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NOTE

Pay or Play? The Jeremy Bloom Decision and NCAA Amateurism Rules

Laura Freedman*

INTRODUCTION

Jeremy Bloom appears to epitomize the "All-American" kid: he was a member of his state champion high school football team, a track star, a skiing star, and a student with a 3.4 high school GPA. Jeremy Bloom, however, is anything but typical. His football prowess earned him a scholarship to play at the University of Colorado, while his skiing talents enabled him to compete for the U.S. Olympic Team in the 2002 Olympic Winter Games (hereinafter the "Games") and earn the U.S. National and World Cup championship titles in mogul skiing in the same year.[1] Bloom was also a two-time Colorado State track and field champion. His good looks, meanwhile, have provided him with numerous modeling and entertainment opportunities, including a lucrative contract with Tommy Hilfiger.[2] It appears, however, that these coveted opportunities may be mutually exclusive. The National Collegiate Athletic Association (NCAA) determined that in order for Bloom to compete as a collegiate athlete, he must forfeit his modeling and entertainment opportunities.[3]

The NCAA was established on March 31, 1906[4]—then called the Intercollegiate Athletic Association of the United States—in

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1 *See* Verified Complaint for Declaratory and Injunctive Relief ¶ 11, Bloom v. Nat'l Collegiate Athletic Ass'n (20th Dist. Ct. Colo. Aug. 15, 2002) (No. 02-CV-1249) [hereinafter Bloom's Complaint] (on file with the author).

2 *See id.* ¶ 15.

3 *See id.* ¶ 52.

4 *See* Kay Hawes, *The NCAA Century Series—Part I: 1900–39: 'Its Object Shall Be Regulation and Supervision: NCAA Born From Need to Bridge Football and Higher Education*, NCAA NEWS, Nov. 8, 1999, *at* http://www.ncaa.org/news/1999/19991108/active/3623n27.html.

response to increasing safety concerns in the sport of football.[5] At that time, players did not use the padding and protective equipment now standard for the sport.[6] Several schools had banned football and state legislatures were debating making the sport illegal, but few changes to the game were being implemented.[7] The 1905 college football season provided the necessary impetus for sweeping change, as it resulted in eighteen deaths and 149 serious injuries to student-athletes.[8] Representatives from colleges and universities agreed to meet and form an association, which then made several changes to collegiate football.[9] The association issued a formal constitution and bylaws on March 31, 1906, upon ratification by the then thirty-five member institutions.[10] By 1909, the association had expanded to sixty-seven member institutions and the association changed its name accordingly in 1910 to the National Collegiate Athletic Association, "to reflect its now truly national nature."[11] By 1919, the NCAA was composed of 170 member institutions and governed eleven different sports.[12] Currently, the NCAA is made up of 1,258 member institutions, with a total of approximately 361,175 student-athletes within its jurisdiction.[13]

As the membership of the NCAA has evolved, so have its purposes. Once enacted for regulating and ensuring the safety of football, the NCAA's purposes have greatly expanded. The current stated goals of the NCAA are to: "Promote student-athletes and college sports through public awareness; [p]rotect student-athletes through standards of fairness and integrity; [p]repare student-athletes for lifetime leadership; [and p]rovide student-

5 *See id.*
6 *See id.*
7 *See id.*
8 *See id.*
9 *See id.*
10 *See id.*
11 *Id.*
12 *See id.*
13 *See* Nat'l Collegiate Athletic Ass'n [NCAA], *Composition of the NCAA*, *at* http://www1.ncaa.org/membership/membership_svcs/membership_breakdown.html (Mar. 4, 2003).

athletes and college sports with the funding to help meet these goals."[14]

Approximately fifty years after its original formation, the 1940 NCAA convention "authorized the NCAA Executive Committee to investigate alleged violations of the NCAA's amateurism regulations and to issue interpretations of the NCAA constitution."[15] The issue of amateurism, however, has been present since the NCAA's establishment.[16] Scholars indicate that amateurism's historical roots can be traced back to Great Britain and reflect the socio-economic classes of that time.[17] Amateurism was associated with the privileged classes—those who engaged in sport "purely for enjoyment and to become well-rounded gentlemen."[18] The NCAA addressed the notion of amateurism in its original 1906 constitution, where eligibility of student-athletes was contingent upon the student-athlete having not, at any time, received money or other consideration for his or her athletic endeavors.[19] The eligibility rules at this time, however, operated solely on an honor system, since the NCAA had no mechanism for enforcing its rules.[20]

By the 1900s, the emerging popularity of professional baseball inspired the NCAA's first debate over amateurism. Many believed "that simply by associating with professionals, . . . student-athletes had forfeited their amateur status and their college eligibility."[21] By 1916, the NCAA specifically defined amateurism in its bylaws.[22] The definition stated, "An amateur athlete is one who participates in competitive physical sports only for the pleasure and the physical, mental, moral and social benefits directly derived

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[14] NCAA, *The Purposes of the NCAA*, NCAA Online, *at* http://www.ncaa.org/about/purposes.html (n.d.).

[15] NCAA, *Timeline—1940 to 1979*, NCAA News, *at* http://www.ncaa.org/news/1999/19991122/active/3624n27.html (Nov. 22, 1999).

[16] *See* Kay Hawes, *Debate on Amateurism Has Evolved Over Time*, NCAA News, *at* http://www.ncaa.org/news/2000/20000103/active/3701n03.html (Jan. 3, 2000).

[17] *See id.*

[18] *Id.*

[19] *See id.*

[20] *See id.*

[21] *Id.*

[22] *See id.*

therefrom."[23] National enforcement of the eligibility rules became feasible once the NCAA Committee on Infractions was established in 1954.[24] The rules, however, underwent changes over the next twenty years. The NCAA received a number of requests from student-athletes and their schools for waivers to maintain collegiate eligibility.[25] The waivers were "consistently denied" until the rules were modified during the 1974 NCAA Convention.[26] These changes allowed student-athletes to compete as a professional in one sport, while retaining their amateur status in another.

Article 12 of the NCAA's bylaws currently governs student-athlete eligibility as it pertains to amateurism.[27] Article 12 states: "Only an amateur student-athlete is eligible for intercollegiate athletics participation in a particular sport."[28] Article 12 then continues to provide relevant definitions, explaining how an athlete may lose his eligibility to play college athletics.[29]

Jeremy Bloom's case presents a clear example of the conflict arising between the NCAA's Amateurism Bylaws (hereinafter "Bylaws"),[30] their current application, and the NCAA's stated purpose: betterment of its student athletes. The Bylaws' effect on this exemplary athlete's career demonstrates that the Bylaws may, in many cases, act to the detriment of student-athletes, rather than to their benefit.

This Note contends that the regulations imposed by the NCAA, as they relate to its student-athletes' abilities to garner endorsements and sponsorships, should be invalidated. Part I of this Note will trace the decision of the District Court in Boulder County, Colorado, refusing to enjoin the NCAA and requiring Bloom to choose between collegiate football and his skiing career.

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23 *Id.*
24 *Id.*
25 *Id.*
26 *Id.*
27 *See, e.g.*, NCAA, NCAA DIVISION I MANUAL art. 12, at 69–83 (2002–03) (setting forth the bylaws concerning amateurism for Division I, which is the same for Divisions II, & III), http://www.ncaa.org/library/membership/division_i_manual/2002-03/index.html.
28 *Id.* art. 12.01.1, at 69.
29 *Id.* art. 12, at 69–83.
30 *Id.*

Part II will demonstrate that the NCAA did, in fact, breach its contract with its member-institutions as it applies to Bloom. Part III will examine the enforceability of the NCAA's rules and regulations as they apply to an athlete's right of publicity, concluding that these rules are unconscionable. Part IV will demonstrate that the NCAA's Bylaw 12.5 is an unreasonable restraint of trade and should be invalidated. Part V recommends several proposals that could be implemented providing ample protection to student-athletes while preserving the amateur environment the NCAA wishes to maintain.

I. *BLOOM V. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION*[31]

A. Background

Bloom was awarded a scholarship to play football for the University of Colorado in 2001, but chose to defer his admission to prepare for the 2002 Winter Olympics.[32] After his success in the Games, Bloom sought to pursue his education and his opportunity to play football at the University of Colorado, yet declined his scholarship.[33] The University of Colorado filed an initial waiver[34] in February 2002, announcing its support of Bloom in his entertainment and ski-related endeavors.[35] This waiver was denied by the NCAA.[36] Bloom, with the support of University of Colorado, then brought suit against the NCAA, seeking an injunction which would allow Bloom to play for the University of Colorado while continuing to accept his sponsorship money.[37] The

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[31] Bloom v. Nat'l Collegiate Athletic Ass'n, No. 02-CV-1249 (20th Dist. Ct. Colo. Aug. 15, 2002).

[32] *See* Adam Thompson, *Bloom Sues NCAA; Skier Wants to Play for Buffs*, DENVER POST, July 26, 2002, at D-02.

[33] *See id.* ("[Jeremy] wants to play for the University of Colorado in the fall without a scholarship . . . ."). *See also* Bloom's Complaint ¶ 17 ("[Jeremy] will receive no financial aid from the NCAA . . . or from any other member institution to attend CU.").

[34] *See* NCAA, *supra* note 27, art. 14.12, at 164 (describing the process under which a member-institution may appeal when one of their student-athletes is deemed ineligible for collegiate competition).

[35] *See* Bloom's Complaint ¶ 3.

[36] *See* Thompson, *supra* note 32.

