

David C. Drummond '85, is Senior Vice President, Corporate Development and Chief Legal Officer of Google. This is the text of the speech Mr. Drummond presented at the 3<sup>rd</sup> Annual Santa Clara University Sports Law Symposium on September 7, 2012. The symposium discussed the question "What is the Role of Sports in Higher Education?"

## IT'S NOT JUST THE MONEY

Thinking about the role of athletics in the university is not something I do for a living. But as a former college football player, lawyer, and rabid college football fan it's something with which I've become increasingly fascinated. Like most of you, I've watched with amazement the growth and commercialization of college sports (specifically football and basketball) and consider myself a beneficiary of their increased sophistication and accessibility. Though I will deny that I have actually done this, it is now possible to start one's fall Saturday at 7:00am with ESPN's College Game Day, and continue, virtually uninterrupted, until the end of the Hawaii Warriors home game at about 1:00am the next day. These are good times for college football fans like me.

But even as I've enjoyed football Saturdays (and Wednesdays and Thursdays)—as well as the greatness that is March Madness – I've become increasingly concerned by the glaring contradictions at the core of big-time college sports, contradictions that other speakers today have so thoughtfully explored.

And as I've followed the arguments of the reformers, I've usually found myself in agreement with folks who say we should take the money out. I've sympathized with those who think college football and basketball have become large entertainment businesses and that – as laudable as the goals of athletic competition are, and as much as we like the spectacle – the level of commercialism in these sports has corrupted the system and undermined the academic mission of universities. In short, college football should become like college, say college baseball or soccer, and leave the development of professional talent to the professional teams. I'm sure that folks like me would still watch.

This argument is compelling, as well as principled, but as many, including Joe Nocera have pointed out, not very practical. And as I continued to think about the problem, I started to wonder whether commercialism is really the root of the problem. Could there actually be a more principled way for universities to pursue the revenue and status offered by big time athletics? This got me thinking about other areas where universities have "commercialized" other areas where schools have decided to "monetize" their unique assets in the marketplace.

And it turns out that there was another growing area of university activity with commercial attributes that might sound familiar to observers of college sports. This activity has:

- 1) Generated billions of dollars in unrestricted revenue for universities over the years;
- 2) Created a system of haves and have-somes, with some individual institutions generating hundreds of millions and others struggling to break even
- 3) Opened the way for millions more in alumni contributions, in addition to direct revenue, while also driving marketing and prestige value that is hard to quantify;
- 4) Caused more and more schools to get into the mix, hoping to replicate the successes of the "Big Time" schools; and
- 5) Led to criticism that commercialism is undermining the university's academic mission.

The activity I'm describing is called "university technology transfer," and it's practiced by virtually all of the nation's research universities. It's the process by which the university takes inventions created by students, faculty or staff and licenses them, for financial gain, to established companies or to start-up companies typically founded by the university-affiliated inventors.

University technology transfer has been around for decades, and accelerated dramatically in 1980 with the passage of the Bayh-Dole Act, which enabled universities to retain ownership of inventions resulting from federally-funded research projects and encouraged schools to commercialize them through licenses with the private sector. According to the Association of University Technology Managers, research institutions took in about \$2.5 billion in royalty revenue in 2011, which does not include equity stakes acquired in several hundred start-up companies.

This is big business, and I've seen it up close. Indeed, I have spent the better part of the last decade and a half working for Google, a company formed as part of a university technology transfer. One of the first things I did for Google 14 years ago was to negotiate a patent license with Stanford, where Larry Page and Sergey Brin worked on search engine innovations. Stanford has to be considered one of the Big-Time programs in technology licensing, and its policy was and is to encourage the creation of start-ups based on technologies developed at the school, with Stanford receiving an equity stake in return.

It's no secret that things worked out pretty well for Stanford. At the time of our IPO, Stanford held about 1.8 million shares, which at today's price would be worth about 1.2 billion dollars. Of course, Stanford sold its position along the way, and has reported its Google gain at about 340 million dollars, but you get the picture.

You might be asking, though, what does this really have to do with college sports? Aren't these things pretty different? I'd actually argue that they are the same in some fundamental respects. Both might be considered deviations from the principal mission of academia, and both provide an opportunity to monetize unique assets of the university. And as the Google return and the recent conference television deals show, both are major commercial enterprises.

But I'd also argue that both of these university activities serve a social purpose, beyond financial gain for the institution. Technology transfer allows for the broader dissemination and public use of inventions; college sports promote and help build community, beyond the walls of the institution. They also showcase achievement, overall excellence and the spirit of teamwork and athletic competition, all of which are social positives. And college sports are also high-quality entertainment.

