

## **Unsportsmanlike conduct? The NFL's response to the kneeling controversy**

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The National Football League (NFL) has faced some arduous challenges in the last few years. “Cord cutters” are cancelling cable television in favor of streaming options such as Netflix and Hulu. The NFL has received negative coverage of its handling of the Chronic Traumatic Encephalopathy (CTE) issue. Some have criticized the NFL's response to off-the-field criminal actions by players. Additionally, a recent controversy over kneeling during the national anthem has some fans so mad they were burning their season tickets. This case study provides a concise background of the controversy, the NFL's financial condition, and a comparison of how the National Basketball Association (NBA) is handling the same issue.

Keywords: Business ethics, Business law, Public relations, Employee rights, National Football League, Kneeling Controversy



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## BACKGROUND

The modern National Football League (NFL) kneeling controversy started in 2016 when San Francisco 49ers quarterback Colin Kaepernick refused to stand while the national anthem played before each game. While he initially would sit inconspicuously on the bench, after a discussion with former NFL player and former Navy Seal Nate Boyer, they came to the compromise that Kaepernick would take a knee alongside his teammates. Nate Boyer said this was a middle ground that was more respectful than sitting on the bench (Brinson, 2016). Kaepernick compared the posture of kneeling to “a flag flown at half-mast during a tragedy” (Reid, 2017). The reasons Kaepernick gave for not standing cover police brutality against minorities and overall minority oppression in America. “I am not going to stand up to show pride in a flag for a country that oppresses black people,” Kaepernick explained (Reid, 2017).

The NFL rules at the time stated, “The national anthem must be played prior to every NFL game, and all players must be on the sideline for the national anthem... players on the field and bench area should stand at attention, face the flag, hold helmets in their left hand, and refrain from talking... It should be pointed out to players and coaches that we continue to be judged by the public in this area of respect for the flag and our country. Failure to be on the field by the start of the national anthem may result in discipline, such as fines, suspensions, and/or the forfeiture of draft choices(s) for violations of the above, including first offenses” (Belton, 2017).

Initially, there seemed to be institutional support for Kaepernick’s decision. The 49ers “recognized the right of an individual to choose [not to participate]” (Maiocco, 2016). The coach said, “It’s not my right to tell him not to do something” (Wyche, 2016). Even the NFL said, “Players are encouraged but not required to stand during the playing of the national anthem” (Wyche, 2016).

By the beginning of the 2017 season, however, the controversy had grown. Even President Trump was weighing in against the kneeling players. Largely because of Trump’s actions, week three of the 2017 season had more players protesting than ever. On May 23, 2018, the NFL owners, without consulting the players union, passed a new policy which states, “A club will be fined by the League if its personnel are on the field and do not stand and show respect for the flag and the anthem” (Wilson, 2018). This new policy, designed to be a compromise, pleased President Trump and some veterans’ groups while angering some players and activist groups.

Most surveys indicated a majority of Americans do not support NFL players kneeling during the anthem, but a majority also said players should not be punished for doing so (Breech, 2016). There was a significant racial divide in these numbers, however. While 74% of black adults approved of the protests, only 30% of white adults approved (DiNitto, 2016). This corresponded to the issue of police misconduct. While 70% of whites approved of how “police in the U.S. are doing their job,” only 24% of black Americans approved (DiNitto, 2016).

## NFL'S FINANCIAL CONDITION

The exhibits provided in the appendix represent various statistics pertinent to this case. Exhibit 1 (Appendix) shows NFL estimated revenues between 2001 and 2017. The trend line portrays an average increase in revenues of 8% per year for the roughly 15-year period. Exhibit 2 (Appendix) shows the decline in television viewership between the years 2011 and 2017. The figures, provided in weekly hours, are broken down by age group, which readily shows the most drastic declines in television viewership being attributable to the youngest generations (a highly sought-after marketing demographic). The average decrease in viewership is 48% for people between the ages of 12 and 34. Finally, Exhibit 3 (Appendix) shows the assorted reasons given for watching fewer professional sports overall in 2016. As you study these exhibits consider their connections and reasons for any divergences.