[37] *See* Bloom's Complaint ¶ 3–4.

complaint contended that the opportunities presented to Bloom had nothing to do with his football talents and these opportunities preexisted his status as a collegiate athlete.[38] As University of Colorado's assistant compliance director, Sherri McKelvey, articulated, "[Bloom] has had these offers before he even set foot on campus, before he's caught his first football at [the University of Colorado]—even in practice."[39]

B. The Impact of the NCAA's Bylaws

1. Ski Endorsements

The NCAA's Bylaws mandate that an athlete be an "amateur," and although enforcement of the rules has become more flexible, the rules prohibit athletes from being paid to promote commercial products or services.[40] Athletes have been permitted to maintain "amateur" status in one sport while competing professionally in another, but they are still bound to abide by the prohibition on sponsorship, presenting a problem for those athletes whose "secondary" sport is not a traditional professional sport.[41]

> The NCAA allows student-athletes to play professional sports, even minor-league baseball in the summer and then return to their college teams in the fall and spring—as long as the only money they accept is from their stated salary.
>
> The NCAA has ruled in Bloom's case that since he doesn't receive a salary, his endorsement deals and prize money violate the provision that he can't make money based on his athletic ability.[42]

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38 *See id.* ¶ 3.

39 B.G. Brooks, *Bloom Wants Ruling: Motion Seeks to Clear Up Eligibility for CU Football*, ROCKY MOUNTAIN NEWS (Colo.), July 26, 2002, at 1C.

40 NCAA, *supra* note 27. *See also* Hawes, *supra* note 16.

41 Thompson, *supra* note 32 ("[Athletes] may get paid to play professional sports and remain eligible for others as amateurs, but cannot sign sponsorship deals that fund participation in individual sports, such as freestyle skiing.").

42 Shane McCammon, *The Straight Line: Trouble with NCAA Unfairly Continues to Bloom*, Media News, *at* http://www.jeremybloom.com/ncaa.htm (July 29, 2002).

If he was receiving a salary in a traditional form for his skiing career, the NCAA would likely not resist Bloom's pursuit of both professional skiing and collegiate football.[43] However, elite-caliber skiers do not make a traditional salary, but are instead compensated in the form of endorsements.[44] Moreover, these endorsements do not serve as mere compensation, but often enable the athlete to continue to participate in the burdensomely expensive sport.

> Skiers, who earn little prize money, rely on endorsements to finance the high costs of travel and training (up to $100,000 a year) that come with elite-level competition . . . Bloom must give up a six-figure endorsement income by cutting his ties with Oakley, Under Armour and others. He'll now be hard-pressed to fund his 2003 World Cup campaign.[45]

Bloom, whose success on the ski slopes has earned him numerous endorsements, including contracts with Oakley,[46] Under Armour,[47] and Dynastar skis,[48] lamented the limitations placed on him by the NCAA ruling: "The bottom line is I just want to ski and have a shot at Italy in 2006 and play football. This is about me being able to pay for my [ski] season and I can't do that without my endorsements."[49]

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[43] *See* NCAA, *supra* note 27, art. 12.1.2, at 73–74; McCammon, *supra* note 42.

[44] *See* John Romano, *NCAA Should Make Common Sense an Option*, ST. PETERSBURG TIMES (Fla.), Aug. 21, 2002, at 1C ("The only way [Bloom] can financially support his skiing career—the cost of equipment, coaching and traveling—is by accepting endorsement money. By denying Bloom the type of earnings made by every Olympic-caliber skier, the NCAA is essentially threatening his career.").

[45] Kelley King, *Cashing Out; Jeremy Bloom Wanted To Play for Colorado So Badly That He Gave Up Lucrative Skiing Endorsements*, SPORTS ILLUSTRATED, Sept. 23, 2002, at R6.

[46] *See* http://www.oakley.com (n.d.).

[47] *See* http://www.underarmour.com (n.d.). Under Armour is producer of six apparel-product lines designed to be usable in all climates and weather conditions. Their first, and most popular product, is a lightweight synthetic undershirt, worn under the athlete's uniform and equipment to keep moisture away from the body. *Id.*

[48] *See* http://www.dynastar.com (n.d.).

[49] Bruce Feldman, *Bloom: I Feel Like I'm Fighting for My Freedom*, ESPN: THE MAGAZINE, Aug. 1, 2002 (alteration in original), http://espn.go.com/ncf/news/2002/0801/1412906.html.

2. Entertainment and Modeling Opportunities

Likewise, the NCAA's restrictions on association with a commercial product will impair Bloom's ability to continue to pursue entertainment and modeling opportunities. NCAA Bylaw 12.5.2 prohibits athletes from granting the use of their name and likeness for a commercial product, even if the athlete is uncompensated.[50] For example, the NCAA has previously found that an athlete's allowance of a sorority to use his picture in a charity calendar and an athlete taking a part in a movie thriller would both violate this Bylaw.[51] Bloom was subject to an exclusive modeling contract with Tommy Hilfiger, has appeared in segments on television shows including EXTRA, Access Hollywood, and on the Music Television Station (MTV), and was offered a contract to host a show on Nickelodeon.[52] According to the NCAA's interpretation of its rules, student-athletes are not permitted to pursue these opportunities. Thus, this prohibition may mean that Bloom must permanently forfeit these lucrative opportunities.[53] As Conan Smith, a William Morris talent agent, stated, these limitations would "'make it virtually impossible [for Bloom] to further his career in the television and film industries at this time."[54] The entertainment industry is notorious for its

[50] *See* NCAA, *supra* note 27, art. 12.5.2, at 81.

[51] *See* PAUL C. WEILER & GARY R. ROBERTS, SPORTS & THE LAW 734–35 (2d ed. 1998). "[I]n 1985, Steve Alford, star guard of Indiana's NCAA champion basketball team . . . , was suspended for one game that season because he had allowed his photograph to be included on a calendar that was sold for charity by a school sorority." *Id.* The NCAA also determined that Darnell Autry's acceptance of an offer for a part in a supernatural movie thriller would violate "Bylaw 12.5.2.3.4 which states that 'the individual performance of a student-athlete may not be used in a commercial movie . . .'." *Id.* at 735. "Before the trial, though, the [NCAA]'s Eligibility Committee granted Autry a special waiver on the basis that as a theater major in college, his appearance in the film was something that many theater majors might do, and thus not related to his athletic ability." *Id.*

[52] *See* Bloom's Complaint ¶ 14.

[53] *See* Bloom's Complaint ¶ 18.

[54] Jeremy Bloom's Verified Motion for Temporary Restraining Order and for Preliminary Injunction at 3, Bloom v. Nat'l Collegiate Athletic Ass'n, No. 02-CV-1249 (20th Dist. Ct. Colo. Aug. 15, 2002).

fluctuations in interest. If Bloom is unable to capitalize on his current popularity, his opportunities may be forever forsaken.[55]

Bloom may be further harmed considering that while at the University of Colorado, he plans to pursue a degree in communications.[56] The school encourages their students to seek "hands-on" opportunities such as those presented to Bloom. Stephen B. Jones, Assistant Dean of the School of Journalism and Mass Communications at the University of Colorado, explained that the school "'encourage[s] all' its students 'to gain professional broadcast experience.'"[57] Dean Jones explained that the university encourages its students to gain media experience and noted that such experience is helpful to a student seeking admittance into the University of Colorado's competitive communications program.[58] Dean Jones further stated that media experience, such as the Nickelodeon and MTV opportunities presented to Bloom, would be advantageous to an individual seeking a career in broadcasting upon graduation, concluding that, "[t]he profession will hire the recent graduate with experience over other graduates every time . . . ."[59] While Bloom's athletic abilities have permitted him to fulfill his dream of playing collegiate football, the NCAA's restrictions are unfairly impairing his ability to make the most of his education and fulfill his ultimate career.

Furthermore, Bloom's status as a communications major should have enabled him to prove his broadcasting abilities. By analogy, Darnell Autry, a Northwestern football player and theater major was permitted to accept a part in a commercial movie.[60] Darnell Autry was a star running back, Heisman finalist, and theater major at Northwestern University.[61] In 1996, Autry sued the NCAA to allow him to accept "a small speaking role in 'The Eighteenth Angel,' a supernatural thriller being filmed in Italy,"

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55 *See id*. at 5–6 (Entertainment and modeling opportunities "occur but once in a lifetime, with nothing to suggest they will be available four (or five) years from now.").

56 *See* Bloom's Complaint ¶ 41.

57 *Id.* (alteration in original).

58 *See id*.

59 *Id.*

60 *See* WEILER & ROBERTS, *supra* note 51.

61 *See* Andrew Fegelman, *Judge's Restraining Order Still Doesn't Solve Autry's Problem*, CHI. TRIB., Apr. 4, 1996, at 3N.

while maintaining his eligibility to play football.[62] Autry was offered the part after the director saw him on television, and noted the student-athlete's "poise, presence, projection[,] and demeanor."[63] The only compensation Autry was to receive would be that necessary to cover his expenses.[64] Further, the director promised that the role would not include any football-related performances by Autry, the student would not appear as an athlete in the movie, and he would not be used to promote the film.[65] The Illinois District Court granted a temporary restraining order against the NCAA, enjoining it from precluding Autry's performance in the film.[66]

Similarly, the broadcasting and modeling opportunities presented to Bloom would not involve his performing as a football athlete. In fact, these opportunities were a direct result of his skiing success and not football. Moreover, Bloom seeks to retain his amateur status in football. The triggering force for the offer should not be problematic as long as the opportunities do not arise from his success on the football field. These opportunities may be distinguished from his participation on the University of Colorado football team. As Bloom has indicated, however, these impediments are minor, he simply wants to continue to ski for his country and play football for the University of Colorado.[67]

C. The Court Decision

While expressing his disappointment with the NCAA and his sympathy for Bloom, Judge Hale, the presiding Boulder County District Court judge, rejected Bloom's motion for injunctive relief,

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62 Mark Brown, *Autry Sues NCAA Over Film Role*, CHI. SUN-TIMES, Apr. 3, 1996, at 108.

