

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WISCONSIN INTERSCHOLASTIC ATHLETIC
ASSOCIATION, AMERICAN-HIFI, INC.,

Plaintiffs,

Case No. 09-CV-155

v.

GANNETT CO., INC. and
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

Defendants.

**DECLARATION OF MONICA SANTA MARIA IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
ON THEIR COUNTERCLAIM**

I, Monica Santa Maria, declare and state as follows:

1. I am an attorney with the law firm of Godfrey & Kahn, S.C., counsel to defendants Gannett Co., Inc. and Wisconsin Newspaper Association, Inc.
2. I make the following statements based on my personal knowledge.
3. Attached hereto as Exhibit A is a true and correct copy of Plaintiff, Wisconsin Interscholastic Athletic Association's Responses to Defendant Gannett Co., Inc.'s First Set of Requests to Admit served on Defendants' counsel on January 11, 2010.
4. Attached hereto as Exhibit B is a true and correct copy of Plaintiff, Wisconsin Interscholastic Athletic Association's Responses to Defendant Gannett Co., Inc.'s First Set of Interrogatories served on Defendants' counsel on January 11, 2010.
5. Attached hereto as Exhibit C is a true and correct copy of the Expert Report of James L. Hoyt, Phd served on Defendants' counsel on September 28, 2009.

6. Attached hereto as Exhibit D is a true and correct copy of Exhibit C of the Expert Report of James L. Hoyt, Phd that was served on Defendants' counsel on September 28, 2009 together with the report referenced in ¶ 5 above.

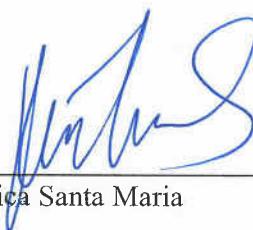
7. Attached hereto as Exhibit E is a true and correct copy of the Affidavit of Todd C. Clark served on Defendants' counsel on September 28, 2009.

8. Attached hereto as Exhibit F is a true and correct copy of Exhibit 2 of the Affidavit of Todd C. Clark that served on Defendants' counsel on September 28, 2009 together with the affidavit referenced in ¶ 7 above.

9. Attached hereto as Exhibit G is a true and correct copy of Exhibit 3 of the Affidavit of Todd C. Clark that served on Defendants' counsel on September 28, 2009 together with the affidavit referenced in ¶ 7 above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 22nd day of January, 2010.



Monica Santa Maria

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

WISCONSIN INTERSCHOLASTIC ATHLETIC
ASSOCIATION, AMERICAN-HIFI, INC.

Plaintiffs,

Case No. 09-CV-0155

v.

GANNETT CO., INC., and
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

Defendants.

**PLAINTIFF, WISCONSIN INTERSCHOLASTIC ATHLETIC ASSOCIATION'S
RESPONSES TO DEFENDANT GANNETT CO., INC.'S
FIRST SET OF REQUESTS TO ADMIT**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Plaintiff Wisconsin Interscholastic Athletic Association ("WIAA") by its undersigned attorneys, hereby responds to Defendant Gannett Co., Inc.'s First Set of Requests to Admit as follows:

REQUESTS TO ADMIT

Request No. 1: Please admit that WIAA is a state actor.

OBJECTION: Plaintiff objects to Request to Admit No. 1 on the grounds that it improperly requests an ultimate legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: See Limited Joint Stipulation filed on December 31, 2009.

Request No. 2: Please admit that WIAA had a full and fair opportunity to litigate, and in fact did litigate, whether it was a state actor in *Wakefield v. Wisconsin Interscholastic Athletic*

Association, Milwaukee County Circuit Court Case No. 08-CV-3423.

OBJECTION: Plaintiff objects to Request to Admit No. 2 on the grounds that it improperly requests a legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: Deny.

Request No. 3: Please admit the WIAA had the opportunity to appeal the final decision in *Wakefield v. Wisconsin Interscholastic Athletic Association*, Milwaukee County Circuit Court Case No. 08-CV -3423.

OBJECTION: Plaintiff objects to Request to Admit No. 3 on the grounds that it improperly requests a legal conclusion and assumes facts. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: Admit.

Request No. 4: Please admit that Exhibit A to these Requests to Admit is a true and correct copy of the Decision and Order filed in *Wakefield v. Wisconsin Interscholastic Athletic Association*, Milwaukee County Circuit Court Case No. 08-CV-3423.

RESPONSE: Admit.

Request No. 5: Please admit that Exhibit B to these Requests to Admit is a true and correct copy of the Stipulation and Order for Dismissal filed in *Wakefield v. Wisconsin Interscholastic Athletic Association*, Milwaukee County Circuit Court Case No. 08-CV-3423.

RESPONSE: Admit.

Request No. 6: Please admit that Exhibit C to these Requests to Admit is a true and correct copy of a letter sent by Gerald M. O'Brien to Brett A. Eckstein on or about October 8, 2009 on behalf of the WIAA.

OBJECTION: Plaintiff objects to Request to Admit No. 6 on the grounds that it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, and the document constitutes inadmissible hearsay, conclusion, and opinion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: Admit.

Request No. 7: Please admit that Exhibit D to these Requests to Admit is a true and correct copy of a letter sent from Brett A. Eckstein to Gerald M. O'Brien on or about October 13, 2009 and that Gerald M. O'Brien received Exhibit D.

OBJECTION: Plaintiff objects to Request to Admit No. 7 on the grounds that it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, and the document constitutes inadmissible hearsay, conclusion, and opinion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: Admit.

Request No. 8: Please admit that Exhibit E to these Requests to Admit is a true and correct copy of the Response Brief of Wisconsin Interscholastic Athletic Association on Request

for Permanent Injunction on Certiorari Review and in Support of WIAA's Motion to Dismiss, with attached Affidavit of Douglas E. Chickering, filed in *Wakefield v. Wisconsin Interscholastic Athletic Association*, Milwaukee County Circuit Court Case No. 08-CY-3423.

OBJECTION: Plaintiff objects to Request to Admit No. 8 on the grounds that it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, and the document constitutes inadmissible hearsay, conclusion, and opinion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: Admit.

Request No. 9: Please admit that Exhibit F to these Requests to Admit is a true and correct copy of the Brief of the Wisconsin Interscholastic Athletic Association in Opposition to Motion for Temporary Injunction filed in *Wakefield v. Wisconsin Interscholastic Athletic Association*, Milwaukee County Circuit Court Case No. 08-CY-3423.

OBJECTION: Plaintiff objects to Request to Admit No. 9 on the grounds that it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, and the document constitutes inadmissible hearsay, conclusion, and opinion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: Admit.

Request No. 10: Please admit that Exhibit G to these Requests to Admit is a true and correct copy of the Plaintiff's Reply Brief on the Merits in Support of Certiorari Review, A Permanent Injunction, and Declaratory Judgment filed in *Wakefield v. Wisconsin Interscholastic*

Athletic Association, Milwaukee County Circuit Court Case No. 08-CY-3423.

OBJECTION: Plaintiff objects to Request to Admit No. 10 on the grounds that it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, and the document constitutes inadmissible hearsay, conclusion, and opinion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: Admit.

Request No. 11: Please admit that Exhibit H to these Requests to Admit is a true and correct copy of the Plaintiff's Brief in Response to Defendant Wisconsin Interscholastic Athletic Association's Brief in Opposition to Motion for Temporary Injunction filed in *Wakefield v. Wisconsin Interscholastic Athletic Association*, Milwaukee County Circuit Court Case No. 08-CV-3423.

OBJECTION: Plaintiff objects to Request to Admit No. 11 on the grounds that it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, and the document constitutes inadmissible hearsay, conclusion, and opinion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: Admit.

Request No. 12: Please admit that WIAA does not pay state sales tax from gate receipts from WIAA Tournament events pursuant to Wis. Adm. Code Tax 11.03(2)(a)5.

RESPONSE: Admit.

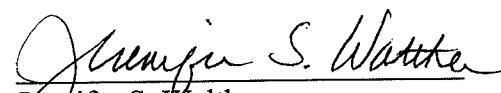
Request No. 13: Please admit that WIAA is estopped from asserting it is not a state-actor on the basis of the final decision in *Wakefield v. Wisconsin Interscholastic Athletic Association*, Milwaukee County Circuit Court Case No. 08-CY-3423.

OBJECTION: Plaintiff objects to Request to Admit No. 13 on the grounds that it improperly requests an ultimate legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: Deny.

Dated this 11th day of January, 2010.

MAWICKE & GOISMAN S.C.
Attorneys for Wisconsin Interscholastic
Athletic Association


Jennifer S. Walther
State Bar. No. 1001551

P.O. ADDRESS:

1509 N. Prospect Avenue
Milwaukee, WI 53202
Phone: (414) 224-0600

EXHIBIT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

WISCONSIN INTERSCHOLASTIC ATHLETIC
ASSOCIATION, AMERICAN-HIFI, INC.

Plaintiffs,

Case No. 09-CV-0155.

v.

GANNETT CO., INC., and
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

Defendants.

**PLAINTIFF, WISCONSIN INTERSCHOLASTIC ATHLETIC ASSOCIATION'S
RESPONSES TO DEFENDANT GANNETT CO., INC.'S
FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff Wisconsin Interscholastic Athletic Association ("WIAA") by its undersigned attorneys, hereby responds to Defendant Gannett Co., Inc.'s First Set of Interrogatories as follows:

INTERROGATORIES

INTERROGATORY NO. 1: Please state the complete factual basis for your affirmative and additional defense of "ADMINISTRATIVE NECESSITY."

OBJECTION: Plaintiff objects to Interrogatory No. 1 on the grounds that it requests a legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: Concerns over access, spatial availability to accommodate necessary personnel, cost-containment, WIAA's ability to organize and administer events, safety, quantity of video feeds, and other logistical necessities at the events themselves caused the WIAA to

develop the ability to manage the number of individuals who receive media credentials, the number of individuals with media credentials who can access an event, and the number and location of individuals with credentials who would be transmitting a particular game.

INTERROGATORY NO. 2. Please state the complete factual basis for your affirmative and additional defense of “PROPRIETARY CAPACITY.”

OBJECTION: Plaintiff objects to Interrogatory No. 2 on the grounds that it requests a legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: The WIAA acted in its proprietary capacity when organizing and operating tournament games because, as a self-sustaining enterprise managing its internal operations, it was engaged in a commercial venture for the purposes of operating an event organized for public entertainment. Thus, the WIAA could enter into contracts as could any other business in a similar situation.

INTERROGATORY NO. 3: Please state the complete factual basis for your affirmative and additional defense of “SCOPE OF COPYRIGHT LAWS.”

OBJECTION: Plaintiff objects to Interrogatory No. 3 on the grounds that it requests a legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: The WIAA’s right to control internet streaming of WIAA sponsored events is not preempted by U.S. Copyright laws. The U.S. Copyright laws only cover things

fixed in a tangible medium of expression. Live sporting events are not fixed in a tangible medium of expression prior to or independent of the transmission. Thus, Defendants can have no copyright claim for games they were unable to transmit nor are the WIAA's claims or rights preempted in any way by copyright law. Similarly, because the WIAA controls access to the games, which occurs prior to any transmission, the WIAA may impose reasonable restrictions on that access without violating any copyright laws or triggering any preemption of the WIAA's rights or claims.

INTERROGATORY NO. 4: Please state the complete factual basis for your affirmative and additional defense of "UNAUTHORIZED COPYRIGHT."

OBJECTION: Plaintiff objects to Interrogatory No. 4 on the grounds that it requests a legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: To the extent that a live sporting event organized by the WIAA is copyrightable once fixed in a tangible medium of expression, as Defendants appear to argue, Defendants and their members transmitted games without permission. Furthermore, Defendants and their members have posted unauthorized transmissions of games on their individual websites, thus violating the exclusive rights that WWWY and the WIAA hold in the transmission. To the extent the Defendants may have used the same feed set up or controlled by the WIAA and WWWY, they would also have violated the exclusive rights held by WWWY and the WIAA.

