

# Legal and Ethical Dimensions of Sport Public Relations

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## After reading this chapter, students should be able to

- identify legal issues in sport public relations and the way in which those issues affect teams, leagues, and organizations;
- anticipate emerging legal issues, particularly in relation to the development of digital media content;
- understand the importance of legal analysis in sport public relations;
- evaluate ethical dilemmas present in sport public relations; and
- recognize the need for ethical decision making in sport public relations.

## Key terms discussed in this chapter include

- Family Educational Rights and Privacy Act (FERPA),
- Freedom of Information Act (FOIA),
- intellectual property,
- slander and libel, and
- code of ethics.



**The legal dimension** of sport public relations grows in importance and influence each year. The process of maintaining favorable relations between a sport organization and its publics often involves balancing the marketing effects of communication with the legal ramifications of both the topic in question and the method of communication itself.

Closely tied to the legal dimension of sport public relations are the ethical ramifications of decision making and the process of relating those decisions to an organization's publics. Not all legally sound decisions are ethical, and not all ethical decisions are legal. Sport organizations must examine their actions from an ethical perspective because of the importance of sport in the larger societal framework.

Consider the following example. NCAA Division I football and men's basketball student-athletes are featured in video games licensed through the NCAA Collegiate Licensing Company and produced by game producer Electronic Arts in recent times, as well as by other companies in the past. This practice has been the object of considerable criticism and analysis, and class action suits were brought against it in the federal courts of California in 2009 and 2010 (Kaburakis et al., 2009).

The most recent and prominent of these lawsuits was filed by Sam Keller, a former quarterback for Nebraska and Arizona State, against the NCAA, the Collegiate Licensing Company (CLC), and Electronic Arts. The suit alleged that the NCAA, in conjunction with EA and the CLC, purposefully circumvented the prohibition on using student-athlete names by allowing users to modify and download rosters from an EA-hosted online server. Those rosters are easily adapted to the real names of the players, and most "real" players have a digital analogue present in the game (Kaburakis et al., 2009).

As with any intellectual property situation, several issues are at work. On the one hand are the fundamental intellectual property rights of student-athletes, which frequently conflict with those of their institutions and the NCAA, and on the other is the constitutionally recognized freedom of expression, including commercial speech, that communication professionals and industry executives need to be aware of and incorporate in their communications and strategic planning.

At the same time, major corporations and athletics associations or governing bodies need to maintain the balancing act between a positive public image measured against practical and mostly financial considerations. Answers to the difficult questions posed by such conflicts often are provided by either

black letter law or, in most contemporary situations, by recent case precedent, as well as through policy solutions that governing bodies reach after considerable membership and constituent input leading to consensus (Kaburakis et al., 2009).

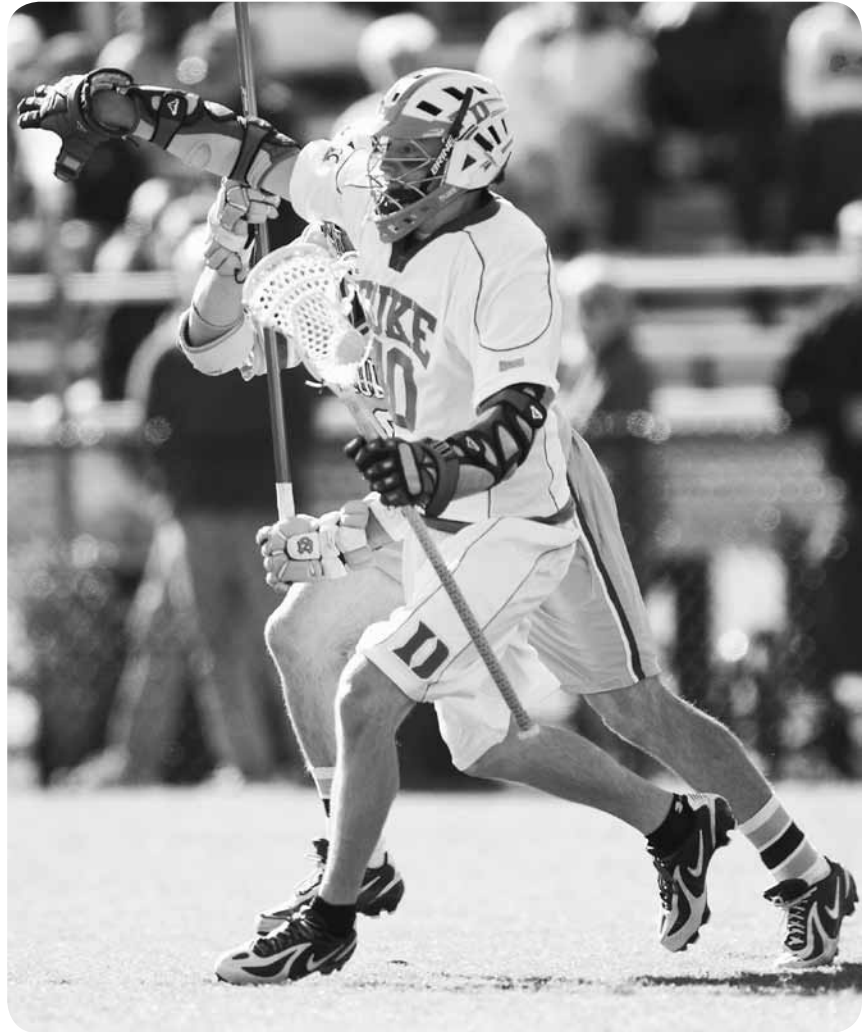
## Legal Dimensions of Sport Public Relations

The Duke lacrosse scandal stands as one of the most important and cautionary sport public relations tales of recent times. In 2006 three members of Duke University's lacrosse team were accused of raping an African American stripper at a team party. Both the district attorney's office and large sections of the Duke academic community rushed to judgment on the case, declaring the players guilty before trial. The university even went so far as to cancel the remaining games of the season and fire the head coach.

As the story began to unfold, however, it was found that the accuser had manufactured her claims against the players. Worse still, the district attorney, Mike Nifong, had withheld evidence to win indictments against the players. For that crime, Nifong was disbarred and made to serve a short jail term for lying to a judge. The players were exonerated, and they eventually sued the district attorney and the county. The former head coach, who had been pressured into resignation in the initial wake of the charges, filed suit against the university, as did other lacrosse players who had not been formally charged. The president of Duke University, Richard Brodhead, eventually apologized to the players and team, saying that the university had made the families of the lacrosse players feel abandoned by not reaching out to them during the process.

Furthermore, Brodhead was forced to address comments from faculty members at the university, many of whom were venomously critical and accusatory toward the players and team as a whole. Brodhead and the university were put into a position where in effect they had to disavow those comments, indicating that they did not represent the sentiments of the university as a whole.

The Duke lacrosse scandal highlights many of the pitfalls present when considering the legal and ethical aspects of sport public relations. Practitioners are often expected to respond to stories without knowing the complete story, and the comments and verbiage produced by the public relations



**The Duke lacrosse team is a perennial power, but the squad saw its season cancelled midyear in 2006 as a university response to a scandal.**

Peyton Williams/ICON SMI

department are ultimately attributed to both the individual and the organization. Numerous actors are often at play in public relations scenarios, and the added complications of technology, federal law, and state statutes can serve to muddy already unclear waters. This section examines some of the major factors facing sport public relations workers in today's digital age.

