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Sports Law

USA – Law and Practice

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Contributed by Herrick, Feinstein LLP ***Authors:*** Daniel A. Etna, Irwin A. Kishner, Barry Werbin, Briana Rose Meginniss

Law and Practice

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Herrick, Feinstein LLP focuses on the myriad of corporate, real estate, tax, litigation, intellectual property, government relations and litigation concerns that arise in the sports industry. The group's work spans league and team formation and operation, arena and stadium-financing and development, naming rights, sponsorships and media rights' transactions, team acquisitions and investments, and a wide range of ancillary concerns. Herrick's sports lawyers also provide pragmatic counselling on the day-to-day operation of sports businesses – advising on player and personnel issues, credit facilities, concession agreements, advertising and vendor contracts, and off-season stadium and arena events. The group also represents team owners, executives and athletes in their outside investment activities, as well as in their tax and personal planning concerns.

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1. Leagues

1.1 Legal Structure

In the USA, there are five major sports leagues: Major League Baseball ("MLB"), the National Football League ("NFL"), the National Basketball Association ("NBA"), the National Hockey League ("NHL") and Major League Soccer ("MLS"). The leagues serve as the primary governance mechanisms and function as self-regulatory organisations. These leagues maintain careful control of the workings of their respective sports and exercise approval rights over certain key transactions among their teams. One type of transaction that nearly always requires league approval is a transfer of ownership or interest in a team. Depending on the size of the transaction in question and subject to some exceptions, each league will require at least the approval of the Commissioner and often the majority of the other member teams.

Except for MLS, the leagues are unincorporated non-profit associations with limits on membership and franchise rights granted to the members to operate professional teams in their designated cities. MLS is organised as a single Delaware limited liability company. In an attempt to avoid parity issues faced by prior US-based soccer leagues of the late 1960s to mid-1980s, MLS actively sought a structure that was different from the unincorporated associations of the NFL, MLB, NHL and NBA. Under the MLS operating agreement, MLS is the actual employer of all of the league's players, and MLS receives capital from its investors. These investors pay a fee, become members of the MLS, and then obtain the right to operate an MLS team subject to the terms and conditions of MLS. MLS maintains broad rights and control over the players, movement of players, and the teams themselves. Among other rights, MLS approves all player-related transactions, owns all intellectual property of the teams, and negotiates league-wide sponsorship contracts. Additionally, MLS assumes all costs related to player and league personnel salaries and benefits. Many of the interests of MLS and its investors are aligned, as the success of MLS relies on the operating results of each team in a significant way.

While this guide places particular emphasis on the five major leagues, it also includes discussion of other leagues with less visibility on the US professional sports landscape. Two examples of these other leagues are Major League Lacrosse ("MLL") and the National Women's Hockey League ("NWHL"). MLL is a semi-professional league, which, similar to MLS, is controlled by a single Delaware limited liability company, Major League Lacrosse, LLC. This limited liability company is owned by the four founders of MLL and the nine member teams. As a semi-professional league, MLL does not provide benefits such as health insurance, and its athletes often have other full-time careers. NWHL, formed in 2015, is currently comprised of four member teams. This league is funded through private investment, and team owners are subject to a salary cap.

Throughout sports in the USA, prior performance does not impact any individual team's standing within the league. Unlike some leagues in Europe, no team in the USA will be relegated to a minor or lower tier league due to a poor showing in any given season. Instead, all teams remain members of their respective league. Relegation in these European leagues has a significant negative impact on the affected teams. Beyond the stigma of dropping from the highest league tier, the teams face the loss and diminution of revenue streams (including broadcast rights fees and sponsorship agreements). Additionally, contracts for coaches and managers often provide for a reduction in compensation if a team is relegated. Further, to the extent that a relegated team is party to a credit agreement, the reduction in revenue streams resulting from relegation may require a renegotiation of the financial coverage ratios in the credit agreement.

With the exception of MLS, leagues in the USA do not play games outside of the league structure to any meaningful extent. However, MLS permits its member teams to play in the CONCACAF Champions League against other clubs from leagues in Mexico, Central America and the Caribbean.

1.2 Role of the Commissioner/League Office

Each of the five major leagues is helmed by a Commissioner. The Commissioner serves as the CEO of the league and is elected by the member teams, but the Commissioner is not controlled or supervised by the member teams. It is the role of the Commissioner to at once represent the interests of the member teams and serve as a disciplinarian of the teams and owners when necessary. Above all, however, the Commissioner is tasked with protecting the integrity of the league and the sport generally. For example, under the MLB Constitution, the Commissioner is afforded plenary authority to take action found to be in the "best interest" of baseball.

Outside of the five major leagues, the use of a commissioner to act as the ultimate governing authority is common. MLS was initially governed by an Executive Director. Since 2004, however, MLS has been governed by a Commissioner. MWHL has a unique governance structure due to its Commissioner also being the founder of the league.

The Commissioner also has the power to arbitrate disputes among teams, owners, players and other team or league officials and employees. The Commissioner's interpretive powers also impact team decisions and agreements as the Commissioner's determination of the meaning of a league provision, policy or procedure can directly affect the affairs of an individual team.

In addition to the Commissioner, there are other individuals and groups that help run each league. The Commissioner in each league will likely be surrounded by other supporting officers in different departments including business, legal, advanced media, and labour. Each league also has its own governing body. Under the NFL Constitution, the NFL has an Executive Committee which is made up of one representative from each member team. Similarly, the NBA Constitution provides for a Board of Governors comprised of one representative from each team. The NHL Constitution establishes an Executive Board composed of one representative from each team, with two alternates. The NHL Constitution also empowers the Commissioner to appoint eight to 12 members of the Board of Governors to a separate Executive Committee. Under the MLB Constitution, representatives from eight of the member teams (four from the National League and four from the American League) comprise the Executive Committee of the MLB, on which the Commissioner serves as Chairman. Similarly, the MLS operating agreement establishes a Board of Governors composed of representatives of its investors. This Board of Governors serves as the managers of the MLS limited liability company. The Bylaws of NWHL also establish a separate Board of Governors to provide a check on the Commissioner, establish the policies of the NWHL and uphold the league's constitution. These separate governing bodies are able to exercise only the rights and powers granted to them in their applicable league's constitution.

