
International Prospective Student-Athletes and NCAA Division I amateurism

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Abstract: This paper summarises a research stream dealing with the US system of amateur intercollegiate sport and its relation to International Prospective Student-Athletes (IPSAs). Crucial differences exist between the US ‘clear demarcation’ of commercial pro sport and amateurism as applied by National Collegiate Athletic Association Division I (NCAA DI) on one hand, and the International club-based federalised structure, with more connections between professional and amateur clubs on the other. Thus, IPSAs, NCAA staff, and member institutions experience problems. As litigation has not resolved these challenges, regulatory evolution and policy recommendations are in order to achieve greater balance among NCAA DI membership.

Keywords: National Collegiate Athletic Association (NCAA); amateurism; International Student Athletes (ISAs); international sport structure systems; governance; federalised club-based socio-cultural model; professionalisation threshold; sport commercialism.

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1 Introduction

Each year, there are approximately 3,000 International Student-Athletes (ISAs) joining National Collegiate Athletic Association Division I (NCAA DI) member institutions’ teams (Brown, 2005). These ISAs are, arguably, the fortunate ones. There are significant problems in the recruitment process of International Prospective Student-Athletes

(IPSAs)¹, mainly due to the fundamental differences in philosophy and culture between the world of NCAA DI and the world of international sport governance. In addition, there are challenges when attempting to balance among often conflicting bedrock principles of the Association's Constitution, such as the principles of institutional control and responsibility, NCAA Bylaw 2.1, Student-Athlete (SA) welfare, NCAA Bylaw 2.2, non-discrimination, NCAA Bylaw 2.6, and competitive equity, NCAA Bylaw 2.10, as acknowledged by NCAA staff (NCAA, 2004), Conferences Compliance Directors and institutional staff members (CCACA, 2004), as well as recruiting coaches (WBCA, 2004). These conflicts of NCAA DI principles create further problems for IPSAs wishing to pursue the opportunity of an athletic scholarship offered by NCAA DI institutions. The core problem deals with the nature of amateurism as it is applied by NCAA DI. There have been various policy changes implemented in the course of the first five years of the 21st Century to update a concept that has its roots in the 19th Century (Brown, 2004a, 2004b, 2004c, 2005; Carter, 2000; DeCourcy, 2001; Henry, 2004; NABC, 2004; Pickle, 2003a, 2003b, 2004; Suggs, 2005; Wieberg, 2004; WBCA, 2004). Additionally, what becomes evident by the documentation of such policy matters is that there are fundamental problems in the application and interpretation of NCAA DI regulations by its 327 (NCAA, 2004) member institutions. An IPSA who may be considered ineligible by one institution could be interpreted as eligible by another school, according to the principle of institutional control, thus rendering the principle of competitive equity moot.

The IPSAs for NCAA DI member institutions are governed by their respective state and sport federation laws. These laws do not have the same classification the NCAA has in regard to definitions of professional league, team, or athlete. Moreover, these two systems do not share common ground in the rationale, purpose, or the interpretation of their regulations. Therefore, there are cases of adversely affected classes of prospective SAs that wish to attend US academic institutions and although according to the laws of their own countries and the regulations of their specific sport entities they are not considered professional athletes, the NCAA DI respective regulations classify them as such, and find them ineligible for intercollegiate athletic competition. For NCAA DI membership, recruiting coaches, and most importantly the prospects and their families, these problems need to be addressed and researched.

The study focuses on and revolves around NCAA DI amateurism and its application on IPSAs. The main reasons for this are the extensive athletic scholarship opportunities offered through NCAA DI institutions, the means for international recruiting available and affordable to DI institutions, a more strict amateurism emphasis when compared to other divisions and intercollegiate associations (i.e., NJCAA, NAIA) and ultimately the fact that DI features arguably the better athletic talent, which is where problems in terms of upholding amateurism principles arise, especially in the case of talented recruits from overseas who might have crossed the respective professionalisation threshold. DI member institutions seek the 'difference makers' while engaging in international recruiting; these prospects encounter the most eligibility challenges in terms of amateurism policy conveyance.

2 Summary of litigation

The NCAA DI internal mechanism and handling of IPSAs along with the description of the basic international federalised club-based structure and how it impacts IPSAs transition to NCAA DI recruiting institutions have been discussed elsewhere (Kaburakis and Solomon, 2005). These sport governance and procedural challenges have led to infrequent litigation moved by IPSAs in the US system of jurisprudence.

Although there has been much discussion concerning NCAA amateurism, there have been relatively few legal challenges for the NCAA's position. Reece (1975) collected and critically evaluated 34 cases involving the rules of the NCAA. His timeframe (1970–1974) was crucial in terms of policy development and court decisions concerning NCAA rules in general and amateurism in specific.

The cases Reece (1975) studied targeted 11 rules of the NCAA, including amateurism, and the so-called 'Foreign Student' rule. Impressively, only three of the 34 cases concluded with the courts disallowing an NCAA rule, due to constitutional scrutiny. Even more remarkably, two of those three NCAA losses occurred in the 'field' of amateurism, and the 'Foreign Student' rule. What is also of great importance is that in nine of the 14 cases the courts found State Action established by the NCAA.

The NCAA's 'Foreign Student' rule contained a classification according to alienage that was found to be unjustified and discriminatory. Under its terms, foreign students lost a year of eligibility for every year after their 19th birthday in which they had participated in athletic competition. No such limitation was placed on US citizens. Plaintiffs (*Howard v. NCAA*, 367 F. Supp. 926, 1973) argued that the rule was arbitrary, unreasonable, excessively vague, and designed to favour US citizen students over aliens (Reece, 1975).

