

Navigating the New NIL Landscape: A Checklist for Athletes Looking to Profit

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By W. Drew Kastner and Stephenie Wingyuen Yeung 楊穎苑

On June 30, 2021, the college athletics landscape was significantly altered, as the NCAA announced an “interim policy” concerning the commercialization of college athletes’ names, images and likenesses (“NIL”).

NIL includes an athlete’s name, appearance, signature, nicknames and any other signs, slogans, sayings or symbols that can be used to identify that individual.

Here is a basic step-by-step guide to help college athletes profit from their own NIL while complying with NCAA, state and school rules:

(1) Know the interim NCAA policy.

- Athletes can now profit from NIL.
- State law where the school is located will apply.
- The school’s rules will also apply, even if there is no state NIL law.
- You can hire professional representation (attorneys, agents) with certain limitations.
- You must report NIL activities consistent with state law and school rules.
- Avoid NIL affiliation with NCAA’s banned substances (drugs, performance-enhancing drugs, etc.).

(2) Does your state have an NIL law? If so, know it.

In order to play the game, you have to know the rules. Therefore, start by learning about your state’s NIL law. If you are unsure, contact your athletic department or a local attorney for guidance.

- What are the “banned categories” in the state (drugs, alcohol, gambling, etc.)?
- What are the reporting requirements?
- What makes someone eligible to help you with NIL deals (state agency requirements)?

(3) Know your institution’s NIL policy.

- You must know what your school does and does not allow.
- Can you use the school’s logo or facilities in your NIL activities with or without pre-approval?

- Is there a process to request approval to use school logos and facilities?
- Can you conduct NIL activities during team-sanctioned events?
- What are your school's "banned categories"?
- Are there special NIL social media rules?
- Does your proposed endorsement conflict with the school's existing product agreements?
- What are the school's NIL reporting requirements?
- Does your school have a designated NIL administrator to help you?
- What is the enforcement mechanism and ap-peal procedure if you make an alleged NIL mistake? (You should consider hiring professional representation to help avoid this.)

(4) Protect your NIL.

If you are in the market for significant NIL deals, you should consider protecting your intellectual property ("IP").

Seek legal counsel with experience in both IP and sports law. The initial consultation will typically be at no cost. Beyond that, a small expense up front can pay off down the road.

- Register your IP.
- Register your name, nickname, or slogan as domain names.
- Protect your right to use your own NIL and prevent unauthorized third-party use by filing for trademark protection.
- What is a trademark? It is a word (name or nickname), symbol, design or slogan that can specifically identify you in commercial activities.
- Consider hiring a trademark attorney to assist you.

How do I determine if it is cost-effective to take these steps?

- The NIL market is extremely new and, therefore, tough to judge. However, the more substantial contracts are being executed by players with larger social media followings and on-field presence. Regardless, do NOT sell yourself short. Test the market and see what deals you may attract.

(5) Understand the impact of any earned income.

Earning income from NIL may affect your personal financial situation, including your tax status and liabilities, your immigration status, and/or your financial aid package.

(6) Seriously consider hiring professional representation.

In accordance with NCAA, state and school guidelines, consider obtaining professional representation, such as an attorney or agent registered in the state. Also, consider whether obtaining financial, tax, immigration or other professional advice would be helpful. At the end of the day, no NIL deal is worth your NCAA eligibility or institutional good standing.

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