

## COLLEGIATE ATHLETES: THE CONFLICT BETWEEN NCAA AMATEURISM AND A STUDENT ATHLETE'S RIGHT OF PUBLICITY

ARASH AFSHAR\*

### ABSTRACT

*A student-athlete is widely considered exactly what the name implies: a student first and an athlete second. The governing body of collegiate athletics—the National Collegiate Athletic Association (NCAA)—seeks to protect this status with strict rules that prevent these student-athletes from receiving compensation for their work or to have the right to leverage their personal brands, in a similar manner professional athletes do, without conceding their amateur status. This is where the issue of this Note stems: Amateurism is a concept that contradicts an individual's publicity rights. The NCAA implicitly forces students to abandon their right of publicity in order to participate in collegiate athletics.*

*As with any policy revolution, change is imminent. Ed O'Bannon, a former UCLA basketball player, pursued damages from the NCAA, Electronic Arts, Inc. (EA), and Collegiate Licensing Co. (CLC) for the use of athletes' names and likenesses. O'Bannon was able to settle with EA Sports and CLC, while a California district court ruled that student-athletes could profit from their names, images, and likenesses; this case is widely considered a landmark case that will lead the change in collegiate athletes' rights. Shortly after O'Bannon filed this claim, the NCAA announced that it would not renew its longstanding licensing contract with EA for college football video games, citing "legal and business concerns."*

*In this Note, I will compare the current NCAA model with the longstanding and continually evolving Olympics model and argue that the Olympics can serve as a sufficient example of granting athletes*

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\* Willamette University College of Law, J.D. expected 2015; University of Oregon, B.S. 2010. I would like to thank Professor Karen Sandrik for her advice and inspiration to write this piece. I would also like to thank the Willamette Law Review Board, specifically Kirc Emerson and Corey Driscoll, for their indispensable assistance in bringing this work to publication.

*their rights of publicity while maintaining their status as amateurs. Further, in this note I examine the past, present, and future of the “student-athlete” and their status as amateurs. Specifically, how these present claims in the courts of the United States against the NCAA and its affiliates could reshape college athletics and grant athletes the right to benefit from their own publicity.*

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## I. INTRODUCTION

Though his name does not have national recognition, Josh Huff is one individual who has recently expressed his general displeasure

regarding the NCAA and its regulatory scheme.<sup>1</sup> Huff, who, at the time, was a senior wide receiver at the University of Oregon, had plans to throw a party and claims to have spent \$1,500 in preparation to host the event when he received information that the National Collegiate Athletic Association (NCAA) regulations would not permit an amateur athlete under their watch to throw such an event and charge for admittance—a regular practice for college students.<sup>2</sup> Huff quickly took to Twitter to provide his opinion, where he stated: “So it’s okay for the NCAA to make money off my name and likeness but once I go to charge ppl [sic] to get in my party it’s a problem? Crazy.”<sup>3</sup> He would go on to say he is merely a student-athlete trying to make money, likening his membership on the University of Oregon’s football team to working a full time job.<sup>4</sup> With those statements, Huff said what everyone else has been thinking: While he puts in blood, sweat, and tears for football, the NCAA and the universities are making money from that work. On the other side, the NCAA will point to the fact that Huff and other student-athletes are not working for free; athletes receive a free education as well as a monthly stipend.<sup>5</sup> In this Note, I will focus, not on the frustrations of the student athletes, but rather the purpose and legitimacy of amateurism.

In addition to examining the realities of amateurism, I focus on amateurism’s direct conflict with an individual’s right of publicity. In a time where litigation is on the rise between the NCAA and current and former players, previously profitable relationships are coming to an end as a result. In July of 2013, the NCAA announced it would end its highly popular relationship with Entertainment Arts, Inc. for college football games, specifically pointing to legal and business reasons.<sup>6</sup> The NCAA also severed its relationship with Collegiate Licensing Company (CLC), the leading collegiate trademark licensing

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1. Danny Moran, *Ducks’ Josh Huff takes on the NCAA about canceled party in Twitter rant*, OREGONIAN (Oct. 17, 2013, 7:10 PM), [http://www.oregonlive.com/ducks/index.ssf/2013/10/josh\\_huff\\_takes\\_on\\_the\\_ncaa\\_ab.html](http://www.oregonlive.com/ducks/index.ssf/2013/10/josh_huff_takes_on_the_ncaa_ab.html).

2. *Id.*

3. *Id.*

4. *Id.*

5. Kristin R. Muenzen, *Weakening Its Own Defense? The NCAA’s Version of Amateurism*, 13 MARQ. SPORTS L. REV. 257, 262–63 (2003).

6. Steve Berkowitz, *NCAA Ending Deal With Video Game Maker EA Sports*, USA TODAY, July 17, 2013, <http://www.usatoday.com/story/sports/ncaaf/2013/07/17/ncaa-ending-videogame-contract-with-ea-electronic-arts/2525843/>.

and marketing firm.<sup>7</sup> Coincidentally, both of these entities are defendants in multiple lawsuits involving former student-athletes that are pointing to the misappropriation of their names and likenesses.<sup>8</sup>

In Part II of this Note I focus on the formation and purpose of the NCAA as a governing body and protector of student-athletes. This is followed by details regarding revenues that the schools and the NCAA as a whole generate from student-athletes, the salaries earned by the coaches of collegiate athletics. The purpose of this section is to illustrate the fallacy of the NCAA's desire to maintain a line between professional and collegiate sports, while it continues to make multi-billion dollar deals and coaches continue to earn millions of dollars every year. In Part III, I discuss the idea of amateurism and what it means in the context of participating athletes. The discussion will start generally with a detailed description of the NCAA's original intention for the concept of amateurism and what that idea has become in practice and implementation today. Then, the definition of amateurism as used by the International Olympic Committee (IOC) will provide a comparison to the NCAA's present incarnation of the same term. In Part IV, I provide an analysis of schools, teams, and individuals who have violated the NCAA rules on amateurism.

In Part V, I open the discussion on what the "right of publicity" is and who has a right to invoke this doctrine. I began the discussion of the right of publicity at the point of inception and illustrate its application in various courts. In Part VI, I introduce the recent movement against the NCAA and its efforts to protect students. I open the section with an explanation of the changes currently in progress and pending within the NCAA and follow it with a discussion surrounding present litigation between the NCAA and its participating players. I present a formulated proposal based upon the amateurism model enacted by the IOC. This is a guided suggestion on how the NCAA can begin resolving recent conflicts and move forward and away from the old definition of "student-athlete," into a new age of college athletics that could potentially ease the tensions of all affected parties.

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7. *Id.*

8. *Id.*

## II. THE NCAA AS A GOVERNING BODY AND BUSINESS

### A. *Formation and Purpose of the NCAA*

The NCAA was founded in 1906 with the stated purpose of protecting young people (student-athletes) from the “dangerous and exploitive athletics practices of the time.”<sup>9</sup> After a series of deaths and serious injuries, due to the rugged nature of early-day football, President Theodore Roosevelt held a meeting with thirteen colleges and universities to initiate changes in the rules of the sport.<sup>10</sup> This governing body of collegiate athletics—later becoming the NCAA—was originally the Intercollegiate Athletic Association of the United States.<sup>11</sup>

The NCAA’s purpose “is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports.”<sup>12</sup> When President Roosevelt brought together representatives from Yale, Harvard, Princeton, and ten other schools considered “football leaders,” the issue of amateurism as a possible legal issue was at the forefront of their conversations. The current concern revolving around amateurism and its legitimacy essentially eliminates President Roosevelt’s original concern regarding safety as students now seek to leave school to make money earlier than they would if they were to remain in school. This is where the issue currently resides.

The current goals of the NCAA are stated on their website: “Promote student-athletes and college sports through public awareness; protect student-athletes through standards of fairness and integrity; prepare student-athletes for lifetime leadership; [and] provide student-athletes and college sports with the funding to help meet these goals.”<sup>13</sup> This means that the latest incarnation of the

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9. Mike Singer, *NCAA ‘Denies Legal Duty’ to Protect Student-Athletes, Court Filing Says*, CBSSPORTS.COM (Dec. 19, 2013) available at <http://www.cbssports.com/general-eye-on-sports/24380786/ncaa-denies-duty-to-protect-student-athletes-court-filing-says>.

10. Muenzen, *supra* note 5, at 257–58.

11. *Id.*

12. NAT’L COLLEGIATE ATHLETIC ASS’N, 2014–15 NCAA DIVISION I MANUAL 1 (2014) (NCAA Const. art. 1 § 3.1), available at <http://www.ncaapublication.com/productdownloads/D115.pdf>.

13. Cedric W. Dempsey, President Nat’l Collegiate Athletic Ass’n, State of the Association Address at the 2000 NCAA Convention (Jan. 17, 2000), available at

NCAA's purpose is to make collegiate sports a training for the student-athletes' futures—athletics or otherwise. Article 12 of the NCAA's bylaws that govern schools and their students states “[o]nly an amateur student-athlete is eligible for intercollegiate athletics participation in a particular sport.”<sup>14</sup>

### B. NCAA Revenues and Salaries

#### 1. NCAA and Conference Revenues and Earnings

From 2011–12, the NCAA's revenues were \$871.6 million.<sup>15</sup> Unseen is the fact that approximately 96% of these revenues are distributed to Division I programs, to provide support to their members and programs benefitting their student-athletes.<sup>16</sup> These high revenues result in the view that the NCAA is a big business.