## THE NBA'S APPROACH

The National Basketball Association (NBA), while having a higher percentage of black players than the NFL, has largely avoided the kneeling controversy despite having essentially the same national anthem policy as the NFL did in 2017. Some have concluded that the reason the NBA hasn't faced the backlash from players that the NFL has is that Commissioner Adam Silver has created an atmosphere of inclusion and understanding with the players union. They have collaborated on game-related issues such as less demanding schedules and off-court issues such as gun violence and police brutality.

The day the NFL released their new no kneeling policy, NBA Commissioner Adam Silver said, "Do not stick to sports. Embrace it, celebrate it, and let's use it to build bridges and bring people together" (Boone, 2018). He also commented, "There's never been a time when sports has been more impactful on society than it is today" (Boone, 2018).

When comparing the NFL to the NBA it is important to note the differences in demographics among the fan bases. The NBA is the only major professional sports league in the U.S. with more black viewers than white. NFL fans are 13% more likely to be republican than democrat (Johnson, 2017). NBA Coach Steve Kerr used these demographic differences to criticize the new NFL policy calling it, "idiotic." "They're just playing to their fan base. Basically just trying to use the anthem as fake patriotism, nationalism, scaring people," Kerr said (Bontemps, 2018).

## DISCUSSION QUESTIONS

1. Does the NFL have any social responsibilities beyond maximizing profits? Economist Milton Friedman said, "There is only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game." Do you agree? If not, what are some other examples of when businesses should forego profit in order to do the right thing?
2. The NFL certainly found itself in a difficult position. There was no action that would have pleased everyone. If you were present in the owners' meeting that resulted in the new policy, how would you have advised the owners? What other options were available?

3. The kneeling controversy is certainly not the only issue facing the NFL. Perform a SWOT analysis on the NFL and conclude with ways they can exploit their strengths and opportunities while minimizing their weaknesses and threats.
4. Based on the existing trends of revenues, viewership, and viewer age demographics, how do you predict the NFL's position ten years from now will compare to its current position? Based on your answer to that question, what would you advise the NFL does now to preempt future issues?

## TEACHING NOTES

### Legal and Enforcement Issues

NFL players are represented by a union, the NFL Players Association. When employees are represented by a union, the employer cannot change the terms of employment without negotiating in good faith with the union, which the players union is alleging the NFL failed to do. Furthermore, the case could be made that a player who now comes out of the locker room to kneel during the anthem is not protesting police brutality so much as they are protesting the workplace rule that they have to stay in the locker room. Protesting a workplace rule is protected under federal labor law.

As for the First Amendment free speech issue, the NFL's policy could be argued either way. Kneeling, while not verbal, is a form of expressive speech that receives the same constitutional protections as other forms of speech. However, the general rule is that you only have free speech protections against the government, and not a private employer. Nevertheless, many people, including some NFL owners, say that the kneeling ban was "initiated" by the U.S. President. Trump has certainly not been quiet on the issue which he says "is about respect for our Country. . . NFL must respect this!" And, "Sports fans should never condone players that do not stand proud for their national anthem." And, "Wouldn't you love to see one of these NFL owners, when somebody disrespects our flag to say, 'Get that son of a bitch off the field right now. He's fired. He's fired!'" Trump, who possesses a great deal of power over U.S. immigration enforcement, also said that if a player won't stand for the anthem, "Maybe you shouldn't be in the country." He even threatened the NFL with, "Changing tax law!" if the kneeling continued. And after the new policy was implemented, President Trump and Vice President Pence both expressed their approval. Because the head of the U.S. government arguably played a role in the NFL's decision, it could be argued that the result is a quasi-government action and first amendment protections therefore apply.