63 *Id.*

64 *See* Bloom v. Nat'l Collegiate Athletic Ass'n, No. 02-CV-1249, slip op. at 5 (20th Dist. Ct. Colo. Aug. 15, 2002); Brown, *supra* note 62.

65 *See* Brown, *supra* note 62.

66 *See* Jeremy Bloom's Verified Motion for Temporary Restraining Order and for Preliminary Injunction at 11, Bloom v. Nat'l Collegiate Athletic Ass'n, No. 02-CV-1249 (20th Dist. Ct. Colo. Aug. 15, 2002) (citing Autry v. Nat'l Collegiate Athletic Ass'n, No. 96CH3275 (Cir. Ct. Cook County, Ill. Apr. 3, 1996)) (on file with the author).

67 *See* Feldman, *supra* note 49.

upholding the NCAA ruling.[68] Recognizing the NCAA's authority regarding this matter, Judge Hale nevertheless expressed his opinion that this was an unreasonable result:

> Here the NCAA had an opportunity to recognize and support a World Cup champion and an Olympic competitor by supporting his future success—by leaving doors open rather than closing them. . . . Mr. Bloom is truly an amateur athlete in football with only dreams of even receiving playing time . . . . [T]he NCAA is missing an opportunity to promote amateurism on the one hand, and the opportunity to support the personal and football [and] non-athletic growth of a student athlete on the other.
>
> Mr. Bloom is the epitome of an amateur who wishes to live out his dream of playing college football for [the University of Colorado] without abandoning the once-in-a-lifetime future opportunities he has. I would like to [see him] live out those dreams. I would like to be able to find a legal basis for me to be able to enjoin the NCAA. However, I cannot find a sound legal basis that would allow me to [do so].[69]

In refusing to grant an injunction against the NCAA, Judge Hale held that the rules were rationally related to the NCAA's stated purposes and that they were not arbitrarily or capriciously applied.[70]

First, Judge Hale determined that student athletes, specifically Jeremy Bloom, are third party beneficiaries in the existing contract

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[68] *See Bloom*, slip op. at 7 ("Although the administrative process relating to this rule could have, and I think should have, allowed an accommodation to be reached as to Mr. Bloom's interest and the interest of the NCAA, the failure to do so was not arbitrary and capricious.").

[69] *Id.*

[70] *See id.* Courts generally exert deference to the NCAA's rules and administrative decisions. *See*, *e.g.*, Wiley v. Nat'l Collegiate Athletic Ass'n, 612 F.2d 473, 479 (10th Cir. 1978) ("[C]onstitutional analysis requires broad discretion be given to the NCAA eligibility rules. But even applying a minimal test of rationality the NCAA's rule . . . fails.") (citation omitted).

between the NCAA and its member collegiate institutions.[71] Applying the criteria set forth in *R.N. Robinson and Sons v. Ground Improvement Techniques*,[72] the judge found that "the NCAA and its members intended to benefit the person not a party to the contract and that the benefit is direct and not merely incidental to the contract . . . . The ways in which the contract benefits student athletes are too numerous to mention."[73] The bylaws constituting part of the contract were, in fact, enacted primarily for the benefit of students.[74]

Judge Hale then found that without the injunction, Bloom would be subject to immediate and irreparable harm with no adequate legal remedy.[75] In addition, preserving the status quo would protect Bloom's existing rights and the remedies that he seeks.[76] The judge, however, did not find that Bloom had a probability of success on the merits of his case.[77] To succeed in his motion for injunctive relief, Bloom was required to demonstrate that the "NCAA had breached the contract, that the bylaws were arbitrary and capricious or in violation of public policy, or that the bylaws were applied in an unfair, arbitrary or

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[71] *Bloom*, slip op. at 2. The NCAA conceded that this contract resulted from its constitution and bylaws. *Id.*

[72] 31 F. Supp. 2d 881, 887 (D. Colo. 1998) ("[A] third party beneficiary . . . may have a right to sue on the contract where '(a) the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary; or (b) the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.'" (quoting RESTATEMENT (SECOND) OF CONTRACTS § 302 (1981))).

[73] *Bloom*, slip op. at 2.

[74] *Id.*

> [The] series of by-laws is almost solely for the benefit of the student athlete as it relates to a primary purpose of the contract—the education of student athletes. Additionally the by-laws restrict the use of agents and prohibit compensation for participation in college sports. One benefit is to foster amateurism. The other is a direct benefit to student athletes which is to avoid their being exploited.

Id.

[75] *Id.* at 3.

[76] *Id.* ("[W]ithout the injunctive relief requested Mr. Bloom will lose an opportunity to defend his world cup title in free style mogul skiing. He will be unable to obtain the customary income from professional skiing necessary to allow for activities such as coaching and other expenses to allow for a defense of his title.").

[77] *Id.* at 3–4.

capricious manner."[78] The judge found that Bloom failed on this account, specifically noting the NCAA's legitimate purpose of fostering amateurism in collegiate sports and that the implemented Bylaws were rationally related to the NCAA's mission of distinguishing collegiate athletics from professional sports.[79]

Further, the judge determined that the NCAA was not applying its rules in an arbitrary or capricious manner. The judge noted that there were differences between the pursuit of a professional career as a skier as opposed to a baseball player, and the difference between these salary structures justifies different treatment.[80] Judge Hale noted that while some athletes would use the sponsorship pay to fund their athletic endeavors, others would simply take it as a profit:

> If Mr. Bloom was allowed to receive the income that is customary for professional skiers, it is not difficult to imagine that some in other professional sports would decide that in addition to direct monetary compensation, that endorsements or promotion of goods would become "customary." Therefore, I find a rational basis for the bylaw and its interpretation.[81]

Under similar reasoning, Judge Hale found that the NCAA's prohibition on Bloom continuing his Tommy Hilfiger modeling contract was also rational. The judge observed that the NCAA expressed a reasonable fear that the personal appearances required of Bloom under his contract could utilize his football ability:

> If those at a Tommy Hilfiger promotion recognized or learned that Mr. Bloom was a [University of Colorado] football player and began discussing a dazzling punt return he made for [a] touchdown with him, it is inconceivable that this polite young man could reasonably be expected to ignore the conversation. It would be a conversation about his athleticism in football. Even if Mr. Bloom had no intent to endorse or promote Tommy Hilfiger clothing, that

78 *Id.* at 4.
79 *See id.*
80 *See id*. at 5.
81 *Id.*

> would be a practical effect of his presence at the promotion.[82]

Judge Hale also disagreed with Bloom's argument that the NCAA and its member institutions' advertising and promotion policy contravenes their stated purpose, because the policy does in fact benefit the sports programs and "each student athlete at the institution."[83] Further, the judge distinguished NCAA's waiver of Bylaw 12.5.2.3.4 for Darrell Autry from the NCAA's refusal to grant permission to Bloom.[84]

Judge Hale concluded that Bloom was unable to demonstrate his likelihood of success and refused to issue the injunction. Jeremy Bloom thus "faced a choice. Give up a life-long dream of college football or give up hundreds of thousands of dollars and, quite possibly, a chance at returning to the Olympics in 2006. Bloom chose football."[85]

While Bloom enjoyed success in his freshman season at the University of Colorado, he remains forced to contemplate the wisdom of his decision.[86] In a recent interview, Bloom was asked whether he planned on playing another three years of college football, to which he responded:

> I'm not sure right now. I'm just taking everything a day at a time and after ski season I will think about if I will come back next year or not. The NCAA makes it really

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82 *Id.* at 6.

83 *Id.* at 5.

84 *Id.* The court noted:

> Autry was a drama major well into his course of study; Autry was not being compensated for appearing in the film; Autry had a defined and very small role in the film; and the other actors had an international reputation which demonstrated that the appearance of Autry in the film was not designed to impact the popularity of the film. On the other hand, Mr. Bloom would be the focus, the star, of any MTV or Nickelodeon show and would be compensated.

Id.

85 Romano, *supra* note 44.

86 In the Big 12 Championship Game, while losing to the University of Oklahoma, Bloom made an 80-yard punt return, setting a Big 12 record. Bloom was also voted by the Colorado Hall of Fame Committee as the "Colorado Amateur Athlete of the Year." *See* http://www.jeremybloom.com/index1.html (last visited Mar. 28, 2002); University of Colorado, *Oklahoma vs. Colorado (Dec. 7, 2002)*, *at* http://cubuffs.ocsn.com/sports/m-footbl/stats/120702aaa.html (last visited Mar. 31, 2003).

> hard for me to be able to do both sports so at some point I will have to choose.[87]

Bloom chose to play football rather than cash in on the lucrative opportunities presented to him, but the NCAA unfairly presented him with a choice that he never should have been forced to make.

