

# Exhibit O

**Discussion of the Application of the Recommendations of the  
NCAA Study Group on the Use of Student-Athletes' Names and Likenesses**

The majority of the current provisions of NCAA Bylaw 12.5 (and subsequent bylaws) have not been significantly updated in over twenty years. In that time, the common types of promotional activities used has expanded beyond simply printed materials and in-person appearances. The advent of the Internet; advances in and affordability of the use of various media types (e.g., video, audio, etc.); and the ever expanding and changing nature of how entities interact with the public has created types of promotional activities that were never envisioned when Bylaw 12.5 was adopted. This has resulted in trying to fit a square peg (promotional activities) into a round hole (Bylaw 12.5).

Further, commercial sponsors have become an important component in an institution's ability to maintain or develop a broad-based athletics programs. Intercollegiate athletics strives to be as self-supporting as possible. Commercial sponsors may have a positive impact, with proper institutional control, on the types of programs that are offered to student-athletes. The lack of clarity and ease of application of current legislation hinders the development of these relationships and creates the potential for inconsistent application of the legislation.

In an effort to help the Association modernize its philosophies and legislation, the NCAA Study Group on the Use of Student-Athletes' Names and Likenesses was created. This group was charged with developing legislative recommendations regarding the use of the names, likenesses, pictures or appearance of student-athletes in promotional activities that:

1. Supports all fundamental principles of the Association with an emphasis on the principles of amateurism and Bylaw 12 (i.e., students participation in intercollegiate athletics is an avocation and student-athletes should be protected from exploitation by professional and commercial entities);
2. Provides greater flexibility for institutions and conferences, as well as charitable, not-for-profit and educational entities, to use the ever-expanding myriad of techniques and technologies to communicate positive messages about intercollegiate athletics and to use student-athletes to do so without exploitation;
3. Provides the opportunity for institutions and conferences, as well as charitable, not-for-profit and educational entities, to enter into more positive relationships with commercial entities (e.g., corporate sponsors, media partners) that share the values of the Association for the purpose of developing and sustaining successful programs for student-athletes; and
4. Replaces outdated aspects of the NCAA's current legislation in this area with more modern legislation that is clear, easier to apply and accommodates legal concerns (e.g., unrelated business income tax, antitrust, student-athlete rights).

In an effort to help the membership and others understand its recommendations, this document provides guidance and examples that clarify the application of the recommendations.

One key change or theme which should allow for an easier and consistent application of the legislation related to promotional activities, is the concept of focusing on the prevention of direct endorsement of commercial products/services by student-athletes. This approach removes the requirement to assess whether an implied endorsement has occurred. The practice of assessing whether an implied endorsement has occurred is subjective and results in inconsistent application of the legislation. The study group believes the recommendations, in totality, sufficiently protect the names and likenesses of student-athletes so that it is no longer necessary to assess whether an implied endorsement occurred and is no longer required.

Another key theme is that institutions should remain in control of the use of student-athletes' names, likenesses and pictures through the approval of the athletics director (or his or her designee). This will help ensure that student-athletes are not exploited and featured in a manner consistent with the mission and values of institutions, conferences and the NCAA.

The study group created three categories of promotions and decided to address each category in a separate bylaw. The categories are:

1. Institutional, charitable, educational or nonprofit promotions, which may include cosponsorship by a commercial agency;
2. Commercial advertisement or promotions; and
3. Broadcast media entities promotion of their coverage of intercollegiate contests.

It should be noted that these categories are not mutually exclusive. A promotional activity may fit in multiple categories and affords the opportunity for a promotional activity to be permissible in several different ways.

**Category 1 - Promotions of Institutional, Charitable, Education or Nonprofit Entities Which Includes Cosponsorship by Commercial Entities.**

A substantial portion of the recommendations related to this category does not change the current language found in Bylaw 12.5.1.1. However, there are some additions and deletions.

