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The Future of Name, Image, and Likeness in Advertising

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THE FUTURE OF NAME, IMAGE, AND LIKENESS IN ADVERTISING

A Thesis

Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Master of Mass Communication

in

The Department of Mass Communication

by

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ABSTRACT

This study explores the unique intersection of the law and the theories of communication related to a student athlete’s ability to receive compensation based off their name, image, and likeness (NIL). The purpose of this study is to understand the future of NIL legislation application as it relates to emerging media and student-athletes’ privacy interests in order to better understand influencer marketing and the impact new legislation will have on student-athlete brand deals. Through a series of semi-structured, in-depth interviews, I explored industry trends in NIL as it relates to brand partnerships and advertising, focusing on key players, methods, and strategies of student-athletes, brands, and universities within the NIL space. Additionally, because NIL legislation is still emerging in some states, this study provides insights on how student-athletes, businesses, and universities could streamline communication when it comes to student-athlete influencer deals in the future.
INTRODUCTION

College athletics underwent a substantial shift in the 2021 and 2022 calendar years. As a result of the U.S. Supreme Court confirming that the NCAA’s eligibility standards constituted anti-competitive business practices in June of 2021, the NCAA rescinded its prohibition on student-athletes’ ability to capitalize on their right of publicity (NCAA v. Alston, 2022).

In the months leading up to July 1, 2021 (and immediately thereafter), most states in the U.S. passed state-specific laws (or issued Executive Orders) that permit qualifying intercollegiate athletes (defined as a student enrolled in a postsecondary education institution who participates in an athletic program) to retain eligibility to play for a university-sponsored athletics program, notwithstanding the athlete monetizing his or her individual right of publicity. Generally, these name, image, and likeness (“NIL”) laws allow qualifying intercollegiate athletes at various competitive levels the opportunity to earn compensation by using his or her own name, image, and likeness (“NIL”) in a commercial context without fear of losing their eligibility (Worsham, 2021).

To reflect this departure from its prior practices, the NCAA released their newly adopted interim policy that, remarkably, includes very few, expressly stated regulatory prohibitions (The National Collegiate Athletic Association, 2021). States without NIL laws are to follow the NCAA’s bare bones interim policy which gives two main prohibitions on NIL deals: (1) student-athletes cannot be paid for on-field performance, or, “pay for play,” and (2) NIL deals cannot be offered as recruiting inducements to attend a specific university.

In Louisiana, Senate Bill No. 60 governs the scope of what types of deals an athlete can engage in to earn compensation for their name image and likeness. From the NIL deals that have been made so far, the most popular categories include promoting their own businesses, making

1
appearances for compensation, promoting corporate entities in several capacities (brand ambassadors, social media influencers, etc.), establishing their own clinics or camps, and signing autographs. As expected, there are parameters to the athlete’s ability to make money on their NIL. Because many state laws were written with haste, there are inconsistent requirements in state NIL laws and the NCAA interim policy that cause communication issues that inhibit the success of student-athlete brand deals (Romano, 2022).

A student-athlete is expected to use their own identity to receive compensation in exchange for brand deals, influencer marketing assets, or promotion of their own products online. This paper seeks to predict how student-athletes will participate and change the growing advertising trend of influencer marketing, and how businesses will utilize student athletes in the future. Further, this study will examine the possible negative aspects of NIL legislation and how student athletes, businesses, and universities can proactively remedy emerging communication issues due to inconsistencies in state legislation.
REVIEW OF LITERATURE

The NCAA has traditionally operated on the foundational idea of “amateurism,” in which student-athletes should be motivated to participate in their sport primarily by education, and the physical, mental, and social benefits derived from participation in the sport. The principle of amateurism centers around the idea that student-athletes, as “amateurs” in an intercollegiate program, should play for the “love of the game” (Fisher, 2021). The NCAA’s focus on education is best exemplified through their preamble statement: “Intercollegiate athletics programs shall be maintained as a vital component of each institution’s broader educational program. The admission, academic standing, and academic progress of student-athletes shall be consistent with the policies and standards adopted by the institution.” (The National Collegiate Athletic Association, 2021). The NCAA maintains that college athletes are allowed to receive educational and other benefits in accordance with guidelines established by their NCAA division (The National Collegiate Athletic Association, 2021). Until recently, the NCAA has been able to maintain and repeatedly emphasize how allowing student-athletes to be compensated could result in exploitation by professional and commercial enterprises. With the emergence of name, image, and likeness regulations nationwide, the NCAA has been forced to reevaluate how to protect student-athletes from exploitation in highly competitive advertising environments.

A Brief History of the Name, Image, and Likeness Debate in Collegiate Sports

To understand how the NCAA’s core value of amateurism has been broken down, and how we have now entered the commercialized world of student-athletes receiving compensation for their name, image, and likeness, we must first look to past judicial decisions that were just shy of allowing student-athletes to be compensated through use of their name, image, and likeness. In 2014, Ed O’Bannon, a former Division I basketball player at UCLA, sued the NCAA
after noticing that EA’s video game, *NCAA Basketball*, featured a player that looked almost identical to him, imitating his physical appearance and jersey number, among other attributes. (Worth, 2012). In his lawsuit, O’Bannon argued that he never gave the NCAA permission to use his name, image, and likeness, nor had he been compensated by EA for his NIL in their video game, which enjoyed enormous commercial success (*O’Bannon v NCAA*, 2015).

Using federal antitrust law principles, O’Bannon successfully argued that the NCAA’s prohibitions on NIL monetization effectively monopolized college sports, creating an “unreasonable restraint of trade” (*O’Bannon v NCAA*, 2015). While the NCAA argued that its restrictions on student-athlete compensation were reasonable because they were necessary to preserve its tradition of amateurism, maintain competitive balance, promote the integration of college athletics, and increase the total output of its product, O’Bannon argued that there were less restrictive ways to achieve amateurism and the value of amateurism (*O’Bannon v NCAA*, 2015). On appeal, the Ninth Circuit affirmed the lower court’s decision, siding with O’Bannon, explaining that the NCAA thwarts this “promotion of competition,” by creating a monopoly on the group licensing market within college athletics. Ultimately, the Ninth Circuit in *O’Bannon* stopped short of allowing college athletes to be compensated for use of their name, image, and likeness (*O’Bannon v NCAA*, 2015).

The basis for O’Bannon’s case stems from federal antitrust law. The NCAA has been repeatedly challenged on similar grounds due to their specific restriction on student-athlete compensation through their name, image, and likeness. The Sherman Antitrust Act passed in 1890 makes every act in the form of conspiracy that “impedes interstate commerce,” illegal (Worth, 2012). Congress passed the Act to combat anti-competitive practices, reduce market domination by individual corporations, and preserve unfettered competition as the rule of trade
The Sherman Antitrust Act forms the foundation for most federal antitrust litigation. This has been the main basis for athlete’s suits in the past on the basis that the NCAA thwarts this “promotion of competition,” in two main ways: (1) a collusion of economic rivals to reduce competition and (2) the market structure itself restricting competition. Before the new Name, Image, and Likeness regulations, the NCAA had somewhat of a monopoly on the group licensing market. As a result, college athletes would not be able to benefit from the use of their NILs on live telecasts, sports video games, game rebroadcasts, advertisements, jerseys, and other memorabilia (Worth, 2012).

O’Bannon argued that there are other, less restrictive, ways to achieve amateurism and the value of amateurism, while the NCAA argued that its restrictions on student-athlete compensation are reasonable because they are necessary to preserve its tradition of amateurism, maintain competitive balance among Division I basketball teams, promote the integration of academics and athletics, and increase the total output of its product (O’Bannon v. NCAA, 2015). The Ninth Circuit ultimately stopped short of allowing college athletes to be compensated for their name, image, and likeness, but the NCAA chose to stop the use of its name on EA’s video game, which halted further production of the video game, *NCAA Football*. (Gerace, 2021).

Nevertheless, in 2020, the Supreme Court of the United States (“SCOTUS”) agreed to hear an appeal from the NCAA in the case of *National Collegiate Athletic Association “NCAA” v. Alston*, which is significant for several reasons (*NCAA v. Alston*, 2021). Prior to *Alston* (June 2021), but after *O’Bannon*, the NCAA continued to limit student-athlete “compensation” to the cost of attendance at the university, which crippled a student-athletes’ ability to receive financial benefits that were not tied to education (*NCAA v. Alston*, 2021). In *O’Bannon*, the NCAA argued that pro-competitive effects, including integrating academics with athletics, and promoting
amateurism, outweighed the NCAA limiting student-athlete compensation (*O'Bannon v. NCAA*, 2015). The primary issue in *Alston* concerned the restrictions that the NCAA placed on the amount of financial remuneration student-athletes could receive and still remain eligible to participate in college athletics (*O'Bannon v. NCAA*, 2015). Specifically, the court considered the NCAA limitations on the value of a student athlete’s “Cost of Attendance” scholarship, which was capped at “education-related benefits” at the time (*O'Bannon v. NCAA*, 2015).

In *Alston* the U.S. Supreme Court agreed with the U.S. District Court’s opinion that the NCAA, by limiting education-related benefits that schools offer to student-athletes (such as limiting scholarships for graduate or vocational school, payments for academic tutoring, or paid post eligibility internships), violated the Sherman Act (*O'Bannon v. NCAA*, 2015). In a sense, *Alston* paved the way for name, image, and likeness legislation by stating that NCAA regulatory limitations on student-athlete compensation should be evaluated by conducting fact-specific analyses as opposed to declaring these limits “per se,” unlawful (*O'Bannon v. NCAA*, 2015). In fact, not three weeks after SCOTUS’ *Alston* decision was released, the NCAA released its interim NIL policy (The National Collegiate Athletic Association, 2021).

In June of 2021, the NCAA adopted an interim NIL policy in anticipation of several states creating legislation around name, image, and likeness (The National Collegiate Athletic Association, 2021). The policy provides that student athletes can engage in NIL activities that are consistent with the law of the state where the school is located without violating NCAA rules related to name, image, and likeness (The National Collegiate Athletic Association, 2021). The NCAA implemented this bare-bones interim policy with two main stipulations: athletes cannot be paid for on-field performance (better known as “pay-for-play”), and schools cannot offer NIL deals as a recruiting inducement to attend a specific university (Lyman, B. 2022). Additionally,
where athletes were previously prohibited from hiring agents before the completion of their last intercollegiate contest, the NCAA has allowed individuals to hire a professional service provider (usually marketing agents or firms) for NIL activities (Lyman, B. 2022). This interim solution allows states to continue to work with Congress to adopt federal legislation that supports student-athletes’ ability to capitalize on their name image and likeness in the future (Lyman, B. 2022).