There are additional arguments for how the NFL could be considered more of a state actor than a private employer on this issue. The national anthem is often part of a larger patriotic pageantry that the U.S. Department of Defense pays the NFL to promote. Additionally, NFL stadiums are often heavily financed by public, taxpayer money. While this is a theory that has never been judicially determined, it is unlikely that it would be enough to classify the NFL as a state actor and therefore liable for free speech violations. After all, many private employers receive taxpayer benefits such as grants, tax breaks, police protection, road construction, etc.

The NFL's new policy states in relevant part that, "A club will be fined by the League if its personnel are on the field and do not stand and show respect for the flag and the anthem" (Wilson, 2018). In order to enforce this rule, you have to define exactly what it means to not show respect. What about a player who wears a hat during the anthem? Whispers to his

teammate? Raises his fist? It could be argued that it shows respect for the flag to support others who want to protest it. What if one player kneels intending to show respect for fallen soldiers and another player kneels with the intent to raise awareness of police brutality? Does the NFL now have the task of delving into the psyche of players to determine the motivations behind their actions during the anthem?

Additional Question:

- Are there any potential legal issues the NFL may face because of their new policy? What about enforcement issues?

### **Shareholder v. Stakeholder Ethics**

This case presents an excellent opportunity to discuss the difference between the shareholder view and the stakeholder view. The shareholder view essentially says that the only duty corporations have is to their shareholders. Sure, sometimes policies like higher employee wages and benefits, community outreach, and environmentally conscious programs will be implemented by a corporation under the shareholder view. But, if they are it is not because the intent was to help employees, the community, or the environment. Rather, the sole purpose was to maximize shareholder wealth and these policies in that particular instance happen to reach that end.

The stakeholder view says that corporations should consider stakeholders other than just the shareholders. Other stakeholders could be suppliers, members of the community, the overall environment, employees, former employees, etc. Some students who take the stakeholder view might say that, even if it will hurt their bottom line, the NFL should promote awareness of racial injustice because that is what is the best for society.

Additional Questions:

- If the goal of Kaepernick was to raise awareness of minority treatment in America, do you think his tactic of refusing to stand for the national anthem had a net positive or negative effect?
- Analyze the different ways NBA Commissioner Adam Silver and NFL Commissioner Roger Goodell have addressed the issue. What are the potential benefits and downsides to each approach?
- Despite most experts saying Kaepernick's ability on the field would easily earn him a spot as a backup quarterback on numerous teams, he was unsigned for the 2017/2018 season and is currently not signed for the 2018/2019 season. If you were an NFL team owner in need of a backup quarterback, would you want to hire Kaepernick? Would the potential distraction from winning games due to the press and upset fans be worth it? Furthermore, Kaepernick will turn 31 in 2018 which means he doesn't have many years left to play. The average age of a starting quarterback in the NFL is 29. Is there an issue that you feel so strongly about that you would be willing to lose not only your job, but also your career?
- In an increasingly polarized climate, it is harder for large corporations to please everyone. From gun control to same-sex marriage, and from immigration to climate change, corporations are increasingly taking positions on controversial political issues. Do you think the polarized climate has caused corporations to reluctantly take political positions or do you think corporations taking political positions has helped create the polarized political climate? Do corporate positions on political issues affect your consumer decisions?

- If you feel people should not be allowed to protest in any way during the national anthem, would your answer change if a player was protesting in favor of an issue you strongly agree with? Conversely, if you support player protests during the anthem, would your position change if the players were protesting in favor of something you strongly disagree with?

### Other Options

As students provide alternative policies that the NFL could have considered, be sure that they are considering not just the strengths of their proposed policy, but also the weaknesses. As is often the case in business, there is no perfect solution that will make everyone happy. Your students' ability to think critically about their own proposals is a valuable skill. Make sure they are considering these options not as what they personally desire, but rather as an NFL team owner that has a significant vested interest in the financial success of the NFL. Also, when faced with a problem, people often have the mindset that "We must do something." Remind the class that doing nothing is always an option to consider. Sometimes in business, "The cure is worse than the disease," and doing nothing is the best course of action.