## Social Networking

Social networking represents a new and potentially perilous frontier in the world of sport public relations. The ability of athletes to maintain their own publicly viewable web pages, filled with pictures, language, and interactive messages to friends, poses quite a challenge for sport public relations workers, because of the potential exposure of damaging information being uncovered by fans and the media.

The most popular social networking sites, such as Facebook and Twitter, allow athletes, coaches, and others to “be themselves” and interact with their friends and acquaintances. The vast majority of athlete and coach actions on social networking sites are innocuous and do not warrant concern. But incidents that occurred early in the development of social media and networking have created a great deal of caution among sport public relations professionals regarding these services.

In 2006 the Northwestern University women's soccer team became embroiled in a hazing controversy after several photos emerged that showed team members engaged in hazing-related activities that the school and media considered embarrassing. Although no one is completely certain where the photos were originally posted on the Internet, they spread like wildfire, ending up on several sport-related blogs. This incident, along with others

during the same period, caused sport public relations officials to become increasingly concerned with athletes' ability to post pictures and other material on publicly viewable social media sites such as Facebook.

### ***Dealing With Issues in Social Networking***

Many sports information directors on the college level have taken to putting on special workshops for their athletes to explain the potential pitfalls of social media. Beyond simply the fear of embarrassing materials being published, these institutions are also concerned with potential legal issues, including libel, copyright violations, and other problems that could arise from athletes under scholarship with the school. Furthermore, the potential for liability issues exists, particularly with photographs of student-athletes engaged in behavior that violates local statutes and laws, such as those relating to alcohol consumption. There is no better way to prepare student-athletes in such educational sessions for problems than to review the outcomes of publicized cases in which inappropriate use of social networking led to teams' seasons being forfeited and athletes being charged with violations of student or student-athlete conduct, hazing policies, state statutes, or even federal law. In certain cases, the incidents resulted in dismissal from the school or team and even criminal charges. Besides those outcomes, others can pertain to privacy and the potential risks for students' safety, such as recently documented cases of harassment or cyberbullying that led to suicide in one case, and the stalking of athletes by fans pursuant to social networking updates, which assumed a new level through Twitter updates.

The emergence of Twitter as a communication medium has brought other potential legal issues to the forefront of sport public relations directors' minds. Although public relations methodology tends to favor official team messages coming through a single outlet (such as a media relations official or team website), Twitter and Facebook allow players, coaches, and even team personnel to publicize their thoughts and feelings on all sorts of topics.

Beyond the concerns that athletes and coaches could get themselves into trouble by making ill-advised or ill-conceived statements that are subsequently taken out of context by the media, an additional concern is that these messages could result in a range of legal issues for both athlete and organization. Unmoderated words from athletes and coaches, particularly when written in the aftermath of a heated game, could result in anything

from defamation of character claims, to libel, to breach of contract in relation to sponsors.

To mitigate potential legal issues related to Twitter, sport organizations have taken steps to minimize their players' and coaches' exposure. In the NBA, for example, players are not allowed to tweet from 45 minutes before the start of a game until after they have finished with their official duties. This no-tweeting policy includes halftime. The NBA has shown that they are serious about enforcing this rule by fining Milwaukee Bucks player Brandon Jennings \$7,500 during the 2009–10 season for violating the Twitter rule. Other leagues, including the NFL, have instituted similar restrictions. The sidebar titled *The Legal Side of Sport Public Relations*, written by John Koluder, offers advice on using social media and other legal aspects of sport public relations.

### ***Monitoring Social Networks***

In addition, the expansion of social networking outlets and their patent popularity has led to entrepreneurial ventures by shrewd investors and administrators inside and outside the sport realm. One such service, YouDiligence, provides subscribers the opportunity to monitor the textual content of selected social networking sites. YouDiligence started as a service for higher education administrators and athletics department officials to help monitor the social networking sites of their athletes, and it has now expanded to subscriptions for concerned parents. Although the service does not allow monitoring of images on social networking sites, it does cause certain keywords that might produce concern to trigger an alert that draws monitoring attention. Administrators are thus alerted to potentially questionable online behavior by their athletes, thereby allowing them to take action.

The presence of this system allows athletic administrators to avoid the "nuclear" option of rendering social media sites off limits, an action that would raise major concerns regarding invasion of privacy and abridgement of freedom of expression. The ability to monitor these sites, combined with athletics-department-mandated educational sessions for athletes about the perils of social networking sites, helps make the online sphere a safer place for both the athlete and the administrator. Recommending that athletes keep their profiles and accounts private, counseling them to be sure that they know anyone whom they "friend," and advising them of acceptable content that can be posted online will help sports information practitioners steer their teams and athletes away from inappropriate usage of social networking tools.



Photo courtesy of John Koluder.

## The Legal Side of Sport Public Relations

John Koluder

Most aspiring public relations professionals looking at sport public relations don't think about the legal aspects of things. But whether it's dealing with social-media-related player issues, intellectual property, or reporting on foreign nationals and the way that their signings and releases are handled, my job has all kinds of legal aspects that require constant vigilance.

I've been working in MLS in various media relations capacities for over a decade, so it wasn't as if I came into the job with a categorical knowledge of these processes. Much of what we run into legally with sport public relations is trial and error. Some of it, particularly the social media issues that have popped up recently, we're seeing for the first time ever, so we're having to use past precedent from other situations as our guideposts for how to act.

Let's take the signing of a foreign-national player as an example. During the visa and immigration process, my department is constantly getting updates on where the team is in the process of signing the player. This includes updates on what we can and cannot say, and what we should confirm or deny. The immigration process itself is not handled by media relations, but we're in the room when the conversations are occurring.

Although certain methods are prescribed for dealing with player immigration issues, the situations are often so fluid that media relations has to address issues without any understanding of how the situation will work out. Visa and immigration issues can be affected by myriad factors beyond the team's control, and what seems like a sure thing one minute can completely change in the next hour.

In many of these cases, you're handling situations on the fly. There's no handbook or manual for these things. The primary thing to keep in mind is to talk to absolutely everyone in your organization who's involved and get to a level of clearance where you feel comfortable before putting out a press release. Ultimately, as the team's public relations person, you're the one who's pressing "send" and putting the information out there. You have to feel confident in what you're putting out there before you do so.

I can't stress enough the importance of following established channels of information clearance before putting anything out, be it a press release, tweet, blog post, or whatever, if it involves an immigration issue. As long as the information being released has been cleared by team or league management, the media relations worker is normally safe from personal liability.

But if you decide to tweak something that you think is harmless and it comes back to hurt you, you're going to have to bite that bullet and take responsibility. Always have someone above you in the team hierarchy sign off on information that you think might be sensitive in nature.