Judge Gesell's opinion on the matter is useful:

“While the NCAA is properly concerned with preventing older players coming from abroad on the pretext of educational objectives and dominating championship competition because of age and prior sports activity, it was not demonstrated to the Court's satisfaction that there are not other less restrictive means available for accomplishing these objectives. The flat age restriction, stated in the vague terms of the rule's reference to any team or individual participation in athletic competition, results in arbitrary discrimination against aliens. To meet a felt need, the Association has, in effect, thrown the baby out with the bath.”

The court declared the 'Foreign Student' rule to constitute a denial of Equal Protection under the 14th Amendment of the US Constitution and the Association was permanently enjoined from any future enforcement of the rule. The decision was affirmed by the Court of Appeals under *Howard U. v. NCAA*, 510 F. 2d 213 (1975).

In *Buckton v. NCAA*, 366 F. Supp. 1152 (1973), one of the most important cases applicable to IPSAs and ISAs challenging NCAA DI amateurism, the Association's Constitution was tested for validity of the amateur clause, alien clause, and its jurisdiction over ice hockey players. The Court -again- found that State Action was present; therefore, the Association was subject to constitutional scrutiny. Judge Joseph L. Tauro's comments transcend time and offer invaluable insight on subjects this study is dealing with:

“These regulations constitute and impose disparate eligibility standards, one for student-athletes who have played hockey in the US and another for those who have played in Canada. Because the regulations in effect classify plaintiffs, who are resident aliens, differently than their American counterparts, they are inherently suspect and this court is required to subject such classification to strict scrutiny.

A Canadian boy who wants to play hockey at a pace more challenging than at a pick-up level must join one of these (civic groups) teams ... this requires a boy to transfer his residence and schooling to the Metropolitan area where the team is located. When he does, it is customary for him to receive room, board, and limited educational expenses from his team, as did the plaintiffs in this case.

An American boy, on the other hand, can leave his home town to attend a prep school for the same dual purpose of playing hockey while receiving an education. When he does, he may receive financial aid from his school to meet his room, board, and educational expenses. Such aid may have even greater dollar value than the aid received by plaintiffs in this case, and yet the American boy need not fear any sanction by the defendant Association.

As stated, the aid received by the American and Canadian student-athletes may be precisely the same, both as to character and dollar value, but the defendant Association would brand the Canadian a professional while accepting his American counterpart as an amateur. This clearly amounts to a disparity in treatment, a classic example of classification which is subject to judicial review.”

In summarising his decision, Judge Tauro acknowledged that the damages suffered by the two hockey players would be much more than those suffered by the Association. Implications of professionalism are far worse than being academically insufficient (Reece, 1975). This landmark decision provided the basis for the NCAA to alter amateurism guidelines, especially as they pertained to ice hockey.

Useful insight is obtained by the case of *NCAA v. Lasege and University of Louisville*, 53 S.W.3d 77 (S. Ct. Ky. 2001). A trial court granted Lasege and University of Louisville a temporary injunction, which was affirmed in the Court of Appeals. The Supreme Court of Kentucky granted interlocutory relief at the request of the NCAA, vacating the prior decision. The crucial issue was amateurism, and the impact of a specific relationship the ISA had with a professional club team. The trial court suggested that the NCAA had ignored what it described as “overwhelming and mitigating circumstances” including economic and cultural disadvantages, a complete ignorance of NCAA regulations, and elements of coercion associated with execution of the contracts. The court believed the NCAA’s determination conflicted with the NCAA’s own amateurism guidelines and past eligibility determinations regarding athletes who had engaged in similar violations. The court expressed its doubts about whether the first contract signed by Lasege was legally enforceable as an agency contract both because of Lasege’s minority at the time he executed it and because the trial court disputed that the contract created an agency relationship. The court concluded that a clear weight of evidence suggested Lasege committed these violations not in order to become a professional athlete, but only to obtain a visa which would allow him to become a SA in the USA.

The trial court found that Lasege would suffer substantial collateral consequences from an erroneous and adverse eligibility determination, balanced the equities in favour of Lasege, and ordered

“the NCAA and its members ... to immediately restore the intercollegiate eligibility of Muhammed Lasege so as to allow him to participate in all NCAA basketball contests.”

The trial court also addressed U of L’s concern that the NCAA could impose sanctions under NCAA Bylaw 19.8 (19.7 in the 2005–2006 edition of the NCAA DI Manual) if the injunction was subsequently vacated. NCAA Bylaw 19.8 allowed the NCAA to seek restitution from member institutions that permitted SAs found ineligible by the NCAA to compete for their athletic teams pursuant to court orders which were later vacated. The trial court therefore declared that NCAA Bylaw 19.8 was invalid because *“it prevents parties from availing themselves of the protections of the courts”* and ordered: *“... that the University of Louisville shall abide by this injunction and shall not prohibit Muhammed Lasege from engaging in intercollegiate basketball”*.

After the trial court entered the temporary injunction, Lasege played basketball for U of L during the 2000–2001 season. In the ensuing process, the Appeals Court denied the NCAA’s motion, and the NCAA sought relief at the Supreme Court of Kentucky. The latter supported the NCAA and pontificated on relevant cases:

“This case demonstrates that courts are a very poor place in which to conduct interscholastic athletic events, especially since this type of litigation is most likely to arise at playoff or tournament time. If an injunction or restraining order is granted erroneously, it will be practically impossible to unscramble the tournament results to reflect the ultimate outcome of the case. Since, by definition, temporary injunctions attempt to place the parties in a position most likely to minimize harm before the court can finally decide the issues raised in a complaint, trial courts are asked to make significant decisions with less-than-complete information. As such, these determinations differ from most decisions reached by trial courts. There are no ‘drive-through windows’ on courthouses for a good reason – judicial decision making demands thought and deliberation of all relevant evidence ... ‘Longshot’ claims which have little hope of prevailing when the buzzer sounds will not justify injunctive relief.”