It remains permissible for promotions to include cosponsorship by a commercial entity, however, the recommendation further defines the manner in which such commercial cosponsors appear or

are referenced in the promotion. The study group wanted to provide recommendations that help ensure that the promotional activity clearly and obviously explains the relationship between the commercial cosponsor and institution, as well as charitable, educational or nonprofit entities. Further, it was important to create recommendations that maintained the appropriate disconnect between the student-athletes and the commercial cosponsor.

To that end, the study group made the following recommendations:

1. Any promotional activity involving a student-athlete with eligibility remaining must be approved by the institution's athletics director (or his or her designee). Inherent in the need for approval by the athletics director, is the expectation that each approved activity will be consistent with the mission and values of the institution, conference and the NCAA. Other provisions of Bylaw 12.5 related to the unauthorized use of a student-athlete's name or likeness will continue under this recommendation.
2. The relationship or affiliation of the commercial cosponsors with the institution, conference or noninstitutional charitable, education or nonprofit entity must be explained as a part of the promotional activity. In activities that have multiple commercial cosponsors, a common relationship or affiliation does not have to be explained separately for each commercial cosponsor. For example, institution XYZ is having a fundraising event for which the Soda Co. and the Sneaker Co. are the commercial cosponsors. In order to meet this recommendation, posters and/or announcements for the event, which includes the names and likenesses of the soccer team and the logos of the commercial cosponsors, would say "Soda Co. and Sneaker Co. proud sponsor of XYZ Institution's Soccer Teams." Or a line of text above a grouping of the logos of the cosponsors, which says "Official Sponsors of the Soccer Teams of XYZ Institution" would also satisfy this recommendation.
3. The promotional activity may not include language or action which directly encourages the use or purchase of commercial products or services. For example, the activity may not include language or action such as "Buy all your beverages from Soda Co." or "Sneaker Co. shoes will make you run faster and jump higher – remember to get yours."
4. The product or service of the cosponsor may not be included in the promotional activity (except for the normal use of athletics equipment and apparel). In this category, it is important to maintain the distinction between institutional (or charitable, educational or nonprofit) promotions and commercial advertisements. Inclusion of the product or service of a commercial cosponsor in the activity would cause the promotion to be subject to the restrictions on commercial advertisements (addressed in category No. 2). If

the activity fails to meet the restriction on either the institutional (or charitable, educational or nonprofit) promotions or commercial advertisements, it would result in a violation. In the spirit of deregulation and consistency, it is not necessary to require a separate standard for athletics equipment and apparel companies as required by the current legislation. Such entities may be noted as commercial cosponsors regardless of whether their products appear in the activity, provided the products are depicted in their normal use (e.g., wearing the uniform, use or presence of appropriate equipment) that is incidental to the activity.

5. The elimination of the requirement that all monies derived from the activity or project go directly to the institution, conference or the charitable, educational or nonprofit agency has been eliminated. The complexity of financial relationships in college athletics and the advent of the Internet have changed the commercial market and how transactions are completed. For many institutions and conferences, the Internet would be a cost effective and efficient way to sell items and generate revenue, but very few institutions and conferences have the technological capabilities to use this opportunity. There are many companies which have developed technology for conducting Internet sales and make it available to be used by others for a fee. The fee structure of these companies is varied and may include a fee or percent of the revenue from each item sold. In order to allow institutions and conferences (or charitable, educational or nonprofit entity) greater flexibility and the opportunity to take advantage of these opportunities, the study group believed that it was important to eliminate this requirement. The principle that monies derived from permissible activities go to the institution or conference (or charitable, educational or nonprofit entity) is inherent in the bylaw; however, removing this particular provision allows flexibility in arrangements for the infrastructure of such activities.
6. The elimination of the requirement that the appearance of a commercial cosponsor be limited to the reproduction of the sponsoring company's officially registered regular trademark or logo. The elimination of this requirement does not open the door to elaborate advertisements in this context. It simply deregulates an outdated and often-confusing standard. The current legislation addresses this limitation in the context of printed items. Interpretations were necessary to extend the limitation to other media. Under the study group's recommendation, the key is the requirement that the relationship between the institution and the commercial cosponsor is explained in the promotional activity. The explanation will likely include the cosponsor's logo or other relevant information (e.g., name, address, telephone number).

