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A MESSAGE FROM THE CHAIR

Over the last several months, the Executive Committee and the various subcommittees have been actively coordinating with other committees of the WSBA regarding continuing legal education activities, social networking, and publication of materials benefiting the legal community. In particular, we are co-sponsoring an event with the ADR Committee on drafting alternative dispute resolution clauses in contracts. We expect a large turnout for this very useful CLE. We are also assisting with the 39th Annual Northwest Securities Institute to be held in Portland in late May. This is always an outstanding opportunity to keep apprised of securities issues in the Northwest.

Importantly, the Legal Opinions Subcommittee has published the amended and restated Legal Opinions Report and it is being very well received. The Partnership and LLC Law Committee has also published its comments on the recent Washington LLC Act and we expect these comments to be very useful to practicing attorneys as we work with this new law.

Together with other WSBA Committees, we are actively tracking Engrossed Substitute House Bill 1788. This Bill repeals a majority of the Bar Act and impacts all members of the WSBA. It recently passed out of the House and is now before the Senate. Ensuring the continued existence of the WSBA is potentially at stake. The WSBA opposes this Bill.

Over the next couple of months, we will finalize the nomination process and elect next year's slate of officers and subcommittee chairs. The nomination process is now open and will be open until the end of March. To nominate a person for an officer position, the process occurs on line and through each member's MyWSBA account. Anyone having problems with this process is encouraged to contact me directly.

We continue to be very active in the Business Law Section and our membership is growing. As always, we welcome input and participation from all our members.

David Eckberg

The Communications Committee of the Business Law Section encourages section members to contact the chair about article proposals, suggestions, or submissions.

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THE MOST ASTONISHING THING ABOUT THE INDIE MUSIC INDUSTRY

By: Lara Lavi

Turn Up the Music! We switch on the radio and listen to music. We turn on our smartphones and computers and stream our favorite playlists. We go to those vanishing record stores and buy CDs and vinyl from our favorite artists, at least if we are over 40. We go to live shows. We buy artist's merchandise. We listen to the soundtrack when we go to the movies, play our video games and endure commercials on the television. Music is everywhere. The reports of the music industry's death are greatly exaggerated. It has not died. It has simply changed form… again. Music is a multi-billion-dollar, star-making, worldwide industry.

Identifying the Issue

Independent music now makes up almost 40 percent of the music industry worldwide.[1] And yet more than any other, this industry has a custom of relying on oral agreements, or poorly drafted agreements, even if they are written. Why? Indie artists concentrate on the fun and creative process—jamming, writing and recording songs, and performing. They skip the paperwork with their bandmates, managers, production companies and marketing firms, and hope for the best, believing that since the music industry is a relationship-driven business, somehow comprehensive written agreements get in the way and are not "cool." This, of course, works for the artists until it doesn't work. Inevitably, it doesn't work. If an artist makes it to the major label and publisher system, then long-form agreements are expected and accepted, but until then, with indie artists, it's the Wild West.

How Do We Best Work with Indie Artists?

I advocate that individual artists and bands embrace proper contracts when actively entering the music industry, so that – much like any startup company – they can operate like a business in the future. I counsel clients that the consequences of ignoring this advice can range from the business falling apart altogether (at best) to costly, unresolvable litigation (at worst). I explain that the clients' precious intellectual property is at stake. This article outlines examples of some of the key agreements that indie music attorneys should have in place as they serve artists, managers and indie record labels in the indie music industry.

Band & Project Agreements

The first key agreement artists should consider when working with other collaborators making up a band, duo, writing team, or production team is a band agreement, and when applicable, a formal project agreement. Band agreements may consist of a simple partnership agreement setting forth the same

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SECURITIES COMMITTEE REPORT

Chair - Mark Beatty

On November 7, 2018, at the annual "Meet the Securities Regulators" mini-CLE, representatives from the Washington Securities Division presented updates on recent developments in state securities laws, including proposed amendments to investment adviser rules, Regulation A offerings, crowdfunding, SCOR offerings, financial exploitation of vulnerable adults, and enforcement proceedings involving the securities laws.

38th Annual Northwest Securities Institute

Portland, Oregon

May 3, 2019 | Hotel Monaco

The conference will include discussions with regulators as well as panels on the state of the securities laws with respect to cryptocurrency and cannabis.

