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STATE OF WISCONSIN

CIRCUIT COURT

PORTAGE COUNTY

WISCONSIN INTERSCHOLASTIC
ATHLETIC ASSOCIATION
5516 Vern Holmes Drive
Stevens Point, WI 54481,

Plaintiff,

and

AMERICAN-HIFI, INC.
a/k/a When We Were Young (WWWY)
a Wisconsin Corporation,
501 Moravian Valley Road
Waunakee, WI 53597,

WKOW TELEVISION, INC.
5727 Tokay Boulevard
Madison, WI 53719,

WAOW-WYOW TELEVISION, INC.
1908 Grand Avenue
Wausau, WI 54403,

WXOW-WQOW TELEVISION, INC.
3705 County Highway 25
La Crescent, MN 55947

FOX SPORTS NET NORTH, LLC,
10201 West Pico Boulevard
Building 103, Room 3152
Los Angeles, CA 90064

VISUAL IMAGE PHOTOGRAPHY, INC.
W63 N582 Hanover Avenue
Cedarburg, WI 53012,

Plaintiffs pursuant to Wis. Stats. §803.03,

vs.

GANNETT CO., INC.
d/b/a The Post-Crescent
7950 Jones Branch Drive
McLean, VA 22107,

COMPLAINT

Case No.: 08-CV-

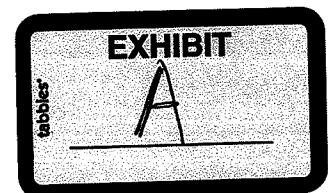
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Circuit Court Portage County, Wis.

FILED

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BERNADETTE A. FLATOFF
CLERK OF COURTS



WISCONSIN NEWSPAPER ASSOCIATION, INC. (WNA)
3822 Mineral Point Road
P.O. Box 5580
Madison, WI 53705,

Defendants.

NOW COMES the plaintiff, Wisconsin Interscholastic Athletic Association (WIAA), by its attorneys, Anderson, O'Brien, Bertz, Skrenes & Golla, by Gerald M. O'Brien, and for its Complaint against the defendant hereby requests a declaratory judgment as hereinafter pleaded:

1. That the WIAA is a voluntary unincorporated association made up of high schools in the state of Wisconsin, with its principal place of business at 5516 Vern Holmes Drive, Stevens Point, WI 54481.

2. That upon information and belief, American-HiFi, Inc. (WWWY) is a Wisconsin corporation with its principal place of business at 501 Moravian Valley Road, Waunakee, WI 53597, and engaged in the business of television productions. It is being joined in this action because, it claims an interest in the subject matter of this action and as a necessary party pursuant to Wis. Stats. §803.03.

3. That upon information and belief, WKOW Television, Inc., WAOW-WYOW Television, Inc. And WXOW-WQOW Television, Inc. ("The WIAA State Network") are Wisconsin corporations engaged in the business of producing television programs. They are being joined to this action because they claim an interest in the subject matter of this action and as a necessary party pursuant to Wis. Stats. §803.03.

4. That upon information and belief, Fox Sports Net North, LLC (FSN-N) is a LLC, with its principal place of business at 10201 West Pico Boulevard, Building 103, Room 3152, Los Angeles, California 90064, engaged in the business of telecasting. It is being joined to this action because, it claims an interest in the subject matter of this action and as a necessary party pursuant to Wis. Stats. §803.03.

5. That upon information and belief, Gannett Co, Inc. Is a corporation with its principal place of business at 7950 Jones Branch Drive, McLean, Virginia 22107, engaged in the business of publishing newspapers, including the Post-Crescent in Appleton, Wisconsin. That it does substantial business in Wisconsin in that it publishes, distributes and collects revenue from the sale of newspapers in Wisconsin.

6. That upon information and belief, Wisconsin Newspaper Association, Inc. (WNA) is a non-stock corporation organized in the state of Wisconsin, with its principal place of business located at 3822 Mineral Point Road, Madison, Wisconsin 53705, engaged as described in its By-Laws, a copy of which is attached hereto and marked as Exhibit A. That it has forwarded a letter from its attorneys, Godfrey & Kahn, dated October 31, 2008 to the WIAA, a copy of which is attached here to and marked as Exhibit B, challenging the WIAA's right to control internet streaming and challenging the WIAA's authority to grant exclusive coverage rights to its sponsored athletic events.

7. That upon information and belief, Post-Crescent publishes and distributes newspapers and is located at 306 West Washington Street, P.O. Box 59, Appleton, Wisconsin 54911.

8. That on April 26, 2005, the WIAA granted certain production rights and distribution rights to WWVY for valuable consideration and a copy of that agreement is attached hereto and marked as Exhibit C.

9. That on March 20, 2004, the WIAA granted certain television broadcast rights to the WIAA State Network for valuable consideration and a copy of said agreement is attached hereto and marked as Exhibit D.

10. That on July 13, 2007, the WIAA granted certain telecast rights to FSN-N for valuable consideration and a copy of that agreement is attached hereto and marked as Exhibit E.

11. That on October 21, 2008, the WIAA provided to Visual Image Photography, Inc. certain photography rights for valuable consideration and a copy of such agreement is attached hereto and marked as Exhibit F.

