

PROTECTING YOUR POSSIBILITIES PODCAST WITH LUKE FEDLAM

Episode 39: The Crazy World of Name Image & Likeness| May 5, 2021

The following is a transcription of the audio podcast recording. It is largely accurate but in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors.

Luke: I'm sports attorney Luke Fedlam, and welcome to the Protecting Your Possibilities podcast. Each conversation we focus on sharing information and having conversations around how athletes can best educate and protect themselves or their life outside of their sports.

Thank you so much for tuning into the protecting your possibilities podcast. I'm your host, Luke Fedlam. And before we start today's episode, I wanted to take a moment just to say thank you, thank you for listening to this podcast and for engaging with me sending me emails, and messages on LinkedIn, some people sending texts just to tell me your thoughts, your comments on the various episodes that we have. It's not an easy undertaking to put out a podcast on a weekly basis. And I have to always give a shout out to our marketing team who truly helps make this happen.

But you know, when I think about the content, I always try to be timely, I always try to share information that is presented in a way that focuses on how we protect athletes, and how athletes, entrepreneurs, you know, business owners and others can think about various legal aspects of what they're going through in a way that's, you know, more digestible. A way that's easier to understand. And so, for all of you who listen, especially for those who provide feedback, thank you so very much, because it's kind of weird, right? People who know me personally know how much energy I have. And so when you sit in a room by yourself, and just stare at a microphone and a computer screen to record a podcast, it can be weird, but hearing the feedback, getting the feedback from you all who listen, thank you so very much. It does mean a lot.

But let's get right into today's episode. And for those of you who listen regularly, you know, I really enjoy talking about name, image and likeness, and the changes that are coming to college sports because of name, image and likeness. And I've said this before, and I'll say it again, I think that the changes we're seeing right now, in college sports are the most monumental changes that we've ever seen at the collegiate sports level, name, image and likeness alone is going to be a significant, significant change. And that's why I wanted to bring up what happened in the state of Florida this past week. I've got numerous phone calls from people asking what was going on. And I just felt like this would be a good opportunity to have this episode focus on where things stand, from a name, image and likeness perspective. And to highlight what happened in Florida to show the fragility of really kind of what's going on in this name, image and likeness space.

So what happened? So, interestingly, as you all know, Florida is set to have their name, image and likeness, law go into effect on July 1 of this year, so less than two months away. And what's interesting is Florida has been one of the first states and it's been talked about and discussed that Florida was going to be the first state you know, in the earliest state to adopt name, image

and likeness opportunities for their student athletes. As we've seen, things put on pause at the NCAA level, because of the Supreme Court case of NCAA versus Alston, which we've discussed because of the fact that the Department of Justice had concerns about the D1 council taking a vote back in January on name, image and likeness, states have realized that there's a high likelihood that the NCAA is not going to have new rules in effect on July 1. And so what we're going to see is states who have passed legislation signed into law that go into effect this summer, they're going to be the states that lead in this name, image and likeness space. And it's really interesting, I have a lot of conversations with athletic department personnel, and there is significant concern around just how this is all going to play out how it's going to affect student athletes, how it's going to affect the institutions themselves as well in terms of what is allowed, not allowed, what's reported not reported and how. And so that kind of leads to what happened in Florida over the past kind of week, week or so.

And what happened was a state senator in the Florida Legislature goes by the name of Senator Travis Hutson. He added an amendment to a bill that had nothing to do with name, image and likeness. In fact, it was focused on charter schools, and there were a flurry of different amendments that were added in but he added an amendment that focused on name, image and likeness and the name, image and likeness law that was set to go into effect July 1, and added a delay. It was basically a delay amendment saying that the name, image and likeness law should not go into effect until July 1 of 2022 now, basically bottom line, law set to go into effect on July 1 of this year, this amendment would then push things to in the state of Florida to July 1 of 2022.

As you can imagine, that caused an incredible uproar from student athletes, from coaches, from schools, athletic directors in the state of Florida, because let's be honest, these schools have been promoting the fact that their state is going to be one of the first states to have name, image and likeness be a law. And so when something is a law, it's interesting because it would be very difficult for student athletes to have legally protected rights within a state. And then the NCAA says, Well, you can't do that. But that's what Senator Hutson's fear was, right? He told ESPN that he was concerned that the NCAA might punish athletes or punish schools if they take advantage of the name, image and likeness law that's going into effect July 1. So to kind of cut to the chase. And to put a bow on this, I guess, lawmakers in Florida passed a bill this past Friday afternoon, which was the last legislative day of the state legislature for this session, where they reinstated July 1 of this year as the start date for allowing student athletes to earn money off of their name, image and likeness.