1.3 Judicial/Governmental Supervision

Each of the five major leagues has a process for arbitration that is laid out in each league's respective Collective Bargaining Agreement ("CBA"). For each league, there are at least two paths of arbitration, one for disputes surrounding salaries and another for other grievances against the league or team, generally in response to discipline. While all five leagues have such procedures, there are certain nuances and rule variations across the leagues. The discussions below are not an exhaustive review of each league's procedures, but rather highlight some of the points of each system.

MLB

Regarding salary dispute arbitration, the MLB CBA specifies certain eligibility requirements for players to submit to arbitration without the consent of their team. In order to be eligible for arbitration, a player must have played a certain amount of time in the MLB. At the start of the arbitration process, both the player and the team submit their respective proposals for salary. At the end of the hearing, the arbitration panel selects one of the salary proposals submitted and inserts it into the player's Uniform Player Contract ("UPC"). Neither an opinion nor a vote count of the arbitration panel is provided along with the chosen amount.

For other types of disputes, MLB's CBA provides that the grievance must first be brought to the team, and then to the Labor Relations Department of the MLB if not resolved. After a meeting of the parties, the Labor Relations Department will issue a decision which may then be appealed to arbitration. The MLB also reserves some dispute resolution for itself rather than resorting to formal arbitration. For disputes relating to fines and suspensions, the player may appeal to the Special Assistant to the Commissioner or the Commissioner who will then set the date for a hearing and issue a final decision. Finally, the MLB Constitution reserves the right in the Commissioner to serve as arbitrator at any hearing related to professional baseball that does not already have a method of dispute resolution provided for it in the Constitution, the CBA, or the collective bargaining agreement of the umpires.

NFL

Under the NFL CBA, if a party to salary negotiations believes that any of the other parties is not engaging in good faith negotiation, the question may be brought before an arbitrator. In this instance, the arbitrator is able to grant a cease-and-desist order if he or she finds that a party did not engage in good faith negotiations, but cannot compel any party to enter into any agreements or make any concessions. In addition, other salary-related disputes may be brought before an arbitrator. The System Arbitrator is the arbitrator granted the authority to arbitrate a wide number of disputes including salary disputes. Decisions rendered by the System Arbitrator are final unless a timely appeal is made to the NFL Appeals Panel for final resolution. Neither the System Arbitrator nor the NFL Appeals Panel may order relief or assess an award against an individual owner, officer or non-athlete employee. The authority of the arbitrator and NFL Appeals Panel are limited to enforcement against a team or the league itself.

The NFL has a separate arbitration procedure for other types of grievances not within the jurisdiction of the System Arbitrator. For these grievances, a hearing may be brought before an arbitrator whose decision shall be final. The NFL CBA provides for a grievance settlement committee to meet prior to the arbitration in an attempt to resolve any grievances that are pending arbitration. Any settlements reached by this panel are binding final decisions on the parties in question. The NFL CBA also has a specific injury grievance process whereby athletes may challenge a termination decision by claiming that they were, at the time of termination, suffering from an injury that occurred while serving under the contract. The player must submit to an examination by a neutral physician, the findings of which will be deemed conclusive by the arbitrator when making his or her decision. An athlete may appeal a discipline decision made by the Commissioner to a panel of hearing officers selected by the Commissioner after consultation with the NFL Players' Association.

NBA
The NBA CBA establishes an arbitration procedure for many disputes that may arise under the NBA CBA, including salary disputes. Like the NFL's process, disputes are submitted to an arbitrator for a hearing. The decision of the arbitrator is final, but may be timely appealed to the NBA Appeals Panel.

For disputes involving other issues including athlete discipline, the NBA CBA establishes a separate grievance process. Like the MLB CBA, attempts must be made to settle the grievance between the parties before appearing before the arbitrator. The arbitrator is required to issue an opinion, with his or her decision being final. In contrast, for minor disciplinary grievances, the Commissioner issues the final decision.

NHL
Similar to the salary arbitration of the MLB, the NHL CBA outlines certain requirements for when a player may be eligible for salary arbitration and when a team may take the player to arbitration. If salary arbitration is initiated, the sides will present their cases to the arbitrator who will issue a decision on the salary amount.

For other grievances, the parties must first try to settle the dispute and then may bring it before an arbitrator. Under the NHL CBA, an impartial arbitrator conducts the hearing and will issue a written decision, which shall be final. The NHL CBA also establishes procedures for determining if an athlete is able to play and perform under his contract. Under these procedures, the athlete submits to examination by an independent physician, and the physician's determination regarding the fitness of the athlete is conclusive and final. Additionally, the NHL CBA allows for an appeal to an arbitrator after determination by the NHL and subsequent decision by the Commissioner regarding discipline taken against any athlete.

MLS
Under the MLS CBA, there is only one grievance procedure for all disputes involving the interpretation or application of, or compliance with, any agreement involving an athlete, team or the MLS. The parties to the grievance have an opportunity to settle the matter after the grievance has been filed and the served party has answered. However, if the grievance is not resolved, the matter is referred to the MLS Grievance Committee comprised of one representative appointed by the MLS and another appointed by the MLS Players' Association.

A grievance may be brought before an arbitrator in one of two ways. First, if the MLS Grievance Committee fails to settle the dispute, the matter may be brought before an arbitrator. Second, if neither party to the grievance submits the dispute to the MLS Grievance Committee, the grieving party may bypass the MLS Grievance Committee and bring the matter directly to an arbitrator. After a hearing, the decision of the arbitrator shall be final. Similar to the procedures under the NHL CBA, the MLS CBA states that in a case involving injuries, any findings made by an independent physician shall be conclusive and final.

Other Leagues
Other leagues, including the NWHL, do not have as formal a system for the handling of grievances as the five major leagues. While NWHL does have a players' association, there is no collective bargaining agreement in place. The players' association serves mostly as a liaison between the front office and the athletes and to promote the interests of the athletes.

1.4 Legal Relations with Players/Unions/Players Associations

As previously discussed, in soccer, the MLS is the employer of all of the players and has significant control over all transactions regarding the players. In the other major leagues, UPCs have been created and implemented. The UPCs contain the basic rights of the team to the athlete's services:

- exclusivity, whereby the athlete covenants to play only for this particular team;
- a prohibition on other activity, pursuant to which, in order to minimise the risk of injury, the athlete's rights to participate in other athletic pursuits are limited to those sponsored by the team; and
- the unique services clause, which acknowledges that the athlete is providing unique services to the team and cannot be replaced or adequately compensated with monetary damages.

