



PROGRAM MATERIALS

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The Basics of Name, Image, and Likeness (NIL) Regulations and Deals – 2026 Update

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CELESQ PRESENTS

**THE BASICS OF
NAME, IMAGE,
AND LIKENESS
REGULATIONS AND DEALS**

AGENDA

- | | | |
|-----------|-----------------------------|---|
| 01 | THE CORE CONCEPT | <i>What NIL is and why it was contested</i> |
| 02 | THE ROAD TO 2021 | <i>O'Bannon, Alston, and the collapse of amateurism</i> |
| 03 | THE HOUSE SETTLEMENT | <i>Revenue sharing, the cap, and the CSC</i> |
| 04 | THE GOVERNING RULES | <i>State law, NCAA rules, institutional policy</i> |
| 05 | ANATOMY OF A DEAL | <i>Contract terms and risk points</i> |
| 06 | CONFLICTS AND ETHICS | <i>Representing athletes, collectives, and brands</i> |
| 07 | WHAT'S NEXT | <i>Federal preemption, employment, and open questions</i> |

WHAT IS NIL?

Name, Image, and Likeness ("NIL") refers to an individual's right to control, and profit from, the commercial use of their personal identity.

NAME

The athlete's given or used name, nickname, and identifying marks. Think "Caleb Williams" on a jersey, an Instagram handle, a merch line.

IMAGE

Photographs, video footage, and other visual depictions. Includes likenesses rendered in video games, trading cards, and advertisements.

LIKENESS

Broader persona rights. Signature gestures, catchphrases, identifiable physical traits, even voice. Right-of-publicity territory.

FROM AMATEURISM TO ALSTON

2014

O'BANNON v. NCAA

N.D. Cal. holds NCAA rules restricting NIL compensation violate the Sherman Act. Permits cost-of-attendance scholarships. First real crack in amateurism.

2019

CALIFORNIA SB 206

"Fair Pay to Play" Act. First state to prohibit schools from penalizing athletes for commercial NIL activity. Triggers a cascade of state statutes.

2021

NCAA v. ALSTON

Supreme Court (9-0) affirms antitrust limits on NCAA education-related benefits caps. Justice Kavanaugh's concurrence telegraphs broader liability.

**JUL 1,
2021**

NCAA INTERIM POLICY

NCAA suspends its NIL rules. Athletes may engage in NIL activity consistent with state law (or any law, if none exists) and school policy. The floodgates open.

ALSTON, THEN CHAOS

THE HOLDING

The NCAA is not immune from ordinary antitrust scrutiny. Its restrictions on education-related benefits fail rule-of-reason analysis. Schools may now offer uncapped academic achievement awards, tutoring, study-abroad, and computer equipment tied to education.

THE WARNING SHOT

Justice Kavanaugh's concurrence: the NCAA's entire compensation model is suspect. "Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate."

TAKEAWAY: ALSTON DID NOT CREATE NIL. IT GUARANTEED NIL COULD NOT BE STOPPED.

HOUSE

v. NCAA

\$2.8B

BACK-PAY SETTLEMENT

Damages class covering D-I athletes from 2016 forward. Paid over ten years by the NCAA and conferences.

REV-SHARE

FORWARD-LOOKING CAP

Schools may now pay athletes directly from athletic department revenue. Cap escalates year over year.

APPROVED

JUNE 2024 / LIVE 2025-26

Final approval in 2024. Effective for the 2025-26 athletic year. You are now operating under the new regime.

THE REV-SHARE CAP, EXPLAINED

YEAR 1 CAP (2025-26)

~\$20.5M

PER SCHOOL, PER YEAR

- Based on 22% of average athletic revenue across power programs
- Schools opt in; once in, subject to settlement terms
- Escalator: cap rises annually, projected ~\$32M+ by year 10
- Roster-limit rules replace scholarship caps for opt-in sports
- NIL deals above the cap still permitted, but now subject to review

PRACTICE NOTE: REV-SHARE IS NOT NIL. IT IS A SEPARATE, SCHOOL-TO-ATHLETE PAYMENT STREAM LAYERED ON TOP.

THE CSC AND NIL GO

COLLEGE SPORTS COMMISSION

New enforcement body created under the settlement. Jointly run by the power conferences. Assumed primary enforcement authority over rev-share cap compliance, rules violations tied to the settlement framework, and NIL-deal review at the institutional level.

THINK OF IT AS:

A hybrid of the old NCAA enforcement staff and an arbitration board, running in parallel with traditional NCAA infractions.

NIL GO (DELOITTE CLEARINGHOUSE)

Third-party clearinghouse (administered by Deloitte) reviewing NIL deals over \$600. Evaluates deals for legitimate business purpose and fair-market value. Deals flagged as pay-for-play pretext may be denied approval.

WHAT IT MEANS FOR COUNSEL:

Every material NIL deal now requires a paper trail justifying the deliverables and the compensation. "Because the collective wants to pay the quarterback" is not an answer.

A PATCHWORK OF STATE LAW

More than 30 states have enacted NIL statutes. They vary on every material question: who can pay, what can be advertised, when the school can restrict, and how agents must be licensed. Federal preemption has been proposed but not enacted.

CALIFORNIA: THE ORIGINAL BATTLEGROUND

SB 206 (2019)	The first. Prohibited schools from penalizing athletes for NIL activity. Took effect Jan. 1, 2023.
SB 26 (2021)	Accelerated effective date to Sept. 1, 2021. Added agent licensing and anti-inducement rules.
Cal. Civ. Code § 3344	Right-of-publicity floor. Pre-existed NIL and still governs commercial misappropriation claims.
Cal. Labor Code	Talent Agencies Act applies to athlete-agents operating in California. Licensing and commission limits.