So everything kind of is back to where it was two weeks ago. But it shows how quickly things can change. And when you think about the schools in Florida, and what they've done, from a recruiting perspective, how they have partnered with organizations, and how they are selling this opportunity for name, image and likeness, compensation to student athletes, to prospective student athletes, it's significant. And so anything that could change that, or a bend that, obviously would cause quite a bit of concern from various stakeholder groups, especially the student athletes themselves. And that's what we saw, right? We saw the athletic directors from Miami, University of Florida, from Florida State, all speak out about the importance of doing what's right for student athletes as it relates to name image and likeness. And obviously, you know, a big portion of that is because they have invested in what that looks like, within their own institutions. But what's interesting, though, is in addition to Florida going into effect this summer, you also have Alabama, Arizona, Mississippi, and New Mexico, all who through their state legislatures have passed bills into law, as it relates to name, image and likeness and set the effective dates for this summer, mostly in July.

And so what's interesting about that is that what we're seeing is now states realizing that if there's not going to be federal legislation that governs name, image and likeness, then it really is a race by the various states to pass name, image and likeness legislation.

In a [past episode](#), I'll have the information in the show notes, but in the past episode, I talked about how these state laws are not all created equally, either. Various states have unique nuances around name, image and likeness within their state laws. And so that will be interesting to see how student athletes will select the schools that they want to go to based on the opportunities that may be afforded by that particular state's legislature.

But what does this mean broadly? And what does this look like from an overall kind of national perspective? Well, it means a few things. Number one, the NCAA is still going to wait to see what the court's decision is the supreme court's decision is in NCAA vs. Alston. We've spoken about this in the past on podcast episodes, the oral arguments were heard at the end of March, and everyone expects that there will be a decision from the court sometime in June, whether it's mid to late June, we'll see. But that's going to be instructive. Even though the case itself did not focus directly on name, image and likeness. The courts guidance in their decision for this case, will absolutely play a role in both who is responsible for defining amateurism and kind of setting forth the benefits the student athletes can receive and or limiting those benefits, but also how and so we should get some good information.

I think everyone kind of in this collegiate sports spaces, kind of holding their collective breath to see what the court's ruling is going to be in that case. And that will be instructive. I think as these new name, image and likeness rules will, you know ultimately go into effect. And what's interesting in Florida is that when interviewed Senator Hutson, who tried to delay Floridas name, image and likeness law from going into effect until next year, said that he spoke with the NCAA president Mark Emmert, and received enough assurance to get rid of that delay. So interesting, right, that the NCAA, at least unofficially has given some reassurance to state lawmakers that they would not hold student athletes or institutions accountable to the NCAA as current rules, they still say student athletes cannot receive benefits or make money off of you know, their name, image and likeness. So it'll be interesting to see, because what we're seeing broadly now are multiple states with laws going into effect.

So I listed off the five that are going into effect this summer, we have there are other states that have passed name image and likeness legislation into law. But it just goes into effect later. There's some states that are early 2022, multiple states that are in 2023. And what we could see, are those states legislators voting to move up, right, their effective date of their laws, if they feel like they're going to get left behind from a recruiting perspective.

All in all, I think that ultimately, we're going to see, there's going to have to be federal legislation that addresses this. We've talked about that before. The question is kind of "When is that going to happen?" And how will that happen? What will that look like? We know that it from the various kind of bills that have been presented, that there are some differences and some nuances between them? And without, you know, they'll I'll save that for another episode where we kind of get into some of the differences from the federal legislation perspective, but we know that there are a few different bills that are out there, and some other ones additional ones that are being drafted to address this name, image and likeness situation.

Because ultimately, there's going to need to be some uniformity among what's allowed or not allowed. The question is who is able to actually establish what that uniformity looks like? And I think for all intents and purposes, it's going to end up being the federal government with federal

legislation related to student athletes being able to be compensated off the use of their name, image and likeness.

So the question really becomes, what do we do to protect student athletes? What do student athletes need to think about as they navigate in the certain states name, image and likeness that is now authorized and allowed by state law? The key when we think about this, it really is kind of the impetus of even why I have this podcast, right, it's protecting the possibilities of athletes and student athletes, in the states that we've mentioned, will have the opportunity to earn compensation off their name, image and likeness. And so the first step is that the student athlete is going to really need to understand what is that state law? What is authorized by that state law? Are there any restrictions within that particular state as to how student athletes can engage in this name image and likeness space? Does that state's legislation have a prohibition on signing on deals with brands or companies that the school has deals with? Does that state legislation have a prohibition on doing deals with companies that are competitors of brands that the schools or the institution has deals with, and so much more. So student athletes really will need to understand that state legislation, the state law and compliance at all of the institutions, the schools within that particular state that has authorized and allowed name, image and likeness compensation for student athletes, the compliance departments are going to have to really work hard to educate student athletes on what is allowed and not allowed. Because if state law is, let's say silent on a particular area of student athletes earning compensation, then the default is going to be obviously what is that institutions policy, which should mirror what's allowable by state law, but also what's the NCAA policy on that particular issue. So there's going to need to be significant education as it relates to the rules themselves.