12. That the WIAA organizes, supervises and sponsors the athletic tournament games of its member high schools. That it has all rights and ownership in those media rights, including newspaper, television, radio and internet, and has the authority to assign all or portions of those rights to third parties, such as the plaintiffs joined pursuant to Wis. Stats. §803.03.

13. That the WIAA has given notice to all public media in the state of Wisconsin of its exclusive ownership rights, and of its general policies, with respect to radio, television, cable, photography and internet limitations as provided in a portion of its 2008-09 media policy reference guide, a copy of a portion of which is attached hereto and marked as Exhibit G. That in addition, it has met with representatives of all public news media in the state advising them of its exclusive ownership rights and its limited access to them by others.

14. That on November 8, 2008, the Post-Crescent newspaper, without permission of the WIAA, live streamed a tournament football game between Appleton North High School and Stevens Point Senior High School in the city of Stevens Point, Portage County, Wisconsin, and streamed it, live, on the internet on its web page. That it is the position of the WIAA that such streaming was in violation of the exclusive rights and ownership of the WIAA. That because its action took place in Portage County, Wisconsin, Portage County is the proper place of venue for this action.

15. That the football game constituted an entertainment event and not a governmental function. That the WIAA did receive compensation for assignment of the rights to live stream, video and web-cast the event. That such compensation assisted in offsetting the cost of producing such event.

16. That this action is commenced for the purpose of having the court enter an order declaring the rights of the WIAA to control the transmission, internet stream, photo, image, film, videotape, audiotape, writing, drawing or other depiction or description of any game, game action, game information, or any commercial used of the same of an athletic event that it sponsors, and that it has the right to grant exclusive rights to others, including the plaintiffs named pursuant to Wis. Stats. §803.03 for tournament events that it sponsors.

WHEREFORE, the WIAA requests judgment declaring that it has ownership rights in any transmission, internet stream, photo, image, film, videotape, audiotape, writing, drawing or other depiction or description of any game, game action, game information, or any commercial used of the same of an athletic event that it sponsors, and that it has the right to grant exclusive

rights to others, including the plaintiffs named pursuant to Wis. Stats. §803.03 and, further requests such other relief that the court deems appropriate, together with its costs, disbursements and attorneys fees.

Dated this 5 day of December, 2008.

ANDERSON, O'BRIEN, BERTZ, SKRENES & GOLLA

By 

Gerald M. O'Brien

A Member of the Firm

Attorneys for Plaintiff

1257 Main Street, P.O. Box 228

Stevens Point, WI 54481-0228

Telephone: 715/344-0890

State Bar No.: 1007340

WNA BYLAWS

Adopted October 5, 1979
Amended January 21, 1994
Amended January 22, 1999
Amended January 31, 2001
Amended February 2, 2006

ARTICLE I NAME

The name of this association shall be the Wisconsin Newspaper Association, Inc.

ARTICLE II PRINCIPAL PLACE OF BUSINESS

The principal office of the association shall be located in the County of Dane, State of Wisconsin, or such other place as may be established from time to time by vote of the association membership.

ARTICLE III OBJECTS AND PURPOSES

The object of this association shall be to protect, promote, foster and advance the interest of its newspaper publishing members in Wisconsin; to increase the market position of newspapers; to improve the conditions under which newspapering is carried on; to protect newspapers against unfair and unjust burdens; to cultivate professional journalism and a high regard for journalistic principles among its members; to place the ethics of newspapers upon a higher plane; to collect and disseminate pertinent data relating to newspapers; to support other organizations, foundations and/or corporations whose goals and functions are in accord with this association; and that this corporation shall not have power to issue certificates of stock or to declare or pay dividends, its purpose not being for pecuniary profit of its members.

ARTICLE IV MEMBERSHIP

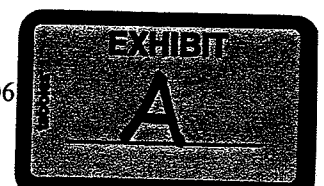
Section 1. The membership of this association shall be of eight classifications: Business, Limited Business, Associate Business, Affiliate, Sustaining, Honorary and Golden, and Campus.

(A) **Business Membership:** Any individual, partnership, corporation, or other form of enterprise engaged in newspaper publishing in Wisconsin may become a Business Member.

(1) A publication to qualify for newspaper membership in the Wisconsin Newspaper Association shall have been published at least weekly in the state of Wisconsin for at least two years as of the start of the year for which the directory is published; shall have a bona fide paid circulation to actual subscribers equivalent to at least 50% plus one of its distribution; shall be a newspaper of general character and interest, as contrasted with publications issued to supply information on certain subjects of special interest to particular groups; shall devote at least 25% of its content to news and editorial matter.

(2) Whenever a Business Membership is held in the name of a partnership or corporation, one individual representing the firm shall exercise the voting power of the membership and the name shall be certified with the secretary of the association. The voting member of the association shall be the publisher of record or a person designated by the publisher.

(B) **Limited Business Membership:** Any individual, partnership, corporation or other form of enterprise engaged in newspaper publishing in Wisconsin may become a Limited Business Member, provided they are not eligible for a regular Business Membership because their publication does not qualify under Section A above as to length of publication. Said Limited Business Membership shall be based on all qualifications stated in Section 1 (A) with this one aforementioned exception. Publication must be regularly issued for at least one year prior to application for membership. A Limited Business Member must apply for full membership after completing two continuous years of publication.