The interim policy also allows all states that have not adopted their own NIL laws to participate in brand deals, just as those under state legislation would be able to (The National Collegiate Athletic Association, 2021). Student athletes that participate in collegiate athletics where there is no state law or executive action follow this general rule: “if an individual chooses to engage in an NIL activity, eligibility will not be impacted by NCAA amateurism and athletics eligibility bylaws, but other NCAA rules, including prohibitions on pay-for-play and improper recruiting inducements remain in effect.” Most state legislation has also prohibited pay-for-play, or, athletes being compensated for athletic performance, however, the NCAA will not be responsible for monitoring student athlete’s compliance with state laws (The National Collegiate Athletic Association, 2021). The emphasis so far has been on the market value of student-athlete branding and personal endorsement deals.

For those states with their own NIL regulations, conflicts in legislation could affect, among other things, recruiting, transfers, and the ability of the student athletes to capitalize on the legislation. There are only 24 states that have officially signed NIL policies into law, as of January 2022 (The National Collegiate Athletic Association, 2021). Despite the possibility of future NCAA rules and a federal bill, states are still pursuing NIL laws of their own, with glaring differences. These differences are especially prevalent in the types of endorsement agreements student athletes can enter into in each state. Many states that have NIL laws have included
requirements that give the university discretion to prohibit or allow student-athlete NIL agreements that directly conflict with existing corporate sponsors, advertising contracts, and endorsement deals of the postsecondary institution. (La. Rev. Stat. 17:3701-3703, 2021). Louisiana gives the institutions the option to prohibit student athlete NIL deals that conflict with either (1) existing institutional sponsorship agreements or contracts, or (2) “institutional values” as defined by the postsecondary education institution. (La. Rev. Stat. 17:3703(e)(1), 2021). This gives a power school like Louisiana State University (LSU) a vast amount of leeway to control what their athletes can contract for. In the future, it is possible student athletes may pick a university based on less restrictive contracting rules in order to obtain more brand deals, marketing opportunities, and partnerships.

Interestingly, many states are in the process of repealing their state legislation to allow student-athletes in their state to participate in their right to publicity with less restrictions. In November of 2021, the Alabama House of Representatives approved a bill to repeal the state’s name, image, and likeness legislation, shortly after the interim NIL NCAA regulations were made. The Alabama state government found that Alabama’s legislation was far more restrictive than what the NCAA set forth in the interim, which affected two major collegiate universities in the Southeastern Conference: The University of Alabama and Auburn University, two of LSU’s major competitors (Lyman, 2022). As recruits start to think about where they will go for college, NIL regulations are likely a large factor (Lyman, 2022). A student-athlete’s ability to create income streams through NIL is vital to students who struggle economically to afford college, and the legislators’ inability to create regulation that streamlines communication and education for these student-athletes creates inequality within NIL opportunities.
Influencer Marketing in Sports

According to the Pew Research Center, in 2021, 72% of the public in the U.S. uses some type of social media platform. (2022). Additionally, 73% of millennials were active on social media from the ages of 18 to 29, and 66% of Gen Z considers social media an essential part of their lives (Woods, 2016). Generational nuances impact how the audience interacts with a brand or influencer during all stages of a campaign (Sprout Social, 2021). Time spent on social media only continues to grow, and advertising agencies continue to allocate more of their advertising budget to social media strategy each year (Woods, 2016). Approximately 92% of consumers believe recommendations from friends and family over all forms of advertising (Woods, 2016). With the new NIL legislation, advertisers can capitalize on student-athletes’ larger platforms to communicate their messaging, much like a friend. In fact, 49% of social media users said they rely on influencers for honest information on products they endorse (Swant, 2016). In addition to allocating marketing budgets for influencer marketing, advertisers will typically go through an “influencer agency,” to reach their influencer talent (Woods, 2016). Studies show advertisers would rather give the influencers creative control. Usually, the creative control is outlined in every contract between each influencer and advertiser, and this sacrificed control is what create an effective and authentic advertisement for the influencers’ followers (Woods, 2016). Using student-athletes could be advantageous to businesses because not only are they reaching the student-athletes’ followers, but also, the athletes are backed by the collegiate university, and often reposted on the collegiate sports programs’ social media channels.

According to a study completed in 2019, more than 65% of sports marketers agree that influencer marketing programs are a necessity for a brand's success in today's digital world. (Forrester, 2019). Researchers concluded that this is an indicator that influencer marketing is
quickly becoming a staple marketing channel for amateur and professional sports teams across nations, which will only keep growing exponentially (Forrester, 2019). Sports marketers have taken advantage of online resources to measure their target audience, Generation Z, and their spending habits.

Generation Z, or Gen Z, born between the late 1990s and early 2010s, represents 24% of the U.S. population and is very different from earlier generations (Pichler, et. al., 2021). Also referred to as Homelanders or Digital Natives, Gen Z grew up in an environment that promoted hyper-technological advances and technology-driven communication. As a result, they bring a distinct set of characteristics into the marketplace. (Pichler, et. al., 2021). Not surprisingly, Generation Z uses social media and network comparisons, similar to millennials, in order to make purchase decisions (Forrester, 2019). Gen Z now account for an average spending of $143 billion per year, with an average 8 hours a day online, and 72% purchasing online within the last month at the time of being surveyed. (Lexington Law, 2021). Like millennials, Generation Z values transparency, which is at the heart of influencer marketing.

While influencer marketing has become prevalent on social platforms, student-athletes participating in collegiate sports have only just received the opportunity to participate. Due to the NCAA’s restriction on student-athletes’ ability to receive financial benefits that were not “tied to education,” the Association prevented student-athletes from partnering with brands and local businesses without fear of losing their eligibility (O’Bannon v. NCAA, 2015). Influencer marketing research shows that student-athletes possess a particularly unique NIL value, but they further indicate student-athletes' NIL value has a moderately dependent relationship with the institution at which they are enrolled (Kunkel, et. al., 2021). As a protection, student-athletes are not automatically immersed in the opportunities provided by NIL legislation. Collegiate athletes
must “opt-in” to participate in resources that universities can provide within the NIL legislation, such as disclosure of the student-athlete’s contact information for NIL deals.

**Group Licensing Opportunities & Social Media Influencing**

Now, not only can athletes become brand ambassadors, star in ad campaigns, or participate in influencer marketing deals, but they can also capitalize on group licensing agreements (Worsham, 2021). This allows student athletes to capitalize on their name, image, and likeness through jersey sales, trading cards, video games, and eventually, the emerging NFT market. Student-athletes who opt into a group licensing agreement will receive payments when licensees and sponsors monetize their name, image, and likeness (Worsham, 2021). LSU’s group licensing agreement, with the third-party advertising agency, The Brandr Group (TBG), allows student-athletes to retain their rights and do individual deals on their own, while still providing passive income for their attributes that are utilized through group licensing deals (Worsham, 2021). All of this is only possible if the communication between universities, student-athletes, and third parties is streamlined, in order to encourage the public to engage with the student-athletes as influencers online.

Because of the patchwork effect that state-to-state legislation and the NCAA interim policy has created, many athletic departments differ in their ability to facilitate NIL deals for players, limiting athletic departments in certain states from helping their own players maximize their opportunities; thus, leaving a sizable gap in the NIL marketplace. Collectives have added another communication dimension to the existing NIL marketplace. Because collectives are generally funded by athletic boosters, they have distinct attributes from other third-party agencies (Smith, 2021).
According to developing research, collectives have the potential to serve a variety of purposes for student-athletes, however, their main purpose is to funnel money into individual student-athletes (Prisbell, 2022). More importantly, collectives could have the freedom and the pooled funds to facilitate NIL deals, without the restrictions that athletic departments currently face (Smith, 2021). Sports industry sources expect that at least one NIL collective will form around every Power 5 university by the end of 2022 (Prisbell, 2022). Collectives offer a viable solution for many universities to achieve the required separation between the university and student-athlete brands. They operate as a third-party agency with no official affiliation to the university, and no rights to licensed marks (Smith, 2021). However, many professionals in the industry have commented on the current “chaos” that collectives create because boosters, alumni and influential donors do not understand the exchange that must take place in order for athletes to effectively monetize their NIL (Prisbell, 2022).

While third-party agencies have taken the shape of advertising solutions and collectives, sports agencies should not be overlooked. A sports agent’s relationship with student-athletes depends on the specific legislation of the state (ADU, 2022). Before the NCAA allowed a student-athlete to be compensated for their name, image, and likeness, college athletes were not allowed to sign, agree to, or work with professional sports agents in almost every circumstance. Violations of the specific NCAA regulation would result in loss of eligibility for the student-athlete.

With the emergence of name, image, and likeness, student-athletes can sign with agencies in college as long as the scope of the representation is for use of the student-athlete’s NIL, as opposed to negotiations for professional contracts (Front Office Sports, 2022). This allows traditional agencies to enter into the NIL space in a different way than advertising agencies and
collectives. The challenge for these companies is the inconsistency in how NIL legislation is structured state to state, with no blanket NCAA regulation or federal legislation to determine longevity (Smith, 2021).

Between collectives, agents, and third-party advertising agencies, it is almost impossible to streamline communication between the university and student-athletes due to the each party’s unique motivations for utilizing student-athlete influencer marketing. In early May, 2022, the NCAA announced that the Association would enforce current recruiting regulations that restrict boosters from recruiting or providing benefits to prospective student-athletes, whether it be a high school recruit, or a transfer (National Collegiate Athletic Association, 2022). The NCAA clarified that the definition of “booster,” found in current NCAA regulations, includes collectives who are formed to funnel funds to student-athletes through NIL deals (National Collegiate Athletic Association, 2022). While offering an NIL deal as a recruiting inducement to attend a particular university is currently prohibited per the NCAA interim policy, it does challenge the ultimate freedom that collectives anticipated they would have by forming outside entities to work to pay particular student-athletes for their NIL.
MATERIALS AND METHODS

Rationale for Proposed Study

With so many states creating name, image, and likeness legislation, it is likely that federal legislation will be needed to create a fair and neutral playing field for student-athletes’ business opportunities. As of January of 2022, the NCAA has a bare bones rule for student athletes participating in college athletics where there is no state legislation. This study seeks to identify how advertising and communication messages will be affected, as well as identify inconsistencies or problematic language within state name, image, and likeness legislation that could lead to issues for the student athletes, businesses, and universities.

