**2019 Sports Law Hot Topics to Watch**

**The annual January tradition I know y’all look forward to is here - my predictions on what will be the hottest of the sports law hot topics! I settled on selecting six topics this year, and I must say, it was wonderfully hard to narrow down the list because there is a lot of meat we will get to digest over the next 12 months.** (Disclaimer: I think #1 will be the hottest of the hot, but that may be my bias talking since that is one of my main wheelhouses!)

That said, I would also like to remind those of you who may be newly acquainted with the concept of “sports law” that, in all honesty, there is technically no such thing as “sports law,” *per se*. Rather, what a handful of attorneys and I do is specialize in understanding and zealously advocate to resolve diverse legal issues that take place within the sports industry because the law often treats sports in a special way relative to pretty much every other industry out there.

Keep reading for a brief descriptions of each topic’s current status, why I am including it on this list, and a few Twitter handles to follow for the latest news and analysis throughout the year:

## 1. COLLEGE ATHLETES’ RIGHTS AWARENESS & ADVOCACY

**Current Status**: Since its inception as a non-profit organization in 1906 and as expressed in Bylaw 2.9 of the 2018-2019 NCAA Division 1 Manual, the NCAA has wanted its athletes to be “motivated primarily by education and by the physical, mental and social benefits to be derived,” and it has wanted the athletes to be “protected from exploitation by professional and commercial enterprises.” The NCAA’s “amateurism” principle led to the “student-athlete” term it coined in 1964, for these athletes are allegedly students first and athletes second so that they remain distinguished - in vernacular, at least - from professional athletes. Amateurism governs the entire college athletics business model that the NCAA and its member institutions created, including but not limited to the athletes’ mobility between schools, the maximum financial compensation they may receive (currently, the institution’s “cost of attendance”), and who controls the commercial use of the athletes’ names, images, and likenesses (hint: it is not the person whose name, image, and likeness is being used). All of this, according to the NCAA, is aligned with its main priorities: academics, well-being, and fairness.

**Why It Will Be HOT**: The NCAA is in a delicate position right now. College athletes, fans, and the public, generally, are becoming increasingly aware of questions that have been part of the college athletics business world since the 1980s. Are college athletes more like employees of the institutions for which they play? Should college athletes be “paid”? If so, what does “paid” even mean, and how much should they earn, and by what means and sources would be appropriate? If protection from corruption and greed in the market is an issue, should they be allowed to hire an agent to help them through any shark-infested waters? How would this work under Title IX, or would it even apply in potential new business models?

Whether willingly or not, the NCAA has been put in a corner and pressured to cave to create a bit more flexibility in its rules interpretations. For example, the approved Residency Requirement waiver petition opportunities for revenue sport athletes that became effective immediately allowed Shea Patterson to transfer with immediate eligibility from Ole Miss to Michigan. This off-season, Justin Fields is attempting to get the same waiver and play immediately at Ohio State. There is little precedent for this since it is so fresh, and whatever the Committee for Legislative Relief decides may reveal how the transfer situation could be trending from the NCAA’s perspective.

Moreover, the NCAA is forced to defend itself in various courthouses right now where current and former college athletes have filed lawsuits to eliminate allegedly illegal NCAA rules. In my predictions last year, I told people to follow Jenkins. That case joined another case led by Shawn Alston, In Re: NCAA Grant-in-Aid Cap Antitrust Litigation v. NCAA, which had its closing arguments in December in front of Judge Claudia Wilken (i.e., the same judge who initially ruled on O’Bannon a handful of years ago). She should be issuing her opinion soon, and it is safe to say that whichever party does not receive a favorable outcome will appeal the case, and whoever loses at the appellate level will try to get it heard by the Supreme Court. The end game is further away, but I think this is the case to make the next big step to achieve fairness and college athlete well-being… ironically.

## 2. “ALTERNATIVE” PROFESSIONAL FOOTBALL LEAGUES

**Current Status**: True, there are a couple small entities labeled “professional,” but the NFL has not seen a real threat to its popularity in over three decades. Professional football is America’s favorite sport to watch. Currently, we do have two somewhat longstanding leagues in the U.S.: (1) the Canadian Football League, which was founded in 1958; and (2) the Arena Football League, which has been around since 1987. Neither has been able to rise remotely close to the NFL’s popularity level. Nonetheless, maybe one pro-league during the fall and winter is not enough to satisfy the market, and maybe now is the right time for potential “competitors” (see below why this is in quotes) to enter the market since the NFL had a series of public relations blunders and - whether it wanted to be here or not - found itself in the middle of political controversies that has affected viewership.

