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# EA Sports: It's in the Game–But is it in the Law?

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**EA Sports: It's in the Game–But is it in the Law?**

**By: Olivia Morton, Production Editor Vol. 110**



On February 2, 2021, Electronic Arts (EA) announced the long-awaited return of their popular college football video game.[1] The game highlights the college football experience from recruiting, to on field play, and the most popular feature—a Dynasty mode where players can act as a coach and build their dream teams.[2] EA Sports, a subsidiary of EA, started their college football franchise in 1993 with “The Granddaddy of Them All” Bill Walsh College Football.[3] The game did not feature any of the schools until it received the proper licensing in 1995 with the next game in the franchise, College Football USA, which was the first game to include all Division 1-A teams.[4]

Dynasty Mode was introduced in 1997 when the game rebranded to what we all know the game to be, NCAA Football 98.[5] The success of the game warranted many different editions and changes, such as: career mode, TeamBuilder, and Road to Glory.[6] Despite all of this success, EA Sports produced its final NCAA football game in 2013 in the wake of extensive antitrust litigation regarding players name, image, and likeness rights.[7]

In 2009, former UCLA basketball star Ed O’Bannon sued the NCAA, EA, and the Collegiate Licensing Company (CLC), the company who licenses the trademarks of the NCAA for commercial use, in a California District Court after seeing himself depicted in a college basketball video game produced by EA.[8] O’Bannon was outraged after seeing a virtual player avatar that “resembled O’Bannon, played for UCLA, and wore O’Bannon’s jersey number, 31,” as he had not consented to such use and had not received any profits from the game.[9] O’Bannon reached a settlement with CLC and EA for \$40 million for himself and for others players whose likeness had also been depicted in the game without consent or compensation.[10]

O’Bannon proceeded with the lawsuit against the NCAA, claiming that the NCAA’s prohibition on players compensating from their name, image, and likeness was an illegal restraint of trade under Section 1 of the Sherman Act.[11] The court used the rule of reason to evaluate the claims,[12] and defined the relevant market as the “college education market,” “wherein colleges compete for the services of athletic recruits by offering them scholarship and various amenities, such as coaching and facilities.”[13] Within that market the NCAA’s compensation rules had an anticompetitive effect, because if they “did not exist, member schools would compete to offer recruits compensation for the name, image, and likenesses.”[14] However, the court determined that the NCAA’s commitment to amateurism was a procompetitive effect, as the NCAA’s amateurism model of collegiate sports “increases their appeals to consumers.”[15] The final step in the rule of reason asks “whether there are reasonable alternatives to the NCAA’s current compensation restrictions” that would be “virtually as effective in serving the procompetitive purposes.”[16] The court ultimately determined that allowing players to receive compensation from their name, image, and likenesses would undermine the NCAA’s amateurism model, effectively disturbing consumer demand as well.[17]

Although EA was “willing to pay players moving forward to use their likenesses,” the resistance from the NCAA to change their rules and allow players to receive this type of compensation forced EA to terminate their NCAA football games for fear of another lawsuit, which made the games revival that much

more surprising.[18] Daryl Holt, EA Sports vice president and general manager, told ESPN that EA planned to move forward with the game with or without changes from the NCAA regarding the name, image, and likeness rules.[19] This may have been risky business for EA, however as the national conversation buzzed and pressure weighed on the NCAA to modify its rules to allow players to receive this type of compensation, the college football game we all love may be back in a more equitable fashion following the wake of the Supreme Court's decision in *National Collegiate Athletic Association v. Alston*. [20]

On June 21, 2021, the Supreme Court unanimously voted to invalidate portions of the NCAA's amateurism rules.[21] This decision maintains the integrity of college athletics amateurism model by restricting outright compensation for student athletes while also opening the sponsorship market for student athletes to compete, along with allowing colleges to offer several other education related benefits such as free laptops or post-graduate internships.[22] Similarly to O'Bannon's lawsuit in 2009, the plaintiffs here sued under Section 1 of the Sherman Act arguing that the NCAA's rules limiting the compensation student athletes may receive for their services were a violation of the antitrust laws as a restraint on trade.[23] In response, the NCAA claimed that their market of amateurism had pro-competitive effects and it was therefore good for consumers.[24] Using the rule of reason analysis, the Court rejected the NCAA's argument because its concept of amateurism has changed so drastically, as student athletes have received increasingly more kind benefits over time which has changed the market realities.[25]