Two-Step Flow Theory

This study will show how corporate players in the NIL market interact with student athletes and social media to create a channel for advertisers that utilizes the two-step flow model in communication theory, with a focus on the sphere of influence that social media creates. There are not many theories that have been developed in this area, so I am choosing to apply the two-step flow theory on the view that this model will become important to how third-party entities and developing collectives push information through athletes as influencers, how these athletes communicate with the public, and how the fans receive the advertising and react to the information they are presented with through social media.

The two-step flow model of communication theory proposes that ideas flow from mass media to opinion leaders, and from opinion leaders to a wider population (Katz, 1957). Additionally, the theory posits that interpersonal interaction has a stronger effect on shaping public opinion than mass media outlets (Katz, 1957). The two-step flow theory is likely to re-emerge in NIL advertising through its traditional concepts involving personalized content. The
theory assumes that most people get their information through personal sources, not directly from the media, thus emphasizing the role of gatekeepers and opinion leaders in this mediation process (Soffer, 2021). While many attempts to revisit the two-step flow theory focus mainly on socio-political opinion leaders, I argue that third party organizations, such as corporations or collectives, act as gatekeepers who seek to hire student-athletes to participate in NIL deals and act as opinion leaders. The two-step flow theory highlights interpersonal relations in the mediation of mass communication outlets (Soffer, 2021).

Entertainment theory posits several reasons for why viewers use entertainment media (Baran & Davis, 2021). Many users gravitate toward social media for parasocial interaction, in which the user creates a one-sided relationship with the influencer (Baran & Davis, 2021). Put simply, parasocial relationships on social media are those relationships in which the influencer is completely unaware of their followers’ interactivity with their page (Yuan & Lou, 2020). By consistently creating content, influencers can foster parasocial relationships online and gain the credibility needed to become opinion leaders, which creates great advertising potential for brands (Yuan & Lou, 2020).

Traditionally, opinion leaders do not hold positions of power, but serve as “the connective communication tissue” that informs their peers on their commercial consumption choices (Nisbet & Kotcher, 2009). In advertising, social media influencers function as opinion leaders for followers who seek out parasocial relationships with them online (Cheung, et. al., 2022). Recent research indicates that content characteristics including campaign design quality, technology quality, and creativity are significant predictors of parasocial relationships. I seek to show how student-athletes, acting as social media influencers for these brands, could dominate the digital media environment and influence the public as opinion leaders in a unique way.
In this study, I will compare the theory’s concept of personalized content to the current notion that corporate entities and collectives operating as opinion leaders will serve as gatekeeping agents to the public. This flow from third party organizations to student-athletes, and then to the public and the fans could result in a split of both strong positive and strong negative flows of information. Further research may study the reactions of collegiate sports fans; however, my focus is on the flow of this information and how it can affect the third-party businesses developing in the field, as well as student-athletes and collegiate universities. This study will contribute to the emerging discussion about communication flows within social media by analyzing this within the new NIL legislation, and attitudes toward the information being put out on social media.

Research Questions

As more individual states continue to pass NIL legislation, student-athletes’ roles as students, athletes, and working professionals change. The purpose of this study is to understand the future of the NIL legislation application as it relates to sports advertising, social media influencing, and student-athletes’ social media management and messaging. The goal is to fill the gap between the existing research on influencer marketing, and what similarities and differences student-athlete deals will have due to the new legislation, including communication differences with their audiences and brands. To further explore this topic, I conducted 20 in-depth, qualitative interviews over the span of three months with key players at Louisiana State University’s Athletics Department, as well as several third-party groups developing within the NIL space. The participants work in a variety of roles, including athletic administrators, coaches, student-athletes, and third-party agency partners of LSU Athletics and beyond. Based on the
changes to NCAA regulations, recent NIL developments, and two-step flow literature, the following research questions emerged:

RQ1: To what extent have changes in the NIL industry affected communication and strategy when working with athletes?

RQ2: What are the unique challenges and opportunities facing universities and athletes moving forward with NIL?

By drawing on relevant academic research, this research will offer insight on how student-athletes, universities, and third-party facilitators can strategically move forward as state and NCAA legislation takes form, and the possibility of federal legislation emerges.

**Suppositions and Implications**

Because NIL legislation is new and, in some states, still emerging, this study will provide predictions on how student-athletes, businesses, and universities could move forward in participating in social media influencer deals in the future. It will also provide a list of ongoing concerns based on the current state legislation more broadly, and issues particular to Louisiana. This discovery process will create a foundation for future research to be able to analyze the effects of evolving NIL legislation in the future, whether that be federal or through more permanent NCAA regulations. The practical value of the findings will provide student athletes, businesses, and university administrators with a tool to better understand the current climate of NIL legislation. It will also identify problem areas for university administrators to prospectively remedy problem areas in the legislation, with third-party businesses, and with student athletes. Ultimately, these findings could impact the way that legislation is revised, particularly in Louisiana.
The two-step flow theory will help provide a clearer picture of how communication can be stream-lined in the future to avoid disproportionate opportunities for student athletes and prevent a split in audience opinion.

Research Method

This study utilized in-depth, semi-structured interviews, which allowed participants to articulate their own feelings and experiences thus far around name, image, and likeness. This also allowed participants to make sense of NIL from a holistic perspective. In-depth interviews are ideal for this study because as Lindlof and Taylor (2011) noted, semi-structured interviews “are particularly well suited to understand the social actor’s experience and perspective” (p. 173). The semi-structured interview allows interviewers to “formulate follow-up questions to either clarify the original inquiry or any of the aspects expressed by participants in their responses” (Molleda & Moreno, 2008, p. 139).

Semi-structured interviews allow an opportunity for the researcher to pay close attention to all of the ways in which people interact with questions and text (Lindlof & Taylor, 2011). Unlike the structured interview, which leaves no room for deviation from questions, or the unstructured interview, which does not necessarily allow for focus, the semi-structured interview can reveal answers to specific, contextual questions while allowing the chance for further explanation if necessary (Lindlof & Taylor, 2011). I interviewed subjects from three distinct entities in the growing NIL landscape. To investigate how NIL legislation effects sports advertising and student-athletes’ college environments, participants consisted of people who work within athletics in a coaching or administrative role; third-party facilitators that work with the athlete or university; or student-athletes who are currently enrolled in the university.
During the 30–45-minute interviews, the discussion topics included the impact of NIL regulation on the subjects in their day-to-day roles, issues they see within the legislation currently, how social media plays a role in their jobs, and the benefits and risks involved in working within the ramifications of the name, image, and likeness legislation. In-depth interview participants included student athletes, employees, and coaches in the university athletics department; owners and employees of corporate entities; and contracted third-party entities that enhance NIL opportunities and education through the university. These three distinct groups allowed me to research the possible shifts in advertising and the growing communication concerns due to the interactions between the three, or lack thereof.

I began examining data with an “open coding” approach to identify themes, instead of arbitrary categories established before the interviews were conducted (Lindlof & Taylor, 2011, p. 251). Through this open coding process, I was able to group answers as I heard repeated themes in the participants’ comments. Throughout the analysis, I used a constant comparative method, which involved grouping answers according to common questions in order to examine different perspectives on the overarching themes that were identified during the open coding process (Patton, 1990).

First, I will introduce the three key entities involved in NIL that were identified by my participants in order to give a better understanding of the groupings given. My analysis of the in-depth interview data and groupings also led to the production of six main interrelated categories. Each of these topics and subtopics is explored below.

**Sampling Criteria**

Sampling criteria for participants included screening for years of experience in the sports industry, the status of the participant’s current position, and their work affiliation (university,
student athlete, or third party). Four university athletic department members, I sought out participants who had at least five years of experience in the college sports industry. This criterion ensured that athletic department participants were active in both the pre and post-NIL environments, giving them the perception needed to describe the past and current environment and adequately predict what future environments may look like based on their levels of experience. For all third-party participants, I also set a five-year professional experience parameter in order to ensure that participants were well-equipped to answer questions around the sports advertising industry, as well as the pre and post-NIL environments. All third-party participants were contacted based on their companies’ connections to the college sports industry. While these third-party participants varied in professions (sports education, agents, management, advertising, etc.), each participant held leadership roles in their company, contributing to their ability to elaborate on future strategies and their companies’ current roles in the NIL landscape.

For student athletes, I sought out participants who were currently-enrolled or had graduated within one year of the enactment of NIL regulations. For those student-athletes who were currently enrolled, I sought out participants that had at least one year of experience operating under pre-NIL regulations and were currently following the NIL rules at their university. Student-athlete participants who had recently graduated had done so within a year of the enactment of the NCAA interim policy and current state legislation. Because athletic departments, law makers, and the NCAA deliberated over name, image, and likeness legislation for over a year before any action was taken, student-athlete graduates who were only one year out were well-aware of the quickly changing landscape.

In order to safeguard the identity of my participants but display the integrity of the information I collected, I created a table with pseudonyms for my participants with their area of
expertise within the sports industry. All participants were involved specifically in the college sports industry in some capacity. “Athletic Administrators” included coaches, coaching staff, compliance staff, and athletic department administrative roles. “Athletic Creative” included participants from both athletic communications and creative services. Student athletes were labeled as such, without identifying their sport. “Third-party Business[es]” are designated as such to create a broad category of subjects I interviewed within third-party facilitator, advertising and brand strategy, sports agency, and sports law advocacy roles. “Third-Party Education” encompasses any third-party that provides education for the university or the student-athletes.
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<th>Participant Role in Athletics</th>
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<td>Josh</td>
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<td>Rachel</td>
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RESULTS

Key Publics

From the interviews I conducted, I was able to identify three key entities that contribute to the continuity, or lack thereof, in NIL communication that are currently evolving around the opportunities presented as a result of name, image, and likeness legislation. These three groups show three different motives for entering the NIL space, and each of these key publics plays a large role in how communication is successfully implemented to create successful influencer and advertising campaigns.

