

Final Report of the NCAA Task Force on Commercial Activity in
Division I Intercollegiate Athletics

Preamble.

In compliance with the charge of the NCAA Division I Board of Directors, the following is a report of the Board-appointed Task Force on Commercial Activity in Intercollegiate Athletics. It is submitted to the Board with the recommendation that it be forwarded to the Division I Leadership Council for a broad discussion, thorough vetting both within the governance structure and the membership, and the proposal of implementing legislation where clear parameters are apparent or of best practices where informed judgment and flexibility are favored. On the following pages are a discussion of the tension that exists in the higher education community and beyond regarding the nature of commercial activity in intercollegiate athletics; a historic perspective that explores the ambivalence among the concepts and practices of amateurism, professionalism and commercialism; the task force charge outlining the group's anticipated work product; and a set of recommended principles and guidelines that emerged from three in-person meetings of the group and numerous e-mail exchanges.

It is the overarching conclusion of the task force that for most Division I intercollegiate athletics programs, and for a growing number of other athletics programs, the need for revenue gained through commercial activity associated with intercollegiate athletics (including ticket sales, sale of merchandize, royalties from the sale of media rights, and the development of corporate sponsorships) is as essential to the successful future of the enterprise as is the continued integration of intercollegiate athletics with the values of higher education. While this is disheartening and even contradictory to some in higher education and public who wish intercollegiate athletics to be devoid of any and all commercial influences, commercially generated revenue is both necessary and appropriate as a means for holding the subsidization of athletics from a university's general funds within such bounds that academic mission and programs are not threatened. Indeed, revenue to offset the cost of equipment, personnel, travel and facilities acquired through commercial efforts is as historic as college sports itself.

However, there are two conditions commercial activity must meet to avoid compromising the relationship between intercollegiate athletics as an educational component of the university experience and higher education itself. First, commercial activity cannot abridge the principle of amateurism as applied to student-athletes, including their exploitation by commercial and professional interests. Second, it must comport with the values of higher education.

In the briefest of terms, there are also two conditions for the maintenance of amateurism as understood in the American collegiate model of athletics: (1) Student-athletes cannot financially benefit from their participation in intercollegiate athletics beyond grants-in-aid and other forms

of approved support allowed by NCAA regulations to promote student-athlete wellbeing, and (2) their motivation to play college sports should come primarily from the educational and physical benefits of participation. While these are the conditions *student-athletes* must meet to be amateurs, the principle of amateurism in the collegiate model also includes the responsibility of the NCAA, conferences and member institutions to protect student-athletes from exploitation by commercial and professional interests. In essence, the Association and its member conferences and institutions are charged with ensuring that student-athletes are not taken advantage of in ways that would violate their amateur standing or that threaten the educational advantage gained through participation.

As straight forward as all these conditions appear to be, they can prove to be elusive in their implementation, especially with regard to the increased association of commercial entities with intercollegiate athletics, the expansion of media platforms ranging from print to the Internet and “new media” initiatives, and the growth of intercollegiate athletics as programming inventory for various electronic media. A broadening in the relationship between higher education, intercollegiate athletics and commercial entities is not necessarily an issue for concern if the relationship respects the primacy of collegiate athletics as students, is reciprocal in nature, and the values of higher education are not abridged.

To that end, the NCAA Task Force on Commercial Activity in Intercollegiate Athletics in Division I was formed in June 2008 and charged to review the current rules and applications regarding such activity and to recommend a set of principles for consideration by the Association’s governing structure that would guide future applications. Specifically, the task force was asked to find a balance point between the abandonment of all commercial activity in an effort to achieve an unrealistic sense of purity and the engagement of such crass commercialism that the differences that demarcate the collegiate and professional models of sport are lost.

Historic Perspective.

