

the limited circumstances in which these regulations may apply there is no provision for a compensatory award to be made which is attributable to the unauthorised use of the individual's image in an advertisement. TCMAR 1998, therefore, may be regarded as largely toothless.

### 18. Regulatory Codes

The British Codes of Advertising and Sales Promotion<sup>174</sup> provides that all advertisements should be legal, decent, honest and truthful; prepared with a sense of responsibility to consumers and to society<sup>175</sup> and with respect for the principles of fair competition generally accepted in business.<sup>176</sup> No advertisement should bring advertising into disrepute.<sup>177</sup>

Paragraph 13.1 of the Advertising Code refers specifically to the 'protection of privacy' and provides:

Advertisers should not unfairly portray or refer to people in an adverse or offensive way. Advertisers are urged to obtain written permission before....

(b) referring to people with a public profile...

(c) implying any personal approval of the advertising product....

However, in the event of a complaint being upheld by the Advertising Standards Authority (ASA) the sanctions are somewhat limited:

The media, contractors and service providers may withhold their services or deny access to space; adverse publicity, which acts as a deterrent, may result from rulings published in the ASA's monthly report; pre-vetting or trading sanctions may be imposed or recognition revoked by the media's, advertisers, promoters or agency's professional association or service provider and financial incentives provided by trade, professional or media organisations may be withdrawn or temporarily withheld.<sup>178</sup>

The Independent Television Committee (ITC) is the statutory appointed body for the enforcement of a code of standards and practice relating to television advertising and programme sponsorship.<sup>179</sup> Paragraph 15 of the code is dedicated to the 'Protection of Privacy and Exploitation of the Individual' and provides that 'individual living persons must not be portrayed or referred to in advertisements with-

out their permission except in circumstances approved by the Commission.' In the event of the ITC upholding a complaint formal warnings or fines may be issued to the licensee.

However, there is an absence of any provision under which a compensatory award may be made to the celebrity for the unauthorised use of their image.

### 19. Concluding comments

McCarthy states:

English law often seems tied to the legal categories of the past and, up to the present, unable to accommodate itself to the modern commercial realities of licensing and merchandising.<sup>180</sup>

However, the author submits that the judiciary is correct to proceed with caution as the inventive use of current law will not create certainty but may ultimately serve to exacerbate a lack of clarity. The purpose of this work is to demonstrate that the rationale underpinning any movement towards modification must be well-founded and coherent policy decision. The English courts must not be wooed unduly by sentiments that 'if the image of a personality is worth exploiting without authorisation, it should be protected by the law.'<sup>181</sup>

Having said this, the author does concur that there has been a distinct reluctance to challenge the traditional view of the English courts. Sufficient consideration has not been given to a modification of the existing position in the U.K. and the mechanisms prevalent in other jurisdictions. However, in giving due consideration, the interests of the private individual, the role of the athlete in today's society and the position of the consumer must be carefully balanced.

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174 10th edn. 1st October 1999

175 Para. 2.2 of The British Codes of Advertising and Sales Promotion.

176 Para. 2.3 of The British Codes of Advertising and Sales Promotion.

177 Para. 2.4 of The British Codes of Advertising and Sales Promotion.

178 10th edn. 1st October 1999 para. 68.39

179 The ITC was created under the Broadcasting Act 1990.

180 McCarthy, The rights of publicity and privacy (2nd edn) para. 2-286.

181 Abell; Protecting personalities: Time for a new form of copyright' (1998) 82 Copyright World 33.



# Mind the Gap

## *National Collegiate Athletic Association Division I Handling of International Prospects and Student-Athletes - The Professionalization Threshold Regulatory Framework Analysis - Conveyance of Amateurism Policy*

by **Anastasios Kaburakis and Jacob Solomon\***

### 1. Introduction

An in-depth research project on International prospects and student-athletes for Division I National Collegiate Athletic Association member institutions has to cover a few elements that are necessary in developing a complete understanding of the problems faced by the prospects, as well as the challenges faced by the Association as a whole, and the member institutions independently. Such elements include the current regulatory framework applied by the NCAA on cases of international prospects and student-athletes (IPSAs-ISAs), which revolves around the amateurism bylaw of the NCAA DI Manual (Bylaw 12). Amateurism is the one single element that has created and still triggers most problems in ISAs cases and DI member institutions' recruiting attempts. Therefore, the ensuing analysis will shed light on the theory and the application portion of the amateurism bylaw in its present form.

Furthermore, there are important procedural elements that need to

be posed and will follow the aforementioned analysis. These elements deal with the NCAA staff's internal mechanism, the Agents, Gambling, and Amateurism (AGA) staff and the review process by the Student-Athlete Reinstatement (SAR) Committee and staff, as it stands now the two main entities that are the crucial decision making bodies in the governance and evaluation of ISAs cases that come under scrutiny. Finally, the suggestions by the NCAA to member

\* *Anastasios Kaburakis* is an Attorney at Law from Thessaloniki, Greece, holding a Law Degree from Aristotle University of Thessaloniki, a Masters degree in Athletic Administration/Sport Management from India University, Bloomington, USA and is currently a Visiting Professor at the Department of Kinesiology, School of Health, Physical

Education, and Recreation, Indiana University, and *Jacob Salomon* is an assistant women's basketball coach at George Washington University, USA, from Salisbury, England, holding a Philosophy degree from the University of London, and currently pursuing his Masters in Sports Law and Marketing at George Washington University.

institutions will be juxtaposed with the valuable lessons this line of research has drawn from international governing bodies, international sports federations, club administrators and a plethora of cases involving international prospects and student-athletes. The differences in structure of these sport administrative entities and the legal implications they may cause will be applied and analyzed in the scope of international prospective student-athletes, who wish to overcome these challenges and pursue higher education combined with sport in the U.S.

## 2. NCAA Constitution - Amateurism definitions and regulations

The NCAA Constitution clearly states (NCAA DI Manual, 2004-2005, Bylaw 1.3.1, Constitution, Fundamental Policy) that: "The competitive athletics programs of member institutions are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports". Closely, (Bylaw 2.9, The Principle of Amateurism) "Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental, and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises".

The main theoretical framework on amateurism and NCAA eligibility rules is to be found in Bylaw 12: "Only an amateur student-athlete is eligible for intercollegiate athletics participation in a particular sport" (Bylaw 12.01.1). The "clear line of demarcation" between college athletics and professional sports that was aforementioned is repeated in Bylaw 12.01.2. 12.01.3 covers an important definition for cases of international student-athletes, whose amateurism status may be affected by activities prior to enrollment in a DI member institution, costing them eligibility (such cases and particular activities are analyzed at a later portion of this paper with references to the different global sport legal systems and mainly the European Club-based system), and mentions: "NCAA amateur status may be lost as a result of activities prior to enrollment in college. If NCAA rules specify that an "individual" may or may not participate in certain activities, this term refers to a person prior to and subsequent to enrollment in a member institution. If NCAA rules specify a "student-athlete," the legislation applies only to that person's activities subsequent to enrollment." Hence, prospective student-athletes are differentiated by enrolled student-athletes. During the course of the evolution of amateurism regulations, NCAA guidelines to member institutions, and their application (elements that will follow this theory portion), there have been particular directives that have ultimately benefited already enrolled student-athletes that could have been adversely affected by legislative changes, however they have been treated in a fair manner after the reconsideration of their cases and the intervention of the Executive Committee.

In Bylaw 12.02 one finds crucial definitions and applications, such as:

- 12.02.2 **Pay.** Pay is the receipt of funds, awards or benefits not permitted by the governing legislation of the Association for participation in athletics.
- 12.02.3 **Professional Athlete.** A professional athlete is one who receives any kind of payment, directly or indirectly, for athletics participation except as permitted by the governing legislation of the Association.  
and the recently (8/1/02) amended and very important for this research definition of
- 12.02.4 **Professional Athletics Team.** A professional team is any organized team that:
  - a Provides any of its players more than actual and necessary expenses for the participation on the team, except as otherwise permitted by NCAA legislation. Actual and necessary expenses are limited to the following, provided the value of these items is commensurate with the fair market value in the locality of the player(s) and is not excessive in nature:

- (1) Meals directly tied to competition and practice held in preparation for such competition;
- (2) Lodging directly tied to competition and practice held in preparation for such competition;
- (3) Apparel, equipment, and supplies;
- (4) Coaching and instruction;
- (5) Health/Medical Insurance;
- (6) Transportation (i.e., expenses to and from practice and competition, cost of transportation from home to training/practice site at the beginning of the season and from training/practice site to home at the end of the season);
- (7) Medical treatment and physical therapy;
- (8) Facility usage; (Revised: 4/24/03)
- (9) Entry fees; and (Revised: 4/24/03)
- (10) Other reasonable expenses incidental to participation; or (Adopted 4/24/03)

### b Declares itself to be professional

At this point there needs to be some legislative history presented, that will clarify a few elements in regard to the definition of a professional team. Moreover, one realizes that the wording and the specific rationale of each amendment play an integral role in shaping the handling of cases such as the ones we are researching and have led to the present reality of international student-athletes. Especially the ones that are governed by a federalized club-based system, as will be extrapolated in a later part, are directly affected by any modification in any portion of this definition. Specifically:

The broad inclusion of the wording "...any of its players..." means that if e.g. a junior in high school participated in a team that is not strictly defined as professional, however it does provide one of its players with some extra benefits, other than the ones mentioned in the definition and allowed by NCAA regulations, that team is deemed as professional in its entirety. Moreover, according to 12.02.4 (b) if a team merely declares itself as professional and does not fit any of the impermissible benefits definitions, it will still be characterized as professional. Actually, the internal mechanism of the NCAA and the S-A Reinstatement Committee have declared that they will provide remedy for cases such as these, and examples will be provided in the last portion of this research. Fact remains the wording of NCAA law creates some ground for interpretation and certain problems in particular cases.