Athletic Departments

Because there is no comprehensive federal legislation enacted, the role of the athletic departments varies from state-to-state. In states where athletic departments are authorized to facilitate deals for their student athletes, they work more cohesively with the other industries evolving around college athletics and streamline communication for clear, innovative, and successful advertising. Some states like Louisiana have specific prohibitions in their law that do not allow for schools in that state to directly facilitate and help student-athletes enter into NIL deals (La. Rev. Stat. 17:3701-3703, 2021). This creates a more difficult communication environment for athletic departments to create a successful, cohesive atmosphere for their athletes. Athletic departments have traditionally outsourced for many of their sponsorships, brand deals, and advertising initiatives. Participants in this group are concerned about the time, resources, and ability of the athletic departments to handle NIL internally, long-term.

Brands and Third-Party Facilitators

The most important aspect of college athletics is the ability for brands to connect with their fanbase. Without fans, college athletics would likely not survive. Connecting brands to
student athletes has become one of the most important communication strategies in creating opportunities for student athletes to utilize their name, image, and likeness. Most brand deals at universities across the country consisted of either influencer marketing or brand ambassador contracts between student athletes and brands facilitated by either (1) the university directly, or, in the case of prohibitions on facilitation, (2) a third-party facilitator, who acts as a liaison between the student athlete and the brand. Even if brands reach out to student athletes directly, not every brand has the ability to conduct an advertising campaign start-to-finish. This is where third-party facilitators fill the gap in advertising, brand strategy, and education.

Along with brands, sports agents, agencies, and collectives now have the opportunity to expand their business in student-athlete advocacy. Each of these third-party facilitators operate in a different manner based on who they are contracted with, and where they receive their profit from.

**Sports Agents.** In the professional sports industry, sports agents traditionally operate as the point of contact for the athlete. After *Alston* and the release of the NCAA interim regulations, agents sought out college athletes to secure professional clients in the future. Per the interim regulations and most state legislation, professional agents (and anyone else) can register to be an “NIL agent.” Most participants reported uneasy feelings around this type of facilitation because of professional agents’ motivation to sign student-athletes after the NCAA eligibility ends, and their professional career begins. There is much confusion among athletic departments on where the line is drawn between professional recruiting and an agent providing services to the student-athlete to further their ability to pursue NIL deals. Josh, who is an athletic administrator explains:

> Once you get a professional sports agent representing student-athletes. There’s no way to monitor whether these agents are acting on their behalf for name image and likeness
purposes, or from a professional athletic side of things. Historically, what we’ve seen is student-athletes who sign with an agent to represent them for NIL one hundred percent of the time, have the same agent represent them in negotiations for professional contracts in the future.

Frank was just one of the professional agent participants in this study who elaborated on the distinction between a professional contract and an NIL contract:

The agency contracts never overlap. The goal is to build a relationship with these student-athletes while they’re working through NIL deals during their years of eligibility as a student-athlete, and once they move on to the professional environment, we hope that we have built a strong enough relationship with each one of them in order to continue to work with them professionally.

Other third-party agencies. While advertising agencies seemed to be the initial party involved, the NIL landscape has quickly expanded to allow many types of third-party companies to create a business model around connecting student-athletes to brands. Companies that fall into this category range from technology companies who build out mobile and online platforms, to NIL agents who seek out NIL opportunities for athletes, to media buying and creative agencies who connect student-athletes to brands. Third-party facilitation technology built around connecting the athlete to the brand has become entirely oversaturated, leaving student-athletes with endless options for how to reach the brands they seek to partner with, and vice versa. This growing “connectivity” market has had so much growth in the past six months, that many agencies, agents, and platforms are now expanding to online education resources for athletes to better understand the uncertainty that is present in the evolving NIL landscape. Many third-party facilitators exist in both the education and connectivity ecosystems, creating a comprehensive solution for student-athletes, brands, and athletic departments.

Collectives. Collectives have developed independently of universities, comprised of businesses or boosters whose first goal is to pool funds and distribute those funds to student athletes. Many operate in a manner that is adjacent to state legislation and NCAA interim
requirements, others choose to surreptitiously enter the market through “back doors,” leaving universities in the dark. Some collectives provide advertising, branding, or connectivity services, and others simply provide a stream of revenue for athletes to pull from. Their priority is to “broker” money through NIL deals for their preferred collegiate university’s student-athletes. Collectives typically evolve around one university, collecting and distributing funds to student athletes of a particular school. Many are set up as non-profit entities, and others are operating as for-profit businesses serving as the housing agent between the player and the businesses. In some states, university collectives have yet to provide deals, other than presenting an athlete with money on the front end and finding a way for the athlete to perform a service on the back end.

Put simply, these collectives do not start the communication process with a specific advertising objective. Instead, a collective’s first goal is to create financial opportunities, and the service provided by the athlete is an afterthought for how to justify distribution of the funds. Many participants, especially within the athletic departments, worry that collectives will further facilitate recruiting inducements by working with coaches to recruit high school athletes by offering large sums of money with no plan for how to implement an NIL campaign. Cameron, who works in athletic administration, explained that there are some challenges:

State-to-state legislation varies on boosters’ abilities to be involved in the recruiting process, but if you have a booster working with the football coach who tells this high school athlete ‘if you come to X school, I’ll give you $30,000,’ to me, that’s definitely a recruiting inducement… because what’s the exchange?

Participants from athletic programs stressed the importance in providing education on how communication should take place between student-athletes and businesses for the specific purpose of creating an NIL deal. Because collectives are so new, many boosters involved do not even have a concrete idea of how an advertising campaign comes to fruition. Additionally, many states have multiple collectives forming around one or a few universities. Many collectives
cannot agree on where funds should be allocated. As a result, this multiple collectives model does not best serve the player in their ability to obtain NIL deals. While collectives are not all detrimental, there is a breakdown in communication between the schools and collectives for the same reason as these third-party facilitators. Many schools cannot facilitate deals, therefore, many of them find it safer not to have any contact with a collective, even if one exists in the state.

**Category 1: Effects of NIL on Student-Athletes**

This category centers around how athletes are learning to adapt their brand identities online to pursue interaction with brands and develop advertising strategy. This category was coded specifically based on responses around how NIL effects student-athletes in their capacity as college students and business professionals. Participants discussed two specific effects on athletes that choose to pursue NIL deals through social media: (1) effects on student-athlete involvement based on education around NIL and prior time commitments, and (2) effects on student-athletes’ personal brand and career development.

**Education, Communication Tactics, and their Effects on Student Athlete Involvement in NIL**

To date, social media influencer partnerships make up a majority of student-athlete NIL deals across the nation. Participants from LSU Athletics stated that their athlete’s deals are about 90% social media-based. Most participants stated that student athletes are getting information about name, image, and likeness legislation from either (1) their universities, or (2) seeing others success through social media, or both. Almost all the participants indicated that athletes are not only getting most of their education around NIL from social media, but they are also pursuing deals mainly through social media platforms. This is essential to understanding how athletes are communicating with brands and with their athletic departments. The university can provide as
many resources as it wants, but it seems most participants predict that students will have to take
the initiative in order to capitalize on their name, image, and likeness.

Several participants also identified a clear separation of engagement within the student-
athlete population. All participants made it clear that peer-to-peer communication is an athletes’
preferred method of learning about NIL, with a smaller subset that is highly engaged and
proactively pursuing academic, administrative, and online resources to be on the cutting-edge of
the industry. There is a distinct part of the student-athlete population that is highly engaged on
social media, and as a result, highly motivated to pursue NIL deals. “This group of athletes looks
for any information they can get their hands on. They are taking the initiative to pursue brands on
their own, rather than sit around and wait for the information.” (Brandon, Athletic Creative).
These athletes communicate directly with their athletic departments to find out what regulations
they should be following, and how to take advantage of NIL opportunities. Those who truly seek
to capitalize on NIL opportunities are actively soliciting help from their coaches and athletic
departments, as well as online educational resources. The second subset of athletes are finding
out about deals through this high engagement group, as well as from social media posts. This
group seeks information from their peers or their peers’ social media. Most of these athletes
(along with many in the highly engaged group) recognize they won’t “go pro” after college. Two
participants specifically stated that athletes are aware of the value in pursuing a college degree,
and many are negotiating how much time they should invest in NIL deals versus the time they
invest in academics. No participants seemed to be concerned that name, image, and likeness
legislation would lead to athletes dropping out of college programs: “These kids are getting deals
with local businesses…maybe a meal here or there in exchange for a post so they can eat for
free. We’re not talking about the Nikes or the Adidas of the world unless you’re looking at the
top 1% of college athletes” (Oliver, Third-Party Business). Larger universities across the country are seeing companies show interest in high-profile student-athletes, but not every student athlete is extremely marketable: “Businesses are still aware of what the value is in their marketing dollars.”

Brands are using social media channels to increase communication tactics with student athletes. When brands reach out directly to student-athletes, it initiates (1) a personal connection with that student-athlete, and (2) a connection with fans that are eager to see these athletes succeed. Almost all participants said that social media is the easiest route for brands to connect directly with student athletes in an efficient manner for both parties. Many participants also stressed the time constraints student-athletes are already under. For student-athletes, deals outside of social media such as appearances, autograph signings, camps, or clinics, present a substantial time commitment outside of their already demanding schedules. Brandon explained:

Think about it: the student-athletes are already on an extremely stringent schedule. There are NCAA compliance rules centered around protecting athletes’ free time as it is. [Social media deals] benefit the athlete by allowing them to earn income from their phone, while also providing businesses with extra exposure to new, and sometimes unidentified audiences online that they wouldn’t otherwise have had.

There is a clear correlation between the convenience of the vehicle that allows brands to connect with student-athletes, and how likely that athlete is to take the deal: “The less work for them, and the more financial benefit for them, is going to be what they are more willing to put their time toward.” (Dan, Athletic Administration). These responses clearly indicate that direct messaging or emails are the preferred method of communication for both student athletes and brands. However, due to facilitation restrictions, more than half of participants pointed out that it is often difficult for brands to find student athlete information to contact them directly and efficiently. For example, universities that are prohibited from facilitating deals are not allowed to
give out student athlete emails or phone numbers directly to brands who request that information. This is where third-party facilitators enter the chain in communication. Details of this process are discussed in Category 2.