In addition to the revenues that the NCAA generates, the schools are making revenues off of their athletics. Of these programs, Alabama and Penn State top the list, each making above \$31 million per year.<sup>17</sup> Most noteworthy is that the majority of athletic programs' revenues fall short of allowing them to be self-sustaining departments of the universities.<sup>18</sup> In total, only twenty-three athletic departments generated enough money on their own to cover their expenses in 2012.<sup>19</sup> Of that group, only sixteen received some type of subsidy.<sup>20</sup>

Contributing to these high revenues are large television contracts

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<http://fs.ncaa.org/docs/NCAANewsArchive/2000/association-wide/state%20of%20Bth%20Basso%20Baddress%20B1-17-00.html>.

14. See, e.g., NAT'L COLLEGIATE ATHLETIC ASS'N, *supra* note 12, at 57 (NCAA Operating Bylaws art. 12, § 01.1, setting forth the bylaws concerning amateurism for Division I sports, which is identical for Divisions II, & III).

15. Jake O'Donnell, *Um, They Pay Schools How Much to Play in the NCAA Tournament???*, SPORTS GRID (Apr. 6, 2013, 12:23 PM), <http://www.sportsgrid.com/ncaa-bas-ketball/ncaa-tournament-money/>.

16. *Id.*

17. Alicia Jessop, *Highest Net Income Amongst Athletics Departments*, BUS. OF COLLEGE SPORTS (Mar. 21, 2012), <http://businessofcollegesports.com/2012/03/21/highest-net-income-amongst-athletics-departments/>.

18. Steve Berkowitz et al., *Most NCAA Division I Athletic Departments Take Subsidies*, USA TODAY, July 1, 2013, <http://www.usatoday.com/story/sports/college/2013/05/07/ncaa-finances-subsidies/2142443/>; see also Kristi Dosh, *Self-Sustaining Athletic Departments: More than What Meets the Eye*, BUS. OF COLLEGE SPORTS (June 16, 2011), <http://businessofcollegesports.com/2011/06/16/self-sustaining-athletic-departments-more-than-wh-at-meets-the-eye/>.

19. See Berkowitz et al., *supra* note 18.

20. *Id.*

that the NCAA and its various conferences sign. The NCAA has large-scale contracts with television networks that permit the various television broadcasters to expose college sports to the masses.<sup>21</sup> In 2010, the NCAA reached a fourteen-year deal with CBS for the television rights of the NCAA men's basketball tournament.<sup>22</sup> The deal earned the NCAA \$11 billion, or nearly \$1 billion per year for fourteen years.<sup>23</sup> This exposure of college athletes allows the general public to recognize the participants on a day-to-day basis, walking down the street, or simply recognizing their respective numbers on jerseys, despite the lack of identifying names.<sup>24</sup> When so much money is going toward these television contracts, the line suddenly gets blurred and the NCAA begins to move away from their main goal of treating college athletics as a complement to each student's educational experience.<sup>25</sup>

## 2. Individual Earnings

“Let's recognize that most of it is professional anyway. Coaches are paid millions of dollars a year, like professional coaches. It's marketed very much like a professional entertainment activity. The only thing that's missing is the payment for the players.”<sup>26</sup> Student-athletes view their net worth and value comparably to professionals due to circumstances blurring the line between collegiate and professional sports, such as coaches making similar salaries to their professional counterparts. Alabama's Nick Saban is making \$5,316,667 per year.<sup>27</sup> In addition to this seven-figure salary, Saban also makes \$150,000 in “other pay” and can receive a maximum

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21. Marissa, D. Sunio, *Saving Face: Protecting the Rights of Student-Athletes and the Idea of Amateurism*, 33 WHITTIER L. REV. 431, 439 (2003).

22. Thomas O'Toole, *NCAA Reaches 14-Year Deal with CBS/Turner for Men's Basketball Tournament, Which Expands to 68 Teams for Now*, USA TODAY (Apr. 22, 2010), <http://content.usatoday.com/communities/campusrivalry/post/2010/04/ncaa-reaches-14-year-deal-with-cbturner/1#.U0DNXVeTLzM>.

23. *Id.*

24. *See* Sunio, *supra* note 21.

25. *See id.* at 441.

26. Amy Christian McCormick & Robert A. McCormick, *The Emperor's New Clothes: Lifting the NCAA's Veil of Amateurism*, 45 SAN DIEGO L. REV. 495, 505 (2008)(emphasizing three specific areas that have a bearing on amateur athletics: labor law, antitrust law, and tax law).

27. Kristen DeRamus et al., *Coach Pay and Bonuses in the NCAA's Bowl Subdivision*, USA TODAY (July 1, 2013), <http://www.usatoday.com/story/sports/ncaaf/2012/11/19/ncaa-college-football-head-coach-salary-database/1715543/>.

bonus of \$700,000 per year.<sup>28</sup> The lowest paid coach in the National Football League (NFL) is Jim Harbaugh—former football coach of the Stanford Cardinals—making \$5 million per year for five years (starting in 2011).<sup>29</sup>

Continuing the NCAA's goal to maintain a clear line between professional and collegiate sports will only become more difficult. Reggie Bush accepted \$100,000 worth of benefits while he attended the University of Southern California on a football scholarship.<sup>30</sup> This would be less than a quarter of the minimum salary of \$405,000 for rookies, set by the NFL.<sup>31</sup> If Reggie Bush was considered the top football player in the country—having won the Heisman Trophy (now forfeited after NCAA sanctions)<sup>32</sup>—then it seems like a logical argument that he would deserve to be paid like an NFL player, much like Nick Saban is being paid like an NFL coach.<sup>33</sup> The only difference is, one was a student-athlete and the other is a coach. The clear line that the NCAA seeks to establish between its athletes and professionals<sup>34</sup> is no longer very clear.

### III. AMATEURISM

The issue of amateurism's place in college sports extends beyond the debate of whether or not collegiate athletes, such as Josh Huff, are, in fact, also amateur athletes.<sup>35</sup> The legal aspect, as is becoming increasingly more relevant, is whether intercollegiate athletics remains, truly, "amateur" sports, and whether the NCAA's justification for the continued existence of amateurism serves as a proper defense for the NCAA in any claims raised against them by

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28. *Id.*

29. Marc Sessler, *Forbes: 49ers' Harbaugh Lowest-Paid Coach in NFC West*, NFL.COM (May 19, 2012, 10:51 AM), <http://www.nfl.com/news/story/09000d5d82934c1c/article/forbes-49ers-harbaugh-lowestpaid-coach-in-nfc-west>.

30. Charles Robinson & Jason Cole, *Reggie Bush Investigation*, YAHOO! SPORTS (Sept. 15, 2006, 2:59 AM), <http://sports.yahoo.com/ncaa/football/news?slug=ys-bushprobe>.

31. Kurt Badenhausen, *NFL Players Can Save a Fortune with Tax Decisions*, FORBES (Sept. 5, 2013, 11:49 AM), <http://www.forbes.com/sites/kurtbadenhausen/2013/09/05/tax-decisions-by-nfl-players-can-save-a-fortune/>.

32. *Reggie Bush to Forfeit Heisman*, ESPN.COM (Sept. 15, 2010), <http://www.espn.go.com/los-angeles/nfl/news/story?id=5572827>.

33. The Heisman Trophy is awarded each year to the most outstanding player in college football. *Heisman Trophy*, WIKIPEDIA.COM, [http://en.wikipedia.org/wiki/Heisman\\_Trophy](http://en.wikipedia.org/wiki/Heisman_Trophy) (last visited Apr. 7, 2014).

34. *See supra* note 12 and accompanying text.

35. Muenzen, *supra* note 5, at 257–58



student-athletes.<sup>36</sup>

*A. Origins of NCAA Amateurism*

An amateur is defined as someone who does something for pleasure and not as a job—“one who engages in a pursuit, study, science, or *sport* as a pastime rather than as a profession.”<sup>37</sup> An amateur is a person who is “engaging or engaged in without payment; nonprofessional.”<sup>38</sup> The definition that the NCAA would adopt in 1916 was that an amateur was “one who participates in competitive physical sports only for the pleasure, and the physical, mental, moral, and social benefits directly derived therefrom.”<sup>39</sup> This original definition, though not significantly different from today’s definition by words, forbade any sort of receipt of remuneration, *including scholarships*.<sup>40</sup> In 1948, the NCAA made its first attempt at remedying the original rule in order to permit scholarships for collegiate athletes. Under this new rule a “student athlete could receive a tuition-and-fees scholarship (not room and board) if the student had demonstrated financial need and met the school’s normal admissions requirements.”<sup>41</sup> These rules and definitions were put in place as a form of regulating payments made to student-athletes.

Even with this rule in place purely for regulating any payments to student-athletes, boosters and alumni sought to gain competitive advantages through illegal payments.<sup>42</sup> In an effort to mitigate these practices, the NCAA voted to allow full grants-in-aid, which would allow payments for tuition, fees, room and board, books and a monthly “laundry money” stipend.<sup>43</sup> In 2011, President of the NCAA, Mark Emmert, pushed through a new rule that would grant Division I universities the right to pay student-athletes a \$2,000 stipend.<sup>44</sup> This effort was for naught, as boosters and alumni still

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36. *Id.* at 258.

37. Amateurism Definition, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/amateur> (last visited Mar. 2, 2014) (emphasis added).

38. Amateurism Definition, GOOGLE.COM, <https://www.google.com/search?q=amateur&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a> (last visited Mar. 2, 2014).