These contracts are established by the league itself, but the teams and players may make modifications thereto during negotiations. During these negotiations, agents play their biggest role. Although as discussed below, salary caps and other salary regulations may lessen the bargaining power of the agents. Contract negotiations are further limited by the CBAs of each league.

CBAs address a wide array of labour issues confronted by the leagues and their member teams. Each league's players' association bargains with the league on behalf of all of the athletes to negotiate the terms of employment including, but not limited to, the form of the applicable UPC, scheduling, discipline and minimum salaries. These terms are then finalised in the league's CBA. Teams may also interact with unions representing other employees of the team, and other CBAs reflecting these employment terms may also be negotiated.

1.5 Individual Sports

Outside of the five major leagues, each individual participant sport is differently organised and addresses specific issues associated therewith. By way of example, presented below are discussions of figure skating, tennis and golf.

Figure Skating

In the USA, figure skating is governed by the non-profit organisation U.S. Figure Skating ("USFS"), which is a member of both the International Skating Union and The U.S. Olympic Committee ("USOC"). USFS is composed of member clubs which also include collegiate and school-affiliated clubs. These clubs appoint delegates to the Governing Council which meets yearly to review actions taken by the Board of Directors, which is composed of 16 members including one member from each geographic section of USFS, two coaches and four athletes. Revenue is generated from memberships within USFS, the U.S. Figure Skating Memorial Fund, the U.S. Figure Skating Foundation, publications and USOC programmes. USFS negotiates broadcast rights agreement for coverage of domestic competition and international competition through its wholly owned subsidiary network, icenetwork. The rules for testing and progressing through the levels of figure skating are specified by USFS. Additionally, USFS sanctions a slate of events each year including performances, exhibitions and competitions. USFS competitions begin at the regional level, followed by sectional competitions eventually leading to the U.S. Championships, the premier event conducted each year by USFS. Like many other sports, drug testing in figure skating is governed by the United States Anti-Doping Agency ("USADA") rather than USFS itself.

Tennis

The United States Tennis Association ("USTA") is the governing body of tennis in the USA. The USTA is a non-profit organisation. The USTA is the source of standardised rules and regulations in the sport and organises competition from simple weekend tournaments for its 17 geographical sections to the US Open. To rank the individual competitors, USTA helped create the National Tennis Rating Program which rates players into their respective skill levels. These ratings are used to provide appropriate competitive matches in tournaments. The voting members of the USTA are the sectional associations, which govern each of the geographical sections, and direct member clubs and organisations. These voting members elect the USTA Board of Directors which is composed of five officers, the immediate past-president, and nine at-large members. There are further requirements dictating the makeup of the Board of Directors including the inclusion of elite athletes as members. Additionally, the Board of Directors is tasked with nominating the US representative to the International Tennis Federation. Similar to the aforementioned USFS, the USTA complies with all protocols promulgated by the USADA to combat drug and other performance-enhancing drug ("PED") use in tennis.

Golf

The United States Golf Association (the "USGA") is the national association governing golf in the USA, territories of the USA, and Mexico. The USGA works with The R&A, a relatively recent group of companies tracing its history back to The Royal and Ancient Golf Club of St. Andrews, Scotland, to establish and interpret the rules of the sport. The two bodies revise the rules every four years, and the set of rules effective in January 2012 was the first single common set of rules of golf applied throughout the world. Like the USTA, the USGA provides a national handicap system for all of its member golfers helping to facilitate rankings and competition. Currently, the USGA organises 14 separate national championships, of which ten are exclusively for amateur players, for its membership clubs. The USGA is managed by an Executive Committee made up of 15 members. The Executive Committee is the executive policy-making group of the USGA. Additionally, the USGA has a Senior Leadership Team which manages the daily operations of the USGA. Unlike the USFS and USTA, USGA establishes its own drug-testing programme and policies. The USGA will indeed honour, in its discretion, the findings of other golf organisations' drug testing programmes, however, it has created its own Anti-Doping Manual which is followed at all USGA tournaments.

2. Contract Law Principles

2.1 Drafting

Countless types of agreements are involved in the efficient and successful operation of any sports league. There are certain transactions and agreements that, although entered into by the team, owners, and/or a third party, will require approval from the league. Ultimately, if a team is contemplating any agreement that could be deemed significant, it will likely require league approval or extra care to ensure that it conforms to all league regulations.

The most common type of transaction, though not the only one, which requires league approval is any type of transfer of ownership interest in a member team. The exact requirements differ among the leagues, but usually approval by the Commissioner is required and often approval from the other member teams is necessary as well.

Loans and other types of credit agreements which a member team may enter into also generally require league approval as teams are often not allowed to incur indebtedness without league consent. There may also be league-specific language that must be included in these agreements, usually to preserve the rights of the league with respect to the team and

any collateral that may be pledged in connection with the facility.

Agreements relating to a team's stadium or arena are necessary elements of running a team. Depending on the league, there may be approval requirements for agreements that a team may enter into regarding stadium or arena construction or leasing. Stadium or arena finance agreements, like other credit agreements may also require league consent. An important related agreement that many teams may confront are non-relocation agreements. If a stadium or arena financing involves public funds, the applicable government authority will generally require the team to enter into a non-relocation agreement. The intent of such an agreement is to ensure that the team remains within the community which has just invested in the stadium or arena project.

Other agreements are left to the purview of the teams themselves. For the most part, these are revenue-producing agreements and agreements relating more to the day-to-day functioning of the team. One common type of revenue-producing agreement that all teams enter into is a concession services agreement. These agreements entered into by the team and concessionaire company govern the concessionaire's right to operate within the team's stadium or arena. While the concessionaire has the general right to conduct the operations, the team will retain certain approval rights over the products sold and the use of the team's logo. Related to concession services agreements are sponsorship agreements. The teams may enter into countless sponsorship agreements having various terms with other companies ranging from office supplies to ice cream. Accordingly, it is necessary that the concession services agreements contemplate and provide for granted sponsorship rights relating to food and drink. In addition to simple sponsorship agreements, teams often enter into agreements with premier sponsors for naming rights. These agreements can range from the right to name the stadium or arena to the right to be the presenting sponsor for a specific high-profile event.

Except for the NFL, broadcasting arrangements are another area largely in the control of each team. For the most part, each team is free to negotiate its own broadcasting agreements within their defined home territories. The leagues will reserve the exclusive rights to certain nationally-broadcast games, special events, and championship games. In contrast, NFL teams assign all of their broadcasting rights to the NFL for the purpose of enabling the NFL to negotiate agreements for the national broadcast of games.