Furthermore, there were three recently documented attempts to amend this definition that were successful. One of these amendments (proposal #2002-39) referred to participation in Olympic and National teams that may compete for prize money, in order to allow the benefits of international athletics participation without further ramifications for eligibility. The most important ones -addressing most cases that come under scrutiny- that have been added as of late are proposal #2002-49 and upcoming proposal #2004-150, which was recommended to the main legislative body of the NCAA, the Management Council, by the NCAA DI Academics/Eligibility/Compliance(AEC) Cabinet, and is going through the current (2004-2005) legislative cycle.

The former proposal (#2002-49) made the inclusion (10) under 12.02.4 (a) which referred to "other reasonable expenses incidental to participation". This inclusion had the following rationale: "Under NCAA rules, any team that provides an expense not listed as an actual and necessary expense under the definition of a professional team is considered a professional team. For example, any team that provides its members with telephone calls on a team trip would be considered a professional team, regardless of whether or not anything else is provided. It seems that the intent of the legislation was to clarify that only teams providing substantial funding to its team members, not merely expense money, should be classified as professional. This amendment clarifies that the provision of other reasonable expenses (such as telephone calls and local entertainment) does not cause the team to be considered professional under NCAA rules." [NCAA Division I Board of Directors Management Council (Academics/Eligibility/Compliance Cabinet)(Agents and Amateurism Subcommittee) (Ivy Group), posted on NCAA

Legislative Database (LSDBI) on 6/23/03]. There are interesting elements to this rationale by NCAA legislature, one pertaining to the wording “*it seems that the intent of the legislation...*” that signifies some uncertainty, and that this amendment opened up -or at least attempted to do so- some breathing room for the narrow interpretations of past NCAA administrations, that would not go beyond the letter of the regulation and instantly declare a prospective S-A ineligible. At the same time, it may be criticized by true amateurism advocates, as creating some space for interpretation, thus allowing some institutions to bend the spirit of the regulation, recruiting athletes that would have had eligibility problems in the past. Leniency toward prospects and S-As has been the recent trend, as will be further explained in the following section, and this effort is further documented by the latest proposal, #2004-150.

This proposal has been initially accepted and supported by the Management Council for adoption, and at this time, it is widely recognized by NCAA legislative cycles that it will be included in the 2005-2006 NCAA DI Manual. The proposal deals with a further amendment of Bylaw 12.02.4 (a) (10) and the omission of the words “*incidental to participation*”. This will be according to the general trend for being more attentive to prospects and students and submitting specific facts for consideration under a reasonable standard. Once again, true amateurism advocates will assume the position that this “reasonable standard” will create opportunities for certain individual cases to exploit the present system and make the most of the leniency of the current spirit of legislation. A look at the rationale of the proposal may clarify these issues, and may lead to further examination of particular application for ISAs cases: “*The intent of the recent change to the definition of a professional team was to provide clarity to the membership and ensure that teams that provide players money in excess of actual and necessary expenses are considered professional under NCAA legislation. However, including the phrase “incidental to participation” resulted in an interpretation that causes certain amateur teams to be considered professional. For example, as worded, the new definition causes teams that merely provide laundry money to its players to be considered “professional,” because such expenses are not directly tied to practice or competition. The intent of the new definition was not to have such teams (e.g., Espoir teams) trigger the definition of a professional team by simply providing laundry money. The proposed change in language will allow interpretive flexibility so teams that truly are not paying players do not trigger the NCAA definition of a professional team. This proposal is submitted as noncontroversial legislation as it is consistent with the intent of the legislation as initially proposed and merely broadens the legislation to provide greater flexibility in addressing potential student-athlete well-being concerns.*” [NCAA LSDBI, NCAA Division I Academics/Eligibility/Compliance Cabinet (Committee on Student-Athlete Reinstatement)]. Both of these proposals attempt to ratify the new trend in NCAA management of S-As and provide remedy for prior treatment that was challenged as unfair. This trend may assist in the management of ISAs, as it can incorporate more elements that go beyond American sport system governance. As a last observation, one may note that during similar legislative efforts, there usually is a set of directives or guidelines from the Executive Committee that will be implemented by the internal decision-making entities, such as the AGA or the S-A Reinstatement staff.

In NCAA Bylaw 12.1 one finds the general regulations and the noteworthy reference to the retention of amateur status:

12.1.1 **Amateur Status.** An individual loses amateur status and thus shall be ineligible for intercollegiate competition in a particular sport if the individual:

- a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;
- b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;
- c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received;
- d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional

- e) sports organization based upon athletics skill or participation, except as permitted by NCAA rules and regulations;
- e) Competes on any professional athletics team (per Bylaw 12.02.4), even if no pay or remuneration for expenses was received;
- f) Subsequent to initial full-time collegiate enrollment, enters into a professional draft (with exceptions that other NCAA Bylaws cover on the cases of the National Football League and the National Basketball Association draft); or
- g) Enters into an agreement with an agent

Major problematic areas in regard to the loss of amateur status for ISAs are juxtaposed in a following section with ISAs governance by federalized club-based systems of sport. Thus it may become clearer that frequently the nature of a national system and its amateurism policy bear problems for an international prospective student-athlete.

As an extension of the regulations on amateur status, we have specific descriptions of what constitutes prohibited forms of pay, under 12.1.1.1, with references to salary, gratuity or compensation, division or split of surplus, and an important inclusion of educational expenses, that a number of ISAs have had challenges with. Other prohibited forms of pay include expenses, awards, benefits, cash or equivalent awards with the exception of the prospect’s educational institution, unspecified or unitemized expenses, and expenses from a sponsor other than the parents or legal guardians of the PSA. Further regulations refer to impermissible pay based on performance, preferential treatment, benefits, or services, and any prize for participating for an institution’s promotional activity.

Bylaw 12.1.1.4 has a number of exceptions to the amateurism rule, and as contemporary situations become more demanding, this section becomes more extensive. What is of instrumental importance for the cases of IPSAs this research has dealt with, is contained under Bylaw 12.2.3, which covers competition against and with professionals. If the team is termed as an amateur team, the PSA can participate and compete against professionals. On the contrary, under 12.2.3.2: “*An individual shall not be eligible for intercollegiate athletics in a sport if the individual ever competed on a professional team (per Bylaw 12.02.4) in that sport...*” The crucial element of “*ever*” is oftentimes what has denied intercollegiate athletic participation to IPSAs. As will be demonstrated, there are cases where IPSAs have been “promoted” or joined their respective pro club that supports the junior age group amateur team, and by the mere relationship between the two and due to the fact that the IPSA may not have been able to avoid such participation at all levels of the team, including the pro rank, the situation led to permanent ineligibility, or -in the most favorable situations- a number of games withheld from intercollegiate athletic competition, according to a condition that will be covered in the next section.

### 3. Eligibility regulations - Initial Eligibility - “Amateurism Clearinghouse”

Under the general principle of institutional control and institutional responsibility, eligibility shall be determined by the member institutions. According to 14.01.1: “*An institution shall not permit a student-athlete to represent it in intercollegiate athletics competition unless the student-athlete meets all applicable eligibility requirements, and the institution has certified the student-athlete’s eligibility.*” In addition, according to 14.01.3.1: “*A student-athlete shall not be eligible for participation in an intercollegiate sport if the individual takes or has taken pay, or has accepted the promise of pay in any form, for participation in that sport, or if the individual has violated any of the other regulations related to amateurism set forth in Bylaw 12.*”

Furthermore, Bylaw 14.1.2 mentions: “*As a condition and obligation of membership, it is the responsibility of a member institution to determine the validity of the information on which the eligibility of a student-athlete is based.*” At this point, there have been significant efforts by member institutions, conferences, coaches’ associations, and many stakeholders, to introduce an entity within the NCAA administration staff that will relieve the pressure from the institutions, which have had considerable challenges collecting information pertaining to ama-

teur status. Thus there is a consensus that declares a declining trend in recruiting international prospects (NBCA, WBCA communication) due to the hardship coaches and member institutions are confronted with. Therefore the following proposal recently sponsored by the West Coast Conference suggests the creation of an Initial Eligibility Clearinghouse for amateurism that will especially cater to the institutions and conferences' needs in terms of collecting the information that will render an IPSA eligible or not, and models it after the academic credentials Clearinghouse.

Proposal 2004-60 was initially supported in concept, but defeated in the process of the 2004-2005 legislative cycle. The proposed amendment by the WCC that intended to seek formal NCAA staff certification of amateur status for IPSAs read: "14.1.3 Validity of Amateur Status. As a condition and obligation of membership, it is the responsibility of an institution to determine the validity of the information on which the amateur status of a prospective student-athlete is based. The amateur status shall be certified by the NCAA national office. An institution shall use the certification decision with respect to amateur status for each international student-athlete in order to determine the eligibility of that international student-athlete. An institution is responsible for notifying the NCAA when it receives additional information, or otherwise has cause to believe, that a prospective student-athlete's amateur status that has been previously certified has been jeopardized".

The proposal's rationale is very useful toward an understanding of the specific situations that occur around recruitment of ISAs: "Currently, each institution must certify the amateur status of incoming international prospects or selected students as defined in the NCAA General Amateurism and Eligibility Form for International and Selected Student-Athletes. This certification procedure causes the same prospect to receive different eligibility decisions at different institutions. This disparity has led to considerable hardship for and unfair treatment of our student-athletes and member institutions. It has also resulted in the participation of ineligible student-athletes, forfeiture of contests, last minute eligibility waivers and countless undue hours and resources spent on certifying an individual student-athlete. It has become common practice for institutions to obtain informal approval from the NCAA when certifying amateur status. This proposal seeks to formalize the process, take advantage of the NCAA's ability to collect data and equalize the playing field for those institutions unable to devote the same level of resources to certification of amateurism. This proposal is purposefully broad in language in order to allow the membership and NCAA, through subcommittee or otherwise, the flexibility to research the best method of implementation as was done when the initial eligibility clearinghouse was established. A proposal with such specificity would be impracticable at this point in the legislative process.