39. ALLEN L. SACK & ELLEN J. STAUROWSKY, COLLEGE ATHLETES FOR HIRE: THE EVOLUTION AND LEGACY OF THE NCAA’S AMATEUR MYTH 34–35 (1998).

40. Muenzen, *supra* note 5, at 260.

41. SACK & STAUROWSKY, *supra* note 39, at 34.

42. Muenzen, *supra* note 5, at 260.

43. *Id.*

44. Joe Nocera, *Let’s Start Paying College Athletes*, N.Y. TIMES MAG. (Jan. 1, 2012),

sought ways to gain competitive advantages over other schools targeting similar student-athlete recruits.<sup>45</sup> This is an issue that still exists today and has been the result of multiple athletic program sanctions, which will be discussed in detail below.

### *B. NCAA Amateurism Today*

Despite the continual defamation of the idea of amateurism, there remains the ideal that intercollegiate athletics provides student-athletes with a unique opportunity to obtain the all-important higher education.<sup>46</sup> Though collegiate sports provide a form of entertainment and develops student-athletes, the participating individuals are “first and foremost students” with their primary purpose at the institution being students, not athletes.<sup>47</sup> This ideal is debatable, as many student-athletes view themselves first as an athlete for their respective sports, and second as a student of the university. The link between student and athlete still exists as part of the definition of amateurism, but the weakening of amateur standards requires a debate centered on the legitimacy of amateurism, particularly on the more profitable sports of football and basketball.<sup>48</sup>

### *C. Olympic Amateurism*

The Olympics provide a good model for how amateur athletes, who also need to maintain their status as amateurs to participate in their respective sports, can earn money for their work and take advantage of their names similarly to professionals. Olympic athletes—not including the United States basketball and beach volleyball teams—receive no compensation for their services.<sup>49</sup> Their benefits come in the form of a very generalized pride in representing their countries at the highest level. Though Olympic athletes do not take payments in salary form, these athletes are able to leverage their names to obtain sponsorships and endorsements, which oftentimes can be very lucrative.<sup>50</sup> Additionally, certain Olympic committees

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[http://www.nytimes.com/2012/01/01/magazine/lets-start-paying-college-athletes.html?pagewanted=all&\\_r=1&](http://www.nytimes.com/2012/01/01/magazine/lets-start-paying-college-athletes.html?pagewanted=all&_r=1&)

45. Muenzen, *supra* note 5, at 260.

46. JAMES J. DUDERSTADT, INTERCOLLEGIATE ATHLETICS AND THE AMERICAN UNIVERSITY 70 (2000).

47. *Id.* at ix.

48. *Id.*

49. Sunio, *supra* note 21, at 444.

50. *Id.*

give out bonuses to their representatives when they earn a medal (a top-three result).<sup>51</sup>

Athletes are representing a nation, as opposed to a school, and are not making money except in the form of various sponsorship and endorsement deals.<sup>52</sup> Like collegiate athletes whose schools pay participating expenses, Olympic athletes rely on their respective countries' Olympic committees, donors, or fundraisers to pay the cost of travel, uniforms, and other essential items.<sup>53</sup> Olympic athletes and collegiate athletes work equally hard in representation of their respective countries and universities, yet their treatment by the different governing bodies are vastly different.<sup>54</sup> The term "amateur" has a different meaning for NCAA athletes than it does for Olympic athletes. If the Olympic Games are able to thrive in a model where the athletes receive compensation that covers mandatory expenses such as travel and uniforms, while allowing participants to maintain their rights of publicity, then it provides a model for the NCAA to follow.

Historically, the Olympics always had one steadfast rule governing their Games: only amateur athletes could compete, while professional athletes could not.<sup>55</sup> For years, the Olympics clung on to the amateur ideal and enforced it strictly: "Athletes could not receive material gain, directly or indirectly, for playing sports."<sup>56</sup> In a time before large television contracts, if an athlete accepted payments or accepted commercial endorsements, upon discovery of such an offense, the IOC immediately banished the wrongdoer.<sup>57</sup> Regardless of the rules, the money came in some form or another, but those that defended amateurism, much like the NCAA does today, insisted that "'if we water down the rules now, the [sport] will be destroyed within eight years."<sup>58</sup> This was in 1960 at a time when the Games were fully committed to a no-pay-for-play system (including salaries and endorsements).<sup>59</sup> In one famous example of the Olympics' NCAA-

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51. *Id.*

52. *Id.* at 445.

53. *Id.*

54. *Id.*

55. Bob Greene, Op-Ed., *What Changed the Olympics Forever*, CNN.COM (July 23, 2013), <http://www.cnn.com/2012/07/22/opinion/greene-olympics-amateurs/>.

56. Patrick Hruby, *The Olympics Show Why College Sports Should Give Up on Amateurism*, ATLANTIC (July 25, 2012), <http://www.theatlantic.com/entertainment/archive/2012/07/the-olympics-show-why-college-sports-should-give-up-on-amateurism/260275/>.

57. *Id.*

58. *Id.*

59. *Id.*

like inflexibility, the organizers nullified Jim Thorpe's—widely regarded as the finest American athlete of all time—gold medals in the decathlon and pentathlon for having accepted money for playing semi-pro baseball.<sup>60</sup>

At this time, the IOC's president, an American, Avery Brundage, was unbendable on the principle of amateurism.<sup>61</sup> Brundage was insistent that the Olympics needed to be protected from those with “ulterior motives”; meaning those trying to make money.<sup>62</sup>

Brundage's inflexibility and efforts to maintain the “amateur code” ended upon his exit as the president; that is when the proverbial “floodgates” opened. His successor, Juan Antonio Samaranch, pushed for the inclusion of professional athletes in the games.<sup>63</sup> His desire was to include the best athletes in the world and determine who truly deserved the honorable distinction of “best in the world.” In Samaranch's opinion, this was impossible without the inclusion of professional athletes. His efforts proved fruitful and the notions that watering-down the rules would end the Olympics were silenced.<sup>64</sup> “Dead in eight years? . . . If anything, the Olympics are more popular and powerful than ever.”<sup>65</sup> Perhaps it is time that the NCAA follow Samaranch's lead and make the comparable change.

#### IV. VIOLATIVE BEHAVIOR

The NCAA's attempt to reduce violating behavior by changing the rule in 1948 may have had deterrent effects on some rule-abiding schools, but those schools that seek an edge in the competition continue using boosters and alumni to their advantage. Those violating the rules are slowly, but surely, coming to light. The idea is that “[w]here there is money, there is corruption.”<sup>66</sup> Over the last decade, schools violating the NCAA rules have faced sanctions for their actions.

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60. Greene, *supra* note 55.

61. *Id.*

62. *Id.*

63. Hruby, *supra* note 56.

64. *Id.*

65. *Id.*

66. *Top 10 Infamous NCAA Sanctions*, REALCLEARSPORTS.COM (May 17, 2013), [http://www.realclearsports.com/lists/infamous\\_ncaa\\_sanctions/](http://www.realclearsports.com/lists/infamous_ncaa_sanctions/).

### A. Team Sanctions

The NCAA has punished nearly half of all “big-time” collegiate sports programs for various violations of rules.<sup>67</sup> A recent study revealed that 53 of the 120 universities in the NCAA’s top competitive level for football—the Bowl Subdivision— were found to have committed a major violation between 2001 and 2010.<sup>68</sup> This number was consistent with the previous two decades.<sup>69</sup> Some critics believe that the fact that so many programs committed a major violation of the rules is evidence that the association’s rules are impossibly complex and no program can follow them “to a tee.”<sup>70</sup> Yet, there are many that believe the infractions are minor in comparison to the “pay to play” scandals of the 1980s and 1990s.<sup>71</sup>

Infamously, the NCAA imposed its first “death penalty” on Southern Methodist University (SMU) when it discovered that the governor of Texas was paying players to enroll there.<sup>72</sup> When the NCAA punished SMU, they cited the penalties as intent to “eliminate a program that was built on a legacy of wrongdoing, deceit and rule violations.”<sup>73</sup> The punishment that followed was the harshest penalty the NCAA has delivered, to date: a one year ban from football.<sup>74</sup> In addition, the NCAA limited the number of games played the season following the ban and reduced the number of scholarships, coaching positions, and television and post-season appearances.<sup>75</sup>

In 2009, Florida State University was nicknamed “Free Shoe University” because agents purchased upwards of \$6,000 worth of shoes for the Florida State athletes.<sup>76</sup> As a result of this infraction, in addition to cases of academic fraud, the NCAA banned twenty-three

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67. Doug Lederman, *Half of Big-Time NCAA Programs Had Major Violations*, USA TODAY, Feb. 7, 2011, [http://usatoday30.usatoday.com/sports/college/2011-02-07-ncaa-infractions\\_N.htm](http://usatoday30.usatoday.com/sports/college/2011-02-07-ncaa-infractions_N.htm).

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. David McNabb, *Flashback: SMU Gets NCAA ‘Death Penalty’; Worse Than Penn State?*, DALLAS MORNING NEWS, (July 23, 2012), <http://www.dallasnews.com/sports/college/sports/smu-mustangs/20120723-flashback-smu-gets-ncaa-death-penalty-worse-than-penn-state.ece>.