When it comes to social media, the best advice that I can give is to try to walk that fine line between caution and innovation. If we've learned anything over the last five years in terms of social media, it's that it works great in the hands of experienced people who know what they're doing. Unfortunately, even experienced users sometimes don't think about the ramifications of posting a picture or tweeting a message. There are the obvious issues of accidentally posting something illegal or immoral. But then there are also situations where sponsors can see something that they don't like in a picture and view it as a breach of contract.

The easiest fix to most of these problems is simply to educate your players, coaches, and front office staff. Make sure they know how to use the technology properly. Be sure they know what kinds of things they can and can't post, give them the reasons why, and advise them about the legal ramifications should something go wrong. Remember, what you think is common sense simply might not occur to someone else.

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## Safeguarding the Organization, Players, Coaches, and Staff

Various state and federal laws may serve to protect information that would be considered private for players, coaches, and sport organizations. Three key acts pertain to the protection of educational records (and by extension many items that reflect a student-athlete's participation in intercollegiate athletics), medical records, and genetic information:

- Family Educational Rights and Privacy Act
- Health Insurance Portability and Accountability Act
- Genetic Information Nondiscrimination Act

### **FERPA**

The 1974 **Family Educational Rights and Privacy Act (FERPA)** is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education (U.S. Department of Education, n.d.a).

Also referred to as the Buckley amendment, after Senator James Buckley, its main sponsor, it has been the most prevalent and extensively summoned federal legislation that sport administrators in educational settings have to abide by and consider while making everyday decisions. It has been frequently criticized for its contentions and hasty passing, many amendments, challenges in enforcement, and interpretational challenges (U.S. Department of Education, n.d.b).

Under FERPA, parents or eligible students can request educational records, but others are restricted in access to those same records, including information pertaining to student status, grades, school attendance, and performance. Institutions are allowed to share such information only through waivers, except in a small number of circumstances. The consent of student-athletes to FERPA releases is embedded in their participation in intercollegiate athletics, and NCAA member institutions use that consent to disseminate certain information about those athletes.

The use of FERPA by college athletics departments has further stretched the boundaries of the original intent of the law, according to some. For instance, an investigation by the *Columbus* (Ohio) *Dispatch* regarding NCAA violations in the Ohio State Buckeyes football program found literally hun-

dreds of so-called secondary violations of NCAA rules. But when asked to reveal the names and incidents related to those violations, the university claimed that FERPA guidelines did not allow them to disclose such information, because the violations involved student-athletes. Critics pointed out that Ohio State was using FERPA as a shield to protect the athletics department's interests and public perception.

Other incidents involving FERPA-related controversies in college athletics have included the question over what types of information should be redacted from official documents when a student-athlete's name is involved. Some universities have claimed that all information should be redacted and that FERPA mandates such behavior. Other universities have taken a more moderate approach.

### **HIPAA and GINA**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its regulations (the "privacy rule" and the "security rule") protect the privacy of an individual's health information and govern the way that certain health care providers collect, maintain, use, and disclose protected health information. Certain terms and practices are prescribed for public relations professionals when dealing with HIPAA, such as language for conditions released to the public, prerequisites for discussing medical information with hospital or medical professionals, and conditions for retrieving the extent of information allowed by HIPAA and institution and league policy.

The application of HIPAA in sport public relations has been uneven (Bell, Ratzlaff, & Murray, n.d.). In many cases on the professional level, sport leagues require the disclosure of injury-related information on players. The primary purpose of disclosing this information relates to gambling and the desire of sport teams to avoid so-called insider information on player health from being circulated among professional gamblers and handicappers. Beyond the realm of gambling, fans and media observers are generally interested in the injury status of players, both in terms of what medical problems they face and in the amount of time and type of rehabilitation that they will require to get better.

An exception to this philosophy occurs in the sport of hockey, in which injury disclosure is considered unwise. Certain minor league hockey teams have even engaged in the practice of not releasing injury information, claiming HIPAA protection for the athletes in question.

A related law, the Genetic Information Nondiscrimination Act of 2008 (GINA), protects individuals, including athletes, from a variety of genetics-related issues (Department of Health and Human Services, 2009). The law renders it unlawful for an employer to deny employment or to discriminate against an employee based on genetic information. It also keeps employers from depriving opportunities to individuals based on genetic information and from requesting that employees submit genetic information for work-related purposes.

The implications of GINA could be wide and far-reaching in the world of sport. One possible area where it could affect a professional organization relates to Major League Baseball and its teams. A major source of talent in MLB is Latin America, and baseball scouts regularly scour the nations of the Caribbean, Central America, and South America for up-and-coming talent. In many cases, record keeping in those countries is apocryphal at best, and items such as birth certificates can be easily forged or purchased to make a player appear younger than he actually is. This deceit can lead to financial loss for a team that signs such a player, particularly if the team has offered a larger salary to the player because it is under the impression that the player is younger than he actually is. Under GINA, teams would not be able to use genetic testing to examine the player's age scientifically.

Another application of GINA is in the testing of players for genetic defects, particularly in relation to cardiovascular issues. College and professional teams are not allowed to test players genetically for those defects in the course of making contract or signing decisions about a player. The landmark incident in sport regarding this sort of issue involved NBA player Eddy Curry, who in 2005 was under contract with the NBA's Chicago Bulls. The Bulls refused to extend Curry's contract unless he took a genetic test to determine whether he had a potentially serious heart issue. Curry refused to take the test and ended up being traded to another team, with whom he signed a contract without having been tested.

Note that GINA extends protection only to players who do not wish to be tested against their will. Players are not prohibited from getting their own tests performed and submitting those results to teams. In some cases, this approach can be beneficial to the player, because the presence of a voluntary genetic test can ease the mind of a general manager or owner who might otherwise have had questions regarding a player's age or genetic health.

## **Governmental Protections**

Several state and federal laws aim to govern the public's access to information, maintain transparency in state actors' affairs, and protect the public's right to express opinions and criticism. Other than Constitutional protections afforded by the First Amendment in respect to freedom of speech and expression, key legislative means to accomplish these goals include the following:

- Freedom of Information Act
- Sunshine and open door laws
- Anti-strategic lawsuits against public participation regulations

### **Freedom of Information Act**

The **Freedom of Information Act (FOIA)** is a federal law designed to make available previously unreleased documents and information that are in the domain of the federal government (Department of Justice, n.d.). The FOIA generally provides that any person has the right to request access to federal agency records or information (Blanton, 2006).

All agencies of the U.S. government are required to disclose records upon receiving a written request, except those records that are protected from disclosure pursuant to certain exemptions and exclusions. The FOIA applies only to federal agencies and does not create a right of access to records held by Congress, the courts, or state or local government agencies.

Any requests for state or local government records are directed to the appropriate state or local government agency. With the exception of the U.S. Olympic Committee, other public sport agencies and public institutions would be governed by state open records and sunshine laws, which frequently pose stricter requirements and earlier deadlines. For example, the state of Illinois requires a deadline of 5 days for responses to FOIA requests, compared with the 10-day deadline that the federal FOIA guidelines mandate.