**Professional Career Development**

All participants were optimistic that name, image, and likeness can provide student athletes with opportunities to develop their professional brand identities, relationships, and networking opportunities: “A lot of professional success is built around how to ask the right questions and find the answers yourself…NIL is a very practical way for them to work from problem to solution.” Ellie added,

A lot of brands forget that these kids are still 18 to 20 years old. College is about making mistakes, and the earlier they are able to put themselves out there, make mistakes, and improve moving forward, the better they will set themselves up for a professional career, whether that be in sports or another industry.

A few participants mentioned the idea of establishing a workflow. While student athletes do have rigid schedules, Melanie explained that their schedule is mostly centered around their sport:

As the market shifts and [student-athletes] realize their brand value, they may more actively pursue deals. Their schedules are already so busy, that introducing additional work into that schedule is going to be disruptive, whether that be school preparation, their sport and preparation, or a disruption of their free time.

Ultimately, all participants agreed that NIL deals will provide challenges for many student athletes to re-learn to balance their time. However, providing student athletes with the opportunity to capitalize on their unique name, image, and likeness in a college setting gives them the opportunity to identify and build their personal brand. It also allows them to establish a network where they never would have had the opportunity to, per the older NCAA regulations around eligibility.
One major concern with the evolving NIL legislation is the way fans will react. Almost all participants stated that there is a definitive split in attitudes about student-athletes’ abilities to capitalize on their name, image, and likeness. After completing all interviews, many participants in athletic department positions relayed that this split stems from whether or not an athletic department can facilitate deals for their student-athletes, per the state legislation. Many student-athletes feel that limiting facilitation does disrupt their ability to communicate with brands properly. Kate explained that all student-athlete participants had an attitude of gratefulness for the opportunities that they have been given thus far, even prior to NIL:

As a student athlete, I was always in the camp of ‘how much more could I possibly get?’ and then this NIL opportunity came about. Our coach always created an environment of appreciation for how much we are given as student athletes… she always stressed that if you were awarded a scholarship, in many cases, that’s higher paying than your first job might be. All the opportunities you are simply awarded by being a student athlete is a lot. Even for those who don’t have scholarships, it’s crazy how much they spend on us every year.

These athletes communicated how grateful they were for the opportunities outside of the legislation, including scholarships, professional career development, and financial education. Many student athletes that participated were excited but still apprehensive about pursuing opportunities within the NIL space due to the continued uncertainty with the interim regulations. Because of this, most student-athletes believe that if all universities could be more involved in facilitation, they would be able to receive brand deals and execute advertising strategy more effectively without fear of breaking the law. Many coaches and student-athletes who participated in the in-depth interviews seemed to be concerned with distribution of wealth for many student athletes. An uneven distribution can affect team dynamics, as well as opportunities for those who do not pursue professional sports: “I could see [NIL] leading to greed and disrupt team dynamics.” (George, Student Athlete). However, several participants also expressed their joy
around abilities to capitalize on their name image and likeness where the NCAA previously prohibited it. The student-athletes’ main hurdle to conquer, at present, is which type of company they should pursue with in order to maximize their ability to make NIL deals.

**Category 2: Third-Party Facilitation and Discontinuities in Communication**

This category began as a discussion of advertising agencies and how they facilitate brand deals. Based on responses, I was able to quickly expand this category into “start-to-finish” service providers and “component” agencies that handle one aspect of a brand deal process. Because state legislation can be confusing for many student-athletes, coaches, and athletic directors; legislators, universities and third-party facilitators are all working to help student-athletes succeed professionally in this new and evolving space. Most state legislation requires universities to provide a specified number of hours toward financial education, personal branding strategy, or business strategy. Athletic departments have spent months, even years, prior to the passage of state NIL legislation planning NIL programming to give their athletes any possible advantage in this uncharted territory (Broomberg, 2021). Newer companies that offer one of many components in the advertising campaign process will experience several barriers to entry. First, independent contractors that already provide universities with platform assets they need for administrative and compliance purposes are most likely to become independent contractors for connectivity and education purposes. Many companies are adapting their business models to include facilitation or education assets for student athletes and athletic departments, but almost all participants predict that this market is likely over saturated, and “only the top producers in each category [brand enhancement, brand-athlete connectivity, NIL education, etc.] will survive” (Harrison, Third-Party Business).
“Start-to-finish” Facilitation

As mentioned above, many participants stated that convenience is a driving factor for NIL brand deal success. Technology companies who are already emersed in college athletics through compliance platforms they provide for universities have now developed NIL “spin-off platforms” centered around connecting student-athletes to brands. Several participants discussed the possible implications companies like this could have for the sports advertising landscape in the future. Currently, Teamworks and Opendorse have a monopoly in the sports advertising and education industries. They are the “start-to-finish” third-party facilitator, providing everything from two-way communication opportunities between brands and athletes, contract negotiation, presentation of deliverables, and even tax information for the student-athlete at the conclusion of each deal. These start-to-finish third-party facilitators market themselves to universities as a comprehensive solution to outsource for student-athlete NIL success, without taking a cut from the student-athletes themselves.

Teamworks and Opendorse were named during the study as the two largest competitors in this start-to-finish facilitation business for college athletics. Opendorse dominates the sports influencer advertising environment by providing an all-inclusive web and mobile platform that provides athletes with a digital space to build and monetize their personal brand; disclose all NIL activities for compliance purposes; and access creative content and education around NIL. Opendorse organized their platform to control media rights, provide athletes creative content, and track social insights, all in one system. From what many of the third-party business participants stated, Opendorse and Teamworks have a clear territory carved out for them within NIL by contracting with universities, as opposed to the student-athletes individually. Both Opendorse and Teamworks are focusing on business development around universities that are
allowed to facilitate deals for their student-athletes, so that athletes have an easier time finding the resources they need to succeed within their athletic department. Teamworks already holds contracts with many major power-5 universities around the country to optimize compliance operating systems for athletics departments. Teamworks acquired “INFLCR,” which allows athlete brand-building and NIL “business management.” This is Teamworks’ version of a third-party facilitation platform that optimizes communication between student-athletes and brands. The traditional Teamworks platform provides scheduling, communication, and disclosure features that allow coaches and athletics operations staff to optimize their time. Teamworks is similar to Opendorse in that they, too, have modified their existing platform to encompass NIL facilitations for student athletes. Their acquired company, “INFLCR,” provides facilitation between brands and athletes from start-to-finish. Because of the previous relationship these two companies have with athletic departments for other solutions, in addition to the comprehensive nature of their platform, athletic departments are likely to invest in their emerging technology for NIL deals to ensure compliance, reliability, and company stability.

Collectives. Collectives can hinder or assist in communication tactics between student-athletes, brands, and their athletic departments by either skewing an athlete’s personal brand for the sake of compensation or providing student-athletes with the tools necessary to build their brands. Collectives are not affiliated with the collegiate University, other than by fandom and interest in the players. In Louisiana, any collective formed in the future is prohibited from communication with the university unless the collective is seeking information on how to be in compliance with state and NCAA rules. Collectives act as a unit that connects businesses to student-athletes, however, collectives are struggling to operationalize in a sustainable way. Many take positive action to communicate with universities about how to actively comply with their
policies and state legislation. Others will actively take a roll adjacent to contracted third parties, scheduling out meetings with teams around their practice schedules.

In many circumstances, money collected is not being distributed back to the student-athlete just to pursue social media deals. Many collectives offer deals that involve autograph signings and appearances at corporate events, or work with non-profit organizations to compensate the athlete for their time. However, most participants agreed, it’s just easier for the athlete to connect directly with the brand. Amy added:

If I’m a business, I’m just going directly to the student-athlete to make a deal. It eliminates the middleman; it eliminates any third party. If I have the manpower as the business to create the campaign, and provide the tax paperwork after, it’s just easier to go directly to the athlete.

The athlete’s personal brand, as well as many companies’ brands become diluted with collectives because of the collectives’ attempt to reverse-engineer NIL deals. Many participants expressed concern over the fact that many individuals who are donating to collectives do not even have a business to put their marketing dollars back into. Josh explained:

There has to be quid pro quo for an NIL deal to take place. The collectives understand that it’s beyond advertising. Realistically, an athlete can get paid for showing up at a kid’s birthday party. As long as there’s an exchange, no one can really stop them, and the NCAA has yet to stop any collective.

There are currently no industry standards for what constitutes “fair market value” for an NIL deal. This makes it easier for collectives to give any amount money to student athletes they deem worthy, whether their personal brand aligns with the collective’s goals or not. Third party facilitators that focus on education are working to teach collectives about personal branding to make the communication process effective and efficient between athletes, athletic departments, and collectives.

*Components of NIL Advertising*
**Influencer & Brand “Connectivity.”** Many participants pointed out the importance of “brand alignment,” when connecting athletes with NIL deals. Connecting brands to their target audience is essential, especially in college athletics, where fans pay for everything. As mentioned above, advertising, and creative agencies, platform developers, and traditional sports agencies began to turn their attention toward connecting student-athletes with brands that “align” with their personal brand. Katherine weighed in with her experience:

I always tell my brands, “Get to know the student-athlete before you hire them.” A brand sees who someone is on the field or court and that might not align with the athlete’s personality off the court and away from their sport…in the same way that a student-athlete might love a company’s product, but if they don’t align with that company’s goals or views, then it’s not a best fit. The way we’re going to see the highest return on investment is if it’s a best fit for both parties.

Brand alignment is at the center of any successful advertising campaign. At the start of NIL legislation, marketing reps, brand managers, and traditional agents, would often conduct a sales pitch by direct messaging (“DMing”) the student-athletes in order to obtain their business directly. In the state of Louisiana, anyone who works at a connector for student-athletes and brands must be certified as either an attorney or a registered NIL agent to represent student-athletes. Third-party facilitators have emerged to solve connectivity issues between brands and student-athletes that athletic departments cannot tackle alone. In addition, many of these facilitators also focus on education and have created curriculums for athletic departments and athletes to provide services around (1) educating student athletes on building personal brands, and (2) implementing strategies to determine brand alignment. For student-athletes, “who they are and how they show up will affect what [brands] they align with” (Katherine, Third-Party Education). Matchpoint Connection, INFLCR, and JRZY (“jersey”) was frequently mentioned in this category as an example of companies specifically works to create a marketplace to connect the brand and the student-athlete. There are several players in this area, however, for any of
them, it is imperative for third-party facilitators to create a system that allows ease of communication and connection for the student-athlete in order to build interest around NIL deals, whether it be agents making calls on behalf of the student athlete, or mobile platforms like Influential that facilitate “best match” deals through AI. Ultimately, the fear around these types of brand connectivity platforms is that they will become irrelevant as start-to-finish facilitators acquire the technology to incorporate similar products into their business model.