74. *Id.*

75. *Id.*

76. Ian Campbell, *A History of Major NCAA Violations*, DAILYEMERALD.COM (June 25, 2013, 4:39 PM), <http://dailyemerald.com/2013/06/25/a-history-of-major-ncaa-violations/>.

football players from playing in the postseason.<sup>77</sup> In 2011 there were reports that a University of Miami booster had given hundreds of thousands of dollars to Miami players.<sup>78</sup> Miami proposed a self-imposed punishment, banning itself from the football postseason for two years and deducting nine scholarships.<sup>79</sup>

Though football and basketball receive the most coverage, the collegiate athletes that violate NCAA rules are not isolated to these sports.<sup>80</sup> In 1995, after winning the national championship, the NCAA found that the UCLA softball team broke enough rules that they put the entire athletic program on a three-year probation and vacated the national championship.<sup>81</sup> UCLA's star pitcher for the season was Australian Tanya Harding, who attended UCLA from mid-season until the end of the postseason, at which point, she returned to Australia without completing even one quarter of schoolwork.<sup>82</sup>

Of the 120 NCAA schools in the NCAA's Football Bowl Subdivision, reportedly, only seventeen have never been found guilty any violation in any sport.<sup>83</sup> Of these seventeen schools, only four come from the major conferences: Boston College, Northwestern, Penn State, and Stanford.<sup>84</sup> Even with these four teams being reported as non-violators, Stanford is the only one considered to not have broken any rule,<sup>85</sup> which reaffirms the point that the complexity of the rules make it very difficult for schools to operate without any sort of violation.<sup>86</sup>

### *B. Individual Sanctions*

Though the schools always receive punishment for rule

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77. *Id.*

78. *Id.*

79. Chris Dufresne, *Biggest Loser in Miami's NCAA Football Sanctions? It's USC, Again*, L.A. TIMES, Oct. 22, 2013, <http://articles.latimes.com/2013/oct/22/sports/la-sp-1023-miami-ncaa-20131023>.

80. *Top 10 Infamous NCAA Sanctions: 10. Hard for Softball*, REALCLEARSPORTS.COM (May 17, 2013), [http://www.realclearsports.com/lists/infamous\\_ncaa\\_sanctions/ucla\\_softball\\_1995.html?state=stop](http://www.realclearsports.com/lists/infamous_ncaa_sanctions/ucla_softball_1995.html?state=stop).

81. *Id.*

82. *Id.*

83. Dashiell Bennett, *There are Only 17 Schools that have Never Committed a Major NCAA Violation*, BUS. INSIDER (June 22, 2011, 3:33 PM), <http://www.businessinsider.com/17-schools-ncaa-violation-2011-6>.

84. *Id.*

85. *Id.*

86. Duderstadt, *supra* note 46, at ix.

violations by individual athletes, there have been numerous occasions where the athletes acted in blatant violation of NCAA rules, sometimes without school awareness, leading to individual punishments. These are occasions where athletes blur the line of amateur and professional beyond the demarcation that the NCAA has continually enforced.

In 2010, the NCAA punished University of Southern California (USC) for violations by individual athletes, Reggie Bush (football) and O.J. Mayo (basketball).<sup>87</sup> After an investigation, the NCAA concluded that Bush had accepted more than \$100,000 worth of benefits from marketing agents.<sup>88</sup> Benefits that Bush received included, but are not limited to, round-trip airfare, limousine transportation, stays at hotels, clothing, and weekly payments.<sup>89</sup> Additionally, the NCAA determined that a promoter named Rodney Guillory received more than \$200,000 from a sports management agency and part of that was transferred to Mayo in the form of cash, clothes, and a television.<sup>90</sup>

An NFL star running back, Arian Foster, added his name to the ever-growing compilation of present and former athletes and individuals that believe NCAA athletes should receive compensation for their work on the football field and basketball court.<sup>91</sup> During an interview, Foster discussed his difficult financial position and admitted to receiving money during his senior season.<sup>92</sup> “I don’t know if this will throw us into an NCAA Investigation—my senior year, I was getting money on the side . . . I really didn’t have any money. I had to either pay the rent or buy some food.”<sup>93</sup> He goes on to discuss the reality that he viewed: In a stadium with a capacity of 107,000

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87. Lynn Zinser, *U.S.C. Sports Receive Harsh Penalties*, N.Y. TIMES, June 10, 2010, [http://www.nytimes.com/2010/06/11/sports/ncaafotball/11usc.html?\\_r=0](http://www.nytimes.com/2010/06/11/sports/ncaafotball/11usc.html?_r=0).

88. Charles Robinson & Jason Cole, *Reggie Bush Investigation: Cash and Carry*, YAHOO! SPORTS (Sept. 15, 2006, 2:59 AM), <http://sports.yahoo.com/ncaa/football/news?slug=ys-bushprobe>.

89. *Id.*

90. David Wharton & Baxter Holmes, *O.J. Mayo Scandal Leads to Heavy Sanctions for USC Basketball; Team ‘Shocked and Saddened’*, L.A. TIMES, Jan. 4, 2010, <http://articles.latimes.com/2010/jan/04/sports/la-sp-usc-basketball4-2010jan04>.

91. Bobby Valentine, *Arian Foster admits in documentary he took money at Tennessee*, SPORTS ILLUSTRATED (Sept. 20, 2013, 1:11 PM), <http://www.si.com/football/2013/09/20/arian-foster-documentary-comments-about-being-paid-tennessee>.

92. *Id.*

93. *Id.*

people, those people were paying to watch him play.<sup>94</sup> Then, after games he would go sign autographs, after which, he would go home, open his refrigerator, and find it would be empty.<sup>95</sup>

Hold up, man. What just happened? Why don't I have anything to show for what I just did? There was a point where we had no food, no money, so I called my coach and I said, "Coach, we don't have no food. We don't have no money. We're hungry. Either you give us some food, or I'm gonna do something stupid." He came down and brought like 50 tacos for like four or five of us. Which is an NCAA violation. But then, the next day I walk up to the facility and I see my coach pull up in a brand new Lexus.<sup>96</sup>

He continued, saying that he fully believes that student-athletes are actually employees.<sup>97</sup> This is a sentiment that grows with each additional dollar that the schools earn off their names and on-field performance.

A more recent NCAA star corroborated Arian Foster's point. Shabazz Napier, named the Most Outstanding Player in the NCAA Final Four for the men's college basketball tournament, stated: "Student athletes . . . we do have hungry nights when we don't have enough money to get food."<sup>98</sup> He continued, stating that his basketball scholarship was not enough to cover all of his expenses.<sup>99</sup>

## V. RIGHT OF PUBLICITY

Ten years after becoming the youngest player to ever win the Masters golf tournament, Tiger Woods became the first athlete to earn a cumulative one billion dollars for his career.<sup>100</sup> He managed to do

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94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *UConn Star Describes 'Hungry Nights': Sometimes I Go to Bed 'Starving'*, FOX NEWS (Apr. 8, 2014, 12:22 PM), <http://foxnewsinsider.com/2014/04/08/uconn-star-shabazz-napier-describes-hungry-nights-sometimes-i-go-bed-starving>.

99. *Id.* Eight days after Napier came out with these statements, the NCAA's legislative council approved a proposal that would expand athlete meal allowances, permitting Division I schools to provide unlimited meals and snacks to everyone playing a college sport, including walk-ons. *Council Approves Unlimited Meals*, ESPN.COM (Apr. 16, 2014), [http://espn.go.com/college-sports/story/\\_id/10787521/ncaa-legislative-council-approves-expanded-meal-allowance](http://espn.go.com/college-sports/story/_id/10787521/ncaa-legislative-council-approves-expanded-meal-allowance).

100. Leslie E. Wong, *Our Blood, Our Sweat, Their Profit: Ed O'Bannon Takes on the*



this by using his image and name power to promote products, video games, and various events.<sup>101</sup> The NCAA is the biggest player in the four billion dollar market for licensed merchandise from college athletics; royalties from these revenues return to the universities.<sup>102</sup> The profitability of collegiate merchandising is, in large part, attributed to the student-athletes that elevate the NCAA athletic experience.<sup>103</sup> It is for this reason that student-athletes are beginning to take a stance: they seek to leverage their names and images, much like Tiger Woods was able to when he reached his one billion dollar mark.<sup>104</sup>

When a university sells student apparel with a student-athletes' representative number attached to the item, their names are not allowed to be embroidered on the product.<sup>105</sup> Despite the lack of names, schools market the numbers of the most popular and best players and the schools receive royalties for each jersey or item of clothing sold.<sup>106</sup> When Carmelo Anthony—now a member of the New York Knicks<sup>107</sup>—played collegiate basketball for Syracuse, he would look up in the stands to see fans wearing jerseys with his number on it.<sup>108</sup> At the time, it bothered him to know that these fans wore a product that was successful because of him, yet, he earned nothing off these sales.<sup>109</sup> This very situation begs the question: Is the objective of the NCAA to prevent the commercialization of collegiate athletics legitimate?<sup>110</sup>

The “right of publicity” is a common law doctrine first recognized in *Haelan Laboratories, Inc. v. Topps Chewing Gum*,

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*NCAA for Infringing on the Former Student-Athlete's Right of Publicity*, 42 TEX. TECH L. REV. 1069, 1070 (2010).

101. *Id.*

102. *Id.*

103. *Id.* at 1071.

104. *Id.*

105. Darren Rovell, *The Shirt Off the Players' Backs*, ESPN.COM (Apr. 2, 2004, 6:37 PM), <http://sports.espn.go.com/espn/sportsbusiness/news/story?id=1774259>.