Intercollegiate athletics in the United States – a phenomenon unique to America – is a little more than 150 years old. The first recorded athletics contest between two institutions of higher education was conducted in 1852 and predates both the creation of the NCAA in 1906 and the development of national policy through NCAA regulation in 1921. Ironically, that first contest, a rowing regatta between the men of Harvard and the men of Yale August 3, 1852, does not predate the introduction of commercial activity associated with college sports. Indeed, the race came about at the urging of James Elkins, superintendent of the Boston, Concord and Montreal

Railroad in order to sell tickets to fans to travel and watch the contest. It was a commercial venture on the part of the railroad and its enterprising superintendent who understood the attraction of an athletics event between two of America's great institutions of higher education. Soon, stands at rowing regattas were being constructed "for those willing to pay 50 cents for a seat." Local businesses were advertising their services to fans and boosters. As other sports were added to the opportunities for intercollegiate athletics, the interest in tapping commercial resources to offset the cost of equipment, travel, room and board, and facilities – while often underwritten by the participants themselves – was increasing. Before the turn of the new century, running tracks were being constructed for collegiate competition; and soon after the dawning of the 20th century, the first football stadiums were built on campus. Where campus facilities did not exist, communities were vying for the opportunity to host intercollegiate events for the economic impact such contests would have on their businesses. The interest among students to participate in athletics against other students, the interest among fans and spectators to watch and root for their favorite sides, the interest of the media to report the results as news, and the interest of commercial entities to associate with and profit from the contests was fast established as a fact of the campus athletics experience and the American culture.

There is a temptation in the modern era of intercollegiate athletics to perceive that commercial activity is a recent development fostered by television and embraced by athletics administrators to swell coffers, build ever-expanding programs, and increase payrolls for coaches and other personnel. It is true that television has had an enormous impact on the exposure of intercollegiate athletics with the growing need to acquire programming inventory as broadcast platforms have mushroomed. First radio and then television clearly have added to the exposure of what once were regional match-ups so that an entire nation – and indeed, the world – understands the significance of regular-season contests between Michigan and Ohio State, Texas and Oklahoma, Alabama and Auburn, Notre Dame and Southern Cal. In fact, the Internet presents nearly unlimited access for even the smallest intercollegiate programs. But the presence of commercial activity within the context of intercollegiate athletics is as old as the enterprise itself and it is growing. Through marketing and promotion, the hype and drama associated with these games challenge anything that professional sports can offer. Because of the high interest, advertisers and marketers at local, regional and national levels are eager for an association with such events and with the institutions of higher education that sponsor the teams. Depending on the relative competitiveness or circumstances of the games, corporations are willing to pay premium prices for the opportunity to put their products before the eyes of an enormous audience across a broad spectrum of media.

Commercial activity associated with intercollegiate athletics is not new, and it is not going away.

Despite this simple truth, higher education, the media and the general public are ambivalent and confused about the relationship of commercial activity with intercollegiate athletics. Much of the confusion comes from a firm commitment to the principle of amateurism and an ironic lack of understanding of the term that we inherited from England but never embraced in the same way as a class distinction. What worked to set intercollegiate athletics apart at Oxford and Cambridge from professional sports – that the amateur was of a social class that could afford both the time and expense of sport without compensation or reimbursement – has never worked as well in the egalitarian culture of America’s institutions of higher education. Indeed, American universities not only opened their doors to 19th century commoners but welcomed them on its athletics teams where the merits of physical talent were desired over economic advantage. The American version of amateurism that developed as athletics increasingly became a part of the student experience on campuses across the country was not a way to keep social classes apart; it was a commitment to the avocational approach to athletics in the university environment as opposed to the vocational approach in professional sports.

So, while the impact of commercial activity and the interests of commercial entities have been welcomed from the beginning – and indeed has helped salve the irritation of faculty and others that athletics financially distracts from the educational mission of the academy – the scale and scope of such activities juxtaposed against a rigid commitment to play without pay for the athletes has never made for a comfortable seat where the two notions can rest side by side. As both practical and imperative as commercial support has been to the creation, rise and expansion of intercollegiate athletics, it has burdened the conscience of all who assume amateurism must first and always be held apart from concerns about money. It is helpful, therefore, to recall that the NCAA’s long-ago adopted definition of amateurism as it relates to intercollegiate athletics has almost nothing to say about compensation and everything to say about motivation. The Principle of Amateurism memorialized in the Association’s Constitution declares that “participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation...is an avocation, and (they) should be protected from commercial and professional interests.”