In a recent case, several national and Florida media outlets pursued FOIA requests against the NCAA for access to records that were considered confidential under a Florida State University counsel agreement with the NCAA. It was decided that the NCAA would have to release documents leading to the Committee of Infractions meetings with the university officials—records that were thus far protected under NCAA policy and agreements with the member institutions (Schrimpf, 2009). In a

## **A Closer Look: NCAA v. Associated Press et al. (Fla. 1st DCA, October 1, 2009)**

This case was an interesting conflict between FOIA and Florida Public Records Laws, and FERPA, as well as the private affairs of the NCAA as a private voluntary membership organization. As the Court of Appeals acknowledged, the Florida courts construe public records laws liberally in favor of the state's policy of open government. If there is any doubt about the application of the law in a particular case, the doubt is resolved in favor of disclosing the documents (p. 8).

The media entities that brought this case wanted access to two documents, the transcript of the Committee of Infractions hearings in the Florida State University case in 2008 and the Infractions Appeals Committee response to the university in 2009. The NCAA countered that disclosing the full documents would violate FERPA and would compromise the NCAA's enforcement process, because informants and private information may be included in the original documents. The trial court sided with the plaintiffs and held that FERPA would not be violated because there was no student-specific educational information and that the NCAA's allegation on the effect on its enforcement process was irrelevant.

An important problem that the Appeals Court handled was whether the state agent or university employee viewing the confidential (and according to the NCAA, private) information would render this a public document. The NCAA vehemently disagreed that the mere review by a public agent of the documents renders them public records. Sensitive and private facts were contained therein, and the NCAA argued that nondisclosure would be imperative to its private enforcement process, frequently residing with self-reporting and whistle blowing by informants and university employees. The court disagreed with the NCAA, remarking that the purpose of those documents was official governmental business, that is, the university's appeal to the NCAA. Had the university lawyers, per the court's rationale, simply viewed an unrelated student's record through the secure website that the NCAA provided, indeed those would be FERPA-protected records, but not in this case, because all the documents in question were part of the university's defense strategy. At the same time, the confidentiality agreement that the university lawyers signed with the NCAA had no effect according to the court, because official public records should always be available, regardless of the fact that a state agent signed a document to protect them.

Because the documents did not "directly" pertain to a student's educational record, the court held that FERPA would not be violated. Intriguingly, the court held that the documents "pertain to allegations of misconduct by the University Athletic Department, and only tangentially relate to the students who benefited from that misconduct" (p. 18). As long as students' identifying information would be redacted, the court held there would not be a FERPA violation issue. It also held that it was in no position to determine whether unredacted versions of the documents should be released to the public.

The court also disagreed with the NCAA's claim that the public records law as applied here would be unconstitutional, under the commerce clause and freedom of association provisions in the U.S. Constitution. The court decided that the public records law as interpreted here had nothing to do with interstate commerce, and it discounted related cases summoned by the NCAA from other jurisdictions, because they pertained to disciplinary proceedings and not open public records.

In fact, the court found that the NCAA's allegation that such an application would "rip the heart out of the NCAA" (p. 21) was overstated, because no individual private informant was identified therein. Rather, the findings were the result of the university's internal self-reporting mechanism. Moreover, the court defended its application of Florida open records laws, citing instances and similar statutes in most states that would not render the Florida application of open records so distinct that the NCAA would not be able to function in that particular state. And in conclusion, the Florida Appeals Court in this case decided that in no way did its application abridge the NCAA's right to freely associate and manage its affairs.

This case, the recent findings from the Indiana University infractions scandal in which private communications were disclosed (and not redacted, containing even private expressions of affection toward spouse or family members) to the *Indianapolis Star*, as well as others call for the attention of public relations and sport communications professionals. Perhaps the most important lesson is that people cannot be too careful about what they put on paper or in an e-mail or official school record, especially when dealing with a public institution, through the means of institutional communications (school e-mail). If the NCAA was not able to seal the enforcement records discussed earlier and protect information contained therein from public



release, one can imagine how hard it would be for an employee of a state institution to avoid disclosure. Therefore, operating preemptively and ensuring transparency and due diligence will result in fewer surprises in the long run (Associated Press, 2010). At the same time, the legal battle staged in the courts of Florida between media entities and the NCAA demonstrates how relentlessly media outlets will pursue news coverage and information to capture the public's interest. "No stone unturned, no record sealed" might be the motto for future mass media professionals (Fla. 1st DCA, October 1, 2009).

letter to the president of Florida State, former NCAA president Myles Brand remarked that if the Florida courts continued to side with the plaintiffs in the case, the association's ability to conduct investigations and enforce bylaws would be greatly affected. Regardless of the NCAA's desire for secrecy and obfuscation, FOIA requests are important tools of the media, so sport public relations officials must learn how to deal with FOIA requests. The sidebar A Closer Look provides more detail regarding the NCAA case.

### Sunshine and Open Door Laws

Open meeting and records laws, also known as sunshine laws, are an important element of governmental oversight on the state level. These laws generally require that state and local government organizations, including school boards and universities, make public their meetings and decision-making processes, although the degree of openness varies from state to state (McDonald, 2001; Missouri Attorney General, n.d.). Similarly, these groups must make available to the public all documentation and other records for the purpose of oversight. Sport public relations workers should be familiar with the sunshine laws of the state in which they are working, for the purposes of both providing legally thorough and accurate information and accurately informing organizational members of what the laws stipulate in terms of openness and access (McDonald, 2001).

One of the more interesting cases involving sunshine laws surrounded the firing of head basketball coach Bob Knight at Indiana University. Following a series of inquiries in the wake of Knight's firing, a lawsuit was filed against the university by a group of fans, claiming that the university's trustees and then-president Myles Brand (who later served as the head of the NCAA) subverted the sunshine laws of the state of Indiana during the decision-making process for the firing. Specifically, the plaintiffs alleged that Brand had purposefully kept the trustees in two separate rooms where neither group formed a quorum of members, thereby avoiding the necessity

of calling an official meeting of the trustees, which would have required a public announcement. The court ultimately found in favor of the university, but commentary surrounding the case indicated that the actions of Brand may have violated the spirit of the sunshine laws.

### SLAPP and Anti-SLAPP

The term *strategic lawsuits against public participation* (SLAPP) refers to lawsuits that aim at silencing critics. These suits are usually filed by corporations, associations, or government and public officials. The purpose of SLAPP cases is often to silence critics through threats, entangle defendants in time-consuming litigation, and generally to affect criticism and cause critics to yield, settle, or discontinue their stance toward the organization and its interests (Coleman, 2011; Pring & Canan, 1996).

SLAPPs assume several forms, and defendants can use state legislation to have SLAPP lawsuits struck from the court (Kline, 2009). The primary burden on the defendants is to prove that their conduct was aligned with the right to petition and free speech guaranteed by the First Amendment. As long as the matter is of public interest, the defendants' actions fall within the public's rights, and the court is convinced that the plaintiff would not prevail in the suit, anti-SLAPP statutes allow defendants these special motions to strike SLAPP suits (Brown, 2009). The major issue with SLAPP-related cases is the difficulty in distinguishing between a SLAPP and a bona fide suit. Courts will have to weigh the competing interests carefully and err on the side of public participation and free speech (Society of Professional Journalists, n.d.).