*Estimated Budget Impact: Not yet determined.*

*Impact on Student Athlete's Time: Considerable decrease on the time and effort expended by international student-athletes in collecting documentation from their home country". (NCAA LDSBI, proposal #2004-60).*

The AEC Cabinet and the S-A Reinstatement Committee, in their recommendation to defeat the proposal at the Management Council, mention:

*Academics/Eligibility/Compliance Cabinet: The cabinet opposes this proposal as presented. Although there is a need to have a system and process in place that would assist in ensuring competitive equity in the area of amateurism, this proposal lacks the details necessary to establish such a process. The cabinet asked the staff to review the concept presented within the proposal and provide recommendations to the NCAA Division I Academics/Eligibility/Compliance Cabinet Subcommittee on Agents and Amateurism.*

*Student-Athlete Reinstatement Committee: The committee did not support Proposal No. 2004-60 as written. Although the committee supports the concept of an international clearinghouse, the committee believes that this proposal lacked specificity to support. Specifically, no budget was addressed and the feasibility of information was not discussed. The committee believes that before it could take a position on the proposal, much greater specificity is needed. With regard to the concept of a clearinghouse,*

*the committee did note that a clearinghouse would certify the amateur status of a prospect; however, the reinstatement committee could still review mitigation present in an individual situation. Further, the committee noted there would be a significant budgetary implication for this proposal.*

The two main factors for the defeat of this proposal, other than the temporary nature and the specific wording problems, are -according to the NCAA staff- lack of specificity, and no budgetary implication. One may assume that the specific jurisdiction of this Clearinghouse would entail direct conflicts with the AGA and S-A Reinstatement staff's usual line of management. However, as a concept it is agreed by the NCAA staff that it would significantly reduce time and resources allotted by these two main entities. In the future, there may be an Executive Committee decision to adopt such a proposal and proceed with the realization of the task. According to the present strategy and the guidelines that will follow, both the centralization of decisions and the well-being of student-athletes are of major importance for the present administration. Thus, flexibility in decision-making will be served by such an entity that already has been pursued by many constituents. Regardless of the outcome of this endeavor, the S-A Reinstatement Committee will maintain the reigns for the ultimate decision, determining whether an IPSA will be eligible for intercollegiate competition or not, either on the first or second degree, after an institutional appeal.

In correspondence of the Collegiate Commissioners Association of Compliance Administrators (CCACA), an entity that is instrumental in the rules interpretations process on issues of national significance (*National Collegiate Athletic Association, Regional Seminars, Guide to Rules Compliance, NCAA DI Interpretations process*), there was further examination of the proposal and a discussion on the feasibility and realization of such a project. In the 11/3/2004 CCACA conference call transcript it was noted:

*Overall the group was supportive of 2004-60 but recognize that there could be concern over cost. Suggestions were made regarding each institution paying for the service of the staff to certify an international prospect as well as having the prospect pay a fee themselves. The group was concerned that the cost issue may cause the proposal to not be approved. It was agreed to continue to have discussions with the NCAA staff regarding this matter and to request that it be placed on the agenda for the in-person February meeting. It was also requested that the AGA staff be present.*

It is evident, therefore, that the major challenge in the realization of the project has been the budgetary implication for the Association and the membership. The CCACA members' suggestion of member institutions and prospects covering the cost may be one way of approaching realization. As was mentioned above, a precise description of the jurisdiction of such an entity would assist the AGA and SAR staff in their line of service provided to member institutions. Regardless of the outcome of a first degree Amateurism Clearinghouse decision, it should be noted that the SAR Committee reserved for itself the right to review the appeals process and consider mitigating circumstances for individual situations. The latter is a detail of significance and practical importance. During the next legislative cycle it may be established that such an entity can be realized, thus relieving the burden from the shoulders of member institutions' athletic administration staff members.

#### **4. Internal mechanism - NCAA AGA and SAR standards of review application**

As mentioned above, each NCAA DI member institution has the responsibility to research and confirm the eligibility of each recruited ISA. According to the aforementioned eligibility analysis, the institution needs to determine the validity of information pertaining to the amateur status of individuals-IPSAs. The process initially deals with the distribution of an ISA questionnaire.

The questionnaire covers such areas as educational background, athletics participation, expenses received from teams, contractual relationships, agency relationships, prize money, benefits, age and level of previous athletic competition, recruiting information, scouting questions, all in an attempt to investigate any potential infractions or

areas that the NCAA staff would use to deny IPSA eligibility. The institution then has to conduct an extensive research effort -frequently conducted by independent legal counsel and firms each institution is contracted with- in order to verify this information and possibly find more areas of question. This initial stage is admittedly very difficult due to limitations of resources and information nodes from overseas, for most DI institutions. Hence the effort from a majority DI institutions and conferences consensus to promote the institution of the Initial Eligibility Amateurism Clearinghouse described above.

The entity that assists member institutions in amateurism compliance is the Agents, Gambling, and Amateurism staff (AGA), which has communicated a series of checklists and updated material each year in order for institutions to investigate the validity of the information submitted by the IPSA. Determinants that are included in the checklist for investigating SAs or PSAs by the AGA staff cover family history, social network, work history, expenses, sources of income, assets, educational history. Specifically for alleged amateurism violations, the checklist involves background information of individuals that were closely related to the prospect, and relationships such as runner, certified agent, financial advisor are determined. In addition, benefits provided to SA/family/friends are investigated. Other resource tools that are suggested by the AGA staff involve interviews with the PSAs family and friends, as well as questions to pose to the AGA or SAR staff, the latter as a secondary measure in the case when a violation has been documented. These checklists, though extensive and helpful for the institutions, practically are hard to realize the collection of material that would clarify the amateur status of an IPSA. Frequently, NCAA staff members as well as member institutions administrative personnel or recruiting staff members have been quoted saying that the institutions that are diligent enough in their research efforts find some type of violation having occurred. On the contrary, institutions that are not characterized as being as meticulous in their amateurism research efforts proceed accordingly, and either use ineligible ISAs, or are being investigated by the NCAA staff in the long run for infractions (*USA Today, Interview with Bill Saum, Director of AGA, 7/15/2003*). Oftentimes, though, they are not, and that is where problems pertaining to competitive equity have been an area of controversy.

The next step after reviewing the amateurism information and deciding that the IPSA will be eligible for intercollegiate competition, is the institution and the recruited ISA completing the General Amateurism and Eligibility Form for International and Select Student-Athletes-Division I (*NCAA DI form 04-10a*). In this form one notices terminology and specific definitions applied for NCAA DI eligibility. According to the institutional guidelines, "*An international/select student-athlete is a student-athlete who either (a) is not a U.S. citizen, or (b) resides in an unincorporated or commonwealth territory of the U.S., or (c) has participated in foreign athletics activities or was associated as an athlete with a foreign athletics organization*". This is a useful inclusion, as it is not found in the NCAA DI Manual per se.

Once more, the institution has to analyze any applicable information that pertains to amateurism, and the ISA is advised that "...information you provide on this form will be used to certify your eligibility and thus may impact your eligibility to compete... You are required to provide accurate information... If you knowingly provide false and misleading information on this form it may result in additional consequences to your NCAA eligibility". After submitting the documentation to the NCAA office, the institution may proceed with declaring the ISA eligible or ineligible, which may lead the particular case to a further revision from the NCAA staff. The AGA staff will support the following action by the SAR staff, in the case an ISA has been declared ineligible and the institution appealed for reinstatement. It useful to note the procedure breakdown:

- Institution determines that a prospective or enrolled student-athlete was involved in a violation that affects eligibility.
- Institution declares student-athlete/prospective student-athlete ineligible under NCAA Bylaw 14.11.1 and withholds the student-athlete from all intercollegiate competition.

- Institution investigates situation and gathers facts (student-athlete reinstatement staff is not investigative in nature and it is the institution's responsibility to determine the facts of each case).
- Institution submits eligibility reinstatement request to student-athlete reinstatement staff.
- Staff reviews request, focusing on the student-athlete's/prospective student-athlete's responsibility.
- Staff reviews precedent with similar facts to determine what conditions for reinstatement should be imposed, if any. The student-athlete reinstatement staff attempts to put the individual back in the position they would have been in had the violation not occurred.
- Staff, on behalf of Student-Athlete Reinstatement Committees, can do one of three things:
  1. Reinstatement eligibility without conditions.
  2. Reinstatement eligibility with conditions such as repayment, return of benefit, withheld from one or more contests, lose one or more years of eligibility.
  3. Not reinstate eligibility at that institution or at any institution.

While the AGA staff is investigative and consulting toward member institutions in nature, the SAR staff is the one entity that is entrusted with a major decision-making responsibility. According to the NCAA webpage describing SAR:

*"Student-athlete reinstatement is a department within the NCAA's membership services program. The student-athlete reinstatement staff processes violations and waivers that directly affect the eligibility of a prospective student-athlete or an enrolled student-athlete. When an NCAA member school self-reports a violation, all eligibility issues are addressed first and as quickly as possible. Then, if the violation has institutional responsibility, it is forwarded to the NCAA's enforcement staff to be processed as a secondary or major infraction case.*

#### *Student-Athlete Reinstatement Mission*

*The mission of the student-athlete reinstatement program is to protect the competitive equity of collegiate athletics by administrating the student-athlete reinstatement and administrative review processes in servicing the NCAA membership and student-athletes. The staff strives for equity, consistency, a service-oriented partnership, and efficient and effective decisions".*

If the SAR staff denies reinstatement, then the institution may appeal the decision with the members of the SAR Committee for Division I. That will be the last resort the institution and the ISA have, before any legal action. On a number of cases, member institutions advise adversely affected ISAs to seek independent legal counsel, and pursue their case using any legal means available to them and necessary to achieve remedy. In the vast majority of cases such efforts will not see the light of the U.S. system of jurisprudence.