INTERROGATORY NO. 5: Please state the complete factual basis for your affirmative and additional defense of “NON-JUSTICIABILITY.”

OBJECTION: Plaintiff objects to Interrogatory No. 5 on the grounds that it requests a legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: The U.S. Copyright laws only cover things fixed in a tangible medium of expression. Live sporting events are not fixed in a tangible medium of expression prior to or independent of the transmission. Because copyright laws do not apply, Defendants’ claims in effect involve their right to create a copyrightable work, rather than to enforce a copyright on an existing work. Furthermore, Defendants appear to claim downstream copyright violations of future transmissions that have not happened.

INTERROGATORY NO. 6: Please state the complete factual basis for your affirmative and additional defense of “MOOTNESS.”

OBJECTION: Plaintiff objects to Interrogatory No. 6 on the grounds that it requests a legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: In 2007-2008, the WIAA suspended the enforcement of its photography policy, and informed Defendants it was doing so, long before this lawsuit was initiated. Further, effective with the 2009-2010 Media Policies, the WIAA changed its photography policy consistent with that earlier suspension. Thus, to the extent Defendants object to the photography policy that is not enforced or in existence, those claims are moot.

INTERROGATORY NO. 7: Please state the complete factual basis for your affirmative and additional defense of “CONSENT.”

OBJECTION: Plaintiff objects to Interrogatory No. 7 on the grounds that it requests a legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: Defendants have tacitly agreed to abide by many of the media policies and restrictions that they now challenge, including by applying for media credentials. Defendants were aware of the WIAA’s exclusive contract for, among other things, live internet streaming of tournament games, but did not object to this contract at the time. In addition, Defendants and their members have had numerous communications with WIAA and WWWY staff regarding the scope and extent of media policies, including streaming policies, in which they recognized and acknowledged the rights held by WWWY.

INTERROGATORY NO. 8: Please state the complete factual basis for your affirmative and additional defenses of “LACHES, WAIVER AND ESTOPPEL.”

OBJECTION: Plaintiff objects to Interrogatory No. 8 on the grounds that it requests a legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: Defendants were aware of the WIAA’s exclusive contract for, among other things, live internet streaming of tournament games, but Defendants did not object to this contract at the time. Furthermore, the WWWY contract was signed in 2005, and Defendants and their members have had numerous communications with WIAA and WWWY staff regarding the

scope and extent of media policies, including streaming policies, in which they recognized and acknowledged the rights held by WWWY, but Defendants did not complain about or violate the WIAA's internet policies until late 2008, long after the execution of the WWWY contract.

INTERROGATORY NO. 9: Please state the complete factual basis for your contention that the WIAA has the right to grant WWWY the exclusive right to transmit or stream game action from WIAA Tournament events over the Internet.

OBJECTION: Plaintiff objects to Interrogatory No. 9 on the grounds that it requests a legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE Whether the WIAA has such a right is a legal issue. Facts that are relevant to an analysis of that legal issue include: The WIAA is the organizer, producer, and manager of the athletic competitions at issue; the WIAA has fiscal responsibility to its membership; the WIAA has the responsibility to maximize student participation in events and to protect student participants; the WIAA is engaging in a commercial venture in organizing and producing tournaments, and is exercising discretion in selecting its transmission options; WIAA events are organized for public entertainment; the public has access to the events; the media has access to the events and is free to attend and report on the events; the events are reported by newspaper, radio, television and cable media; additional transmissions beyond that authorized by the WIAA would negatively affect the event's commercial value; the WIAA is self-sustaining and uses its revenues to operate athletic competitions; the WIAA athletic competitions are held in sporting complexes or sporting facilities whose purpose is for the exposition of athletic events; and the

WIAA's media policies with respect to streaming and/or transmissions are content neutral.

See also Expert Report of James L. Hoyt, Supplemental Report of James L. Hoyt, and Affidavit of Todd C. Clark submitted with the expert report.

INTERROGATORY NO. 10: Please state the full definition of all activities WIAA prohibits without prior consent under its restrictions on blogging or play-by-play accounts and state the complete factual basis of that definition.

OBJECTION: Plaintiff objects to Interrogatory No. 10 on the grounds that it is vague and ambiguous. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: If media or websites wish to use transmissions of play-by-play descriptions of action/statistics of a WIAA tournament game, they need WIAA consent through transmission rights and fees. The WIAA does not prohibit a "blog" (a contraction of the term "web log") per se, where the blog is simply commentary or descriptions of the athletic event or status updates. The WIAA does prohibit "play-by-play," without payment of the fees, whether such play-by-play appears on a blog, website, or otherwise. Play-by-play is live and detailed, spoken or written, regular entries of descriptions, or depictions of the sports events as they are happening, or the actual action as it occurs, including the continuous sequential detailed description of play, of events, or other material such as graphics or video regarding any WIAA tournament game, so that it approximates a video or audio transmission that allows the recipient to experience the game as it occurs.

INTERROGATORY NO. 11: Do you contend that a person or entity, if work for hire, who fixes an image of a WIAA Tournament event in a tangible medium does not own the copyright to that image? If so, please state the complete factual basis for that contention.

OBJECTION: Plaintiff objects to Interrogatory No. 11 on the grounds that it requests a legal conclusion, is vague, ambiguous, assumes facts, and calls for speculation. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: While copyright ownership is a legal conclusion, the answer to this question depends on many variables. The only way the WIAA would recognize the right of a person or entity to fix an image of a WIAA tournament event in a tangible medium is if that person or entity obtained permission from and paid the appropriate fees to the WIAA and its agents who own and control the right to manage and produce the tournaments that generate the images sought to be fixed. As a condition of and in exchange for that permission, WIAA controls the ownership of the copyright. Absent such permission, the WIAA does not recognize the rights of persons or entities to fix such images of WIAA tournament events in any tangible medium.

INTERROGATORY NO. 12: Do you contend that WIAA has ownership rights in any transmission, internet stream, photo, image, film, videotape, audiotape, writing, drawing or other depiction or description of any WIAA Tournament events? If so, please state the complete factual basis for that contention. If not, please specify the ownership rights WIAA does claim with respect to depictions or descriptions of WIAA Tournament events fixed in a tangible medium and the source of that right.

OBJECTION: Plaintiff objects to Interrogatory No. 12 on the grounds that it requests a legal conclusion, is vague, ambiguous, assumes facts, and calls for speculation. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: See response to Interrogatory No. 11.

INTERROGATORY NO. 13: Do you contend that WIAA has the right to grant Visual Image Photography, Inc. or American-HiFi, Inc. preferential access to WIAA Tournament events? If so, please state the complete factual basis for that contention.

OBJECTION: Plaintiff objects to Interrogatory No. 13 on the grounds that it requests a legal conclusion, is vague, ambiguous, assumes facts, and calls for speculation. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE See response to Interrogatory No. 9.

INTERROGATORY NO. 14: Specify, by year, the services WWWY has provided to you under ¶ VI(a) of the WWWY Contract.

RESPONSE: WWWY provides the following services to the WIAA:

1. WWWY films, edits, and makes available on wiaa.tv, the WIAA's sports meetings, such as the WIAA's seasonal rule interpretation meetings, so that members and the public can access such meetings without attending in person. This saves members time and expense, and allows increased public access to WIAA information, thereby promoting the visibility of the WIAA, and supporting the marketing and branding of the WIAA.

2. WWWY films, and makes available on wiaa.tv live, the WIAA's Annual Meeting, so that members and the public can access such meetings without attending in person. This saves members time and expense, and allows increased public access to WIAA information, thereby promoting the visibility of the WIAA, and supporting the marketing and branding of the WIAA.
3. WWWY produces an annual video that compiles highlights of all state WIAA tournaments throughout the year.
4. WWWY films, edits, and makes available on wiaa.tv, the annual scholar athlete award ceremony held in the spring in Wausau, Wisconsin. WWWY gives the award winners a DVD copy of the event.
5. WWWY films, edits, and makes available on wiaa.tv, the annual WASC Spirit of Excellence Award ceremony. WWWY films interviews of the presenters which it includes in the final production of the award ceremony tape. WWWY helps promote the award ceremony at tournaments by showing the tape on the video board at various venues.
6. At venues where the WIAA hosts championship tournaments, WWWY provides live game feed to the video board.
7. WWWY produces highlight segments from other WIAA sponsored sectionals or tournaments, and does recaps with video from other WIAA state championship tournaments, that WWWY presents and feeds to the video board at WIAA championship tournaments.

8. WWWY films starting line-up introduction videos and/or team videos that it shows on the video board at all tournaments that have video board capability.
9. WWWY creates public service announcements that the WIAA and member schools can display on video boards at events and that are displayed on wiaa.tv.

INTERROGATORY NO. 15: Identify the organizational purpose through which WIAA claims 501(c)(3) eligibility and state the complete factual basis supporting WIAA's claim to be organized and operated exclusively for that purpose.

OBJECTION: Plaintiff objects to Interrogatory No. 15 on the grounds that it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: The WIAA's purpose is:

- (a) To organize, develop, direct, and control interscholastic athletic programs which will promote the ideal of its membership and opportunities for member schools' participation.
- (b) To emphasize interscholastic athletics as a partner with other school activities in the total educational process, and formulate and maintain policies which will cultivate high ideals of good citizenship and sportsmanship.
- (c) To promote uniformity of standards in interscholastic athletic competition, and prevent exploitation by special interest groups of the school program and the individual's ability.

INTERROGATORY NO. 16: If you contend WIAA is not organized and operated exclusively for educational purposes in your response to Interrogatory 15, state the complete factual basis for WIAA's statement that the revenue it generates from admissions, sales of

programs and television/radio rights to WIAA Tournaments is substantially related to the performance of its 501(c)(3) purpose because such revenue is generated “for the benefit of WI public school districts.” *See IRS Form 990, Statement 10 (FY 2007-2008).*

OBJECTION: Plaintiff objects to Interrogatory No. 16 on the grounds that it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it requests a legal conclusion, and on the grounds that it is vague, ambiguous, assumes facts, and calls for speculation. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: The WIAA’s revenue is generated for the benefit of both Wisconsin public school districts and private schools who are members of the WIAA. The revenue allows the WIAA to operate its programs to promote its goals of promoting opportunities for member schools and individual student athletes to participate in athletic programs, to emphasize athletics as a partner with other school activities in the total educational process, to cultivate ideals of good citizenship and sportsmanship, to promote uniformity of standards, and to prevent exploitation of athletes. Further, the WIAA returns a significant amount of revenue generated to member schools through reimbursements and fees.

INTERROGATORY NO. 17: Identify with particularity each instance in which WIAA, during WIAA’s 2007-2008 Fiscal Year, received a donated service or the use of materials, equipment, or facilities at either no charge or at substantially less than fair rental value. *See IRS Form 990, Part IV, line 82a (FY 2007-2008).*

OBJECTION: Plaintiff objects to Interrogatory No. 17 on the grounds that it is not

relevant nor reasonably calculated to lead to the discovery of admissible evidence, is vague, ambiguous, assumes facts, and calls for speculation. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: At the WIAA state track meet and state cross-country meet, the WIAA received donated services from hundreds of volunteers who assist with managing the track meet, such as timing events and measuring and recording results.

INTERROGATORY NO. 18: Identify with particularity the source of the revenue from “Royalties” and “Royalties-Video” WIAA claimed as Other Revenue on Statement 9 to Form 990 (FY 2007-2008).

OBJECTION: Plaintiff objects to Interrogatory No. 18 on the grounds that it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, is vague, ambiguous, assumes facts, and calls for speculation. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: The source of this reported revenue was WWWY.

INTERROGATORY NO. 19: Do you contend that there are procedural opportunities available to you in this case that were not available to you in *Wakefield v. WIAA*? If so, please identify each such procedural opportunity.