As for agreements relating to the game play itself, as previously mentioned, the CBAs of the leagues outline much of the terms including scheduling and the terms relating to the individual athletes. The rules of the games and the structure of the sport are generally embodied in the applicable leagues rules and constitutions.

2.2 Contractual Dispute Resolution

Contract Enforcement Options

Generally, arbitration is employed to resolve disputes relating to contracts with athletes. Arbitration is most often used to resolve disputes related to salaries, suspensions, other disciplinary action, interpretation of contracts and injury compensation. However, even if the dispute could be resolved through arbitration, arbitration may be avoided under the following circumstances:

- if the athlete has refused to perform exclusively for the team, the exclusivity clause of the contract may be enforced by obtaining an injunction from a court;
- if the dispute is beyond the scope of the arbitration clause in the applicable UPC or CBA, then other dispute resolutions may be employed; or
- if either party has fraudulently induced the other party to enter into the contract.

Even in situations where arbitration is appropriate, athletes may still bring suit seeking to challenge the role of the league in the arbitration process. For purposes of resolving non-athlete-related disputes, both arbitration and judicial review may be employed. Often times, the terms of the agreement in question will contain procedures for dispute resolution.

Basis for Arbitration

CBAs and UPCs serve as the primary source for arbitration rights in athlete-related disputes. However, athlete-related disputes are not the only ones that may be arbitrated. Other disputes may be arbitrated if the terms of the applicable agreement properly call for arbitration. While there is no governmental requirement for arbitration of certain types of disputes, courts will generally uphold arbitration clauses in contracts if they are appropriate and validly drafted.

Types of Disputes Subject to Arbitration

Labour and athlete-related issues make up the largest portion of disputes submitted to and decided by arbitration. Other revenue-producing agreements may also include arbitration clauses calling for all related disputes to be brought before an arbitrator.

Another type of agreement where arbitration may be actively sought is a contract with a government authority or a city. There may be a desire on both sides to try to avoid perceived bias for the other side that may be encountered in a traditional court trial involving a judge and jury who are citizens of the city, and potentially fans of the team, that are both party to the dispute.

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3. Governmental Regulation - Labour Law

3.1 Regulating Individuals in Sporting Events

With respect to the specific terms and conditions of employment, there is very little direct regulation on the part of governmental or administrative entities. The terms are negotiated broadly in each league's CBA, and then more specifically on the individual level in direct negotiations. Nonetheless, all league and team action must still be consistent with all applicable laws, statutes and regulations. For example, in employment agreements, whether for an athlete or non-athlete, the tax provisions contained therein need to be consistent with all necessary withholding and other tax-related obligations.

Although not related to labour, one area where government regulations have more impact is with respect to stadium or arena agreements. Whether construction agreements or leases, these agreements must comply with all environmental zoning, building, employment and permit statutory requirements.

3.2 Remedies of a Legal Violation

The remedies available in the event of a violation of any legal requirement governing the employment of an athlete, or a contract entered into by a team or a league, depends entirely upon the type and severity of the violation. Remedies are generally outlined in the applicable statute, and can range from fines to injunctive relief – and even to imprisonment in the most severe instances.

4. Governmental Regulation - Antitrust Law

4.1 Role of Competition/Antitrust Law in the Organisation of Professional Sports

Antitrust law and sports have historically had a unique relationship since the leagues are structured in such a way that their member teams are at once co-operative and competitive. MLB has held an exemption from antitrust law since 1922 when the Supreme Court of the United States decided that baseball did not involve interstate commerce, and, thus, antitrust laws were inapplicable. See Federal Baseball Club of Baltimore v National League of Professional Baseball Clubs, 259 U.S. 200 (1922). This exemption, though often criticised and challenged, has been repeatedly upheld by the courts. Eventually in 1998, Congress passed the Curt Flood Act of 1998 which allowed baseball players to bring antitrust challenges against their employer teams, but it was limited only to a player's labour-related actions, and did not otherwise alter the general antitrust exemption of baseball. See Curt Flood Act of 1998, Pub. L. No. 105-297, 112 Stat. 2824.

Other leagues have not achieved the same level of antitrust exemption as MLB. In 1955, the Supreme Court held that boxing was subject to antitrust challenges because the promotion of the sport across state lines constituted interstate commerce. See United States v International Boxing Club of N.Y., 348 U.S. 236 (1955). Similarly, challenges were successfully brought against certain practices of the NFL forcing changes in their drafting process and a renegotiated CBA. See Kapp v National Football League, 390 F. Supp. 73 (N.D. Cal 1974); Mackey v National Football League, 543 F.2d 606 (8th 1976). The NBA faced an antitrust challenge against a provision in the league's bylaws that no athlete would be eligible to play in the NBA until four years after his high school class had graduated. It was argued that this was an unfair restriction, and the court agreed. See Denver Rockets v All-Pro Management, Inc., 325 F. Supp. 1049 (C.D. Cal. 1971).

The usual defence of the leagues when facing an antitrust challenge is a "single-entity" defence. The leagues argue that they are uniquely situated in that they are structured as one entity and therefore unable to contract in any way to restrain trade. However, though frequently offered, the defence often does not work. Most recently, the NFL argued that National Football League Properties ("NFLP") was a single entity when a sportswear manufacturer brought an antitrust challenge against NFLP after it granted an exclusive licence to Reebok to produce NFL team-branded items. The Supreme Court ruled that even though NFLP was itself a single entity, the teams themselves had to be considered, and they had many distinct interests – including the licensing of their intellectual property. See American Needle, Inc. v National Football League 560 U.S. 183 (2010).

MLS is the only league that has successfully argued that it is a single entity. As mentioned above, MLS is a Delaware limited liability company which serves as the employer of all of the athletes and maintains significant control over the workings of the teams, while the right to operate such a team is licensed to members who invest into MLS. MLS can more appropriately label itself a single entity than the other leagues because MLS distributes profits to its members in the same way any other limited liability company would. Therefore, the members of MLS have extremely unified interests, relying on the success of each team for the overall success of MLS and thereby the members. Further, because MLS is the employer of all the athletes and controls player movement, there is no competition between the members in the market for players. When players brought a challenge against MLS on antitrust grounds, the court ruled in favour of MLS, holding that it is a single entity. See Fraser v Major League Soccer, 97 F. Supp. 2d 130 (D. Mass. 2000).

