



United States Tennis Association
70 West Red Oak Lane
White Plains, NY 10604
914 696 7000
usta.com

VIA ELECTRONIC MAIL

February 14, 2018

The Honorable Jerry Moran
Chairman
The Subcommittee on Consumer Protection,
Product Safety, Insurance, and Data Security
Dirksen Senate Office Building
Room 521
Washington, D.C. 20510
c/o George.Redden@moran.senate.gov

The Honorable Richard Blumenthal
Ranking Member
The Subcommittee on Consumer Protection,
Product Safety, Insurance, and Data Security
Hart Senate Office Building
Room 706
Washington, DC. 20510
c/o Anna.Yu@blumenthal.senate.gov

RE: Inquiry dated February 2, 2018

Dear Senator Moran and Senator Blumenthal,

The United States Tennis Association Incorporated (USTA) is providing the following response to your letter dated February 2, 2018.¹ In addition, in order to provide greater clarity regarding our responses, we include details regarding our corporate structure and our athlete safety program.

As you know, the USTA is the National Governing Body (NGB) for the sport of tennis in the United States. Within our corporate umbrella are the following corporations:

- USTA National Tennis Center Incorporated (NTC). The NTC is headquartered at the USTA Billie Jean King National Tennis Center in Flushing, New York, which is the home of the US Open Tennis

¹ Our responses take into account the clarifications provided by Max Cobb (chair of the National Governing Body Council, an independent council under the United States Olympic Committee comprised of the chief executive and an appointee of each of the National Governing Bodies) by letter dated February 6, 2018, and subsequently confirmed by the email from Mr. Conor McGrath (Legislative Assistant to Senator Jerry Moran) dated February 7, 2018, and including the additional question from Anna Yu (Legislative assistant to Senator Richard Blumenthal) noted below as 4a.

Championships as well as a year-round tennis facility providing tennis programs to the community at large. The USTA is the sole member of the NTC.

- USTA Player Development Incorporated (PD). PD is headquartered at the new USTA National Campus in Orlando, Florida. This is the high performance division of the organization whose charge is to identify and develop elite athletes. In addition to the new training facility at the USTA National Campus, PD also has a presence at the USTA Billie Jean King National Tennis Center and at the USTA facility in Carson, CA. The USTA is the sole member of PD.
- USTA Foundation Incorporated (the Foundation). The Foundation is the charitable arm of the USTA.

In addition, under its bylaws the USTA has designated 17 Sectional Associations throughout the country to manage the sport of tennis within their geographical regions. The Sections are independent legal entities and have their own corporate structure.

THE USTA SAFE PLAY PROGRAM

The safety of athletes, at all levels of ability, is of paramount importance to the USTA and has been for many years. On almost a monthly basis, we educate our constituencies through workshops, informal gatherings, and elective sessions at national meetings to address matters around safeguarding athletes. This ensures that the conversation about safeguarding athletes never ends and continues to permeate throughout the fiber of the USTA.

The USTA began to formalize its efforts to ensure a safe environment for athletes more than a decade ago. Over the past ten years, working closely with industry experts, the USOC, and most recently with the U.S. Center for SafeSport, the USTA has continually refined and expanded its athlete safety program. The USTA branded its athlete safety program "Safe Play" which is how it is referenced in our responses. In order to be in compliance with Safe Play, the USTA requires all individuals in a position of authority over athletes or who have frequent contact with athletes to fulfill the following every two years:

1. Complete an online training module which identifies the nature of misconduct in sport: how to recognize it, how to prevent it and how to take action (the USTA has adopted the SafeSport training for this purpose);
2. Review the USTA's policies and procedures regarding misconduct, including how to make a report (USTA offers multiple methods by which to report, including anonymously); and
3. Successfully clear a criminal background screen.

To confirm compliance with Safe Play, the USTA has adopted a "red light" and "green light" protocol. Those individuals who receive a "green light" have successfully completed all three requirements above; those with a "red light" have not successfully completed the three requirements above and are not permitted to participate in any USTA-branded and/or co-branded programs or events for minor athletes, or have authority over amateur athletes of majority age.

