

## I. JUSTIFICATION

### a. Introduction

In March 2016, USA Ultimate (USAU) informed Brigham Young CHI Ultimate (BYU) that BYU would not be eligible to compete for a bid in the national tournament due to BYU's stated position of not participating in athletic events on Sundays. USAU informed BYU that due to current timing and logistical issues, no change would be made to the policy that disallows any team from participating if that team knows in advance that they will not be able to fully participate in every game in a particular tournament. However, USAU also informed BYU that BYU would be able to submit a proposal, along with a justification and supporting documents for how USAU might accommodate a no-Sunday play request in the future. BYU was informed that such changes may be considered and/or implemented at a future date. This document serves as justification for that proposition, and includes proposals for how USAU could accommodate BYU without unreasonably burdening other teams, players, participants, and stakeholders. Additionally, it provides a justification for why USAU should do so as soon as possible, as it is in the best interest of BYU, USAU, and the broader Ultimate community.

### b. Governing Documents

BYU, as a matter of written policy due to a sincerely held religious belief, does not participate in athletic competitions on Sunday. That has been the case since the inception of BYU's CHI Ultimate, and will continue to be the policy going forward. USAU, of which BYU CHI is a member, is governed by the USA Ultimate Bylaws (2014).<sup>1</sup> Under Article III, which is the Purpose of USAU, Subsection 5 states that "USA Ultimate shall... Protect the **right of opportunity**, without discrimination on the basis of race, color, **religion**, age, gender, sexual orientation, national origin or disability of an athlete, coach, manager, administrator or official **to participate in Ultimate** (*emphasis added*).<sup>2</sup>

### c. BYU's Position

It is the position of BYU that the preemptory disallowance of BYU to participate in the National Tournament represents a failure to uphold this right of opportunity to participate a USAU-sanctioned ultimate event. Specifically, USAU's preemptory refusal to allow BYU to participate represents discrimination on the basis of religion because of BYU's religiously-motivated policy of not participating in athletic events on Sunday.

By preemptively disallowing BYU the possibility of being able to qualify for and participate in the national tournament, USAU has materially denied BYU a right of opportunity. Rather than inviting BYU and allowing the team to make the decision to forfeit Sunday matches (a result that

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<sup>1</sup> <http://www.usultimate.org/about/usultimate/governance/bylaws.aspx>

<sup>2</sup> *Ibid.*

BYU concedes would occur should a Sunday matchup result from the tournament scheduling), USAU has taken upon itself the position of arbiter and enforcer of a policy that is BYU's to enforce. Put another way, it is incumbent upon USAU to provide the opportunity to BYU to qualify and play if—through their play on the field—BYU has earned such an opportunity, just as it is incumbent upon BYU to choose if they will accept an earned invitation to the series.

Allowing BYU to earn an invitation to the national tournament, and to chose to play in all non-Sunday games and—where necessary— to forfeit any Sunday matches, USA Ultimate would be taking steps in protecting BYU's right of opportunity. However, for reasons of equitability discussed below, it would still represent a failure of USAU to protect BYU's right of participation free from religious discrimination

#### **d. Equity vs. Equality**

USAU's website contains a FAQ discussion on the distinctions between equality and equity. The relevant portion of that definition reads:

Equality means offering the exact same thing (programs, resources, etc.) to different groups of people while assuming the outcomes will be the same and/or provide the same opportunities for everyone, regardless of the varying situations and challenges faced by different groups. Equity refers to the attempts that are being made to ensure the same outcomes and equal access to opportunities for a variety of groups by taking into account their various barriers and making an effort to even out those challenges with programs, resources, etc., that can help level the playing field.<sup>3</sup>

In this context, USAU is discussing equity as it applies to men's and women's ultimate. Specifically, USAU admirably recognizes that there are specific challenges that women face that men do not, and resource allocation should reflect the disparities that currently exist between men and women in Ultimate. Some of the programs designed to foster the purposes of USAU for women do not have a direct corollary for men--the sometimes-differing treatment reflects principles of equity. BYU applauds these efforts wholeheartedly.