The Most Astonishing Thing About the Indie Music Industry

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terms and conditions as any business. In recent years, it has become increasingly common for bands to form limited liability companies and govern their business relationship with an operating agreement as more formal business partners. This allows for capital contributions, provisions for ownership of the IP, taking in money, and executing deals including record deals and exiting member provisions (an area that is always messy). Forming an LLC is also probably one of the best ways to regulate tax and intellectual property protection and monetization matters within the band or duo. The important cornerstones of the contract are: distribution of income, band name rights, distribution of jobs, withdrawal of band members, fatality, insurance, possession of instruments/equipment, and voting rights within the group.

Photo credit: Eric Luck

Songwriter Split Sheets

When two or more songwriters decide to co-write a song of any genre, they should, after every writing session, sign a songwriter split sheet, setting forth the percentage of each songwriter contributing to the song, also known as the composition. A split sheet also sets out the contact information of each contributing writer, their publisher information and information related to their performing rights affiliation, including listing the membership numbers for all the writers and publishing companies. Note that in many cases in the indie music world, the writer is also the publisher.

Artist Management Agreements

In many instances, a musical artist is represented by a so-called "manager." Artist managers take on the business development and business management of an artist's career, so the artist is free to write, record and perform. If the artist is the brand, then the manager is the brand manager. There are several ways to contract between artist and manager. First is the traditional artist-manager management agreement. The terms of this agreement are usually fairly one-sided in favor of the manager. The scope of these traditional agreements includes terms of authority, rights and compensation, as well as other important clauses. The manager's compensation is a percentage of earnings. Increasingly, we are seeing an artist and a trusted manager form an LLC to share in income and expenses given the comprehensive nature of revenue sharing between the two. Note that revenue sources include sales of digital and hard copy music, performance revenue, merchandise revenue, music synchronization for film, television, gaming and advertising publishing revenue, sponsorship and endorsement revenue. Typically, a manager earns 20 percent of the gross revenue of the artist's income, plus the artist covers the manager's expenses.

Recording Contracts

If a record label is interested in an artist, the artist can transfer the "rights in the recording" using a classic record deal. This takes care of all the manufacturing, distribution and marketing of the recording—both the execution of monetizing the music and building the artist's brand. Alongside the record deal for individual songs or albums, there is also the exclusive artist contract. The main things regulated by record deals are: production volume, format, exclusivity, duration, sub-license rights, sync and merchandising rights. Typically, in a traditional record deal, the Artist transfers his or her rights of ownership to the record label either for a specified term or in perpetuity in exchange for the record label providing the artist an advance on a percent of the revenue from the sale of the music. The percents often range from 12 to 50 percent depending on the nature of the deal. Record deals may also be what is commonly called "360 deals," meaning income includes merchandise, publishing, endorsement income and live performance income. Often artists sign production deals with companies who can help them with artist development, recording their music and building their brand – and such arrangements usually include management as well. These production deals assure the artist's music gets to market by contracting with digital distribution companies that aggregate indie music and distribute it to the digital service providers (DSPs) such as iTunes and Amazon Music Services.

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The Most Astonishing Thing About the Indie Music Industry

