

Predicting the Future of Licensing Student-Athletes' Likenesses after Keller and O'Bannon

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In 2008, CBSsports.com announced plans to host a fantasy college football game using the names and statistics of current student-athletes (Di Fino, 2008). While such a move raised eyebrows in the college sports community, the NCAA decided not to intervene to stop the fantasy game “because of the added exposure fantasy sports can bring the student-athlete” (Di Fino, 2008, p. 1) and because “... the right of publicity is held by the student athletes, not the NCAA” (Brand, 2009).

The NCAA’s decision not to seek to protect the intellectual property rights of student-athletes (Isenberg, 2008) continues to raise concerns about the implications of the rapid evolution of licensing the images of amateur athletes for use in commercial purposes. In 2009, the NCAA Task Force on Commercial Activities recommended member institutions should address commercial activity “on a campus-by-campus basis” (p. 7). While this guarded approach, using the NCAA’s principles related to amateurism as its guide, may seem to be an appropriate response, it is an imperfect solution because member institutions have a clear financial incentive to enter into lucrative licensing deals featuring the likenesses of their student-athletes.

The recent class-action lawsuits, *Keller v. NCAA* (2009) and *O’Bannon v. NCAA* (2009) attempt to remedy the alleged violation of contractual and statutory rights for current and former student-athletes. The one-sided nature of the contracts that student-athletes are required to sign raises serious concerns that student-athletes are likely unaware of the legal effects of waiving their rights not to mention that “[t]he ... athlete may well have no knowledge or awareness that his or her reputation, image or name is being used for these commercial purposes” (Southall, 2009).

The researchers will begin with a discussion of the evolution of the licensing of college athlete images with an emphasis on critique and analysis of the NCAA Task Force’s recommendations. Analysis of how the *Keller* and *O’Bannon* cases may re-shape the sport licensing landscape will be provided. The researchers will then present a preferred approach for using student athletes’ images in college athletics promotional campaigns which focus on celebrating the academic achievements of the relevant universities and promoting team accomplishments, rather than highlighting the athletic accomplishments of individual student-athletes. This approach aligns more closely with the core mission and values of the NCAA and may allay concerns about perceived exploitation of student-athletes.