7. The final recommendation in this category relates to sports wagering. The NCAA opposes all forms of legal and illegal sports wagering on college sports. Sports wagering has become a serious problem that threatens the well-being of the student-athlete and the integrity of college sports. With that in mind and as further support of the Association's position regarding sports wagering, the recommendation includes a prohibition on the use of a student-athlete's name, likeness, picture or appearance in conjunction with an activity that is sponsored by an entity that is involved in sports wagering.

### **Category 2 - Promotions of Commercial Advertisement or Promotions.**

This category addresses the appearance of the name, picture or likeness of student-athletes in commercial advertisements or promotions. The study group had extensive discussions about the importance of commercial sponsors in maintaining a comprehensive athletics program, as well as the importance of protecting student-athletes from being exploited by commercial entities. In reviewing the use of a student-athlete's name, picture or likeness in commercial promotions and keeping in mind the focus of preventing direct endorsements, the study group determined that the appearance of certain types of footage or audio that includes student-athletes does not create a direct endorsement of commercial products or services. The ability to allow such advertisements or promotions provides an institution, conference or NCAA flexibility of determining the manifestation of its relationship with commercial entities. Further, the increased flexibility may increase the ability of an institution (or conference or NCAA) to strengthen its relationship with commercial sponsors and increase the ability of institutions to support a comprehensive athletics program or the programming of the conference and NCAA.

The recommendations in this category limit the appearance of student-athletes in commercial advertisement or promotions to competition video footage, competition audio or competition photographs. The importance of limiting the use of competition footage, audio, or photographs is that it helps protect student-athletes' time and prevents direct endorsements by student-athletes. The other recommendations for this category are:

1. The advertisement or promotion must be approved by the institution's athletics director (or his or her designee). This requirement will allow institutional authorities the opportunity to review the promotion or advertisement and use their good judgment and institutional standard to determine whether the use of competition footage, audio or photographs is done in an appropriate manner.
2. The relationship or affiliation of the commercial cosponsors with the institution, conference or NCAA must be explained as a part of the promotional activity. It is important to note that only those entities that have a formal relationship with the

institution may include competition video, audio or photographs of student-athletes in approved advertisements and only in the context of explaining the relationship or affiliation with the institution, conference or the NCAA.

3. Any language or action included in the advertisement or promotion which directly encourages the use or purchase of a commercial product or service of a commercial entity, may not be attributable to or made by the student-athlete, institution, conference or NCAA. A direct endorsement by the student-athlete, as well as representatives of institutions, conferences or the NCAA, is precluded. For example, this recommendation precludes student-athletes, as well as representatives of the institution, conference or NCAA, from saying "Buy Soda X because it tastes great!" or be shown drinking a soda during the commercial advertisement or promotion.
4. The advertisement or promotion may not involve sports wagering or be an advertisement or promotion of a sports wagering entity.

### **Category 3 – Broadcast Media Entities Promoting Coverage of Intercollegiate Contests.**

The study group recognized the importance of promotions of the broadcasts of intercollegiate contests for the broadcast media, institutions, conferences, NCAA and the student-athletes. In creating this category and recommendations, the study group did not change the current standard, but believed that it was important to clearly codify the manner in which the broadcasts of intercollegiate contests or events may be promoted using the names, likenesses and photographs of student-athletes with eligibility remaining. The media entity, which will be broadcasting the collegiate contest or event, may feature the names, likenesses and pictures of student-athletes with eligibility remaining in the promotion of coverage of the contest or event (in which the student-athlete's institution will or may participate or has previously participated) provided the use of a student-athlete's name, likeness or picture is limited to competition video footage, audio footage, competition audio and competition photographs. It should be noted that it would remain permissible for news media to use the name and likeness of a student-athlete in the context of promoting its coverage of an event, story or interview involving the student-athlete. Such use of a student-athlete's name or likeness has traditionally been considered to be informational and not intended to promote the use of the news media's products or services. Additional student-athlete involvement in media activities, such as in-game interviews or video, is specifically addressed in Bylaw 12.5.3.