With regard to the specific questions contained in your letter:

USTA RESPONSES

1. *What reporting protocols for child and sexual abuse allegations are currently in place to ensure that all reports receive fair, timely, and thorough review by all appropriate parties, including law enforcement?*

The USTA provides multiple well-published channels for reporting suspected violations of its Safe Play policies and guidelines including child and sexual abuse allegations. We maintain a dedicated hotline for both internet and phone line reports, an electronic reporting form submitted via webpage, and a dedicated email address. All reporting mechanisms are monitored 24 hours per day, including holidays and weekends. Each means of reporting are immediately routed electronically to the appropriate USTA Safe

Play executive and the Office of the General Counsel at the USTA. Upon review of the matter reported, if the report contains information that is alleged to be sexual abuse, the matter is: (i) immediately forwarded to the appropriate law enforcement agency; and (ii) in accordance with USOC requirements, immediately forwarded to the U.S. Center for SafeSport to commence an investigation should any of the parties involved fall within the definition of a Covered Individual. In all cases, USTA quickly removes the alleged perpetrator's "green light" status, thereby suspending his/her ability to participate in USTA sanctioned activities. Based on the individual circumstances of the matter, the USTA may notify relevant industry partners such as a USTA Sectional Association, the tennis coaching organizations, and/or the employer of the alleged perpetrator.² This status is maintained until law enforcement or the U.S. Center for SafeSport (whichever is later) advises the USTA otherwise.

The USTA requires that all individuals completing its Safe Play process review its reporting channels and requirements. Further, the USTA requires that all its employees act as mandatory reporters and immediately report any forms of suspected child or sexual abuse to the USTA Safe Play office.

For details about the USTA's Safe Play reporting process and tools please visit www.usta.com/safeplay/report.

2. *Are there special accommodations to account for volunteers that are separately employed by non-NGB institutions, like the case of Dr. Nassar who was employed by MSU, in these reporting practices?*

The USTA requires all individuals in a position of authority over athletes engaged in USTA branded or co-branded programs and events or who have frequent contact with athletes through USTA branded or co-branded programs and events to complete the Safe Play process and adhere to those policies, including volunteers and independent contractors (non-USTA employees). Examples include Net Generation providers (the USTA's new youth platform to engage tennis providers, parents, etc.), those involved in the USTA's Junior Team Tennis program (which is comprised of volunteer coaches, coordinators, and parents), hitting partners, athletic trainers and more. The USTA does not make special accommodations that would otherwise modify an individual's duty and obligation to report to the NGB, the U.S. Center for SafeSport, or law enforcement should that volunteer become aware of any wrongdoing, bad act, or omission, or any violation of the USTA's bylaws, or the SafeSport Code of the U.S. Center for SafeSport.

3. *Has your organization ever utilized an NDA to enforce confidentiality against any athlete, volunteer, or employee in the past? To the extent possible, please provide all details regarding the justification and circumstances surrounding every individual NDA used by your organization.*

The USTA requires employees to enter into a Non-Disclosure Agreement (NDA) for various well-recognized business purposes, including matters related to intellectual property and other confidential Association information. The USTA does not and has not utilized an NDA to enforce confidentiality between itself and an athlete, volunteer, or employee from revealing criminal activity or any other type of matter that can be construed or considered abuse in sport or a violation of the SafeSport Code of the U.S. Center for SafeSport.

² Unlike most NGBs, the USTA does not certify the coaches of its sport. Certification of coaches is under the administration and authority of two separate organizations over which the USTA has no authority: the Professional Tennis Registry (PTR) and the United States Professional Tennis Association (USPTA). Insofar as a coach participates in USTA branded or co-branded youth programs, they are required to be in compliance with the USTA Safe Play program. Currently, the USTA is instituting a coaching accreditation process for organizations who certify tennis coaches. A component of the accreditation process is mandatory compliance with the USTA's Safe Play program.