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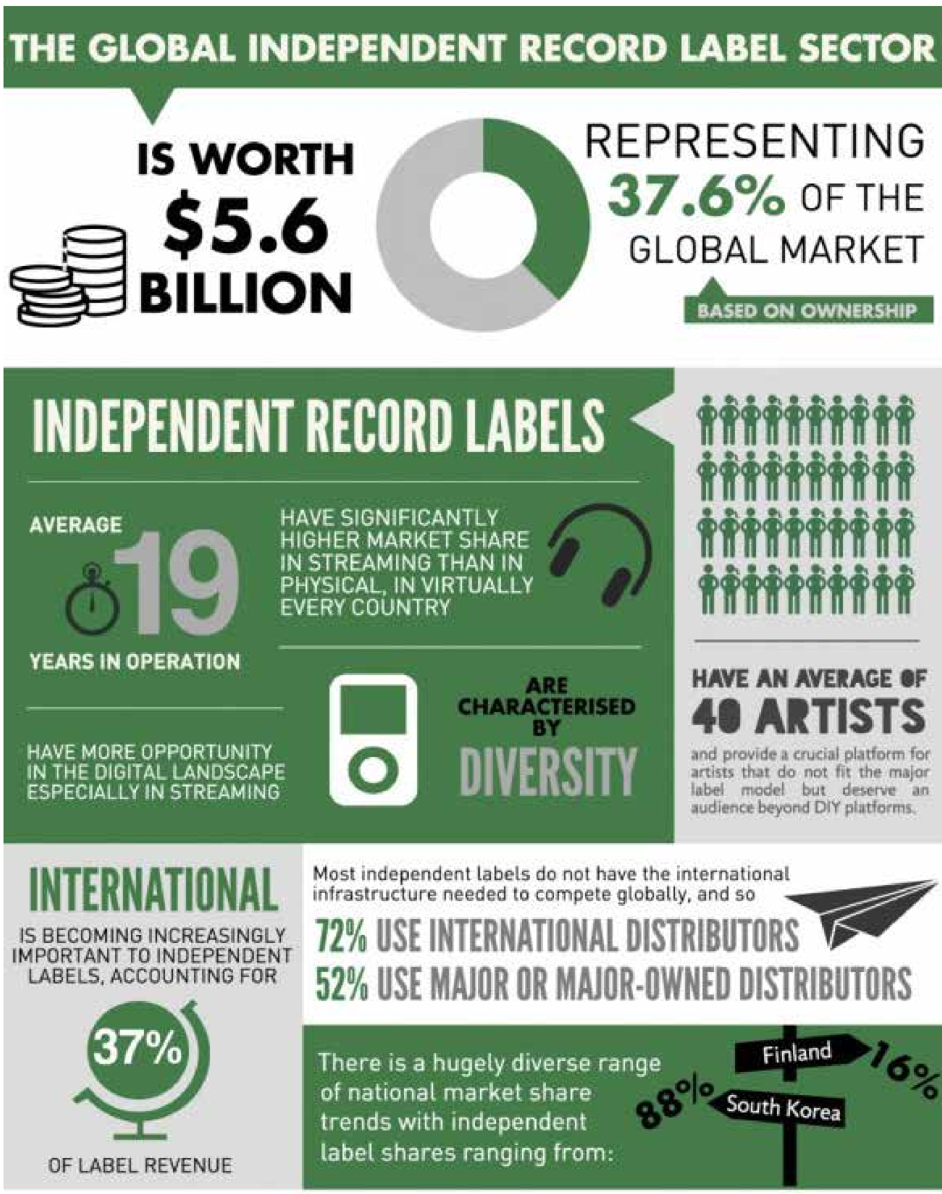
Distribution Contracts

Distribution contracts are usually entered into between record labels and distributors. If an artist wants to make an independent release, then the artist will be making direct contracts with aggregators. This way, artists don't usually transfer any rights of ownership to their recordings; rather, they contract to provide the exclusive right to distribute their music to an aggregator such as The Orchard or a label service provider such as Sony-Red. If an artist has physical copies of their album or single, then there are also deals for both digital and physical distribution with income to the artist based on a percent of sales. The distributor receives 15 to 20 percent in exchange for the manufacture of the physical product, distribution and marketing services for the artist to build their brand and generate revenue. In a distribution contract the following points are regulated: distribution area, recordings covered by the contract, release, costs and payment, transactions with collection societies, protective rights and stock management.



Conclusion

While indie music has grown as a business, most of it is done on a handshake, which is not the best practice. Indie music lawyers have the opportunity to help their clients properly paper up their deals, whether it is a management deal, an agreement between two writers, a written record deal or a distribution deal. As attorneys in the entertainment industry, our job requires us to guide our clients to better contractual practice and assure they get it in writing so that deals are crystal clear for building the artist's brand now and beyond. ■

https://www.dittomusic.com/blog/the-increasing-value-of-the-independent-record-labels. Lara Lavi is the general counsel for ditto music and is authorized to provide this graphic of statistical information.

Lara Lavi is a new media/entertainment law attorney, an entrepreneur, an entertainment company executive, a business development specialist, a film and TV producer, director & writer, artist manager and a professional award-winning singer-songwriter. Ms. Lavi is also the managing partner of her own firm, Media Law Group, Inc. She has affiliate offices in Los Angeles, New York, Austin and Malta.