The second concept that adds to America’s collective confusion about the relationship of commercial activity to intercollegiate athletics is that while participation is to be an avocation for students, college sports as an enterprise is a professional undertaking for everyone else. Furthermore, the generating of revenues to help offset expenses must be guided by the same sound business principles as any commercial entity. When Harvard met Yale in the first rowing contest in 1852 and Princeton traveled to Rutgers for the first intercollegiate football game in 1869, it was the result of students seeking freedom from their 19th Century classrooms. But once

the colors were raised and the pride of victory was contested, it was not long until the professional coach was introduced to improve the chances of winning. Before the establishment of the NCAA in 1906, nearly every sport had coaches who were paid for their expertise. The expansion toward programs with multiple sports lead inevitably to a need for professional management of budgets and schedules, the hiring of coaches and other personnel, the building of facilities to host events, and the development of revenues to pay for the enterprise.

On one hand, such growth of staff, facilities and the need for their management is no different in athletics than for any other activity on campus that is developed in response to need or interest. As the curriculum of higher education in the 18th and 19th century evolved into that of the comprehensive universities of the 20th century, music, journalism and computer science – as examples – were introduced and had to be supported by an infrastructure of personnel, facilities and development. The difference in athletics is the media attention that college sports invited, the public enthusiasm that fans and alumni demonstrated, and the commercial interest that was attracted by both. In addition, the emotional engagement that intercollegiate athletics stimulates, the media and business awareness that follows run so parallel to college sports' professional counterpart that those who view all that pertains to higher education from the viewpoint of the academy are made uncomfortable by the proximity.

The question of whether there should be a connection between higher education-sponsored athletics and the commercial activity that has grown up around such events (regardless of confusion about the propriety of amateurism being under attack or the spreading of professionalism into the infrastructure for college sports) was answered when the first ticket was sold and the first coach was hired. All that has followed is an issue of scale and scope.

To be certain, commercial activity cannot be stripped away from intercollegiate athletics at any level. Higher education requires of college sports programs, as it does of any other component of the campus, that the activity offset at least some of its costs by generating revenue. And as public support and private appreciation for higher education have increasingly experienced a reversal to public appreciation and private support, the need to monetize the assets of an institution and to encourage corporate and private investment in the very basics of the academy, intercollegiate athletics will be pressed more aggressively to develop wider revenue streams through commercial activity. While some in America's colleges and universities have publically lamented the increased commercial nature of the entire campus, it is a fact of 21st century life that institutions of all types will succeed increasingly by their own wits and best efforts to engage the world beyond the campus.

We know from our experiences with media partners and their advertisers that it is not only the popularity of college sports that is attractive. It is also the values that intercollegiate athletics and higher education foster that appeal to marketing and advertising interests. Indeed, if there were no constraints on commercial activity – if colleges and universities were to barter their values (the avocational motivation for athletics participation and the protection of the student-athlete from commercial and professional interests) for a few dollars more – the appeal would be weakened. The attraction of intercollegiate athletics that allows the enterprise to compete favorably with professional sports for media attention and commercial support is not the athletics superiority of the collegiate product. Professional athletes are paid for a reason; they are better at what they do than amateurs because playing sports is the professional's job. The attraction is the near visceral recognition that intercollegiate athletics and higher education share common values and that the keystone to the relationship is the student-athlete who resides in both worlds. That is a value that advertisers and corporations are as interested in preserving as is higher education. Their interest is not in overwhelming the constraints; it is in understanding in clear and unambiguous terms exactly what the constraints are.

As noted earlier, commercial activity associated with intercollegiate athletics is not new, and it is not going away. More importantly, the relationship between commercial entities and college sports, when conducted within the appropriate constraints of higher education, should be encouraged and strengthened. Not only is the revenue from such activity critical to intercollegiate athletics and the colleges and universities that sponsor athletics, it helps engage communities beyond the campus in ways that fulfills the broader mission of higher education. The best relationship is a reciprocal one in which the corporate world advocates for the values of intercollegiate athletics and carries the messages for higher education. We, in turn, have an obligation to work with corporations to help them understand the role of universities in the advancement of national well-being and success. We need to take the steps to educate and support corporations in this endeavor.