The FAQs further state that while the equity vs. equality discussion is currently focused on gender disparities,

**There is a good chance that this policy could eventually serve as the foundation for a more effective, thorough and inclusive policy that addresses equity in general,** not just as it relates to gender in ultimate, but also race, **religion**, ethnicity, sexual orientation, disability, income, etc. It could also evolve to focus on programs and services over which USA Ultimate has institutional control, and not independent third parties (*emphasis added*).

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<sup>3</sup> <http://www.usultimate.org/equity/>

In this context, BYU recognizes that a request for no-Sunday play is unique. Indeed, some have made the argument that it would be unfair to accommodate BYU's request, as it is the only school at this time requesting such an accommodation. USAU's current policy of preemptively disallowing any team which does not play on all days of a tournament from being invited to qualify for the national tournament appears to be based on principles of equality, in that such a rule applies to all teams equally. However, under principles of equity, which USAU espouses and is seeking to expand, removing the policy of preemptively disallowing teams who—for religious reasons—might choose to forfeit certain games is equitable to all parties. Additionally, working to accommodate the request for no-Sunday play by creating a tournament schedule that allows BYU to both be invited and advance in the tournament can be equitable to all parties, if executed correctly.

Indeed, accommodating Sunday play requests is the standard in intercollegiate athletics, most notably (but not exclusively) as demonstrated by the National Collegiate Athletic Association (NCAA). The NCAA has carefully considered the issue of accommodating institutions with written no-Sunday play policies for years across a wide variety of sports at every level of competition.<sup>4</sup> The end result is a process whereby such policies are accommodated at that sport's championship level, and usually accommodated at other levels unless that sports' governing committee were to successfully petition for a waiver if such accommodation would unduly disrupt the orderly competition of a championship<sup>5</sup>. In other words, rather than require the school to prove that accommodating such a request would not create a disruption, the burden was on the sport's governing body to prove that there would be a disruption. In recent history, accommodations have been made for BYU Rugby as USA Rugby was able to move championship play off of Sundays. The NCAA, just this spring, was able to make accommodations for BYU Women's golf during its three-day event. BYU men's baseball also advanced to the post season where preparations were made for any potential Sunday tournaments.<sup>6</sup> The following proposal illustrates various ways in which USAU could accommodate BYU's request to be allowed to avoid Sunday play.

## **II. Competition Proposals**

During discussions with USAU, college director and competition committee member Tom Manewitz noted a variety of characteristics any successful proposals must exhibit. Some of the characteristics this proposal was asked to consider include:

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<sup>4</sup> See generally "*The NCAA and Religion: Insights About Non-State Governance From Sunday Play and End Zone Celebrations*" by Kevin J. Worthen, available at <http://epubs.utah.edu/index.php/ulr/article/viewFile/349/287>

<sup>5</sup> Ibid.

<sup>6</sup> <http://www.deseretnews.com/article/865656920/Never-on-Sunday-BYU-wont-compete-on-the-Sabbath-Day-regardless-of-the-consequences.html>

- a. Avoiding undue financial burdens on other member institutions or individual athletes
- b. Avoiding an undue burden on recruiting quality volunteers to administer an event
- c. Avoiding a solution that nullified the ESPN contract that USA Ultimate manages with the National Championship tournament
- d. Compromising the options for available field sites to host conference, regional, and national events
- e. Providing ample opportunity for teams and individual athletes to plan for event logistics
- f. Providing a solution that fits into USAU's 'mechanical system' and that has a 'process that is the same and not an inhibitor' to the post-season collegiate series

Further, a failure to provide a solution executable across all regions, a solution that compromised the safety guidelines of the USAU tournament regulations, or a solution that introduced too much competitive variance to a tournament format would disqualify a solution.