OBJECTION: Plaintiff objects to Interrogatory No. 19 to the extent it requests a legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: Wisconsin legal authority explicitly states that certiorari review cases are

not the equivalent of and are different from civil actions. Such legal authority identifies numerous procedural differences between a civil action and a certiorari review, among those including that there is no fact-finding, no discovery, a limited scope and standard of review, no jury trial, limited relief, different remedies, and different statute of limitations, whereas a § 1983 action is a uniquely federal remedy.

INTERROGATORY NO. 20: State the complete factual basis for your contention that WIAA controls the right to transmit WIAA Tournament events over the Internet.

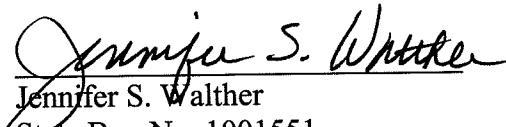
OBJECTION: Plaintiff objects to Interrogatory No. 20 on the grounds that it requests a legal conclusion. Subject to this objection, but without waiving same, Plaintiff responds as follows:

RESPONSE: See response to Interrogatory No. 9.

As to Objections:

Dated this 11th day of January, 2010.

MAWICKE & GOISMAN S.C.
Attorney for Wisconsin Interscholastic
Athletic Association


Jennifer S. Walther
State Bar. No. 1001551

P.O. ADDRESS:
1509 N. Prospect Avenue
Milwaukee, WI 53202
Phone: (414) 224-0600

VERIFICATION

I, Dave Anderson, declare and state:

I am the Executive Director of the Wisconsin Interscholastic Athletic Association, and I am authorized to make this verification on its behalf.

I have read Plaintiff's Responses to Defendant Gannett Co., Inc's First Set of Interrogatories and know the contents thereof. Upon information and belief, I allege that the matters stated therein are true, complete, and correct.

I declare that the foregoing is true and correct.

Executed this 8 day of January, 2010.

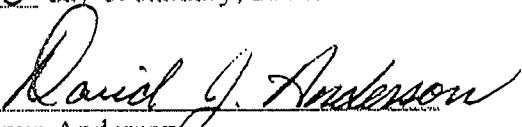

Dave Anderson
Dave Anderson
Executive Director
Wisconsin Interscholastic Athletic Association

EXHIBIT C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

WISCONSIN INTERSCHOLASTIC ATHLETIC
ASSOCIATION, AMERICAN-HIFI, INC.

Plaintiffs,

Case No. 09-cv-0155

v.

GANNETT CO., INC., and
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

Defendants.

EXPERT REPORT OF JAMES L. HOYT, Ph.D.

I. INTRODUCTION

1. I have been asked by attorneys for the Wisconsin Interscholastic Athletic Association (“WIAA”) to examine the WIAA’s policies related to the internet transmission of its WIAA Tournament events. My opinion is limited to the WIAA’s policies related to transmission via internet of WIAA Tournament events, defined herein. I expect I may provide testimony at trial that conveys the opinions as set forth in this report. My compensation for these and other future activities, including testifying at deposition and trial, is \$250 per hour. My compensation is not in any way dependent on the outcome of this litigation.

II. MATERIALS RELIED UPON

2. In forming the opinions presented in this report, I have studied the WIAA’s media policies related to internet transmission of WIAA events and the WIAA Senior Handbook, excerpts of which are attached as Exhibits C-F to this report, and the pleadings filed in this case. In addition to the materials cited in this report, a complete list of materials I relied upon in reaching the opinions expressed in this report is attached as Exhibit A to this report.

III. PRIOR TESTIMONY

3. I have not testified as an expert in the past four years.

IV. BACKGROUND AND EXPERIENCE

4. I received a B.S. in journalism from the University of Wisconsin, Madison ("UW") in 1965, a M.S. in Journalism and Mass Communication also from the UW in 1967, and a Ph.D. from the UW in Mass Communication in 1970. I am currently a Professor Emeritus at the UW School of Journalism and Mass Communication, where I have been on faculty since 1973.

During my time at the UW, I have served as, *inter alia*, Director and Associate Director of the UW School of Journalism and Mass Communication. I also served as Head of the school's Broadcast News Sequence. Prior to joining the UW faculty, I was an assistant professor at Indiana University from 1970-73, where I held a joint appointment in the department of journalism and the department of telecommunication.

5. I have held a number of administrative positions at the UW, including Chair of the UW Athletic Board from 1991 to 2000, and I was a Member of the UW Athletic Board from 1990 to 2000. I was also a Member of the UW Athletic Department Committee on Broadcast Exclusivity in 1989, which was tasked with developing and implementing a policy for exclusive radio broadcast rights for UW athletics, in particular football and men's basketball.

6. Specific to intercollegiate athletics, I served as the UW NCAA Faculty Athletics Representative from 1991-2000, as a Member of the NCAA Core Course Review Committee from 1996-2000, and as a Member of the NCAA Legislative Review Committee from 1994-98. I was also a Member of the NCAA Certification site visit team at three different universities. Within the Big Ten Conference, I served as the UW Faculty Athletics Representative from 1991-2000, the Co-Chair of the Joint Group Executive Committee from 1997-99, and on the Rules and Legislation Committee from 1993-2000. Finally, within the Western Collegiate Hockey

Association, I served as Chair of the Executive Committee from 1995-97 and on the Television Committee from 1992-99.

7. In addition to my experience in academia and educational administration, I have served as a reporter, producer, and editor to a number of broadcast news organizations. Between 1965 and 1967, I was a part-time reporter for WTMJ-TV Milwaukee, and a part-time sports anchor for Badger Sports on WHA-TV Madison. As a part of my work with WTMJ-TV, I was responsible for reporting on athletic events such as UW football, basketball, and track and field. For WHA-TV Madison, my responsibilities also included independent contract work covering the WIAA - State Boy's basketball tournament. During the summer of 1971, I worked as a full-time law enforcement reporter for the *Daily Herald-Telegram* in Bloomington, Indiana. During the summer of 1972, I was a full-time news producer/editor for NBC News in Washington, D.C., during which time I worked with such persons as David Brinkley, Garrick Utley, Carl Stern, and Bill Monroe. I later continued my work with NBC News as a consultant for The Today Show and for NBC Nightly News with Tom Brokaw.

8. I have served as a consultant to all of the then NBC owned broadcast news stations, which were WNBC-TV, New York; WMAQ-TV, Chicago; WRC-TV, Washington; KNBC-TV, Los Angeles; and WKYC-TV, Cleveland. In addition, I have consulted for a number of local stations including WTMJ-TV, Milwaukee; WMTV, Madison; KCAU-TV, Sioux City; WTRF-TV, Wheeling; WHOI-TV, Peoria; WSAW-TV, Wausau; KOSA-TV, Odessa, TX; and WAOW-TV, Wausau. As a part of these consulting activities, I conducted audience research addressing the station's overall newscasts, including news, weather, and sports.

9. A copy of my curriculum vitae is attached as Exhibit B to this report. As detailed therein, I have published numerous articles and authored book chapters on broadcast news writing, mass

media, and cameras in the courtroom. I have at least thirty-five years experience teaching news gathering and mass media. I have been the recipient of numerous honors, including induction into the Wisconsin Broadcasters Hall of Fame in 2007, was named the International Radio and Television Society's Frank Stanton Fellow in 2001, and have been listed annually in Who's Who in America since 1986. In addition, in 1989 I was selected to participate in the Leadership Institute for Journalism Education, underwritten by Gannett Co., at the Freedom Forum Center for Media Studies at Columbia University.

IV. LEGAL STANDARDS AND SCOPE OF OPINIONS

10. I do not purport to be an expert in First Amendment law. However, I do believe I am an expert in the real world of practical mass media, including accommodations, compromises, and resolutions that various forms of news media, including print and broadcast media, regularly and routinely make in order to facilitate, permit, protect and, maximize news gathering and news reporting.

11. In preparation of this report, I have discussed with counsel for the WIAA the applicable legal standards to a First Amendment claim. My understanding of these standards is addressed below.

12. It is my understanding from review of the pleadings in this case that the Wisconsin Newspaper Association and Gannett Co. (collectively "Gannett") have asserted that the WIAA's policies related to internet streaming of its state tournament sporting events violate its rights under the First Amendment of the United States Constitution. In order to prevail on this contention, I understand that Gannett must prove, among other things, both that the WIAA is a "state actor" and that the WIAA events take place in what is referred to by courts as a "public forum." I understand that the WIAA disputes both of these issues.

13. It is also my understanding, however, that the First Amendment allows "state actors" to place reasonable "time, place, and manner" restrictions on speech within "a public forum," provided that such restrictions are "narrowly tailored" to serve a significant government interest and leave open sufficient alternative channels to communicate the information at issue. The opinions expressed herein are intended to address these issues in the context of the facts of this case as I understand them.

V. WIAA MEDIA POLICIES

14. I have reviewed the 2008-09 and 2009-10 WIAA Senior High School Handbooks and the 2008-09 WIAA Media Policies and Reference Guide, in particular the policies related to internet transmission of WIAA tournament events. In addition, I have spoken with Todd Clark, Director of Communications for the WIAA, regarding these policies. My understanding of the WIAA and its internet transmission policies is based on these discussions, the pleadings in this case, and the handbooks I have reviewed, and is detailed in the following paragraphs.

15. The WIAA is an unincorporated, nonprofit organization of member schools located in the State of Wisconsin whose purpose is to organize, develop, direct, and control an interscholastic athletic program that promotes competitive, educational and financial opportunities for member schools. Ex. C (2008-09 Senior Student Handbook at 3, 14). These opportunities include participation in post-season WIAA-sponsored, controlled, and funded sports tournaments, which are separate from regular season games. Affidavit of Todd C. Clark ("Clark Aff.") ¶ 3.

16. Both the WIAA 2008-09 and 2009-10 Senior High School Handbook include Spectator/Crowd Conduct Policies. Exs. C (2008-09 Senior High School Handbook at 48-51) & D (2009-10 Senior High School Handbook at 48-49). The 2008-09 Senior Handbook also contains Radio and Television Broadcast Policies, which relate only to the WIAA State Tournament series events, i.e., regional, sectional, and state level tournament events. Ex. C

(2008-09 Senior High School Handbook at 50-51). According to these policies, television and cable broadcasters must request permission to broadcast games. Ex. C (2008-09 Senior High School Handbook at 51). Similarly, the 2009-10 Senior High School Handbook contains Video Transmission Policies, which apply to broadcast, cable, and Web stream during the WIAA State Tournament Series. Ex. D (2009-10 Senior High School Handbook at 51). These policies prohibit any live or delayed television or internet streaming of WIAA State Tournament Series events without permission from the WIAA or an authorized (by the WIAA) person or entity, which varies depending on event. Exs. D (2009-10 Senior High School Handbook at 51) & C (2008-09 Senior High School Handbook at 51).

17. It is also the WIAA's policy, however, to permit commercial stations covering WIAA State Tournament Series for "newscast purposes," without paying a fee, to (1) use tournament action as a backdrop for live actions reports (provided no play-by-play is used); and/or (2) use up to two minutes of film, videotape, etc. on a regularly scheduled news or sports program. Exs. D (2009-10 Senior High School Handbook at 51) & C (2008-09 Senior High School Handbook at 51).

18. The WIAA has also issued a 2008-09 Media Policies Reference Guide ("Media Guide") "to assist media with requesting/issuing of working media credentials . . . the use of equipment by news gathering media and the comprehension of WIAA property rights for State Tournament Series competitions." Ex. E (2008-09 Media Guide at 1). These include policies for radio, television, cable, and internet, and apply only during the WIAA-State Tournament Series, which includes regional, sectional, and state final tournaments. Ex. E (2008-09 Media Guide at 10). These policies define the term "broadcast" as "the airing/streaming . . . the entire duration of tournament games." Ex. E (2008-09 Media Guide at 11).