NCAA RULES & SCHOOL POLICY

NCAA RULE 22.1.3

The current NCAA NIL framework (successor to the interim policy). Key points:

- Athletes may engage in NIL activity
- No pay-for-play; no recruiting inducements
- Boosters and collectives regulated
- Disclosure to institution required
- Violations can jeopardize eligibility

INSTITUTIONAL POLICY

Every school has its own NIL policy. You cannot advise an athlete without reading theirs. Typical restrictions include:

- Prohibited categories (alcohol, gambling, adult)
- Use of school marks, uniforms, or facilities
- Conflicts with school sponsors
- Deal-disclosure timing and thresholds
- Team activity vs. personal-time distinctions

THE HIERARCHY: STATE LAW > NCAA RULES > CONFERENCE > INSTITUTION > CONTRACT

KEY CONTRACT TERMS

1 GRANT OF RIGHTS

Scope of NIL rights granted. Media, geography, and duration. Exclusive vs. non-exclusive.

2 DELIVERABLES

Specific services: posts, appearances, autographs, photoshoots. Quantified, not aspirational.

3 COMPENSATION

Cash, equity, product. Payment schedule tied to deliverables. FMV analysis for NIL Go.

4 TERM & TERMINATION

Fixed term vs. auto-renew. Cause vs. convenience. Survival of post-term obligations.

5 EXCLUSIVITY

Category exclusivity, competitor restrictions, and carve-outs for team and league sponsors.

6 IP OWNERSHIP

Who owns the content created? Licenses back to the athlete. Moral rights and attribution.

RED FLAGS TO HUNT

"IN PERPETUITY" GRANTS

A four-year college athlete should not sign a forever NIL license. Cap duration; tie survival to specific content.

UNILATERAL MORALS CLAUSES

Watch for one-way morals clauses with vague triggers ("brand harm"). Demand reciprocal obligations and objective standards.

COMPENSATION CONTINGENCIES

Payment conditioned on follower counts, game outcomes, or draft position looks like pay-for-play to the CSC. Tie pay to deliverables.

BROAD EXCLUSIVITY

Category exclusivity is fine. Industry-wide exclusivity locks the athlete out of the pros. Carve out team, league, and future employer sponsors.

IP ASSIGNMENTS

"Works made for hire" language can sweep in the athlete's own creative output. Default should be license, not assignment.

NO TERMINATION FOR ATHLETE

If only the brand can terminate, the athlete is trapped. Mutual termination rights for material breach are non-negotiable.

WHO DO YOU REPRESENT?

THE ATHLETE

PRIORITIES

Compensation, minimal restrictions, career flexibility, brand control.

PAIN POINTS

Getting paid fairly. Not being locked up. Maintaining eligibility. Tax structure.

THE COLLECTIVE / BRAND

PRIORITIES

Deliverables, enforceable exclusivity, ROI, clean IP chain.

PAIN POINTS

Athletes not performing. Bad social-media behavior. Deal-value transparency. Competitor poaching.

THE INSTITUTION

PRIORITIES

Compliance, reputation, sponsor protection, eligibility preservation.

PAIN POINTS

Booster misconduct. NCAA investigation. Conflicts with team sponsors. Title IX exposure.

ETHICAL TRAPS FOR NIL COUNSEL

MODEL RULE 1.7

Concurrent-client conflicts. Do not represent the athlete AND the collective that is paying the athlete. Waivers are narrow and rarely sufficient.

MODEL RULE 1.8

Business-transaction conflicts. If you take equity in an athlete's LLC or a collective, document thoroughly and get separate counsel for the client.

MODEL RULE 5.5

Unauthorized practice. NIL deals cross state lines. Know where you are licensed and where the work is performed.

MODEL RULE 7.3

Solicitation. Athletes are often minors. Direct solicitation rules apply; recruiting them through coaches or collectives raises professional-conduct issues.

TALENT AGENCY ACTS

In California and several other states, procuring NIL deals may trigger agent-licensing requirements distinct from bar admission.

OPEN QUESTIONS

FEDERAL NIL STATUTE?

Bills in every recent Congress. Industry-backed preemption would standardize the rules but displace robust state protections. No clear consensus.

ARE ATHLETES EMPLOYEES?

Johnson v. NCAA (3d Cir.), Dartmouth men's basketball unionization, NLRB memoranda all point toward employment status for at least some athletes.

TITLE IX AND REV-SHARE

DOE guidance is evolving. Schools paying only men's-sport athletes face Title IX exposure. Litigation likely.

HIGH SCHOOL NIL

Most state athletic associations now permit some form of high-school NIL. The rules are younger, the dollars smaller, the pitfalls identical.

INTERNATIONAL ATHLETES

F-1 visa constraints still block most NIL activity for international student-athletes. Creative structures carry real risk.

PRACTICE TAKEAWAYS

- 1** Always ask which party you represent. The conflicts show up fast in NIL work.
- 2** Read the school's NIL policy before you read the contract. The policy sets the floor.
- 3** Build a fair-market-value file for every material deal. NIL Go will not accept "because we wanted to pay."
- 4** Push back on forever terms, broad exclusivity, and one-way morals. Those three issues drive most NIL disputes.
- 5** Treat rev-share and NIL as separate income streams with separate rules. Do not let clients conflate them.
- 6** Track state law. The patchwork is changing in real time. What was legal last spring may not be now.

**THANK
YOU.**

QUESTIONS?

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