4. *Has your organization ever utilized binding agreements other than NDAs with athletes under your purview? To the extent possible, please provide all details regarding the justification and circumstances surrounding every individual agreement used by your organization.*

The USTA enters into a variety of binding agreements with athletes under the USTA's purview. These agreements include participation waivers and releases for large events such as the US Open, agreements for participation in national team competitions such as the Olympics, agreements related to training at USTA PD training camps and workshops, agreements related to and resolving personal injury matters, and agreements for personal appearances or to serve as a spokesperson related to a USTA branded property. Notwithstanding the foregoing, the USTA has not entered into a binding agreement with an athlete prohibiting an athlete participating in USTA-branded and/or co-branded programs from making a report of criminal activity. Further, the USTA has not entered into an agreement with an athlete participating in USTA branded and/or co-branded programs requiring the athlete keep confidential and/or not disclose information about any wrongdoing, bad act, or omission, or any violation of USTA bylaw, or the SafeSport Code of the U.S. Center for SafeSport.

- 4a. *Per Senator Blumenthal: I would like to clarify that we are also interested (in addition to the kinds of agreements you listed), all the cases in which an NGB might have required an athlete to participate in forced binding arbitration.*

Pursuant to USTA Bylaws, the USTA does have binding arbitration for its Sectional Associations and Districts for governance and corporate management. Furthermore, under the Ted Stevens Olympic and Amateur Sports Act, NGBs are required to participate in binding arbitration where an athlete alleges that the NGB has denied him or her an opportunity to participate in certain competitions, and where a member alleges that the NGB has violated certain provisions of the Sports Act or USOC Bylaws. In these cases, it is the athlete who chooses whether or not to require an NGB to participate in binding arbitration, and the athlete is in no way obligated to participate. With that as background, there are no situations where the USTA has required an athlete to participate in forced binding arbitration.

5. *Since the recent lawsuits filed against USOC, USAG, and MSU for organizational failures to investigate, discipline, or remove Dr. Nassar after complaints of sexual abuse, has your organization taken additional steps to improve transparency, efficiency, and effectiveness of its misconduct reporting mechanisms?*

For over a decade, the USTA has been working to safeguard the athletes participating in its USTA-branded and/or co-branded programs. Starting as early as 2004, the USTA provided background screen recommendations and guidance to the tournament directors of its sanctioned junior tournaments both at the local and national levels. In 2006, the USTA launched its youth branded program, USTA Junior Team Tennis, and subsequently provided similar screening and security check recommendations for all volunteer coaches and trainers. In 2009, this recommendation became formalized in a more comprehensive set of guidelines safeguarding those athletes participating in USTA Junior Team Tennis events. In 2011, the USTA expanded its existing background screen requirements to include all USTA Certified Officials, independent contractors coming into contact with athletes such as athletic trainers, massage therapists, USTA Player Development event coaches, and other event-specific volunteers of youth activities. In 2012, the USTA released its *Safety, Security, and Sensitivity Handbook* which provided recommended guidelines and templates for use in youth tennis programs. The USTA expanded upon all of its work up to this date when it introduced its comprehensive Safe Play program in 2013. In 2017, the USTA launched its new youth tennis platform – Net Generation. Through this platform the USTA is be able to connect with tennis providers throughout the country, many of which may never have otherwise been within the USTA's remit. This also provides the USTA with the ability to require that all Net Generation tennis providers have a green light through the USTA's Safe Play program. Most recently, the USTA broadened its requirement of employees to complete SafeSport training to now include all USTA, NTC, and PD employees, full-time

and part-time as well as the entire USTA Board of Directors (given overlapping boards, this includes the boards of NTC and PD as well). As an association, we feel it is critical to educate and heighten the awareness for all employees, whether they interact with athletes or not, on the issues relating to safeguarding program participants. Our training outlines the core concepts behind creating a safe and positive sport environment and addressing how to identify and prevent sexual misconduct and abuse. The training also provides the legal requirements for reporting a concern about abuse and how the reporting process works as well as how to recognize, respond to and prevent various forms of misconduct, including bullying, hazing, harassment and physical and emotional abuse.

As noted above, on almost a monthly basis, we educate our constituencies through workshops, informal gatherings, and elective sessions at national meetings to address matters around safeguarding athletes. This ensures that the conversation about safeguarding athletes continues at all levels throughout the organization.

As the USTA continues to grow and have influence over more people within tennis and more research is available about sexual predators as well as about bullying, hazing, harassment and all other forms of misconduct, we constantly evaluate our Safe Play program, its policies, and procedures to ensure that we are providing a safe and respectful environment for all athletes to flourish.