In his dissenting opinion, Justice Johnstone agreed with the fact there should be no ‘drive-through windows’ while offering injunctive relief. Answering, however, the majority’s argument that the trial court substituted the review of the NCAA, he remarks: *“I would agree that there has been a substitution of judgment in this case, but it has been the majority substituting its judgment for the trial judge”*.

NCAA v. Yeo, 114 S.W.3d 584 (3rd Ct. App. TX, 2003), is the most recent case in which a decision was reached, where an ISA succeeded in challenging the NCAA’s amateurism and eligibility regulations. Yeo’s crucial argument was that she had established a protectable property right, through her swimming honours captured in International and Olympic competitions. To fully capture the ramifications of the *Yeo* case, it is useful to quote the opening statement of the Appeals Court opinion: *“To characterize this as a case presenting a unique fact pattern requiring a decision of first impression would be an understatement”*.

Joscelin Yeo, a native of Singapore and the nation’s most visible athlete, had competed in the 1992 and 1996 Olympic Games before coming to the USA. She later competed in the 2000 and 2004 Games. In 1998 she enrolled at the University of California at Berkeley, whose swim coach at the time, Michael Walker, also coached the Singapore national team. Before the 2000–2001 academic year, Walker left Berkeley to coach at the University of Texas at Austin, and Yeo chose to follow Walker to Texas. NCAA rules regarding transferring athletes (Bylaw 14.5.5.1) required Yeo to sit out of

collegiate competition for a full academic year (after Berkeley rejected Yeo's request for a waiver of the regulation under Bylaw 14.5.5.2.10), which she did in 2000–2001. Yeo began swimming for Texas in the fall of 2001. But because she had participated in the Olympic Games in the fall of 2000 instead of enrolling in classes – athletes must be enrolled for the time they sit out to count under 2000–2001 NCAA rule 14.1.6.2.2.1.2 – Texas erred in letting her compete.

When Berkeley officials protested to the NCAA, Texas acknowledged its error and declared Yeo ineligible to compete for part of the winter. In March 2002, the NCAA Student-Athlete Reinstatement (SAR) staff ordered Texas to withhold Yeo from four events to make up for the ones it had mistakenly let her compete in earlier in the year. Among the events Yeo was to miss would be the upcoming 2002 women's swimming and diving championship, and she argued that being barred from that meet, when her planned participation had already been promoted, would "harm her reputation as an athlete" and undermine potential endorsements. UT-Austin appealed the SAR staff's decision to the Student-Athlete Reinstatement Committee (SARC). At that point, for the first time, UT-Austin informed Yeo of the problem and advised her to "plea for sympathy" (case transcript, Section 5) with the SARC. The latter upheld the staff's decision and required Yeo to sit out the Championship meets. At that point UT-Austin advised Yeo to seek independent legal counsel, which she did, suing UT-Austin and its vice president for institutional relations and legal affairs, Patricia Ohlendorf. Yeo's side sought to enjoin them from disqualifying her from competing in the championship meet two days later and for a declaration that UT-Austin had denied her procedural due process as guaranteed by the Texas Constitution.

It is important to follow the procedure of the Yeo case: The same day (March 20, 2002) Yeo moved for an injunction, the trial court granted Yeo a temporary restraining order. This development is the deciding factor, in order for the SA to be able to compete with a trial pending. On March 21, the NCAA intervened in the action, but Yeo moved to strike the intervention, and after a hearing later that day, the trial court granted Yeo's motion. The next morning, the NCAA sought mandamus relief from the court of appeals, and UT-Austin appealed from the temporary restraining order. That afternoon, the court of appeals denied the petition for mandamus and dismissed the interlocutory appeal for want of jurisdiction. Thus, Yeo won the important procedural battle and was able to compete in the championship meet.

In November 2002, after a trial to the bench, the trial court rendered judgement for Yeo, declaring that UT-Austin had denied Yeo procedural due process guaranteed by the Texas Constitution, thereby depriving her of protected liberty and property interests. The court permanently enjoined UT-Austin from declaring Yeo ineligible in the future without affording her due process and from punishing her for participating in past competitions, including the 2002 women's championship. The trial court also awarded Yeo \$164,755.50 in attorney fees through an appeal to the Texas Supreme Court.

After the championship meet in March 2002, Yeo graduated from UT-Austin, received a Rhodes Scholarship, and ended her college swimming career. Yeo currently pursues graduate studies in Oxford, England.² None of the parties involved in the litigation³ currently under review by the Texas Supreme Court argued that the case has become moot, because the injunction prevents the NCAA from imposing retroactive sanctions under its 'Restitution Rule' (at the time Bylaw 19.8). The latter was challenged in the *Lasege* case as well.⁴

Thus, IPSAs may pursue injunctive relief against an ineligibility decision in order not to lose the opportunity to participate in intercollegiate athletics. The reason for this is that enrolment in an American educational institution and the offer of an athletic scholarship open up a door to the US court system. This research entailed an examination of past cases featuring foreign SAs being adversely affected by NCAA regulations and decisions, and established the following points:

- Courts do not always decline to intervene and grant judicial review when dealing with Athletic Associations' rules challenges. Even in the much-contested area of NCAA DI (after the *Tarkanian* case in 1988) there have been decisions rendered on these matters.
- There have not been many (successful for that matter) cases against amateurism and eligibility rules moved by international plaintiffs. It may be argued that this is due to resources' limitations and the unfamiliarity with the US judicial system and the NCAA DI regulatory framework, where the institution remains the main decision-making actor.
- After investigating the NCAA internal mechanism, NCAA DI amateurism regulations, and the circumstances that are applicable on IPSAs cases in reference to the system of sport governance in their region, it cannot be safely said that there are inherently discriminatory rules against IPSAs, nor that the Association is not serving its purposes (such as Institutional control, Competitive Equity, and SA welfare). These matters need to be examined on a case-by-case basis, as they have been dealt with so far by the US system of jurisprudence.
- After examining especially the *Buckton*, *Howard*, *Lasege* and *Yeo* cases, useful conclusions include:
 - A 'Foreign Student' rule would not pass Constitutional review under the scope of Equal Protection and the application of the strict scrutiny test by the courts. Neither in the *Howard*, nor the *Rivas Tenorio* case were restrictive rules based on alienage and national origin found to serve compelling state interests.
 - The mere fact that IPSAs come from a different philosophical, cultural, structural, educational, and athletic background, does not mean that they should be rendered ineligible, if they otherwise did not jeopardise their eligibility. As the *Buckton* and the *Lasege* (trial and appeals court) decisions demonstrate, particular circumstances in each region might be deciding factors for judicial decision-making, e.g., acknowledgments by the judges in these two cases that the Canadian Junior hockey-club system and the International Club-based system should not per se render an individual ineligible for intercollegiate athletics participation.
 - The *Lasege*, *Yeo* (trial and appeals court) and other cases establish a Property interest in an athletic scholarship and – under circumstances (which in the *Yeo* case involved global recognition and past extraordinary athletic achievement) – intercollegiate athletics participation.

- As the *Yeo* case and its procedural development points out, it may be appropriate – and shrewd in terms of legal strategy – to pursue a case against a state institution as opposed to a questionable State Actor, such as the NCAA.
- The *Yeo*, *Lasege*, and other recent cases or out-of-court settlements (Bloom, Neuheisel, and MIBA/NIT)⁵ may alarm NCAA administrators, who need to operate pre-emptively in order to avoid consuming litigation in the future, e.g., render amateurism and eligibility decisions in uniform, non-conflicting fashion, and consider revision of rules that appear frequently as major themes of litigation (even though the ‘Restitution Rule’ under NCAA Bylaw 19.7 has exactly that purpose; to ensure that decision reversals in court will be impacting the institution and SAs under question, as well as have specific consideration and value, in the case of paying back broadcast revenue, championships awards, and related items of value; Bylaw 19.7 – arguably – does not deter institutions from initiating litigation against the Association per se).
- As a concluding remark, it is established that litigation does not resolve the problems that IPSAs, recruiting institutions, and NCAA staff are dealing with in regard to the incompatibilities of the world sport governance systems. Hence, there are policy resolutions needed, in order to alleviate such challenges.

3 International sport federation views

Before examining the policy recommendations this research leads to, it is appropriate to consider the position of international administrators. During recent meetings of the leadership of FIBA-Europe, the European leg of the International Basketball Federation, the differences in the thought process, as well as attempts to embellish the incompatibilities of the two worlds, became apparent. FIBA-Europe’s president George Vassilakopoulos supported (Vassilakopoulos, 2005) policy changes including the adoption of an age-limit for talented European basketball players wishing to leave for the USA to sign with professional teams. Speaking on the future of European basketball in Madrid, Spain, Vassilakopoulos’ points are important to note:

“The NBA wants Europe to become a competition similar to the NCAA and that is unacceptable to us ... Sport is a social, not a financial or commercial activity. Sport needs money but it is necessary to distinguish between commercialism and professionalism, 2 totally separate things. The common factor between these two concepts is money. With professionalism sport uses money to achieve the best results possible. In commercialization money is used as an investment and in turn sport is used as a means to achieve the best financial gain. For FIBA Europe they are different things and commercialization has no place within sport. We should be also careful not to compare professionalism to amateurism. An amateur is somebody giving up time on an occasional basis.”

Vassilakopoulos (2005) also had some very insightful comments that are applicable to NCAA DI amateurism, and refer to the codification of terms and notions:

“In recent years, we have been observing a persistent confusion, due mainly to the deliberate efforts by some well known circles, to distort reality and downgrade the importance and the social role of the sports movement and of the bodies and persons who serve it. This situation creates today an imperative need for us to try to agree on a concrete content, a concrete definition of some notions that are used with different interpretations and provoke a confusion that in fact arranges only those who do not serve but exploit the relation between sport and society.

I have already developed this issue in the past, but I believe that now the time has come to proceed to the definition and codification of the various notions. For instance, I do believe that in the year 2005 it is not possible for us to accept the erroneous, misleading, insulting and unfounded, from the sports point of view, distinction between ‘professionals and amateurs’, ‘professional and amateur Basketball’ or ‘professional and amateur clubs’.

Back in the 1950s, this distinction may have had some importance, but rather social than financial. However, today it is very clear that sport is one and unique, and no adjectives may be added to it. The insistence by some to use this distinction is suspect and dangerous ...