19. Although "live coverage" of tournament events is not permitted absent permission, consistent with the 2009-10 Senior High School Handbook, commercial television stations and websites covering the WIAA State Tournament Series for "newscast purposes" are permitted use of two minutes of film, video or audio tape for regularly scheduled news, sports programs, or websites, and may use tournament action as a backdrop for live actions reports, provided no play-by-play is used. Exs. E (2008-09 Media Guide at 12) & F (2009-10 Media Guide at 11-12). No fees are required for tape-delayed broadcasts or streams for schools wishing to air games on their school's educational channel on local cable systems or the school's website. Ex. E (2008-09 Media Guide at 12).

20. Beyond this, parties who wish to broadcast or internet stream State Tournament Series events are required to obtain permission from the rights holder. Ex. E (2008-09 Media Guide at 16). It is my understanding that the WIAA has entered into an exclusive contract with When We Were Young Productions ("WWWY") for the internet streaming rights to all pre-state Tournament Series events for all sports (i.e., regional and sectional events) and all State Tournament events (i.e., finals) excluding football, basketball, and hockey finals; that Fox Sports Wisconsin ("Fox") has the exclusive rights to State Football Championship games; and that WAOW-TV/Quincy Newspapers, Inc. ("Quincy") has the exclusive rights to the Boys and Girls Basketball State Tournaments and Hockey State Finals. Ex. E (2008-09 Media Guide at 16). I have been provided each of these contracts, which were attached to the initial complaint in this matter.

21. In addition to policies related to video transmission of games, the WIAA has adopted policies that allow for media access to communication lines (i.e., telephone, high-speed, and wireless connections) at State Tournament venues (Ex. F (2009-10 Media Guide at 6)),

photography (Ex. F (2009-10 Media Guide at 6)), radio or other audio broadcast (Ex. F (2009-10 Media Guide at 10-11, 13-14, 17)), and post game interviews. Under these policies, subject to some limitations, newspapers are offered up to five media credentials for daily papers (two for weekly newspapers), which allows reporters access to communications lines for a fee of \$25-30, permits the taking of pictures for reporting (Ex. F (2009-10 Media Guide at 6-8)), and allows for post-game interviews of players and coaches (Ex. F (2009-10 Media Guide 8-10)).

VI. OPINION

A. SUMMARY OF OPINION

22. I have reviewed the policies of the WIAA related to internet transmission of the WIAA Tournament events, and, in my opinion based on more than forty years in the field of broadcasting and journalism, these policies are reasonable, strike a proper balance between news and broadcast entities seeking to report on the events and/or live broadcast from the events, and are consistent with those generally used by sports teams, organizations, and leagues, including public educational institutions. In my opinion, these policies do not unreasonably restrict newspapers from reporting on these events or from covering these events in a comprehensive way. Exclusive rights agreements for television, radio, and internet such as the ones employed by the WIAA, are commonly used by athletic teams, leagues, and organizations. Such agreements are frequently used by public education institutions to generate funds to support a broad array of athletic participation opportunities for student athletes. In my opinion, the WIAA's policies properly serve this function while simultaneously and reasonably permitting access to the broadcast and print media. These policies are intended to and do balance and reasonably accommodate the otherwise potentially competing and inconsistent interests of the WIAA and member schools to receive financial benefits from these events and the desire of the media to report on these events.

B. THE WIAA HAS A SUBSTANTIAL INTEREST IN LIMITING INTERNET TRANSMISSIONS FOR TOURNAMENT EVENTS

1. EXCLUSIVE LICENSE AGREEMENTS ARE COMMONLY USED BY SPORTING ORGANIZATIONS

18. Based on my experience in intercollegiate athletics administration, protecting broadcast rights and awarding them on an exclusive basis is clearly a major financial underpinning of college sports. As a member of a variety of committees over the years, I have been a party to discussions and deliberations which have led to exclusive contracts between universities and/or conferences and rights holders. Specifically, in 1989 I was a member of the UW Committee on Broadcast Exclusivity, which determined there was a substantial value to the UW by awarding exclusive rights for radio broadcasts of football and men's basketball games, and solicited and awarded exclusive rights for the first time at the UW. *See* Exs. G-I. As a part of our discussions, it is my recollection that we reviewed the broadcast policies of other Big Ten universities, and determined that UW's policy of non-exclusivity was inconsistent with the policies of other institutions, which allowed for exclusive broadcast rights thereby gaining substantial additional revenue. The committee therefore changed a long-standing UW non-exclusive policy that permitted virtually any radio station to carry games so long as they paid a modest rental fee for a broadcast booth. *See* Exs. H & I.

23. I have also participated in discussions within the Big Ten Conference Joint Group (the athletic directors and faculty representatives) regarding the conference policy that awards exclusive television rights for multiple sports to one or more of the major national networks. Universities in the Big Ten assign their television and broadband rights to the Big Ten Conference, which then enters into exclusive license agreements for the Conference. Revenues from these contracts are then divided among the Conference members. For example, the Big Ten currently licenses Big Ten Football coverage to Disney, i.e., ABC and ESPN, for a

substantial (but confidential) fee. This agreement lasts from 2007-2017. *See Ex. J.* For the past two years, since the advent of the Big Ten Network, games that are declined by Disney are carried on the Big Ten Network. *Ex. K.*

24. In addition, as a member of the Television committee of the Western Collegiate Hockey Association, I was involved in discussions that led to the awarding of an exclusive television contract for televising and/or streaming all WCHA Tournament Games—opening round and Final Five. *See Ex. L.* Much like the WIAA, it is my understanding based on my participation in the administration of the WCHA that the WCHA is funded primarily through revenues derived from its tournament events, i.e., the opening round and Final Five. Thus, the purpose of the awarding of this exclusive contract was to increase revenues of the WCHA.

25. Prior to the awarding of exclusive rights at the UW, individual radio stations could rent a booth and broadcast football and basketball games on their own. In 1988-89, that rental rate was a minimum of \$550 per game. *Ex. H.* According to records from the UW Committee on Broadcast Exclusivity, revenues from radio of football and basketball for the years 1983-88 were as follows:

Review of Radio Broadcast Rights Fee Income from Football and Basketball

	<u>Football</u>	<u>Basketball</u>	<u>28 Games</u>
1988	11 Games Home & Away	\$ 99,905.86	\$6970.00
1987	11 Games Home & Away	99,041.48	7700.00
1986	12 Games Home & Away	108,372.48	8130.00
1985	11 Games Home & Away (increased rate)	87,478.45	9360.00
1984	11 Games Home & Away	77,713.86	4380.00
1983	11 Games Home & Away (reciprocal arrangement started)	72,777.00	4350.00

Ex. I. The UW's initial estimate was that an exclusive license agreement would *triple* radio broadcast revenue. Ex. G. In fact, Wisconsin's most recent renewal with its current radio rights holder, Learfield Communications, is for *\$75 million* over 12 years, far exceeding initial estimates.¹ Ex. M. Clearly, there is a value to a school, league, tournament, or sponsor in protecting and awarding exclusive broadcast rights.

26. UW's policies are consistent with other public universities throughout the country in that the value of the exclusive broadcast rights is a key component in the business plan for athletics, which I have reviewed in my work with the above-noted committees. Learfield alone has agreements with more than 50 universities and conferences related to radio sports coverage. Ex. N. The exclusivity of UW's broadcast rights is similar to that of other large public universities. This is common practice. It is nothing out of the ordinary for organized sports.

27. In my opinion, the UW's exclusive license agreements and those of other universities and conferences are comparable to the exclusive license arrangements of the WIAA related to internet transmissions of WIAA Tournament events.

2. LICENSING FEES PROVIDE NEEDED FUNDING FOR THE WIAA

28. It is my opinion that the WIAA's exclusive rights agreements, in particular its agreement with WWWY productions, provides much needed funding for the WIAA. The WIAA therefore has a substantial interest in this contractual arrangement.

29. It is my understanding that the contract with WWWY productions was entered into in part due to budgetary needs of the WIAA. Clark Aff. ¶ 4-7. According to the WIAA, in 2004 it was informed by Quincy, carrier of Boys and Girls State Basketball State Tournament and Hockey State Finals Tournament, that it could not afford to continue to pay the amount included

¹ In addition to radio, this contract covers expanded rights, including additional sports (e.g., women's basketball and hockey), game programs, and inventory such as stadium signage.

in the rights agreement. Clark Aff. ¶ 4. The WIAA accordingly sought out other sources of revenue. Clark Aff. ¶ 4. In 2005, the WIAA was approached by WWWY with the idea of transmitting WIAA games over the internet. Clark Aff. ¶ 7. At the time, it is my understanding that no television station carried games other than the Football Finals, Boys and Girls Basketball, and Hockey Finals, except that in some instances local community access channels would broadcast local games. Clark Aff. ¶ 5. The WIAA was unaware of any internet streaming of games. Clark Aff. ¶ 5. The WIAA thus received no rights fees related to the vast majority of its sports. Clark Aff. ¶ 5-6. The WWWY contract thus represented an entirely new and important stream of revenue for the nonprofit organization.

30. I have been provided with a copy of the WIAA budget from the year 2007-08. Ex. O.

The WIAA's tournament events are overwhelmingly the largest source of WIAA operating revenue. Ex. O; Clark Aff. ¶ 3. Indeed, by my calculation based on the 2007-08 budget, the WIAA receives approximately 87% of its annual revenues from the WIAA Tournament series.

See Ex. O. Like the WCHA, the WIAA thus depends on its tournament events to survive.

31. A portion of this operating revenue is derived from its exclusive media rights agreements. In 2008, the WIAA received \$75,000 for the Boys and Girls Basketball State Tournaments and Hockey State finals, \$20,000 for Football State finals, and \$60,000 from When We Were Young Productions for all other tournament events. Ex. P; Clark Aff. ¶ 8.

32. In my opinion, were these contracts switched to non-exclusive, this revenue stream would all but disappear. Based on precedent in other leagues and athletic organizations, the value of the media rights rests primarily in exclusivity. Stations and networks are willing to make investments in their coverage in order to enhance the value of their exclusive rights payments.

33. In addition to the \$60,000 paid by WWWY in 2008, the WIAA also received \$80,000 from a sponsorship partner. Clark Aff. ¶ 10. A portion of the value of this sponsorship agreement comes from advertising in programming produced by WWWY. Clark Aff. ¶ 10. The overall value to the WIAA associated with the contract with WWWY is therefore substantially above the \$60,000 paid for the internet transmission rights.

34. Furthermore, it is my understanding that WWWY provides additional services to the WIAA as a part of the agreement, including without limitation video production, audiovisual and graphics support for tournament games such as producing video programming for scoreboards at tournament sites. Clark Aff. ¶ 9. In addition, WWWY also provides web transmissions for mandatory WIAA sport rule meetings which allows members, officials, and coaches to view these mandatory meetings remotely thereby avoiding travel, and at their convenience. Clark Aff. ¶ 9. Because it receives these otherwise costly services as a part of the exclusive agreement, the contract with WWWY productions is thus of even greater financial value to the WIAA than the amount paid in royalties from WWWY.

3. AN EXCLUSIVE LICENSE IS NECESSARY TO FUND OTHERWISE UNDER-FUNDED AND UNDER-EXPOSED TOURNAMENT EVENTS

35. In my experience at the UW and with the Big Ten Conference, the WCHA, and the NCAA, the exclusive rights fees for tournament events generates revenue that is critical for the funding of sports that are unable to produce revenue on their own. In this way, the exclusive rights revenue leads to expanded participation opportunities for student athletes. It is my opinion that the WIAA's exclusive rights contracts perform this same role for the organization, by funding otherwise under-funded and under-exposed sports. In this regard, the WIAA's exclusive rights agreements create opportunities for participation for Wisconsin student athletes that otherwise would likely not exist.

36. The vast majority of the WIAA tournament revenue is derived from basketball and football. Ex. O. In fact, in 2008 the WIAA generated positive net revenues in only basketball, football, wrestling, volleyball, hockey, and soccer. Ex. O. All remaining sports, which include baseball, track, swimming, tennis, gymnastics, cross country, softball, and golf, *operate at a loss* and must be subsidized by the revenue from the more popular WIAA tournament events. Ex. O. The WIAA thus depends in part on its rights agreements to fund otherwise under-funded sports tournaments for less popular sports.