106. *Id.*

107. *Carmelo Anthony*, ESPN.COM, [http://espn.go.com/nba/player/\\_id/1975/carmelo-anthony](http://espn.go.com/nba/player/_id/1975/carmelo-anthony) (last visited Nov. 17, 2014).

108. Rovell, *supra* note 105.

109. *Id.*

110. Matthew J. Mitten, *Applying Antitrust Law to NCAA Regulation of “Big Time” College Athletics: The Need to Shift from Nostalgic 19th and 20th Century Ideals of Amateurism to the Economic Realities of the 21st Century*, 11 MARQ. SPORTS L. REV. 1, 6 (2000).

*Inc.*,<sup>111</sup> which focuses on the economic interest in an individual's name or likeness.<sup>112</sup> The primary concern with this doctrine is the right of an individual to control any commercial use of their name and likeness; these individuals are usually public figures.<sup>113</sup> The four elements considered by courts to determine a violation of such a right are "1) the defendant's use of the plaintiff's identity; 2) the appropriation of the plaintiff's name or likeness to the defendant's advantage, commercially or otherwise; 3) lack of consent and 4) resulting injury."<sup>114</sup> The key to violating one's right of publicity is the use of one's name or likeness for commercial gain, without their consent.<sup>115</sup>

The Second Circuit recognized in *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* that an athlete did, in fact, have a legal claim for uncompensated use of one's identity.<sup>116</sup> In that case a number of athletes and Bowman Gum Company made a contract that licensed to the Bowman Gum Company the right to use the players' images in connection with their gum.<sup>117</sup> Other terms of the contract included a promise by the players to not grant any other gum manufacturer the same rights.<sup>118</sup> Topps Chewing Gum, aware of this contract, obtained a similar contract with some of the same players and contended that the contracts the players signed were nothing more than a release of liability for each party to use the players' images.<sup>119</sup> Topps Chewing Gum further contended that an individual has no legal interest in the publication of their image beyond a privacy right.<sup>120</sup> The court disagreed with the defense and held that in addition to the right of privacy, the players also have a right to the

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111. *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866 (2d Cir. 1953).

112. Matthew G. Matzkin, *Gettin' Played: How the Video Game Industry Violates College Athletes' Rights of Publicity by Not Paying for Their Likenesses*, 21 LOY. L.A. ENT. L. REV. 227, 229 (2001).

113. *Id.*

114. *Id.* at 229–30 (citing *Abdul-Jabbar v. Gen. Motors Corp.*, 85 F.3d 407, 413–14 (9th Cir. 1996); *See also* Darren F. Farrington, *Should the First Amendment Protest Against Right of Publicity Infringement Actions Where the Media Is Merchandiser? Say It Ain't So, Joe*, 7 FORDHAM INTELL. PROPR. MEDIA & ENT. L.J. 779, 793 (1997)).

115. Matzkin, *supra* note 112, at 231.

116. *See Haelan Laboratories, Inc.*, 202 F.2d at 868.

117. *Id.* at 867.

118. *Id.*

119. *Id.*

120. *Id.*

publicity value of their images.<sup>121</sup>

*A. The Rise of the Right of Publicity and its Application in Sports*

The idea of the right of publicity grew in the Hollywood spotlight, but quickly caught on in most other states.<sup>122</sup> The concept of one's "Right of Publicity" in California is so vast and broad that it even goes as far as to protect a singer's specific style of singing music.<sup>123</sup> In the context of athletics, the right of publicity is a key difference between professional athletics and amateur athletics.

The biggest difference between professional and amateur athletes—separated by a "clear line of demarcation"—is a professional athlete's enjoyment of payments for various services.<sup>124</sup> Professional athletes have the ability to leverage their names and likenesses to receive salaries and endorsement deals.<sup>125</sup> Professional athletes' endorsement deals reach as high as \$39,000,000, cumulatively, in a single year.<sup>126</sup> Athletes and celebrities, alike, enjoy their publicity rights and work tirelessly to enhance the commercial value in their likeness and reputation.<sup>127</sup> While these individuals raise their net worth by leveraging their names and receive compensation from their popularity, due to NCAA rules, collegiate athletes do not receive the same rights and instead raise the net worth of their respective universities.

*Ali v. Playgirl, Inc.* recognized that an athlete has a right to control the distribution of his likeness.<sup>128</sup> In this case, Muhammad Ali, a former boxing heavyweight champion, sought injunctive relief and damages for unauthorized print and distribution of a portrait in Playgirl Magazine that depicted a nude black man seated in the corner of a boxing ring.<sup>129</sup> In the magazine's defense, they claimed that Ali, as an athlete in the public domain, chose to bring himself into the spotlight and into public notice and the right of privacy does not

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121. *See id.* at 868.

122. Sunio, *supra* note 21, at 434.

123. *Id.*

124. *Id.* at 435.

125. *Id.*

126. Daniel Roberts, *The 50 Highest-Earning American Athletes*, FORTUNE, <http://fortune.com/fortunate50/lebron-james-2/> (last visited Nov. 17, 2014).

127. Sunio, *supra* note 21, at 436.

128. *Ali v. Playgirl, Inc.*, 447 F. Supp. 723 (S.D.N.Y. 1978).

129. *Id.* at 725.

extend to an individual in such a case.<sup>130</sup> The court rejected this argument and held that the defense's "contention confuses the fact that projection into the public arena may make for newsworthiness of one's activities, and all the hazards of publicity thus entailed, with the quite different and independent right to have one's personality, even if newsworthy, free from commercial exploitation at the hands of another."<sup>131</sup>

The purpose of one's right of publicity is to protect their image.<sup>132</sup> In *Parrish v. NFL Players Ass'n*, over 2,000 retired players of the NFL sued the National Football League Players' Association (NFLPA) for using their images, without consent, to create the famous Madden NFL videogame.<sup>133</sup> In this case, the likeness of the characters in the videogames matched those of the professional athletes, thus prompting these 2,000 retired athletes to raise their right of publicity.<sup>134</sup> The court awarded the players a sum of \$28.1 million in damages for the misappropriated use of their rights.<sup>135</sup>

Student-athletes do not get their right of publicity due to the concept of amateurism,<sup>136</sup> yet it seems that only these individuals are missing out on this right to privacy. The idea in collegiate athletics is that athletics comes secondary to academics, but under rules in every major professional sport, these students can leave school early and enter the draft for the respective sports.<sup>137</sup> The reality is, for many of the elite level athletes—those with professional aspirations—college athletics is more of a stop-gap between high school and the point of eligibility for professional participation, at which point, they can leverage their names. The Supreme Court held in *Gertz v. Robert Welch, Inc.* that public figures are people known to have "pervasive fame or notoriety."<sup>138</sup> Following such a precedent, college athletes fall under this category of "public figures" because they are on television on a weekly basis; the public recognize them on the streets; and their jersey numbers are a representation of each individual player, linked directly to them and sold in stores. Collegiate athletes

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130. *Id.* at 727.

131. *Id.* (citing *Booth v. Curtis Publishing Co.*, 223 N.Y.S.2d 737 (N.Y.A.D. 1962).

132. Sunio, *supra* note 21, at 436.

133. *Parrish v. NFL Players Ass'n*, 534 F.Supp. 2d 1081, 1086–87 (N.D. Cal. 2007).

134. *See id.*

135. Sunio, *supra* note 21, at 436–37.

136. *Id.* at 442.

137. *Id.* at 440.

138. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974).

are public figures, as per the definition laid out by the Supreme Court, but such individuals' statuses as amateurs directly contradicts the rights afforded to professionals deemed public figures.<sup>139</sup>

The conflict between amateurism and the right of publicity arises because NCAA bylaws prohibit student-athletes from receiving any sort of compensation for their services as a college athlete.<sup>140</sup> Video game producers, in turn, are allowed to create a product featuring legitimate collegiate stars with professional aspirations, use their images and likenesses, but as long as the game producers do not specifically use athletes' names, it is permissible.<sup>141</sup> This is a stark contrast to professional sports, where such usage of an athlete's likeness must result in appropriate compensation.<sup>142</sup> Therefore, even if a student athlete does not consent to the use of their name or likeness for the commercial gain of the NCAA or product manufacturers, like video game producers, there is no medium for remedy, as the NCAA implicitly tells these athletes they are not allowed to utilize their "brand" for their own commercial gain.

#### VI. THE BEGINNING OF THE MOVEMENT

In 1951, Walter Byers was named the first-ever executive director of the NCAA.<sup>143</sup> During his next thirty-seven years as the executive director, Byers built the NCAA into the power it is today and created the term "student-athlete."<sup>144</sup> He created the term to deflect attempts by universities to pay workers' compensation to injured athletes.<sup>145</sup> Towards the end of his tenure, Byers stated that he "supported any rule that sought to keep college athletics more a student activity than a profession."<sup>146</sup> As time passed, however, he could see the transformation of college into a big business, which caused a shift in his stance.<sup>147</sup> He believed the rules needed to be changed and student-athletes needed to, at least, be allowed to

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139. Sunio, *supra* note 21, at 443–44.

140. Matzkin, *supra* note 112, at 228.

141. *Id.*

142. *Id.*

143. Joe Nocera, Op-Ed., *The Lawsuit and the NCAA*, N.Y. TIMES, June 22, 2013, [http://www.nytimes.com/2013/06/22/opinion/nocera-the-lawsuit-and-the-ncaa.html?\\_r=3&](http://www.nytimes.com/2013/06/22/opinion/nocera-the-lawsuit-and-the-ncaa.html?_r=3&).