II. THE CONTRACT—NCAA CONSTITUTION AND BYLAWS

A. NCAA Constitution and the Bylaws

The NCAA's Constitution and Bylaws constitute a contract between the NCAA and its member colleges.[88] Article I of the NCAA Constitution sets forth its fundamental purposes.[89] Article 1.3 states the NCAA's "Fundamental Policy," indicating that its basic purpose is to "maintain intercollegiate athletics as an integral part of the educational program . . . and . . . retain a clear line of demarcation between intercollegiate athletics and professional sports."[90] The constitution establishes obligations for its member institutions.[91] Article 2.2 delegates the responsibility to member institutions to ensure that they "maintain an environment in which a student-athlete's activities are conducted as an integral part of the student-athlete's educational experience."[92] Bylaw 12 states that only amateur athletes are eligible to participate in NCAA intercollegiate athletics.[93] Bylaw 12 also establishes the numerous ways in which an athlete may lose their amateur status, describing

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[87] Interview with Jeremy Bloom (Dec. 8, 2002), *at* http://www.geocities.com/jellyqueens/jeremy/images/inter/inter.htm. *See also* Sam Adams, *Upchurch Honored to Join Class of 2003*, ROCKY MOUNTAIN NEWS (Colo.), Dec. 4, 2002.

[88] *See Bloom*, slip op. at 2 ("The NCAA has conceded its Constitution and By-Laws constitute a contract between it and its members which number approximately 1,267.").

[89] NCAA, *supra* note 27, art. 1, at 1.

[90] *See id.* art. 1, 1.3.1, at 1.

[91] *See id.* art. 1, 1.3.2, at 1 ("Member institutions shall be obligated to apply and enforce this legislation, and the enforcement procedures of the Association shall be applied to an institution when it fails to fulfill this obligation.").

[92] *Id.* art. 2.2.1, at 3.

[93] *See id.*, art. 12.01.1, at 69.

prohibited forms of payment to student-athletes.[94] Importantly, Bylaw 12.5.1.1 provides that a member institution may grant permission to entities to utilize student-athletes' names, pictures, or appearances if all monies derived therefrom go to the member institution; otherwise, no form of the athlete's identity may be associated with any commercial product or branding.[95]

B. Athletes As Third-Party Beneficiaries

Judge Hale determined that Bloom was a third-party beneficiary of the contract between the NCAA and the University of Colorado.[96] A third-party beneficiary is one who receives the benefit of two contracting parties' exchange of promises.[97] A typical third-party beneficiary contract exists when the promisor's interest in the third party is limited to the promisor's performance of its promise to the third party.[98]

> [O]ne does not qualify as a third-party beneficiary of a contract merely because one is an incidental beneficiary of the performance of a contract or because the promisor had a general desire to advance the interests of a third party. . . . "[T]he key is not whether the contracting parties had an altruistic motive or desire to benefit the third party, but rather 'whether performance under the contract would necessarily and directly benefit' that party."[99]

The contract formed by the NCAA Constitution and Bylaws is between the NCAA and its member institutions. The contract establishes the rules and conditions to which student-athletes must adhere in order to retain their eligibility and participate in NCAA

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94 *See id.* art. 12, at 69–83.

95 *See id.* art. 12.5.1.1, 12.5.1.1(c), (e), (g), at 78.

96 *See* Bloom v. Nat'l Collegiate Athletic Ass'n, No. 02-CV-1249, slip op. at 2 (20th Dist. Ct. Colo. Aug. 15, 2002).

97 *See* Blessing v. Freestone, 520 U.S. 329, 349 (1997) (Scalia, J., concurring) ("[If] A promises to pay B money, in exchange for which B promises to provide services to C, the person who receives the benefit of the exchange promises between the two others (C) is called a third-party beneficiary.").

98 *See, e.g.*, Lewis v. Benedict Coal Corp., 361 U.S. 459, 495 (1960).

99 Hairston v. Pac.-10 Conference, 893 F. Supp. 1485, 1494 (W.D. Wash. 1994) (quoting Postlewait Constr. v. Great Am. Ins., 720 P.2d 805, 806–07 (Wash. 1986) (quoting Lonsdale v. Chesterfield, 662 P.2d 385, 390 (Wash. 1983))).

competitions.[100] While student-athletes do not directly enter into this contract, they may nonetheless be considered a party to the agreement.[101] Student-athletes are not merely affected by the contractual performance of the two parties, but directly benefit from the existing contract. As Judge Hale indicated: "[T]his series of by-laws is almost solely for the benefit of the student[-]athlete as it relates to the primary purpose of the contract—the education of student[-]athletes."[102] Further, even the amateurism rules, while enacted to foster amateurism itself, also have "direct benefit to student athletes which is to avoid their being exploited."[103] Thus, the contract's goal is to benefit the student-athlete, as third-party beneficiaries. Therefore, Bloom is a third party beneficiary to the contract between the NCAA and the University of Colorado.

C. Breach

Bloom, as a third-party beneficiary to the contract between the NCAA and the University of Colorado, has proper standing to bring legal action against the NCAA and the University of Colorado for those injuries he sustained as a result of those parties' breach of contract. A third-party beneficiary has standing to sue a party in privity to a contract for that party's breach of the contract, to the extent that the breach has infringed upon the rights assigned to the beneficiary.[104] The NCAA's refusal to allow Bloom to capitalize upon his professional opportunities constitutes a breach of contract. The NCAA's stated purpose and underlying rationale for all of their rules and regulations is to enhance the educational experience of the student-athlete.[105]

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[100] *See Bloom*, slip op. at 4.

[101] *Id.* at 2.

[102] *Id.*

[103] *Id. See also* Hall v. Nat'l Collegiate Athletic Ass'n, 985 F. Supp. 782, 797 n.32 (N.D. Ill. 1997) ("NCAA members, pursuant to the constitution, bylaws and regulations, all agree that students will not be allowed to play intercollegiate sports unless they meet NCAA criteria. . . . [T]he intent of the NCAA and its members in evaluating incoming student athletes . . . is to specifically protect entering student athletes . . . .").

[104] *See* Lucas v. Hamm, 364 P.2d 685, 689 (Cal. 1961) (finding that a third party beneficiary has a right to bring action under a contract upon a showing that the promisor (member institutions) understood the promisee's (NCAA's) intent to benefit that individual).

[105] *See* NCAA, *supra* note 14.

Rather than enhance Bloom's educational experience at the University of Colorado, however, the NCAA hampered it. As previously stated, many of the opportunities presented to Bloom, specifically the broadcasting opportunities, would have supplemented the communications major's education.[106] The NCAA's expressed concern is that the companies approaching Bloom with lucrative offers may exploit him. Bloom's professional career predates his matriculation at the University of Colorado. Thus, it is unlikely that Bloom would suddenly become exploited as an NCAA athlete. The restriction did not serve to protect Bloom, but rather thwarted viable opportunities. This may constitute a breach of the NCAA's promise to protect the student-athlete and enrich his education. To the extent that the NCAA's enforcement of its amateurism rules has impeded Bloom's ability to enhance his collegiate education, the NCAA breached its contract with the University of Colorado. Bloom, a student-athlete and third-party beneficiary to the contract, has standing to sue based on that breach.

III. ATHLETE LIKENESS AND COLLEGE PROFITS

As previously noted, an athlete must agree to abide by all of the NCAA's rules and regulations before he or she can compete.[107] This provision results in depriving athletes of their ability to capitalize upon their right of publicity. The right of publicity is the right of an individual to control the commercial use of his or her identity.[108] The underlying rationale is that an individual's identity inherently belongs to him or her and that only he or she should be able to exploit that identity so as to not provide unjust enrichment to another.[109] Here, Bloom only hopes to exploit his identity to

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[106] *See supra* Part I.B.2.

[107] In accordance with Bylaw 14.01.3.1, a student-athlete's eligibility hinges on the individual adhering to the amateurism regulations set forth in Bylaw 12. NCAA, *supra* note 27, arts. 14.01.3.1, at 125. Bylaw 12.1.1 describes those situations in which an athlete would lose her amateur status. *Id.* art. 12.1.1, at 70–74.

[108] *See* HARVEY L. ZUCKMAN ET AL., MODERN COMMUNICATIONS LAW 313–16 (1999).

[109] *See* JESSE DUKEMINIER & JAMES E. KRIER, PROPERTY 15–16 (4th ed. 1998) ("[E]very man has a property in his own person. This nobody has any right to but himself. The labor of his body, and the work of his hands . . . are properly his." (paraphrasing JOHN

sustain himself in elite skiing. Moreover, while the NCAA rules are not only limiting *his* ability to exercise this right, the NCAA and the University of Colorado are using his identity for *their own* benefit. The rules providing for this assignment of the athletes' rights of publicity are unconscionable, and should therefore be invalidated.

A. The Right of Publicity

The right of publicity is rooted in the right to privacy, a right "that allowed people to block the use of their name and likeness in advertisements without their consent."[110] Judge Jerome Frank, in *Haelan Laboratories v. Topps Chewing Gum*,[111] recognized that an individual's identity was a common law property right with a commercial value completely independent of privacy concerns.[112]

> This right might be called a "right of publicity." For it is common knowledge that many prominent persons (especially actors and ballplayers), far from having their feelings bruised through public exposure of their likenesses, would feel sorely deprived if they no longer received money for authorizing advertisements, popularizing their countenances, displayed in newspapers, magazines, busses, trains and subways. This right of publicity would usually yield them no money unless it could be made the subject of an exclusive grant which barred any other advertiser from using their pictures.[113]

The right of publicity is most often associated with the commercial use of an individual's name or likeness. The *Restatement (Third) of Unfair Competition* takes an expansive view of the right, defining the right of publicity as the appropriation of "the commercial value of a person's identity by using without consent the person's name, likeness or other indicia

LOCKE, TWO TREATISES OF GOVERNMENT bk. 2, ch. 5 (Peter Laslett ed., Cambridge Univ. Press 1988) (1690))).