According to a recent interview conducted with Julie Roe, former Director of SAR, and currently holding one of the recently created positions of Director of Enforcement, the SAR staff was reported to conduct an average of 1,800 reinstatement requests' reviews per year. According to Julie Roe, one of the most important procedural developments in the management of SAs was the adoption of the new approach by the NCAA administration, the "less bureaucratic - more responsive" initiative by the NCAA Executive Committee in June 2003. According to the latter, SA welfare is weighed more than preserving competitive equity of member institutions. After the introduction of this new philosophy, it was reported that more than 50% of the cases handled were decided in favor of the SA, and 12% of the cases were treated with the withholding condition, which will be elaborated further; previously these cases would not have been reinstated.

Before extrapolating and discussing the withholding condition and the SAR process, it is instrumental to note certain developments in the policy formation of the present NCAA administration and certain guidelines the staff has to abide by when deciding on such cases. According to the September 2003 Report of the SAR Committee to the AEC Cabinet, certain legislative items and their rationale were evident of a change in philosophy and proposals for amendments in

the regulations that “reflect what occurs in practice” (Supplement #14, Report of the SAR Committee). Furthermore, the same report included nonlegislative items pertaining to the aforementioned shift in philosophy. After the NCAA Executive Committee communicated the new philosophical approach to committee chairs in a June 2nd 2003 memorandum, there were three major themes posed, by which the staff complies and delivers judgment:

- Flexible judgment
- Responsiveness
- Simplification

*Flexible judgment:* The committee determined that a shift in approach is appropriate. Previously, the committee provided directives to the staff prescribing specific outcomes for various categories of cases. The committee will continue to provide oversight to the staff, still serving as the appellate body for all decisions and working in collaboration in setting policy. The shift in philosophy will allow the staff to make flexible decisions aligned with guidelines set forth by the committee. Guidelines will assist both the staff and committee in considering what factors are important when deciding cases. The committee will regularly review all decisions made by the staff. The committee will have regular conference calls to review staff decisions that deviated from case precedent in light of the shift in approach. The committee will either approve the precedent or archive it. Until the committee’s review, the staff’s decisions are not binding on the committee.

In deciding cases, the staff and committee should consider many factors, including, but not limited to:

- Student-athlete (SA) culpability (SA knew);
- Student-athlete responsibility (SA should have known); and
- The advantage gained from the violation and the appropriate way to address that advantage (in light of any mitigation; through a withholding condition imposed on the SA or through an institutional sanction).

*Responsiveness/Simplification:* Regarding the two remaining themes, the committee discussed the student-athlete reinstatement process, including documentation requirements for various types of requests. The committee will continue to examine this area.

These guidelines are important in the conveyance of amateurism policy, as well as the future strategy by the NCAA staff and its decision-making process on ISAs cases. The major point that was reached after a July 7th 2004 meeting with the AGA and the SAR staff was that there is an imperative need of a concentrated effort by the NCAA staff and administration primarily, and by member institutions as the supporting mechanism, to educate the stakeholders in this process, mainly IPSAs and their families, on the particular regulations’ details. Thus IPSAs will not be jeopardizing eligibility unknowingly, and if so, the work of the SAR staff will become more feasible. The elements of culpability and responsibility by the individual IPSA will play a major role in the decision, as the information and conscious decision to jeopardize amateurism status will have been in place and in close relation.

In the case of an IPSA being declared ineligible and after the submission of the reinstatement request it was decided that there are impermissible benefits that the IPSA has to repay, this purpose can be served by the institution enrolling in a repayment plan, or the IPSA may select a charity of his/her choice for repayment of impermissible benefits. What is important to note for the purposes of member institutions compliance, is that if the reinstatement condition requires repayment and the institution and ISA choose to enter into a repayment plan, failure to satisfy that repayment plan by the ISA after competing under the plan may result in the SAR staff not entering into repayment plans with that institution for a four-year period. For the purposes of IPSAs reinstatement, international charity plans for repayment will suffice, as was mentioned in the July 7th meeting with the AGA and SAR staff. What will be demonstrated through the last portion of this research project, however, is the rationale and purpose served in particular cases by the withholding condition.

The SAR policies mention: “For decisions that involve withholding from competition as a condition, the student-athlete must fulfill the rein-

statement condition when he or she is otherwise eligible and during one of his or her four seasons of competition. The competitions used to fulfill a reinstatement condition must be applied as follows:

*Team sports:* The contests must be among those considered for team selection to the NCAA championship;

*Individual sports with separate team championship:* The dates of competition must be among those considered for team selection to the NCAA championship;

*Individual sports without a separate team championship:* The date of competition must be among those used to qualify for the NCAA championship.

*Sports without an NCAA championship:* The date must be regularly scheduled.

(Please note scrimmage or exhibition contests may not be used to fulfill a reinstatement condition. In addition, if the next contest in the institution’s schedule is part of the NCAA championship or other postseason competition, then the student-athlete must be withheld from those contests.) Also, a student-athlete must fulfill a reinstatement condition when he or she is medically cleared to play by the institution”.

According to the reinstatement policies for amateurism violations (Bylaw 12 guidelines, Reinstatement standard applied to amateurism violations for individuals initially enrolling at an NCAA institution for the 2003 academic year and thereafter) in the specific examples that will follow this analysis, reinstatement will be granted through the withholding condition. Even if the IPSA did not bear responsibility or culpability, and because of the nature and structure of the federalized club-based sports system in -mainly- European countries, such prospects will have to be withheld from competition, even if under no other circumstances did they jeopardize their amateur status (i.e. by signing a contract or with an agent). This seems to be the one element that may not serve the purpose of the rationale behind the new philosophy, or even the application of the “reasonable person” standard that substituted the “intent to professionalize” standard of review that existed in the past.

It is crucial, however, to make the distinction between professional competition for the IPSA before and after the first opportunity to enroll in an NCAA institution. In the former case, an individual who participates on a professional team (per Bylaw 12.02.4) after the first opportunity to enroll shall not be permitted to compete in intercollegiate athletics. In the latter case, an individual who participates on a professional team before the first opportunity to enroll will be withheld from competition on a one-for-one basis, not to exceed the equivalent of the number of contests in an NCAA season for that sport.

Case examples used by the NCAA staff as guidelines:

(1) *Facts:* While enrolled in high school, a basketball prospective student-athlete competes in 20 contests on a professional team, but did not sign a contract, nor accepted any impermissible benefits and expenses.

*Decision:* Eligibility reinstated upon the prospect being withheld from the first 20 regularly scheduled contests of the basketball season. The contests must be among those used for consideration for team selection for the NCAA Championship.

This is the case where a large number of IPSA from Europe and world regions with similar structure are being confronted with the withholding condition, while oftentimes they had no alternative but to play for the respective pro-club team, while enrolled in high school. Such cases and an overview of certain European countries sport structures will clarify these points in the ensuing discussion.

(2) *Facts:* While enrolled in high school, a basketball prospective student-athlete competes in 20 contests on a professional team, and signs a professional contract agreeing not to participate with any other team. There was no salary agreement.

*Decision:* Eligibility not reinstated due to the signing of a professional contract.

(3) *Facts*: A prospective student-athlete graduates from high school in May 2003 and decides to take a year off from school. The prospect competes in three contests on a professional team during the fall of 2003 and then decides to enroll in college in January 2004.

*Decision*: Eligibility not reinstated; the professional competition occurred after the prospect's first opportunity to enroll.

It is important to note that in the same context there are sport-specific guidelines posed. This is helpful for the SAR staff and the institutions, in order to take into consideration certain elements that are inherent in particular sports. Such exceptions are progressively introduced as amendments into the NCAA DI Manual. Being attentive to such needs may require further sport-specific amendments. Such an effort will coincide with the rationale and the philosophy the SAR staff is already implementing. An examination of facts on a case-by-case basis already leads to such legislative initiatives. Moreover, the application of the recently adopted standard of review came as a result of one such case.

Recapitulating, the standard of review that changed the summer of 2003 may have been initially strict in interpreting IPSAs cases and certain situations that may have led to amateurism violations; the intent to professionalize will not be the main deciding factor, but the IPSAs particular actions. These actions, however, as was mentioned above and will be explained further, may lack both the elements of culpability and responsibility. That is where the intervention of the new "student-athlete-first" philosophy has assisted in maintaining a balance in decision-making, and it remains to be seen how it will be implemented further in the near future.

According to The NCAA News: *"The student-athlete-first philosophy initially caused unease among segments of the membership who were concerned that the more flexible environment would be open to abuse. But student-athlete reinstatement committee members, many of whom had wanted to find a more friendly approach even before the new philosophy was adopted, are seeing positive results. The implementation of the new philosophy has led to two major changes within the processing of reinstatement requests.*

*The first is the greater authority given to the student-athlete reinstatement staff to make decisions. That authority has resulted in fewer appeals; however, the committee still provides oversight and input to the staff. Although the committees may see fewer cases on appeal, members review all cases where the flexible review resulted in a different outcome. That review takes place on a quarterly basis and provides the staff with insight into the factors that should be considered in its analysis. In about 98 percent of the cases decided by the staff, the committees have agreed with the staff's decision.*

*In addition to the increased staff authority, the implementation of the new philosophy resulted in a shift away from dictated outcomes or directives to a focus on approach. With this change in focus, the staff and committees now spend time discussing what factors should be considered in the analysis of various cases"* (The NCAA News, July 19th, 2004).