This is why I would like to invite the President and the members of our Legal Commission, in cooperation with the Presidents of other Commissions and if possible some representatives of the EU and of course with the contribution of all those of you who would be interested, to start drafting a Code of the Sports Notions and Definitions. It is necessary for everybody to be aware of the reality. The EU, the taxation systems, the state subsidies, the transfer system etc. are examples of terms and notions that we should define, mainly in relation to the way they affect sport.

This is an urgent and crucial issue, because, as the new political and financial environment in our continent evolves, it will give us the possibility to resolve many important issues and in fact put an end to situations where due to ignorance of reality we may harm ourselves and our sport.”

In the above views, Vassilakopoulos (2005) portrays basic differences between an outdated concept of amateurism and contemporary practices encountered in sport governance. Although he mainly focuses on distinctions between what he defines as the US commercial model of sport and the European professional model, Vassilakopoulos, nevertheless, uses terminology and definitions that are applicable on NCAA DI analyses. His description of the NCAA world as a farm system for US professional sports leagues – which would be ‘unacceptable’ for European administrators – fits in with the positions of Wheeler (2004), Weiler (2003), Allison (2001), Bale (1991, 2003), Zimbalist (2001), Sack and Staurowsky (1998), Telander (1996), Sperber (1990) and Glader (1978) among others, who characterise NCAA DI as a commercial venture. Vassilakopoulos defines an amateur as “someone who gives time on an occasional basis” and strongly disagrees with those who see sport as a strictly financial and commercial activity. Furthermore, he dismisses any “clear demarcation between amateur and professional sport” as “erroneous, misleading, insulting and unfounded” and any insistence on such differentiation as ‘suspect and dangerous’. He epitomises this position by declaring that “sport is one and unique, and no adjectives should be added to it”.⁶ Hence, Vassilakopoulos essentially proposes to eliminate all of the NCAA’s distinctions between professional and amateur athletes, serving contemporary sport reality, bearing in mind the conditions of 21st Century sport both in the USA and in Europe.

4 Policy recommendations

4.1 Amateurism clearinghouse

An old Greek proverb mentions that “people who don’t know history have no future”. Jack Falla’s history of the first 75 years of the Association (Falla, 1981) reported the establishment of a Committee to study methods of athletic regulation and control in other countries in 1913. In December 1918 the Convention authorised a Special Committee on extending the influence of the Association. In the years after WWII Falla observes a

“marked increase in transcontinental recruiting ... There was an early desire to cooperate and learn from other regulatory systems around the world, and gain valuable insight that would help the Association’s own goals and serve its mission.” (Falla, 1981)

This early Committee could be replicated in our time as a body of cooperation and information collection from overseas federations, sport systems, and NGBs in order to regulate and decide on matters of international amateurism, recruiting, and eligibility. Equally important is that this Committee could help to build bridges among stakeholders and establish cooperation among world sport governing bodies. The Amateurism Clearinghouse may be the start of such an effort, mirroring attempts of the past, and expanding service to the Association and the membership, while at the same time educating international constituents and stakeholders, especially IPSAs and their surrounding social and athletic environment.

The proposal for the creation of an Amateurism Clearinghouse appears to be – at this point in time – the most feasible goal to be attained, in terms of policy development. Conversely, even with the consensus of the membership and key stakeholders in the process, there are challenges to be faced and hurdles to be overcome (Brown, 2005).

The need to balance fundamental principles of the NCAA Constitution such as Competitive Equity among institutions, SA welfare, and Institutional Control, makes new policy necessary. The recurring point among NCAA executives, conference commissioners, coaches associations’ leaders, and various athletic administrators in the field, was a conflict between Institutional Control and Competitive Equity. The overall belief is that there is no common ground and institutions do not play on a level playing field. In order to solve problems of consistency, centralised administration is necessary (P. Viverito, 28.3.2005).

Transferring control of the eligibility process and shifting the burden away from the institution to the Clearinghouse – with the necessary contribution of the institution (Brown, 2005) – renders the Clearinghouse a key contributor to the maintenance of equity, as well as SA welfare. Lessons from NCAA history and the more recent development of the Initial Eligibility Clearinghouse (IEC), suggest that a Clearinghouse will help to solve many of the problems posed herein.

In order for the Clearinghouse to be successful, appropriate staff and sufficient funding are essential. In order for the Clearinghouse to be able to collect all the necessary information – that so far neither the institutions, nor the NCAA staff were able to fully collect – there needs to be an all-encompassing staffing endeavour and an all-inclusive search for the appropriate individuals with knowledge, experience, and above all dedication to the Clearinghouse cause. Staff numbers are important as well; Bill Saum, entrusted with a key role in the development of the Clearinghouse, projects that there will

be 150,000 requests annually, with 3,000 involving IPSAs (Brown, 2005). Needless to say there would be a pressing need for more staff in the IEC, whose sole vocation would be amateurism matters and requests. Such policy formation has considerable budgetary implications.

When the IEC was initially proposed and developed all shareholders felt the need for it, everyone wished it was realised and it would commence operations sooner rather than later, but no one had the most remote perception that it would evolve into “a million-dollar business”⁷ (P. Viverito, 28.3.2005). Ten years after the days of the IEC development, the situation is much the same. Suggestions that would provide resolution to this financial challenge include funding from other revenue sources within the NCAA, meaning that the Association would earmark funds to the Clearinghouse, even by reducing (or freezing increases in) monies appropriated to member conferences and institutions. A similar proposal would have member institutions paying a flat fee to support the development of the project, with the institutions able to receive an amateurism decision upon request. Another proposal that would directly conflict with the European ‘socio-cultural’ approach to policy, would expect IPSAs to pay a fee as well. During discussions, the disparity (in the class of \$100) between what US PSAs and IPSAs would sustain as a fee appeared contradictory both to social norms and the notion of ‘amateurism’.⁸ Nevertheless, provided an IPSA has made the conscious decision to pursue higher education and athletics in the USA, such a fee might be unavoidable, considering the financial position most DI and DII (that the Amateurism Clearinghouse would serve as well) member institutions find themselves in nowadays. Stressing the importance of financial planning, an economy of scale should allow member institutions to actually save some of the funds invested in seeking independent legal counsel as most institutions were engaging in, so as to assist them in the recruitment and determination of eligibility process.