110 WEILER & ROBERTS, *supra* note 51, at 422.

111 202 F.2d 866 (2d Cir. 1953).

112 *See id.* at 868.

113 *Id.*

of identity for purposes of trade."[114] The latter part of this definition, the "other indicia of identity," has allowed for protection of various characteristics of an individual. Viable publicity claims may be based on the misappropriation of an individual's likeness,[115] voice,[116] running style,[117] an athlete's specialized shot or technique,[118] and depictions of objects associated with the individual.[119]

Bloom is prevented from exploiting any attributes of his name or identifiable persona and from using his publicity rights to create an association with commercial brands or products.[120] The same rule that prevents Bloom from usurping value from his name, however, allows the NCAA, and specifically, the University of Colorado, to exploit his personal characteristics to reap a profit.[121]

A. Collegiate Usage of Athlete's Name and Likeness

An estimate in the late 1980s found that "each additional victory in football earned the school $300,000, and in men's basketball $45,000. . . . Patrick Ewing is estimated to have

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[114] RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 46 (1995).

[115] *See, e.g.*, Ali v. Playgirl, 447 F. Supp. 723 (S.D.N.Y. 1978) (finding a violation of Muhammad Ali's right of publicity for a portrait in *Playgirl* magazine in which the drawing clearly had a resemblance to Ali and included a reference to the drawing as being "The Greatest"); White v. Samsung Elec. Am., 971 F.2d 1395 (9th Cir. 1992) (identifying a potential publicity claim for Vanna White for Samsung's use of a robot dressed in a wig, gown, and jewelry reminiscent of White).

[116] *See, e.g.*, Midler v. Ford Motor Co., 849 F.2d 460 (9th Cir. 1988) (finding Bette Midler's voice is distinctive and personal, an attribute of Midler's identity that may be protected from commercial exploitation).

[117] *See, e.g.*, Hirsch v. S.C. Johnson, 280 N.W.2d 129 (Wis. 1979) (holding that defendant-company's use of the name "Crazylegs" to market their shaving gel constituted an infringement of Hirsh's right of publicity since Elroy Hirsch's distinctive running style led to him being known as "Crazylegs").

[118] *See generally* ROBERT P. MERGES ET AL., INTELLECTUAL PROPERTY IN THE NEW TECHNOLOGICAL AGE 844 (2d ed. 2000) (identifying moves such as "Monica Seles' two-handed backhand shot in tennis; Bob Cousy's behind the back basketball pass; [and] Pete Rose's headfirst baseball slide" may be protectable attributes of the athletes' rights of publicity).

[119] *See, e.g.*, Motschenbacher v. R.J. Reynolds Tobacco, 498 F.2d 821 (9th Cir. 1974) (finding that a company that used a car for commercial use, which was reflective of famous race-car driver's distinctive car, infringed the driver's right of publicity).

[120] *See* NCAA, supra note 27, art. 12.5.1.1(g), at 78.

[121] *See id.*, art. 12.5.1.1(e), at 78.

generated $12 million in additional revenues for Georgetown during his four years there in the early 1980s, when overall college basketball revenues were *significantly lower* than they are today."[122] Recent years have displayed a demonstrative increase in the amount of revenues generated for NCAA member institutions from television and sponsorship contracts.[123] Notably, the above stated figures, attributing revenue to individual players, were calculated *before* these types of lucrative contracts became the norm.

> In 1999, the NCAA and CBS signed a contract in the amount of $6.3 billion ($6,300,000,000.00) for the rights to televise certain basketball performances of NCAA student-athletes, just 63 games annually. In 2000, ABC signed a contract for $400 million ($400,000,000.00) for rights to televise the football performances of NCAA student-athletes in the Bowl Championship Series . . . . Fox Sports Network has agreed to pay $220 million ($220,000,000.00) to televise the football performance of NCAA student-athletes in games involving the Big Twelve Conference alone [(of which the University of Colorado is a member)].
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> . . . On June 12, 2002, the Wall Street Journal reported that Coca-Cola Company entered an agreement with the NCAA and CBS valued at $500 million ($500,000,000) whereby Coca-Cola purchased the rights to promote its products in connection with the performance of student-athletes at NCAA championship events.[124]

Moreover, "[u]niversities take commercial advantage of the popularity of college athletics through the merchandising and

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[122] WEILER & ROBERTS, *supra* note 51, at 796 (emphasis added).

[123] *See* WEILER & ROBERTS, *supra* note 51, at 769.

[124] Bloom's Complaint ¶¶ 24–25 (citing Betsy McKay, *Coke Beats Pepsi for NCAA Rights in Deal That Tops $500 Million*, WALL ST. J., June 12, 2002, at B3). *See also* News Release, NCAA, NCAA Reaches Rights Agreement with CBS Sports (Nov. 18, 1999), http://www.ncaa.org/releases/makepager.cgi/champother/1999111801co.htm; News Release, NCAA, Coke Signs "Corporate Champion" Pact (June 24, 2002), http://www.ncaa.org/news/2002/20020624/awide/3913n16.html.

licensing of college merchandise."[125] While restricting an athlete's ability to grant commercial usage of his or her name and likeness, "the NCAA does not restrict the use of a college athlete's likeness by the universities themselves."[126] Revenue generated from the sales of college merchandise and royalties earned from the licensing thereof produces multi-million dollar profits for schools.

> In the early 1980s, the total retail market for products identified with college athletics was under $100 million a year, most of which was sold in college book stores or other outlets on campus. By the mid-1990s, the college market was over $2.5 billion a year, the vast bulk sold in retail stores and chains. The average royalty rates of around eight percent earned some 20 schools more than a million dollars per year.[127]

The amateurism rules allow schools to profit by using athletes' identities, but prohibit athletes from receiving any compensation for their own name and likeness. The NCAA has considered proposals to cure this inequity, though none would alleviate the problems the Bylaws present to Bloom and other extraordinary student-athletes like him.

Schools are able to capitalize on athletes' identities, because they can compete as NCAA athletes. Bylaw 14.01.3.1 states that student-athletes must abide by the NCAA's regulations to retain their eligibility.[128] Bylaw 12.5.1.1 grants universities permission to commercially utilize a student-athlete's name, likeness, and identity.[129] Thus, in order to abide by the NCAA rules and regulations, an athlete must grant his or her school a license to use his or her name and likeness (his or her right of publicity) for the school's own commercial gain. These provisions of the NCAA contract are unconscionable and should be invalidated.

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[125] Vladimir P. Belo, *The Shirts off Their Backs: Colleges Getting Away with Violating the Right of Publicity*, 19 HASTINGS COMM. & ENT. L.J. 133, 153 (1996).

[126] James S. Thompson, *University Trading Cards: Do College Athletes Enjoy a Common Law Right to Publicity?*, 4 SETON HALL J. SPORT L. 143, 167 (1994) (citing a letter to James S. Thompson from Richard D. Schultz, Executive Director of the NCAA).

[127] WEILER & ROBERTS, *supra* note 51, at 769.

[128] NCAA, *supra* note 27, art. 14.01.3.1, at 125.

[129] *Id.* at 78–79.

B. Unconscionability

A court may invalidate a contract if it is deemed unconscionable.[130] Unconscionability exists within a contract where its terms are so unfair that they "shock the conscience."[131] The traditional rule was that a contract was unconscionable if it was "such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other."[132] In *Williams v. Walker-Thomas Furniture Co.*,[133] the court recognized that unconscionability included the absence of a meaningful choice on the part of one party, coupled with "contract terms [that] are unreasonably favorable to the other party."[134] The court further noted that "when a party of little bargaining power . . . signs a commercially unreasonable contract with little or no knowledge of its terms, it is hardly likely that his consent, or even an objective manifestation of his consent, was ever given to all the terms."[135]

Commentators have identified two different types of unconscionability: procedural and substantive.[136] Procedural unconscionability results from unfairness within the bargaining process.[137] If one party to the contract effectively has no choice but to agree to the terms of the contract, this indicates a defect in the negotiation process, which may result in procedural unconscionability. Substantive unconscionability, however, focuses on the terms of the contract itself. If the contract terms are unreasonable, and so one-sided that they "shock the conscience," the contract may be substantively unconscionable.[138]

In order to participate in intercollegiate competition, an athlete must agree to abide by all of the NCAA's rules and regulations,

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130 *See* U.C.C. § 2-302 (1977) (allowing a court to refuse to enforce a contract, which it deems was unconscionable when the contract was effectuated).

131 Ferguson v. Countrywide Credit Indus., 298 F.3d 778, 784 (9th Cir. 2002).

132 RESTATEMENT (SECOND) OF CONTRACTS § 208 (1981).

133 350 F.2d 445 (D.C. Cir. 1965).

134 *Id.* at 449.

135 *Id.*

136 CHARLES L. KNAPP ET AL., PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS 675 (4th ed. 1999).

137 *Id.*

138 Am. Software v. Ali, 54 Cal. Rptr. 2d 477, 482 (Cal. Ct. App. 1996).

"including those which permit the universities to use the likeness of college athletes for commercial purposes."[139] Athletes who wish to compete at the collegiate level have no alternative but to agree to the stipulated provisions, and as a result they are left with "no meaningful choice."[140] High-school-aged athletes must either agree to the terms, most of which they are likely unable to truly understand, or loose their collegiate eligibility. In the end, these young adults do not have a choice. Moreover, the contract terms themselves are unjust. The forced forfeiture of rights combined with the compulsory assignment of athletes' right of publicity is unconscionable and should be invalidated.