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

endorse products and receive additional financial assistance.<sup>148</sup> The NCAA eventually pushed Byers out the door, but on his way out, he urged that the only way things could change was action by Congress or litigation.<sup>149</sup> This statement would prove to be a forewarning to the NCAA about what was coming its direction.

As presently constructed, the NCAA rules do not provide protection to the athletes. Top athletes receive renewable scholarships that are revocable at the end of any given year at the discretion of coaches.<sup>150</sup> Due to the discretionary NCAA standard for scholarship renewals, a student may lose their scholarship as a result of underperformance, punishment, injury, or even the signing of a higher-rated recruit to the program.<sup>151</sup> Essentially, these students come to the school, where they can perform at the highest level for a year, and if they suffer a career-ending injury, they could potentially suffer a scholarship loss that could ultimately lead to the loss of an opportunity at higher learning.<sup>152</sup> The only protections these students have come in the form of an NCAA insurance program that covers “catastrophic” injuries sustained while participating in their respective sports.<sup>153</sup>

After enacting the new rule that allowed universities to pay their players a stipend, Mark Emmert was asked how a \$2,000 stipend differed from paying an athlete to play.<sup>154</sup> Emmert commented that if the NCAA were to move to a “pay-for-play” model, it would lead to

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148. *Id.*

149. *Id.*

150. See Alan Zagier, *Revoked Scholarships Surprise College Athletes*, HUFFINGTON POST (May, 24, 2010), [http://www.huffingtonpost.com/2010/05/24/revoked-scholarships-surp\\_n\\_586854.html](http://www.huffingtonpost.com/2010/05/24/revoked-scholarships-surp_n_586854.html).

151. See *id.*

152. Noteworthy is that certain states require their universities to provide continued scholarship provisions if an athlete is injured. An example is California’s Student-Athlete Bill of Rights that states if a student-athlete’s athletic scholarship is taken away as a result of the educational institution’s medical staff determining that he or she is medically ineligible to participate in the athletic events, then the institution shall provide an equivalent scholarship. CAL. EDUC. CODE §§ 67450–54 (2013).

153. *Student-Athlete Insurance Programs*, NCAA, <http://www.ncaa.org/about/resources/insurance/student-athlete-insurance-programs> (last visited Apr. 11, 2014). Coincidentally, this insurance program protects students injured during their athletic activities much the same way employees are protected by workers’ compensation. See *Workers’ Compensation*, UNITED ST. DEP’T OF LAB., <http://www.dol.gov/dol/topic/workcomp/> (last visited Apr. 11, 2014).

154. *Stipend is not ‘Pay for Play’ Move: Emmert Defends Decision to Give Student-Athletes \$2,000*, NCAA.COM, Nov. 3, 2011, <http://www.ncaa.com/news/ncaa/article/2011-11-03/stipend-not-%E2%80%98pay-play%E2%80%99-move>.

the end of college athletics, as those athletes would simply be university employees looking for experience before transitioning.<sup>155</sup> Graduation rates would no longer be relevant, and student-athletes would no longer be students, but simply athletes.<sup>156</sup> The purpose of the \$2,000 stipend was not to act as a payment for playing, but rather, raise the value of the scholarship and help these student-athletes cover the cost of living.<sup>157</sup> In December 2011, the \$2,000 stipend was rejected by 160 of 350 Division I member schools, but Emmert continues seeking some additional aid to student-athletes to cover expenses that a regular scholarship does not.<sup>158</sup> As the schools and the NCAA fight against paying their students, others call this a time for reform. “The scholarship model that’s in place is more than 40 years old and in 40 years, everything has changed in sports except that . . . . So it’s high time they (NCAA leaders) had a good debate.”<sup>159</sup>

#### A. *Fighting for the Rights of Student-Athletes*

The movement for student-athletes to have the right to receive some type of compensation has begun. Current and former student-athletes are beginning to stand together in an effort to attain a right that, though contradictory to the idea of amateurism, every other person holds; the right to their name and their likeness.

##### 1. *Jeremy Bloom v. NCAA*

Jeremy Bloom presents a case of an Olympic athlete that was able to utilize his name and likeness for commercial value, while not taking away his amateur status. This case also provides an illustration of the flaws presently plaguing the NCAA amateur athletic system by comparison to the Olympics system.

Jeremy Bloom earned a football scholarship from the University of Colorado, but at the same time, due to his talent in skiing, he was competing for a spot on the United States Olympic Team for the 2002 Winter Olympics.<sup>160</sup> He chose to defer his admission in preparation

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155. *See id.*

156. *See id.*

157. *Id.*

158. Rich Kirchen, *Emmert: NCAA Will Reconsider Athlete ‘Stipends’ in 2014*, BIZJOURNALS.COM (Sept. 16, 2013, 2:52 PM), <http://www.bizjournals.com/milwaukee/blog/2013/09/emmert-ncaa-will-reconsider-athlete.html?page=all>.

159. *Id.*

160. Laura Freedman, *Pay or Play? The Jeremy Bloom Decision and NCAA Amateurism Rules*, 13 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 673, 674 (2003).

for the Olympics, and it was only after his success in the Games that he chose to pursue his education and opportunity to play football at Colorado.<sup>161</sup> Though he would attend Colorado, he declined the generous scholarship offer.<sup>162</sup>

In addition to being athletically gifted, Bloom's physical appearance provided him with modeling and entertainment opportunities, which also included a profitable contract with clothing brand Tommy Hilfiger.<sup>163</sup> The NCAA, in reviewing Bloom's eligibility, concluded that in order for Bloom to maintain his amateurism status, he needed to forfeit those modeling and entertainment opportunities.<sup>164</sup>

Bloom and the University of Colorado filed a waiver that would allow him to continue "his entertainment and ski-related endeavors."<sup>165</sup> The NCAA denied the waiver. Bloom, with support from the University of Colorado, sought an injunction which would allow him to keep accepting sponsorship money on the grounds that such opportunities were unrelated to his participation in the sport of football and these opportunities existed before he enrolled at the University of Colorado.<sup>166</sup> If Bloom simply received compensation for his skiing, it is unlikely that the NCAA would have found a violation, but because his payments were via endorsements, that is where the issue arose.<sup>167</sup> Bloom stated that without his endorsement deals, he would be unable to financially afford the expenses one incurs from participating in skiing as a competitive sport.<sup>168</sup>

The NCAA's stringent restrictions of its athletes' association with commercial products also hindered Bloom's ability to pursue his modeling and entertainment opportunities.<sup>169</sup> Before this case, the NCAA had previously gone as far as disallowing an athlete from having his picture included in a sorority's charity calendar, as well as an athlete taking part in a movie thriller.<sup>170</sup> Bloom was forced to forfeit lucrative and future-enhancing prospects that would ultimately

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161. *Id.* at 678.

162. *Id.*

163. *Id.* at 674.

164. *Id.*

165. *Id.* at 678.

166. *Id.* at 679.

167. *Id.* at 680.

168. *Id.*

169. *Id.* at 681.

170. *Id.*



impair his ability to further his career in the television and film industries.<sup>171</sup>

The Boulder County District Court, though expressing sympathy for Bloom, upheld the NCAA's ruling recognizing the authority of the NCAA regarding the issue.<sup>172</sup> The NCAA states that it is seeking to protect the student-athletes, but with Bloom, where is the protection? He was earning endorsement deals and modeling opportunities that were completely unrelated to his involvement with the University of Colorado's football team, yet the NCAA still found—and its finding was upheld—that these were in violation of the rules of amateurism. An Olympic athlete was unable to take advantage of his hard work and, further, was prevented from pursuing other endeavors and career goals because of such inflexible rules.

## 2. Ryan Hart v. Entertainment Arts, Inc. (EA)

In 2009, former University of Rutgers quarterback Ryan Hart filed a lawsuit against EA for the violation of his right of publicity.<sup>173</sup> Hart's specific claim was that EA misappropriated his likeness in its NCAA college football video game for the specific purpose of enhancing its commercial value.<sup>174</sup> The similarities were abundant. In the 2006 game, the quarterback for Rutgers wore number thirteen like Hart, had the exact same height, weight, and even included accurate biographical and career statistics.<sup>175</sup> Though the player in the game was not given a name, it is inarguable that it was intended to portray Hart as the quarterback of the Rutgers' football team.

On review, the Third Circuit reviewed approaches of other courts after determining that they had not yet addressed the methodology in balancing the First Amendment rights of one party and the rights of publicity of another.<sup>176</sup> After a review of multiple variations of addressing the issue, the court held that NCAA Football 2004, 2005, and 2006, which were all at issue, did not sufficiently transform Hart's identity to escape liability under the right of publicity claim raised.<sup>177</sup> This case provided an opening for future litigation, and

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171. *Id.*

172. *Id.* at 683–84.

173. *See* Hart v. Elec. Arts, Inc., 717 F.3d 141 (3rd Cir. 2013).

174. *Id.* at 147.

175. *Id.* at 146.

176. *Id.* at 152–65.

177. *Id.* at 170.

ultimately aids the presently pending *O'Bannon* case that seeks to reshape and alter the future of the NCAA.