While some of the proposed solutions flex into some of the above areas, the discussion of 'undue burden' is one that we feel should be opened up to the ultimate community during this proposal time. Feedback from other Big Sky, Northwest, and national collegiate teams is invited and should weigh into USAU's decision. However, it should be noted that the existing tournament formats *also* flex into many of the above mentioned categories, and that should also weigh into their decision. To treat the current formats as a solution free from economic, academic, and other burdens would be misinformed:

- Tournament formats, both during the regular season for bid earning and during post season play, have an element of competitive variance. Examples during the regular season include Texas and Texas A&M's single-game Centex, which would add a competitive advantage to a team that is stronger, but top-heavy. Without the grind of 6-8 games on a weekend, it unequally favors a team that could influence the bid picture.
- In the series, examples of 5<sup>th</sup> round pool play games in which teams that had secured the pool rested starters against a team fighting to stay in contention (UNC vs Oregon Men 2015, Georgia vs Texas A&M Men 2016). Cal Poly SLO and TAMU did not face the same George team in that pool, thus adding a variance from the mean of the standard of competition.
- Current academic burden includes the scheduling of the series during many schools' finals period, including those administered at BYU. USA Ultimate has long asked conference coordinators to consider academic conflicts when possible, but notes that it is difficult to adjust around everyone's schedules. BYU has, for many years, had the conference championships held on a scheduled finals day. Petitions to the conference coordinator have not resulted in the selection of a different weekend. As such, USAU recognizes that the series can interfere and will continue to interfere with some collegiate coursework and can only work to minimize those conflicts.

Many of the solutions, given the considerations above, focus on two key components: reducing the number of games played at the conference and regional level, and reducing the number of teams that advance from conference championships to regional championships. USA Ultimate did not specify that they considered a minimum number of games in a weekend to be an important factor in their post-season events. Also, given community feedback received about the constraints on the academic schedules and the financial burdens on college athletes, it would be in the best interest of a majority of the community to reduce the number of teams advancing to the next round that do not have a meaningful chance of winning or advancing to the national tournament.

For all solutions, we propose a September 1<sup>st</sup> deadline for requesting an accommodation for postseason series competition. Secondly, we propose that accommodation requests be limited to written policies for school intercollegiate, extramural, or club sports programs as they relate to protect rights of opportunity, including religion. Conflicts for academics, other collegiate extracurricular activities, etc should continue to be administered in alignment with USAU's current college guidelines.

In all scenarios, BYU would be glad to discuss additional costs for tournament directors being assessed to BYU if it can be shown that an accommodation comes with an increased cost for the event organizer. Lighted field space rental, an additional day of field rental, etc. could all be considered.

#### **a. Conference Championship**

##### *Preferred Solution: Bracket Play*

With the regular season having just concluded, we propose to avoid pool play at the conference level and instead move straight to elimination play. Back-door brackets could be introduced at the quarterfinal round, or where appropriate based on the size of the conference, so that teams with a tougher first round draw still have a chance to advance. Play could be concluded in 4-5 rounds, making it possible to conclude in 1 day, or with minimal Friday night games. Because the conference level typically involves less travel, the burden of Friday night games would be minimal at this stage in the series.

##### *Strengths: Bracket Play*

- Simple to administer
- Able to rely heavily on format manual already provided by USA Ultimate in administering brackets
- Reduced number of games so as to avoid increased financial burden on teams
- Win or Go Home

##### *Weaknesses: Bracket Play*

- Some teams might only play 1-2 games before being eliminated
- Lack of connectivity during the regular season makes for potentially difficult first round match ups

- Bracket Formats have a lower probability of advancing the most qualified team to the next round than pool play

*Other Solutions: Two Weekends, Friday-Saturday, Auto Advance*

Conference championship play could be split over two consecutive Saturdays. This allows for current formats to be used, but requires additional travel. A Friday-Saturday tournament would also allow for current formats, but might add additional academic burdens. A survey of Big Sky and other NW schools, to assess the academic impact of a Friday-Saturday tournament, should be conducted before considering this option. Should USA Ultimate feel that an accommodation has become necessary, but it feels any of the above solutions are difficult, it could consider moving BYU to a different conference championship (determined in September of the preceding year) or even consider advancing BYU directly to the regional level, as has been done with the Triple Crown Tour (TCT) in the club series for teams that qualify. We would prefer to not engage in either of these options, but would consider them should it allow for competing at the next levels.