IV. NCAA BYLAW 12.5 CONSTITUTES AN UNREASONABLE RESTRAINT OF TRADE

A. The Sherman Antitrust Act

The Sherman Antitrust Act (hereinafter the "Act")[141] prohibits unreasonable restraints of trade.[142] The seminal case analyzing NCAA practices under antitrust law is *National Collegiate Athletic Ass'n v. Board of Regents of the University of Oklahoma*.[143] In *Board of Regents*, the Supreme Court analyzed the NCAA's television plan and found that the "challenged practices of the NCAA constitute a 'restraint of trade' in the sense that they limit members' freedom to negotiate and enter into their own television contracts."[144] The Court recognized, however, that the Act only prohibits those restraints of trade that are unreasonable.[145]

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[139] Thompson, *supra* note 126, at 176.

[140] *Walker*, 35 F.2d at 450. *See also* WEILER & ROBERTS, *supra* note 51, at 750 ("All colleges with major athletic programs are members of the NCAA, and they have all agreed to abide by the NCAA's rules and not to play against any school the Association declares ineligible.").

[141] 15 U.S.C. §§ 1–7 (2000).

[142] *See id.* "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or commerce among the several states, or with foreign nations is declared to be illegal." *Id.* § 1.

[143] 468 U.S. 85 (1984).

[144] *Id.* at 98.

[145] *See id.* at 98–99.

> A conclusion that a restraint of trade is unreasonable may be "based either (1) on the nature or character of the contracts, or (2) on surrounding circumstances giving rise to the inference or presumption that they were intended to restrain trade and enhance prices. Under either branch of the test, the inquiry is confined to a consideration of the impact on competitive conditions."[146]

The validity of a regulation potentially restraining trade will be determined by evaluating its impact on competition.[147] Bylaw 12.5.1,[148] the rule prohibiting athletes from associating with for-profit entities while allowing schools to profit from using their athletes' name, likeness, or identity, is anticompetitive and should be invalidated under the Act.

A. Antitrust Scrutiny of the NCAA's Amateurism Bylaws

Most courts examining a challenge to the NCAA's Amateurism Bylaws have determined that the Bylaws fulfill a legitimate business purpose,[149] and in fact have procompetitive effects.[150] However, these cases have focused on the "no-agent" and "no-draft" rules.[151] While it has been stated that "[t]he overriding purpose of the eligibility Bylaws . . . is not to provide the NCAA with commercial advantage, but rather the opposite extreme—to prevent commercializing influences from destroying the unique 'product' of NCAA college football[,]"[152] this rationale may not be applicable when analyzing the amateurism rules from the

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[146] *Id.* at 103 (quoting Nat'l Soc'y of Prof'l Eng'rs v. United States, 435 U.S. 679, 690 (1978)).

[147] *See id.*

[148] NCAA, *supra* note 27, art. 12.5.1, at 78–81.

[149] *See, e.g.*, Gaines v. Nat'l Collegiate Athletic Ass'n, 746 F. Supp. 738, 744 (M.D. Tenn. 1990) (stating that the NCAA's regulations are designed to "maintain amateur intercollegiate athletics 'as an integral part of the educational program . . .'" (quoting NCAA, *supra* note 14)).

[150] *See, e.g.*, *id.* at 746 (finding that the NCAA's amateurism rules "have primarily procompetitive effects in that they promote the integrity and quality of college football and preserve the distinct 'product' of major college football as an amateur sport").

[151] *See, e.g.*, Banks v. Nat'l Collegiate Athletic Ass'n, 977 F.2d 1081 (7th Cir. 1992).

[152] *Gaines*, 746 F. Supp. at 744.

viewpoint of their restrictions on athlete endorsements or sponsorships.

1. College Athletics: Truly Amateur Sport?

College athletics is a commercialized industry. The NCAA's own efforts have demonstrated this with its multi-million dollar television and merchandising contracts.[153] To view collegiate sports as "an institution of amateurism" would ignore this fact, and would indeed be "misguided."[154] NCAA colleges and universities reap tremendous financial benefits from their star athletes.[155] A star athlete may give the school increased name recognition, greater airtime on television, and success for the school both on and off the field. One star athlete could allow the school to enjoy greater success in the sports season, which makes future recruitment of other talented student-athletes easier. The increased presence that accompanies a successful sports season can result in an increase in applications, strengthening the quality of student the school itself attracts.[156] Most importantly, however, a star athlete and/or a successful season greatly increases the revenue earned by the school.

This phenomenon is best demonstrated by looking at a specific example. In the past several years, the University of Maryland (hereinafter "Maryland"), a large Division I school, has enjoyed considerable athletic success.[157] Coincidentally, the school has also seen an increase in enrollment applications, a higher quality of student, and an increase in revenue within that same time period.[158]

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[153] *See supra* note 124 and accompanying text.

[154] Belo, *supra* note 125, at 153.

[155] *See generally supra* Part III.B.

[156] *See* WEILER & ROBERTS, *supra* note 51, at 796 (noting that in his four years at Georgetown, Patrick Ewing helped generate a forty-seven percent increase in applications and a forty point rise in its freshman SAT scores).

[157] *See infra* Tables 1, 2.

[158] *See infra* Tables 2, 3. *But see* Sarah Talalay, *Football Success Pays Off for UM; Campus Basks in Prestige, Enjoys Added Revenue*, SOUTH FLORIDA SUN-SENTINEL, Dec. 29, 2002, at 1A (quoting University of Maryland [hereinafter Maryland] officials who asserted that donations fell in 2002 after years of continued growth and that the number of applications received by Maryland had already been increasing prior to the success within the Maryland athletic program).

The following tables depict the evolution of Maryland's football and basketball teams, and track revenue and admission statistic changes.

Table 1
University of Maryland Football and Basketball Season Records[159]

School Year	Football		Basketball	
	Record	Post-Season Result (if any)	Record	Post-Season Result[a] (if any)
1998–1999	3-8		26-6	Sweet Sixteen
1999–2000	5-6		25-10	Second Round
2000–2001	5-6		25-11	Final Four
2001–2002	10-2	Orange Bowl	32-4	National Champions

[a] These results indicate the NCAA Division I Basketball Tournament round in which the Maryland men's basketball team lost.

Table 2
University of Maryland Budgeted Sports-Related Revenue[160]

Fiscal Year	Sales & Services of Auxiliary Enterprises[a] ($)	Private Gifts, Grants & Contracts[b] ($)	Total Revenue ($)
1999	137,348,686	41,321,284	836,612,738
2000	127,720,172	43,222,186	904,347,659
2001	135,546,500	41,744,722	960,586,972
2002	151,388,065	54,687,507	1,028,517,530

[159] *See University of Maryland Football Game Results*, TerrapinStats.com, *at* http://www.terrapinstats.com/football.php (last visited Mar. 31, 2003); *University of Maryland Basketball Stats*, Terrapin Stats.com, *at* http://www.terrapinstats.com/basketball.php (last visited Mar. 31, 2003).

[160] *See* Telephone Interview with Blene Mekbeb, Fiscal Management Specialist, Dept. of Budget and Fiscal Analysis, University of Maryland (Jan. 28, 2003); Dept. of Budget & Fiscal Analysis, *Budget Information*, University of Maryland, *at* http://www.inform.umd.edu/CampusInfo/Departments/BFA/budgetinfo3.html (last visited Mar. 31, 2003).

2003	147,352,979	52,803,238	1,155,364,083

[a] Auxiliary Enterprises revenue constituted 13–16% of the total revenue budgeted, and includes the University Bookstore, where most of the school-licensed memorabilia is sold on campus. Additional licensing revenue is also placed under this subsection.
[b] Private Gifts comprised approximately 5% of the total revenue budgeted, and consists mainly of donations made to the school, private grants, and alumni contributions.

Table 3
University of Maryland Admissions Data[161]

First Year Class[a]	Total Applications	Acceptance Rate (%)	Average GPA[b]	SAT Range[c]
1999	18,807	54.5	3.61	1150–1320
2000	18,525	50.6	3.72	1170–1330
2001	19,668	55.0	3.76	1170–1330
2002	23,141	43.5	3.86	1200–1350

[a] The year listed indicates year of matriculation.
[b] Average high school grade point average.
[c] Range of Scholastic Aptitude Test scores from the twenty-fifth to seventy-fifth percentiles.