The possibility of SLAPP suits occurring in sport is higher than one might imagine. Any league or team wishing to silence critics and media entities that disagree with their decision making could ostensibly file a SLAPP suit. These suits could focus on legal issues such as defamation, invasion of privacy, or other legal doctrines. Furthermore, SLAPP could be used by educational institutions and associations, such as the NCAA or state high

school athletics federations, who wish to shield themselves preemptively against inquires related to their internal affairs or business practices.

For instance, if a professional sport team attempts to receive public funding for a new stadium through voting initiatives or other public procedures, considerable opposition may arise in the public sphere. The team could choose to pursue critics of such a stadium deal with SLAPP lawsuits to stifle public debate and cast the stadium's opponents in a negative light. An anti-SLAPP statute could allow these critics to organize more effectively without fear of having to defend themselves in court against a well-financed opponent who has a tremendous financial stake in the overall situation (Kling, 2005).

## Emerging Legal Issues in Sport Public Relations

With the advent of new media and technology tools to express opinions and to aim at profiting from the use of innovative digital expression, seemingly countless legal issues have emerged, which state and federal laws and key provisions of existing legislation are attempting to resolve. A crucial point to recognize for anyone studying these issues and working in the field is that the law is evolving as technology advances; it is dynamic, fickle, and sometimes conflicting depending on the jurisdiction. When there is a contradiction among district and federal appeals courts, the U.S. Supreme Court might hear a case to provide resolution. There is also the prospect of federal legislation to resolve such conflicts. The latter is the case with efforts to introduce federal acts on rights of publicity and amendments to existing provisions of the Copyright and Trademark Acts that address contemporary legal problems. The following sections briefly summarize these issues:

- Intellectual property evolution
- Copyright law and commercial misappropriation
- Trademark law
- Rights of publicity
- First Amendment and federal law preemption of intellectual property rights

### **Intellectual Property and Right of Publicity**

Sport public relations and communications in the 21st century touch a wide variety of **intellectual**

**property** issues. This section focuses on the areas that have the greatest application to the emerging areas of new and social media, along with areas that lack strongly established precedent. Some of these areas include copyright, trademark, and patent law, as well as rights of publicity and speech.

### **Copyright Law and Commercial Misappropriation**

Contemporary copyright law is rooted in 18th century English law, which attempted to protect intellectual property under several common law principles. Through the intervening years, copyright law has been progressively expanded, adding to the classes of intellectual creations that are protected (Copyright.gov, n.d.).

Copyright protection is currently extended to "original works of authorship fixed in any tangible medium of expression, now known or later developed" (17 U.S. Code § 102 (a)). Although this law provides protection to a wide variety of creative processes, the standard on which originality is based requires independent creation and a minimal degree of creativity. Copyright protection, for example, does not apply to a sporting event, although it does apply to a broadcast of a sporting event.

Copyright law affords the copyright owner specific exclusive rights; for example, the owner holds the right to perform the work publicly. To balance the rights of owners and users, Congress instituted what is known as the Fair Use Doctrine. This doctrine allows non-copyright holders to use copyrighted works for the purposes of criticism, comment, news reporting, teaching, or research.

Individuals and organizations have battled in the past over the application of the Fair Use Doctrine and its possible or real effect on the marketplace for a copyrighted work. Prior case law has established that each situation has a different line over which usage crosses from fair to infringement, such as the case of *Zacchini v. Scripps Howard Broadcasting* (1977), in which the U.S. Supreme Court found that a television station could not broadcast a human cannonball performance in its entirety without the performer's prior consent, because of the possibility that the performer's ability to capitalize financially on his work would be compromised.

In *Monster Communications v. TBS* (1996), the broadcaster's use of copyrighted footage of Muhammad Ali in a documentary of his life constituted fair use because of the "combination of comment, criticism, scholarship, and research involved." The protection granted to factual compilations has been especially difficult for sports news broadcasters,

who would claim that reporting only the facts of a sporting event, using excerpts from copied portions of a televised broadcast, should not infringe upon the rights of the copyright holder. The main rule would be that the newscast is obligated to seek permission from the copyright holder before supplementing the report with copied portions of the televised broadcast.

Frequently, elements of commercial misappropriation appear in copyright cases, in which an individual or organization has been found to be “ripping off” the work of someone else, at the expense of the creator of that work. An early precedent in news gathering was set in the case of *International News Service v. Associated Press* (1918), which found that the International News Service, which had been copying the Associated Press’ bulletins and reprinting them without permission, needed to stop this practice, because it was unfairly competing with the AP (Magliocca, 2009).

The concept of copyright as it applies to sport and its games has developed over the years. An early case involved the Pittsburgh Pirates baseball team, which had signed an exclusive broadcast rights contract with General Mills Corporation. Another company attempted to broadcast Pirates games on the radio, using paid observers stationed outside the ballpark, on premises leased by the defendant that afforded the observers good views of the action. Although this company did not use the official accounts of the authorized broadcast of the game, the court found that the Pirates maintained a “property or quasi-property” right by way of the creation of their games, the control of the ballpark, and their restriction of the dissemination on news of the games. In other words, the Pirates held a copyright on the reporting of the game as it happened in real time.

The court has ruled, however, that this protection applies only to that real-time relation. Later case law indicated that after a sport event occurred, the details of the event immediately became part of the facts of history. News information itself cannot become the subject of a property right belonging exclusively to any person. Although the content of a broadcast can be copyrighted, the actual events of a game or contest may not.

This finding was upheld by the Federal Appeals Court for the Second Circuit in a case involving the NBA and a lawsuit against Motorola. The communications company had developed a portable device called Sports Trax, which operated as a sort of sport-oriented pager system that provided real-time, continuously updated scores of NBA games.

The NBA sued, claiming that Sports Trax was both causing the loss of ticket sales because of its real-time updates and taking away future opportunities from the NBA in terms of creating their own stats-based update system. The court held that although the product offered by Motorola was a derivative of the NBA’s work, it was not so similar that it created a substantial threat to the NBA’s existence. Furthermore, the court found that receiving statistical or score updates in real time was not a substitute for attending the game in person and therefore had no competitive effect on the NBA’s business because the NBA was capable of creating its own competitor to the Motorola system.

Prior court cases have also considered the legal concept of work for hire as it relates to athletes’ performances in games as portrayed through broadcasts. Case law has dictated that, despite the protestations of players, a player’s performance in a game is indeed copyrightable by the team or league who broadcasts it, because of the presence of artistic merit and creativity. As a result, the players were unable to claim the right of publicity to the broadcasted renditions of their performances. This issue remains an active concern today because of the proliferation of Internet-based video and the reorganization of media to feature teams and their media relations departments as the primary source of distributed video content and highlights.

### Trademark Law

Another aspect of intellectual property is trademark law, which focuses on the protection of marks, words, names, symbols, designs, and combinations thereof. Ultimately, trademark law helps to protect brands and brand names, as well as logos and other individual and collective marks. Trademark law also protects colors and symbols that have acquired secondary meaning in conjunction with an organization.