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1 The Increasing Value of Independent Record Labels. Ditto (July 24, 2016), *https://www.dittomusic.com/blog/the-increasing-value-of-the-independent-record-labels*

UNDER THE INFLUENCE – A GUIDE TO COUNSELING ESPORTS CELEBRITIES

By: Shirley Roberson

In 2019, the worldwide esports industry is expected to exceed $1 billion in revenue. While games such as *League of Legends* and *Call of Duty* continue to surpass prior-year performance for number of players, number of unique viewers, and value of tournament prizes, new games, such as *Fortnight*, are exploding on the scene, bringing even more fans, players, and revenue to the party.

Income Streams

According to Newzoo, sponsorships and advertising constitute nearly 60 percent of the global revenue stream for the 2018 esports industry.[1] However, media rights are becoming a significant source of income as broadcasters partner with esports leagues and media platforms to give viewers exclusive access to tournaments, matches, game-play instruction, expert commentary, and other high-revenue-generating resources. Additionally, broadcasters and organized esports leagues are focusing on micro-market development by creating "home teams" for cities such as the Los Angeles Valiant, with the hopes of gaining local interest for teams, players, and specific games.

Currently, expert players acting as commentators and "influencers" provide a valuable channel of communication among viewers, other game players, and sponsors. Twitch, a live-streaming video platform, had 15 million daily active users by February 2018. These users can watch expert players play live games, while providing commentary on their game play; or users can watch live streams of matches and tournaments, which also include expert commentators.

As viewership increases and the esports industry becomes more accessible to the general public, these expert commentators, or "influencers," as I will refer to them in this article, are becoming valuable resources within the esports industry. Practitioners who represent esports influencers need to protect the influencer's identity, industry goodwill, intellectual property, and future opportunities within an industry that has very few globally-recognized regulations and no single governing body to enforce and protect the participants. Here are some factors to consider when representing an esports influencer:

Federal Trade Commission (FTC) Guidance on Influencers

FTC 16 CFR Part 255 provides guidance on the application of Section 5 of the FTC Act (15 U.S.C. 45) for the use of endorsements and testimonials in advertising. Aspects of the FTC Act relevant to esports influencer activities include:

1. an endorsement, either directly or implicitly, represents that the endorser is an expert, the endorser must, in fact, possess the qualifications of an expert that the endorser represents he or she has; and
2. when there is a connection between the endorser and the seller of the advertised product (the definition of product includes goods and services), the connection must be fully disclosed. The disclosure must include a clear and conspicuous disclosure of any payment, promise of payment, or other consideration given to the endorser in exchange for their endorsement.

In April 2017, the FTC delivered 90 Educational Letters to remind influencers of their disclosure obligations and confirmed that they apply to social media platforms and channels. After distributing these initial letters, the FTC has continued its correspondence targeting influencers and cautioning them that further action by the FTC is likely if the influencers do not heed the FTC's warnings. In September 2017, the FTC settled its first-ever complaint against an individual social media influencer (In the Matter of CSGolotto, Inc., Trevor Martin, a/k/a Tmar'Tn, and Thomas Cassell, a/k/a TheSyndicateProject, Tom Syndicate, and Syndicate[2]). The Decision and Order from this settlement provided an extensive analysis of the disclosures that influencers are required to make when endorsing products on social media if they have received consideration for such endorsement.

Intellectual Property

Influencers, by their very participation in esports activities, will interact with the intellectual property of other parties and they also will create their own intellectual properties. It is paramount that the influencer is protected from third-party infringement claims while also identifying and protecting his or her IP.

Infringement Claims. The opportunities for infringement within the esports industry are complicated by several factors: (i) the relative infancy of the industry; (ii) the informality of protective protocols, such as license agreements; (iii) the technology used in the industry where live streaming events can inadvertently capture music, sponsor logos, third-party game play, and other IP that hasn't been cleared; (iv) participants limited access to qualified IP counsel; and (v) no single regulating authority to monitor and govern IP exposure.