37. Moreover, in my opinion, the WWWY exclusive license agreement provides expanded exposure for less visible sports. As noted above, prior to the WWWY agreement, these games were carried solely on local cable access, and even then on an irregular basis. Clark Aff. ¶ 5. Thus, by way of example, a resident of Green Bay would only be able to watch a WIAA volleyball tournament game if that game were carried on local cable access in Green Bay. In contrast, under the WWWY contract, this game can be made available over the internet to anyone with a computer and internet access on WIAA TV (<http://wiaa.tv/>), a web portal that allows access to WIAA events. Clark Aff. ¶ 8. In fact, whereas in 2004-05 no WIAA events were offered on the internet, in 2008-09 the WIAA web portal transmitted 82 live WIAA events on WIAA TV and 182 offered on archived stream and DVD, of which 134 were under the WWWY contract with WIAA. Ex. Q; Clark Aff. ¶ 8. Thus, in my opinion, the WWWY contract has enhanced public access to WIAA events.

38. The WWWY contract helps fulfill one of the WIAA's stated objectives, to promote "opportunities for member schools participation." Ex. C (2008-09 Senior Handbook at 14). Prior to entering its contract with WWWY, it is my understanding that the WIAA (at the request of participants) had unsuccessfully sought out a carrier for sports other than football finals,

basketball, and hockey finals by making inquiries with their existing rights holders. Clark Aff. ¶

6. In fact, it is my understanding that prior to WWWY, no other organization had approached the WIAA with an offer to transmit events via internet at all, let alone to transmit the then-underexposed and less visible sports such as cross country and tennis. Clark Aff. ¶ 7. The contract with WWWY thus provided an opportunity for the WIAA to promote a particular group of events and student athletes. Clark Aff. ¶ 7.

39. Finally, in my opinion, were the contract on a non-exclusive basis, it is unlikely these sports would be made available to the non-attending public. Other than WWWY, media have not expressed an interest in carrying a full range of the WIAA Tournament events. This is demonstrated in Gannett's complaint, which discusses multiple attempts by newspapers to transmit football *only* from their local area teams. Furthermore, without the economic protection provided by exclusivity, an internet rights holder would be unlikely to invest in and commit the equipment and facilities necessary to produce this number tournament events, in particular those sports which do not normally command significant public attention.

40. Indeed, in this regard WWWY's interest in exclusivity, and the WIAA's interest in limiting internet transmissions of its games, is comparable to a newspaper's or wire service's need to protect its product from unapproved use on other websites or publications, or, more directly on point, much like Major League Baseball's interest in prohibiting unauthorized use of the broadcast of its game without the advance written consent of Major League Baseball, which has itself entered into rights agreements related to that content.

C. THE PRINT AND BROADCAST MEDIA HAVE A RECOGNIZABLE AND APPROPRIATE INTEREST IN REPORTING ON AND COVERING ATHLETIC EVENTS

41. As someone who has worked long and hard in, and has studied and taught in, the field of news gathering and reporting, and in the field of broadcast journalism, I recognize and profoundly respect the interests and needs of the public, and the eyes and ears of the public (i.e., the media) not only to report on newsworthy events, but to have reasonable access to newsworthy events in order to properly carry out these tasks and responsibilities.

42. However, as a result of my long tenure in this field, I am also firmly of the opinion that "rights of access" to newsworthy events is a relative, not an absolute concept, particularly as it has played out in the context of real life events. That is because of the practical truth of the observation that the "legitimate" rights of one entity inherently conflict with the "legitimate rights" of another. That is particularly true in the context of sports events and the "reporting" on the same. There is no doubt that there is a news gathering/news reporting aspect to these events. What a team does in an athletic event certainly has public interest and may be "newsworthy." And, of course, "incidents" at a game, such as a fight or the collapse of bleachers, have their independent "newsworthy" significance.

43. But, in my opinion, it is equally true that the "sponsoring" or "supporting" or "responsible" entity that puts on the event has a rational and realizable interest in maximizing the economic benefit which accrues from the event, i.e., the public sees the event, in part at least, as entertainment and will pay to see it, particularly when the proceeds are invested in promoting other such events, or related events, or activities.

44. The "media" and "sponsoring" schools (or related organizations such as the NCAA and the WIAA) have, at least de facto, recognized these valid, rational and potentially competing

interests. What has developed, in my experience, and in my opinion, is a de facto (but is often formalized in contract and licenses) accommodation, or compromise, or “stand off” whereby all interests agree to “reasonable” time, place and manner restrictions – restrictions that are intended to balance these competing “rights” and concerns, while still recognizing the respective legitimacy of the rights and concerns of each of the involved and affected “entities.”

45. For the reasons hereinafter discussed, in my opinion, the identified practices, policies and restrictions that the WIAA has formulated and practiced strike a proper balance and, in this context, constitute reasonable time, place, rules, practices and restrictions.

D. REASONABLE RESTRICTIONS ARE ACCEPTED PRACTICE IN SPORTS BROADCASTING AND COVERAGE

46. Throughout my years of experience working for broadcast stations and being involved in intercollegiate athletics, I have not encountered ways in which university exclusive broadcast rights policies have hindered media outlets from reporting on games. The only significant restriction from these policies is on the broadcasting or streaming of the games. Other than that, reporters for print, broadcast, and internet media are free to report on games without significant restrictions on their coverage.

47. In fact, the WIAA’s restrictions are typical of those I have encountered in my coverage of games. As a reporter covering UW athletics, I was able to film game action, record relevant statistics and other game information via audio recording and good, old fashioned pen to paper. I had access to coaches and athletes following games to complete game stories and sidebars. The presence or absence of an exclusive broadcast rights policy does not affect any of these basic journalistic practices.

48. Based on my experience, it is common practice for reporters covering athletic events to be restricted to specific locations and to have limitations placed on the equipment they can use,

for example, on the ability to originate a radio broadcast. These policies are typically based both on the availability of space and to control the conduct of the game. For example, television and still photographers are given clear limits on where they can work during a game so as to not interfere with the game itself, or simply because of space limitations. You cannot have an unlimited number of television cameras because there is not space for them. Similarly, broadcasters originating game coverage regardless of the type of media (i.e., radio, television, or internet) are accustomed to working within pre-defined space limitations, for example, a broadcasting booth. In my opinion, in virtually all cases, broadcasters and reporters know and respect any exclusive rights agreements that are in place for that event. There is a widely recognized distinction between *covering* a game, which virtually any news organization can do, and *carrying* a complete broadcast or stream of a game, which is limited to the appropriate rights holder.

E. THE MEDIA HAVE ALTERNATIVE ACCESS TO REPORT ON THESE GAMES

49. First and foremost, under the WIAA's policies, newspapers are not foreclosed from internet streaming of games. They are able to transmit games if they simply pay the required fee to WWWY. This is in contrast to the exclusive license agreements for television, which defendants have not challenged, and which do not allow the defendants or any other organization the right to transmit live or delayed game coverage in any instance.

50. Second, newspapers have sufficient opportunity to report for their regular editions the details and outcomes of the games, including sidebars, statistics, and other relevant information. As detailed above in paragraphs 14-21, they can report on the games, photograph the events, and have interview access to coaches and athletes. This permits the thorough coverage which the newspaper audience expects. At the same time, they can provide online score updates and other relevant information regarding a game in progress, except for carrying the live stream of the

game itself. Newspapers are also permitted to carry live audio streams of tournament games from radio rights holders by paying an additional rights fee of \$40-50 to WIAA.

51. In addition, websites can use up to two minutes of highlights or other action for reporting purposes, and may exceed two minutes with the WIAA's approval. This policy also applies to commercial television stations. Websites can also report live from tournament venues using live game action as a backdrop for the report so long as there is no play-by-play commentary. These policies apply to all commercial television stations and websites using video for newscast or webcast purposes.

52. As a result of these policies, newspapers have virtually complete access to the athletic events in order to perform their expected journalistic functions, i.e., to fully describe, explain, and analyze newsworthy events. Only in streaming a game do they need to pay a rights fee to anyone outside the WIAA, which is consistent with the policies that apply to radio and television media. This is consistent with the way in which coverage is handled in intercollegiate athletics and also consistent with the practices of professional sports leagues including the National Football League, Major League Baseball, and the National Basketball Association.

53. Finally, I do not see WWWY and state newspapers as being competitors. They each have their own roles to play. WWWY pays an exclusive rights fee to provide production services to client media. Newspapers are able to fully report on the WIAA Tournament events for their readers in all traditional ways. In my opinion, the WIAA's policies do not interfere with the abilities of newspapers to fully cover the WIAA Tournament events.

VII. CONCLUSION

54. The opinions in this report are based on information currently available to me. I reserve the right to continue my investigation and study, and to supplement, expand, or modify the opinions expressed in this report as discovery progresses in this case and further information becomes available to me. In my testimony, I may use demonstratives or exhibits.

Dated this 28th day of September, 2009.

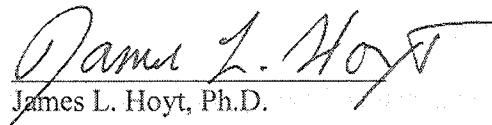

James L. Hoyt
James L. Hoyt, Ph.D.

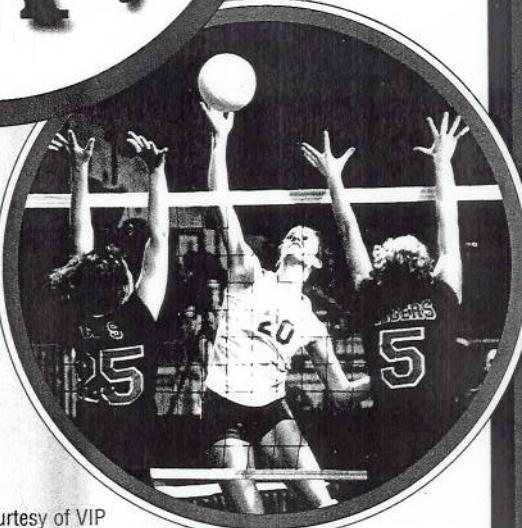
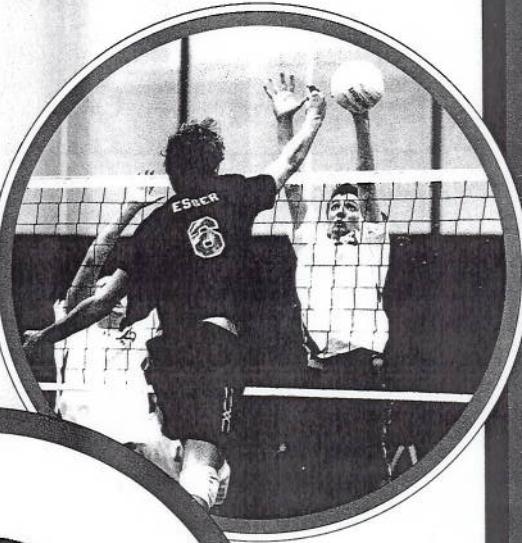
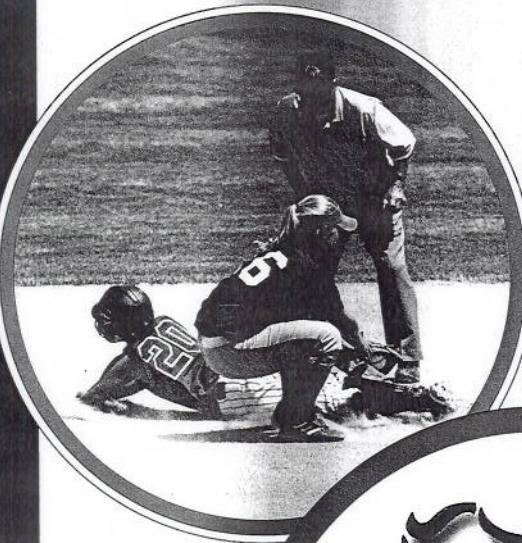
EXHIBIT D

EXHIBIT C

Senior High School

Wisconsin
Interscholastic Athletic Association

2008-09



All photos courtesy of VIP

Handbook

Introduction to the WIAA

The Wisconsin Interscholastic Athletic Association is a voluntary, unincorporated and nonprofit organization. As of April 1, 2008 there are 505 schools in the membership, including all senior high schools in Wisconsin's public school districts, statewide schools, specialty schools, and religious and independent schools. On the basis of the 2007-2008 school year, there are also 117 members in the WIAA Junior High/Middle Level association. The WIAA had its earliest beginnings in late 1895 and early 1896, and the first set of rules was adopted in December of 1896.