**Personal Branding for Student-Athletes.** Student-athletes have many decisions to make when it comes to the creative entity that handles their personal brand. Many student athletes outsource for design, branding strategy, and connectivity. A few participants in the creative space, such as Brandon, elaborated on the importance of individuality when building an athlete’s brand:

> Now we’re just rushing to build these kids’ brands, we’re rushing to push out some graphics, we’re rushing to make generic logos, we’re just rushing it all and it’s not even a well-built brand… these kids need more solid brand work.

All participants in the creative space are frustrated with the effect recruiting has on an athlete’s true ability to build a personal brand around their name, image, and likeness. Creatives in athletic departments already manage content creation for each sport in the program. Now, many creatives in each sport have taken on the recruiting tactics each coach requests. For example, two creatives mentioned they were making individual logos for each player to exemplify the strength of the university’s in-house creative, when, in reality, these creatives are barely treading water between their full-time positions creating for their assigned sports and NIL recruiting assignments. Melanie explained:

> There was a time when we were making logos for every single player for them to build their own brand, but these kids don’t really understand what that means from an advertising perspective. They’re excited about the logos so they can throw them up on
Instagram and they’re just not using it properly… that shouldn’t be the strategy…when they’re rushing to get it done, it’s not even a true brand identity.

Athletic department creatives have seen a decrease in this kind of creative work now that third parties are involved, however, coaches are still working with players to build their personal brands. Their new focus is to advertise the strength of the university’s NIL program, whether that be by facilitating deals or NIL education. For most athletic department employees, their focus has turned away from building individual brands, and exaggerating the strength of the university in its capacity to promote name, image, and likeness programming.

**NIL Education.** Most larger universities have implemented an NIL education system by signing partnerships with third-party facilitators such as Opendorse or Teamworks’ brand, INFLCR, that are “start-to-finish.” Other universities constrained by “no-facilitation” rules hired companies focused on legislative education. Third-party facilitators who participate in this arm of student-athlete development pride themselves in creating opportunities for student athletes. Katherine explained:

> We say we educate and empower, but in all reality, we create communication lines in fragmented markets. We search for communication gaps that are occurring in this new landscape and move forward.

Many participants explicitly mentioned the possible inequality of resources between larger schools such as power-five universities and smaller schools with less student athletes participating in NIL activities. With several credible (and non-credible) companies with websites up, running and charging a premium for educational services, traditional sports agents are also extending their services to college athletes. However, the same discontinuities exist between revenue-generating and non-revenue-generating athletic departments. Participants active in education in partnership with universities make it clear that they are the experts. Many do not seem to be concerned with education entities becoming obsolete due to the uncertainty around
NIL and pending federal bills. In fact, many participants expressed a need for more education within their athletic programs and businesses.

**Resources for Student-Athlete Brand Development**

A few participants mentioned a discrepancy in resources that causes smaller athletic departments to reach out to academic departments within the university for guidance. Agents are recruiting the highest-profile college athletes who perform well. Their hope is that student-athletes will utilize their services during their college career, earn their loyalty through negotiation of brand deals, and pay out as clients professionally. Only a very small percentage of college athletes end up in a professional career, and most of these athletes are participants in revenue generating sports. While most athletic departments are responsible for providing education on the name, image, and likeness space, they do not actively give athletes resources outside of their contracted parties. Highly engaged, self-motivated, and high-performing athletes may pursue nontraditional resources for help, while other athletes are funneled to the company or third-party facilitator provided by the university. Because a majority of student athletes receive their information about name, image, and likeness legislation through peer-to-peer communications, this discontinuity and hesitancy in which kind of help to pursue has the potential to create an insulated environment where all athletes follow the same personal-branding formula: “That’s why there’s so much confusion and disconnect… because brands don’t know which way to best reach out to athletes.” (Liam, Third-Party Business). If these players decide to pursue brand deals through traditional agents, or the type of companies that only facilitate a component of the advertising campaign process, it likely creates a gap in communication with both the University and the brand. If universities adopt a start to finish company that facilitates
brand deals, and student athletes decide to deter from this route, it only creates confusion among student athletes, coaches, agents, and advertising professionals for how to handle a campaign.

**Category 3: Ownership of Name, Image, and Likeness Content**

The ramifications of who owns content can drastically affect brands’ and student-athletes’ ability to be compensated correctly in NIL deals. With so many restrictions on an athlete’s ability to utilize their university’s brand, it is difficult to see why brands would choose to use a student athlete over similar non-athlete content creators for influencer marketing. While the NCAA and all universities continue to promote the separation between the student-athletes’ personal brand and the university’s, it’s clear that one relies on the other. Visualize a university in your mind. What is the first thing you think of? For most participants, it is almost never the math department, or the music program, but the athletics department and the athletes that drive fans to the stadiums. Without student athletes, the universities’ brand is diminished significantly. Without the identity of a university, a student-athletes’ personal brand is also diluted.

**Ownership and Digital Content Creation**

No athlete has signed a contract selling the whole of their “name image, and likeness,” but there are conversations around what would happen in the circumstance that a student-athlete does sign away their rights completely. Theoretically, it is easier for an athlete to sell their NIL rights to a company and obtain the value for it initially, and then allow that company to sell or license the rights of that athlete to other brands. However, most participants do not seem to be immediately worried with that scenario. What worries most participants is the intentional nature of businesses with content created specifically for their campaigns. Many brands who produce their own content with the NIL of a student athlete make clear in their contracts that the brand owns the content produced for the brand, even though they capitalize on the student-athlete’s
NIL. “What it’s going to take is a high-profile student-athlete making someone mad… when a student-athlete uses a content creator’s photo, and that creator is so selfish that they see that they could’ve had the opportunity to make more money on it, that’s when this becomes an issue.” (Jake, Third-Party Business). Most participants described student-athlete contracts that allow the brand or company they work with to utilize images that student-athletes produce themselves for a specified period of time. Almost no participants have encountered contracts that specifically outline royalties and rights in the actual images.

The more interesting conversation is the relationship between the student-athlete’s personal brand, and the university’s brand. Prior to name, image, and likeness legislation, schools traditionally provided athletes with personalized content, including a comprehensive photo library for their personal use. There is a continued disparity in understanding between student-athletes and the university as to who owns that digital content. Universities have been proactive about helping the student-athletes understand the delicate balance between receiving these photos as a curtesy for personal use and using these assets to then pursue NIL deals and receive compensation for them. The issue of content creation does not stop at photographs. Many states have provisions in their legislation that prohibit student-athletes from using protected marks of the athletic department and university. Many provisions state that student-athletes may not enter into a contract for use of their NIL that uses the licensed marks or logos of the University unless the school has provided written permission in advance of signing the NIL contract.

Consequently, this requires the student-athlete to disclose their deals to the University compliance office for revision. This leaves athletes to work through two major communication issues. First, this leaves the student athlete vulnerable to agreeing to contract terms that make
compensation for NIL deals contingent upon their ability to obtain use of universities’ marks. Second, the student-athletes must recognize that under certain circumstances, it is possible that an athletics department could disclose the details of their deals to third parties, namely, other brands and media groups interested in reporting on specifics such as sport, salary, and other details of their contracts.

Each college athletic department has the discretion to determine whether an athlete’s NIL agreement conflicts with a university’s corporate sponsorship, contract, or a term of a contract. Per most states’ legislation, and specifically within Louisiana, the athlete is required to disclose any NIL agreements to the education institution in the manner prescribed by their university. At Louisiana State University (LSU), athletes are required to disclose all NIL deals to the compliance office for revision to determine if there is a prohibited subject matter such as an endorsement of alcohol, tobacco, illegal substances, or activities, banned athletic substances, or any form of gambling. In addition to reviewing the contracts for the prohibited substances listed above, LSU, like most other universities, will review the contract for conflicts with corporate sponsors and university agreements. Many brands have noticed the universities’ processes for disclosure, and many have included contingency clauses that render the deal void if students are not able to obtain use of the university’s marks. Not only does this hinder a student-athletes’ ability to obtain compensation, but it also gives the university a broad discretion to prohibit athletes from using the marks at the will of the university.

Because student athletes are required to disclose their NIL deals through their university, media conglomerates nationwide have argued to obtain copies of their deals through The Freedom of Information Act. To date, two petitions have been filed by media organizations in both Georgia and Louisiana that shed light on the failure of both states’ legislation to address the
privacy issues surrounding student-athlete and university disclosure of NIL deals. These media organizations argue that universities “hide behind” FERPA and its specific exemptions for student “education records” to conceal the details of student-athlete NIL contracts. Almost all participants brought up how the *Gray Media vs. Tate* lawsuit recently decided in Louisiana caused a significant disruption to student-athlete privacy.

While the court in Louisiana did decide that the university could not be compelled to release this information under FERPA protections, many participants worry that decisions in other states could severely impact the integrity of a student-athlete’s NIL opportunities that state legislation and the NCAA interim policies seek to provide. If media groups were able to obtain and release these disclosure forms containing salary, time commitment, media ownership, etc. third-party companies and advertising agencies will have an obvious advantage in negotiating NIL contracts because they know the details (including value) of their past deals. This adds to the disruption in communication of an advertising message, especially if the public is aware of the compensation provided for a brand deal. Consequently, the prediction most participants communicated was the likelihood that viewers’ trust in student-athlete influencers would decline, and further diminish fan engagement. Additionally, brands would be able to exploit their access to knowledge about student-athletes’ past deals, leaving little room for negotiation.

Many creative participants stressed the importance of individuality when it comes to student-athlete brand identity. If a school offers these resources to student-athletes for free, it is unlikely that many athletes taking less lucrative deals would outsource to an agency or a third-party facilitator for guidance, especially if that third-party is taking a percentage of their deal. Internal creative worry that they may not have the internal staff to create for every athlete, forcing universities to outsource solutions to provide their athletes with a personal brand. All
participants agree that providing student-athletes with resources to build their brands is essential due to the split in identity between the university and the student-athlete. This allows a student athlete to be successful through the university, but also through their own identity.