But if commercial activity is here to stay – and is to be encouraged – for both intercollegiate athletics and all of higher education, what then are the constraints we use to determine how far we can go without compromising our mission or the principles that underpin that mission? Where can we move comfortably among the conflicting concepts of commercialism, amateurism and professionalism? Is there a true north that can guide each of us so that the desire to compete doesn't incrementally push all of us beyond the brink?

Clearly, there is a shared responsibility for addressing these questions. There may be some regulation that be developed, especially with regard to making commercial activity compliant

with the principle of amateurism for student-athletes. And while the Association can develop recommendations for commercial activity practices that align with the values of higher education, as with most other issues that confront higher education, the answers to these questions most likely are apparent only on a campus-by-campus basis. with most other issues that confront higher education, the answers most likely are apparent only on a campus-by-campus basis. As compelling as it is to find refuge in regulation and national policy that relieves a campus from the difficult decision, it is most likely that each campus must be guided in the decisions regarding commercial activity related to intercollegiate athletics by the principles that guide commercial activity for the rest of the campus. The ways in which we encourage private and commercial funds to subsidize athletics initiatives and the conditions we are willing to accept for how those funds will be spent should be consistent with how we encourage and accept private and commercial funds for the rest of the campus. And while the opportunities for development of commercial relationships are likely greater for athletics than most other components of the campus, the principles for doing so should nonetheless be consistent with the way in which the rest of the campus would approach those opportunities if they were available. In short, the task at hand – as media platforms broaden and as institutions reach further beyond the campus for new revenue opportunities – is to align the commercial activity associated with intercollegiate athletics with the rest of higher education and to find the appropriate and reciprocal relationship with corporate America so that both benefit in accordance with their shared values.

Task Force Charge.

Prior to its first meeting, the Task Force on Commercial Activities in Intercollegiate Sports received a document outlining the group's charge. The document presented the scope of the issues to be undertaken, including the update and clarification of rules for the uses of student-athlete likenesses, images and names and an expanded charge to address the more general issue of proper engagement in commercial activity in the presentation and broadcast of intercollegiate athletics contests. The charge document also attempted to present the differences between college and professional sports that might influence how and to what degree limits should be established that demarcate the two approaches to sports presentation.

Professional sports, the charge observed, seeks to build audiences by entertainment in sports venues and through media presentations, especially the broadcast media. The purpose is to create interest in sports properties that translates to profits for the owners. The participants in the events are remunerated professional athletes, whose primary functions are to win the contests and add celebrity to the product.

College sports, by contrast, seeks to develop positive interest and loyalty in the sponsoring universities by engaging its campus constituencies, alumni and friends through sports events and through media presentations. The purpose is to create visibility and a sense of standing for the sponsoring universities that can be translated into prestige and attractiveness to potential students. The players themselves are students, not employees, who are to receive the benefits of being enrolled in a university, including the education developmental benefits of participating in competitive sports. Most college and university athletics programs do not result in revenues that exceed expenses and require institutional subsidies to make up the difference. For those specific sports programs that have revenues above expenses, the revenues are distributed broadly to fund participation opportunities in sports with little or no revenues.

The problem with regard to commercial activity arises when the differences between college sports and professional sports are diminished, and the similarities begin to dominate. When media companies and corporate sponsors, reporters and analysts, and university athletics departments, alumni and boosters overly emphasize the similarities between college sports and professional sports, the higher education context for college sports becomes weakened, with the threat of being lost. In too many cases, focus on revenue generation through advertising and corporate sponsorship is not only changing the look and feel of college games, but also the perceived connectivity to higher education.

How can the higher education context of college sports be preserved, even as real world pressures to produce revenue and favorable visibility push the enterprise toward the professional sports approach? How, that is, can the loss of identity of college sports be halted?

Both the narrative and the earlier charge present the case that the answers are neither to divorce college sports from media and commercial interests nor to encourage the drift of college sports toward the professional sports approach. Commercial activity associated with intercollegiate athletics is here to stay and indeed can and should be embraced. The appropriate approach is to nurture a reciprocal appreciation that encourages corporate America to recognize its interest in selling products in ways that are consistent with and helps communicate the values of intercollegiate athletics and higher education.