The governing body of the WIAA is the Board of Control which consists of 10 administrators from the senior high membership and one representative of the Wisconsin Association of School Boards. Seven of the 11 members represent geographical districts of the state, one is an at-large gender representative, one an at-large ethnic minority representative, and one is an at-large nonpublic school representative. The WASB member is named by its Board of Directors. Liaison representation is given to WADA (Wisconsin Athletic Directors Association), WASB (Wisconsin Association of School Boards) and the DPI (Department of Public Instruction). The first Board of Control was elected in 1897.

To assist the Board, an Advisory Council of administrators from senior highs was created in 1949 that now consists of 18 members. There are five members each from large, medium and small school categories and three at-large representatives, gender, ethnic minority and nonpublic school.

A seven-member Middle Level Council was created in 1996 and was enlarged to nine members in 1997. Liaison representation is provided to WAMLE (Middle Level Educators Association), DPI, WATA (Wisconsin Athletic Trainers Association) and WADA (Wisconsin Athletic Directors Association).

Operation of the WIAA is the responsibility of Executive Director Douglas E. Chickering and the executive staff at WIAA headquarters at 5516 Vern Holmes Drive in Stevens Point, WI. In addition to Chickering, there are five additional executive staff members and 15 full-time members of the support staff. There have been three other executive heads of the WIAA, the first being P.F. Neverman who served from 1924-1951, Cliff Fagan from 1951-1957 and John E. Roberts from 1957-1985. Doug Chickering became executive director on Jan. 1, 1986.

The WIAA conducts an Annual Meeting (senior high) each April which provides its membership the opportunity to amend the Constitution, Bylaws and Rules of Eligibility and address special topics. The WIAA is a member of the National Federation of State High School Associations.

The WIAA HANDBOOK, which is published each summer, is distributed free of charge to all administrators and coaches of member schools. It also is available to others at a cost of \$10. The WIAA YEARBOOK also is available at a cost of \$15. The Association also prints 12 issues of the WIAA BULLETIN from August to July. It is distributed without charge to the membership as well as to licensed game officials, and it may be purchased by others at a cost of \$8 per year. Also available for purchase are the DIRECTORY OF MEMBER HIGH SCHOOLS (\$12) and the JUNIOR HIGH/MIDDLE LEVEL DIRECTORY (\$6).

Constitution

The WIAA Constitution applies to high school and junior high/middle level. The Bylaws and Rules of Eligibility are published separately for high school and junior high/middle level.

For the convenience of readers, new rules and rules clarifications in the Constitution, Bylaws, and Rules of Eligibility have been highlighted (shaded areas).

Article I – Name

Section 1 – Association

A. The name of this voluntary, unincorporated, and nonprofit organization shall be the Wisconsin Interscholastic Athletic Association (WIAA), hereinafter referred to as the Association.

Article II – Purpose

Section 1 – The purpose of this Association is threefold:

- A. To organize, develop, direct, and control an interscholastic athletic program which will promote the ideals of its membership and opportunities for member schools' participation.
- B. To emphasize interscholastic athletics as a partner with other school activities in the total educational process, and formulate and maintain policies which will cultivate high ideals of good citizenship and sportsmanship.
- C. To promote uniformity of standards in interscholastic athletic competition, and prevent exploitation by special interest groups of the school program and the individual's ability.

Article III – Membership

Section 1 – Eligibility

A. Membership in this Association is open to:

- 1) Public high schools on a Grades 9-12 basis, and public middle level schools on a Grades 6-8 or any combination thereof, basis.
- 2) Schools associated with state-supported universities and colleges.
- 3) State, county, and municipality supported institutional schools offering instruction in any or all of Grades 6-12.
- 4) Nonpublic schools enrolling Grades 9-12 that qualify for Section 501(c) (3) status under the declaration of the Internal Revenue Code.
- 5) Nonpublic schools enrolling Grades 6-8 that qualify for Section 501(c)(3) status under the declaration of the Internal Revenue Code.

Section 2 – Admission

A. Application for membership shall be considered by the Board of Control of this Association upon receipt of the form provided for such purpose of evidence that the school:

- 1) Minutes of school's governing board action authorizing application to the WIAA.
- 2) The school's Board-approved extracurricular code of conduct.
- 3) Department of Public Instruction school identification number.
- 4) Indication of at least one independently sponsored, interscholastic athletic program.
- 5) Completed WIAA membership application form provided as evidence that the school:
 - a. Is eligible as a public school or institution, substantially supported by taxation, and the application for membership by the public school has been approved by the school board of the school district of which the school is a part.
 - b. Is eligible as a nonpublic school, qualifying for Section 501(c) (3) status as a tax-exempt organization, and the application for membership by the nonpublic school has been approved by the recognized governing body of the nonpublic school.
 - c. Will conduct its athletic program under the CONSTITUTION, BYLAWS, and RULES OF ELIGIBILITY and all other regulations of this Association.
 - d. Agrees to abide by decisions and respect interpretations of the Board of Control of this Association.

B. A school shall be a member in good standing for one calendar year prior to programs becoming eligible for entry into Association tournaments.

C. A school shall be a member in good standing for one calendar year prior to being eligible for entering into cooperative team programming with another member school.

Section 3 – Classification

A. Each senior high school shall be classified for purposes of membership, representation, and competition (including tournaments where necessary) on the basis of previous year's enrollment on the third Friday in September.

- 1) Schools with only Grades 10-12 students shall add, for purposes of classification and competition:
 - a. The total enrollment figure of the Grade 9 students, if there is only one school with Grades 10-12 students in the district.

Spectator/Crowd Conduct Policies

The pursuit of good sportsmanship is a priority of the WIAA and its member schools. Coaches, administrators, athletes, cheerleaders, support groups and fans are expected to display good sportsmanship at all regular season and tournament contests. The WIAA Board of Control has established the following guidelines for certain matters during WIAA tournament competition. Schools are encouraged to have policies that promote good sportsmanship on a local and conference level for regular-season events. Schools are reminded that they may be requested to submit a written report to the WIAA if problems with conduct occur during a game or meet as specified in the WIAA Bylaws (Article IX, Game Control).

The manager of each tournament site will be expected to notify the WIAA office by telephone no later than the following school day of any serious problem or situation in the area of spectator control, crowd sportsmanship, etc. Managers should contact each competing school if host school policies are more restrictive than WIAA policies listed in this section.

WIAA Tournament Policies

Locker Room:

State Law (175.22) prohibits use of cell phones (and other image-recording devices) in locker rooms except in emergency situations.

Use of Public Address System:

At all WIAA tournament sites, the public address system is only to be used for announcements necessary for the administration of the contest.

Sportsmanship Announcement:

The reading of the following announcement is required immediately prior to player introductions of Tournament Series contests. "The WIAA requires good sportsmanship by student-athletes, coaches and spectators at education-based, interscholastic events. We request your cooperation by supporting the participants and officials in a positive manner. Profanity; racial; sexist; or ethnic comments; or other intimidating or taunting actions or chants will not be tolerated and are grounds for removal from the site of competition. Please enjoy the game in a positive manner."

Bands:

Participating schools will be allowed to bring their band and/or have a support group perform at halftime. Bands will be permitted to play only before and after competition, during time-outs and between periods when not in conflict with other scheduled events. Bands must receive permission from tournament managers prior to using amplifying devices.

Spectators may not bring audio and related radio equipment into facilities hosting games or meets.

Recorded Music:

Lyrics may not be offensive or profane. Recorded music is allowed before and after contests, during warm-ups, between periods or during time-outs. It is not allowed during playing action or brief pauses during playing action (between pitches, plays, assessing penalties/fouls/infractions).

Nonschool facilities such as hockey rinks should be advised about the restrictions on recorded music in advance. It is understood that State events may have separate and/or different restrictions on noisemakers and recorded music.

Banners and Signs:

For indoor events, temporary banners are allowed, with some restrictions. Banners and signs must be hand held and stationary. These banners may NOT have offensive language, be used to disrupt players or officials, interfere with spectators' view, used in an inappropriate manner or be carried around the facility during an event. Banners may not be hung from balconies, ceilings, etc. Permanent banners of the host school are allowed, such as those hanging in a gymnasium depicting conference schools, sportsmanship themes or with welcoming messages. At outdoor tournament events, banners may be displayed and/or hung with the approval of the tournament manager.

Shakers and pennants for spectators, cheerleaders and pom pon squads are allowed, even if attached to wooden/plastic sticks. "Homer hankies", towels, "hands" with "No. 1 fingers" and thunder sticks are permitted, but are subject to the following restrictions: (a) They may contain no printing except school name, team nickname and/or school mascot; (b) Tournament and meet managers have the authority to prohibit them if they cause crowd control problems.

Dress:

All spectators are required to dress appropriately.

Noisemakers:

Air horns, whistles and devices that simulate gunfire are not allowed. (canons, cap pistols, etc.)

Appropriate noisemakers are allowed at regular season and tournament competition; provided that they do not disrupt or interfere with playing action. Tournament managers and/or contest managers may restrict use of noisemakers if, in their judgment, they are disrupting coach/athlete communication or if the devices are excessively loud.

Laser Pens:

Laser pens are prohibited at all WIAA regular season and tournament contests. Violators shall be removed from the contest and laser pen(s) confiscated.

Video Taping/School Photographers:

Spectators are allowed to use hand held "camcorders" from their seats. Tripods and power cables are not allowed. Tournament managers may designate areas from which school photographers may videotape if space is available. Any commercial use of video is prohibited without written consent of the WIAA Executive Staff.

Cheerleading Guidelines:

Shakers and pennants for spectators, cheerleaders and pom pom squads are allowed, even if attached to wooden/plastic sticks. "Homer hankies", towels, "hands" with "No. 1 fingers" and thunder sticks are permitted, but are subject to the following restrictions: (a) They may contain no printing except school name, team nickname and/or school mascot; (b) Tournament and meet managers have the authority to prohibit them if they cause crowd control problems.

Only organized and authorized cheerleaders will be permitted to lead their cheering sections. No maximum number of cheerleaders is designated but the number should not exceed a reasonable total. Schools will be prohibited from using cheers which, in the judgment of the tournament manager, ridicule or taunt an opponent or are otherwise in bad taste. Mascots which are offensive in nature and appearance are not allowed and will be asked to leave at the discretion of the tournament manager.

Each school through its administrator is responsible for the nature of cheers. Cheerleaders can be helpful for the purpose of assisting in efforts to promote good crowd behavior. Cheerleaders and others (including spectators) may not engage in such activities as dunking the basketball, dancing on the floor during breaks in play, etc. Tournament managers will decide if "break-through hoops" will be allowed.

For reasons of safety, the following provision applies at all levels of tournament competition:

- a. Mini-trampolines, other rebounding devices and related pieces of equipment are prohibited.
- b. The use of pyramids-mounts is restricted as follows: All individuals in the pyramid/mount who are not in contact with the cheering surface must be supported by one or more individuals who are in direct weight bearing contact with the cheering surface (base).

Prohibited Activities/Materials:

No alcoholic beverages, tobacco products or illegal substances may be available or present at high school events.