Established trademarks are often used by sport public relations professionals, primarily through the creation of media and dissemination of team-related content. This usage can include the distribution of “official” marks and symbols to media outlets, the inclusion of trademarked items on team press releases and video, and the design and maintenance of team websites.

Sport public relations officials are also often the first line of defense when dealing with violations of a team’s trademarks. The sport public relations worker must be constantly vigilant on the Internet to ensure that trademarked items are not being used for profit by unofficial websites. Furthermore,

observing the actions of commercial entities in the local marketplace is important. Businesses often misappropriate sport team logos and marks without obtaining permission, and it is often the domain of the public relations worker to observe these occurrences in the media.

In sport the protection of trademarks is important because the trademarked items are often used as a proxy for the name of the sport team. In the case of a possible violation of a team's trademark, several prerequisites must be met to sue the violator successfully. The trademark holder must first have established a protectable right. Second, the holder must demonstrate that the violator's actions are causing confusion in the marketplace, which might adversely affect the holder. Third, the holder must establish that the violator is purposefully imitating the trademark to gain a financial advantage.

To sue an entity successfully for violating a trademark, the courts tend to require survey information demonstrating that consumers have indeed been or are likely to be confused by the violator's usage of the trademark. Generally, a plaintiff would want to generate consumer confusion surveys because the court may look more favorably on a claim if it can be proved that consumers are unsure about the nature of a trademark (International Trademark Association, 2008). In some cases, the courts have tried to balance consumer confusion against the public interest in the right of free expression. An earlier case, involving a painting of Tiger Woods winning the Masters, was found to contain sufficient artistic merit to warrant First Amendment protection. A textbook case in trademark law for the sport industry is *Indianapolis Colts v. Metropolitan Baltimore Football Club*. This case was important for the procedural reason of confirming the value of consumer confusion surveys and their weight in court proceedings. The Colts' franchise used evidence from market surveys that arguably proved that the public could have been confused if Baltimore was allowed to continue its use of the Colts nickname and respective marks.

### Right of Publicity

From a legal perspective, the right of publicity has grown out of jurisprudence related to the individual right to privacy. Generally, the right of publicity protects a person from having the commercial value of his or her identity appropriated by someone else without the person's consent. The identity in question includes such items as a person's name, likeness, voice, or other indicia (Kaburakis & Mc Kelvey, 2009).

The landmark case *White v. Samsung Electronics America* (1993), in which Samsung used a robot impersonating Vanna White in *Wheel of Fortune*, is one of the most important lessons for contemporary right of publicity litigation and theory. The majority opinion of the Ninth Circuit held that Samsung had violated White's right of publicity.

There have been several cases related to right of publicity involving sport figures. In *Montana v. San Jose Mercury News*, a court held that posters depicting the past triumphant moments of Joe Montana and the San Francisco 49ers, regardless of whether or not they were made for profit, were protected under the First Amendment simply because Joe Montana was a major player in contemporaneous newsworthy sport events.

Moreover, in *Gionfriddo v. Major League Baseball*, former professional baseball players argued that their common law and statutory rights of publicity were violated by MLB's use of their names, photographs, and video images in websites, media guides, video clips, and game programs. The California court declared that the information posted by MLB was protected speech. MLB's use commanded substantial public interest, MLB did not sell a product, which would render such use commercial, and when determining the balance between competing interests, the players' proprietary rights were deemed negligible compared with the public's enduring fascination with baseball. Therefore, the public interest was served by the free communication of such information. Interestingly, this case would foreshadow the issues of the 2000s relating to the usage of statistics and figures in fantasy sports, specifically whether leagues were unfairly profiting from the statistical production of their players.

Ultimately, the burden of proof for establishing a violation of an athlete's right of publicity is fivefold. First, there must be actual usage of the athlete's identity. Second, that identity must have some intrinsic commercial value. Third, the commercial value of the identity must have been appropriated for the purposes of trade. Fourth, there must be a lack of consent. And finally, there must be a demonstrable commercial injury resulting from the misappropriation of identity.

### First Amendment and Federal Law Preemption of Intellectual Property Rights

Most cases in the field of sport public relations and communication have dealt with First Amendment rights, as well as federal preemption of common law and statutory rights of publicity. Federal preemption is generally based on a patchwork of theoretical

grounds because of the wide variety of statutory and common laws on the books.

Important cases illustrate these conflicts. In *Cardtoons v. Major League Baseball Players Association*, the Tenth Circuit held that Cardtoons' First Amendment rights to parody baseball players in a transformative, artistic way preempted the players' Oklahoma-based statutory rights of publicity. Although the statute permitted newsworthy, noncommercial uses, Cardtoons would *prima facie* violate the players' rights; nonetheless, the comic use was deemed "commentary on an important social institution."

One problem exists in several courts' reasoning in attempting to balance athletes' and celebrities' rights against the public interest and First Amendment protections; namely, the argument is that such prominent figures "are already handsomely compensated." Of course, that condition does not apply to amateur athletes, whose intellectual property rights may also be used for promotions of the collective benefit.

In *C.B.C. Distribution and Marketing, Inc. v. Major League Baseball Advanced Media*, the Eighth Circuit held that the combination of names and statistics used in fantasy leagues is protected by the First Amendment as factual data readily available in the public domain. Disagreeing with the district court, the Eighth Circuit nonetheless found that the elements for establishing a violation of the baseball players' rights of publicity had been met under Missouri common law. The First Amendment preemption of the common law rights of publicity was established, even though the use had a commercial nature. The Eighth Circuit balanced competing economic interests with the benefit to the public.

The most difficult challenge in forthcoming litigation will be delineating the new frontiers to this expanded public domain. Would it be prudent, for example, to argue that images, likenesses, and the very identities of both real people and their avatars, virtual depictions, artistic creations, and expressive works would all be within the realm of a borderless, limitless (if not lawless) public domain through the advent of new media interactive worlds, where innovation and creativity are compensated in more than virtual money? Would one be reasonable to assume that because NCAA student-athletes' names, likenesses, and even identities are broadly available for use on the Internet that their images in video games would not be protected under right of publicity theory?

## Legal Ramifications of Crisis Communication

Crisis communication is a major element of sport public relations and one of the most important elements of a media relations director's job. But legal and ethical considerations in crisis communication can severely and negatively affect not just the organization but also the public relations workers themselves.

During a crisis communication situation, comments must often be made about situations despite a lack of solid information. For instance, a sport organization can ill afford to wait to comment on the arrest of a player or the death of a fan in an incident at the team's stadium. Even if the information on a subject has not yet materialized, the team's public relations efforts must include some sort of official comment. The public relations worker must be careful here to avoid making comments to the media that place him- or herself or the team in any legal jeopardy. Making broad, general statements is usually better than commenting specifically on the subject at hand.

Furthermore, public relations workers should ensure that the organization is speaking with one voice during a crisis to avoid the possibility of future legal action because of on-the-record statements from team personnel that do not reflect the agreed-upon opinions of ownership and management. Proper planning and implementation of a crisis communication plan can help protect athletes and organizations from incidents such as these.