According to Brown (2005), the concession among key decision-makers that the principle of Institutional Control could not be trusted for such important eligibility decisions is an important motivation for the realisation of the project (Brown, 2005). What stakeholders emphasise is fairness and the importance of timing in eligibility decisions. Without a Clearinghouse, the toilsome burden will once again shift to the NCAA SAR staff hindering quick turnaround decisions. In terms of timing, provided the staffing initiatives are met, it will not be as time-consuming for the amateurism decision to be reached and communicated to the membership. Moreover, with the help of the IEC website, each member institution will be able to retrieve past amateurism decisions, saving time in the process of their requests. As long as a clear timeline is developed – and that is importantly conversed to IPSAs – the application process and decision issue will not be protracted.

A few key concepts in the recent NCAA News article by Brown (2005) in reference to the Amateurism Clearinghouse are significant. According to B. Saum,

“institutions will be responsible for determining if there are any issues with the areas of the amateurism bylaws not covered by the clearinghouse. Institutions also will be responsible for certifying compliance for all amateurism bylaws during the time period between the student-athlete’s clearinghouse certification and their initial enrollment at an NCAA institution.”

Also, Saum cautioned that the advent of an Amateurism Clearinghouse does not indicate that the current amateurism rules are changing. He emphasised that while the Clearinghouse will assist coaches and compliance officers in the recruiting process,

“it won’t act as a crutch for not knowing the rules” (Brown, 2005). This is exactly what the second proposition of this research addresses, in reference to rules’ advancement and policy fruition.

4.2 Reconsideration of the withholding condition for certain IPSAs cases

Specific classes of IPSAs are confronted with a withholding condition, causing them to sit out single games, and in some instances to lose a full year of eligibility, even though they might not have been culpable or responsible for an amateurism violation. The particular cases refer to IPSAs in amateurism violations “prior to the first opportunity to enrol”. Juxtaposed with case law review and the points made by courts’ decisions, a reconsideration of the withholding condition in these particular cases appears to be a multi-faceted and prudent future policy investment.

The NCAA closely observed the impact of the two-year implementation of a “student-athlete-first philosophy” in the guidelines and administrative philosophy of the Association and its staff.⁹ This important practice shaped many SAR staff and Committee decisions, shifting the balance in favour of the SA in many cases. The principle of SA welfare, overwhelmingly popular with overseas constituents, supports the reconsideration of the withholding condition for these prospects who neither gained financially nor athletically. This reconsideration would promote conflict resolution and provide balance among NCAA rules and international federations’ procedures.

The reasoning behind such policy practice initially was to prevent ‘failed professionals’ with a higher level of competitive experience from enjoying a second chance in NCAA DI athletics.¹⁰ The IPSAs that would benefit from a reconsideration of the withholding condition would not have had the opportunity of such exposure and competitive experiences but for their junior national teams’ competition, an allowable participation by NCAA amateurism standards. The club competitions in question, even when pronounced professional, would not offer the competitive experiences to the IPSAs the practice aims at preventing. Instead, in most cases, these IPSAs would have no choice but to follow their sport system’s structure and appear on rosters of ‘pro’ teams, even if their participation would be questionable. Moreover, the IPSAs that would benefit from such a policy modification would arguably not unhinge competitive equity among NCAA DI institutions. The ‘difference makers’ would most likely be professional under NCAA DI standards, accepting some form of compensation, and more often than not opting for a professional contract in the country of origin, another country, or the NBA/WNBA.

One effect of such a policy adjustment would be to save time and money invested in discovering information regarding the participation circumstances of the IPSA prior to the first opportunity to enrol. In addition, it would expedite the process of delivering eligibility decisions, alleviating some of the load from the SAR staff. Finally, when scrutinised on a sport-specific, case-by-case basis, there could be alternative ways of promoting equity, such as the member institution assuming the cost, alongside the SA, for any ‘borderline’ violations of amateurism prior to the first opportunity to enrol. This practice would benefit charities under the repayment plans already established by the membership and the NCAA. Such a policy adaptation would offer more positive outcomes than the present practice, which seeks to prevent the promotion of ‘failed pros’.

4.3 *Recruiting suggestions*

Adoptions in recruiting rules may successfully attend to contemporary needs. The complexity of NCAA amateurism regulations and the NCAA DI internal decision-making mechanism make it difficult for an IPSA to fully capture the details that may prove instrumental in the transition to NCAA DI. To comprehend how regional policies from their respective sport governing entities may impact their NCAA DI eligibility, so that IPSAs and their families can formulate an educated decision, a solution comes through the means of recruiting.

DI recruiting guidelines show that there is progressive increase in recruiting actions into the earlier stages of a PSA's high school career. Recruiting now begins immediately after the conclusion of the sophomore year in high school men's basketball.¹¹ Recruiting staffs are able to send recruiting materials and accept collect calls during the month of July. Once in their junior high school class prospects are bombarded by an array of recruiting material, contacts, evaluations, and phone calls. If this trend continues, it seems logical to propose that member institutions should be able to contact, or at least communicate online, through phone calls, and send informational material to IPSAs as early as their sophomore year in high school. In men's and women's basketball prospects need to be educated before the crucial time when they are called to participate in competition with the professional team supporting their youth club.