6. *Please identify any circumstances in which USOC did not take any action following a report of criminal behavior from your organization. To the extent possible, please provide details regarding the justification and circumstances involved in USOC's decision not to act.*

The USTA is not aware of any failure by the USOC to take action on a report of criminal behavior that has been made by the USTA to the USOC.

7. *In 2017, USOC engaged with a third-party consultant to assess compliance with SafeSport policies and procedures within USOC and all of its NGBs and High Performance Management Organizations (HPMO). Please describe the report issued for your organization, including any recommendations necessary for full compliance. If additional recommendations were issued, what actions were taken by your organization? Are there any remaining recommendations that your organization has yet to fully implement?*

As indicated in the question above, the USTA participated in the audit of its compliance with the USOC's Athlete Safety Standards. This is the first time such an audit was conducted and it provided the USTA with the opportunity to work with the USOC and an independent audit agency to review its existing comprehensive athlete safety program, Safe Play. The audit highlighted the strengths of the USTA's program and was beneficial in identifying areas for improvement.

The audit revealed that the USTA has a thorough background screen program ensuring that all individuals in positions of authority over and having frequent contact with athletes are screened. The USTA also provides several opportunities for anyone within its programs to report incidences of misconduct including a 24-hour reporting hotline, online reporting form, and dedicated email address sent directly to USTA Safe Play executives and Office of the General Counsel. Further, the audit revealed that the USTA has in place an efficient and timely process to address these reports. In addition, the audit found that the USTA's policies and procedures are consistent with the Athlete Standards defined by the USOC and the U.S. Center for SafeSport providing for the consistency necessary across the Olympic Movement to ensure athlete safety throughout sport.

The audit also found that the USTA could improve its tracking of the online training and education of those individuals falling within the requirement. The USTA has adopted the USOC (subsequently becoming the U.S. Center for SafeSport's) online SafeSport training tool for this purpose and concurrent with the audit

was working closely with both agencies to improve and integrate the course technology into the USTA's own learning platforms. In addition, the audit found opportunities to improve the USTA's messaging of the U.S. Center for SafeSport's jurisdiction over those athletes subject to the USADA required testing pool. While this information is clearly outlined in the USTA's membership terms and conditions, the USTA chose to include messaging in other material distributed to those elite athletes who may not be USTA members but fall within the requirement by dint of their participation in international and Olympic competitions.

The USTA successfully addressed and implemented the two recommendations issued by the independent third-party audit and the USOC did not issue additional recommendations. **The USOC follow-up report and records note that both recommendations were fully implemented.**

Below are excerpts from the final USOC Audit Report which includes the Audit Recommendation and the USTA's Initial Response to the Audit Recommendation (dated September 28, 2017), and the USTA's 90-Day Status Report regarding implementation of the recommendation (dated December 13, 2017).

1. Athlete Safety Standards – Education and Training Testing

Independent Third-Party Audit Recommendation Dated September 28, 2017

USTA must require that individuals it formally authorizes, approves, or appoints (a) to a position of authority over, or (b) to have frequent contact with athletes complete education and training requirements in a timely manner and before they have contact with athletes to provide assurance that they are educated on the requirements of the Athlete Safety Standards. USTA must consistently track and verify education and training requirements are met for all required individuals. Compliance with these requirements must be completed within 90 days of receipt of the final audit report. USTA should review the testing results and require all necessary individuals to complete the necessary requirements (i.e., education and training).

USTA Initial Response to the Audit Recommendation

In regard to the education and training, since the current SafeSport training platform cannot integrate to the USTA registration and tracking systems, much of the tracking and oversight for the 18,000 USTA users must be managed manually. On November 6, 2017, the U.S. Center for SafeSport is expected to release its new learning management system which will provide the USTA the first opportunity to integrate the online training and education into the USTA's existing registration and relevant member management systems, including an automated verification functionality. Once linked, the USTA is confident that education and training requirements will be tracked more efficiently, leading to greater compliance. Until the integration occurs, the USTA will continue to actively communicate and follow-up with those individuals who have not completed the education module.

We agree with the recommendation and will respond to the USOC with a detailed plan to ensure compliance with the current NGB Athlete Safety Policy. Our plan will be submitted to the USOC within the 90 day timeline referenced above.

