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Ethics and NIL

BOWLING GREEN STATE UNIVERSITY
JACKSON ANDREW KRAUSE

Final Honors Project**Jack Krause****Introduction:**

My final Honors Project will be on the topic of Name, Image, and Likeness, or NIL for short. Name, image, and likeness is an opportunity for student-athletes to be compensated off their name and personal brand (What is NIL, 2022). This does not mean that Universities can directly pay their athletes a salary, such as how professional athletes are compensated. Rather, athletes are paid or given other forms of compensation from organizations outside of the University. In many instances, such as here at Bowling Green, the University is not allowed to help you become compensated off name, image, and likeness. Our University is only allowed to assist their athletes with advice and tell them if they are allowed or not allowed to partner with certain companies. Although most Universities allow their athletes to partner with any company, Bowling Green does not allow its athletes to partner with companies related to gambling, alcohol, or other drugs.

With the new opportunity for student-athletes to be compensated off activities such as autographs, camps, clinics, or even sponsorships, athletes across the nation are navigating uncharted waters as these opportunities were illegal beforehand. Things get shaky for athletes when looking at the ethical, financial, and legal implications these NIL deals may have on themselves. Not only can they get in trouble with the law for misreporting their income, but they also can lose NCAA eligibility if they make unethical decisions and take bribes from campus personnel or improperly abuse their new power to make money.

Previously, Universities and the NCAA had a monopoly on all the financials that student-athletes generated, including ticket sales, concessions, and TV revenue. Student-athletes are not directly receiving payments from the Universities, but they are now allowed to be compensated which is great news for student-athletes. With all the good the new NIL rules bring, some concerns still arise. First, how will all the NIL deals be monitored? Also, who will be liable for the student-athletes, and what will be the consequences of rules that go along with name, image, and likeness (5 Potential, 2022)?

Research Questions

- **Is NIL ethical, and/or fair?**

Looking at the first question, is name, image, and likeness ethical, and/or fair, there are obvious issues already taking place. First, there has been many issues and accusations on unethical recruiting practices across Division 1, but particularly in Power 5 and SEC schools. For example, Texas A&M's football team has caught heat in the press for paying their players. They also have been using extremely shady recruiting practices and making unethical comments to their recruits about how much money they will make when they come to Texas A&M (Sports Illustrated, 2022). There have been videos leaked of recruiters pointing to the press boxes and saying that is where the athlete's money will come from. There has also been comments from other coaches in the league about Texas A&M, and how what they are doing is unfair. Unfair or not, with these recruiting tactics, Texas A&M was able to amass the #1 ranked recruiting class in the nation for 2022, ahead of schools such as perennial powerhouses such as Alabama, LSU, and Ohio State.

Texas A&M is not the only SEC school partaking in shady recruiting strategies and taking advantage of the new name, image, and likeness rules. Louisiana State University's baseball team was also able to assemble the #1 ranked recruiting class in the country respectively, due nearly entirely to its NIL market surrounding the school in Baton Rouge, Louisiana. College baseball is huge in Louisiana, considering its citizens do not have a professional team to root for. This, along with partnerships with brands such as Marucci, who is huge in the baseball world, has helped Louisiana State tremendously (Marucci Inks, 2022). The rumors surrounding the baseball team, and this company, were that the company Marucci would sign each recruit that commits to Louisiana State to name, image, and likeness deals that paid yearly salaries upwards of \$100,000 in some cases. The rumors were only strengthened when Louisiana State signed the nation's top Freshman transfer, in Tommy White, and the nation's best pitching transfer, in Paul Skenes. Both players are likely high first round picks in upcoming MLB drafts and have been having stellar seasons so far this year at Louisiana State. Being able to recruit like this gives Louisiana State extreme advantages over other schools across the country, and in many people's eyes they have an unfair advantage in recruiting now.

A huge debate on the topic of the legality of situations like these has taken place across the nation, and in response, many states came up with legislature to give some guidance on this issue. Louisiana was a state that originally had very strict laws on name, image, and likeness. As time went on, legislators came up with bills and laws that allowed boosters and businesses to pay student-athletes directly (Crabtree, 2022). This was urged along by boosters and donors from large, rich Universities, such as Louisiana State. The people behind the urging want their school to be able to recruit the best athletes, so they have the best chance to win conference

championships and national championships. It came to no one's surprise when Louisiana passed these laws in response to the donors pushing, and Louisiana State has greatly benefited because of it.