4.4 *The blitz: joint informational effort*

Because of the complex framework of NCAA DI amateurism regulations, the guidelines for individual cases' review, the internal mechanism process and the many details involved, there is a need for educating IPSAs, their families, school or club team administrators, teachers, coaches, and advisors. Such an educational effort could copy former practices such as the past academic recruitment meetings held in overseas countries, where institutions presented their respective material and agents served as liaisons between the prospects and an international admissions' office of IPSAs respective country. The popular notion overseas is that there is still a need for agents from the country or region, who can entertain questions and provide links to related information.

A panel of contributors from NCAA DI member institutions and NCAA staff could appear at coaches' meetings, administrators' conferences, and congregations of prospects during or away from competition, and function as the crucial link between the US Higher Education system and the IPSA. The NCAA staff and administration could seek such individuals within the regions that feature most ISAs in respective sports. This process could help to establish long-term cooperation among shareholders.

International admissions offices or informational centres in the academic sector frequently are subsidised by Fulbright fellowships, or other means of funding from the USA. NCAA DI institutions would not be able to fund such agents per se, as that would create a direct agency relationship and ulterior motives for the IPSA to be led to the particular institution. Nonetheless, scouting agencies and international sport companies could assist in the effort and host informational meetings.

Such educational meetings could feature joint bodies of NCAA staff, Clearinghouse personnel, and member institutions' staff, who would be able to answer questions and educate IPSAs and their families about the rules, the process, and the opportunities

available. Should the NCAA administration remain adamant in its ban on banquets and meetings that feature recruiting presentations, such a joint educational effort could focus on compliance with amateurism rules. The available academic network of information could be utilised in the process. The project could by-pass federation administrators and club owners or coaches who seek to preempt IPSAs from pursuing an athletic scholarship in the USA. The IPSAs and their families would meet and exchange information with representatives from the NCAA and its member institutions.

Interested federation administrators and club owners or coaches could be invited and should participate in this educational effort. Sport federation administrations can offer much to the discussion. NCAA executives could offer amateurism rules' explanations and present the basic attributes of the NCAA DI program. More importantly, these meetings could serve the purpose of bridging the gaps in communication and mutual understanding between the two parties, and establish a long term and fruitful collaboration on various themes. On this note, this research offers its last policy recommendation.

4.5 Bridging the gap: collective effort on 'amateur' and 'professional' standards

The final policy recommendation that resulted from this research entails a collective effort by administrative bodies from both the NCAA and the international sport governing bodies to pursue common values and objectives. Discussion should centre on establishing agreements about terms such as amateur and professional and determining their relevance in different cultures and organisational structures. This is contrary to Vassilakopoulos (2005), Wheeler (2004), Allison (2001), Glader (1978) and Sack and Staurowsky (1998) and their arguments in favour of discontinuing the use of the word amateurism and updating regulations to contemporary needs of 21st Century sport.

Meetings could take place during international competition and youth development events, with participation of stakeholders from every continent and international sport governing body. This research encourages further studies and especially Asia-specific sport governance research in relation to US sport and in particular NCAA DI.

5 Conclusion

In conclusion, these recommendations aim at providing uniform decision-making, saving time and resources for NCAA DI institutions and staff, while at the same time creating more lines of communication and cooperation between NCAA DI and international sport governing bodies (through the development of the Amateurism Clearinghouse). A reconsideration of the withholding condition would offer immeasurable service to prospects that would be adversely affected by their country's sport system structure and a subsidisation relationship between their amateur junior club and the respective professional senior club. The recruiting suggestions, along with the educational and informational efforts featuring NCAA staff and institutional members and coaches, would familiarise IPSAs with the convoluted elements of the recruiting process and the complicated definitions, guidelines, and standards of review of NCAA DI amateurism. In this fashion, they would create opportunities for fruitful collaboration between NCAA member institutions and international sport entities. All these services may be organised

and coded through the collective effort of administrators and key stakeholders in the process of developing sport policy. Such a global sport constituency would be characterised by pluralism, inclusiveness, understanding and respect for various values and principles that matter in varying degrees to everyone involved in managing sport and educating young people. In a normative sense, amateurism definitions, applications, and structural incompatibilities would be far from the concerns of future sport policy makers.

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Notes

¹A first distinction in this analysis should be made between the terms International Student-Athlete (ISA) and International Prospective Student-Athlete (IPSA). An International Student-Athlete is one already enrolled in school, having been offered and accepted an athletic scholarship, or one that has joined a school team, regardless of the means of financial aid, as some schools do not offer athletic scholarships 'per se'. As opposed to an ISA, an IPSA is still considered a prospect, and goes through a series of processes in order to be able to eventually enrol in school and participate in athletic competition. The focus of this research is on challenges faced by IPSAs, such as the specific procedural problems encountered in order to pursue higher education combined with athletics in the USA. As far as this research is concerned, as long as an IPSA became an ISA, enrolled in school and appeared on its respective team, there is no need for further examination.

While there is no clear 'per se' definition of IPSAs in the NCAA DI Manual (2005–2006), Bylaw 12.01.3 distinguishes between an 'individual' (person prior to collegiate enrolment) and 'Student-Athlete' (person subsequent to enrolment). For the purposes of this research, the term which will be used for reasons of economy is IPSA and ISA, officially used in communication between NCAA, conferences, and institutional staff members.