USTA's 90-Day Status Report Dated December 13, 2017

On November 29, 2017, the USTA released its updated version of its youth tennis provider registration platform (Net Generation) which integrates the USTA Safe Play training module and electronically verifies an individual's completion before they are able to complete the registration process and be listed on the website as an approved provider. Integrating this technology will eliminate the manual process of confirming the growing number of youth tennis providers registering on the Net Generation platform

(currently 5,700 approved accounts). In addition, we are currently working on a similar integration with the SafeSport learning management system platform for the USTA Officials certification portal anticipated to launch October 1, 2018. In the meantime, the USTA will continue to manually confirm the online training requirement for those Officials seeking certification through the USTA. As a majority of the Officials have already been through the process, this manual confirmation is manageable. This same manual verification process is in place for the USTA's Player Development group for all independent contractors and with the USTA's Human Resources Department for all staff. The manual confirmation consists of the individual providing to the relevant USTA department a copy of their course completion certificate.

The USTA has contracted with a new enterprise-wide eLMS and will begin the process of transitioning to the new eLMS in early 2018. As this process unfolds and projects are prioritized, the USTA will engage the SafeSport training platform for integration so that all manual confirmations can be handled electronically. The USTA will continue to keep the USOC updated as those plans are finalized.

2. Athlete Safety Standards – Application of the SafeSport Policy

Independent Third-Party Audit Recommendation Dated September 28, 2017

USTA must update their SafeSport-related documentation and administrative materials to include the policy applies to athletes USTA designates for the USADA required testing pool (RTP). Compliance with these requirements must be completed within 90 days of receipt of the final audit report.

For example, the following language could be used in place of the current policy language, "The policy shall apply to (1) NGB employees; (2) athletes the NGB designates for the USADA required testing pool (RTP); and (3) individuals the NGB formally authorizes, approves or appoints (a) to a position of authority over, or (b) to have frequent contact with athletes."

USTA Initial Response to the Audit Recommendation

The USTA's Membership Terms and Conditions for all members (athlete or otherwise) provides notice that members are subject to the USADA Protocol and Safe Sport Policies. The Athletes the USTA designates to participate on behalf of the USA in international competition (and accordingly designates as subject to the USADA required testing pool) are professional tennis players who may not hold a USTA membership and therefore may otherwise be outside of the USTA's jurisdiction. To the extent the USTA has authority over these individuals (during international team competitions), USTA agrees to make clear that by dint of their participation, these individuals are subject to the SafeSport policies.

We agree with the recommended action of providing stronger communication to Elite Athletes participating in international competition and will suggest the following language be included in materials such as the Olympic package sent to USA Team members: "The USTA is required by the USOC to make its Team USA Members subject the USTA's SafeSport related policies, as described at: <https://www.usta.com/en/home/about-usta/who-we-are/national/safe-play-conduct--policies---guidelines.html>." The USTA will respond to the USOC with a detailed plan to ensure compliance with the current NGB Athlete Safety Policy. Our plan will be submitted to the USOC within the 90 day timeline referenced above.

USTA's 90-Day Status Report Dated December 13, 2017

Implemented and closed; accepted by the USOC as of November 21, 2017. The USTA has updated the language in the packages distributed to those elite athletes who may not be USTA members but are subject

to the policies and jurisdiction of the U.S. Center for Safe Sport because of their participation in international and Olympic competitions. This updated language now includes the italicized sentence noted above. The USTA also provided the USOC with its updated membership terms and conditions (found here: <https://www.usta.com/en/home/membership/membership-terms.html>) indicating that all USTA members are subject to the USTA's Safe Play policies and that to register for certain USTA branded or co-branded programs, Safe Play training and background screening may be required.

As the questions in your letter did not include a specific timeframe for reference, these responses have been based on my and my team's best recollection and belief over the past 10 years.

We appreciate and fully support your in-depth review of the USTA's policies and procedures in place to safeguard our athletes. I hope the information outlined above properly addresses your concerns. Should you need anything else from me or my office, please do not hesitate to contact me directly.

Sincerely,



Gordon A. Smith
Chief Executive Officer & Executive Director
USTA