Date: August 28, 2019

To: Bonnie H. Ownley, Ph.D, Chair, Coalition for Intercollegiate Athletics (bownley@utk.edu)
Penn State University Faculty Senate
Penn State University Faculty Senate Council

From: Nicholas Rowland, Chair, Penn State University Faculty Senate
Dawn Blasko, Executive Director, Penn State University Faculty Senate

Subject: Penn State Response to COIA and NCAA

To whom it may concern,

On August 16, 2019, Bonnie H. Ownley, Chair of the Coalition for Intercollegiate Athletics (COIA), wrote to faculty senate leaders and COIA Representatives from across the nation. Ownley’s correspondence (attached) requested feedback from faculty senates with regard to recent efforts by the National Collegiate Athletic Association (NCAA) to defended the “amateur athlete model” of collegiate student-athletes in state and federal courts against a competing model, the so-called “pay for performance” model whereby student-athletes can be compensated for the use of their names, images and likenesses.

In preparing Penn State University Faculty Senate’s response, the following steps were taken:

- On August 23, 2019, Penn State’s Senate launched a survey that concluded August 27, 2019 (questions and results attached; total invited to survey: 226; total finished survey: 84; response rate: 37%);
- On August 27, 2019, Penn State’s Senate Council discussed the matter (questions and summarized results attached; Senate Council contains 33 members and invited guests, of which 31 were in attendance).

In what follows is Penn State’s University Faculty Senate response to this inquiry and position on this matter.

Our answer: “We Are Penn State.” That simple phrase, which can be heard on any one of our campuses in the Commonwealth of Pennsylvania, encapsulates stories from our past that have laid the foundation for a philosophy we follow to this day. As an unnamed University Faculty Senator rightly puts it, when it comes to Penn State Student-Athletes, the philosophy is “no names, all game,” which is “evidenced by the lack of names on our student sports jerseys.” To compensate individual Student-Athletes for their individual names, their individual images, and their individual likenesses runs contrary to foundational aspects of the “We Are” philosophy and the Student-Athlete tradition at Penn State.

Results from Penn State’s survey to Faculty Senators and discussion in Senate Council indicate strong support for the notion that “Student-Athletes are more student than employee” as well
as the NCAA working group’s goal to “focus on solutions that reinforce the educational goals of the student-athlete; maintain the clear demarcation between professional and college sports; and further align student-athletes with the general student body.” Unsurprisingly, Faculty Senators also voiced concern that Student-Athletes would potentially “prioritize compensation for their name, image, or likeness over academic success,” if the NCAA’s model of the “Student-Athlete” and the “amateur athlete” do not prevail over the competing “pay for performance” model espoused elsewhere.

Still, results from Penn State University Faculty Senators also reflect complexity inherent in the 21st century college athletics environment. Results were mixed on the idea that “Student-Athletes should have the right to be compensated for the use of their names, images and likenesses.” This reflects, per discussion in Senate Council and review of written survey responses, two, possibly related, concerns. The first: while Penn State Senators prize the Student-Athlete model, the broader legal shift toward compensating college students for use of their names, images and likenesses may be unavoidable. The second: if compensating college students for use of their names, images and likenesses is unavoidable, then the challenge is to manage this transition effectively, appropriately, and with great attention on protecting the academic rights of students – all students, including Student-Athletes – in the process. Those suggestions appear in the survey results, especially in the written portion of the survey, and in notes from the discussion in Senate Council.

Sincerely,

Nicholas Rowland
Chair, Penn State University Faculty Senate
Dear Faculty Senate Leaders and COIA Representatives,

Over the past several years, the NCAA has defended its definition of the amateur athlete model in the courts. As a result, they have been responding to many lawsuits focused on one aspect or another of the “pay for play” movement for intercollegiate athletes (https://globalsportmatters.com/youth/2019/03/14/judges-ruling-upends-ncaa-says-group-cant-limit-compensation-for-student-athletes/). A central question in this debate is whether our student-athletes are in fact students or employees at our universities.

The NCAA has formed a “working group” tasked with how to study the difficult and specific issues related to recently proposed federal and state legislation focused on the use of student-athlete names, images and likenesses, presumptively by universities and other entities. The working group has indicated that they “will focus on solutions that reinforce the educational goals of the student-athlete; maintain the clear demarcation between professional and college sports; and further align student-athletes with the general student body. The group’s work will not result in paying students as employees or as substitute payment for athletics ability.”

Accordingly, the NCAA recently invited the Coalition on Intercollegiate Athletics (COIA) Steering Committee to provide written feedback on the following questions, by August 30, 2019. We need your input to inform our response.

We fully appreciate the significant challenge that senate leaders face in collecting information from senate members at this time of the year, with short notice, but we need your voices. Please send us any thoughts, inputs or insights into these questions by 8/26/2019, if possible, so that we can compile and submit our organization’s response by the August 30 deadline.