### Miscellaneous

The national anthem (Star-Spangled Banner) was written by Francis Scott Key during the War of 1812. In the seldom-sung third verse it says, "No refuge could save the hireling and slave" (Key, 1812). Also, Francis Scott Key was a slave owner. Like many historical figures, Key was complex. He was an attorney who represented slaveholders in court trying to recapture their escaped slaves. But he also provided legal services to slaves seeking freedom.

While people like to picture the average, stereotypical football fan, the NFL fan base is very diverse. There are teams in liberal areas like San Francisco and conservative areas like Minneapolis. Women comprise 45 percent of the fan base (Hampton, 2017). 37% of NFL fans are age 55 and above; another 34% are between the ages of 35 and 54 (Gaille, 2015).

Two possible explanations for how NFL revenues increased while viewership decreased are the increase of commercials per game and the timing of the television contracts. An NFL broadcast contains 27% commercials and on-screen promotions while only 8% is actual gameplay (Stromberg, 2016). The current NFL television contracts were negotiated in 2011 when the four problems listed in the abstract (CTE, cord-cutters, off-field player activity, and kneeling) were either non-existent or less detrimental. The nine-year television contract extensions with Fox, NBC, and CBS announced in 2011 were extensions of the original contract that was set to expire in 2013. The new deals represent a roughly 60% increase for the NFL and extends through the 2022 season (Badenhausen, 2011).

### SUGGESTED ANSWERS TO DISCUSSION QUESTIONS

1. Does the NFL have any social responsibilities beyond maximizing profits? Economist Milton Friedman said, "There is only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game." Do you agree? If not, what are some other examples of when businesses should forego profit in order to do the right thing?

- Some students will agree that the NFL does have additional social responsibilities beyond maximizing profits, including such things as environment, community, workplace, and marketplace issues.
  - Some students may disagree with Mr. Friedman's statement made more than 50 years ago. Today this statement appears dated, lacking insight to today's more complex business world. Today's savvy consumers care about the impact business makes, and they want that impact to be a net positive one. Have your students brainstorm some examples from their experiences in the workplace or as consumers.
2. The NFL certainly found itself in a difficult position. There was no action that would have pleased everyone. If you were present in the owners' meeting that resulted in the new policy, how would you have advised the owners? What other options were available?
- Have your students brainstorm an extensive list of options first, and then work to rank them from great ideas to terrible ones. During the brainstorming session encourage all ideas, no matter how silly or offbeat they may sound at first. Only with an extensive list to choose from will the best ideas rise to the top.
3. The kneeling controversy is certainly not the only issue facing the NFL. Perform a SWOT analysis on the NFL and conclude with ways they can exploit their strengths and opportunities while minimizing their weaknesses and threats.
- Remind your students that both strengths and weaknesses come from within the organization while opportunities and threats come from outside the organization.
  - Potential Strengths: Well established and well known. Strong and apparently continuing revenue stream.
  - Potential Weaknesses: Attitude of arrogance. Slow to adjust to changes (i.e. Blockbuster).
  - Potential Opportunities: Expanding into more online offerings/venues. Catering to an increasing female audience.
  - Potential Threats: Other professional sports gaining traction on viewership/attendance. Declining television viewership overall.
4. Based on the existing trends of revenues, viewership, and viewer age demographics, how do you predict the NFL's position ten years from now will compare to its current position? Based on your answer to that question, what would you advise the NFL does now to preempt future issues?
- The revenues trendline is very positive and has every indication of continuing at its average rate of increasing 8% per year. Television viewership is declining across all age group demographics, but particularly among the youngest viewers. However, most current NFL fans are in the older age groups where this is less of a concern.
  - If the NFL continues to acquire lucrative contracts, the revenues trend will surely continue. If they continue to develop offerings outside traditional television, they are likely to continue to dominate the professional sports culture in the US.

