



# Division III Webinar

## Name, Image and Likeness Updates

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# Agenda

- Background.
- Key Association-wide principles.
- Division III legislative definitions, bylaws and principles.
- Division III legislative concepts.
  - Work product and services.
  - Endorsements.
  - Additional considerations.
- Next steps and timeline.

# Background

- In April, the BOG received the Federal and State Legislation Working Group's final report and charged each division with modernizing its rules within a collegiate framework.
- Division III will determine its best course of action.
- Created Division III-specific Oversight Group in November.
- Discussed and received feedback at 2020 Division Convention Issues Forum.

# Background

- Recent actions and next steps.
  - ILC discussed in Feb. and developed NIL concepts.
  - In April, SAAC, Management and Presidents Council reviewed and endorsed the concepts.
  - Held a series of educational webinars.
  - In early June, DIII NIL Oversight Group distributed a feedback form to the membership.
  - During the summer Council meetings, will finalize the legislative proposals to vote upon at the 2021 NCAA Convention.

# Key Association-Wide Principles

- BOG determined that status quo is not an option, and that the following Association wide principles should guide the divisional review:
  - Compensation to student-athletes for use of their name, image or likeness should not be pay for athletics performance or participation; nor should the payments serve as an inducement to select a particular school.

# Key Association-Wide Principles (cont..)

- Regulation of a student-athlete's name, image or likeness use should be transparent, narrowly tailored and enforceable, and it should facilitate the principle of fair competition among schools in a division, including the integrity of the recruiting process.
- Student-athletes should be able to use their name, image or likeness similar to college students who are not student-athletes, unless there is a compelling reason to differentiate.

# Legislative Definition

NIL is a concept based on laws defining “rights of publicity” or when permission is required to use someone’s name, image or likeness.



# NIL and NCAA Bylaws

- Student-athletes may not participate in promotional activities unless specifically allowed by NCAA legislation. (Bylaw 12.5.1)
- Specific exceptions allowing use of the student-athlete's NIL:
  - Institutional, charitable, educational and non-profit use.
  - Modeling and other non-athletically related promotional activity.
  - Media activities.
  - Student-athlete's own business.



# Modeling and other non-athletically related promotional activity

Can accept pay for use of NIL to promote the sale or use of a commercial product provided:

- Student-athlete became involved in activity for reasons independent of athletics ability;
- No reference is made in these activities to the student-athlete's involvement in intercollegiate athletics; and
- Pay is commensurate with the student-athlete's skill and experience as a model and is not based on athletics ability or reputation.

Bylaw 12.5.1.3

# Media Activities

- Student-athlete may participate in media activities (e.g. appearance on radio, television, in films or stage productions, or participate in writing projects) even when appearance/participation is related to athletics and may receive the following:
  - Legitimate and normal expenses; and
  - Compensation commensurate with the going rate.

Also, student-athlete's name may be used to advertise participation, but status as a student-athlete may not be used for promotional purposes.

Bylaw 12.5.2

# Student-Athlete's Business

Student-athletes may establish and promote their own business but may not use their status as a student-athlete to promote the business.



*Official Interpretation  
February 1, 2007*

# Proposed Legislative Concepts

# Key Division III NIL Principles

- Fair market rate will be one of the tools to ensure compensation isn't a substitute for pay for play.
- Student-athletes can use institutional marks to the extent students generally can use institutional marks.
- Students could use agents, advisors and professional services to help with their NIL activities.
- Institutions may not use promotional opportunities as a recruiting inducement.

# Key Division III NIL Principles

- Institutions may only support a student-athlete's NIL activities to the extent they support students generally in their NIL activities.
- Specific reporting and disclosure requirements are not yet a part of these concepts.

# NIL Concept 1: Work Product and Service

- Proposed concept: Student-athletes could use their status as athletes to promote their own work product or service. Institutions would only be permitted to support NIL opportunities for SAs in the same manner institutions support NIL opportunities for their students generally.
- Why: Student-athletes should be able to use their NIL in a similar manner as college students who are not student-athletes, unless there is a compelling reason to differentiate.

# NIL Concept 1: Work Product and Service

- Examples to consider.
  - Promotion of private lessons.
  - Promotion of their own camp or clinic.
  - Monetize social media platform(s).
  - Paid for autographs.
  - Promotion of creative and/or academic endeavors.
  - Promotion of their own business.
  - General promotion of other work product or service.



# NIL Concept 2: Endorsements

- Proposed Concept: Student-athletes may use their status as athletes to endorse third party products or services provided:
  1. No institutional involvement in procuring promotional opportunities for student-athletes (except to the extent the institution is involved with assisting students generally).
  2. NIL opportunities are not part of the recruiting process.

Additionally, market rate is a tool to ensure compensation is not a substitute for pay for play.

# NIL Concept 2: Endorsements

- Why: Student-athletes should be able to use their NIL in a similar manner as college students who are not student-athletes, unless there is a compelling reason to differentiate.

# NIL Concept 2: Endorsements

- Examples to consider.
  - Payment for appearance at a commercial establishment (e.g. car dealership, restaurant).
  - Promotion of commercial products via social media platforms (e.g. brand ambassadors).
  - Model/promote non-institutional athletics apparel and equipment.
  - Promotion of third-party products or services via traditional commercials.
  - Provide testimonials for a product or service.

# Additional Considerations

- Prohibition of promoting certain types of products or services (e.g. alcohol, tobacco, sports gambling).
- Use of institutional marks (e.g. logos and slogans).
- Compliance responsibilities.
- Mandatory reporting.
- Professional services (e.g. engagement of professional services, including agents).
- Pre-enrollment NIL opportunities.

# Survey Feedback

- Concept #1—Work Product and Service.
- Concept #2—Endorsements.
- Prohibition of promoting certain types of products or services (e.g. alcohol, tobacco, sports gambling).
- Use of institutional marks (e.g. logos and slogans).
- Mandatory reporting and compliance responsibilities.
- Professional services (e.g. engagement of professional services, including agents).
- Pre-enrollment NIL opportunities.

# Next Steps and Timeline

- Additional committee review.
- Final MC and PC review in July/August.
- Proposed legislation at 2021 NCAA Convention.

# Ways You Can Help

- Discuss the concepts and other identified areas.
- Be ready for the “final round” of information coming from the summer Council meetings.
- Prepare for the Convention discussion and vote.

# Questions?

- All questions, must be submitted via your computer, using the following instructions:
  - Click on the chat icon – near the top of your screen. It will open a text box at the bottom of your computer screen.
  - Type in message and click on send.