Please address each of the following:

1. What are the challenges and opportunities in creating a system in which student-athletes may be compensated for the use of their name, image and likeness?
2. Are there viable models for the compensation of a student-athlete’s name, image and likeness that reinforce educational goals, provide a clear demarcation between professional and college sports and that further align student-athletes with the general student body? If so, please address how these models would be:
   a. Enforceable to prevent improper recruiting and transfer inducements or substitution of payment for athletics ability;
   b. Narrowly tailored to support the values and principles of NCAA athletics;
   c. Adaptable to future technological, societal and industry changes.
3. How might fair competition among schools be impacted by compensating student-athletes for their name, image and likeness? In what ways could this impact be mitigated?
4. Are there existing structures to fairly and accurately determine the market value of a student-athlete’s name, image and likeness? What are they?
5. What measures would you recommend that would mitigate against a student-athlete prioritizing name, image, or likeness compensation over academic success and commitment to the team?

The COIA Steering Committee thanks you in advance for your participation. We will, of course, share the feedback we receive from you with our members, as well as our response to the NCAA. This is an important topic with serious ramification and we expect to hear vigorous discussions at our next national meeting, February 14-15, 2020, at Louisiana State University, Baton Rouge.

Best regards,
Bonnie

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Senate Survey on Compensation and Student Athletes

On behalf of University Faculty Senate leadership, we respectfully request you complete a brief survey regarding student-athletes by end-of-workday Tuesday, August 27, 2019.

The National Collegiate Athletics Association (NCAA) has asked University Senates to provide feedback on an important issue. This brief survey will take less than 5 minutes and is important for the Senate’s ability to provide feedback from Penn State.

Your responses will remain anonymous.

**Background:** The NCAA has formed a “working group” to examine recent lawsuits and proposed legislation on compensation for student-athlete names, images and likenesses. The working group stated they: “will focus on solutions that reinforce the educational goals of the student-athlete; [and] maintain the clear demarcation between professional and college sports; and further align student-athletes with the general student body.” The group’s work will not result in paying students as employees or as substitute payment for athletics ability.”

There are five close-ended question, and a final question that is open-ended. Thank you in advance for your time.

[Questions will appear, followed by response options, and Penn State’s response]

1. Rate your level of agreement with the following statement: “Student-Athletes are more student than employee.”

Response options: Strongly Agree, Agree, Neutral, Disagree, Strongly Disagree

**Penn State’s Response:**

1. Rate your level of agreement with the following statement: “Student-Athletes are more student than employee.”

Answered Question: 85, Skipped Question: 0, Not Yet Answered: 141
2. Rate your level of agreement with the following statement: “Student-Athletes should have the right to be compensated for the use of their names, images and likenesses.”

Response options: Strongly Agree, Agree, Neutral, Disagree, Strongly Disagree

Penn State's Response:

2. Rate your level of agreement with the following statement: “Student-Athletes should have the right to be compensated for the use of their names, images and likenesses.”

3. As a faculty member, are you concerned that Student-Athletes would prioritize compensation for their name, image, or likeness over academic success?

Response options: Very Concerned, Moderately Concerned, Neutral, Moderately Unconcerned, Strongly Unconcerned

Penn State's Response:
4. As a member of the Penn State community, are you concerned that Student-Athletes would prioritize compensation for their name, image, or likeness over commitment to the team?

Response options: Very Concerned, Moderately Concerned, Neutral, Moderately Unconcerned, Strongly Unconcerned

Penn State’s Response:

5. Rate your level of support for the NCAA working group’s goal to “focus on solutions that reinforce the educational goals of the student-athlete; maintain the clear demarcation between professional and college sports; and further align student-athletes with the general student body.”

Response options: Strong Supportive, Somewhat Supportive, Neutral, Somewhat Unsupportive, Very Unsupportive

Penn State’s Response:
In the box below, please share your ideas for a solution that allows compensation for the use of Student-Athletes' names, images, and likenesses while also reinforcing the educational goals inherent in the student-athlete role? If you have no response, please click the Abstain box to advance to the next question.