- Another option the current owners have is to sell. Selling while on top and all statistics are positive can yield maximum profit in such a transaction. Finding a viable buyer or buyers group, however, is another story.

### TEACHING ACTIVITIES

- Split the class into thirds. Have two of the groups roleplay the theoretical owners' meeting from Discussion Question 2. Have each of these groups bring their best plan to the table. Have the remaining third of the class listen carefully to all information presented and decide which plan they prefer.
- Conduct a Think-Pair-Share activity with Discussion Question 3. Individually have your students perform the NFL's SWOT analysis, writing down as many ideas as they can think of. Then have the students discuss their answers so far with another student or two. Have each small group of two or three students expand their lists. Finally, expand to a full class discussion.





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**APPENDIX**

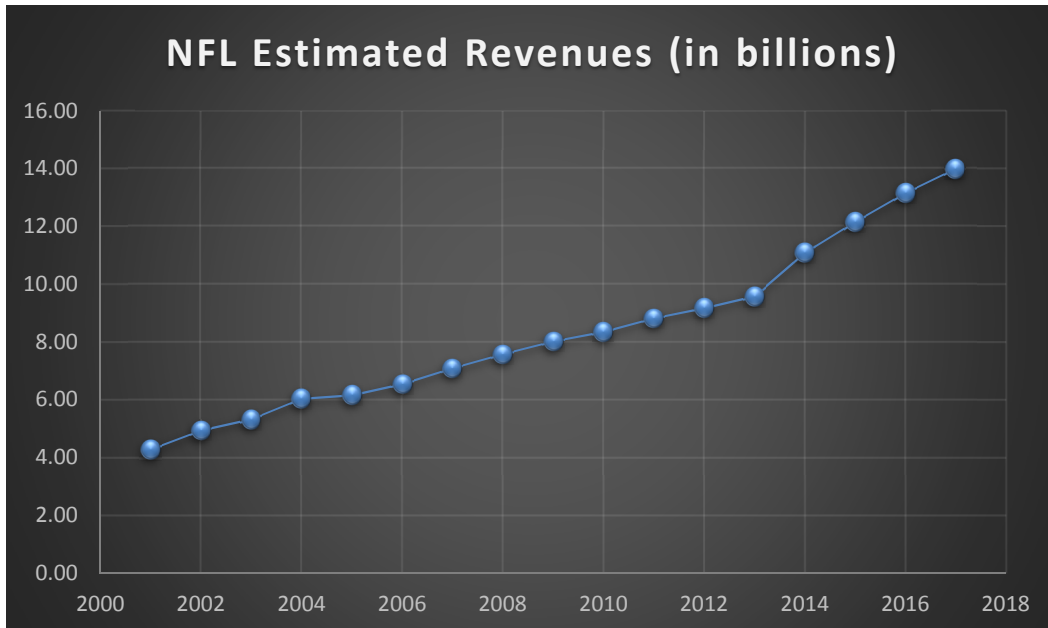


Exhibit 1: NFL Estimated Revenues 2001-2017 (Novy-Williams, 2017; Statista, 2018)