5. Direct Governmental Regulation of Sports

5.1 Structure of Sporting Competitions

Teams and leagues frequently interact with governmental entities. On a local level, teams benefit from government assistance and subsidies such as funds for a new stadium or arena or various tax benefits. Nonetheless, despite the rather strong relationship between sports and government, there is very little direct government regulation on sports and competitions in the USA. One example is the Professional Boxing Safety Act which became law in 1996. The law sets minimum health and safety standards for the sport of boxing. See15 U.S.C.A. § 6301 et. seq. Another example relates to broadcasting rights of the teams: in 1961, Congress passed the Sports Broadcasting Act which allowed teams to pool their broadcast rights under their leagues and negotiate broadcast contracts as an entity. See15 U.S.C.A. §1291 et. seq. However, Congress also took this opportunity to protect college football by prohibiting the NFL from broadcasting games on Friday evenings and Saturdays during the college football season. This protection was an active step on the part of the government not to only provide a benefit to the leagues, but also to ensure that college sports were not harmed.

Even though there is little direct regulation, government actions can still have an impact on the leagues. Congress has routinely conducted investigations into various sports-related issues such as drug and PED use, and the presence of organised crime. In 2005, after investigating the use of drugs and PEDs in baseball, Congress was unable to pass any legislation concerning the issue. Nonetheless, the investigation was a catalyst for non-governmental changes in baseball and other sports' drug testing and disciplinary policies. Similarly, recent investigations into football players' brain injuries have resulted in both the NFL and the National Collegiate Athletic Association ("NCAA") instituting new rules to try to protect players. While direct regulation may not always be the outcome, interest and investigation on the part of the government may be enough to push the leagues to self-regulate in the desired way.

6. Intellectual Property

6.1 Basic Legal Structure

The basic legal structure governing the licensing or use of intellectual property in sports is no different from that governing the licensing or use of intellectual property generally. The primary intellectual property protections most important in sports are trade marks, copyrights and rights of publicity.

Under US law, copyright is exclusively federal law governed by the United States Copyright Act of 1976, 17 U.S.C. §101 et seq. Copyright only applies to original works of authorship that are "fixed" in some tangible form. Thus, a sports game in and of itself is like a performance that is not fixed, but it is common practice for teams and the leagues to simultaneously record games for broadcast, archival or other reference use, including for copyright registration purposes.

Trade-mark law is governed by both US federal law under the Lanham Act, and individual state laws respecting trade marks and unfair competition. Trade-mark rights protect names, slogans, designs and logos that are used in commerce and serve a source-identifying function. Under US law, trade-mark rights arise from use of a mark in commerce. Trade-mark rights are particularly important for protecting team names and logos, and can be enforced under both federal and state laws with respect to both registered and unregistered marks.

Rights of publicity protect an individual's name, likeness and image or persona. Publicity rights are exclusively governed by state law and vary widely from state-to-state. Some states address this by statutory law and others under uncodified common law. Some states also recognise postmortem publicity rights that continue for some period of years after an individual's death. In New York, for example, publicity rights only apply during a person's lifetime and are limited to use for purposes of advertising and trade, but they also extend to a person's voice. In contrast, California has a broad statute that also covers a person's signature, lasts for 70 years after death and applies to broader uses than just advertising and trade.

Some states do not require state residency as a condition of asserting rights, an important fact when dealing with travelling players and events in multiple cities.

6.2 Rights of Athletes

The primary rights that athletes have are governed by state rights of publicity laws. This is often controlled by the respective players' unions. In addition, it is common practice for teams to obtain certain publicity rights from players under contract to utilise their name, image and likeness in connection with marketing of the team and certain ancillary uses. However, players typically retain all such rights with respect to any separate merchandising and uses that are not directly related to the team and applicable league.

The extent of player publicity rights has been somewhat controversial in the USA, particularly in the context of sports video games. There have been several court decisions that are inconsistent as to whether or not a league may utilise player names and likenesses in games that replicate the actual sports and teams.

6.3 League, Club and Sporting Event Rights

In the USA, the five major leagues administer trade-mark enforcement, registration and licensing of all team trade marks, but individual teams retain ownership of their own trade marks under agreements with their applicable league.

On the licensing side, such agreements also allocate licensing revenues between the teams and the leagues.

Some teams have ventures outside their core sport. These ventures are typically not controlled by the leagues, but by the teams themselves – however, the leagues may still require approval if a proposed ancillary use will use a mark that also contains one of the team's core trade marks.

6.4 Laws Restricting the Sale of Broadcast Rights to Sporting Events

As discussed above, broadcast rights are generally handled by the teams themselves, with the leagues retaining some exclusive rights to certain games and events. These agreements do need to conform to any restrictions and regulations set forth in each league's CBA and/or constitution which aim to prevent overlapping broadcasts in any one area.

The question of which party, the team/league or the broadcasting organisation, actually owns the property right to the broadcast is one that courts have repeatedly faced. Consistently, the courts have held that the rights belong to the team or the league, depending on the party to the agreement. As a result, the broadcasting organisations cannot rebroadcast the same game after the original broadcast without obtaining permission from the team or the league. On a related note, highlights of a game are similarly protected. Networks that have shows that air highlights of a game must obtain separate permission to show these highlights, even if the same network aired the original game, and most likely pay for this additional use of the broadcast material of the team or the league.

6.5 Legal Issues with "Ambush" Marketing

While "ambush" marketing is not illegal, organisations such as the USOC take a hard line against it because it undercuts legitimate sponsors and the value of their expensive and typically exclusive sponsorships within their specific markets.

7. Agent Issues

7.1 Basic Role and Importance of Agents

Within the five major leagues, the role of agents is to represent their clients, the athletes, in the negotiation of their contracts with the team, and then again in the negotiation of outside sponsorships and endorsements.

However, despite the increased debate in recent years, there still remains some form of a salary cap or tax in each of the five major leagues. With hard ceilings and floors dictating the amount of money that can be spent on any group of athletes in any given year, the importance of an agent has begun to erode. Furthermore, newly drafted athletes are often guaranteed certain starting salaries based on the order of their selection in the draft. As there is no room to negotiate for those starting salaries, agents may likely play no role at all at the start of an athlete's career and only enter the scene later when the athlete becomes a free agent.