**Why It Will Be HOT**: Compliments sound nicer than substitutes, right? Well, the Alliance of American Football (AAF) kicks off its 10-game season in February 2019 after the NFL season wraps up. It is billing itself as both a compliment to the NFL and a showcase of “local, developing talent.” The rosters already have names of former players many football fans would recognize like Christian Hackenberg, Blake Sims, Joe Fauria, Aaron Murray, and Trevor Knight, and a former NFL executive is co-founding the endeavor. More importantly, while its operations are similar to the NFL operations (e.g., the quarterback draft, coaching hires), it modernizes the game of professional football with slight rule changes and catering to fantasy football in a way the NFL does not do.

While this, much like the USFL, can be called a compliment because it does not directly compete with the NFL with respect to broadcasting and viewership markets since they take place in different seasons, they will compete to some extent for talent. My favorite factor here is the NFL rule (basically made in agreement with the NCAA) that a player must be three years removed from high school to be eligible to enter the NFL draft. Again, it is an NFL rule that causes some of the most talented undergraduate college football players to stay in school and potentially risk a decrease in draft value and career-ending injuries before they can get a salary for their hard work. Now, here comes the AAF, along with the XFL in 2020 and the Freedom Football League that will allow fans to be “part-owners,” who can offer a good chunk of money to any of those players completely free of the NFL’s draft eligibility restriction. Remember how the USFL got various Heisman winners to play for its league instead of the NFL? Will we see that moving forward? Can these alternative professional football leagues be the real deal? I am really excited to find out!

## 3. U.S. SPORTS BETTING “ARMS RACE”

**Current Status**: SCOTUS ruled that the Professional and Amateur Sports Protection Act was unconstitutional, opening the doors for states to determine themselves whether it would legalize and regulate sports betting. Woohoo! Seven states have legal state-regulated sports betting industries now, and even more are drafting legislation and considering legalization as well. As y’all can imagine, some people in the federal government and, at least initially, the “Big Four” leagues (the NFL, NBA, NHL, and MLB) plus the NCAA were not the biggest fans of this state-by-state approach to sports betting. Now, the NFL is the power behind proposed federal regulations being passed around Capitol Hill whereas the other three leagues have shifted their philosophy. Through the final months of 2018, the NBA, NHL, and MLB began to take the matters in their own hands, to the extent they can at this time, and partnered with MGM Resorts to make the casino company the official (but non-exclusive) gambling partner of the leagues.

**Why It Will Be HOT**: This early post-PASPA world is a strange but marvelous place. I am dubbing this an “arms race” because with the state governments on one side and the federal government on the other, I can only imagine the tension level as they try to quickly acquire manpower and “ammo” to push through legal instruments favoring their respective interests. Obviously, each government entity interested in the possibility of legalizing it wants to be able to have regulatory control over the sports betting market and whatever accompanying revenue could come with taxes and license fees. It would be easier for the leagues to work with sports betting, whether or not they actually have a say in the regulations and operations, on a nationwide scale as compared to a state-by-state basis as well. Then, there is the question of whether MGM Resorts can reach the NFL like it has the other leagues, which would be more challenging because while the NFL supports federal regulations MGM Resorts does not support uniform standards across states.

## 4. EQUITY IN AMATEUR SPORTS

**Current Status & Why It Will Be HOT**: Inner-city students in cities like New York, Los Angeles, and Oakland have a more difficult time than other kids gaining access to play sports. This is not anything new. Another fact that is not new is that those populations of kids are predominately ethnic minorities, such as the black and Latino kids in New York public schools in those areas. Young girls are running into access problems too often as well. Lawmakers are proposing bills in some West and East Coast cities that, historically, have some of the most talented pools of amateur athletes we have the pleasure of watching, and students are filing lawsuits to fight the government entities who either choose to no longer fund school sports programs or who reject proposals for new extracurricular organized activity groups. Currently, many of the programs catering to inner-city students or girls are often funded by third parties like LA84 and the local professional sports teams because the cost-cutting and, arguably and as the students allege, discrimination is wrong. Though the resolutions will be far out in time, almost certainly years away,

**Why It Will Be HOT**: The seriousness of this topic has constitutionality and discrimination buzz as a human and civil rights issue and also transactional law buzz that could capture increased media attention in 2019. This disappointing trend of cost-cutting funds for sports in public schools will take a harder hit when, for example, controversial professional sports team relocations happen and remove a large source of that critical funding from charitable third-parties. The Oakland Raiders are providing supplemental funding to Oakland public schools because the city is eliminating half of its sports programs as part of a $500,000 cost-savings effort, but everyone knows that will not last when the Raiders relocate to Las Vegas. There is no way these public schools can rely on third-party funds in the long run. After all, these can barely keep these access efforts alive, if at all. So, whether people or entities step in to generously donate money and time into these access equality issues or whether the courts make their opinions heard or whether the deprivation gets better or worse on a wide scale of factors, this topic is bound to produce some stories and evoke the feels.