Lotteries, drawings, raffles or contests are prohibited at WIAA Tournament events.

Confetti is prohibited.

Ethnic Minority Statement

The Wisconsin Interscholastic Athletic Association objects to activities or uses of materials that may be offensive to members of American Indian or other ethnic communities.

The Association, therefore, discourages schools with American Indian or ethnic mascots from bringing mascots, posters, etc., to any and all competition. This also includes displaying logos or participating in chants, yells, gestures, or other activities that potentially influence incorrect and inappropriate attitudes about the American Indian or any ethnic heritage.

Sportsmanship Disciplinary Policy

In June of 1997, the WIAA Board of Control approved a Sportsmanship Committee recommendation that a disciplinary procedure be in place for schools that have chronic sportsmanship problems. For multiple (more than one) player or coach ejections due to flagrant or unsportsmanlike conduct in a specific season, or for multiple reported incidents of fan/spectator misconduct taking place on school property or the contest facility or reports involving attacks on spectator buses or officials vehicles, the committee recommends the WIAA invoke the following penalty procedure:

1. Require offending school to submit a written report within two weeks on steps they intend to take to resolve problems, improve and correct the conduct of the coach and/or athlete or spectator group involved. The report may involve disciplinary action and must meet the satisfaction of the WIAA.
2. Schools who have multiple incidents of coach/athlete ejections and/or spectator misconduct in a specific sport reported to the WIAA will have that program placed on one year's probation.
3. Subsequent violations during the probationary period will result in the loss of hosting and/or suspension of tournament eligibility for the offending school in the specific sport for one year.

Radio Broadcast Policies

WIAA radio policies relate to broadcasts during the WIAA State Tournament Series. There is no WIAA jurisdiction over regular season radio broadcasting of high school interscholastic competition; however, school administrators are strongly encouraged to prohibit sponsors for broadcasts whose primary business is the sale of tobacco, alcohol, lottery/gambling, mood-altering substances or lewd subject matter. Stations streaming audio or video on the internet must abide by all internet policies and fees.

By submitting the application for radio broadcast or internet stream, stations agree to abide by all WIAA regulations, exclusive contractual agreements and policies regarding the broadcast of events during the entire WIAA Tournament Series to include prohibited advertising and sponsorships as determined by the WIAA.

Stations must apply for play-by-play and live report broadcast rights for pre-State events by completing the **"Radio/Internet Broadcasting Application"** in the *WIAA Media Guides or Reference Guide*. Notification and completed applications for broadcast, with station manager signature, must be mailed or faxed to the tournament site and the WIAA at least two days before the first game of a given tournament. Credentials for all regional and sectional levels of the Tournament Series competition will be issued by the tournament manager at the school hosting the event. Host managers have the right to accept or reject any or all applications for broadcasting or internet broadcasting. Host managers are expected to furnish free admission for two working persons.

Advertising of tobacco, lottery/gambling, alcoholic beverages, mood-altering substances or lewd subject matter or businesses whose primary purpose is the selling of products prohibited by the WIAA as described in the "Advertising" section of the *Media Reference Guide* during broadcasts are prohibited. The WIAA reserves the right to revoke or deny the broadcast rights of any radio station that includes in any part of its broadcast of WIAA Tournament events, including pregame and postgame shows, content or comments considered inappropriate or incompatible with the educational integrity of the tournament or host institution from which the broadcast is originated.

Stations may make arrangements with tournament hosts to pay broadcast rights fee at the tournament site the date of the contest. The fee is to be paid whether or not the station originates a broadcast. There is no fee for live report updates provided no play-by-play is done. Pre-State host tournament managers are authorized to refund fees if the station has a legitimate reason for not being able to broadcast after they planned to do so and/or indicated to the manager in advance it will not be broadcasting if the school it is following is eliminated from the tournament.

A "broadcast" is defined as the airing or intent of airing the entire duration of tournament games or complete session of games from the time the broadcast begins to the time the broadcast ends at the tournament site. This definition includes halftime, between games of a session, immediately before and after a tournament game or session, and during intermission stops and timeouts. A "non-commercial broadcast," defined for the purpose of rights fees assessment, is one that contains no commercials or sponsorships during the entire duration of tournament games or complete session of games from the time the broadcast begins to the time the broadcast ends at the tournament site. This definition prohibits commercials or sponsorships during halftime, between games of a session, immediately before and after a tournament session, and during intermission stops and timeouts. However, a station may return to its studio at halftime or between games of a session to air regularly scheduled programs with its normal advertisers and sponsors.

Stations will not receive a reduced fee by dividing a session into one game on a commercial basis and another on a non-commercial or commercial-delayed basis.

Broadcasts may not begin sooner than three hours after the start time of the game or meet to be classified as a rebroadcast or tape-delayed broadcast.

Broadcast Fees

Type of Radio/Internet Broadcast	Pre-State*	State*
	Fees	Fees
Live broadcast with commercial sponsorship	\$50	\$100
Live broadcast without commercial sponsorship	\$40	\$90
Delayed broadcast with commercial sponsorship	\$50	\$100
Delayed broadcast without commercial sponsorship	\$40	\$90
Stations receiving live feed from originating commercial broadcast	\$40	\$90
Live internet placement of text, images or audio directly from venue	\$50	\$100
Live/Taped Reports/Updates	--	\$25 w/cell or phone

State fees reflected are per game (per day for individual wrestling). Radio broadcasts simultaneously running cybercasts on its internet site does not pay additional fee. The live broadcast fee covers both casts. Rights fees are independent of any telephone line charges covered in the "Telephone Lines" section. Pre-State wrestling fees indicated covers entire regional or sectional. Broadcast rights fees are applicable for stations that pick-up live or delayed feeds from another station or website.

***Subject to radio network agreements.**

Television/Cable Broadcast Policies

WIAA television/cable policies relate to broadcasts during the WIAA State Tournament Series. There is no WIAA jurisdiction over regular season live or taped-delayed television or cable broadcasting of high school interscholastic competition. It is strongly recommended that school administrators not allow sponsors or advertisers on commercial broadcasts or cable telecasts containing any sponsorships or advertising for businesses whose primary purpose is the selling of products prohibited by the WIAA (tobacco, alcoholic beverages, lottery, gambling, mood-altering substances and lewd subject matter). No fees for regular-season broadcasts are required by the WIAA, but local schools and participating teams may wish to require a fee to recover expenses incurred (i.e. power, scaffolding, seats lost due to camera positions, tickets sales lost by spectators staying home and watching, etc.). Television stations and cable stations also considering streaming audio or video on the internet must abide by all internet policies as written in the *Media Reference Guide*.

Pre-State Tournament Series accommodations for working television or cable personnel, cameras and other equipment involved in broadcast production is the responsibility of the host tournament manager, provided the television stations or cable operators receive permission to broadcast in advance. Stations/cable operators must contact tournament host managers and When We Were Young Productions to determine if a live broadcast will be permitted and the amount of rights fees assessed.

Production and distribution rights for all State Tournament and State Tournament Series events are exclusively held by When We Were Young Productions and the WIAA with the exception of the Girls and Boys State Basketball Tournament and the Girls and Boys State Hockey Championship games, which are held by Quincy Newspapers, Inc. **All parties interested in the production and distribution of any State Tournament or State Tournament Series event will be required to obtain permission from the current production and distribution rights holder.**

Production and distribution rights include, and are not limited to, live or delayed television through network or cable outlets, video on demand, content streaming through any platform and physical media. All permissions granted, policies enforced, and fees required will be at the sole discretion of the rights holder. Detailed information regarding policies and fees are available upon request from When We Were Young Productions.

Summary and Contact Information

Event

All State Tournament Series Events
(Regional & Sectional events for all sports)

Rights Holder and Contact Information

Tim Knoeck, When We Were Young Productions
313 W. Beltline Hwy., Suite 31, Madison, WI 53713
Phone: (608) 274-9999, ext. 225

All State Tournament Events, excluding Boys & Girls Basketball Tournaments and Boys & Girls State Hockey Championship Finals games

Tim Knoeck, When We Were Young Productions
313 W. Beltline Hwy., Suite 31, Madison, WI 53713
Phone: (608) 274-9999, ext. 225

Boys & Girls Basketball Tournaments and Boys & Girls State Hockey Championship Finals games

Laurin Jorstad, WAOW-TV
1908 Grand Ave., Wausau, WI 54403
Phone: (715) 842-2251

The WIAA reserves the right to revoke or deny present and future broadcast rights of any television stations or cable operators that include, in any part of its broadcast of WIAA Tournament events including pregame and postgame shows, content or comments considered inappropriate or incompatible with the educational integrity of the tournament or host institution from which the broadcast is originated.

A tape-delayed broadcast is prohibited from airing until three hours after the start of the respective event being aired on a tape-delayed basis. No tape-delayed broadcast of any WIAA Tournament Series event is permitted during the exclusive live coverage of the WIAA State Tournament in the same sport.

The following rules apply for commercial stations covering the WIAA State Tournament Series for newscast purposes:

- a. There is no fee for such purpose.
- b. There may not be live coverage of any kind during the contests. "Live coverage" is defined as any activity which occurs while a game or meet is in progress. Stations may use a backdrop of live action for reports from a tournament facility provided there is no play-by-play commentary and the report is limited to regularly scheduled news or sports programs and are no more than two minutes of a program which is 30 minutes or less in length.
- c. Use of film, video tape, etc., is limited to regularly scheduled news or sports programs, and use on such programs is limited to no more than three minutes of a program which is 30 minutes in length. Unless written approval is granted from the WIAA office, use of more than two minutes of film, video tape, etc., beyond five days from the last day of a tournament is prohibited outside of regularly scheduled news and sports broadcasts.

EXHIBIT E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

WISCONSIN INTERSCHOLASTIC ATHLETIC
ASSOCIATION, AMERICAN-HIFI, INC.

Plaintiffs,

Case No. 09-cv-0155

v.

GANNETT CO., INC., and
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

Defendants.

AFFIDAVIT OF TODD C. CLARK

I, Todd C. Clark, hereby declare,

1. I have personal knowledge of the facts stated herein and, if called upon to do so, could and would testify competently thereto.
2. I am the Director of Communications for the Wisconsin Interscholastic Athletic Association (“WIAA”), where I have been employed since 2000. The principle job responsibilities of the Communications Director include production and supervision of the Bulletin, membership publications and State Tournament souvenir programs; as well as coordination of media relations; Web site maintenance; State Tournament-related coverage; all public relations and sportsmanship efforts and initiatives; and assisting in marketing and sponsorship relationships.
3. The WIAA is a voluntary, unincorporated and nonprofit organization that seeks to develop, direct and control an interscholastic athletic program to promote the ideals of its membership and opportunities for participation by its members. These opportunities include participation in post-season WIAA-sponsored, controlled, and funded sports tournaments. The

tournaments, which are separate from and in addition to regular season games, are the WIAA's major source of operating revenue. I have reviewed the WIAA's 2007-08 budget, and in that year the tournaments brought in \$6,202,963 of the WIAA's operating revenues, which totaled \$7,177,115. Ex. 1.

4. In 2004, I was informed by Douglas Chickering, the then Executive Director of the WIAA, that Quincy Newspapers, Inc. ("Quincy"), the carrier of the WIAA's Boys and Girls Basketball Tournament and Hockey State Finals, could not afford to continue to pay the amount included in the rights agreement. After this, the WIAA began to explore other sources of revenue.

5. At that time, no television station carried games other than the Football State Finals (which was carried by Fox), Boys and Girls Basketball State Tournaments, and Hockey State Finals (which were carried by Quincy). However, in some instances local community access channels would broadcast local games. The WIAA received no direct revenue from these local community access broadcasts. In 2005, I was unaware of any internet streaming of WIAA events by any party. Therefore, the only rights fees I am aware of the WIAA receiving at that time were from the transmission of videos of its tournament events for Football State Finals, Boys and Girls Basketball State Tournament, and Hockey State Finals.