But as I've talked about before, there has got to be education around the business side of what this means. You know that there are going to be student athletes who are the elite of the elite performers, right based on their athletic performance, their athletic ability, and they'll have deals that will read about that will be jaw dropping in some respects, surprising, and others. And from that perspective, we know that that's going to happen.

But oftentimes people forget that they're also student athletes who maybe aren't the star athlete on their team or the star athlete at their institution. But because they have a particular talent, skill ability, or just following on social media, they're going to be able to earn compensation as well. And that is, again, it reinforces the importance of having a solid curriculum, a solid foundational curriculum, around preparing student athletes for the business side of what's to come with name, image and likeness. I've talked about it before, I've had conversations with many of our listeners about this have had conversations on these episodes of this podcast about just how important an educational curriculum around name, image and likeness is. And not just based on branding, yes, that's important. Yes, student athletes want to understand how to develop, grow and monetize their brand. So that's important.

But we're talking about the things like how do you make decisions? How do you do conduct due diligence and investigate people who want to work with you opportunities that get presented to you, the companies that maybe you haven't heard of that are trying to get you to promote their brands? How do you do the due diligence to understand who you're working with and how you're working with them, you also want understand money, right. And it's not just the traditional financial literacy, it's the understanding how taxes play a role in all of this understanding all of the aspects of financial aid, and how taking on some of these deals might affect your financial aid as well. And then, you know, thinking about contracts. And obviously, this is where, you know, I get all, all geeked up, you know, over this because I look at marketing and endorsement contracts day in and day out for the professional athletes that we work with. And I've seen

hundreds, if not thousands of these types of agreements, and student athletes are going to be seeing them for the first time. And so it's important that they have a solid understanding of how a contract works. What happens if you change your mind? And you don't want to represent that brand anymore? But you've signed a contract? Right? What does it mean to breach a contract? How long are you connected? or How long do you have within the term of an agreement with an advisor who wants to work with you? Or how do you terminate an agreement if you want to get out of that agreement? Right.

So thinking about this, it's that decision making that due diligence, money and contracts. And that's a curriculum that through Anomaly Sports, which I've [talked about](#) on the show before, through Anomaly Sports that's focused on educating groups of athletes that I started a few years back, and our partnership through anomaly with Team Altemus out of Philadelphia that focuses on financial literacy, financial management, and understanding both on the spot due diligence, but also that ongoing monitoring and, and I've had their CEO and founder Courtney Altemus, as a guest in [previous episodes](#). That's the curriculum we've put together. And we believe in that curriculum, because we have seen it firsthand with professional athletes that I've worked with, and continue to work with on the legal side. And the professional athletes that Courtney works with, as well, not as a financial advisor, she gave up her licenses, but she has created the ability to understand helping student athletes and professional athletes understand money in different ways, helping them understand due diligence and how to really know who it is that's working with you, right taking all of our experiences on Wall Street, to be able to create learning modules for athletes at all levels.

So again, this curriculum isn't just kind of created, because it sounds good, it's created because we know that it's important. And we've seen it work with athletes. And so I guess, you know, you could call that a plug, if you will, at the end, if you're an athletic department, you know, staff person who wants to talk more about that, feel free to reach out happy to have that conversation.

But I think it's important to really understand the necessity for a business focused curriculum for student athletes, because we do all that they need to help them succeed in the classroom, right? There's mandatory study halls, athletic academic counselors, right? We do all the things that they can be successful in their academics, we do all the things we already know that they need to be successful in their sport from all of the facilities, they have the coaching staff, the trainers, you know, and so on down the line. So why wouldn't we also do all the things that student athletes need in order to be successful in this business of name, image and likeness that they're going to be thrust into here starting this summer in various states and spreading throughout the country. So again, just my plug, and you've heard me say before, it is an ethical imperative that schools provide that real world practical education for student athletes to be successful within their sport, but also outside of it as well. So that's my plug for the day.

Hopefully you found this information interesting, informative. Please do feel free to share with a friend, colleague, teammate, because again, the focus here is how do we make sure that athletes are being protected, especially with some significant, significant changes coming to college sports? Again, I'm Luke Fedlam. Thank you so much for tuning in to the protecting your possibilities podcast. I look forward to talking with you again real soon. Have a great day.

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