In the smaller leagues, the role of an agent is rather limited. The public recognition for leagues outside the five major leagues is lower, and the resulting size and financial health of the leagues results in smaller salaries for the athletes. Most athletes in smaller leagues have other full-time jobs, and agents have limited bargaining power. An exception for the foregoing exists for a marquee player who can be expected to increase the popularity and visibility of the league.

7.2 Regulation of Agents

First and foremost, agents must be registered with the players' associations of the leagues. Agents must apply for certification by providing information statements at the outset of registration and then yearly statements regarding fees and expenses. By registering with the appropriate players' association, an agent opens himself or herself up to the possibility of audits by the players' association.

The players' associations also require all agents to be in compliance with federal and state laws governing agents. These laws are the Sports Agent Responsibility and Trust Act ("SPARTA") on the federal level, and the Uniform Athlete Agent Act ("UAAA") implemented at the state level. SPARTA imposes standards on an agent's conduct when interacting with student athletes, particularly limiting what can be promised to the athlete and requiring disclosures prior to entering into any agency agreement. See 15 U.S.C.A. §7801 et seq. The UAAA takes a different form in each state which has adopted it, but the statute generally applies to the relationship with student athletes and covers a wide range of topics including registration requirements on the part of the agent before he or she may engage in any representation and ongoing reporting to the applicable state agencies. While most states' iteration of the UAAA applies just to student athletes, California in particular has enacted a stricter form of the statute which applies to professional athletes, as well as student athletes. Therefore, agents must be cognisant of the requirements of these statutes in each state where they represent athletes, not only to be in compliance with the laws themselves, but also to maintain their proper certification with their respective players associations.

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8. Tort Law

8.1 Dealing with Injuries Sustained by Sporting Competitors

In the five major leagues, it is not uncommon for the member teams to insure the contracts of each of their athletes. The amount and scope of the insurance varies depending on how much of the individual contract is guaranteed. MLB and NHL guarantee the contracts of their players completely, and the majority of NBA contracts are also guaranteed. It is in the interest of teams in these leagues to insure their contracts in the event of an injury to their players. NFL is an outlier of the five major leagues as it does not fully guarantee the contracts of its athletes. Although there is no rule barring a full guarantee of a contract, the league's salary floors and caps, as well as the size of football teams and a provision of the NFL CBA requiring immediate escrow of the full contract amount, weigh against any push for full guarantees.

Injured athletes may also be able to file workers' compensation claims. For example, the MLB CBA contemplates an injured athlete receiving workers' compensation payments. However, the ability to obtain this compensation is, of course, limited by state law and varies from state to state. Some states have tried to limit the amount of compensation that can be received by athletes. Notably, California recently passed a bill stating that only athletes employed by a California team may collect workers' compensation benefits in California. This bill eliminates any athlete injured while playing an away game in the state from filing a claim and receiving any benefits. See Cal. Labor Code § 3600.5.

8.2 Dealing with Injuries Sustained by Fans Attending Athletic Competitions

Injuries sustained by fans attending athletic events are generally covered by the insurance policies held by the teams. These policies and their coverage vary from team to team as each weighs its respective risk of different types of events and potential injuries.

There is also an assumption of risk of all fans attending an event. A majority of courts throughout the USA routinely uphold the "Baseball Rule", which, despite its name, applies to all sporting events. The rule limits the duty of the teams to provide protective netting or other screening to only areas in the stadium or arena where unavoidable risk of injury is greatest – for example, behind home plate in baseball and behind the goal in hockey. Language on tickets and announcements before the games remind fans of the potential danger that comes with attending a sporting event. Of course, teams may extend the protections as the risks of injury evolve with changes to the sport itself but, in the end, there is still a risk of injury that is assumed by all fans who attend a game.

9. Gender/Racial Discrimination

9.1 Legal Protections Addressing Equality of Opportunity

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programmes receiving federal financial assistance. Title IX states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance". See 20 U.S.C. 1681 et seq. Athletics are considered an integral part of an institution's education programme and are therefore covered under Title IX. Enforced by the Department of Education, Office for Civil Rights ("OCR"), Title IX assures that athletic programmes are operated in a manner that is free from discrimination on the basis of sex. Before Title IX, most colleges and universities emphasised sports for male students. Its enactment helped focus attention on the provision of equal athletic opportunity, which has resulted in the increased involvement of women in sports at all levels.

The regulation implementing Title IX contains provisions relating to athletic opportunities. See34 C.F.R. Part 106. Specifically, a policy interpretation clarified that athletic interests and abilities of male and female students must be equally and effectively accommodated. Equal opportunity is assessed by examining a school's:

- determination of the athletic interests and abilities of its students;
- selection of the sports that are offered; and
- levels of competition, including opportunity for team competition.

Additionally, to the extent that a college or university provides athletic scholarships, it is required to provide reasonable opportunities for such awards to members of each sex in proportion to the participation rate of each sex in intercollegiate athletics.

More recently, the development of policies regarding the inclusion of transgender athletes in school sports activities is one of the prominent civil rights challenges facing educational institutions. In April 2014, the OCR issued an updated policy guidance clarifying that the civil rights guarantees in Title IX extend to all students, regardless of their sexual orientation or gender identity. The inclusion of transgender students in legal standards is evolving nationwide. Currently, 33 state associations have adopted formal policies setting forth anti-discrimination directives regarding transgender student athletes and guidelines governing their participation in school athletics programmes.

Students with disabilities are also legally protected and afforded equal athletic opportunities. The Americans with Disabilities Act ("ADA"), the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973 all apply to scholastic and collegiate athletic programmes. In January of 2013, the OCR issued a letter clarifying the obligations of schools with regard to providing sports participation opportunities for students with disabilities. The letter makes it clear that students with disabilities should be granted equal opportunity to participate alongside their peers in school athletics programmes, club and intermural sports, and physical education courses. If reasonable accommodations are not available to students with disabilities to participate in mainstream programmes, the directive indicates that, pursuant to existing disabilities laws, schools are required to provide athletic opportunities through adapted programmes. Schools can achieve this through programmes specifically developed for students with disabilities or allied programmes that combine students with and without disabilities together in a physical activity.

9.2 Issues Regarding Gender Testing and Gender Discrimination

Gender testing, while controversial, has been utilised in the athletic world for many years. Both the International Association of Athletics Federations ("IAAF") and the International Olympic Council ("IOC") implemented formal policies of female gender testing in the late 1940s. These policies, designed to guard against the possibility of men entering women-only events, initially required that female competitors provide "medical certificates of femininity" to be eligible to compete. However, in the 1960s the IAAF developed a more standardised criteria that required, inter alia, female athletes to parade nude before a panel of physicians and submit to a series of gynaecological examinations.