(C) Associate Business Membership: Any individual, partnership, corporation or other form of enterprise engaged in publishing a special interest newspaper including trade or free newspaper is eligible to become an Associate Business Member. These special interest publications must contain 25% news at least 50% of the time and be published at least once a month.

(D) Affiliate Membership: Affiliate Membership may be granted to authorize representatives of trade journals or of other enterprises allied to or connected with the newspaper publishing industry. This membership is open to out of state publishers and other individuals with an interest in newspaper publishing.

(E) Sustaining Membership: Any person not actively engaged in the publishing industry but who has formerly been so engaged or who is interested in the welfare of the publishing industry in the state of Wisconsin may become a Sustaining Member upon written application, subject to the approval of the Board of Directors, and upon payment of membership dues as determined by the Board of Directors.

(F) Honorary Membership: Honorary Membership may be awarded to newspaper men and women and other people who have performed distinguished service for the press or for the Wisconsin Newspaper Association. The Board of Directors shall grant Honorary Membership, the highest recognition of the distinguished service the Wisconsin Newspaper Association can confer

(G) Golden Membership: Golden Membership shall be awarded to any publisher or executive employee who has been the representative of a Business Member newspaper in WNA for at least five years, and who:

- (1) Has retired from active full-time employment in the newspaper industry, and
- (2) Has attained the age of at least 55 years. Golden Members are not required to pay dues. Other special benefits of Golden Membership may be determined from time to time by the Board of Directors.

(H) Campus papers may become WNA members.

- (1) Papers shall be at UW System, private college and Technical College campuses.
- (2) Papers shall be regularly published and officially linked to relevant academic programs and/or be registered student organizations.
- (3) Papers shall be encouraged to participate in the WNA internship program.
- (4) Papers shall receive the benefits of members and may participate as such in WNA annual meetings, training and other programs, some of which may be tailored to campus paper needs.

(I) Limited Business, Associate Business, Affiliate, Sustaining, Honorary, Golden, and Campus members shall be entitled to all of the privileges of the association except the right to vote and hold office. They may take part in official business of the association with the consent of the membership.

Section 2. Any Business Membership may be represented and vote at any meeting by properly authorized proxy. The secretary shall send a blank form of proxy to any membership on request. Proxies to be recognized must be delivered to the secretary prior to the opening hour of any meeting at which they are to be voted. No proxy shall be valid for more than six months from the date thereof.

Section 3. Each Business Membership, whether in person or by proxy, at any meeting, shall be entitled to one vote.

Section 4. Any membership of this association may be suspended or expelled on the following grounds: delinquent dues, which shall be considered delinquent if not paid on or before March 1 of each year; non payment of dues or assessments 30 days from the date upon which they are due. The services of the Wisconsin Newspaper Association shall be denied to any publication not a member of the association.

Section 5. All requests for memberships shall be submitted to and must be approved by the Board of Directors of this Association. Notice of such application for membership shall be published in the Bulletin three (3) times, first publication at least 25 days before a Board meeting at which the application will be acted upon. Applicants denied membership may re-apply after a lapse of 12 months.

(A) A copy of the annual postal statement or other generally accepted circulation verification, three samples of the publication, and a check for the first year's dues must accompany applications. Dues shall be prorated at 50% for applications made after July 1.

Section 6. All memberships agree to accept and abide by the Articles of Incorporation and By-Laws of the Wisconsin Newspaper Association by their acceptance of membership.

ARTICLE V DUES

The annual dues structure for membership of this association shall be determined by a two-thirds vote of the Board of Directors, from time-to-time at its discretion.

ARTICLE VI OFFICERS AND BOARD OF DIRECTORS

Section 1. The officers and members of the Board of Directors of this association shall be Business Memberships as outlined in Article IV, Section 1 Paragraph (a) sub-section (1) of these By-Laws and shall be a President, a First-Vice President, a Second Vice-President, a Third Vice-President, a Treasurer and a Secretary. The officers shall be elected by a majority of votes cast at the annual meeting by the membership. They shall assume their duties of their respective offices during the annual meeting at which they are elected. In case of death, incapacity or resignation of any officer or director, a successor shall be nominated by the President or the First Vice-President in the absence of the President, subject to confirmation by the Board of Directors within 14 calendar days of such death, incapacity or resignation of the officer or director.

Section 2. The President shall name a nominating committee of three, with the immediate Past President as chairman of the committee. Those appointed in even numbered years shall consist of two daily and one weekly representative; in odd years, two weekly and one daily representative.

Section 3. The duties of the President, Vice-Presidents, Treasurer and Secretary shall be those usually performed by such officers. However, the Treasurer, in addition to the usual duties, shall be responsible for an annual accounting, and an audit, from time-to-time, as directed by the Board of Directors, to be conducted in accordance with generally accepted accounting procedures, for presentation to the Board of Directors and approval of the membership.

Section 4. The Board of Directors shall consist of the President, the Vice-Presidents, of which there shall be three, the Treasurer, the Secretary, the immediate Past President and eight directors consisting of four daily representatives and four representatives of other newspapers.