The charge to the task force was to find the balance point between two extreme positions, between unrealistic idealism and crass commercialism. There is, and there must be, commercial activity associated with college sports. But this commercial activity must respect the context in which college sports is conducted, and it must respect, in particular, that the participants are college students, not paid professional athletes.

The task force was asked to develop the principles that clearly establish this balanced position. These principles, according to the charge, should be sufficiently detailed so that they can be easily translated into enforceable NCAA legislation and rules. They should not be so abstract that they do not relate to action. The formulation of specific NCAA legislation can be undertaken by other NCAA committees with staff assistance, once these principles are in place. The principles must be sufficiently broad-based so that they cover all sports and all commercial activity associated with athletics. They should deal in a consistent way with national postseason championship events, including the Final Four basketball tournaments and football bowl games, with conference championship events and with all regular season games. These principles should be applicable to commercial activity connected with the venues, the broadcast media, and new media in all forms. They should pertain to all contractual arrangements between university athletics departments, athletics personnel and corporate entities that involve sponsorship and promotions, including for example shoe companies and beer distributors.

Special attention needs to be paid to the two issues that motivated the formation of the task force. There must be clear principles that can be translated into enforceable rules pertaining to the uses of student-athlete likenesses, images and names. Similarly, the principles must pertain to BCS postseason football games and indeed all bowl games.

Principles.

After three in-person meetings and numerous e-mail discussions, the task force developed a set of principles for commercial activity that involve student-athlete names or likenesses and activity that does not. The following principles include recommendations for legislative regulation in those instances involving direct student-athlete involvement or exploitation; creation of an oversight committee to inform staff decisions and appeals and to monitor trends regarding commercial activity; and a list of best practices to guide commercial activity at the national, conference and campus levels.

Commercial activities involving student-athlete names or likenesses.

NCAA legislation should be developed regarding the implementation of the following guiding principles concerning use of student-athlete names or likenesses in commercial activities.

1. A student-athlete's name or likeness may not be used in a manner to portray the student-athlete as promoting or endorsing the sale or use of a commercial product or service, or in a manner that a reasonable person would consider exploitation of the student-athlete(s).

COMMENTS:

Use by media that is protected by the first amendment would not constitute a violation of NCAA Bylaws as this is written. Use to broadcast and promote intercollegiate competition that is now permitted would continue. A student-athlete's specific association with the commercial product or service or that endorses, or promotes through appearance, words or actions would not be permitted. This change would permit current "indirect" uses, however, a new committee described in No. 5 below would be established to evaluate the uses involving student-athletes that are not prohibited by amateurism rules.

2. Use of a student-athlete's name or likeness (e.g. via game footage) that does not portray the student-athlete in a manner as promoting or endorsing the sale or use of a commercial product or service is permissible if the student athlete has consented to such use, such use is approved by the institution's director of athletics and there is a clear, official and visibly referenced-association between the commercial entity and the institution, conference or NCAA (e.g. "The ABC Company is an official corporate partner of X University and applauds the academic achievements of the institution's student-athletes"). If an institution or student-athlete learns of an improper use of the student-athlete's name or likeness, the member institution must issue a cease and desist notice to the entity.

COMMENTS:

The NCAA membership services staff remains the interpretative body for questions about NCAA Bylaw 12 related to student-athlete amateurism. The NCAA membership services staff also provides interpretative advice for permissible uses of likeness proposed by the NCAA national office for the Association's corporate and broadcasting programs, although there should be fewer interpretations after adoption of legislation consistent with these principles. The governance structure (e.g., beginning with the Legislation and Interpretations Committee) ultimately serves as a check on the consistency of interpretations of NCAA rules.

In addition, a practical process to obtain student-athlete consent and director of athletics approval must be investigated. One approach would be to expand the language of the student-athlete statement. Director of athletics approval could be obtained in advance as well.

3. Provided the provisions in No. 2 above are met, use of a student-athlete's name or likeness is permissible if it is part of the actual coverage, in any medium, of the student-athlete's competition (e.g., TV broadcast, Internet Web cast, mobile statistics and highlights) or is a representation of that actual competition (e.g., photos, footage), provided such use does not take the form of a fabricated product (e.g., names on jerseys). If an institution or student-athlete learns of an improper use of the student-athlete's name or likeness, the member institution must issue a cease and desist notice to the individual or entity.