### 3. Edward O'Bannon v. NCAA

Former college athlete—University of California, Los Angeles (UCLA) basketball star, Ed O'Bannon—leads a charge against the NCAA, video game manufacturer EA, and the CLC.<sup>178</sup> The basis of this suit was a claim that the NCAA and EA misappropriated O'Bannon's likeness without compensation.<sup>179</sup> If O'Bannon is ultimately successful in the litigation, the NCAA will be required to make major concessions that could have further revenue-sharing impact in the years that follow.<sup>180</sup> This case provided NCAA critics power and a platform to stand on;<sup>181</sup> now the world waits as the process likely moves forward from the decision of California District Court Judge Claudia Wilkens<sup>182</sup> to the United States Ninth Circuit Court of Appeals<sup>183</sup> to make a decision that could have a large impact on the future of amateurism and on the lives of "student-athletes."

On May 5, 2009, former student-athlete Sam Keller filed a class action lawsuit against the NCAA, EA, and the CLC, claiming that they engaged in unjust enrichment through unconsented misappropriation of student-athletes' likenesses, thus violating their right of publicity.<sup>184</sup> The NCAA athletes must sign NCAA form 08-3a (the Form) before participating in NCAA sanctioned events.<sup>185</sup> The Form requires athletes to relinquish the right of publicity of their names and images.<sup>186</sup> The complaint further alleged that this was a

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178. Richard Levick, *The O'Bannon Case: A Golden Opportunity for College Sports Programs*, FORBES (Aug. 8, 2013), <http://www.forbes.com/sites/richardlevick/2013/08/08/the-obannon-case-a-golden-opportunity-for-college-sports-programs/>.

179. *Id.*

180. *Id.*

181. *Id.*

182. *O'Bannon v. NCAA*, No. C 09-3329 CW, 2014 U.S. Bist. LEXIS 110036 (N.D. Cal. Aug. 8, 2014).

183. Steve Berkowitz, *NCAA Filing Hints at Appeal Strategy in O'Bannon Case*, USA TODAY, Aug. 29, 2014, <http://www.usatoday.com/story/sports/college/2014/08/28/ncaa-filing-appeal-strategy-in-obannon-case/14774763/>.

184. Andrew B. Carrabis, *Strange Bedfellows: How the NCAA and EA Sports Sports May Have Violated Antitrust and Right of Publicity Laws to Make a Profit at the Exploitation of Intercollegiate Amateurism*, 15 BARRY L. REV. 17, 17–18 (2010).

185. *Id.* at 18.

186. *Id.*

violation of antitrust laws.<sup>187</sup> Such a contract, which acts as a barrier to students before their participation in athletics, can be considered a contract of adhesion.

After the filing by Keller, other athletes joined the class action lawsuit, including former UCLA basketball player, Edward O'Bannon.<sup>188</sup> O'Bannon filed a different complaint on July 21, 2009, against the same defendants for misappropriation of his likeness in violation of his right of publicity.<sup>189</sup>

Keller's right of publicity argument revolved around the fact that EA Sports and the NCAA video games in question allowed users to download rosters and, though the players were unidentified, there were obvious similarities between the video game characters and their real life NCAA athlete counterparts.<sup>190</sup> Keller claimed that there could be no misconception of the identities of the players because of distinguishable characteristics that were included in the game, such as player height, weight, home state, position, and jersey number.<sup>191</sup> Prior to the start of the O'Bannon trial, the NCAA announced that it had settled with Sam Keller, awarding \$20 million to certain Division I men's basketball and football student-athletes who attended certain institutions in the years the video games were sold.<sup>192</sup>

In O'Bannon's separate complaint, he pointed to the use of his image in reruns of basketball games on television networks.<sup>193</sup> The *O'Bannon* class action differs from that of *Keller* in that current NCAA student-athletes are not part of the *O'Bannon* class; the action instead focuses on the rights of former collegiate athletes.<sup>194</sup> O'Bannon stated that "'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.'"<sup>195</sup>

In a consolidated lawsuit, both plaintiffs attacked the Form because when NCAA athletes sign it and relinquish their right of

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187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.* at 19.

191. *Id.*

192. Martin Rickman, *NCAA Announces \$20M Settlement with Keller Plaintiffs Over Video Game Claims*, SPORTS ILLUSTRATED (Jun. 14, 2014), <http://www.si.com/college-football/campus-union/2014/06/09/ncaa-keller-lawsuit-settlement>.

193. Carrabis, *supra* note 184, at 20.

194. *Id.*

195. *Id.*

publicity, they relinquish “in perpetuity all future rights in NCAA licensing agreements with third parties.”<sup>196</sup> O’Bannon argued that the Form is a contract of adhesion and is unconscionable.<sup>197</sup> The Restatement of Contracts grants the court discretion to refuse to enforce a contract if the contract or terms are unconscionable at the time of its execution.<sup>198</sup>

The difference between the NCAA and professional sports is simple: when professional sports leagues enter into these agreements—such as with EA—the professional leagues pay approximately \$35 million per year to the players’ associations to allow EA to use each professional athlete’s name and likeness.<sup>199</sup> Late in 2013, EA and the CLC tentatively settled for \$40 million, leaving the NCAA as the lone defendant of the suit at its current juncture.<sup>200</sup> For the plaintiffs to succeed in their remaining claims against the NCAA, the plaintiffs would have to show that (1) the NCAA and EA used their identity or likeness; (2) their identity or likeness has commercial value; (3) the NCAA and EA appropriated that commercial value for commercial purposes; (4) the plaintiffs did not consent to such use; and (5) the plaintiffs have endured damages and commercial injuries.<sup>201</sup>

On August 8, 2014, United States District Court Judge Claudia Wilken ruled on the O’Bannon case after weeks of arguments, expert witnesses, and questioning of key NCAA figures and former student-athletes.<sup>202</sup> Judge Wilken held that the NCAA’s restraints act as a violation of antitrust laws and college athletes could profit off their name, image, and likeness.<sup>203</sup> In this decision, she issued an

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196. *Id.* at 21

197. *Id.*

198. RESTATEMENT (SECOND) OF CONTRACTS § 208 (1981) (“[A] court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result.”).

199. Carrabis, *supra* note 180, at 21.

200. Steve Berkowitz, *Judge Orders Settlement Talks in Name and Likeness Case*, USA TODAY, Feb. 28, 2014, <http://www.usatoday.com/story/sports/college/2014/02/28/ed-obannon-judge-settlement-talks-names-and-likenesses/5901221/>.

201. Carrabis, *supra* note 184, at 32.

202. O’Bannon v. NCAA, No. C 09-3329 CW, 2014 U.S. Dist. LEXIS 110036 (N.D. Cal. Aug. 8, 2014).

203. *Id.* at \*88, \*145–46; Dave Revsine, *O’Bannon v. NCAA—Now That’s Old-School Football*, WALL ST. J. (Aug. 11, 2014, 7:33 PM), <http://online.wsj.com/articles/dave-revsine-obannon-v-ncaanow-thats-old-school-football-1407799996>; *see also* Steve Berkowitz, *Judge Releases Ruling on O’Bannon Case: NCAA Loses*, USA TODAY, Aug. 8, 2014, <http://w>

injunction prohibiting the NCAA from enforcing any rules that prohibit schools and conferences from offering certain football and basketball recruits a limited share of revenue derived from use of their names, images, and likenesses.<sup>204</sup> Additionally, the injunction prevents the NCAA from enforcing rules that prohibit “its member schools and conferences from offering to deposit a limited share of licensing revenue in trust” to those same football and basketball recruits, payable to them upon the expiration of their eligibility and departure from school.<sup>205</sup>

Though the ruling opens many doors, the NCAA remains the governing body with powers that will enable them to enact rules with restrictions. The NCAA will be able to place a cap on the new compensation that players can receive while in school, but such a cap cannot be less than an athlete’s cost of attending school—\$5,000 in 2014 dollars.<sup>206</sup> Noteworthy in the injunction is that nothing will prevent the NCAA from prohibitions against student-athlete endorsement of commercial products, setting eligibility requirements, and other similar items.<sup>207</sup> These changes will begin in the 2016-2017 school year,<sup>208</sup> thus likely impacting the next recruiting cycle.<sup>209</sup>

O’Bannon called the judge’s ruling “a game-changer for college athletes.”<sup>210</sup> Though, much remains before the conflict is fully resolved, if ever. The NCAA will likely file an appeal with the Ninth Circuit.<sup>211</sup> Other issues and obstacles include the fact that the NCAA, conferences, and schools will have to determine the impact of Title IX, as the decision only applies to revenue generating sports,<sup>212</sup> which

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ww.usatoday.com/story/sports/college/2014/08/08/ed-obannon-antitrust-lawsuit-vs-ncaa/3801277/.

204. *O’Bannon*, 2014 U.S. Dist. LEXIS 110036, at \*147.

205. *Id.* at 148.

206. *Id.*; Berkowitz, *supra* note 200.

207. *O’Bannon*, 2014 U.S. Dist. LEXIS 110036, at \*149–50.

208. Steve Berkowitz, *NCAA Filing Hints at Appeal Strategy in O’Bannon Case*, USA TODAY, Aug. 29, 2014, <http://www.usatoday.com/story/sports/college/2014/08/28/ncaa-filing-appeal-strategy-in-obannon-case/14774763/>.

209. Cindy Boren, *Five key things to know about O’Bannon vs. NCAA*, WASH. POST (Aug. 9, 2014), <http://www.washingtonpost.com/blogs/early-lead/wp/2014/08/09/five-key-things-to-know-about-obannon-vs-ncaa/>.