A) Non daily membership shall be elected to the Board as representatives from each of the four districts of the association. Two nominations for the Board of Directors from each district shall be selected from a primary election ballot of memberships submitted to all memberships of the district. If a tie vote produces more than two nominees, the final election ballot shall list the two plus ties. An election conducted by mail within each district, shall determine which of the nominees will serve as director. The non-daily membership of the Wisconsin Newspaper Association, Inc. shall recognize and accept as members of the Board of Directors to represent them as the chosen delegate as designated by each of the four districts hereby created:

(1) Northwest District - Newspapers in the Wisconsin counties of Ashland, Barron, Bayfield, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor and Washburn.

(2) Southwest District - Newspapers in the Wisconsin counties of Adams, Buffalo, Crawford, Dane, Grant, Green, Iowa, Jackson, Juneau, La Crosse, Lafayette, Monroe, Richland, Sauk, Trempealeau and Vernon.

(3) Northeast District - Newspapers in the Wisconsin counties of Brown, Calumet, Door,

Florence, Fond du Lac, Forest, Green Lake, Kewaunee, Langlade, Lincoln, Manitowoc, Marathon, Marinette, Marquette, Menominee, Oconto, Oneida, Outagamie, Portage, Shawano, Sheboygan, Vilas, Waupaca, Waushara, Winnebago and Wood.

(4) Southeast District - Newspapers in the Wisconsin counties of Columbia (including Randolph, WI), Dodge (including Waupun, WI), Jefferson, Kenosha, Milwaukee, Ozaukee, Racine, Rock, Walworth, Washington and Waukesha.

(5) If for geographic or other reasons, a newspaper wishes to be in other than the district to which it is assigned, the Board of Directors upon written request may grant the transfer.

(B) Four directors shall be elected at large by mail ballot by the dailies to serve on the Board of Directors. They shall be elected for staggered three-year terms as follows: first election, one director for one year; one director for two years, and two directors for three years. A nomination ballot shall be sent by mail to all daily members. If there is one position open, the two nominees receiving the highest number of votes, plus ties if any, shall be placed on an election ballot to determine the director elected to the board representing daily members. If more than one position is open, one more nominee, plus ties if any, than positions open shall be placed on the election ballot.

Section 5. All officers shall serve for one year or until their successors are duly elected. The office of secretary and the office of treasurer shall be voted on annually and no person shall hold office for more than three terms.

Section 6. The Board of Directors shall establish and maintain a general business office for this association for the purpose of carrying on the business and conducting activities in furtherance of the objectives and purposes of the association, and to employ a chief executive officer and such other personnel as may be necessary in operating such a business office.

Section 7. A majority of the members of the Board of Directors shall constitute a quorum for the transaction of business at any of its meetings.

Section 8. Directors for each district and those at large shall be elected for a term of three years, and shall not hold the office of director for more than two consecutive full terms, partial terms excluded.

Section 9. There shall be an Executive Committee of the Board of Directors which shall consist of the President, the immediate Past President and the three Vice Presidents. The Executive Committee shall review the activities of the Association, shall monitor the implementation of actions previously approved by the Board of Directors, shall plan the agenda for up coming Board meetings and shall advise and supervise the officers, agents, and employees of the Association in carrying out their duties. A majority of the committee shall be necessary to constitute a quorum for the transaction of business, and a majority of the members present at a meeting at which a quorum is present shall be the act of the committee. The President shall preside. Meetings of the committee shall be held on the call of the President or any two members of the committee.

Section 10. Members of the Board of Directors or any Committee of the Board may participate in a meeting by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in such manner shall constitute presence in person at such meeting for the purposes of these By-Laws. Before the commencement of any business at a meeting at which any directors do not participate in person, all participating directors shall be informed that a meeting is taking place at which official business may be transacted.

Section 11. Each director or officer of the association shall be indemnified by the association against all costs and expenses including attorneys fees which may be imposed upon or reasonably incurred by him in connection with, or arising out of, any action, suit or proceedings (whether the same proceed to judgment or be settled, discontinued or otherwise terminated) in which he/she may be or become involved or to which he/she may be made a party by reason of being or having been such director or officer or by reason of any action alleged to have been taken or omitted by him/her in either such capacity, provided that the foregoing right to indemnification:

(A) Shall not extend to, or apply with respect to any matter as to which such director or officer shall be finally adjudged in such action, suit or proceeding to have been individually guilty of negligence, fraud, or other misconduct in the performance of his duty as such director or officer; but in no case shall contesting the validity of any statute, rule, ordinance or regulation in good faith constitute

such negligence or dereliction of duty, even though the same may be held valid and enforceable in such contest:

(B) Shall cover all costs, expenses and liabilities incurred by such officer or director by reason of acts done or omitted by him/her in good faith in the exercise of his/her judgment that it was in the best interests of the association; and in cases where such liabilities, costs and expenses arise out of a position taken by such officer or director for and on behalf of the association in the belief of the association in the right of such position, on which there might be a fair difference of opinion, such indemnification shall be made for any consideration paid or to be paid for any compromise or settlement or for any judgment, decree, fine or penalty imposed against such officer or director upon any claim in any action, suit or proceeding by reason of a determination, or a compromise of such proceedings or claim adverse to the position so taken;

(C) Shall inure to each such director and officer whether or not he/she is such director or officer at the time such costs or expenses are imposed or incurred and whether or not the claim asserted against him is based on matters which antedate the adoption of these by-laws;

(D) In the event of his/her death, shall extend to his/her heirs and legal representatives; and

(E) Shall not be exclusive of any other rights to which any director or officer may otherwise be entitled under the laws of the State of Wisconsin.