One example of a crisis communication situation gone awry occurred with golfer Tiger Woods. During a holiday weekend in November 2009, a story broke in the national press that Woods had been involved in a car accident and had been released from the hospital in good condition. Woods' public relations team did not attempt to get out in front of the story, and after a few days, the tone of the national conversation had been irretrievably altered by rumors that Woods had been involved in a domestic violence situation as a result of an argument with his wife, Elin. The public perception of Tiger went from sympathy to disgust in a short time. Further revelations, including allegations that Woods' handlers had attempted to buy off the press in exchange for keeping previous stories of Woods' sexual dalliances out of print, did nothing to help Woods' image.



Tiger Woods' then-pristine image suffered serious damage during a scandal in 2009.

Charles Baus/Icon SMI

### ***Libel and Slander in the Electronic Realm***

The explosion of digital expression opportunities in the 21st century has opened up limitless conditions under which defamation can occur. The Restatement (Second) of Torts (1977) outlined the common law tort of defamation, under which an individual is subject to liability if he or she damages another person's reputation by speaking (slander) or publishing (libel) false statements about that person to a third party. Defamatory statements have the potential to tarnish a person's social standing and even discredit a person's business and economic status. An entity that publishes or disseminates a defamatory statement may also be liable.

Defamation law generally posits that to establish the tort of defamation a plaintiff needs to prove

1. a false and defamatory statement of fact
2. published or communicated to a third party;
3. fault, or at least negligence, of the publisher or communicator; and
4. harm leading to damages.

Defamation torts are divided into two categories: **slander** and **libel**. Slander relates to communication by spoken word, and libel relates to publication or communication through written materials. Other than punitive damages, whereby the U.S. system of jurisprudence attempts to make an example and prevent future torts, the main two categories of damages in defamation are general (i.e., humiliation, degradation, mental suffering) and special, which must be particularly established for each plaintiff and would include items such as lost wages and business income. Unless there is a *per se* slanderous or libelous defamatory statement, the plaintiff has to prove sustaining special damages. In *per se* defamation situations, special damages are not necessary to establish because they pertain to

1. moral turpitude;
2. professional, business, or trade practices and abilities;
3. loathsome diseases; and
4. sexual misconduct.

In the digital era, most communications delivered by the Internet (i.e., social networking, message boards, chat rooms, blogs) would fall under the category of libel. Libel includes comment sections relating to podcasts, YouTube clips, and other audio-based components. The actual audio or video, including communications on VOIP, Skype, and other systems, would fall under slander. In some cases, particularly relating to Skype, Instant Messenger, and other services that offer simultaneous writing and speaking, a person can commit libel and slander simultaneously.

As an example, saying that your former friend is an “STD encyclopedia” in a podcast or videocast would be considered slander, whereas making that same remark in a chat room, a message board, or on Facebook would be considered libel (both *per se* defamatory statements). Note that common carriers (such as a DSL Internet provider) would not be held liable for defamation, and neither would the service distributors (e.g., Amazon, Barnes & Noble, and so on), unless they had prior or active knowledge of the defamatory work.

But the publishers of the defamatory statement, that is, newspapers, editors, and the several online entities involved in publication means, could be held liable for defamation. Facebook, MySpace, YouTube, and even Google have been targets of suits in this realm. This fact should increase the sense of responsibility among direct employees of an athletics department or professional sports information department to check sources, conduct research with due diligence, and ensure that they have established the dependability and credibility of sources.

Note that anonymity on the Internet does not ensure a free ride when it comes to defamation claims. Sufficient ways are available to establish the IP and source of post addresses, so it is definitely prudent to err on the side of caution and not engage in commentary that may arguably be considered defamatory.

If a person is confronted with such claims encompassing posts from his or her IP address, a line of defense could be a claim that the IP address was erroneous. As is usually the case with piracy over the Internet, proxy servers are utilized to that end. The U.S. Department of Justice, in cooperation with state attorneys general offices, engages in a continuous effort to fight cybercrime (Department of Justice, 2002). Anonymity on the Internet will not be assured if a person is not careful with her or his digital conduct, especially when such communications emanate from a PDA or web-enabled cell phone, iPhone, or Blackberry (Seltzer, 2009). People

who attempt to circumvent federal and state policies of Internet use could face criminal charges as well. This area is a primary focus for Department of Justice officials in the new digital age (Department of Justice, 2002).

Other than certain privileged circumstances, in most cases the one defense for a defamation suit is the truth of the communicated statement. If the statement is not verifiable, and it is merely an opinion, the defendant may enjoy First Amendment protection for freedom of expression.

Defamation has always been an area of the law in which First Amendment freedom of expression has conflicted with the protection of one’s reputation and public image. The journalism law textbook case of *New York Times Co. v. Sullivan* of 1964 and the subsequent decision by the U.S. Supreme Court serve as the example for determining defamation suits. In that case, public officials’ access to media and publicity meant that they had to reach a higher standard when attempting to prove defamation than would a normal person. As a result of the case, public officials have to establish actual malice on the part of the defamer; it must be proven that the defendant either intended to harm the plaintiff by making a statement that the person knew to be false or that the defendant had a reckless disregard for the validity of the statement and its subsequent effect.

A case closely related to *Times v. Sullivan* was *Curtis Publishing Co. v. Butts* (1967), in which the athletic director at the University of Georgia was accused of delivering the football game plan to his friend, Alabama head football coach Bear Bryant, before a contest between the two squads. The court found that the standard for actual malice to succeed in a defamation case would extend to public figures who “commanded sufficient continuing public interest.” In *Gertz v. Robert Welch* (1974), the U.S. Supreme Court defined an additional legal fiction, that of “limited-purpose public figures.” The finding reinforced that a public figure, even if that figure is public in a limited capacity, must meet the actual malice burden of proof to claim defamation.

College and professional sport coaches are generally considered public figures, although there have been exceptions, such as the case of a Louisville assistant baseball coach in *Warford v. Lexington Herald* (1990). In the realm of high school sport, however, there is considerable controversy over the public status of athletes and coaches. In *Wilson v. The Daily Gazette Company* (2003), the West Virginia Supreme Court decided that high school athletes are not public figures, even though the athlete in question had achieved a great deal of notoriety and media

attention for his sporting achievements. Given the nationwide popularity that a high school athlete today can potentially accrue, such as that attained by LeBron James during his pre-pro days in Ohio, it begs the question of whether these athletes, despite being high school students, are not actually public figures.

## Ethical Dimensions of Sport Public Relations

The ethical dimension of sport public relations does not receive a great deal of attention, but it can be extremely important for both the individual public relations practitioner and the organization as a whole. The way that a public relations department treats ethical considerations sets the tone for external perception of the organization as a whole.

### Codes of Ethics

Many sport media organizations have their own **codes of ethics**, which act as guidelines for professional behavior among workers in the field. For sport media relations professionals on the collegiate level, the professional organization of the College Sports Information Directors of America (CoSIDA) publishes a code of ethics, which contains behavioral guidelines and parameters.

The CoSIDA code of ethics details the organization's stated preferences for sports information director conduct as it relates to a wide variety of items. Some areas of ethical concern include support of institutional policies, loyalty to the athletic director and coaching staff, respect for athletes, professional interactions with the media, prohibition of criticism of officials, and avoidance of conflict of interest with products or sponsors.