1. Put compensation for names/images/likenesses into an account such that student-athletes receive compensation only after completing their BA/BS degree.
2. Have revenue placed in escrow accessible upon completion of the degree and/or withdrawal from the university.
3. I think there should be much less attention to the marketing of athletes and that this whole suggestion of paying them for the marketing of their images will simply diminish their identity as students and increase their identity as professional athletes -- which is NOT what's needed.
4. Market the team and not the players. Don't allow players to use the team name in their own marketing.
5. Any money earned by the university through these items should be directed towards the support of scholarships, NOT provided directly to the student.
6. I do not offer any solution that could be contained in this text box. The issue of compensation for DI athletes in revenue-generating sports (especially football and men's and women's basketball) is complex. Institutions including Penn State have used student-athletes as means to promote themselves and drive revenue for decades, and it seems to me that those student-athletes should be compensated fairly and proportionately for that use. The question of "how much" is the issue. Additionally, my reaction to the specific question asked is that there is no logical connection between compensation for athletic ability and "... reinforcing the educational goals inherent in the student-athlete role." This isn't a continuum of competing interests; they are orthogonal.
7. Name and likeness of a student athlete should be strictly forbidden. However, if name and likeness is used in mass media (video games) they have a right to this compensation.
8. Student athletes could be compensated for the use of their names, images, likenesses by placing those funds in trust until they are no longer a student - perhaps until completion of their degree/graduation (which would actually emphasize the importance of EDUCATION).
9. Tough to balance, but principles should lead the issue.
10. Compensation could be provided as additional support of living expenses and academic expenses (if not already fully covered)
11. If the goal is to clearly demarcate between professional (paid) and college (unpaid) sports, then companies and universities should not be allowed to use student athletes (images, names, etc.) for promotion of commodities.
12. Could compensation go to the universities - rather than the student? So, the university benefits?
13. I do not believe that Student-Atheletes should be so compensated. As a former student-athlete, I believe that any such compensation would detract from amateurism and further distinguish the treatment of student-athletes from those of other students who are also involved in beneficial service to an educational institution. I believe that the response by institutions to the pressures of law suits and/or the economics of university athletics, or pop culture that permits such disparate treatment is a degradation of our on-profit educational mission. Such an action is short-sighted as it not only overlooks the considerable benefit that the student-athlete receives from the publicity attendant to his/her participation in enhanced post student opportunities but also exacerbates an existing malady of giving a priority to sports over other university activities only because it has some purchase in the economic sphere. If student-athletes who desire to develop valuable reputations in order to gain future advantage did not have the university forum, they would not be bale to attract necessary attention of post student employers (NFL, NBA etc.). It is outrageous that coaches at institutions are routinely paid far greater salaries than even the most cherished of faculty and
staff, and now the NCAA proposed to widen that gap and divide the student body. A bad approach. Let us instead reinforce amateurism and the goals of unity.

14. Student-athletes could be compensated with a percentage of revenues from use of their names, images and likenesses but those funds would be put into a trust that is only available AFTER graduation. If the student leaves before graduation, the funds are transferred to a scholarship fund unless the student can prove compelling need (e.g. student leaves for pro ranks but becomes injured and never receives a "pro" salary, so needs the funds for medical treatment). This gives incentives to stay in school and graduate, but also compensates the student-athletes for use of their likenesses.

15. The graduation rates for student athletes, especially in basketball, demonstrate these students are being exploited to provide a spectacle and encourage alumni loyalty and interest. And it is ridiculous to suggest that the NCAA has any interest beyond the profitability of the NCAA for the few that reap the rewards from that organization. That is why it is largely a waste of time to talk about the goals of an NCAA working group. It's all a PR campaign and smokescreen to ensure that large, mostly African American young men continue to give each other concussions for our entertainment.

16. Put in a trust till the students graduates or completes his/her academic career.

17. Allowing compensation for likenesses etc. is a very delicate question and ultimately needs to be highly policed if it were enacted. Furthermore, does this apply to all student-athletes and in what settings? What about a class project that happens to include a photo of a member of the fencing team?

18. This should apply to non-revenue athletes as well as basketball/football.

19. Turn down the temperature on all this marketing of our student-athletes. They are students. They are already well supported for performing as athletes (with athletic scholarships, etc.). To also pay them for the marketing of their images, names, etc., will simply make them seem even more like professional performers-for-pay, and less like students. It's the wrong direction to be going in.

20. I have no experience with student athletes nor do the questions fit with how student athletes at this campus are treated.

21. College sports in general is the problem. They have become big business. The $179 million the Penn State sports pulled in this past year is clear evidence of that. Top tier College Sports like basketball and football are nothing more than unpaid minor leagues for the professional leagues. While actual amateur sports suffer. A college coach should not be the highest paid state employee in every state in our nation. It's a disgrace to academics. Quite frankly, high level programs like football, basketball, etc. should be sold to the pro leagues and they can expend their own dollars on developing their workforce rather than Universities eating the cost.

22. Penn State has long been a proud leader in the concept of "no names, all game", as evidenced by the lack of names on our student sports jerseys. This is a perfect example of focusing the students on supporting the team they are on, along with the University as a whole, as opposed to 'show-boating' to promote their own 'brand'.

23. A set annual amount for unlimited use of the name, images and likeness is called a scholarship. I am not sure what that money is for.