(F) This Article is intended to constitute a contract with each person who, subsequent to its adoption, is serving or shall subsequently serve as a director or officer of the association; and the indemnification provided herein shall be in addition to any other compensation that each such person may receive from the association for his/her services as a director or officer of the association.

ARTICLE VII MEETINGS

Section 1. Meetings of the association shall be held at least annually at such time and place as shall be selected by the Board of Directors. At least 30 days' notice shall be given to each membership.

Section 2. Special meetings of the association may be called by the president or by order of the Board of Directors or upon duly presented petitioned by at least 20 percent of the business memberships. Notice stating the purpose shall be given to memberships as provided by Section 1, and no other business shall be transacted at any special meeting.

Section 3. The memberships present at any regular or special meeting shall constitute a quorum for the transaction of business.

Section 4. Robert's Rules of Order shall be the authority for all meetings unless otherwise provided in the constitution and by-laws.

ARTICLE VIII AMENDMENTS

Section 1. These by-laws may be altered, amended or repealed by a two-thirds vote of the membership present at any regular or special meeting of this association on 30 days notice of announcement of intent to make such alteration, amendment or repeal.

**GODFREY
& KAHN**
ATTORNEYS AT LAW

ONE EAST MAIN STREET
POST OFFICE BOX 2719
MADISON, WI 53701-2719
TEL 608-257-3911
FAX 608-257-0609
www.gklaw.com

October 31, 2008

BY FACSIMILE 715-344-4241
AND U.S. MAIL

Douglas E. Chickering, Executive Director
Wisconsin Interscholastic Athletic Association
P.O. Box 267
Stevens Point, WI 54481-0267

RE: **Internet Streaming Policies**

Dear Mr. Chickering:

We represent the Wisconsin Newspaper Association ("WNA") and its members. We are writing on their behalf to demand that the Wisconsin Interscholastic Athletic Association ("WIAA") rescind its media policies on internet streaming of state high school tournament events. Those policies purport to grant a private company, When We Were Young Productions ("WWY"), the exclusive right to control internet streaming of tournament events. That policy is unconstitutional on its face and as applied.

As you know, the WIAA's claimed right to control the news media's use of photographs taken at tournament events first came to the WNA's attention in 2007. The WNA protested at that time the following provision of the WIAA's Media Policy Reference Guide:

Photographs taken with the authoritative use of the media
credential by newsgathering media outlets are strictly for editorial,
non-commercial use only.

Based on this policy, the WIAA claimed the right to prohibit newspapers from selling photographs taken at tournament events. Indeed, the WIAA claimed it had granted WWY the exclusive right to do so.

Responding to the WNA's objection, the WIAA first clarified that its policy and exclusive contract with WWY did not prohibit the sale of photographs that newspapers had published in print. When this did not satisfy the WNA, many of whose members sell photographs published on their internet web sites, the WIAA wisely decided not to enforce its stated policy. Speaking at the WNA's conference that summer, you said the WIAA preferred to see how a similar dispute was resolved in our neighboring state of Illinois, where it was already in litigation, and where the news media's position ultimately prevailed.



Douglas E. Clickering, Executive Director
October 31, 2008
Page 2

A similar dispute has now arisen over the WIAA's claimed right to prohibit any live coverage of tournament events by internet streaming, except through its "exclusive" contractor, WWY. This claim is asserted, without reference to any supporting legal authority, in the WIAA's media guide:

The WIAA owns the rights to transmit, upload, stream or display content live during WIAA events and reserves the right to grant exclusive and non-exclusive rights or not grant those rights on an event-by-event basis.

Worse, the media guide indicates that WWY has been given the exclusive authority to control, at its sole discretion and without any apparent standards, any live internet streaming of tournament events.

#All parties interested in the production and distribution of any State Tournament or State Tournament Series event via broadcast or internet streaming will be required to obtain rights from current production and distribution rights holder as outlined above.

Production and distribution rights include, and are not limited to, live or delayed television through net or cable outlets, video on demand, content streaming through any platform and/or physical media. All permissions granted, policies enforced and fees requested 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 (608) 849-3200 ext. 225.

WWY has informed WNA members of the fees and conditions under which it would permit live streaming of tournament events:

If an entity wants to produce and stream (on its own) a WIAA tournament event, whether live or delayed on its web portal, the fees are as follows:

\$250 -- for a single-camera (with talent) production
\$1500 -- for a multi-camera (with talent) production

The entity must also send us a master copy of the game and is prohibited from selling copies of the game to anyone.

Douglas E. Chickering, Executive Director
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WWWY will produce a master DVD from the tape (that is sent) and market the product on prepfilms.com of which the entity will receive a 20% royalty on gross sales.

Thus, it appears that the WIAA has not only granted WWWY the "sole discretion" to charge whatever it wants to WNA members seeking to utilize internet streaming technology to report on tournament events, but also to demand the right to market their work and retain 80% of any revenue generated. This is patently unconstitutional.

True?

Falsel

State high school sports tournaments are public, taxpayer-supported events. As such, neither the host schools nor the WIAA has any right to discriminate between members of the news media who wish to report on the events, using whatever technology they choose, subject only to reasonable and non-discriminatory time, place and manner restrictions. Granting exclusive live coverage rights to one news organization, where there are no physical constraints that would prohibit accommodating all news organizations who care to use live streaming technology to report the event, serves no compelling government interest and is not a reasonable time, place and manner restriction.