As of 1985, Maryland boasted a number-one-ranked football team and a top-rated basketball team led by a young, upcoming star, Len Bias.[162] By 1990, however, commentators had criticized Maryland as having hit "rock bottom."[163] Bias died of a cocaine overdose in June of 1986, and following recruiting violations and an NCAA determination of a "lack of institutional control," Maryland was subject to severe and controversial NCAA sanctions.[164] As a result, the Maryland men's basketball team was

[161] *See* Office of Institutional Research & Planning, *Quick Summary Data*, University of Maryland, *at* http://www.inform.umd.edu/OIS/quicksum.html (last visited Mar. 31, 2003).
[162] *See* Michael Wilbon, *This Decision Has No Appeal*, WASH. POST, Aug. 4, 1990, at B1.
[163] *See, e.g.*, *id.*
[164] *See* Jonathan Feigen, *Restore The Roar; Maryland Revives Program With Help of Home-Grown Talent*, HOUSTON CHRON., Mar. 21, 1995, at 2 (describing sanctions imposed on the program after the death of Len Bias and the programs subsequent rebuilding process); Phil Hersh, *'Seeing Superman Go Bad': Their Records Set, for Many*

placed on probation for three years, was precluded from postseason competition through the 1991–92 season, and was prohibited from appearing on live television, effectively barring Maryland from competing in the Atlantic Coast Conference (ACC) tournament during those years.[165] Furthermore, Maryland was required to return $400,000 it had received in NCAA Division I Basketball Tournament (hereinafter "Tournament") revenue to the NCAA. The NCAA deleted the Maryland men's basketball team's record from the 1988 Tournament.[166]

From the 1999 to 2002 Maryland football seasons, the team improved its overall record from an abominable 3-8 to a 10-2 record, including an appearance at Maryland's first major bowl game in over twenty years, followed by a win at the Peach Bowl in 2003.[167] The Maryland Terrapins' Peach Bowl win marked Maryland's second eleven-win season in the 110 years of Maryland football.[168]

During the same time period, the basketball team dramatically improved their record, made Maryland's first appearance in the NCAA National Tournament Final Four, and won Maryland's first national basketball championship.[169] During the same period, Maryland's revenue increased a total of $318,751,345.[170] In particular, the categories of revenue representing sales of Maryland memorabilia and licensing, and private donations increased a total

the Records Turned Criminal, CHI. TRIB., Dec. 28, 1986, at 1C; John Nelson, *Year in Review: 1986; Deaths of Bias, Rogers Overshadow Sport Achievements*, L.A. TIMES, Dec. 28, 1986, § 3, at 1.

165 *See Maryland Nailed with a Two-Year Post-Season Ban,* TORONTO STAR, Mar. 6, 1990, at B5.

166 *See id*.

167 *See* P.K. Daniel, *Woman's Touch on Terps; Title IX Paved Way for Maryland's Yow, String of Championship Seasons*, SAN DIEGO UNION-TRIB., Nov. 17, 2002, at C1; Leo Willingham, *Peach Bowl: Maryland 30, Tennessee 3: Terps Right at Dome*, ATLANTA J.-CONST., at 1C; *supra* Table 1.

168 *See College Game Day: Chick-Fil-A Peach Bowl: Fan Guide*, ATLANTA J.-CONST., Dec. 31, 2002, at 5C.

169 *See* Dan Wetzel, *Maryland Relishes First of Hopefully Many NCAA Titles*, CBS Sportsline, *at* http://cbs.sportsline.com/b/page/pressbox/0,1328,5192180,00.html (Apr. 2, 2002) (describing Maryland's national championship and the program's resurgence since the death of Len Bias); *supra* Table 1.

170 *See supra* Table 2.

of $10,004,293 and $11,481,954, respectively, between the 1999 and 2003 fiscal years.[171]

In that same period, the academic quality of the student body improved correspondingly.[172] Over the four years examined, Maryland received increasingly more applications for the incoming class. Admissions became increasingly competitive and the percentage of accepted applications fell.[173] The Maryland admissions office received over 4,000 more applications for the 2002 entering class than it received for the 1999 entering class.[174] Those students, on average, had high school GPAs that were a quarter-point higher and scored an average of forty points higher on their SATs.[175]

When examining these figures, it is important to note the correlating time periods. The success of a football season would likely be reflected in the following year's revenue earnings and admissions statistics.[176] The basketball season, however, spans two calendar years and ends early in the second year.[177] Success within a basketball season would be jointly represented in the current and following fiscal years (i.e., the year in which the season ended and the next year). Additionally, considering that Maryland requires applicants for the incoming class to submit the first portion of their application by the end of January, and all accepted students must confirm their decision to attend the school by May 1st, the basketball season would affect the following year's student-applications.[178] For instance, the 2002 incoming class would likely in part reflect the 2001 football team's success, but would not be affected by the 2001–02 basketball team's

[171] *See supra* Table 2.
[172] *See supra* Table 3.
[173] *See supra* Table 3.
[174] *See supra* Table 3.
[175] *See supra* Table 3.
[176] The college football post-season traditionally ends by the first week of January. *See, e.g.*, University of Maryland, *supra* note 159 (demonstrating that the 2001–02 football season schedule ended January 2, 2002).
[177] *See University of Maryland Football Game Results*, *supra* note 159 (displaying the 2001–02 Basketball Season, which ran from November 2, 2001, through April 1, 2002).
[178] *See* University of Maryland, *Freshman Application Dates*, Undergraduate Admissions, *at* http://www.uga.umd.edu/apply/dates.html (last visited Mar. 21, 2003).

national championship. Since Maryland won the championship April 2002, it is likely that the 2003 incoming class will most adequately reflect this athletic success.

Examination of these figures reveals a correlation between the on-the-field success of a university's teams and the benefits that accrue to the school. The underlying purpose justifying the NCAA's rules—to promote amateur sport—may have already been thwarted. Effectively, under the Amateurism Bylaws, colleges and universities reap significant financial benefits from their star student-athletes while the preventing student-athletes from capitalizing on their own name and likeness.

2. Anti-Competitive Effects of the Amateurism Bylaws

Courts have rejected student-athletes' antitrust claims on the basis that the athlete is not a "competitor" with the NCAA or its member institutions,[179] but students and the NCAA or universities might be viewed as competitors in terms of marketing or sponsorship deals. If companies were permitted to sponsor individual athletes, the college teams and the NCAA as a whole would be competing with those individuals to gain lucrative endorsement contracts. A star student-athlete might make a team more attractive to marketers and to consumers, but if marketers could simply invest in that star, they would potentially bypass negotiating a deal with the university or the NCAA. For instance, upon learning that Bloom was signing with the University of Colorado, Nike, with whom Bloom had previously been negotiating, stated "there was no reason for it to enter into a skiing sponsorship contract with [Bloom] because the NCAA Bylaws essentially made [him] a Nike athlete for the next four (4) years."[180] In 1995, the University of Colorado entered into a ground-breaking, five-year deal with Nike for $5.6 million, renegotiated in 2000, under which all but two of the university's

[179] *See, e.g.*, Smith v. Nat'l Collegiate Athletic Ass'n, 978 F. Supp. 213, 217 (W.D. Pa. 1997) ("'[T]he plaintiff is currently a student, not a businessman in the traditional sense, and certainly not a 'competitor' within the contemplation of the antitrust laws.'" (quoting Jones v. Nat'l Collegiate Athletic Ass'n, 392 F. Supp. 295, 303 (D. Ma. 1975))), *aff'd in part, vacated in part, and rev'd in part*, 139 F.3d 180 (3d Cir. 1998).

[180] Bloom's Complaint ¶ 52.

seventeen athletic teams would be outfitted in Nike attire and equipment.[181] These contracts are not limited to the University of Colorado. Seven of the eight teams competing in the 2002 Bowl Championship Series had agreements with Nike.[182] In the 2002 NCAA Basketball Tournament, forty-nine of the sixty-five competing schools were "Nike schools," including all four teams competing in the Final Four.[183]

If the NCAA's rules had not prevented Bloom from entering into a Nike (or similar) contract, then Bloom could compete with the University of Colorado or the NCAA for corporate sponsorship. The NCAA's rules are, therefore, anticompetitive by ensuring that universities do not have to compete with their own athletes for advertising and merchandising monies. Given that the NCAA has abandoned amateurism (as demonstrated by the University of Maryland) and that it has thwarted competition within the sports sponsorship and endorsement market, the only consequence is that the NCAA Bylaws have no legitimate purpose and have anticompetitive effects. Therefore, the rules are an unreasonable restraint of trade and should be invalidated for violating the Sherman Antitrust Act.[184] As such, the rules may be

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[181] *See* Adam Thompson, *Clotheslined CU Figures to Take a Hit Even if the Big 12 School Renews Its Lucrative Nike Contract, Which Expires This Weekend*, DENVER POST, June 26, 2001, at D1.

[182] *See id*.

[183] Mike Huguenin, *Now You Seed Them? No, You Don't*, ORLANDO SENTINEL TRIB., Mar. 30, 2002, at C2 (noting that most of the remaining teams had agreements with Adidas, Reebok, and And 1).

[184] *See* Michael P. Acain, *Revenue Sharing: A Simple Cure for the Exploitation of College Athletes*, 18 LOY. L.A. ENT. L.J. 307, 327 (1998).

> [A] student-athlete may convince a court that Rule 15.2 is invalid by showing that it is not connected to the legitimate goals of the NCAA. Such a challenge would seek to establish that the NCAA has abandoned the goal of combining education with athletics . . . . Without a connection to legitimate goals, the NCAA's entire regulatory program fits a pattern of purely anti-competitive behavior, and should be invalidated as a violation of the Sherman Antitrust Act. Additionally, if a student-athlete can prove that the NCAA's rules are aimed at maximizing profits, and not at upholding traditional goals, an argument can be made that these restrictions should be treated and rejected as regulations within a purely commercial market.

Id.

deemed an unreasonable restraint of trade and should be invalidated for violating the Sherman Antitrust Act.

