, might help with that as it conducts study and drafts uniform legislation for state consideration rather than passing laws with a wide range of provisions.

Gender Equality

Historically, male sports have always been more popular, and there has always been inequality between the genders in terms of treatment in collegiate sports. Just in the past couple of years, there was outrage over the treatment of women's teams during the NCAA Womens March Madness Basketball tournament, as they were treated entirely differently from the men.

In terms of NIL deals, there is vast gender inequality. “Student. Athlete. Mogul?” an article recently published by the New York Times, talked about NIL's impact, especially looking into the dynamics of the University of North Carolina. The article talks about two specific athletes at the University, Amandon Bacot and Erin Matson. Bacot, a basketball player for the University, shared some of his deals since the passing of NIL, including getting a brand-new car to drive around campus. Overall, his projected annual income approaches \$400,000. Bubba

Cunningham, the athletic director at the University of North Carolina, commented, "They are setting themselves up for life after basketball" (Schoenfeld). Due to the amount he is making with deals, Bacot has decided not to go into the draft but to stay another year at The University of North Carolina at Chapel Hill as he believes it is a better financial move.

On the other hand, Erin Matson is a North Carolina field hockey player. She is perhaps considered the best player in the history of college field hockey. She is far more accomplished than Bacot in the context of their respective sports. Together with all of her NIL deals, they do not earn her even as much as many Division 1 running backs. She estimated she had earned about \$50,000 over two seasons. A huge difference compared to Bacot on the men's basketball team. (Schoenfeld).

Gender equality has always been a massive issue nationwide, especially in sports. The emergence of NIL creates an even more significant gap between the genders in their respective sports.

Funding of Schools

Changing the foundation on which college athletics have been built has a price. An article published recently in the New York Times gave great insight into NIL's impact on Universities by looking at its impact at the University of North Carolina. The article highlighted the universities basketball team and how the NIL has allowed many starters to return to campus instead of going professional to gain revenues. Although this is great for athletes, it comes with unexpected consequences. Some deals made with these athletes at North Carolina are with advertisers and boosters who previously supported North Carolina athletics in the only way permitted: by giving money to the athletic department. (Schoenfeld). Now that investors can give money to these departments, universities are losing the funding to keep competitive. "When NIL

was put into motion, there was good intent,” Stone says. “What it has turned into is a pay-to-play, to some degree, and a recruiting mechanism for those who are smart enough and wealthy enough to put together a collective for their schools. (Schoenfeld).

Universities must now navigate complex rules and regulations to ensure their student-athletes remain eligible while earning income from NIL opportunities. This can place a significant administrative burden on athletic departments and compliance offices. Some universities may need to adjust their budget in response to NIL changes. For example, universities may offer more scholarships to athletes in high-revenue sports or minor scholarships to free up resources for NIL opportunities (Williams). Universities in high-profile sports may use NIL opportunities to recruit top athletes. This could create a "rich get richer" scenario in which top programs have a competitive advantage in recruiting. Some universities may partner with third-party organizations to offer educational programs to student-athletes to manage their finances, market themselves, and navigate the world of NIL opportunities. These are all things to be considered now that NIL is in full effect and new.

Recruiting

Today, many kids decide what college to attend based on what schools will take care of them with NIL. There are now eighteen years old's, committed to playing basketball in college, already earning \$3.5 million annually, and have yet to play a single colligate game. In an article published by the New York Times, they looked at athletes at prominent universities, such as Armando Bacot. Bacot was projected to be chosen for the N.B.A draft that June. After any other such season, he almost surely would have left school to start being paid to play basketball. However, last his season was different. For the first time in modern history, a college athlete did not need to go to a professional league to do that (Schoenfeld).

Boosters receive the highest compensation; many of the most significant transactions include recruitment. Jaden Rashada, a quarterback from Pittsburg, California, is claimed to have made large payments to continue playing at the university level: After receiving a \$9.5 million contribution from a single supporter, John Ruiz, he first committed to the University of Miami. Then, he was offered a deal for more than \$13 million by one of the more than 200 collectives set up to combine supporter funds and distribute them to players. The organization was the Gator Collective, which promotes the University of Florida. Rashada canceled his trip to Miami and enrolled at the University of Florida. He announced in a 43-second video that opened with him emerging from a blue Lamborghini (Schoenfeld).

The NCAA's allowance for athletes to receive compensation for their name and image is still being pushed to its limits by college recruiting. According to a story from The Athletic on Friday, a high school junior (Nico Lamaleava) has inked a contract that could pay up to \$8 million by the time he enters his junior year of college. According to The Athletic, he will receive an initial payout of \$350,000 and monthly payments that will increase to more than \$2 million annually once he starts college. Lamaleava, from the class of 2023 will participate in social media campaigns, public events, and other NIL initiatives. (The Athletic). It is considered the most significant private non-professional athlete contract ever inked.

Suggestions

This new freedom in NIL could cause a further divide between college sports. To add to the problem, no current federal legislation stands to make this new rule uniform across the NCAA. This causes issues when states can draft their rules for their NIL bill, giving some states a competitive advantage in recruiting. As a suggestion, there needs to be a federal law passed to take control of how the states handle NIL. There continues debate over whether individuals

should be compensated or if the money made should be divided among teams. I believe there needs to be more rules in place in order to keep collegiate athletics going. There also needs to be a greater crack down on any illegal actions taking place in order to recruit children. As this is an ongoing topic of debate, it will be interesting to see what the future holds in terms of athletics.

Conclusion

With the recent introduction of NIL, the Collegiate Model of Athletics has wholly changed. The impact of NIL (Name, Image, and Likeness) on college athletes and the sports industry is significant and far-reaching. The new rules allowing college athletes to monetize their name, image, and likeness have opened up new opportunities for them to earn income and leverage their personal brand. This change has also sparked debates and discussions around issues such as fair compensation, amateurism, and the role of universities in supporting their student-athletes.

The impact of NIL is expected to vary depending on factors such as the sport, the individual athlete's popularity, and the type of endorsements or sponsorships pursued. Some athletes may benefit greatly from this new opportunity, while others may not see other opportunities or financial gain. It is also possible that the new rules could lead to more inequality among college athletes, with the most popular and marketable athletes receiving the most lucrative deals.

Overall, the impact of NIL on college sports is still evolving, and it will take time to fully understand the implications of this change. However, it is clear that the new rules have already disrupted the traditional model of college sports and opened up new possibilities for athletes to earn income and build their personal brands.

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