High school athletic organizations have long been treated as state actors, just like their public school members, for constitutional purposes. See *Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531 U.S.288 (2001). Although the issue has not yet been decided in Wisconsin, we see no factual or legal basis on which the WIAA's constitutional status can be distinguished from its counterparts in Tennessee, Illinois, Arizona, Missouri, Louisiana, Oklahoma, Indiana, Mississippi, Rhode Island or Pennsylvania, see *id.* at 294 n.1, or any of the other states where the issue has been adjudicated since *Brentwood* was decided. See, e.g., *Communities for Equity v. Michigan High School Athletic Association*, 459 F.3d 676 (6th Cir. 2006); *Christian Heritage Academy v. Oklahoma Secondary School Activities Association*, 483 F.3d 1025 (10th Cir. 2007).

The WIAA lacks the authority, as a state actor, to deny the WNA's members the right to utilize internet streaming technology to report on state high school tournament events on an equal basis with WWWY. See, e.g., *American Broadcasting Companies, Inc. v. Cuomo*, 570 F.2d 1080, 1084 (2nd Cir. 1977) ("Once there is a public function, public comment and participation by some of the media, the First Amendment requires equal access to all of the media."). The WNA does not object to reasonable fees paid to host schools to cover their costs of producing the events, including any costs specifically incurred to facilitate internet streaming coverage. To require them to pay fees to a competing news organization and relinquish ownership of their work product, however, is plainly unconstitutional.

Not a public function

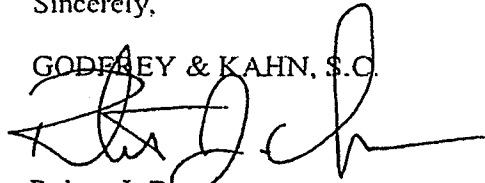
State high school athletic competitions have been part of newspapers' core coverage since before broadcast and internet technology even existed. The WNA's members will not meekly surrender their right to use internet streaming technology to enhance their reporting on

Douglas E. Chickering, Executive Director
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these events. The WNA and its members would welcome a constructive dialogue with the WIAA and its counsel on these issues, and would prefer to avoid litigation, but they will not accept the status quo as set forth in the WIAA's media guide. Please let us know before November 7, 2008, when the next round of the high school football tournament begins, if the WIAA is interested in meeting to discuss resolution of this dispute.

Sincerely,

GODFREY & KAHN, S.C.



Robert J. Drops

RJD:jlm
3294093_1

Production Rights and Distribution Agreement between the Wisconsin Interscholastic Athletic Association (WIAA) and American-HiFi, Inc. dba When We Were Young Productions (WWWYP)

General Terms of Agreement

I. RIGHTS

- (a) American-HiFi/When We Were Young Productions will be granted the exclusive right to produce, sell, and distribute all WIAA tournament series and championship events for all WIAA sports with the exception of existing contracts as of the date of this contract. These rights also include the existing WIAA film library housed in Stevens Point.
- (b) American-HiFi/When We Were Young Productions will be granted the joint right to produce, sell, and distribute, on a delayed basis, all WIAA tournament series and championship events for all WIAA sports under an existing contract as of the date of this contract. These joint rights require approval from both the WIAA and the existing contract holder as of the date of this contract.
- c. American-HiFi/When We Were Young Productions will be granted to right to market this partnership and to use the WIAA trademark, logo, and name to promote these efforts.
- d. American-HiFi/When We Were Young Productions will be granted the right to establish an online property containing the name WIAA for use of marketing and distributing WIAA tournament series and championship content.
- e. American-HiFi/When We Were Young Productions will be granted the right to legally enforce any violation of these production, sale, and distribution rights by a third party.
- f. American-HiFi/When We Were Young Productions will be granted the right to authorize affiliate production partners for the production of WIAA tournament series and championship events.

II. CONTENT PRODUCTION

- a. American-HiFi/When We Were Young Productions will agree to produce directly or through an affiliate all WIAA tournament series and championship events. Our production goals would be as follows for all sports:
 - i. 100% of all state tournaments
 - ii. 50 % of all sectional events
 - iii. 25 % of all regional events
- b. Event production will vary and may include any of the following:
 - i. Single camera high location
 - ii. Single camera low location
 - iii. Multiple camera mixed
 - iv. Special edit

Production enhancements may include play-by-play commentary, slow motion replay, and special graphics. Each event strategy will be spelled out in advance and budgeted out as noted in the **Revenue** section of this contract.
- (c) American-HiFi/When We Were Young Productions will act as an agent of the WIAA in the event that a third party expresses interest in the production, sale, or distribution of any WIAA tournament series or championship event that American-HiFi/When We Were Young Productions holds rights to.



- d. American-HiFi/When We Were Young Productions will agree to actively seek out and affiliate all qualified production resources that have a history of producing WIAA tournament series or championship events.
- ✓ e. American-HiFi/When We Were Young Productions will agree to actively involve local student resources in our production efforts, whether directly by us or through an affiliate, to ensure educational and cooperative benefits for the individual students and their schools.