V. MODIFICATIONS TO THE AMATEURISM BYLAWS

A. Amateurism Deregulation

If the Amateurism Bylaws were invalidated, amateurism may survive, albeit under different circumstances. There have been a plethora of proposals suggested by outside media sources, as well as the NCAA itself, ranging from modifying the NCAA amateurism rules to abolishing them entirely. For instance, Tom Farrey, an ESPN.com writer, proposed providing players with outright payments through a form of revenue-sharing to allow the student-athlete to be compensated based on the earnings they provide for their individual schools.[185] Farrey notes, "Over a four-year college athletic career, that means the average Syracuse player is theoretically 'underpaid' by more then $1.8 million."[186] This is, however, too far-reaching a proposition. The goal of collegiate amateur sports should not be abandoned altogether. Paying athletes for their participation in their "collegiate" amateur sport, as opposed to another sport in which they compete professionally, might create more problems than it solves.

The NCAA itself has considered numerous proposals to modify its amateurism rules. The Amateurism Deregulation Proposals were adopted by the Division II schools, and were considered, but largely rejected by Division I.[187] These proposals take two forms: post-enrollment and pre-enrollment.[188] The pre-enrollment

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[185] *See* Tom Farrey, *Play-for-Pay: Not Yet, but Soon?*, ESPN, *at* http://espn.go.com/ncb/ncaatourney01/s/2001/0326/1162258.html (Mar. 28, 2001).

[186] *Id.*

[187] *See* Adam Wodon, *D-II Passes Amateurism Deregulation; D-I Next?*, USCHO, *at* http://uscollegehockey.com/news/2001/01/09_001551.php (Jan. 9, 2001); NCAA, *Division I Management Council*, *at* http://www1.ncaa.org/membership/governance/division_I/management_council/index.html (last visited Apr. 1, 2003).

[188] NCAA, *Postenrollment Amateurism Deregulation Proposals*, *at* http://www12.ncaa.org/membership/governance/division_I/docs/board_of_dirs/2001_08_Board_of_Directors/07_Att_B_2001_08_BOd_Amateurism.htm (July 11, 2001) [hereinafter Post-enrollment Proposals]; NCAA, *Pre-Enrollment Amateurism*

proposals are inapplicable to Bloom's case because, while he engaged in professional athletics prior to competing as a collegiate athlete, the debate centers around his ongoing marketing activities while he is enrolled in the University of Colorado. Post-enrollment proposals include allowing the NCAA to pay insurance premiums on behalf of student-athletes who qualify for disability insurance; for student-athletes to obtain a loan for up to $20,000 during their five-year eligibility period based on future earnings; and a fee-for-lesson provision, allowing student-athletes to accept up to $2,000 in compensation for teaching their athletic skills to others.[189]

These proposals, even if they had been enacted, would not have enabled Bloom to reasonably continue his skiing career. His concern is not based on disability insurance; he needs funding to support his elite skiing. Likewise, the fee-for-lesson provision is of minimal assistance, because even if Bloom earned up to the $2,000 cap, this would do little to dent the debt he would incur participating in elite ski competition.[190] Lastly, the loan based on future earnings does not allow Bloom to earn all of the money necessary for him to continue competing. Even if this limitation was raised, however, it would be of little assistance to Bloom based on the structure of elite skiing. He needs endorsement money to cover his skiing costs. This is, and will be, the case for as long as he competes in the sport. A loan against future earnings would not rectify Bloom's situation because those endorsements will be needed to pay for that current year's skiing. Perhaps no general proposals could alleviate his predicament, but in light of the perpetual problems the Amateurism Rules create, the NCAA should be vigilant to accommodate these student-athletes whose talents separate them from the "average" athlete.

As this Note demonstrates, the current system results in several injustices to student-athletes. Modifications to the current bylaws could be made that would protect the most talented student-athletes

Deregulation Proposals, *at* http://www12.ncaa.org/membership/governance/division_I/docs/board_of_dirs/2001_08_Board_of_Directors/07_Att_A_200108_BOD_Amateurism.htm (July 11, 2001) [hereinafter Pre-enrollment Proposals].

189 Post-enrollment Proposals, *supra* note 188.

190 *See* King, *supra* note 45 and accompanying text.

from being exploited by their own colleges or universities while preserving amateurism. Accommodations could be made that would be fairer to the athlete and would not result in unjust enrichment of the school.

A. Proposed Solutions

It has been suggested that the NCAA establish a trust fund system similar to that instituted by the United States Olympic Committee (USOC).[191] USOC regulations permit athletes to retain their amateur status, while still allowing the athlete to receive monetary compensation granted by the committee.[192] The program allows such funds to be collected into a trust fund, from which the athlete may withdraw to cover her sport-related expenses.[193] The remainder may be withdrawn once she has completed her amateur career.[194] Such a system would alleviate some of the amateurism rules' inherent unfairness. In Bloom's situation, the money could be deposited into a trust fund to support his ski endeavors. Meanwhile, such a system would ensure that other athletes could not simply profit. To ensure that student-athletes are not abusing this system, each student's trust account should be supervised by an NCAA-appointed (and student-athlete-approved) trustee. The trustee could withdraw the money for activities determined to be "appropriate." This determination could be made at the outset, when the trust account is first established, and would be the result of a negotiation between the NCAA and the individual student-athlete or the student's university. Whether a student-athlete's usage of his or her funds is appropriate should be a case-by-case determination, accounting for the specific circumstances unique to each individual student-athlete. The standards set forth in this negotiation should be put into writing and a dispute resolution process should also be agreed upon to ensure a fair process for the

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[191] *See* Belo, *supra* note 125, at 154.

[192] *See id.*; Christine Brennan, *No Small Change for USOC; Budget Burgeons, Attitude Shifts, but Pennies Can Pinch Athletes; No Small Change for Olympics, yet Pennies Can Pinch Athletes*, WASH. POST, May 12, 1996, at D01 (describing Operation Gold, "which pays athletes for medals won at the Olympics and world championships, a reward system instituted for the first time in 1980, and beefed up considerably in 1989").

[193] *See* Belo, *supra* note 125, at 154.

[194] *See id.*

determination of expenditures that may or may not have been foreseeable at the time the account was created.

Another solution for athletes whose secondary "professional" sport is regulated by the USOC and/or the relevant national governing body (NGB), would be to adopt an exception similar to that carved out by the NCAA in its Olympic Gold Grant program.[195] Specifically, the NCAA allows former Olympians to retain their collegiate amateur status while receiving funds administered by the USOC.[196] Under the Olympic Gold Grant program, "a student-athlete remains an 'amateur' completely eligible to play college sports after being directly paid $25,000 in cash in exchange for each Olympic gold-medal winning performance. The Operation Gold program also permits sizable cash payments to 'amateurs' for silver and bronze medal performances."[197] There is no logical justification for why an athlete may be permitted to receive money as a reward for their Olympic performance, yet not be able to receive the necessary funding to compete and train in Olympic and elite-caliber competition. A fair compromise may be to have the endorsement money flow through the USOC and/or the relevant NGB (e.g., U.S. Skiing), as an agent for the athlete. The money could then be paid by the USOC to cover training and equipment costs. In a sense, this would assign the USOC a trustee-like position, protecting the money on behalf of the athlete, while ensuring that the money is being allocated for "appropriate" expenditures.

The NCAA's aforementioned proposal to grant student-athletes a loan based upon their future earnings,[198] while not alleviating Bloom's financial burdens, might be effectively modified to provide a reasonable solution to Bloom's problem. First, the limit of the loan should be individualized to the particular student-athlete, and not be based upon an arbitrary number.[199] After an examination of the surrounding circumstances, including the student's needs and intended use of the money, a limit could be

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195 *See supra* note 192 and accompanying text.

196 *See* NCAA, *supra* note 27, art. 12.1.1.1.4.3.2, at 71.

197 Bloom's Complaint ¶ 32.

198 *See* Post-enrollment Proposal, *supra* note 188.

199 *See id.* The post-enrollment proposal amount is $20,000.

agreed upon by the NCAA, the pertinent member-institution, and the student-athlete. Again, it is imperative that this be a case-by-case determination rather than a per se rule. Problems arise in the current regime because of the amateurism rules' rigidity and their inflexibility towards those student-athletes that do not fit neatly into the box of standard, average collegiate athletes.

Second, a necessary modification to the current proposal would alter the loan's dependency on future earnings.[200] For reasons previously described, a loan on future earnings may not be a reasonable solution for athletes such as Bloom. A better solution would be to allow student-athletes to receive traditional loans that would cover the necessary costs and expenditures, i.e., those costs that the endorsements would have previously paid. The student-athlete could then repay these loans on an installment basis and be liable as a traditional creditor would be. The best case scenario would be for the NCAA to grant these loans upon a demonstration of need and possibly a demonstration that this money was available from other venues that the NCAA's rules have denied the student-athlete. This would enable the NCAA to regulate who is receiving the loans and how the monies are being used, and it would also allow the students to receive the loan at a more desirable interest rate than a college student would likely otherwise be able to obtain. The amount of money loaned should be based upon the student-athlete's need in proportion to the forfeited opportunities, and not a literal evaluation of future earnings.

CONCLUSION

The NCAA's rules prohibiting Jeremy Bloom from retaining the ski-related endorsements necessary to continue in elite competition should be invalidated under numerous legal theories. Even if the rules themselves could be saved by virtue of the fact that they support the NCAA's stated purpose of furthering amateurism, an exception should be made in Bloom's case. The opportunities presented to Bloom had nothing to do with his collegiate football career and arrangements could have been made

200 *See id.*

to accommodate the needs of this talented student-athlete. Examination of the facts of Bloom's case reveals that a prohibition here does nothing to further the NCAA's goals, but only serves to injure Bloom and student-athletes like him. For an association that exists by virtue of student-athletes, and is designed to protect these individuals, this outcome is unreasonable and wrong.