There are other states and Universities across the country that do not have the same money and power that schools like Louisiana State have. This gap in power has created so called 'recruiting wars,' where Universities bid against each other, to get athletes to choose their school over others, based on name, image, and likeness packages that student-athletes can receive at their school (Dellinger, 2022). For example, there have been athletes committing to schools, then flipping their commitments because of more name, image, and likeness deals available to them at other schools. Recently, a student-athlete has been making headlines because of his commitment flips. His name is Jaden Rashada and is a top ranked quarterback recruit. He was originally committed to Miami and had a reported NIL deal worth up to \$9.5 million (Bologna, 2023). Then, Rashada was offered a deal from a booster from Florida, which was slated to pay him \$13.85 million over four years at the University of Florida. With schools having boosters who can now legally toss around huge amounts of cash to these recruits, most of whom grew up with way less money, recruiting wars are tearing apart the norms and acceptable practices of recruiting that have taken place since the inception of the NCAA.

Relating back to the discussion question, how fair is NIL, how can smaller Division 1 schools keep up with and compete with these large schools for athletes? They already barely have enough money to operate in most cases. So, how are these donors who are already donating to the school just to fund programs, also going to have enough money to toss around at recruits? The answer to that question is very simple, and the matter of the fact is that Mid-

Majors cannot compete with Power 5's anymore, at least for the major sports, in the recruiting world (Golden Tribune-Star, 2022). Division 1 athletes are already receiving over 70% of all NIL deals (Zuckerman, 2022). Within that subset of athletes lies big institutions in the Power 5 group that are tossing around most of the money. In the eyes of the law and the NCAA, this is perfectly legal. But, for most people out there, this is not how they had hoped the new NIL rules would work out. Ethically speaking, everyone is not getting a fair share of the compensation in terms of NIL money. The NCAA mandates required hours of practice and training per week, that no team can exceed. So why then, does the starting quarterback receive financial compensation in many cases, but the starting women's soccer goalie does not get anything? Both athletes work the same amount in their sports and are representing their school on the biggest stage. That is why there needs to be change in name, image, and likeness initiatives across the nation at every University.

Athletes need to be fairly compensated for their name, image, and likeness, across all Division 1 sports. It is not ethical, or in the NCAA's best interest to widen the gap between athletes across campus. The major sport athletes already receive more, even at our university. The men's basketball and football teams receive the most gear, and attention on campus because they are revenue generating sports. The same goes for hockey teams at northern schools, and baseball teams at southern schools. Many schools across the nation already discriminate against women's sports as it is, and with the new day and age of NIL, there needs to be change from the NCAA to help shorten this gap.

- **Does the effect of NIL differ depending on the size of the University and sport?**

The second question, regarding if NIL differs depending on the size of the University and sport, is another serious issue with the new day and age of NIL. To start, different Divisions of college athletics have many differences in NIL deals received, and for varying reasons. First, Division 1 athletes typically have higher visibility and marketability. Many Division 1 schools have fans and followers, and even people who are not alumni of the University will root for the team. This means that athletes at these Universities are in the eyes of many more people, receive more media coverage than Division 2 and Division 3 athletes, and as a result, receive more opportunities to participate in name, image, and likeness deals from local and national businesses.

Division 1 athletes also have more endorsement opportunities, and higher financial considerations (GoldenTribune-Star, 2022). This relates mostly back to the fact that Division 1 schools on average have much larger fan bases than Division 2 and Division 3 schools. Due to Division 1 athletes' higher exposure to the masses, many companies are more likely to endorse these athletes and give them higher financial compensations. Although in some specific cases of smaller athletes getting large deals, for the most part, Division 1 athletes account for the great majority of NIL deals.

Not only do NIL deals differ between Divisions of competition, but they also differ between sport. Some of the reasons of the differences between sports include popularity of the sport, marketability of the sport, each athlete's individual performance and visibility, and the demand for specific individual athletes' personal brand.