Regardless of the organization, sport public relations officials are expected to conduct themselves professionally while simultaneously acting in the best interests of their organizations. This responsibility includes producing positive content relating to athletes, coaches, and team officials.

### Questions of Fairness in Coverage

Sports information directors and other professional media relations workers are often concerned with equity in coverage of their sports by the media.

The process of dealing with inequities in coverage through external media is a long-standing ethical concern, but the growth of team and organizational websites as a news source has led to ethical issues of fairness in coverage within these organizations.

Newspapers and television stations have long been criticized for giving preferential coverage to more popular sports while ignoring or minimizing others. Several studies have established that mainstream media outlets tend to cover high-revenue sports, such as college football and men's basketball, while minimizing coverage of low-revenue sports, particularly women's sports. This problem has been exposed even at the high school level, where boys' sports receive far greater coverage than girls' sports.

Particularly at the collegiate level, sport public relations workers often find themselves in the ethical dilemma of having to promote coverage of one sport over another. This issue can take many forms, from resource allocation (i.e., assigning personnel to provide coverage to a sport) to money spent on promotion and writing. On the one hand, the sports information director has an ethical responsibility to attract equitable coverage to all sports, particularly those that are traditionally underexposed. On the other hand, the athletics department needs to have greater attention paid to the revenue sports for financial reasons.

Athletics departments must make these decisions in relation to their own websites as well. Does the school provide equal promotion to stories about all varsity sports on its website, or does it focus its coverage on sports such as football and men's basketball, which are liable to attract greater web traffic and therefore generate more revenue?

### Moral Differences in Domestic and International Sport

Although we tend to focus mostly on the legal or political differences between jurisdictions and governing bodies on the international stage, significant moral differences are found domestically as well, colored in large part by the cultural and historical underpinnings of each city, country, and region. The sport experience in the United States features several intense rivalries, on both the professional level (e.g., New York Yankees and Boston Red Sox, Chicago Cubs and St. Louis Cardinals, Green Bay Packers and Minnesota Vikings) and the collegiate level (e.g., Michigan and Ohio State, North Carolina and Duke, Texas and Oklahoma). But the way that people treat sport in other parts of the world is



vastly different, and it begins with team affiliation of youth essentially “out of the womb.” Socioeconomic, religious, cultural, and demographic differences render certain teams’ competitions as classic rivalries, essentially becoming battles in a long-standing war against supporters of the opposite camp or team, often with religious, political, and socioeconomic overtones.

Thus, sport communications professionals need to be aware of the sensitivities of each region. Before a Celtic–Rangers, Barcelona–Real Madrid, Partizan–Red Star Belgrade, or Panathinaikos–Olympiakos game, public relations workers need to attempt a balanced report and try to ease the inherent pressure. Furthermore, public relations professionals need to do the same on the national team stage before classic rivalries with historical underpinnings (i.e., Argentina v. Brazil, Serbia v. Croatia, Russia v. USA). Particularly with the advent of breakaway republics formed out of the former Eastern Bloc, Yugoslavia, and other areas of the world, public relations professionals need to conduct some fundamental research so that they can cover such events and games responsibly and minimize irritation among administrators or fans from either camp. A good example nowadays is when U.S. reporters refer to the Former Yugoslav Republic of Macedonia (FYROM) by only the last component of the U.N.-acknowledged name, which immediately raises fiery protest by Greek audiences because of the history of the Greek region of Macedonia (northern Greece).

At the same time, public relations professionals working in international sport settings need to be familiar with the customs and traditions for each sport and region. Otherwise, they might not know how to handle the presence of SWAT or special forces units deployed in rivalry games in each region and would not know at which stages of the event they would need to keep their distance or protect themselves from foul play.

Of course, the tone, character, and delivery of written pieces are also important to consider in an

international context. Entitlements and freedoms upheld in the United States may not be respected in other regions. When a public relations worker is covering an international event, significant research and interaction with local public relations and sport communications staff would assist in forming an educated and well-planned strategy for work in such different settings (Halgreen, 2004; Kaburakis, 2008).

## **Ethical Dilemmas for Public Relations Professionals**

Sport public relations can have its share of ethical dilemmas. The conflict between what is right for the athlete or coach and what is right for the organization can sometimes lead to uncertainty about how to proceed. Furthermore, the responsibility that public relations workers have to their employers can also be affected by larger societal issues.

When dealing with the firing of a coach or the release of a player, issues often arise between the team and that coach or player. The sport public relations worker should approach every firing situation from a professional and neutral perspective. Although a person’s primary obligation is to the team or league of employ, she or he must also consider the ethics of reporting false information to the team’s constituent groups, including fans, sponsors, and the media.

Public relations officials must also be careful to balance the needs of the organization with the needs of the fans. Although casting the team and its players in the best possible light is important, the public relations worker risks appearing unrealistic or out of touch if the tone of press releases or content is blindly positive. This point is particularly apt during seasons when a team is losing a large number of games. Balancing the ethical obligation of projecting positivity with the obligation to provide truthful information can be a challenge.

## SUMMARY

The legal and ethical considerations of sport public relations are numerous and ever changing. This area of sport public relations is perhaps the most severely affected by the advent of technology. New issues and problems arise every year for sport public relations professionals in the management of these new tools. Today's sport public relations professionals must remain up to date on emerging communication trends that athletes, fans, and media are using. They must be able to consider not only the benefits of those trends but also the potential drawbacks. Anticipating where possible legal issues may arise can mean the difference between success and trouble in the sport public relations realm. Questions of ethics in sport public relations also change constantly, and sport public relations professionals must be able to adapt to the ethical mores of the generation in cultural command. These changes need not be for the worse, and certain ethical standards may be relaxed as younger and less conservative fans become the majority. Sport public relations professionals need to understand these changes and use them to the benefit of their organizations.

## LEARNING ACTIVITIES

1. Find and examine a recent news article that covers a legal issue relating to sport, such as the arrest of a key player, a lawsuit brought against a governing body, or a court ruling that affects the eligibility of athletes to compete (such as the NBA's one-and-done rule). What are the key elements of the issue? Who stands to benefit from the current rule? What is the background of the rule, and how did it get to where it is today?
2. Organize an in-class debate in which one group of students assumes the position of the NCAA student-athletes' advocates, claiming violations of their rights of publicity because of the NCAA-CLC-EA Sports licensing agreements and use of images and identities in college sport video games. The other groups each defend a defendant, arguing for consent defense, First Amendment preemption of student-athletes' rights, and so on.
3. Examine several areas of sport public relations and communications, focusing especially on innovation and new media. Prepare a presentation and brief paper analyzing how you would test the (nowadays expanding) limits of the public domain, promoting the interests of a sport corporation, institution's athletics department, media outlet, personal blog, or LLC. Ensure that your organization is fully prepared to deal with a suit such as copyright or trademark infringement, right of publicity violation, invasion of privacy, defamation, commercial misappropriation, and so on.
4. Read and evaluate the code of ethics of a nationally known sport entity or governing body. What are the central ethical tenets expressed in the code?