Julie Roe, in her aforementioned interview, mentioned that there has been a decrease in the numbers of appeals since the new philosophy. 5,4% of the cases dealt with were appealed to the SAR Committee in 2002, compared to 3,5% in 2003 *"due to the more flexible approach and staff discretion"*. It should also be noted that the decision to shift to the new approach and adopt the recent standard of review were unanimous Management Council decisions. The latter provides specific guidance for the SAR staff. Specifically, the SAR Committee and staff have identified certain applicable guidelines that are appropriate for the developing management of ISAs. These deal with:

- Student-athlete's responsibility for the violation.
- Institution's responsibility for the violation.
- If the violation could have reasonably been avoided if the institution had knowledge of it beforehand.
- Any other relevant mitigation presented by the institution.

These new guidelines are the factors that can cause reconsideration of the withholding condition in cases of IPSAs. The fact remains that there needs to be attention drawn toward both the well-being and fair

treatment of all PSAs and SAs, as well as maintenance of a level competitive field for DI member institutions. There have been concerns not yet eradicated in regard to the policies of certain institutions, which may approach the new philosophy with an attempt to bend and circumvent NCAA regulations, through a carefully staged series of successful appeals. Such conduct may perpetuate, thus the SAR Committee and staff assumed two policies that may relieve this pressure:

*"The most direct would be for the committees to send a letter to the institution's CEO in cases in which institutional error caused the student-athlete to be in harm's way but relief was granted. Committee members believe that CEOs who receive many of these letters — or more than one that deals with the same violation — would be likely to ensure that the reason for the behavior was modified. The letter is not intended to serve as a penalty but rather to make the institution aware that relief from a penalty was provided because of an institutional error.*

*The groups also discussed educational efforts to modify behavior. Committee members believe the more that institutions know about the number and types of requests — and the patterns that emerge from the requests — the more likely that the behavior will change"* (The NCAA News, July 19th, 2004).

Hopefully, this attempt by the SAR Committee and staff will bear fruit in the future. At the time being, however, one needs to observe particular situations that require attention in regard to IPSAs; these situations are directly related to the local region's sport structure, the norms of the particular national or international sport federation or national governing body, and impact the IPSAs amateur status and their eventual opportunities for pursuing higher education in the U.S.

## **5. The professionalization threshold - International sport entities structure - The case of men's and women's basketball**

At this point we employed both the secondary data available to the NCAA staff and member institutions as of November 2004 (*National Collegiate Athletic Association, Evaluating the competitive experiences of International student-athletes, International student-athletes and International Sports Items links*), as well as original research spanning from December 2001 to December 2004. This line of research leads to useful information and the general conclusion that, because of the structure differences between the U.S. educational-based system of sport in NCAA DI athletics and the club-based model in most parts of the world, international prospects pursuing higher education and athletics in DI member institutions will be confronted with many challenges, mainly meeting the amateurism criteria as they were established above. An examination of international sport entities structure will provide evidence for these problems (both for IPSAs and member institutions wishing to recruit them) and for the purposes of this research paper, scope will be de-limited on the sport of basketball, with the specific differences between men's and women's basketball. The selection of the particular sport has a number of justifications, which include but are not limited to: growing popularity of sport internationally, revenue (men's) and borderline revenue (women's) producing sport in DI athletics, sport-specific regulations included in the NCAA DI Manual and the amount of basketball-specific rules that are incorporated for men's and women's basketball, being a team sport that signifies clearly the challenges examined in previous parts of this analysis. Moreover, the findings extricated may be useful for comparison and relevant analysis in similar federalized club-based systems of sport in team sports such as soccer, volleyball, handball, field hockey, ice hockey, rowing and water polo.

Interestingly and appropriately for reasons of serving the interests of member institutions and the IPSAs, the AGA staff embarked on a quest that would both inform member institutions of the situations existing in foreign countries and pose specific elements that may cause problems in recruiting eligible prospects, as well as educate foreign national and international sport federations on the NCAA amateurism regulations, with the hope the administrators overseas would disseminate the information to as many constituents as possible. In the previously mentioned meeting with the AGA and SAR staff, it was realized that there are challenges that have to be overcome and

that an all-encompassing educational effort on NCAA amateurism rules should target as many NGBs as possible and extend to younger age groups, before IPSAs engage in activities that would jeopardize their eligibility. In other words, before the prospects go beyond the crucial professionalization threshold. Once e.g., basketball prospects reach the 17-18 years-old age group it may be too late to ratify and remedy a situation that arose due to the sport system structure in the country of origin. This educational effort started with basketball and volleyball, and hopefully will extend beyond these sports, covering a wide range of intercollegiate athletics sponsored by DI member institutions that feature international prospects. As a suggestion, it was communicated to the NCAA staff that it may be feasible to start from the sports and countries that traditionally feature more ISAs in DI member institutions. The NCAA research staff is annually compiling this information and can be instrumental in assisting and identifying the next targets for this effort.

The European club-based model is representative of international sport entities structure and in similar forms may be encountered in other parts of the world as well. The organized participation in sports through clubs may begin as early as the 3-6 years-old bracket, with the first competitions taking place in the under-10 years-old age group. By the time the selected few reach the elite teams that are operated under the auspices of the sport federation overseeing the sport and/or a professional club, namely the Cadet age group (Under-16) and Junior age group (Under-18), they -most likely- will have been given the opportunity to join the ranks of the professional team supporting the infrastructure for the junior club, which would bear problems in the case these young athletes wish at a later point to pursue an athletic scholarship opportunity in the U.S. Hence, an extensive educational effort should focus on prospects and their families in as younger age groups as possible. Insofar as the member institutions may not engage in recruiting attempts during these early stages of competition, it will rely on the NCAA staff to organize this educational effort.

According to the info collected by the NCAA staff (*National Collegiate Athletic Association, International Sports Items, The European club-based athletics system*):

*"The athletics structure in Europe is primarily a club-based system that is common throughout the continent. These clubs provide participation opportunities at many different levels, often for several sports. However, the formation of clubs just for basketball participation is not uncommon. In the case of basketball, top clubs will often participate in the highest competitive league in their respective country. The rosters of these senior teams may include individuals who have developed through the club structure by participating on the team's cadet or junior teams. The senior team roster may also include individuals with previous experience with other clubs or in other countries (including former U.S. collegiate and NBA or CBA players). The rights to a particular player may be traded, purchased or loaned to another club. Professional players in many leagues throughout Europe have the potential to earn large salaries but may be participating with a younger player who receives very little or no remuneration. Clubs may also sign younger players to agreements that provide small salaries, educational expenses, or actual and necessary expense reimbursement for their participation at any level for the club.*

*The popularity of basketball in Europe has increased significantly in recent years, and it appears that this popularity is having an effect on how many leagues throughout the world will market and promote themselves as professional. Further, many of these leagues wish to retain their younger players by providing them with financial incentives that will keep them from leaving their club teams and enrolling at NCAA member institutions. European basketball officials are cognizant of the increased popularity and financial revenue created by the NBA, and wish to create the same atmosphere in their countries. Therefore, eligibility issues regarding prospective or enrolled student-athletes' participation history in these leagues should be a concern.*

*The national federations are the governing body of the countries' club team system. The federation has all player contracts on file. The club team system is organized by four age levels. All players have a license that indicates for which club team they play.*

*Payment of money to players generally begins at the junior club team*

*level for elite players. Club team contracts beginning at the junior level and up may include educational expenses, housing accommodations, per diem, stipends, allowances, equipment, facilities, coaching and transportation. Club teams with significant resources may provide housing, education and food. The NCAA's definition of "actual and necessary expenses" is more broadly interpreted by those involved in international basketball.*

*Club systems are financed through membership fees (shareholders and boosters), corporate sponsors, television contracts and local government funding.*

*The level of funding varies from club to club. The better-funded clubs have facilities where participants are lodged and fed. These clubs may also pay educational expenses as well as provide equipment, facilities, coaching, transportation, stipends and per diems at no cost to the player.*

*There are multiple divisions of club competitions. In some federations, there could be as many as seven divisions. Club teams in the first division in South America, the top 30 European countries and some Asian nations are considered professional teams where players are paid. First division club teams participating in leagues maintain or lose their status in the league each year based on their win/loss records. The two worst teams in first division are replaced by the top two teams from the second division. Second division teams may be professional.*

Bearing in mind a recent (11/3/2004) agreement between the International Basketball Federation (FIBA) and the Union of European Basketball Leagues (ULEB), the entity that organizes the top competition in European Basketball - the Euroleague for the top European club teams, prospects may find themselves in a more balanced and at the same time more financially lucrative world of European basketball. According to the agreement, FIBA will continue to organize the youth development European National teams' championships, but with the joining of forces the strength of top basketball competition will lead to the best prospects signing with top notch professional teams. In combination with the fact NBA and WNBA teams have already led the way in international and especially European talent recruiting, it appears that only a handful of talented athletes will continue to pursue athletics combined with higher education in the U.S. If they wish to do so, however, they will be faced with challenges such as the ones created by the difference in structure between NCAA DI athletics and club-based sport.

Even before the aforementioned historic agreement between FIBA and ULEB, the NCAA staff reached a few points that member institutions wishing to recruit foreign student-athletes in basketball have to bear in mind:

- *First division club teams in South America, top 30 European countries and some Asian nations are considered professional teams where players are paid.*
- *First and second division club teams have players who are paid, under contract and are considered "professional."*
- *Only first division club teams compete in FIBA international competition.*
- *Elite junior European players (approximately 18 years old) are getting paid by club teams at the junior club team level.*
- *Club team contracts begin at the junior level (may include educational expenses, housing accommodations, per diem, stipends, allowances, equipment, facilities, coaching and transportation).*
- *Many first division club teams play in professional leagues.*
- *Most players on first division club teams have contracts with the teams.*
- *Many players on second division club teams have contracts with the teams.*
- *Agents are unregulated. Many agents have relationships with club teams and procure players for the teams.*
- *Agents sign elite players as young as 12 years old; many agents send students to the United States to play college basketball.*

An in-depth look at particular countries of origin and their sport structure as it pertains to basketball competition will lead to an identification of issues that need to be addressed by IPSAs, member institutions recruiting them, and ultimately the NCAA staff.