III. CONTENT DISTRIBUTION

- a. American-HiFi/When We Were Young Productions will agree to establish a multi-platform distribution strategy and will agree to directly distribute or contract with a distribution agent for all WIAA tournament series and championship events. These agreements would include live production, live or delayed streaming, video on demand, tape delayed production, and physical media. Examples of distribution platforms are as follows:
 - i. Internet based video on demand (web streaming)
 - ii. DSL/Broadband based video on demand
 - iii. Cable based video on demand
 - iv. Satellite based video on demand
 - v. Cable (live or delayed)
 - vi. Satellite (live or delayed)
 - vii. Network (live or delayed)
 - viii. Physical Media
- Ⓟ b. The WIAA will reserve the right to review, modify, or reject any terms of these distribution agreements, which do not support the purpose and mission of the WIAA and our mutual partnership.

IV. SPONSORSHIPS

- a. American-HiFi/When We Were Young Productions will be granted the right to solicit and contract with sponsors that adhere to the WIAA guidelines as published.
- b. American-HiFi/When We Were Young Productions will be granted the right to place and promote these sponsors on all forms of content distribution and market them as joint WIAA and WWWYP sponsors.

V. REVENUE

- a. American-HiFi/When We Were Young Productions agrees to pay the WIAA a rights fee based on the following formula:
 - i. WWWYP will establish a tournament/event production cost that encompasses all business related expenses to produce the tournament or event.
 - ii. WWWYP will receive 100% of all revenues generated by the distribution of the tournament/event up until all of the costs have been recaptured.
 - iii. All revenues generated after the tournament/event cost has been recaptured will be split 50% to the WIAA and 50% to WWWYP with the exception of physical media sales.
 - iv. All sales of physical media after the initial cost has been recaptured will be split 20% to the WIAA and 80% to WWWYP.
- b. The WIAA shall be the sole overseer of any funds distribution (if any) to participating schools.
- c. American-HiFi/When We Were Young Productions will be responsible for the collection and clearing of revenues generated for content distribution.

when we were
young
PRODUCTIONS

- d. Monthly status reports will be delivered to the WIAA. Collected funds will be distributed to the WIAA on a monthly basis.
- e. All revenues generated by solicitation of sponsor contracts will be split 30% to the WIAA and 70% to WWWYP. Funds will be distributed immediately upon collection.

VI. MISCELLANEAUS

- a. American-HiFi/When We Were Young Productions will agree to provide video production resources to the WIAA upon request and at no additional cost to the WIAA. These would include:
 - i. Taping and duplication of WIAA meetings and corporate events
 - ii. WIAA promotional videos
 - iii. Tournament highlight trailers
 - iv. Video board content
- b. The WIAA will agree to provide free advertising in all tournament materials and verbally promote our partnership and products at all venues and the WIAA website.
- c. The WIAA will agree to provide preferred credentials and access to American-HiFi/When We Were Young Productions at all WIAA tournament series and championship events and venues.
- d. The term of this agreement will be for 10 years from the date of signing.

Please signify your acceptance of these General Terms of Agreement by signing below.

Acknowledged and agreed:

By: TEEA Date: 5/26/05
Tim Eichorst
President
American-HiFi/
When We Were Young Productions

BY: Doug Chickerling Date: 4-26-05
Doug Chickerling
Executive Director
WIAA

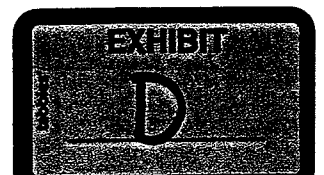
**TELEVISION BROADCAST RIGHTS AGREEMENT
BETWEEN WISCONSIN INTERSCHOLASTIC ATHLETIC
ASSOCIATION AND THE WIAA STATE NETWORK**

This is an agreement ("Agreement") among WKOW Television, Inc., WAOW - WYOW Television, Inc. and WXOW - WQOW Television, Inc. (hereafter collectively referred to as "The WIAA State Network") and the Wisconsin Interscholastic Athletic Association (hereafter referred to as "WIAA").

1. Length of Agreement.

1.1 This Agreement shall be effective July 1, 2004 and shall end on June 30, 2010. Unless either party gives notice of termination to the other in writing prior to June 30, 2008 or June 30 of each subsequent year thereafter, this Agreement shall be extended by one additional year and shall be extended each subsequent July 1 thereafter on the terms and conditions described herein. The intent of the parties as expressed above is to preserve a three year "rolling horizon" agreement and that the procedure described above will provide a minimum of two (2) years' prior notice of cancellation by either party.

1.2 Notwithstanding anything else in this Agreement to the contrary, both parties understand that the obligations of The WIAA State Network are conditioned on the approval of the broadcast network(s) having an affiliation relationship with The WIAA State Network (which presently is ABC television network) to broadcast the championship events described in this Agreement.



2. **Grant of Broadcast Rights and Fees.**

2.1 The WIAA State Network will pay WIAA a total of \$40,000.00 for each year of this Agreement. Payment of each annual rights fees of \$40,000.00 to be submitted in full by The WIAA State Network to the WIAA by May 1 of each of the contract years.