24. I think an important dimension is commodification. Team pictures, game highlights, sports media interviews have become routine, and although they single out a subset of players, they seem within the boundaries of what has become a major enterprise for many universities. But there is a difference between exploiting a player’s skill and accomplishments to generate revenue that is distinct from that generated by the program. Student athletes should be able to refuse to engage and retain the support of the program. Managing the image of the program as a unit rather than a combination of stars and worker bees should always be at the forefront. The other side of the issue is managing Individual efforts to put themselves in the frame. With social media, players can advertise themselves if they choose. Setting boundaries as to what programs will and will not ask, allowing in problematic cases a
grievance process independent of the program and perhaps the university (using people who go through some training, analogous to that of referees), and establishing an institutional culture of behavior, certainly in keeping with an educational goal, might be avenues for pursuit.

25. I believe all athletic teams are not the same and we keep trying to put them all in the same box. The model the NCAA has been enforcing for years works for lesser-known sports, but the money-making sports should be treated differently. I don't think football at Penn State should be the same as fencing at Penn State. A revenue-producing machine like football should be under a different administrative body than non-revenue producing sports. For sports like football, it makes sense to recognize and address the dollar value of the players to the University. Until we separate the sports, we will never be able to come up with a system that makes sense.

26. Any compensation should be held in escrow until the student-athlete completes his/her collegiate career.

27. Allow student-athletes to earn a certain percentage of every item with their name or likeness sold. All students, not just athletes, should receive a standard amount for names and likenesses used for recruitment/marketing purposes.

28. They should be paid a fare amount for the use of their likeness. If the university makes a ton of money from them, the athletes should be compensated in some manner. That said, the athlete is here for an education and must also be held to high academic standards.

29. The fact is that these student athletes are getting exposure from playing for the institutions. The NCAA, though, has a bit of a predicament because it permitted athletes to continue their businesses such as media manipulators to send web traffic to a particular site if this was in existence before they were student athletes. The value of the education should be maintained for the student athlete as compensation. The NCAA is under tremendous pressure to get something in place soon. One solution that I have considered is that the team as a whole would benefit from a common pot like the agreements between bartenders and waitresses where all the tip money goes into a common jar and then split equally between all parties that worked that night. I think this would emphasize the team concept over the individuals seeking to maximize their compensation and could possibly unify the teams.

30. I am not sure that the student-athletes names, images and likenesses are the problem at hand. It is more than just this and to try to isolate this portion of the larger problem is, in my opinion, not the way to go about addressing it.

31. Any compensation could be included in a future healthcare insurance program to protect students from future ailments associated with having played college sports.

32. I think this is a real issue, particularly for Division One student-athletes. In many ways, the NCAA has been playing with fire, essentially demanding that student-athletes perform as professional athletes without getting compensated. I have no real solution other than a complete overhaul of the current system which I doubt the NCAA is interested in.

33. Compensation based on student-athletes' names, images, and likeness should benefit each athlete on the team and be distributed equally each season or semester.

34. Student-athlete contract would clearly state that compensation cannot be provided unless student-athlete is academically eligible. Further, the name, image and likeness may not continue/begin to be used unless compensation is made (i.e. student-athlete must be academically eligible). Further, student-athlete must be a member in good standing on the team that benefits from the advertising.

35. Consider a flat compensation for all athletes to allow use of their images/names in promotional materials, plus pro-rated additional compensation for television commercials/televised games.

36. Stop using student-athletes images and likeness—it is not that hard to do from a technical or marketing perspective if the NCAA is willing to let go of the money they indirectly pocket in the form of inflated executive salaries. The NCAA president made $2.9 million last year in 2018.
37. Lion cash that could be used for food and books would be the most appropriate form of compensation for image & likeness being used.

[End of attachment on Penn State Survey].
Attachment C: Summarized Responses from Penn State Faculty Senate Council.

These comments appear in no particular order:

- Questions and concerns were raised regarding the NCAA’s perceived historical lack of transparency, equity, and fairness in numerous capacities as an association.
- It is not at all yet clear how this commodification or valuation process of Student-Athletes would unfold. Various models were discussed, many of which diminished team morale, diminished the academic identity of Student-Athletes, and undermined the Penn State “We Are” philosophy.
- The possibility was raised that allegations of Title IX violations may ensue if the amount of compensation for young men far outweighs compensation for young women, and many other aspects of how this shift toward compensation must be viewed through the lens of gender and gender inequity.
- Different options for trust funds and various forms of “holding” funding until the student graduates or leaves the university were discussed as well as the idea that if students are compensated at all, then the student or students should be in good academic standing.
- The broader concern that all students everywhere whose likenesses are used should be compensated, provided Student-Athletes are compensated for their likenesses, as Student-Athletes, like all students, are students first.
- The group generally regarded this concern over compensation to be an important and unavoidable aspect of the college athletic environment in the 21st century.