#### *Australia:*

Interestingly for NCAA DI member institutions, Australia along with a handful of other countries around the world with a very exquisite sport structure and an emphasis on the developmental side of youth athletics, has established the government funded Australian Institute of Sport (AIS). AIS athletes are selected as elite athletes and receive scholarships for attending AIS. These scholarships include a variety of benefits such as (*Australian Institute of Sport, Scholarship section*):

- access to world-class facilities
- high performance coaching
- performance reporting and supervision
- personal training and competition equipment
- sports science and sports medicine services
- travel, accommodation and living allowances for events chosen by the AIS
- full board at the AIS Residence or living-out allowances as appropriate
- reimbursement of education expenses to limits that depend on the type of study undertaken
- assistance provided by the Athlete Career and Education program
- incidental expenses.

Being an educational based amateur team, AIS maintains eligible IPSAs in their ranks, even though they participate in the Australian Basketball Association (ABA) -men's side - and the Women's National Basketball League (WNBL) -women's side. Both these leagues would be considered semi-professional for purposes of NCAA DI amateurism. However, the AIS players participating in e.g. WNBL competition may not be subjected to the withholding condition, as opposed to several European prospects hailing from similar conditions. The reason being AIS is considered maintaining the amateur status of IPSAs, as opposed to many European leagues and teams that fail to do so. As will be examined further, on a number of occasions, European prospects should be treated equally, as they do not jeopardize amateur status, but for the structure of their respective sport system that encourages or in certain situations obliges junior athletes to participate in the top division pro teams.

In Australia both the National Basketball League (NBL), the top club competition for men's basketball, and the WNBL, have teams that are or should be considered professional, and at the same time include in the rosters of these teams junior age players that would be considered IPSAs for NCAA DI member institutions. Even with limited participation or by the mere fact of their appearance on the roster of a pro team, these IPSAs jeopardize amateur status for NCAA DI. The AIS being the best solution for someone who wishes to participate in the highest level and at the same time maintain eligibility for NCAA DI athletics, IPSAs have challenges to face in their transition, but not in the degree European-based IPSAs have to. According to unpublished data from our research, most NCAA DI men's and women's basketball teams either entertained the notion of recruiting an IPSA and eventually did not follow through due to amateurism - basically - challenges, or were actively engaged in international recruiting attempts. In the case of basketball, the problematic area of amateurism application as well as the breeding ground for a majority of IPSAs for DI member institutions is the European club-based system. The following information is a juxtaposition of secondary data obtained from the NCAA staff's research communicated to member institutions with material from our original research conducted on the areas of focus of the previous NCAA staff research, as well as additional areas and countries of origin.

#### *France:*

*The top league for men's basketball in France is the Ligue Nationale de Basketball (LNB). The LNB, which is made up to two divisions (Pro A and Pro B), is considered a professional league. Each LNB team will also have a junior or espoirs team in which young men from the age of 18 to 21 sign agreements with these teams, receive compensation or expense reimbursement, and commit to the club should they participate at the highest professional level in France. It is not unusual for an espoirs player*

*to participate at the professional level in a limited number of contests. Lower leagues such as the National 1, 2, and 3 leagues appear to be considered amateur leagues even though some players may be compensated for their participation.*

Similar to the AIS structure mentioned above, the French Basketball Federation (FFBB) has instituted youth development through the National Institute of Sport, (INSEP). Contrary to the AIS, French administrators self-proclaim the players on INSEP teams professionals as they participate in top division competition, traditionally in second division leagues; however it is established and the NCAA staff acknowledges that the mere declaration as professional does not render a prospect as such, depending on the particular situation. In the INSEP case, junior national team players may live, study, and train together for years, however they may not get paid and would be considered amateur according to NCAA DI amateurism standing.

The most interesting situations from an amateurism standpoint occur at the Espoir team level, with young athletes enjoying benefits from their respective pro teams. Oftentimes, the developmental side of these Espoir teams extends beyond what would be the professionalization threshold, and these young players may receive benefits that under NCAA regulations would be considered impermissible. This is the situation occurring in most European countries. The respective national systems function through state funding and appropriation of monies to national sport federations, which administer the competitions and support clubs in all levels. Most importantly, the better pro clubs have established a strong foundation for their Espoir teams, frequently paying the junior age players. These situations are more frequently encountered in men's basketball, though in select states and regional areas there may be similar relationships between junior women and the pro clubs operating top Espoir teams.

*All Espoir players have to sign either an Aspirant contract or a Stagiaire contract. Espoir players who are 16 to 18 years old sign Aspirant contracts, which are two-year contracts. Espoir players who are 19 to 21 years old sign Stagiaire contracts, which are three-year contracts. These contracts reflect the cost of development of the Espoir players. The cost of development varies based on an Espoir player's age. Sixteen-year-old Espoir players are assessed 580 Francs per month. Seventeen-year-old Espoir players are assessed 805 Francs per month. Eighteen-year-old Espoir players are assessed 1,000 Francs per month. Nineteen-year-old Espoir players are assessed 1,600 Francs per month. Pro A and Pro B teams have Espoir contracts to reflect the cost of development assessed to Espoir players and to create a uniform monetary standard for the transfer of players based on the player's age. In rare instances, Espoir players who wish to leave their club team may be obligated to pay the team for the training they were provided. In essence, this is a release fee from their contract. The Espoir teams play each other during the regular season and prior to Pro A and Pro B games. There is also an Espoir championship. It is not unusual for an Espoir player to participate at the professional level in a limited number of contests.*

In many countries there may be a practice of pro club administrators inflicting pressure on young talented athletes to sign early with their club teams for services that may extend to their late 20s. Certain countries' practices, especially former Eastern Block countries, would ban the talented young athletes from further participation in the junior ranks, if they did not sign for the respective pro club team. Thus, they would risk losing exposure for a potential career, or an athletic scholarship, that they would jeopardize by definition had they entered into an agreement with their clubs. This vicious cycle perpetuates and players only have their national teams' competitions as a last resort for exposure before U.S. recruiters. Sadly, in a number of cases the influence of club administrators on federation members, in charge of the selection of national team members, creates unfair practices, and players may be adversely affected if they do not conform to the urge of their club administrators. Former practices in some countries entailed the issue of an athletic identity card that would bind the player to their club for a minimum of 12 years; that was the situation in Greece.



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THE HAGUE — THE NETHERLANDS

# The European Union and Sport Legal and Policy Documents

*Editors:*

Robert C.R. Siekmann and Janwillem Soek

*With a Foreword by*

Viviane Reding, EU Commissioner for Education and Culture

*The European Union and Sport: Legal and Policy Documents* is the first volume in the T.M.C. Asser Institute series of collections of documents on international sports law containing material on the intergovernmental (interstate) element of international sports law. Previous volumes have dealt with the Statutes and Constitutions of universal sports organizations, their Doping as well as their Arbitral and Disciplinary Rules. The legal and policy texts in the present book are arranged in thematical, alphabetical order and are chronologically subordinated per theme. They cover the period since the *Walrave* judgement in 1974 when the European Court of Justice established that sport is subject to Community law to the extent that it constitutes an economic activity. The book in fact gives a detailed insight into what could be called the 'EU Sport *Acquis*' for the present and future (candidate) Member States. This *acquis* has been developed over the years in numerous decisions and policy documents by, in particular, the Council, Commission, European Parliament and Court of Justice.

The contents of this book are divided into three parts totaling twenty chapters and covering all themes which the EC/EU has dealt with so far. The *General* part contains general policy documents such as, for example, the European Model of Sport and the so-called Helsinki Report on Sport. *Specific Subjects* concern Boycott, Broadcasting (in particular the Television without Frontiers Directive), Community Aid and Sport Funding (for example, the Eurathlon Programme), Competition (central selling of tv rights re-

garding the UEFA Champions League, the German Bundesliga, the English Premier League, etc., Formula One, World Cup ticketing arrangements, players' agents), Customs, Diplomas (Hcylens), Discrimination (*Walrave*, *Dona*, *Kolpak*, and including Women in sport), Doping (Community Support Plan and Pilot Project for Campaigns to Combat Doping in Sport), Education / Youth (European Year of Education through Sport 2004, and documents concerning child protection in sport and trafficking in young footballers), the freedom of establishment to provide services (*Deliege*) and of movement of workers (*Bosman*, *Lehtonen*), the Olympic Games, State Aid, Tax, Tobacco Advertising, Trade Marks (*Arsenal/Reed*), Vandalism and Violence (football hooliganism) and Miscellanea (Fishing, Horses, Hunting, etc.).

*The European Union and Sport: Legal and Policy Documents* provides an invaluable source of reference for governmental and sports officials, legal practitioners and the academic world. With the increasing public interest in the legal aspects of sports, this collection of documents is a timely and welcome contribution to enhancing the accessibility of basic texts on international sports law and policy.

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THE HAGUE — THE NETHERLANDS

# Sports Image Rights in Europe

*Editors:*

Ian S. Blackshaw and Robert C.R. Siekmann

*With a Foreword by Sam Rush, Chief Operating Officer,  
SFX Sports Group (Europe) Ltd., London, United Kingdom.*

As sport has developed into a global business, the importance of sports image rights as a marketing tool to promote individual sports persons and sports teams and clubs – and, incidentally, major sports events themselves – has also evolved and become a significant player in the multi-billion dollar sports industry around the world – not least in Europe, a powerhouse in world sport and the focus of this book.

This book provides a concise legal and practical overview of the creation, protection and enforcement of sports image rights in the pre-May 1, 2004 Member States of the European Union as well as Norway and Switzerland. It also covers sports image rights in the United States of America for comparative purposes. A separate chapter deals with some of the fiscal aspects of the subject. Each chapter is devoted to a review of the applicable legal rules on sports image rights in an individual country. In addition, where appropriate, practical mat-

ters, such as the contents of contracts, are also examined and explained.