Due to protests and criticism surrounding the IAAF testing standards, the IOC implemented an alternative, less invasive method where all female athletes were required to undergo the "Barr body test". This test collected a "buccal smear" from inside the athlete's cheek and then examined the cells for the presence of a chromatin mass (known as the "Barr body") which is found only in women. If the test was positive, the athletes were issued a "certificate of femininity". However, if the test results were negative, a complete chromosomal examination was conducted on a blood sample of the female athlete, and was supplemented by a thorough gynaecological examination.

The IOC gradually phased out the Barr body test and, beginning with the 1992 Winter Olympics, adopted a new protocol which consisted of the "polymerase chain reaction" ("PCR") test that searched for the SRY (sex-determining region Y) gene. Since the SRY gene is found only on the Y chromosome, its existence should indicate that the individual was male. However, further examination revealed that at least one of the DNA sequences used to prime the PCR test was in fact not exclusive to males; this likely contributed to false positive test results, including eight female athletes in the 1996 Summer Olympic Games in Atlanta who were wrongly identified as male.

Current IOC and IAAF standards focus on "female hyperandrogenism", a condition that involves the excessive production of androgens like testosterone – the reasoning being that women with naturally high levels of testosterone are considered to have an advantage over women with lower levels of testosterone. These regulations provide that any female athlete with levels of testosterone that reach a male's normal level would be barred from competing with other female athletes, if it is found that the athlete's body is responsive to androgens. The IAAF and IOC have similar exceptions to the above rule in the event the athlete is able to establish to the satisfaction of the expert medical panel that she has an androgen resistance indicating that she derives no competitive advantage from androgen levels that fall within the male range.

Under the IOC and IAAF regulations, gender testing is also applicable to transgender athletes. However, they only seek to address cases where an athlete has undergone male-to-female sex reassignment, and not female-to-male reassignment. The testing procedure for an athlete who has undergone female-to-male sex reassignment to participate in a male athletic event is far simpler; such athletes are merely required to produce a sex-recognition certificate or any other form of identification confirming that he is legally recognised as a male.

Current standards of gender determination seek to improve upon older methods to ensure fairness and not to eliminate athletes with an indeterminate gender. However, there is much debate as to whether the new regulations are simply a tool for indiscriminate use against people who are not gender-conforming.

9.3 Basic Legal Framework Protecting Employees or Independent Contractors

Generally, whether an athlete is considered to be an employee or an independent contractor depends upon the sport involved and the terms of the contract under which they perform. In team sports, such as football and basketball, where the player competes under the direction and control of a coach or manager, they are an employee. On the other hand, in individual sports competition, such as golf or tennis, where the athlete is normally free to determine their own style and manner of performing, they are considered an independent contractor.

Employees, unlike independent contractors, are protected by discrimination and harassment laws, including an employer's duty to accommodate any disabilities. Though their employment is often governed by a collective bargaining agreement, as employees, professional athletes are also afforded the protections of the federal and state laws prohibiting workplace discrimination, including, inter alia:

- Title VII of the Civil Rights Act of 1964, which makes it illegal to discriminate against someone on the basis of race, colour, religion, national origin, or sex;
- Title I of the ADA, which makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments; and
- the Equal Pay Act, which prohibits sex-based pay discrimination between men and women who perform under similar working conditions.

Notably, in an area of much debate, courts have held that student athletes are not currently considered employees, and therefore are not afforded the protections under federal labour laws.

10. Drug Testing and Conduct Regulations

10.1 World Anti-Doping Agency (WADA)

In the USA, the national anti-doping organisation is the USADA. The USADA is a non-profit, non-governmental agency. Congress has recognised it as "the official anti-doping agency for Olympic, Pan-American and Paralympic sport in the United States". See Pub. L. 107-67 §644. USADA is a signatory to the World Anti-Doping Code, and the organisation carries out the USA's commitment to the UNESCO International Convention against Doping in Sport.

The promulgations of the World Anti-Doping Agency and their World Anti-Doping Code certainly has an impact on drug testing policies in sports in the USA, but the USADA does not control the testing procedures and policies of each and every sports league. As discussed above, some, like figure-skating and tennis, leave their testing entirely in the hands of the USADA, while others, like golf and each of the five major leagues, implement their own programmes.

10.2 PED Rules

Each of the five major leagues has established its own anti-drug policy and procedure through collective bargaining with their respective players' associations. In 2006, MLB adopted the Joint Drug Prevention and Treatment Program, which was an agreement between the MLB Players' Association and the league. Though it is a separate agreement, it is referenced throughout the MLB CBA. The NFL and its players' association agreed to new drug policies in 2014. These policies are referenced in the NFL CBA as an official NFL policy and as part of the general substance abuse deterrence duties of the teams and the league. Alternatively, each of the NHL, NBA and MLS explicitly state their entire anti-doping policies in their respective CBAs.

10.3 Legal Issues Regarding Athlete Suspensions or Discipline

Under the CBAs, athletes can be suspended not only for a failed drug test or a violation of a rule of the game, but also for violating personal conduct policies of the league or for acts that may be detrimental to or not in the best interests of their respective sport. Often these suspensions are challenged, sometimes quietly and other times aggressively, seeking legal intervention to overturn the decision. As examples, two athletes who appealed their personal conduct suspensions and challenged the decisions of their leagues are discussed below.

In February 2014, Ray Rice, then a running back for the Baltimore Ravens, was arrested on assault charges after getting into an altercation with his then fiancée. Rice was eventually indicted and in May entered a pretrial intervention programme. It was not until June 2014 that the NFL even conducted a disciplinary hearing for Rice. In July, the NFL issued Rice a two-game suspension. However, as more videos were released over the next few months showing the seriousness of the incident, both Rice and the NFL faced public criticism. The NFL announced a new stronger domestic violence policy that would be part of the NFL's personal conduct policy. The NFL also decided that, based on the new footage, Rice would be suspended indefinitely.