6. In fact, in 2005 the vast majority of our sports were not carried by any media organizations. The participants in the WIAA's volleyball and wrestling events had requested that these events be broadcast. We inquired whether our existing rights holders might be interested in broadcasting these events, but the existing rights holders expressed concerns regarding production costs and network preemption agreements and declined. In addition, Quincy had expressed to the WIAA an interest in expanding coverage of WIAA state hockey

events to include state semifinal games, be ultimately decided not to make this expansion due to network preemption concerns and cost.

7. In 2005, we were approached by When We Were Young Productions (“WWWY”) with the idea of transmitting WIAA games over the internet. At no time prior to WWWY do I recall any media or production company expressing any interest in transmitting WIAA events via internet. Furthermore, I am unaware of any inquiries or requests to the WIAA by media organizations to transmit the then-underexposed and less visible sports such as cross country and tennis. The WWWY agreement therefore both provided new and needed revenue for the organization and an opportunity for the WIAA to promote less visible WIAA sports and participants.

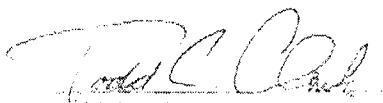
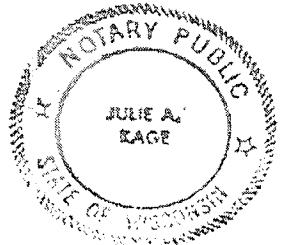
8. Under the WWWY contract, WWWY has the right to transmit via internet all WIAA Tournament Events except Football State Finals, the Boys and Girls Basketball State Tournament, and Hockey State Finals. In addition, WWWY has a separate distribution agreement with Fox, which allows Fox to air some of these games on FSN. Such games are then transmitted via internet on a delayed (as opposed to live) basis. Both live and delayed WWWY games are available to any person with a computer and internet access on WIAA TV (<http://wiaa.tv/>), a web portal that allows access to WIAA events. As a result, although in 2004-05 no WIAA events were offered on the internet, in 2008-09 the WIAA web portal, transmitted 82 live WIAA events on WIAA TV and 182 offered on archived stream and DVD. Ex. 2. Of these events, approximately 134 were under the WWWY contract with WIAA, while approximately 48 were Football State Finals, Boys and Girls Basketball State Tournament, and Hockey State Finals. Ex. 2. WWWY paid \$60,000 to the WIAA in 2008 for these rights, while Quincy paid \$75,000 for its rights agreement, and Fox paid \$20,000. Ex. 3.

9. The value of the contract with WWWY productions, however, far exceeds the amount paid in royalties from WWWY. In addition to providing internet transmission of games, WWWY provides additional services to WIAA. These services include video production, audiovisual and graphics support for tournament games such as producing video programming for scoreboards at tournament sites. In addition, WWWY also provides web transmissions for mandatory WIAA sport rule meetings, which allows members, officials, and coaches to view these mandatory meetings at their convenience remotely thereby avoiding travel and added costs to member schools. The WIAA does not pay for these services. While I am not aware of the exact value, in my experience such services are costly, and, without WWWY, WIAA would likely not be able to afford them.

10. In addition, in 2008 WIAA received \$80,000 from a sponsorship partner, a portion of which value comes from advertising in programming produced by WWWY. The overall amount of associated with the contract with WWWY is therefore substantially above and beyond the \$60,000 paid for the internet transmission rights.

11. I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct to the best of my knowledge.

Dated this 28th day of September, 2009.


Todd C. Clark

Julie A. Kage
Notary Public
My Commission Expires 2/28/12

EXHIBIT F

EXHIBIT 2

WYAA State Tournaments - Events/Distribution

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Season	Event	Location	Events	FS Wisconsin	Fox College Sports	WIAA-TV Stream	WIAA-TV Archive	DVD
Annual Cycle								
Fall	Tournament							
	GOLF - GIRLS	J.W. Ridge CG - Madison	Tournament Highlight Show	1	3	-	1	1
	TEENN'S (INDIVIDUAL) - GIRLS	Nelson Stadium - Madison	Tournament Highlight Show	2	1	-	1	3
	TEENN'S (TEAM) - GIRLS	Nelson Stadium - Madison	Tournament Highlight Show	1	1	-	1	2
	CROSS COUNTRY - BOYS & GIRLS	Ridges CG - Wisconsin Rapids	Tournament Highlight Show	1	1	-	1	1
	SOCCER - BOYS	Union Soccer Park - Milwaukee	Division 1 Quarterfinals	-	-	4	4	4
			Division 1 Semifinals	1	1	2	2	2
			Division 1 Finals	1	1	2	1	1
			Division 2 Semifinals	1	1	2	2	2
			Division 2 Finals	1	1	2	1	1
			Division 3 Semifinals	1	1	2	2	2
			Division 3 Finals	1	1	2	1	1
	SWIMMING & DIVING - GIRLS	University Station - Madison	Division 1 Swim/Dive Final	1	1	-	1	1
			Division 1 Dive Prelims/Semis	1	1	-	1	1
			Division 2 Swim/Dive Final	1	1	-	1	1
			Division 2 Dive Prelims/Semis	1	1	-	1	1
	VOLLEYBALL - GIRLS	Beach Center - Green Bay	Division 1 Quarterfinals	-	-	4	4	4
			Division 1 Semifinals	1	1	2	2	2
			Division 1 Finals	1	1	2	1	1
			Division 2 Semifinals	1	1	2	2	2
			Division 2 Finals	1	1	2	1	1
			Division 3 Semifinals	1	1	2	2	2
			Division 3 Finals	1	1	2	1	1
			Division 4 Semifinals	1	1	2	2	2
			Division 4 Finals	1	1	2	1	1
	VOLLEYBALL - BOYS	Wisconsin Autzen Colise - Eau Claire	Quarterfinals	-	-	4	4	4
			Semifinals	1	1	2	2	2
			Finals	1	1	2	1	1
	*SOFTBALL	Camp Randall - Madison	Tournament Highlight Shows	7	7	-	7	7
			Tournament Finals	7	7	-	7	7
			Fall Three Sub-Total	28	28	28	58	58

Winter Tournament	Location	Events	FS Wisconsin		FOX College	WIAA-TV	WIAA-TV
			Sports	Stream	Sports	Archive	DVD
SWIMMING & DIVING - BOYS	UW Natatorium - Madison	Division 1 Swim/Dive Final	1	1	2	1	1
		Division 1 Dive Prelims/Semis	1	1	1	1	1
		Division 2 Swim/Dive & Final	1	1	1	1	1
		Division 2 Dive Prelims/Semis	1	1	1	1	1
WRESTLING (INDIVIDUAL)	The Keph Center - Madison	Division 1 Finals	1	1	1	1	1
		Division 1 Finals	1	1	1	1	1
		Division 2 Finals	1	1	1	1	1
		Division 3 Finals	1	1	1	1	1
		All Divisions Non-Final Sessions	1	1	1	1	1
WRESTLING (TEAM)	UW Field House - Madison	Division 1 Quarterfinals	1	1	4	4	4
		Division 1 Semifinals	1	1	2	2	2
		Division 1 Finals	1	1	2	2	2
		Division 2 Semifinals	1	1	1	1	1
		Division 2 Finals	1	1	2	2	2
		Division 3 Semifinals	1	1	2	2	2
		Division 3 Finals	1	1	1	1	1
*HOCKEY - BOYS	Alliant Energy Center - Madison	Quarterfinals	4	4	4	4	4
		Semifinals	2	2	2	2	2
		Finals	1	1	1	1	1
*HOCKEY - GIRLS	Alliant Energy Center - Madison	Semifinals	2	2	2	2	2
		Finals	1	1	1	1	1
GYMNASICS	Lincoln High School - Wisconsin Rapids	Lincoln High School - Gym	1	1	1	1	1
*BASKETBALL - GIRLS	Alliant Energy Center - Madison	Division 1 Quarterfinals	1	1	4	4	4
		Division 1 Semifinals	1	1	2	2	2
		Division 1 Finals	1	1	3	3	3
		Division 2 Semifinals	1	1	2	2	2
		Division 2 Finals	1	1	1	1	1
		Division 3 Semifinals	1	1	2	2	2
		Division 3 Finals	1	1	3	3	3
		Division 4 Semifinals	1	1	2	2	2
		Division 4 Finals	1	1	1	1	1
*BASKETBALL - BOYS		Division 1 Quarterfinals	1	1	4	4	4
		Division 1 Semifinals	1	1	2	2	2
		Division 1 Finals	1	1	3	3	3
		Division 2 Semifinals	1	1	2	2	2
		Division 2 Finals	1	1	1	1	1
		Division 3 Semifinals	1	1	3	3	3
		Division 3 Finals	1	1	2	2	2
		Division 4 Semifinals	1	1	1	1	1
		Division 4 Finals	1	1	1	1	1
		Winter Tries Sub-Tournament	27	27	29	62	63

Spring/Summer Tournament		Location	Events	FS Wisconsin	Fox College Sports	WIAA-TV Live Stream	WIAA-TV Archive	DVD
Event	Category							
TENNIS (INDIVIDUAL) BOYS	Nelson Stadium - Madison	Tournament Highlight Show	1	1	-	1	1	1
TRACK & FIELD - BOYS & GIRLS	Wisconsin Memorial Stadium - W.M.A. Course	Division 1 Girls Track and Field	1	1	-	1	1	1
		Division 2 Girls Track and Field	1	1	-	1	1	1
		Division 3 Girls Track and Field	1	1	-	1	1	1
		Division 1 Boys Track and Field	1	1	-	1	1	1
		Division 2 Boys Track and Field	1	1	-	1	1	1
		Division 3 Boys Track and Field	1	1	-	1	1	1
GOLF - BOYS	University Ridge - Madison	Tournament Highlight Show	1	1	-	1	1	1
TENNIS (TEAM) BOYS	Nelson Stadium - Madison	Tournament Highlight Show	1	1	-	1	1	1
SOCER - GIRLS	Uihlein Soccer Park - Milwaukee	Division 1 Quarterfinals	-	-	4	4	4	4
		Division 1 Semifinals	1	1	-	1	1	1
		Division 1 Finals	1	1	-	1	1	1
		Division 2 Semifinals	-	-	2	2	2	2
		Division 2 Finals	1	1	-	1	1	1
		Division 3 Semifinals	-	-	2	2	2	2
		Division 3 Finals	1	1	-	1	1	1
SOFTBALL	Conshan Diamond - Madison	Division 1 Quarterfinals	-	-	4	4	4	4
		Division 1 Semifinals	-	-	2	2	2	2
		Division 1 Finals	1	1	-	1	1	1
		Division 2 Semifinals	-	-	2	2	2	2
		Division 2 Finals	1	1	-	1	1	1
		Division 3 Semifinals	-	-	2	2	2	2
		Division 3 Finals	1	1	-	1	1	1
		Division 4 Semifinals	-	-	2	2	2	2
		Division 4 Finals	1	1	-	1	1	1
BASEBALL (SPRING)	Fox Cities Stadium - George Chase	Division 1 Quarterfinals	-	-	4	4	4	4
		Division 1 Semifinals	-	-	2	2	2	2
		Division 1 Finals	1	1	-	1	1	1
		Division 2 Semifinals	-	-	2	2	2	2
		Division 2 Finals	1	1	-	1	1	1
		Division 3 Semifinals	-	-	2	2	2	2
		Division 3 Finals	1	1	-	1	1	1
		Division 4 Semifinals	-	-	2	2	2	2
		Division 4 Finals	1	1	-	1	1	1
BASEBALL (SUMMER)	Bukolt Park - Stevens Point	Quarterfinals	-	-	4	4	4	4
		Semifinals	-	-	2	2	2	2
		Finals	1	1	-	1	1	1
		Spring/Summer Total Sub-Totals	21	21	40	64	61	51
		Total Annual Totals	26	26	82	182	182	182

¹reflects retransmission of FS W and On-produced events.

EXHIBIT G

EXHIBIT 3

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