210. Berkowitz, *supra* note 200.

211. *Id.*

212. Jon Solomon, *Q&A: What the O’Bannon Ruling Means for NCAA, Schools and Athletes*, CBSSPORTS.COM (Aug. 9, 2014, 6:30 PM), <http://www.cbssports.com/collegefootball/writer/jon-solomon/24654805/qa-what-the-obannon-ruling-means-for-the-ncaa-schools-and-athletes>.

are generally limited to FBS Football teams and Division I Men's Basketball teams.<sup>213</sup> The ruling also does not legally force the schools to provide allowed-for funding to students, but such an issue is likely to play out during the recruitment cycle.<sup>214</sup>

*B. A New Model*

The day prior to the Judge's ruling, the NCAA Board of Governors gave students and schools more reason to be optimistic. A vote by the Board granted legislative autonomy to schools in the five biggest revenue-generating FBS conferences and Notre Dame.<sup>215</sup> This autonomy will allow schools to provide greater benefits to student-athletes, such as larger stipends and insurance coverages that extend beyond an athlete's time at school.<sup>216</sup> Uncertainty remains as to whether or not the vote will increase the gap between schools with greater financial ability and the rest—the “have” and the “have nots.”<sup>217</sup>

Each of these cases has provided a different perspective on how NCAA rules impact different individuals. For Jeremy Bloom, the rules rendered him unable to pursue his modeling and entertainment opportunities, despite the potential for those opportunities to directly aid his future, which the NCAA claims is one of its goals. Ryan Hart, sought recovery for EA's use of his likeness in video games, a right contracted to EA by the NCAA and away from student-athletes via NCAA form 08-3a. Finally, Edward O'Bannon sought to prevent the NCAA and others from earning a profit from his contests when the NCAA's broad authority no longer restricts him. In each of these cases, a clear reason for change was made. A step in the right direction would allow student-athletes the right to contract individually with companies to use their name and likeness, a right that is granted by the Olympics.

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213. Dashiell Bennett, *Only 22 of 120 Division I Athletic Programs Made Money Last Year*, BUS. INSIDER (Jan. 15, 2011), <http://www.businessinsider.com/ncaa-revune-expense-report-2011-6>.

214. Solomon, *supra* note 212.

215. Ivan Maisel, *Autonomy Set To Benefit Athletes*, ESPN.COM (Aug. 7, 2014), [http://espn.go.com/college-football/story/\\_/id/11321434/autonomy-grants-power-5-more-control](http://espn.go.com/college-football/story/_/id/11321434/autonomy-grants-power-5-more-control).

216. *Id.*

217. Zac Ellis, *Breaking Down NCAA's Approval of Power Five Autonomy*, SPORTS ILLUSTRATED (Aug. 8, 2014), <http://www.si.com/college-football/2014/08/07/ncaa-power-five-autonomy-passes>.

With the proposed model, NCAA athletes will have an opportunity to earn compensation for their work in their respective sports. Individuals who feel that their coaches and universities are benefitting from their efforts can now leverage their names and likenesses the same way Olympic athletes can. In all likelihood, this will not solve every problem in the NCAA system, but it could be enough to appease those athletes that feel abused by the current unbendable system and definition of amateurism. Granting access to their own rights of publicity will act as an incentive for athletes to grow their brand and remain in college, which will potentially further their professional careers.<sup>218</sup>

A right to obtain endorsements, though, would not ease the financial responsibilities of universities, as they would maintain the current scholarship-providing system. Athletes would still need their monthly stipends, which could increase soon,<sup>219</sup> in order to pay for their day-to-day expenses. Finally, the biggest change would be granting athletes the right to utilize an agent to aid in their endorsement-bargaining efforts. When the IOC finally allowed professionals to participate, it implicitly allowed athletes with agents. Young men and women, as young as eighteen, likely could not negotiate their own endorsement and sponsorship deals.

The *O'Bannon* decision acted as a launching point. Schools that are now able to hold student finances in trusts could similarly maintain endorsement earnings.<sup>220</sup> The NCAA retains the power to prohibit such activities, but by opening the door the NCAA will find that the provisions appease the athletes of sports whose athletic endeavors were not a topic of discussion in the decision by Judge Wilken. Such a proposition could extend to athletes beyond just FBS Football teams and Division I basketball programs, opening up opportunities for more students than just those directly impacted by the *O'Bannon* decision. The *O'Bannon* decision allows for schools to utilize their own students-athletes' names, images, and likenesses and

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218. A 1991 NFL study shows that the average professional career of an NFL player was nearly two times longer when he had a college degree, compared to the careers of those who left college early. David Cornwell, *Time to Challenge NCAA's Oppressive Amateurism Rules*, SPORTS BUS. DAILY (Nov. 29, 2010), <http://www.sportsbusinessdaily.com/Journal/Issues/2010/11/20101129/Opinion/Time-To-Challenge-Ncaas-Oppressive-Amateurism-Rules.aspx>.

219. Kirchen, *supra* note 158.

220. *O'Bannon v. NCAA*, No. C 09-3329 CW, 2014 U.S. Dist. LEXIS 110036, at \*148 (N.D. Cal. Aug. 8, 2014).

give limited portions of revenue to those students.<sup>221</sup> By expanding this to mirror the Olympic system, student athletes would be given more power and access to their own names, images, and likenesses, and the NCAA might find that students are not in as much of a hurry to leave school, likely increasing the level of competition and benefiting all parties involved.

The NCAA's goal is to protect student-athletes.<sup>222</sup> The NCAA has continually stated that it seeks to advance the professional goals of athletes.<sup>223</sup> Allowing students such as Jeremy Bloom<sup>224</sup> to maintain and obtain endorsement deals would not contradict this purpose—though allowing endorsement deals and students to hold their right of publicity will not solve every issue. Athletes in non-mainstream sports that spend equal amounts of time devoted to their sport were not given the same ability to receive financing as members of football and basketball teams under the *O'Bannon* decision. Lower athletic divisions and small conferences will be plagued with similar issues. Fortunately, the *O'Bannon* decision was a step in the right direction and like the IOC, the NCAA will finally show a willingness to be flexible, and a decades-old issue will end.

## VII. CONCLUSION

The Commissioner of the Big Ten Conference recently insinuated that the collegiate and professional systems for basketball and football need reform.<sup>225</sup> He pointed to the fact that the National Basketball Association (NBA) and NFL are the only major sports without a minor league, much like baseball, hockey, and soccer already have dedicated to developing players before they make their jump to the "majors."<sup>226</sup> The only way for athletes playing basketball or football to develop their skills is through one source: the NCAA.<sup>227</sup> There is a general belief that as the NCAA continues making money off of its players and continues paying its coaches professionally-

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221. *Id.*

222. *See* Dempsey, *supra* note 13.

223. *Id.*

224. *See* discussion *supra* Part VI.A.

225. John U. Bacon, *Reforming College Sports: Best-Selling Author John U. Bacon Makes His Case*, YAHOO! SPORTS (Oct. 9, 2013, 5:23 PM), <http://www.thepostgame.com/commentary/201309/john-u-bacon-fourth-long-book-reforms-college-sports-jim-delany-big-ten>.

226. *Id.*

227. *Id.*



comparable salaries, the value of a player's scholarship will continue to fall.<sup>228</sup> It is for this simple reason that Mark Emmert continues to provide a stipend for student-athletes—to increase the value of the currently diminishing scholarships that the athletes are given.<sup>229</sup>

Certain pundits of amateurism call it “counterintuitive,” when considered in conjunction with the large contracts that the NCAA is signing with various entities.<sup>230</sup> The NCAA signed a fourteen year television contract for men's basketball for \$10.8 billion,<sup>231</sup> yet the athletes transmitted on television are not paid. The NCAA claims that these amateurs are paid in the form of education and scholarship in exchange for those revenues they create.<sup>232</sup> There is a call to the NFL and NBA players' associations to challenge the current NCAA economic model, because studies show that the average professional career of an NFL player was nearly two times longer when they had a college degree.<sup>233</sup> Therefore, finding incentive to actually create value in the student-athletes' scholarships and for them to remain in school presents a mutually beneficial proposal for all involved parties.

Creating value in these scholarships is where the difficulty lies. Student-athletes can receive as much as \$57,100 per year in scholarships to cover tuition, a monthly stipend, and additional funds for “away” games.<sup>234</sup> In addition to the scholarships, athletes often receive free apparel, including clothing and shoes. These are essential expenses plus benefits athletes receive. Olympic athletes similarly receive compensation for essential expenses, yet they are able to leverage their names and likenesses to obtain sponsorship and endorsement deals. Such a system can coexist with the NCAA's definition of amateurism. Changes need to be made, but with the potential unionization of Northwestern University's football players<sup>235</sup> and the *O'Bannon* decision, the process for change has been accelerated and is coming sooner rather than later.

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228. *Id.*

229. Kirchen, *supra* note 158.

230. Cornwell, *supra* note 218.

231. *Id.*

232. *Id.*

233. *Id.*

234. *The 50 Most Expensive U.S. Colleges*, CBS NEWS, <http://www.cbsnews.com/pictures/the-50-most-expensive-us-colleges/18/>.

235. Tom Farrey, *NW Union Reps Off to Congress*, ESPN.COM (Mar. 31, 2014, 11:42 AM), [http://espn.go.com/espn/otl/story/\\_/id/10695272/northwestern-university-union-representatives-head-congress](http://espn.go.com/espn/otl/story/_/id/10695272/northwestern-university-union-representatives-head-congress).