Regardless of these challenges, infringement claims do arise and are subject to applicable laws, including the Copyright Act of 1976, the Lanham Act, and the Patent Act. Further, the global nature of the esports industry increases the potential for international IP governance through treaties and similar unifying legislation such

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as the Madrid Agreement, World Intellectual Property Organization (WIPO), and the Berne Convention. Best practices when protecting an esports influencer from infringement claims include: (i) documenting written waivers/releases for any person, location, music, or entity that participates in the influencer's esports activities; (ii) obtaining written representations, warranties, indemnifications, and liability limitations from the producers, sponsor, broadcasters, and any other party who could introduce infringing materials into the influencer's activities; and (iii) carefully evaluating and planning out the influencer's project to reduce and eliminate potential infringement situations. The ownership of the IP (discussed below) also may affect how infringement claims are resolved. If the infringing material is not owned but is only being displayed or delivered by the influencer, the influencer may be protected by the Digital Millennium Copyright Act (DMCA) and may only have to remove the infringing material upon notice. However, if the influencer proposes to own or have created the project that contains infringing materials, DMCA protection probably is not available for the influencer.

Intellectual Property Ownership. With so many parties involved in the influencer's final product or services, it is important to establish clearly which parties own preexisting IP, IP that is created during the influencer's activities, and IP that may be created after the project is finished. Generally, any pre-existing IP will continue to belong to the initial owner, but the influencer may need to get a license to use the pre-existing IP. For example, a streaming media platform hires an influencer to provide commentary and game play advice in a five-minute streaming video. The influencer may need a license to use and record the video game that is being played.

In this same scenario, let's say the five-minute video is newly created IP. Does the video belong to the streaming media platform or does it belong to the influencer, or does it belong to the owner of the video game? If there is no written agreement addressing IP ownership, the ownership would be determined by the applicable laws and regulations that govern the relationship. Factors that could affect the outcome may include: (i) whether the influencer is an employee or independent contractor; (ii) jurisdiction of the IP ownership claim; (iii) prior conduct between the parties for similar projects; (iv) whether the IP is a derivate of some other IP; and (v) standard industry practices.

Additionally, after the five-minute video is completed, the streaming media platform may decide to edit the video and repurposes it to advertise an upcoming tournament. The new advertisement is a derivate product of the original video. Who owns the new derivative IP? If there is no mutual agreement of ownership among the parties, derivate IP ownership would be determined in a manner similar to the process used for newly created IP. Also, the influencer may be entitled to additional compensation if "advertising" was not the original purpose for the influencer's work and the streaming media company will benefit from this additional work.

As the licensing and ownership negotiations take place, the influencer and their counsel should work closely together to decide the following: (i) if the influencer wants to own the IP; (ii) identify any potential infringement situations; (iii) obtain licenses, or waivers and releases from the owners of pre-existing IP; (iv) make sure any possible use of the IP has been considered and addressed; and (v) document representations, warranties, and indemnifications for all IP that may be used or created as part of the project. Finally, if the project involves IP that is owned, licensed, or created outside the United States, influencer's counsel should be aware of whether the "moral rights" in any IP are retained by the creator of the IP. There are a number of countries that do not allow their citizens to transfer, release, or waive moral rights and it is important to identify these potential issues.

Rewards

An influencer providing its own services or products may be an influencer's primary source of income; however, influencers don't become influencers without some special and unique expertise within the esports industry. This expertise may be game play, for which the influencer also can earn money by participating in tournaments, making personal appearances, taking on sponsorships, coaching other players and many other related revenue opportunities. The expertise could be deep industry knowledge, for which the influencer may earn money as a tournament commentator, color analyst, coaching, esports product development, and providing event production services. The source of the expertise is as varied as the games, players, viewers, platforms, and esports industry itself. Whatever unique skill or asset belongs to an influencer, they will need competent and zealous counselors advocating for their best interests in an industry that has yet to reach, or even identify, its maximum capacity. ■

Shirley Roberson is Senior Associate at Hughes Media Law Group PC, where she focuses on corporate transactions—including mergers & acquisitions, business financing, software licensing and distribution management, and business asset management. Shirley can be reached at *sroberson@hmlglaw.com*.