**Licensing Agreements and Use of Protected Marks**

Louisiana’s legislation states: “[a]n intercollegiate athlete shall not use a postsecondary education institution’s facility, uniforms, registered trademarks, products protected by copyright, or official logos, marks, colors without express written permission of the postsecondary education institution.” (La. Rev. Stat. 17:3701-3703, 2021). Many states have similar provisions to protect the integrity of the university’s distinct brand. This limits a student athlete’s ability to maximize brand opportunities and execute advertising campaigns to their full potential.

Per Louisiana’s state legislation, “(1) A postsecondary education institution may prohibit an intercollegiate athlete from using the athlete’s name, image, or likeness for compensation if the proposed use of the athlete’s name, image, or likeness conflicts with either of the following: (1) existing institutional sponsorship agreements or contracts, and (2) institutional values as defined by the postsecondary education institution.” (La. Rev. Stat. 17:3701-3703, 2021).

This gives each school the discretion on how they handle sponsor conflicts. At LSU, the compliance officers will review the NIL contracts for conflicts in corporate sponsorship (those brands who pay for the use of LSU’s marks). If an athlete decides to partner with a brand who is a competitor of a corporate sponsor, LSU has the discretion and the authority to prohibit a student athlete from using their protected marks in the advertising campaign. As Ellie notes:

While a university can prohibit a student athlete from making a deal entirely, many athletic departments work to ensure their athletes can engage in every opportunity to some capacity to ensure their professional success.
All participants recognize the fact that while the legislation works to separate and athletes’ brand from their university, both identities are essential to any brands’ goals. Many brands who pursue partnerships with student-athletes at a school that has a conflicting sponsorship have made their contracts contingent on the athlete’s ability to obtain use of the university marks. These types of influencer deals make it nearly impossible for student athletes to obtain deals with larger brands that may conflict with corporate sponsors, further limiting brand partnership opportunities. These types of brands truly seek to capitalize off the university’s brand identity, rather than the individual athlete’s NIL. This causes a breakdown in communication between the brand and the student-athlete and clouds the advertising vision that the company seeks through influencer marketing.

The ramifications of who owns digital content could change the sphere of opportunities that student-athletes will be able to have in the future. As mentioned in the literature, group licensing provides an athlete with collective rights to their NIL in specific agreements. This is more efficient for third parties, and often less lucrative for student-athletes. Two participants from third-party businesses expanded on the importance of student-athlete opportunities to own their content in a digital space: “Everyone forgets about the possibility of ‘web 3’ in this space. There is so much potential for student athletes to migrate from user-based platform participation to ownership of their own content” (Rachel, Third-Party Business). For example, many participants mentioned the emerging NFT market, and how many student-athletes could utilize this space to create monetary value long-term. Companies like the BrandR Group are partnering with universities to provide convenience to the university through group licensing and convenience to the third-party by allowing use of university protected marks. However, many participants in the third-party connectivity space stressed the importance of emerging technology
evolving around student-athlete ownership. “Owning digital trading cards, spaces, and assets will provide more security for athletes long term” (Parker, Third-Party Business).

**Category 4: Constraints in State Legislation & the Effect on Advertising**

**Student-Athlete Constraints**

In the state of Louisiana, the post-secondary institutions (universities) cannot facilitate, nor can they “cause compensation to be directly or indirectly provided” to a student-athlete. This means that universities like LSU can merely educate student-athletes on financial literacy and “professional development strategy.” This limits a university’s ability to protect their student-athletes on any level, whether it be their coach offering advice, or LSU Athletics offering insight as to why a brand deal may not be advantageous for the athlete, given their limited time and academic commitments. University members relayed that many brands offer deals in which the student athlete only makes a percentage of earnings on whatever product is sold. Mark, who works in a third-party agency that handles brand to athlete connectivity explained, “These brands want to turn athletes into salesmen rather than influencers, relying on sales to be compensated for deals.”

With the facilitation restriction in place, university members cannot even advise student athletes on whether the deals they are taking a line with their time commitments, personal brands, and professional goals. Pending legislative changes as of January of 2022 suggest removing this clause from Louisiana’s NIL rule to remain competitive. States like Alabama and Texas have removed any type of facilitation restriction, causing further concerns for athletic department coordinators within Louisiana. If removed, many athletic department employees in Louisiana, including coaches and university members, are optimistic that there will be a more effective, streamlined communication between all three major entities at play.
Additionally, many participants predict collectives may become unnecessary if Athletic departments can fundraise opportunities for their student athletes. While there may be Title IX implications within the structure, it eliminates the need for traditional advertising agencies and many collectives. Amy noted that there’s still a lot that can happen:

So, is it better to keep it at arm’s length for the university’s protection? Down the road, we aren’t sure if we are comfortable to say we want that looped in with the athletic department because we cannot possibly determine who deserves that money.

Almost all participants agree that when businesses can determine who they believe is valuable, they should be providing direct deals to student-athletes to maximize their opportunity for compensation. In most influencer advertising markets; brands reach out directly. While there are platforms that provide matches for brands and their ideal influencer, participants argued the majority of deals are made through direct messages, calls, or emails, directly to the desired athlete. If facilitation becomes possible in Louisiana and other states that have the prohibition, athletic departments predict that they will either (1) be able to provide everything an agency would internally through both creative services and student-athlete development, or (2) eliminate the need for third-party facilitators that only specialize in one component of NIL advertising by contracting with “start-to-finish” facilitators who would charge the university, rather than the athlete, a premium for use. This would not only maximize opportunities for student-athletes to build their personal brand and pursue influencer deals, but it would also allow student-athletes to maximize their profits.

**Athletic Department Constraints**

Without federal legislation, two categories of athletic departments now exist in the NIL space. The first are composed of universities that can facilitate deals for their students, and the other are those prohibited from facilitating deals directly. Almost all participants discussed the
inefficiencies in communication that “no-facilitation” rules place on universities. For example, Mark, who works with a third party studying collectives, explained:

…it if a collective wants to hire 10 guys on the baseball team, but the collective can’t communicate with the coach about what their practice schedules look like, there’s no way to streamline a successful branding deal. Limits on facilitation are forcing collectives to go one way and athletic departments to go the other.

The same relationship exists between third-party facilitators and universities that cannot facilitate deals. Most participants at LSU explained that because they cannot facilitate deals, their priority is shifting focus to hiring third-party contractors that handle education specifically, as opposed to those universities that can bring in teams to facilitate every step of the advertising campaign process. Third-party companies feel differently, and many express that there will be a consistent need for comprehensive solutions to name, image, and likeness. Nick, who works for a third-party, explained this will be crucial for their business moving forward:

Every type of third-party offers different strengths and value propositions, but ultimately, every athletic department is going to shift their strategy to provide more comprehensive solutions for their student athletes. That’s what the kids are going to look for: how can this university set me up for success?

A few third parties expressed the shift in operation they have seen within athletic departments, and the growing need for outside parties to get involved. One participant pointed out that athletic departments have functioned the same way for years by making their money in broadcast deals to all sports within their college program. Harrison, who works with a third-party company that handles group licensing explains, “they haven’t had to be very entrepreneurial.” Television contracts have been the way of the world for over a decade in advertising and sports industries, and half of participants stressed there has to be a shift in focus from television contracts to personalized content creation. This creates a need for athletic departments, as well as a constraint in their ability to provide solutions internally. Most college athletic departments
traditionally outsource sponsorship agreements, parking, concessions, and event management due to budget and creative constraints. With the emergence of NIL, athletic departments are held to a higher standard by prospective student-athletes. Athletes are now looking to the universities to provide solutions. Cameron, who works in athletic administration, added:

Most kids I meet with, the first thing they ask is, “What does your NIL department look like? what opportunities do I have here?” It’s become a necessity in recruiting, and we just don’t know the correct way to go about it.

Even if the universities can properly contract with third parties and collectives, not all third parties are in compliance with state legislation. This is why so many universities are turning to third-party “start-to-finish” facilitators to provide a liability shield if advertising deals fall through, and conflict arises in the future. Athletic department staff members stressed that this is especially important for Title IX implications and financial opportunity discrepancies. Many student-athletes and coaches pointed out that many NIL deals could be directed toward revenue-generating sports if facilitation is not handled carefully. Either way, universities have taken on most of the burden to educate companies in this evolving NIL space. A few participants expressed the fact that most universities’ staff members do not know how to handle problems evolving around equal opportunity, and many rely on in-house legal counsel, who are “barely keeping their heads above water,” with the current NIL legislation. This creates further confusion on what types of deals are allowed, what “equal opportunity” looks like for student-athletes, and further creates an environment of hesitancy for brands around hiring student-athletes as influencers.
ANALYSIS AND CONCLUSIONS

RQ1 centered around to what extent changes in the NIL industry have affected communication and strategy when working with athletes. A theme most prevalent among all participants is that the NIL industry as a whole has become an “arms race” for all parties involved. As it pertains to recruiting, universities use NIL to bolster the athletics program while prospective student-athlete try to decipher which university can build the most cohesive department or agency to handle strategy, creative resources, and connectivity to ensure student-athlete success. This data fills the gap between existing literature surrounding social media influencer advertising and the growing environment around NIL.

Due to gray areas and gaps in state-to-state legislation, key players have entered a space with constant change, and athletic departments are worried: “are we doing this the right way?” The NIL market is quickly expanding in all directions, with very little regulations or enforcement strategy.

Based on participant responses, there is a clear communication triangle that exists, complicating matters for all three parties, displayed in Figure 1 below. First, student-athletes are at the top, communicating with both third-party entities and their university. Second, universities communicate with student-athletes by providing education around NIL opportunities whether that be personal branding, financial literacy, or professional connection-building. Lastly, third-party facilitators communicate with (1) the student-athlete, (2) the university, or (3) sometimes both. Communication tactics are determined by both the state legislation for purposes of facilitation, and, ultimately, on the type of facilitator they are. Collectives act differently as a facilitator than companies who provide connectivity or “start-to-finish” solutions.
It is clear from the data that most participants agree social media “influencer marketing,” has become an overused, oversaturated tactic for brands and agencies. While many student-athlete influencers find success with smaller target audiences, brands that sign entire teams just for the sake of flooding the market with content around their brand lose sight of advertising strategy. Both creatives and strategists identify immediate ROI issues with this type of tactic: “who’s actually making money on this?” All participants agree that there are few brands that have the ability to look beyond the immediate “gold rush” of NIL deals with student athletes. I predict this is where third-party facilitators could be helpful, especially if they are contracted with the university or a collective. A viable solution to the communication issues between brands and student-athletes might be companies like Opendorse or Teamworks, who can provide most, if not every, step of the process from connectivity services to strategy, creative content, and implementation of advertising campaigns.