**b. Regional Championships**

*Preferred Solutions: Reduced Number of Teams*

In both preferred solutions below, a reduced number of teams at the regional event allows for a more likely accommodation. Reducing the number of teams at the regional level (down to 4-8 teams) has many benefits:

- Added importance to the conference championships
- Reduced costs and academic disruptions to more teams who fail to qualify for the regional championships (perhaps mitigating additional costs for conference championships)
- Reduced costs for tournament directors—fewer fields, less field food, etc
- Ability to highlight/broadcast more games at the regional level
- Additional flexibility in formats/options that accommodate no-Sunday play

A mechanical system could be implemented for the number of teams at the regional championships, based on the number of bids earned by teams in the region for the national championship tournament (number of bids earned, plus three teams, or four teams for 1-2 bids, six teams for 3-4 bids, etc).

*Preferred Solution 1: Straight Bracket Play*

With the goal of advancing the best teams to nationals, and in fairness to all competing teams, qualifying regional teams will engage in bracket play only at the regional level. Seeding will be determined similar to how seeding is determined for nationals, with an emphasis on regular season results, and some consideration for finishing place at the conference championship level. Games could be held in one day, or spread out across Friday and Saturday nights for increased

opportunities for streaming, fans, etc. Games could be played in a stadium to again highlight the sport since tournament directors do not have to worry about administering dozens of games over the course of a weekend. Observers, already in short supply, would be able to be allocated to these important games and cover most, if not all of the games at the regional level.

#### *Preferred Solution 2: Round Robin*

Similar to the tournament format of the Northwest Challenge, West Coast Cup, and other events, a round robin of all attending teams (maximum eight teams) could be administered. This allows every team to play every team, which would provide minimal competitive variance. Final pool standings after the round robin would determine placement and qualification for the national tournament, depending on the number of bids. Every game matters in this format. Similar to the Northwest Challenge, the burden of Friday games and travel would fall heaviest on BYU. Host and other local teams could each play one game against BYU Friday, giving BYU three games Friday. BYU could then conclude its play Saturday (four games) while the remaining teams spread their games out over Saturday and Sunday. Round robin has the higher probability of advancing the most qualified teams to the next round of competition when compared to straight bracket play.

#### *Other Solutions: Friday-Saturday, Fluid Regional Assignment*

Similar to the conference level, a Friday-Saturday tournament, with existing tournament formats, could be hosted. BYU would also consider moving to a region that would allow an accommodation to be made, should the Northwest decide not to make an accommodation. This would be decided in September, and the region would need to make that accommodation, regardless of if BYU is to earn a bid in that regular season or not. A mechanism would need to be designed to determine fairness of assignment should multiple regions wish to accommodate BYU (random draw, geographic proximity, etc). Regional reassignment would also affect conference reassignment.

### **c. National Championship Event**

#### *Preferred Solution: (3-3-0-2 games per day)*

Adding a day to an event the scale of nationals is prohibitive in cost at this time for USA Ultimate and attending teams. Therefore, a solution should be found in the framework of a four day event. Playing three pool play games Friday, one pool play game, one pre-quarter game (if necessary) and one quarter final game Saturday, and one semifinal and one final Monday would allow for all 7-8 games to be played across three days, with Sunday as a day off. Teams still play a maximum of 3 games per day, allowing for quality competition. The competition committee could also move to flex the final pool play game to Friday (4-3-0-1), thus moving the semifinals to Saturday night in a more prime-time environment for ESPN viewership. Sunday could be used for consolation games (perhaps even adding games to better determine the T5, T9, T13, and T17

placement games). Or, to highlight championship play for both gender divisions in a year where there were not teams in both divisions requesting a no-Sunday play clause, women's semifinals and finals could be played Sunday, with men's semifinals and finals on Monday (or vice versa, depending on which division has a no-Sunday team).