For those not familiar with it, there is a difference between revenue-generating sports and non-revenue generating sports at the college level. For example, football and basketball are

revenue-generating sports. They have ticket sales, concessions, sell merchandise and collectibles at their games, and bring in money to the school. Non-revenue generating sports include sports such as tennis, swim and dive, or soccer to name a few. In most cases, admission is free, there may or may not be concessions sold at the event, and the sport would not be able to fund itself if it was not for the University backing it. All things considered, in many cases, athletes participating in revenue-generating sports tend to have higher demand for NIL opportunities. This is mainly in part to the greater visibility these athletes receive at their sporting events, TV time they receive in front of national audiences, and social followings they amass from these events. It makes sense that companies want to make deals with athletes that have a larger following and are seen by as many people as possible.

Another big difference maker in why athletes participating in different sports receive varying NIL opportunities, is the popularity and marketability of the sport. In the United States, the most popular sports are football, basketball, baseball, soccer, and hockey. Many schools do not have hockey programs, so for the most part across the United States, athletes participating in the sports that are the most popular are receiving the most NIL deals and highest levels of compensation.

One of the biggest factors regarding NIL, is how good the athlete is at their sport, and how big of a following they have on social media. Typically, athletes that shine the most in their sport have the greatest number of NIL opportunities available to them. It does appear that the best quarterbacks and the best point guards are getting more money than the best sprinters or the best divers. So, to an extent, the performance of each athlete does support the idea that

they will be compensated higher through name, image, and likeness deals, but it is not always the case.

Where the athlete goes to school regionally also plays a big impact on how much money they receive from companies or donors. Regional sports, such as hockey, men's volleyball, field hockey, and lacrosse, see athletes having more success for teams playing in markets where those sports are largely popular. These sports are largely considered niche sports for the areas they are played, and athletes who excel at these sports outside of their popular area are mostly out of luck for striking up successful deals with companies.

Not only are there discrepancies between sports and division, but there are also differences between gender. A study showed that 71.7% of NIL payments for Division 1 athletics went to the men's teams. Meanwhile, Division 1 women's athletes accounted for just 28.3% of the NIL deals (Berg, 2022). This statistic really portrays how donors and companies really play their favorite cards. Another issue with NIL and gender, is the possibility of further reinforcing gender stereotypes. The possibility that women are receiving deals more related to beauty or fashion products, while male athletes receive deals related to sports drinks or large companies is ever prevalent. This is a huge ethical issue that needs to be avoided, as it suggests that women should be compensated for their beauty, rather than their social skills or athletic performance. There is already a pay-gap in the workforce today, and the new NIL deals have the potential to exaggerate the pay gap even for college athletes.

The NIL providers are clearly favoring the larger, revenue-generating, and media attention getting athletes. At the end of the day, these donors are running a business, and if they want the biggest return on their investment, which is the athlete, they want to pick the most popular

stars for their college team. When you dive into how most of the name, image, and likeness money is split up, only about the top 2% of college athletes are making a significant amount of money (Hicks, 2022). This statistic really shows how unevenly NIL money is distributed and portrays how those athletes with the biggest following are the real breadwinners in this day and age of NIL.

Applying personal, corporate, and social values

Personal, corporate, and social values can vary depending on who you ask. Looking at these values is extremely important in determining the ethical implications of issues, and is a great way to look at name, image, and likeness implications. It is also important to apply ethical virtues to the research of NIL.

When applying a specific ethical virtue, utilitarianism comes to mind as a great way to evaluate the ethical implications of NIL. Utilitarianism boils down to doing whatever provides the greatest happiness for the greatest number of people (Beyond Business Ethics, 2023). Utilitarianism does a great job of moral reasoning in business because of how it can account for costs and benefits, which is critical when looking at NIL. Utilitarianism applies to NIL based off the financial compensation's athletes are receiving. It is not fair from a utilitarianism perspective how athletes are currently being compensated. Although the overall happiness of athletes is being promoted by them having the ability to be compensated, not every athlete is receiving the same opportunities. At the same time, if it can be shown that the benefits of NIL outweigh the potential harms, then utilitarianism would support NIL. On the other hand, if the

potential harms outweigh the potential benefits, then utilitarianism would reject the adoption of NIL.

Personal, corporate, and social values concerning NIL are also important to look at. Personal values are the principles that each individual holds, and the standards they use to guide their own behavior. Looking at NIL from a personal values perspective, student-athletes should be able to be compensated off their own name, image, and likeness, or personal brand. This is because they are the ones putting in all the work, and by allowing student-athletes to be compensated off their personal brand is fair and the right thing to do.