The contributors to *Sports Image Rights in Europe* are from major European law firms and are experienced in sports law in general and the field of sports image rights in particular. The book's editors are Professor IAN S. BLACKSHAW, international sports lawyer and a member of the Court of Arbitration for Sport (CAS), Lausanne, Switzerland, and Dr ROBERT C.R. SIEKMANN, Director of the ASSER International Sports Law Centre, The Hague, The Netherlands.

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### *Greece:*

After the European Union passed laws governing the protection and support of sport by national governments, nurturing youth sport and including it to the amended European Union Constitution, all member countries have to conform and comply by the modern, fairer regulations. In Greece, there are basically two professional leagues, A1 and A2, which attract some of the best players in Europe and former NBA players. A1 pro clubs have some of the better "Espoir" junior teams preparing talented athletes for the first team, and transfers of young players are often creating major controversies and intense situations among clubs. These young players often select to sign contracts as soon as they become of age (18), even though certain federation regulations may state that formal agreements should be posed to players over 21. Agreements have been documented between clubs and young athletes as early as 15 years old, in the case of a highly talented player sought after by every A1 team and recruited already by some NCAA DI institutions.

Certain inequities occur in the women's basketball league, where A1 is professional, contrary to the proclamations of the administrators. According to NCAA regulations, a female basketball prospect having played in A1 games prior to the first opportunity to enroll in a DI member institution, would be facing the withholding condition, in the best case scenario, where no contract or agreement with agents had been signed, and where no impermissible benefits were covered by the team. The practice shows that the most talented young athletes, members of the cadettes and junior women's national teams, would be practically forced to play in A1 games. Oftentimes, parents feel this is a great honor for their offspring, lacking the knowledge that she might be sacrificing an opportunity for an athletic scholarship in the process. The way A1 is structured in effect does not entail any compensation for these young players. But the mere fact that some of the players on the club team might be reimbursed for occurring expenses, or have contracts, would deem the younger athletes professionals as well.

For this reason and for others pertaining to both structure and national federation administration, there are not many chances of Greek players being considered as IPSAs in DI athletics. Hence, the educational effort by the NCAA staff that was mentioned above, would be serving a multi faceted purpose in such cases. The responsibility and culpability of the IPSA after such a communicated effort of the amateurism regulations and their application would make the SAR staff's work easier when reaching a decision. If a conscious decision has been made by the prospect and the family to pursue participation in pro sports and still consider an athletic scholarship opportunity from a DI member institution, then that decision would be prima facie evidence of culpability and the prospect's responsibility in the amateurism violation under question.

### *Israel:*

In Israel the top divisions in both men's and women's basketball are considered professional. Young athletes under 18 are frequently invited to join and participate in these clubs' competitions. The latter would put them in the same situation as all the aforementioned prospects faced with the withholding condition. Moreover, in Israel (and in Cyprus for that matter) young men 18-19 years-old (in Israel and women) are required to serve mandatory military duty. Some of them receive expenses by their teams for transportation to practice and competition sites, as well as other expenses. Still, the exposure some players receive by means of their national teams' participation open up scholarship opportunities, even if they were not granted the chance to play in the top level of their respective leagues. However, it should be noted that the level of players the top-100 DI institutions expect from an international prospect would be that of a talented member of a respective nation's national team, if not a key contributor for certain specific cases. In turn, these players will be talented enough to have at least limited participation in top division athletic competition, and problems thus arise.

### *Italy:*

Though the club and league structure in Italy is similar to the ones described above, on the women's side the nature of contracts for domestic players is markedly different. Players are not obliged by the Italian basketball federation to sign written contracts with their club teams. The oral contracts between player and club president act in the same manner as written contracts in other countries and these agreements can be entered at any age. It is not unusual for players as young as 14 to have such agreements. Italian basketball on the women's side has seen a decline in participation as volleyball has become more popular, which has led to the best young players being coveted by their club teams and used as bargaining chips between clubs. NCAA legislation treats verbal contracts in the same manner as written contracts. However, if the club or player's parents feel strongly that attending a U.S. institution would benefit a young player, it is very difficult to establish the existence of a verbal contract when all parties are willing to cooperate and deny the existence of such an agreement.

A1 and A2 leagues are professional both in men's and women's basketball. Because of the level of competition, only a selected few would be allowed to participate in pro club games; however these would be the players that top DI institutions would wish to recruit as well. For certain female basketball players, their participation in Italian pro club teams has been the reason for their ineligibility and denial of reinstatement by the NCAA staff, and in other cases certain players with remaining DI eligibility were allowed to compete in intercollegiate athletics, due to the individual case review and the specific facts presented by the ISA and the member institution. It appears that changes in national regulations as well as the re-classification of club teams play an important role in these cases, and may be instrumental for an IPSA pursuing reinstatement. At the time of participation, the team has to be considered amateur according to NCAA DI regulations. If the IPSA ever competed in a club team that at any point of the athlete's participation was falling under the definition of a professional athletics team, the result is ineligibility for the prospect.

For the NCAA staff to increase effectiveness in its pursuit of clarity a viable path is the continuous cooperation with the FIBA-Europe administration in an attempt to encourage a more cohesive mandate with regards to contracts between players and clubs. It is the nature of any federal system of governance to update archaic methods used by its members and it is the responsibility of the federal body to regulate within the defined boundaries of its power as defined by its members.

### *Spain:*

The Spanish club structure is closer to a professional model. Professional leagues offer opportunities for competition to talented young players that are considered IPSAs, though the opportunities exist for only the very best athletes due to a very strong domestic base of players and a high level of funding for club teams both on the men's and women's side. This fact, combined with the establishment by the Spanish federation of basketball academies in Barcelona and Madrid that are educational institutions involved in the organization of a developmental team, provide young players with a luring alternative to signing contracts with senior teams. The players at the academies are recommended by their club team coaches at a young age, and attend the academies by their own volition. These players would be considered amateurs and would be eligible under NCAA regulations, according to what was aforementioned in regard to AIS. The fact that they competed against professionals bears no effect on their eligibility, considering the examination of amateurism regulations above. A recent case of one such player that was highly recruited by NCAA DI institutions signifies that these prospects may instead opt for the WNBA draft, a niche they have as opposed to U.S. players at the same age group.

It is worth noting here that this project by the Spanish federation has created a youth base that is becoming the dominant power in European basketball, with men's and women's teams in the finals or semifinals of U18 and U16 age groups at the European championships the past two years. Relevant areas of research that would be helpful in an all-encompassing education effort would be the nature of sponsor-

ship for the Spanish federation. Barclay Card, one of the major European credit card companies funds the Spanish federation to an unprecedented degree, rivaled only by the recent sponsorship of the Russian federation by Reebok. The Russian Federation's association with Reebok will be discussed below as it has serious implications for the future of elite level youth basketball around the world.

#### *Turkey:*

Turkey has many commonalities with the countries described above, but also features certain characteristics that will be purposefully omitted respecting the Buckley Amendment and the educational privacy of currently enrolled ISAs in DI member institutions. Top divisions in men's and women's basketball are of a professional nature and include participation of young prospects that may or may not be compensated. If they have signed a contract as the federation would urge them to after the completion of their senior year of high school, they would be considered ineligible per NCAA amateurism rules.

The Turkish federation has a clear policy of encouraging its premier players to attend U.S. institutions. The aim of this policy is to give Turkish basketball a higher global profile as is shown by the recent influx of Turkish players to the NBA and the emergence of Turkish youth national teams as contenders in FIBA youth competitions. In terms of contracts between young players and clubs the Turkish federation has very clear and accessible files that detail all contracts. Upon signing, the club must send a copy of any contract to the federation for its records and the federation must approve all contracts. Unlike many European countries it is not required by the Turkish federation that a player signs a contract within 90 days of their 18th birthday, though most players do so as the club system for both genders is well funded and clubs entice young players to sign contracts.

#### *Yugoslavia/Serbia and Montenegro:*

The common theme of former eastern block countries is best demonstrated in the case of Serbia and Montenegro. Before the dismantling of Yugoslavia funding for all sports came directly from the government and was supported in limited fashion by the small privately owned businesses that were allowed under the socialist governments. This led to a system that did not aim at making a profit. Free from the constraints of the bottom line, Yugoslav basketball developed a system that was based on coaching rather than players. National academies for coaching were developed in Belgrade and this in turn produced a generation of players that dominated leagues around Europe in both the men's and women's game. The generation of coaches that created these players is aging and although the coaching academy still exists, it is now a for-profit institution and the output has dropped dramatically. The latter's significance for the league system in terms of professionalism is that funding allowed for extended youth involvement has elapsed and clubs are forced to find private sponsors.

On the men's side this is not as great a problem due to the current trend of both European and NBA teams spending large sums to buy the best young players, and the Bosman ruling that has created a free market in the trade of European born players within Europe. However on the women's side funding has all but disappeared and exists for only two teams in a meaningful sense. While young players on these teams are not given contracts that are truly professional, these young athletes are regularly not paid the small amounts they are promised for their expenses and are generally treated with little respect due to the ease with which a replacement for them can be found. Under NCAA rules these prospects would be considered ineligible. However, due to the member institutions' self-report and investigation mechanisms there are currently many players representing NCAA member institutions who on closer examination would be deemed ineligible. As suggested above, an International Amateurism Clearinghouse would create a level playing field for all and promote one of the constitutional principles for NCAA DI purposes, competitive equity among member institutions, at the same time balancing this principle with the one promoting Student-Athlete welfare. In the long run this would lead to a massive database of information surrounding international amateurism issues and may necessitate an

extended staff in its administration, not far from the model of the Initial Eligibility Clearinghouse for academic purposes, already enjoying the overall acceptance of the industry.