## 5. FOX REGIONAL SPORTS NETWORKS SALES

**Current Status**: Disney is set to purchase many of the Fox entities in early 2019 for a hefty $71.3 billion. The purchase includes control of Fox’s 20th Century Fox films and television studios, Fox networks like FX, and a 30% stake in Hulu. This does not include all of Fox’s assets, but the few remaining ones will form a “New Fox” comprised of Fox News, Fox Broadcasting, and most Fox Sports assets. Notably, the Department of Justice approved the deal and mandated that Disney sell the 22 regional sports networks (RSNs) within 90 days from the deal closing. Disney has not received the bids it likely anticipated, which is critical because it would make the sale much easier with multiple offers and, ideally, some offers to purchase all 22 RSNs in bulk. Unfortunately, that was not the case, at least for the first round of bidding. A lot of questions exist, and each result could have its own varying results stemming from the prior depending on how later bidding rounds go.

**Why It Will Be HOT**: As stated earlier, oh so many unknowns arise here. Will there be a bulk sale of all or handfuls of the networks, or will the RSNs be sold off piece by piece? Who will be the buyer(s)? How will future broadcasting contracts look, and how will they affect consumers and fans? This will certainly affect how we watch MLB and NHL games in many markets since Fox RSNs air the large majority of those games, and it will not just be us viewers affected. This will affect the teams’ agreements as well. While the purchaser(s) will take over the existing contracts in their current states, some teams have contracts set to expire as early as next year, which means they will need to start negotiation strategies soon despite not even knowing the other party with which they will be dealing. Those agreements will largely impact us, in return, and the price consumers pay in the cable market.

Private equity firms, media and tech companies, and powerful local broadcasting companies have shown interest in making bids, but some FCC rules have clearly affected who has made bids, on which RSNs, and the value of said bids or prospective bids. The FCC may loosen rules on the number of networks one broadcasting company may own, specifically the rule prohibiting any one broadcaster from owning stations that reach 39% of U.S. households, but it has not done so yet. We could see different pairings of private firms and broadcasters to comply with the rules and extend from cable to online platforms, but one problem is that the digital rights are typically owned by the leagues rather than the networks. I kind of dig one of two different scenarios where either the MLB or, specifically, Amazon, purchase all 22 RSNs. Reportedly, they both have shown interest, and it will definitely be worthwhile to follow the sales.

## 6. ESPORTS SPONSORSHIPS & PARTNERSHIPS

**Current Status**: For those who are not exactly sure what it is, esports, simply stated, is competitive video gaming at a professional level. The games themselves come in a variety of formats as well as the way the leagues for each game operate, though the two most dominant formats are first-person shooters and Muliplayer Online Battle Arena. So, there are plenty of opportunities for other businesses to get their hands involved with the esports world by becoming sponsors for teams, individuals, organizers, and developers. Just as variant as the games are, we have already seen some pretty groundbreaking deals in the past few years, such as Monster, Geico, Gilette, Alienware, 5-Hour Energy, HTC, Snickers, and Twitch. Also, in September 2018, Mastercard broke ground by becoming the first global partner of League of Legends, the world’s most popular esports game, and signed a multi-year contract.

**Why It Will Be HOT**: As an industry, esports’ portfolio of partners and sponsors is already diverse, and I believe it will continue to diversify even more. Businesses that already support other traditional sports are bound to follow Mastercard, which has been a proud partner of sports and entertainment like the PGA Tour, Major League Baseball, The Open, The Australian Open, and Rugby World Cup. Additionally, as game developers look to expand into their lesser popular/weaker markets, I think it is safe to anticipate seeing more intersections of traditional sports and esports whether it be owners in the “Big Four” (e.g., Robert Kraft), teams partnering with local esports teams, and sports broadcasters entering into contracts like ESPN, Big Ten Network, and TBS have tested out in the past. Nielsen Holdings formed an esports board back in 2017 that has been tracking and monitoring viewership and other media data that can be extremely useful for potential partners who may have been waiting for more concrete numbers or whose curiosity and passion may not have been enough to support a business move into the esports world. In general, access to esports is becoming more readily available, which likely expands fandom, player pools, investor potential, and the contractual relationships we can see develop.

To put things into perspective, the esports industry is quickly approaching revenue levels equal to that reported by college athletics - revenues have increased by 40 percent in the past two years alone, making it very close to the $1 billion mark. Combining that big money factor that draws in progressive business minds with the intelligence developers have in choosing partners, the potential contracts we could see this year

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