Corporate values relate to businesses and are the principles and standards they use to guide their behavior. Many businesses love the idea of NIL and have taken advantage of the new opportunities to interact with student-athletes and boost their sales in local markets. From a corporate perspective, the business benefits by having increased brand recognition and sales from the student-athlete promoting their brand. This means that NIL is promoting equity in collegiate athletics by creating a mutually beneficial relationship between brands and student-athletes.

The third aspect of social values deals with societal standards and principles. NIL does a great job of promoting economic and racial equity for student-athletes, and in turn helps everyone in the community. It helps economically by providing student-athletes with a means of income they can earn while participating in collegiate athletics, which in turn they can spend in their local communities, benefiting all of society around them. Racially, it provides athletes who come from low-income backgrounds an opportunity to earn financial resources they may

not have been able to earn without NIL. This promotes racial equity, addresses economic disparity, and helps the entire community.

Looking at NIL from a utilitarian perspective helps to justify why NIL was implemented, and how it supports the greatest good for the greatest number of people. Applying personal, corporate, and social values also provides useful information, and is a great way to look at the impact of NIL from the perspective of three separate groups.

Conclusion

Name, image, and likeness is a topic with many ethical implications, and overall is difficult water to navigate for someone who is uneducated on the topic. That is why it is important to look at it from different perspectives, and really think critically about the topic before diving right into making deals, proposing legislature, or even just entering discussion about it. Overall, there are ethical implications, differences between divisions, but at the same time NIL also creates a lot of good for the local communities and the athletes involved in the deals.

Annotated bibliography:

What is nil? NCAA rule explained. NCSA. (2022, November 22). Retrieved December 8, 2022, from <https://www.ncsasports.org/name-image-likeness>

This article sums up just exactly what NIL is, giving information on how it works and the implications of it. Also, it talks about how NIL is useful for college athletes. They can utilize the new rules to be compensated. Finally, it gives food information on what is next with name, image, and likeness.

5 potential pitfalls for Nil Collectives in college sports to avoid. Fisher Phillips. (2022, June 22). Retrieved December 4, 2022, from <https://www.fisherphillips.com/news-insights/5-potential-pitfalls-nil-collectives-college-sports.html>

This article gives information on aspects of NIL that may be of issue in today's climate. It brings up concern over laws and legal disputes. Another issue with NIL is how to navigate the NIL process safely for college athletes who have never been able to receive compensation before. Overall, the article gives legal advice on NIL, and gives advice how to stay clear of trouble.

Marucci Inks 9 collegiate athletes with a focus on the future. Marucci Sports. (2022, June 15). Retrieved December 4, 2022, from <https://maruccisports.com/the-rundown/marucci-inks-9-collegiate-athletes-with-a-focus-on-the-future/>

Talks about how the baseball brand, Marucci, signed multiple LSU baseball players. This shows how attending a school like LSU earns you the opportunity to sign with Marucci, a

huge recruiting tactic. If schools start to partner with brands in a way such as LSU and Marucci, it completely changes the recruiting game. This is a huge ethical issue in today's day and age of recruiting with NIL payments.

Sports Illustrated Alabama Crimson Tide News, Analysis and More. (2022, June 30). *Video shows Texas A&M assistant using nil in recruiting*. Sports Illustrated Alabama Crimson Tide News, Analysis and More. Retrieved December 4, 2022, from <https://www.si.com/college/alabama/bamacentral/video-shows-texas-a-m-assistant-using-nil-in-recruiting>

This shows a clip of a Texas A&M football recruiter using unethical tactics to try to persuade recruits to come to Texas A&M. It also shows rules in place around NIL. Texas A&M was under a lot of scrutiny in the media when this video surfaced, and for good reason. Technically, recruiters are not allowed to say what he said, showing how unethical recruiters are becoming with the use of NIL.

Crabtree•06/15/22, J., & Crabtreejeremycrabtree, A. written by:J. (2022, June 15). *Louisiana governor signs law to give nil collectives more power*. On3. Retrieved December 4, 2022, from <https://www.on3.com/nil/news/louisiana-governor-signs-law-to-give-nil-collectives-more-power/>

This article gives good information on how the state of Louisiana has changed their laws to allow boosters and businesses to directly pay student athletes. Louisiana joins many other states in passing laws like this one. It also talks about how the goal of the laws is to give

student athletes more freedom and be able to support themselves. Finally, talks about how deals with NIL in the state of Louisiana are confidential and private to the student athlete.