Also both activities have been criticized as "selling out," of undermining the core purposes of higher education. In the case of technology licensing, some have worried about conflicts of interest, about the skewing of research priorities away from the public interest and toward what might be commercially valuable. Others have argued that getting inventions out to the public would be better served through non-commercial means.

While these are valid concerns, my Google experience suggests to me that these are manageable and that the marketplace is a very effective way to disseminate inventions. The founders of Google considered continuing Google as a research project, or launching it as a non-profit, but ultimately decided that a for-profit business was the best way to get the technology out to the world. Indeed, it's hard to imagine how we could have made local versions of Google available to the world so quickly were

Google not a business (Google's ability to serve the developing world has long been subsidized by its strong businesses in the G20 countries).

The same might be said of college athletics. If we believe that the market is a good way to get university-created technologies to the public, then why shouldn't that be the case for college sports? The laudable purposes of college sports are best served when people can witness the spectacle, when people can see the competition and participate in it. And the business of college sports is what makes them accessible. March Madness is a case in point. The NCAA basketball tournament went from being a must-see for sports geeks like me to a major unifying cultural event, watched (or at least followed) by millions who will not watch another basketball game that season. I doubt we would have a national event this powerful without commercialism.

But even more striking than the similarities between these two multi-billion dollar university enterprises is a fundamental and crucial distinction: while architects and managers of technology transfer recognize that they run a business that must be balanced with the American social, economic and academic norms, the folks who run big time college sports have chosen to operate outside those norms under the increasingly bizarre banner of amateurism.

The first norm that technology transfer managers knew they should respect was the one that says that people who contribute to a commercial endeavor should be compensated in a way that is at least rationally related to their contribution. At Stanford, the policy for licensed inventions calls for one-third of the royalties to go to the inventor, one-third to the inventors' department, and one-third to the inventors' school. Where the school accepts start-up equity in lieu of cash royalties, it is typically a very small percentage, in the case of Google, about 2%. This means that the founders of Google were able to reap the benefits of their hard work and ingenuity, even though they were still students at Stanford.

Tech licensing executives have even developed the idea of socially responsible licensing, with many licensing offices signing on to a 9-point manifesto that calls for universities to balance the drive for revenue with such considerations as making technology available to the underserved communities and the developing world, emphasizing medical inventions that can save lives, and taking care not to abuse patent rights through overly aggressive enforcement.

Contrast this with the now well-documented situation of the big business of college sports, in which the managers refuse to even recognize that they are operating a business, allowing them to rationalize a set of conditions that we would not tolerate in any other business setting. These include, of course, not providing any meaningful compensation to the value-creating athletes; preventing athletes from bargaining individually or collectively to improve their situation; and denying athletes the ability to profit from their images and likenesses.

Others today have and will do a better job cataloguing the contradictions and hypocrisies of the current college sports business, but let me close with a thought experiment. Imagine if the conditions we see in college sports prevailed in the university technology licensing business. We would have "student-inventors," who because of their amateur status would receive a scholarship but no more, and who would be constantly monitored, lest they accept a ride to Burning Man with alumni, or some other inappropriate benefit. We would also have "innovation coaches" who would be lured to schools by the prospect of big salaries and avenues for self-promotion. We would also have schools doing everything they can to land their student-inventors presentation slots at conferences held in far-flung places where

at least the weather is agreeable (though of course, the big time programs would be angling for slots at the TED conference, the granddaddy of them all).

Yes, this sounds absurd, but it's no more absurd than the current structure of college sports. And I don't think this absurdity is caused solely, or even primarily, by the big money that pervades college sports. There is no reason why universities can't run big businesses, even entertainment businesses, where the output of that business creates social value. Indeed, it might be good to have more money in college sports, if it means more quality output. If universities are willing to admit that they are engaged in commerce, are careful about how they conduct it and are prepared to set limits, then universities can run these businesses responsibly and with positive results for society, as has largely been the case with technology licensing.

The problem with college sports is not too much money; it's the lack of basic self-awareness. Even if you believe that amateurism was at one time a reasonable and attainable ideal. That time has obviously passed. Compensating athletes is clearly part of the answer, but it's not the whole answer; what college sports need now is a redesign. And that redesign will have many important details. But what's clear is that Version 2.0 of the college sports business will need to recognize that it's an American business and behave accordingly. Some would say that this is an incredibly tall order, perhaps too tall. Fair enough. But to the reformers in the room, I would urge you to consider a saying we really like at Google: sometimes really good things come from having a healthy disregard for the impossible.

Thank you.