1 Pannekeet Jurre, Newzoo: Global Esports Economy Will Reach $905.6 Million in 2018 as Brand Investment Grows by 48% (February 21, 2018), *https://newzoo.com/insights/articles/newzoo-global-esports-economy-will-reach-905-6-million-2018-brand-investment-grows-48/*

2 *www.ftc.gov/system/files/documents/cases/1623184_c-_csgolotto_decision_and_order.pdf*

THE NCAA AND ITS AMATEURISM POLICY ARE ONCE AGAIN ON TRIAL FOR VIOLATING ANTITRUST LAWS

By: Dalton Thacker

The NCAA

The National Collegiate Athletic Association (the "NCAA") claims to prize amateurism above all else, yet it continues to pocket over a billion dollars per year from the work of the amateur athletes who participate in its member conferences. In its youth, the NCAA could not have foreseen the multibillion-dollar industry that it currently governs. Today, this system is at best outdated and at worst oppressive. While the NCAA continues to fight in court to maintain its power, student-athletes are being exploited for the hours of work that they provide and are prohibited from using their name recognition for their own financial benefit.

Current Litigation

The plaintiffs in **In re: National Collegiate Athletic Association Grant-in-Aid Cap Antitrust Litigation**[1] (*"Grant-in-Aid"*) are the most recent in a line of litigants who are challenging the NCAA's infamous amateurism policy. The amateurism policy states that an individual loses his or her amateur status and thus is ineligible for college athletics, if the individual uses his or her athletic skill (directly or indirectly) in that sport and receives compensation in any form, including accepting a promise of payment, receiving any financial assistance from a professional sports organization based on athletic skill, or entering into an agreement with an agent.

This case, which is pending before the U.S. District Court of Northern California, questions whether the NCAA's amateurism rules violate antitrust laws by limiting the amount that NCAA institutions may pay student-athletes. NCAA colleges are businesses which, under the Sherman Act, should be required to compete with one another for students and student athletes. However, the NCAA uses its amateurism regulation to cap the amount that colleges may compensate athletes to only scholarships for room, books, board, tuition, and a small cost of attendance stipend. Through the lens of the Sherman Act, this conduct is an anticompetitive conspiracy between competitors – which is the crux of the case in *Grant-in-Aid*.

Photo Credit: Dalton Thacker

Specifically, the plaintiffs in *Grant-in-Aid* are asking the court to completely remove the NCAA's compensation cap, which prevents student-athletes from being paid any amount over the cost of attendance. This result may seem desirable; however, as I will explain more fully below, a clearer and more ideal solution would be for the court to require the NCAA to amend its amateurism policy to allow student athletes to profit from the use of their name, image or likeness ("NIL"), and to be eligible to qualify for the Federal Work Study Program ("FWS"). FWS provides funds for part-time employment to help lower-income students finance the costs of postsecondary education.

Antitrust and Basketball

The issues presented in *Grant-in-Aid* resemble those litigated in the *O'Bannon* case decided in 2013. Ed O'Bannon, previous NCAA basketball All-American player, brought an antitrust class action suit claiming that the NCAA's rules illegally prevented schools from compensating athletes for the use of their NIL. In August of 2014, Judge Claudia Wilken (who is presiding over the *Grant-in-Aid* case) held in *O'Bannon* that the NCAA's compensation rules were an unlawful restraint of trade. However, two of the three judges also concluded that preserving amateurism was an important goal and that any compensation which athletes receive had to be related to education. In *O'Bannon*, a key issue became whether any compensation in excess of the usual scholarships crossed an important line which would reduce consumer interest in college sports – a procompetitive justification which the NCAA heavily relies on. Ultimately, the court held that the NCAA violated the Sherman Act by capping compensation at athletic scholarships which were below the full cost of tuition. The NCAA was not held liable for violating the Sherman Act and all compensation beyond educational expenses was banned.

Despite this somewhat counterintuitive holding, *O'Bannon* does not prevent the court in *Grant-in-Aid* from imposing substantial changes to the NCAA's current amateurism policy.

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The NCAA and Its Amateurism Policy are Once Again On Trial for Violating Antitrust Laws

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As in *O'Bannon*, the *Grant-in-Aid* litigation will likely focus on the argument that college athletes receive less than a competitive market would provide – showing this is an anticompetitive effect of the amateurism policy. The NCAA's strongest counterargument is that these restraints are necessary to further the popularity of college sports. The NCAA proffers that the amateur nature of college sports is directly attributable to its popularity. If the athletes were paid, the NCAA seems to believe, college sports would begin to mirror a minor league system, and the student-athletes would no longer be playing for the love of the game but instead for a paycheck. The NCAA argues that it is this distinction that gives college athletics its billion-dollar allure.