### **Impact on Other Sections of Bylaw 12.5.**

There are other areas which are impacted by the recommendations and philosophies developed by the study group.

Bylaws that would be deleted with the adoption of the study group's recommendations:

1. Bylaw 12.5.1.4.1 - Schedule Cards. An advertisement on an institution's wallet-size playing schedule that includes the name or picture of a student-athlete may include language other than the commercial product's name, trademark or logo, provided the commercial language does not appear on the same page as the picture of the student-athlete.

This activity would generally fall under category No. 1 (promotions of institutional, charitable, education or nonprofit entities which includes cosponsorship by commercial entities) and those guidelines would apply.

2. Bylaw 12.5.2.3.2 - Athletics Equipment Advertisement. A student-athlete's name or picture may not be used by an athletics equipment company or manufacturer to publicize the fact that the institution's team uses its equipment.

Such an advertisement could be permissible, provided the recommendations related to category No. 2 (promotions of commercial advertisement or promotions) are met.

Bylaws that would be amended with the adoption of the study group's recommendations:

1. Bylaw 12.5.2.2 - Use of a Student-Athlete's Name or Picture without Knowledge or Permission. If a student-athlete's name or picture appears on commercial items (e.g., T-shirts, sweatshirts, serving trays, playing cards, posters) or is used to promote a commercial product sold by an individual or agency without the student-athlete's knowledge or permission, the student-athlete (or the institution acting on behalf of the student-athlete) is required to take steps to stop such an activity in order to retain his or her eligibility for intercollegiate athletics. Such steps are not required in cases in which a student-athlete's photograph is sold by an individual or agency (e.g., private photographer, news agency) for private use.

This bylaw would be amended to indicate that steps would need to be taken in the circumstance in which the student-athlete did not consent and/or the athletics director (or his or her designee) did not approve the advertisement or promotion.



2. Bylaw 12.5.1.8 - Promotion by Third Party of Highlight Film, Videotape or Media Guide. Any party other than the institution or a student-athlete (e.g., a distribution company) may sell and distribute an institutional highlight film or videotape or an institutional or conference media guide that contains the names and pictures of enrolled student-athletes only if:
- a. The institution specifically designates any agency that is authorized to receive orders for the film, videotape or media guide;
  - b. Sales and distribution activities have the written approval of the institution's athletics director;
  - c. The distribution company or a retail store is precluded from using the name or picture of an enrolled student-athlete in any poster or other advertisement to promote the sale or distribution of the film or media guide; and
  - d. There is no indication in the makeup or wording of the advertisement that the squad members, individually or collectively, or the institution endorses the product or services of the advertiser.

The sale of photographs of student-athletes has become a significant issue in recent years. The advent of digital photography and the Internet has resulted in easy accessibility to photographs. It has become common for photographers and news media to sell prints of photographs on their Web sites. Many of these sites include photographs of student-athletes for sale. This particular issue is ripe for deregulation. It would be much more productive and efficient for institutions to contract with outside entities for the sale of photographs of student-athletes than to devote resources to their own processes for such sales when the ultimate results are the same. This recommendation is consistent with the recommendation above to deregulate the requirement that all monies derived from a promotional activity go directly to the institution (or conference or the charitable, educational or nonprofit agency).

### **Closing.**

Hopefully, this information will help to further clarify the recommendations of the study group. For any further questions or comments, please feel free to contact membership services.