*Other Solutions: 24 team nationals*

Eight pools of three teams. Two pool play games. Pool winners advance to placement game. Runners-up advance to an Elimination game. Pool losers move to consolation. Winner of placement games go to quarters. Losers of those games will play winners of elimination games for a prequarters game. Advance through bracket to final. Removing one game from nationals (6-7 games instead of 7-8) would make it easier to use the Friday-Saturday-Monday format without overloading too many games on to one day. Additional teams make nationals, which adds additional travel costs and admin costs to the event. One-third of the teams are also eliminated from championship contention after just 2 games.

*Other Solutions: Allow a season-ending Forfeit*

Should BYU advance past pre-quarters, allow the team to forfeit its quarterfinal game under the current National Tournament format. This would be a temporary solution until a more permanent solution can be worked out with ESPN contracts, field locations, etc. One team would receive a bye game into semifinals, similar to how teams can receive a 'bye' into bracket play with the current pool play format if a team has already secured their pool win.

### **III. CONCLUSION**

#### **a. Request for implementation**

First and foremost, BYU requests a series format that allows BYU to advance through conference and regional championships and earn a bid to the National Championships. BYU also requests USAU drop its policy of preemptively disallowing teams from being playing any portion of the national tournament if that team might choose to forfeit a game for religious reasons. If a team has earned the right to be invited to a post-season tournament, they have also earned the right to participate, up until they choose not to participate.

Second, BYU requests that the above-mentioned proposal be implemented as soon as feasible. While we understand the logistical hurdles and are cognizant of the effort required to accommodate such a request, we believe that doing so straightaway is best not only for BYU, but for the sport of Ultimate moving forward.

#### **b. Request for explanation**

While we hope to see these steps implemented as soon as feasible, we would respectfully request an explanation from USAU if they are not implemented as part of the 2017 changes to College



Guidelines. Such an explanation should provide whether such a decision was considered, the facts under consideration, the points and counterpoints for each side, the basis for the final decision, and any plans to reconsider BYU's proposal at a future specified date.

As mentioned above, NCAA currently accommodates such requests at all levels of competition across a wide array of sports. While not every intercollegiate sport is governed by NCAA, it does make sense to think of sports falling outside of NCAA governance as still being a part of the intercollegiate sports universe. In that sense, given other NGB's accommodations and the NCAA's outsized role in governing intercollegiate athletics, it makes sense to view BYU's request for no-Sunday play accommodation as the general rule within intercollegiate athletics. Conversely, it is USAU's lack of accommodating such a request as the exception to the general rule in intercollegiate athletics. With that view in mind, should USAU choose to not implement any of BYU's proposals, it is our belief that USAU has some burden to show why such an accommodation was unreasonable or unworkable. That justification should speak to the large size and scope of the programs USA Ultimate currently offers and future expansion of programs that it has announced. It should also speak to the context of the great strides USA Ultimate has made with the protected right of opportunity of other groups of players mentioned in Article III of the bylaws while deciding to not take steps towards the right of opportunity for BYU's religious-based no-Sunday play rule.

### **c. Request for next steps**

Additionally, if BYU's proposal is not implemented at this time, we would respectfully request that USAU provide BYU a guide or path forward toward resolution on this issue. That might include an invitation to be part of a working group, membership on committees of oversight, or an invitation to present BYU's case at a future specified date. The failure to honor BYU's request for accommodation, coupled with the lack of any explanation and/or a reasonable path forward for BYU will hamper efforts to find a mutually agreeable solution that will benefit all sides. Again, it is BYU's position that working to find a mutually agreeable solution at this time will benefit BYU, USAU, and the sport of Ultimate, and it is our sincere hope that we can work to achieve this goal.