Issues with the Proposed Solution

However, if the NCAA could promote amateurism just as effectively, but in a way that is less restrictive and less harmful to athletes, then, under the antitrust precedent, its existing anticompetitive restraints should be condemned.

Removing the compensation cap outright, without a cognizable guide for colleges to follow, would lead to disaster. If the cap was removed and conferences were given complete autonomy to govern the issue, colleges would compete for athletes by any means available. For example: a five-star basketball recruit could receive an offer from the University of Washington for a $500,000 salary, Washington State University may offer him a Ferrari, and Gonzaga University could offer him a beach-front condo in California.

Additionally, a complete removal of the cap would lead to an inequitable system where those colleges with the most capital are able to offer more money to incoming athletes, thereby diminishing the competitiveness between schools and conferences. Many college athletic departments operate in the red, including some of the leading institutions. These schools remain competitive now because the cap prevents other colleges from outbidding them for top talent. However, if the cap were removed, some of these smaller colleges would quickly fall behind because of their inability to compete financially with the top money earners of the NCAA. Therefore, removing the cap entirely would result in an inequitable athletic experience where a few top schools dominate the competition because of their ability to pay top dollar to acquire the world's top athletes.

Alternate Solution: Allowing athletes to profit from their own NIL

There is, however, an alternative which would be more easily implemented and equitable: the court in *Grant-in-Aid* should require the NCAA to amend its amateurism bylaw, thereby forcing reform, which would allow student athletes to market their NIL in order to generate profit on their own behalf.

The NCAA is a unique business, in that it prevents its participants from profiting from their own NIL. As a collegiate basketball player, had I autographed my jersey and sold it to a fan (however unlikely that may have been), I would have violated the NCAA's amateurism policy and would have been banned from participating in college athletics. This policy does not, however, prevent the NCAA from signing million-dollar broadcast deals where the athletes' NIL are displayed on national television, or from licensing the player's likeness to a company like Electronic Arts (EA) to be used in video games. Colleges are also free to sell merchandise displaying the NIL of their most popular players without paying the athletes any royalties. These examples illustrate the illogical result of the NCAA's amateurism policy.

Changing these rules and allowing athletes to profit from the use of their own name recognition is a logical and easily implemented step. If athletes were permitted to accept endorsements, this would allow the leading athletes in the nation to earn the revenue that is generated solely because of their popularity—revenue that is generated because of the athlete's name recognition. This alternative would neither make college athletics resemble a professional league, nor would it would lead to the inequitable college athletic landscape that an outright elimination of the compensation cap would produce. Therefore, the NCAA's main procompetitive justification would be rendered irrelevant, and the core purpose of the amateurism requirement that the NCAA has propounded will endure unscathed.

Limitations to This Solution

Although this solution would eliminate some of the exploitation and inequality that currently exists in college athletics, it would only aid that small portion of college athletes who have national name recognition. Other athletes who are less renowned still forego a job to spend countless hours working as a student-athlete, without compensation. To resolve this undesired consequence, student athletes should be permitted to receive compensation through FWS. The program is need-based, so only athletes who are in financial need will qualify. Student-athletes are currently prohibited from participating in this program because of the NCAA's amateurism regulation, which prohibits them from receiving compensation in any form other than scholarships for the work that they provide as student-athletes. College athletes can

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struggle with poverty, an issue which may even continue post-college, simply because the athletes dedicate their time and energy to a sport rather than a traditional job. This problem can be solved by allowing the students to qualify as employees of their colleges under FWS, thereby earning an hourly wage for the time spent in the gym, weight room, film study, etc.

Conclusion

The *Grant-in-Aid* litigation illustrates the widespread disapproval of the current NCAA structure. Change is inevitable, but this change need not be a complete overhaul or elimination of college athletics as we know it. Instead, the court should consider a less invasive resolution than removing the compensation cap outright. To that end, the court should strike down the NCAA's amateurism bylaw, thereby forcing the NCAA to allow college athletes to receive compensation generated by their NIL and to enable them to qualify for the FWS program. ■

Dalton Thacker is an associate attorney in Eisenhower Carlson's business transactions group. His practice is focused on representing entrepreneurs, counseling them as they navigate legal issues that arise during the various phases of their businesses. As an undergraduate, Dalton played Division II basketball at Simpson University. Dalton can be reached at *dthacker@eisenhowerlaw.com* or 253-620-2549.

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