Whether it is an athletic department, collective, or third-party facilitator, any organization that seeks to be successful in this quickly evolving NIL environment should be focused on the marriage between implementing content creation and strategy for a comprehensive initiative that will be most informative, beneficial, and cohesive for the success of student-athletes.

RQ2 sought to identify the unique challenges and opportunities facing universities and athletes moving forward with NIL. Two types of universities now exist as a result of facilitation vs. no-facilitation NIL policies, creating two different chains of communication within the traditional two-step flow theory. The most common modern application of the two-step flow theory in advertising involves a brand using an influencer as an opinion leader to reach their unique audience online and elicit a response from that audience. The advantage of utilizing
student-athletes as influencers is that they provide a unique opportunity for brands to reach a “cross-over” audience that is highly engaged in both the student-athletes’ personal brand, and the university’s legacy.

Another key theme identified among all participants is that the advertising landscape currently at play will look entirely different six months from now. This study was conducted from January 2022 to April 2022 and offers insight as to where the NIL environment will expand with advertising strategy. Because this advertising environment is so changing at a rapid pace, agencies that have evolved exclusively around current state NIL legislation and student-athlete engagement will not be equipped to handle the different skill sets at play necessary to operate in the evolving landscape.

Based on existing literature, interpersonal interaction through influencer marketing has a stronger effect on shaping public opinion than mass media outlets (Katz, 1957). Thus, brands are not likely to back down from pursuing deals with student athletes over other influencers due to their high visibility as an individual and an athlete at a college university. Based on the logic of the two-step flow theory, if there is a split in communication between student-athlete, third-party, and university, it will be more difficult for these parties to implement advertising campaigns cohesively. Participants identified this unique challenge by consistently stating how confusing it is for all parties involved to determine what the best route of communication is to utilize the student-athlete as an opinion leader.

For this reason, third-party facilitators have had a chance to break into the NIL market where athletic departments have failed to build out resources. This break in chains of communication changes the way that brands reach their target audience through student-athletes. Based on the data collected, so long as the NIL legislation remains state-to-state, I predict there
will be a growing unequal opportunity for student-athletes based on how well their administration can communicate with third-party facilitators and brands directly.

Figure 1. Current Relationships in NIL Communication Affecting Two-Step Flow

All participants communicated that a fragmented environment between the three key players creates a significant gap in opportunities for student-athletes to be seen as opinion leaders in the public eye. Because of the uncertainty, name, image, and likeness legislation has created, there is an uneasy feeling among fans, athletic departments, and brands. The solution, if there is one, is unclear, now that sports agents have been allowed to infiltrate college athletics without jeopardizing student-athletes’ eligibility. Traditionally, in NCAA Basketball and Football, agents are allowed to help student athletes make a strategic decision on whether to play out their eligibility in college athletics or enter into a draft for a professional career. In order to help an
athlete “test the waters,” the NCAA requires agents to take a specific test. A similar relationship exists in the interactions that brands and third-party facilitators have with student athletes.

One viable solution for third-party entities who wish to enter the space could be to set a standard similar to the NCAA agent requirements in order to streamline communication between the athlete, third-party facilitator, and athletic departments, as well as provide ease of mind for the student-athlete that their deal will not jeopardize their eligibility. This either creates unique opportunities for the NCAA to grow and expand in this space or render their enforcement division obsolete in the face of third-parties and state legislators.

Additionally, cohesiveness determines how well an opinion leader is able to convey a successful advertising message to an audience. When universities are skeptical of third-party tactics, and facilitation restrictions force these companies to decipher NIL rules for themselves with little direction, it is reflected in the way athletes communicate with their audience, further creating a split in opinions on whether NIL will help or hurt the university’s fan base. While my initial hypothesis predicted that the two-step flow theory would re-emerge within the growing NIL environment, participant responses confirmed that student-athletes can only succeed as opinion leaders in the influencer market if the key entities achieve cohesive communication.

Currently, intervening factors in the communication chain prevent student-athletes from being able to learn how to utilize NIL and maximize their opportunities for brand partnerships. Breaks in communication between the main three entities of this triangle well make it more difficult for brands to successfully pair with student-athletes, and for universities to both remain compliant and offer their athletes the opportunities necessary to dominate the influencer market. As for third-party facilitators, only the best in each market will survive. The companies with a holistic solution for branding strategy, facilitation of brand and student athlete relationships, and
compliance will have the tools to dominate the market based on the relationships they form with universities and collectives. This solution illustrates how universities can do what is best for their brand, drive the university brand forward by investing in their student-athletes. While there is growing concern around the ability for “start-to-finish” facilitators to be able to provide cohesive personal branding for each individual athlete, branding strategies will vary depending on the brand that the athlete partners with, especially if that brand can produce creative content for the athlete, rather than the third-party facilitator.

Collectives also have the potential to grow in this facilitation space as the NIL industry evolves. Depending on how much university involvement pending federal legislation allows in the future, collectives may become an essential part of the separation between the businesses of university and student-athlete brands. Many collectives are attempting to enter the athlete-management or connectivity space, but without an understanding of sports agencies and personal branding, the collectives could serve as a short-term solution for resource funding.

Collectives that survive will likely partner with third-party agencies or facilitators to help athletes navigate all aspects of brand deals from contract negotiation to brand identity implementation. Collectives could evolve as an alternative way for universities to facilitate deals with limited liability and cohesive brand strategies. Otherwise, there could be a shift within athletic departments that renders many third-party facilitators obsolete if facilitation prohibitions are lifted nation-wide. Another solution to the disjointed communication between universities and student-athletes could be to provide as many NIL services as possible in-house, withing athletic departments’ creative, marketing, and strategy teams. However, this would require a large amount of capital for hiring, especially to provide start-to-finish advertising campaigns.
The current climate lends itself toward a race for market share, rather than support for student-athletes entering the NIL space. As all involved parties prepare for the upcoming year, there should be a focus around student-athlete/brand connectivity and education to effectively implement programs and platforms that sufficiently protect, but also encourage, student-athlete success in authentic brand partnerships and advertising campaign administration.
LIMITATIONS AND FUTURE RESEARCH

One of the most pertinent limitations of this study is the rapidly evolving nature of the NIL environment. Because current regulations are state-to-state, the current environment has created a patchwork effect among states with NIL laws, and a further rift in states without, given the surprisingly broad nature of the NCAA interim policy. Given the nature of the current environment, it is likely that either federal legislation or further enforcement of current NCAA rules will have to be implemented in order to sustain the nature of a student-athlete’s right of publicity. Additionally, most athletic department participants and all student-athletes were involved at one university due to convenience sampling. Future studies should pursue a wider range of participants to accurately determine current attitudes and predict the future of the environment.

Second, this analysis focuses on the many disruptions that the current NIL environment creates in the two-step flow theory. However, based on the inquiries asked in the interviews and the responses given by participants, the data collected does not reflect how these rifts in the communication process affect both the student-athlete’s audiences and college athletics’ fans. Further research should focus on how changes in the two-step four theory affect sports fans as well as student-athlete followers on social media. As a natural extension of my analysis, future studies should specifically study specific advertising campaigns implemented by student-athletes on behalf of brands and analyze their target audiences to determine how well a student-athlete is received as an opinion leader, based on the relationship between these three entities, and all categories considered above.

This analysis does not take into account specific demographics other than making it clear that Millennials and Gen Z prefer personalized communication through social media in a tailored
way. Because of the exploratory in nature of the study, and the number of parties involved, it is difficult to pinpoint what types of brands are successful in this NIL space. Due to the haste in which name, image, and likeness legislation has evolved, it is difficult to analyze specific campaigns and determine their effects on target audiences. Thus, further studies should observe and determine which target audiences are best for student-athlete influencer marketing, whether that be by age, demographic, product, or specified interest.
APPENDIX A. IN-DEPTH INTERVIEW GUIDE

RQ1: To what extent have changes in the NIL industry affected communication and strategy when working with athletes?

- What is the effect of NIL on student-athletes?
  o How have you been getting your information about NIL? Social media? News outlets?
  o To what extent do you think this will prepare student-athletes for professional careers?
  o Do you think this will have any impact on their other responsibilities, such as school work?
  o How do you think this might impact how the public views them? What about how they might view the public?

- What is the effect of NIL on administration?
- What is the effect of NIL on third parties?
- What do you think the effects of NIL will be on advertising?
  o On social media influencers?
  o Where do they see this going in the future?
  o What role is social media going to play in this / already does play?
  o What are the ramifications of who owns content?
    o At what point does athlete behavior impact or reflect what they’re going to do

- Without mentioning names, what are the types of companies and organizations that have expressed interest in NIL?
  o Do you receive help through an agency?

RQ2: What are the unique challenges and opportunities facing universities and athletes moving forward with NIL?

- What issues can they identify already with NIL?
- How do you think NIL legislation might affect student-athletes online?
  o When you think about the uniqueness of Louisiana, how do you think NIL might be different here than other states?

- A key part of NIL is social media, which has grown and changed significantly in the last several years. How do you think NIL might impact how athletes use social media?
- What issues will arise with social media management?
- What issues will arise with content management?
- What issues do you see with social media influencing so far?
  o Sponsor conflicts?

- To what extent will the concept of amateurism will survive in collegiate sports with the emergence of NIL in advertising? or where do we stand with the concept of “amateurism”?
  o How do you think amateurism has changed in the last 10 years? How do you think it will look 10 years from now?
APPENDIX B. IRB FORM

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VITA

Olivia E. Nuss graduated in 2019 from Louisiana State University with a B.A. in Mass Communication and a concentration in digital advertising. She is graduating in August of 2022 from the Louisiana State University Paul M. Hebert Law Center, completing a joint degree program that will allow her to receive her Juris Doctor (J.D.), her Master of Mass Communication degree (M.M.C.), and her Graduate Diploma in Comparative Law (D.C.L.) in approximately three years. Her primary areas of research examine emerging sports law issues and the use of communication technologies within the sports advertising industry. She is currently pursuing a career in college sports working with evolving Name, Image, and Likeness legislation nationwide.