COMMENTS:

This point is added to differentiate between use of name or likeness in the context of athletics competition captured in media forms versus the insertion of a student-athlete's name or likeness on a non-media product. It also is permissible to use a student-athlete's name or likeness to promote media coverage in which the student-athlete, the student-athlete's team or the student-athlete's conference is scheduled to compete or has competed.

The concept of "convergence", which will merge the interactivity of the computer and computer simulation with television broadcast, will need to be interpreted as it relates to the appropriate uses of student-athlete names and likenesses.

4. A student-athlete may not be paid in any form (see Bylaw 12.02.2) for use of his or her name, likeness or athletics reputation.

"Bylaw 12.02.2—Pay. Pay is the receipt of funds, awards or benefits not permitted by the governing legislation of the Association for participation in athletics."

5. A "Commercial Activities Oversight Committee" shall be established and empowered to:
(1) make binding determinations for questions regarding uses of student-athlete names and likenesses that while not prohibited under NCAA amateurism rules, should nonetheless be prohibited as exploitation, and (2) monitor and review annually the advertising/marketing/sponsorship and other commercial trends, practices and policies in Division I and specifically those of the NCAA national office.

COMMENTS:

The committee would be charged to ensure that the values of higher education, the "collegiate model" and the interests of student-athletes continue to be protected in relationships with corporate entities. The committee would apply a reasonable person standard in making decisions concerning uses of student-athlete names and likenesses that

should, or should not, be considered exploitation, and therefore, prohibited or not prohibited. Annual reports from the committee that include evaluation of the Association's policies and practices shall be submitted to the NCAA Executive Committee.

6. All institutions, conferences, and the NCAA national office shall include specific contractual language in all licensing, marketing/sponsorship, advertising, broadcast, and other commercial agreements that would outline the entity's obligation to comply with NCAA Bylaws, policies, and interpretations, particularly those relating to use of a student-athlete's name or likeness. Institutions, conferences, and the NCAA national office also shall have an obligation to seek reasonable solutions with the contractual entity in cases where NCAA Bylaws regarding use of student-athletes' names and likenesses are not met.

COMMENTS:

For example, if a TV network partner does not comply with a requirement of a contract, the institution/conference/NCAA national office might ask them to remove an objectionable ad from future use or produce a replacement ad that sends a "higher education appropriate" message, or even pay a penalty in extreme cases.

7. Each institution, conference, and the NCAA national office shall maintain written policies for its licensing, marketing/sponsorship, advertising, broadcast and other commercial agreements (participants in football bowl games also will be asked to follow this process). These policies will be made available upon request from the Commercial Activities Oversight Committee in that committee's role to evaluate trends and ensure consistency with NCAA Bylaws, policies, interpretations, and best practices.

Commercial activities not involving student-athlete names or likenesses.

Recommended NCAA Best Practice.

Many commercial activities of institutions, conferences, and the NCAA national office do not involve the use of student-athlete names or likenesses, but must still embrace the essential principles upon which intercollegiate athletics is founded.

Corporate and broadcast relationships offer revenue streams that are demonstrably important to sustain overall intercollegiate athletics programs. As a result, the following are recommended standards to consider in such relationships that would encourage uniform practices that would help support the "collegiate model" of intercollegiate athletics and help maintain the line of demarcation between college and professional athletics:

1. The content of commercial advertising and marketing that officially aligns with the institution, conference or NCAA national office and their respective missions should expand the public's understanding of and confidence in higher education and the values of intercollegiate athletics.
2. The quantity of commercial advertising and marketing associated with intercollegiate teams and venues is governed by the respective sponsoring institution, conference or in the case of championships competition, NCAA policies. Such advertising and marketing should be consistent with the mission and values of higher education.
3. Institutions and its athletics personnel, conferences and the NCAA national office should establish written policies and standards regarding the use of intellectual property (e.g. marks and logos) in relation to commercial entities and activities.
4. Institutional presidents, conference boards of presidents and NCAA presidential groups should maintain written policies and standards for advertising and marketing associated with intercollegiate athletics, its participants and personnel.

Respectfully submitted to the Division I Board of Directors.

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