It is also noteworthy that students in all parts of the former Yugoslavia graduate from high school at age 19. By that time they will very likely be signed by clubs -should they be considered top-quality prospects, equally so by pro clubs and NCAA DI institutions- thus eventually being declared ineligible for intercollegiate competition. The choice for these players is limited. Certain prospects, currently eligible for DI athletics, have deliberately withheld from pro club negotiations, risking severe sanctions by their administrators, their federation coaches and administrators, even facing criminally chargeable threats, public criticism, and family turmoil. With their prior participation in the national team ranks, however, they managed to attract recruiters from DI institutions. These prospects would usually have some family tie or strong connection to the recruiting member institution, otherwise exposure would be difficult to attain. The national teams, however, play a very important role in this cause.

#### *Russia:*

The Russian system for youth development is a case in point of how difficult eligibility decisions are for NCAA member institutions. The elite players at the youth level are developed through privately funded basketball schools (Gloria and Trinta in Moscow are good examples). At these schools the coaches actively recruit the best young players to their institutions and act as feeder schools to the Russian "super league" teams. These teams compete in the junior leagues of their respective cities and dominate them as a rule. The federation does not officially sanction these basketball schools but significantly the head of each school has a place on the board of the Russian federation. Due to the strength of most "super league" teams, young players rarely get the chance to compete on the 1st team of their club sides, however it is not unusual for their names to appear in rosters simply as an insurance policy to prevent them from fleeing to U.S. institutions. The level of knowledge about NCAA rules is high among the junior level coaches in Russia.

The sponsorship of the federation by Reebok hints toward the future of the game at the pro level. Reebok looks to sign the best young players to endorsement deals early, and may sign as many players as possible on infinitesimal contracts. According to this developing fashion, the sponsors create a farm system of players headed to the NBA, at the same time receiving a solid following and eventual Return on Investment in each country they sponsor. One should monitor the evolution of this trend, as NBA rosters get deeper with foreign born players. Thus, it is instrumental for the NCAA staff and member institutions -should there be no International Amateurism Clearinghouse adopted in the near future- to develop nodes of information in timely fashion and become familiar with the key constituents of these sponsorships, namely investigating ties with the 3 big sneaker companies - Nike, Adidas, and Reebok.

#### *The Former Soviet States - Ukraine, Belarus, Latvia, Lithuania:*

Each of the former Soviet States has an ailing but fundamentally sound structure that begins with state-sponsored basketball schools that compete in either the first or second division of their countries' league. Although the trend in the early 90's was for players to make the effort and pursue college sports in the U.S., in general the opinion of the U.S. college game has dramatically plummeted, with the common conception being that players do not improve during their careers in the U.S. This means that most young players aspire to play in the Russian "Super League" and on both the men's and women's side there is the money to reward the best young athletes.

Graduation age in these countries and Russia itself is 16 which -for NCAA purposes- means that if a player is recruited beyond his/her high school graduation, even if he/she is only 17, he/she will have been playing professionally for at least part of a season. This is significant because of U.S. college coaches' lack of information. The latter are not educated in the finer points of the countries' high school systems and most of the time remain incognizant of them throughout

the recruiting process. It is therefore up to the member institution's compliance officer to establish high school graduation age and verify the authenticity of documents, which for the right price are all too easy to forge. The situation that recruits find themselves in if they are truly committed to pursuing higher education and NCAA DI sports in the U.S., is paying off whomever they need to in order to attain needed documentation. On the men's side such an effort is more difficult because players' names appear on websites, as having played on pro teams. For women the same situation arises but not with the same frequency. The issue faced by the players through this type of system is the lack of choice.

College basketball, as much as key stakeholders would like to promote it as an ideal system, does not cater for improving players skills so much as providing a show case for talented players and giving those who were overlooked the chance to prove themselves. Bearing in mind the aforementioned situation that is currently developing in European basketball, combined with the professional opportunities offered to young talented athletes by pro leagues both in the U.S. and Europe, the main reason for a foreign player to come to the U.S. and pursue an athletically related scholarship is education and it is precisely this spirit that the NCAA wishes to promote.

#### *Compliance Officers at NCAA DI member institutions*

The reliance on compliance officers creates a massive disparity between institutions due to the work ethic and knowledge base of the individual administrator, as many institutions have only one compliance officer and his/her limited staff must deal with the full load of compliance issues. Thus it is difficult for an individual to reach a complete understanding of the global scene. Hence, NCAA DI member institutions' athletic departments contract independent legal counsel to assist in knowledge attainment and information collection affecting amateur status and eligibility of recruited foreign prospects. At the same time, many institutions that took the time and put forth the effort in managing such issues examining every possible angle, often find that they were recruiting ineligible players. To their dismay, another institution might be less diligent and through a less meticulous investigative effort declared the same recruit eligible. The ultimate decision-making body remains the S-A reinstatement staff and Committee, and by means of the proposed Clearinghouse body, such issues and logistics problems would be avoided and assumed by the fiscally responsible and resources-apt NCAA administration.

#### Key points:

- The scope and capabilities of the suggested Amateurism Clearinghouse
- The role of individual compliance officers at member institutions
- The future sponsorship of national sports federations
- The disparities in graduating ages for different countries
- The purpose of foreign athletes choice of US colleges and universities
- National sport academies and private sport academies
- Federation policies in regard to the participation of their national team players attending US colleges and universities
- The coherence of NCAA policy in regard to foreign/domestic high school education and disparities among the two
- The definition of professionalism
- The lack of blanket policy

#### **6. Conclusion**

Recapitulating, one should note that in most European countries the club-based system creates challenging situations as they pertain to amateurism and NCAA DI eligibility. Prospects that originate from certain countries that do not have a very competitive league or that participate on a team that is not professional in nature would be relieved from the burden of proving they did not jeopardize eligibility and their amateur status. Recruiting institutions should look at those countries and their governing structure carefully, in order to identify potential problems that the NCAA staff will note eventually. Such countries as Albania, Austria, Belgium, Bosnia-Herzegovina,

Bulgaria, Croatia, Czech Republic, Denmark, Finland, FYROM, Germany, Great Britain, Hungary, Iceland, Ireland, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Sweden, Switzerland, and countries from Northern Europe and the former Soviet Union, including Russia, may have very strong leagues at a given time, especially in women's sports, and in the case of Russia, may be expanding their resources to cover salaries of the best players in Europe and the NBA/WNBA to play in their pro ranks. Croatia, Hungary, Poland, Czech and Slovak Republics, Slovenia, Lithuania, have had very strong club sides, which may be able to employ young talented athletes. The latter will thus go beyond that crucial professionalization threshold and will lose eligibility they would otherwise have, had they selected to maintain amateur status before the first opportunity to enroll at a DI member institution. In order for them to remain in good standing, an extensive educational effort is needed by the NCAA staff foremost, as well as by the recruiting member institutions at the first opportunity they are given with informational material targeting as many constituents as possible.

Suggestions that have already been communicated to the NCAA staff and have gone through initial legislative cycles include the Amateurism Clearinghouse that would confirm eligibility and amateurism status for IPSAs. If that effort is not realized, alternative proposals may include the opportunity of recruiting member institutions engaging in an informative and educational pursuit as part of their initial recruiting contacts that will be targeting younger age groups for that purpose. These initial educational efforts and ultimate recruiting attempts may be part of non-institutionalized camps established overseas, and may be sessions devoted to NCAA Amateurism compliance, where members of the NCAA staff could contribute as well. Hence, it will not be merely recruiting that will be the focus and emphasis of such sessions, but an all encompassing educational effort. Such sessions were customary in the past, conducted by many U.S. institutions, aiming at recruiting academic talent. Alternatively, the NCAA staff can uphold the principle of "no-recruiting" in banquets and informational presentations, but allow member institutions to engage in the educational effort, should the NCAA staff lack the budgetary ability to realize such an effort.

The well-intentioned efforts to educate IPSAs (specifically age groups 10-14), their families, and as many stakeholders in the process as possible, should extend beyond a superficial level, in order to fully reward the efforts of the educators. These efforts should cover the grassroots level of European sport infrastructure, creating an opportunity for choice, as opposed to the illusion currently afforded. As mentioned above, the window of opportunity is very narrow for athletes over the age of 15, due to the burden placed upon them by current NCAA legislation conveying amateurism policy from the analyzed international sport structures. Assuming a proactive stance, the NCAA membership may save valuable resources, and such an effort would deal with policy and legislative decisions.

For IPSAs the college route is mainly motivated by an educational pursuit, especially for male basketball players. This is in direct opposition to U.S. male basketball players for whom college is the stepping stone or the second chance to the professional ranks, considering emerging trends of high school athletic talent being directly drafted by NBA teams. If a foreign player is an elite level athlete, he will be drafted by an NBA team or sign for one of the top European club teams. For the women a similar situation is in place; they will either opt directly for the WNBA or for one of the top professional teams, as the standard of college basketball aside of the top-10 teams is not likely to improve their standing when they decide to go pro. It will take a more in depth discussion of the financial rewards that would be considered as actual and necessary expenses to create a framework for suggesting possible changes to NCAA regulations.

Finally, a reconsideration of the withholding condition for cases of IPSAs with amateurism issues prior to their first opportunity to enroll would provide more flexibility, especially for the cases that were analyzed and would render a prospect ineligible as an extension of this prospect's experience in the country of origin and its sport structure. The lessons learned in this line of research lead us to believe that a

“blanket waiver” of the withholding condition for such cases may even go as far as negating the purpose of the proposed Amateurism Clearinghouse. The cases the latter would be deciding upon would be treated preemptively by such a waiver. More constructive ideas are needed and more research and analysis should follow on these issues. Bridging the gap between the professionalization threshold existing in

various parts of the world with the amateurism regulatory framework upheld by NCAA DI is one of the most challenging areas in contemporary sport law and management. Hopefully fairness and good-will prevail and competitive equity along with the emphasis on SAs well being may be balanced in order to create and uphold the values and principles the NCAA should traditionally stand for.

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