Following this decision, the NCAA modified their rules to allow student athletes to receive compensation for their name, image, or likeness, as of July 1, 2021.[26] As for EA Sports in creating its new college football game these new rules have opened the door to a new possibility of college sports games that may integrate college athlete likeness.[27] However, EA has not released any updates about the game regarding a release date following the Supreme Court decision. They have also not made any statements regarding how student athletes will be compensated as the game develops and the rules continue to change. However, fans can expect to see a revitalized version of their favorite game by 2023, per the Collegiate Licensing Company.[28] As name, image, and likeness rules continue to develop this may be a new, equitable beginning for college sports games as we know it.

[1] Michael Rothstein, *EA Sports to do college football video game*, ESPN, (Feb. 2, 2021), [https://www.espn.com/college-football/story/\\_/id/30821045/school-plan-ea-sports-do-college-football](https://www.espn.com/college-football/story/_/id/30821045/school-plan-ea-sports-do-college-football).

[2] EA Sports, *The History of NCAA Football*, Electronic Arts, (Nov. 27, 2013), <https://www.ea.com/news/ncaa-football-history>.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] Kevin Sweeney, *Why Did EA Sports Stop Making NCAA Football Video Games?*, Sports Illustrated, (Feb. 2, 2021), <https://www.si.com/college/2021/02/02/ncaa-football-ea-sports-stopped-making-games>.

[8] *O'Bannon v. National Collegiate Athletic Ass'n*, 802 F.3d 1049, 1055 (9th Cir. 2015).

[9] *Id.*

[10] Kevin Sweeney, *Why Did EA Sports Stop Making NCAA Football Video Games?*, Sports Illustrated, (Feb. 2, 2021), <https://www.si.com/college/2021/02/02/ncaa-football-ea-sports-stopped-making-games>.

[11] *O'Bannon*, 802 F.3d at 1055.

[12] *Id.* at 1070.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 1073.

[16] *Id.* at 1074.

[17] *Id.* at 1076.

[18] Kevin Sweeney, *Why Did EA Sports Stop Making NCAA Football Video Games?*, Sports Illustrated, (Feb. 2, 2021), <https://www.si.com/college/2021/02/02/ncaa-football-ea-sports-stopped-making-games>.

[19] Michael Rothstein, *EA Sports to do college football video game*, ESPN, (Feb. 2, 2021), [https://www.espn.com/college-football/story/\\_/id/30821045/school-plan-ea-sports-do-college-football](https://www.espn.com/college-football/story/_/id/30821045/school-plan-ea-sports-do-college-football).

[20] National Collegiate Athletic Ass’n v. Alston, 141 S. Ct. 2141 (2021).

[21] *Id.*

[22] Kevin Knight, *Supreme Court Rules against NCAA in class-action benefits case, and NIL meeting set for later this week*, The Only Colors, (June 21, 2021), <https://www.theonlycolors.com/2021/6/21/22543745/supreme-court-rules-against-ncaa-in-class-action-benefits-case-and-nil-meeting-set-later-this-week>.

[23] *Alston*, 141 S. Ct. at 2151.

[24] *Alston*, 141 S. Ct. at 2157–58.

[25] *Alston*, 141 S. Ct. at 2158.

[26] NCAA Name, Image, Likeness Rule, Next College Student Athlete, <https://www.ncsasports.org/name-image-likeness>.

[27] Joseph Knoop, *EA Sports College Football Will Include Tech to ‘Seamlessly’ Integrate Player Likenesses*, IGN, (Aug. 4, 2021), <https://www.ign.com/articles/ea-ncaa-football-players-comments>.

[28] Adam Bankhurst, *EA Sports College Football Game Seemingly Won’t Launch Until July 2021*, IGN, (Mar. 11, 2021, 9:50 AM), <https://www.ign.com/articles/ea-sports-college-football-game-seemingly-wont-launch-until-july-2023>.

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