²For more on Yeo: http://www.collegeswimming.com/index.php?show=view_news&id=3, <http://www.utexas.edu/education/kinesiology/0304KHEAnnRpt.pdf>.

³On August 26th 2005, the Texas Supreme Court, in *NCAA v. Yeo*, 171 S.W.3d 863, 48 Tex. Sup. J. 1016 (Tex. 2005), reversed the Appeals' Court decision and ordered that Yeo receive nothing. According to the Texas S. Ct. the Texas Constitution provides no protection for students' participation in extracurricular activities, as was established in *Spring Branch I.S.D. v. Stamos*, 695 S.W.2d 556, 561, 28 Tex. Sup. Ct. J. 554 (Tex. 1985). In a nutshell, the Texas S. Ct. denied Yeo her previously acknowledged property interest in intercollegiate athletics participation.

⁴In Texas, the NCAA's Restitution Rule was handled in: *NCAA v. Jones*, 1 S.W.3d 83, 84, 87-88, 42 Tex. Sup. Ct. J. 636 (Tex. 1999).

⁵For more: *Metro. Intercollegiate Basketball Ass'n v. NCAA*, 339 F. Supp. 2d 545, 2004 US Dist. LEXIS 20418 (S.D.N.Y., 2004), <http://judiciary.house.gov/OversightTestimony.aspx?ID=166>, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=co&vol=2004app%5C4570&invol=1>, www.omnicontests.com/hearst/omnicontests/entry_custom/gallery_download.cfm?file_upload_id=348.

⁶Moreover, in the recent (23.5.2005) meeting of the General Assembly in Slovenia, Vassilakopoulos fuelled an already explosive relationship between the European sport administration and US pro leagues, i.e., proposing minimum age limits for European players, should they wish to entertain the notion of playing in the US pro leagues, and shedding light to the latter's recent management errors while scheduling exhibition games in Europe. The reader can determine whether his remarks constitute a 'casus belli', reviewing his harsher words and comments for the US 'friends':

"At our General Assembly in Prague last year, I had made a long reference to the problems created by the way the NBA, through its practices, deals with European Basketball and its Institutional bodies and affects the process formation of new players by European clubs and National Federations. At that moment we had expressed our discontent for the fact that in recent years we witness a degrading phenomenon, for which practically all European National Federations and Clubs protest and they are right to protest: every year in June there is a wave of immigration of the most talented young players from Europe to the NBA.

Despite all this, and the fact that one year ago there had been some movement and a first exchange of views between the two parties, in the last months there is no serious evolution, and dialogue has lost its momentum. However, the problems remain and continue to grow and worsen. From my part I would simply like to point out that our friends from the other side of the Atlantic are still the hostages of the myth and mythology they have created and spread regarding their organization and their possibilities. Unfortunately, it seems impossible for them to admit the new reality created after Indianapolis and the Athens Olympic Games and adapt to it.

A few days ago I read in the newspapers that the NBA intended to hold some activities in Europe before the 2006-2007 season. They were to meet the Mayor of Rome for this purpose and what remained to be done was to work out the sponsorship and logistical issues and that this was to be their next step in testing the European market.

I asked the President of the Italian Federation, my friend Fausto Maifredi and he told me that he knew nothing about this issue. This is why, from this floor, I would like to say a few more words to our American friends:

We appreciate you, we respect you and we want to cooperate with you. However, you must realise that in Europe there is an Institutionally structured organization, there are the National Federations, there is FIBA Europe and you cannot pretend that you ignore their existence. We do want dialogue and cooperation. We are ready, open and expecting you to come and discuss with a concrete agenda, which should include at least the following items:

- 1 W.N.B.A. and its impact on European competitions*
- 2 the mode that the transfers are being made*
- 3 the amount of the compensation given to the clubs that form the player*
- 4 the setting (at last) of an age limit for the transfers*
- 5 scouting and scouters and the problems they create for the productive life of the European clubs and young players."*

⁷Actually, with a simple calculation, were the 150,000 (Brown, 2005) incoming freshmen each year to pay the \$100 fee, the IEC immediately translates to a \$15,000,000 venture.

⁸Also refer to: http://www2.ncaa.org/media_and_events/association_news/ncaa_news_online/2005/08_01_05/news_digest/#3, declaring that fees will be capped at \$50 for US and \$75 for foreign prospects.

⁹Refer to Student-Athlete Reinstatement. Frequently Asked Questions, Julie Roe telephone press conference, available at: http://www1.ncaa.org/membership/enforcement/s-a_reinstatement/faqs.html.

¹⁰For more on ‘failed pros’ prevention:

<http://www.ncaa.org/news/2001/20010910/active/3819n02.html>;

<http://www.ncaa.org/news/2002/20020916/active/3919n06.html>;

<http://www.ncaa.org/news/2001/20011217/active/3826n32.html>;

http://www2.ncaa.org/media_and_events/association_news/ncaa_news_online/2005/04_25_05/division_ii/4209n25.html;

<http://www.ncaa.org/news/2001/20010115/active/3802n03.html>;

http://www1.ncaa.org/membership/governance/division_I/docs/mgmt_council/mgmt_council_Jan_2002/11_Att_A_2002_01_Amateurism_Package_Results.htm;

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¹¹Recruiting guidelines under: http://www.ncaa.org/library/membership/recruiting_guides/2004-05/2004-05_d1_m_basketball_recruit_guide.pdf, Ice Hockey on file with author.

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