While the NFL claimed to have not seen the more serious footage until after the original suspension decision, evidence shows that the NFL did in fact have the footage before the hearing. Rice then decided to appeal his indefinite suspension, claiming that he had not misled the NFL in his testimony during his hearing. While such an appeal would normally be heard by the Commissioner, due to the Commissioner's involvement in the original proceeding and the issues at the heart of the appeal, a neutral arbitrator was used. The arbitrator overturned the suspension determining that Rice had not lied at his disciplinary hearing and that such a suspension was excessive and without cause. While Rice faced his own legal battles, he was able to keep his appeal out of the courtroom. The entire incident did, however, force the NFL, and all other sports leagues, to re-evaluate their stance on domestic violence and create stronger penalties for those inflicting such violence.

In July 2016, the NFL announced that it would review domestic abuse allegations levelled against Ezekiel Elliot, a running back for the Dallas Cowboys. A year later in August 2017, after interviewing Elliot and reviewing all of his

accuser's allegations, the NFL determined that Elliot had indeed been physical with his accuser and suspended Elliot for six games, the minimum for a first-time offender under their 2014 domestic violence policy. Elliot quickly filed for an appeal which was held before an arbitrator appointed by the Commissioner. After the hearing concluded, but before the arbitrator's decision was released, Elliot filed a lawsuit in the U.S. District Court of Eastern Texas to vacate the result from the appeal claiming that the league had hidden critical information in the original disciplinary hearing. The NFL Players' Association also filed a restraining order in an attempt to block the suspension. The appeal was denied, but the NFL Players Association's request for an injunction against the suspension was granted. The courts had stepped in and determined that Elliot's hearing was unfair. Quickly thereafter, the NFL appealed the injunction and requested an emergency stay. The District Court denied the stay, but the NFL brought the request to the 5th Circuit Court of Appeals, and oral arguments for the stay were scheduled for October 2017.

On 12 October 2017, the 5th Circuit ruled in favour of the NFL holding that the District Court did not have proper jurisdiction to issue the original injunction because a decision had not yet been issued from Elliot's appeal to the arbitrator. Elliot's suspension could then begin. The NFL Players Association responded in two ways – first, by requesting a rehearing before the 5th Circuit and, second, by filing for a temporary restraining order in New York. The temporary restraining order was granted in the U.S. District Court Southern District of New York, and Elliot's suspension was once again put on hold. The hearing for the preliminary injunction was then held in New York on 30 October 2017, which was ultimately denied, thereby reinstating Elliot's suspension. Within one day, the NFL Players' Association filed an emergency motion with the 2nd Circuit Court of Appeals which was granted and blocked the suspension once again for the duration of the appeals process. The appeal of the preliminary injunction decision was brought before the 2nd Circuit in November 2017, which was denied. On 9 November 2017, the 2nd Circuit upheld the decision of the District Court and the suspension immediately began again. Elliot had to serve his suspension while the NFL Players Association pursued other appeal options. Ultimately, on 15 November 2017, Elliot dropped the appeal process and decided to serve his full six-game suspension. What began as a disciplinary decision for an athlete accused of domestic violence, turned into a nearly six-month-long examination of the nuances of jurisdiction and the interplay of league decision-making and the role of the courts.

Appeals to courts are possible for an athlete if a disciplinary decision seems unfair, but it is a careful path that must be taken; courts may often find that, barring clear unfairness, the decisions of the leagues should be upheld as all of the processes and procedures for discipline and appeals have been bargained for and included in the CBAs.

11. College/Amateur Sports

11.1 Regulations and Legal Structures Conducted by Academic Institutions

Amateur Athletics

In 1888, the Amateur Athletic Union ("AAU") was founded to set standards in amateur sports. The AAU represented the USA in international sports associations and worked to prepare athletes for the Olympic Games. By the early 1970s, the AAU was facing criticism for its seemingly arbitrary rules, including the barring of women from participating in certain events. In 1978, the Amateur Sports Act was passed. This act established the United States Olympic Committee ("USOC") and provided protection for individual athletes. In 1998, the Ted Stevens Olympic and Amateur Sports Act was passed which revised the original Amateur Sports Act and reflected changes in the requirements of international competition. See36 U.S.C.A. §220501 et seq.

Currently, the AAU serves as an organisation for the support and promotion of sports programmes for athletes of all ages, though mostly for children. The AAU has 56 district associations which organise sports programmes and competitions. The USOC is now the only US organisation responsible for supporting US athletes in the Olympic Games. The USOC governs Olympic sport throughout the USA and oversees the individual associations that govern each sport in the USA.

Collegiate Athletics

College athletics are organised, and governed by, the NCAA which administers nearly all areas of college athletics from the recruitment process of student athletes to the tournaments in which they will eventually play, and to support and services for the student athletes. The NCAA is an unincorporated non-profit organisation comprising over 1,200 member institutions of higher education. The NCAA is governed by a Board of Governors. The structure of the NCAA consists of different legislative bodies which govern the divisions (discussed below) and committees that establish policies on everything from sports rules to opportunities for minorities.

The NCAA traces its history back to 1905 when President Theodore Roosevelt, concerned about the commercialisation of college sports, cheating in the games, and injuries to the athletes, wanted to establish a cohesive rule-making body. The NCAA did not develop its first codified set of rules until 1946 when it promulgated its Principles for the Conduct of Intercollegiate College Athletics.

In the 1970s, the NCAA recognised the varying levels of emphasis on athletics at its member schools, and implemented

the division system used in college sports today. Division I schools have the largest student bodies, the largest athletics budgets, and the most athletics scholarships to grant, with the exception of the Ivy League schools which qualify as Division I although they do not grant athletic scholarships. Division II schools generally focus their competitions regionally rather than nationally and tend to be smaller, with smaller athletics budgets and partial athletics scholarships rather than full. Division III is the largest division of the NCAA, and the schools in this division do not award any athletics scholarships; these schools vary in size, but the lower emphasis on sports is the same as they do not see college sports as a meaningful way to generate revenue.

Until the 1980s, the NCAA did not administer women's athletics. Women's athletics were originally exclusively organised by the Association for Intercollegiate Athletics for Women, but in the early 1980s there was an overlap of the two organisations planning women's competitions, and the Association for Intercollegiate Athletics ended its operations. Its member schools continued their women's programmes under NCAA regulations, and by 1982 all divisions had national championship events for women's sports.

Though nowhere near the NCAA in scope and power, there are other collegiate athletics associations in the USA, including the National Association of Intercollegiate Athletics, the National Junior College Athletic Association, the National Christian College Athletic Association, the United States Collegiate Athletic Association, and the Northwest Athletic Conference. These conferences are made up of generally smaller schools, and provide athletics governance and championship tournaments for their members.

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