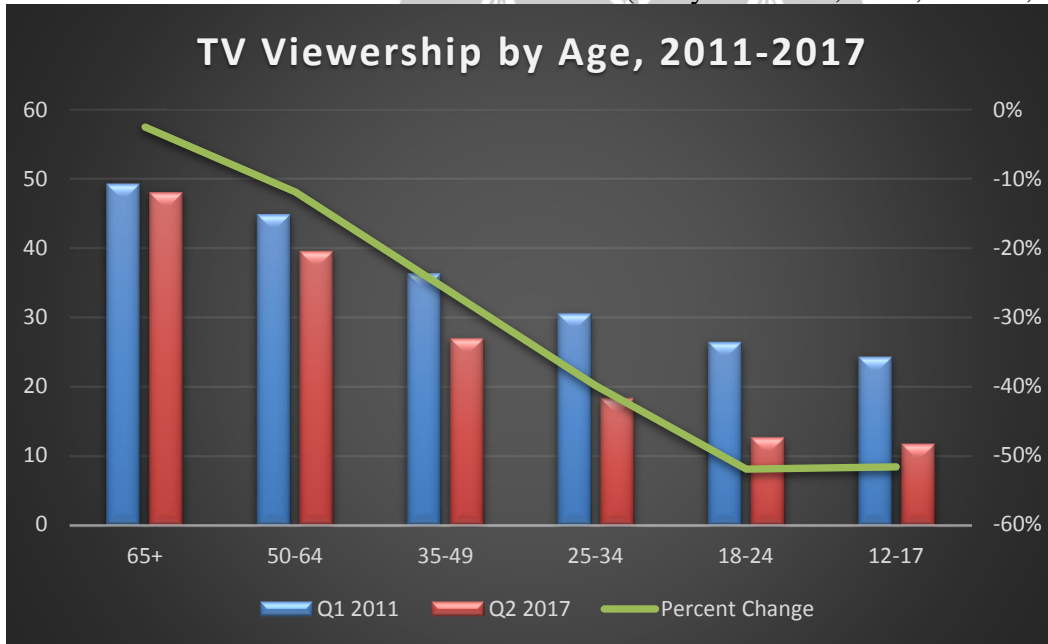


Exhibit 2: Television Viewership by Age Group (Weekly Hours), 2011-2017 (Lupis, 2017)

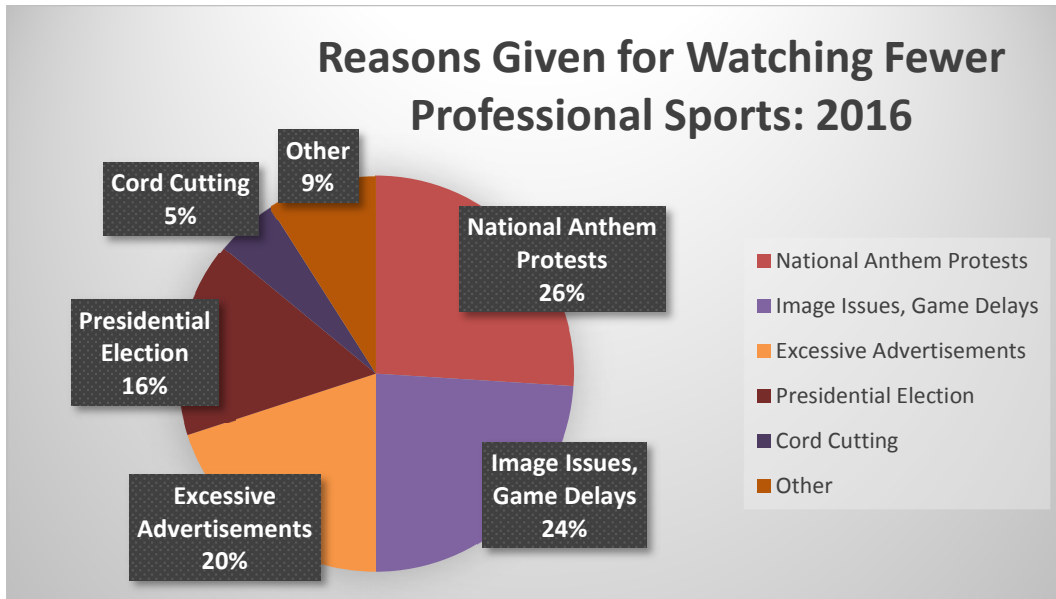


Exhibit 3: Reasons Given for Watching Fewer Professional Sports, 2016 (Rovell, 2017)