GoldenTribune-Star, T. A., Holm, P., & Leake, A. (2022, July 29). *Nil: How does it impact ISU and mid-majors?* Star. Retrieved December 8, 2022, from https://www.tribstar.com/sports/nil-how-does-it-impact-isu-and-mid-majors/article_939ef97e-0f70-11ed-91ea-271ac503dc03.html

This talks about the discrepancies between Power 5 recruiting and Mid-Major recruiting, specifically at Indiana State. Gives examples about how they do not currently have the resources to compete on that level. Also talks about how the coaches can use the transfer portal to lure kids to their school unlike ever before, so bigger schools can bribe smaller schools' better players to come to them. This further increases the gap between FBS, FCS, DII, and DIII athletics now that NIL is a recruiting tool.

Zuckerman, E. (n.d.). *The Ethical Dilemma of NIL*. Fieldstonnews.com. Retrieved December 5, 2022, from <https://fieldstonnews.com/home/2022/06/the-ethical-dilemma-of-nil/>

Talks about the gender discrimination in NIL deals and pay gaps. Talks about USC star receiver Jordan Addison reportedly receiving \$2 million to transfer to USC. Also talks about the inequity of NIL payments across DI, DII, and DIII. Also briefly describes the gender inequity and how women are not financially compensated at a fair rate.

Dellenger, R. (2022, May 2). *Nil, 'Booster Banks' and recruiting wars: For some, it doesn't add up*. Sports Illustrated. Retrieved December 8, 2022, from

<https://www.si.com/college/2022/05/02/nil-name-image-likeness-experts-divided-over-boosters-laws-recruiting>

Talks about the recruiting wars, and how Universities 'out-bid' each other for athletes.

This has been a huge topic of discussion in today's media. Even though schools have been illegally paying athletes for years with many getting caught, now that it is a legal recruiting strategy, is it ethical now?

Bologna, R. (2023, February 6). *Full details of Jaden Rashada's terminated \$13.85 million nil deal*. ClutchPoints. Retrieved April 1, 2023, from <https://clutchpoints.com/full-details-jaden-rashadas-terminated-nil-deal>

This talks about a Florida QB commit, Jaden Rashada. It brings up how he flipped commitments multiple times due to NIL discrepancies. It also shows how brutal the world of college recruiting is. Plus, it shows how the laws for paying athletes are still being worked out, and do not work in favor of the athletes every time.

Berg, A. (2022, March 11). *Iowa star Clark talks gender inequality in Nil Profits*. Athletic Business. Retrieved December 8, 2022, from <https://www.athleticbusiness.com/operations/marketing/article/15289579/iowa-star-clark-talks-gender-inequality-in-nil-profits>

Gives data and statistics about the gender gap in NIL. Talks about a University of Iowa women's basketball player's experience with NIL. Gets into how brands ignore female athletes and only target the males because they get higher views, but women's accounts have a higher interaction percentage. Overall, makes you wonder why companies are discriminating against women in NIL deals.

Hicks, K. (2022, February 25). *College football players are dominating Nil brand deals so far—but inroads are forming for others*. Morning Brew. Retrieved December 8, 2022, from <https://www.morningbrew.com/series/sports-marketing/stories/2022/02/25/college-football-players-are-dominating-nil-brand-deals-so-far-but-inroads-are-forming-for-others>

Gives more data and support for the gender gap in NIL deals. Also talks about how the top 2% of athletes are the ones making six figures or most of the money. The playing field is extremely uneven right now and will not be leveled out anytime soon. Time will be the teller if NIL needs reform to make it more fair for every athlete playing college sports.

Beyond Business Ethics - UT Austin. Ethics Unwrapped. (2023, February 20). Retrieved April 16, 2023, from <https://ethicsunwrapped.utexas.edu/>

Talks about the virtue of utilitarianism. Describes how utilitarianism is doing the greatest amount of good for the greatest number of people. It also says that utilitarianism is the most common form of ethics in business because of its ability to account for costs and benefits.