2.2 WIAA hereby grants for the above annual fees to The WIAA State Network the exclusive telecast rights for any type of live video (including internet and cyber casting) and for television broadcasting of the girls and boys state championship hockey games and the girls and boys state championship basketball games. These telecasts would include:

- (i) the Saturday hockey championship games for both girls and boys from approximately noon to 4:00 p.m., and
- (ii) the entire girls and boys (Thursday to Saturday) quarter final, semi-final and championship games (16 girls and 16 boys) Thursday and Friday approximately 9:00 a.m. to 12:30 p.m.; 1:30 p.m. to 5:00 p.m. and 6:30 p.m. to 10:00 p.m. with Saturday championship telecast approximately noon to 4:00 p.m. and 6:30 p.m. to 10:00 p.m.

3. **Television/Cable Markets.**

3.1 The WIAA State Network shall provide "live" telecast coverage in the Madison, Wausau, Rhinelander, LaCrosse and Eau Claire markets. The WIAA State Network will use best efforts in providing live telecast coverage in the Milwaukee and Green Bay markets. In the event "live" telecast coverage is unavailable in the

Milwaukee or Green Bay markets, The WIAA State Network may substitute on a "best effort basis" cable coverage or delayed television coverage in the Milwaukee and Green Bay markets. The WIAA State Network will provide satellite transmission to those television stations and cable systems in other areas of the State of Wisconsin that wish to participate in accordance with terms established by The WIAA State Network.

3.2 The WIAA State Network owns the intellectual property rights in the mark "The Magic of March." WIAA agrees no use of the mark "The Magic of March" will be granted without the authorized written permission of The WIAA State Network.

3.3 No personal home or other business satellite reception will be provided by The WIAA State Network or granted by the WIAA except for those stations in The WIAA State Network that provide programming from time to time to direct broadcast signal providers ("DBS") (for example, Echostar or Direct TV).

3.4 The WIAA State Network retains the exclusive copyright to the WIAA State Tournaments for duplication of all boys and girls state championship hockey and basketball telecasts. No television station not participating with the WIAA State Network may use any video coverage until 20 minutes following the completion of any "live" broadcast coverage. Stations that are not participating with The WIAA State Network may only use up to two (2) minutes of footage of the above delayed coverage. The WIAA will notify all television stations of this restriction.

4. Production Television Requirements.

4.1 The WIAA State Network will provide and assume all costs of production fees, equipment fees and appropriate insurance for its equipment and personnel for the length of this Agreement.

4.2 The WIAA agrees to "broadcast TV time outs" within all championship telecasts that preserve the integrity of the games and meets the telecast objectives of The WIAA State Network. WIAA will notify The WIAA State Network of any significant changes the WIAA elects to impose that would alter the existing format of any championship telecast at least one year prior to the first telecast of any proposed altered WIAA championship event.

4.3 The WIAA will allow complete facility access to The WIAA State Network for all "live" coverage without management obstacles or associated fees.

4.4 WIAA will grant The WIAA State Network first right or preference for all technical set up of all live championship telecast coverage.

4.5 Live transmissions by any broadcaster that is not part of The WIAA State Network for news gathering are to be cleared and approved by The WIAA State Network in advance.

4.6 WIAA and The WIAA State Network championship telecast "play by play" announcers and game analysis (color announcers) will mutually be agreed upon by the WIAA and The WIAA State Network.

4.7 All nonbroadcast videotaping and coverage of any WIAA championship telecast event covered under this Agreement is prohibited.

5. **Non-Broadcast Related Terms.**

5.1 The WIAA agrees to provide The WIAA State Network the following at no charge for each year of this Agreement:

- a. One full page color ad in all championship series programs.

- b. Inclusion in The WIAA State Network major sponsors and participating television station logos in the annual wall planner submitted to all WIAA member schools.
- c. Sixty (60) "all session" tickets to girls championship basketball series and eighty (80) "all session" tickets to boys championship series. Additional tickets to any WIAA championship event may be purchased directly through the WIAA.

5.2 The WIAA State Network agrees to provide the WIAA the following at no charge for each year of the agreement:

- a. Ten (10) 30 second WIAA public service announcements per month (120 annually) on each of the following stations: WKOW TV, WAOW - WYOW TV, and WXOW - WQOW TV. These announcements would be scheduled in the "best time available" and subject to each station's scheduling and preemption policy. These announcements cannot be accumulated or transferred from one month to another. All announcements will be WIAA endorsed and must be submitted to each individual station which is part of "The WIAA State Network" in a timely manner. The stations in The WIAA State Network are to provide the WIAA with monthly verification of schedule placement.
- b. Two (2) one hour wrap up anthology programs to highlight spring/summer WIAA championship events and fall/winter WIAA championship events to be aired at a time and date to be

determined (most likely August and December of each year in an 11:00 a.m. to 12:00 midnight time period). These programs to air on WKOW TV, WAOW - WYOW TV and WXOW - WQOW TV only.

- c. Provide commercial production time and services for WIAA annual board of control meeting above one hour program and public service announcements.

6. Amendments. This Agreement contains the essence of the exclusive "live" video and television broadcast rights agreement granted by WIAA to The WIAA State Network. From time to time either party may request a meeting with the other party to discuss mutual beneficial changes to any of the above terms upon 90 day written notice to the other party.

This Agreement was executed by the parties on the dates indicated below.

Dated: 3/18/04

WKOW Television, Inc., WAOW - WYOW Television, Inc. and WXOW - WQOW Television, Inc. ("The WIAA State Network")

By: *Ralph M. Oaker*

Print Name Here: Ralph M. Oaker

Its VP

Dated: 3/20/04

Wisconsin Interscholastic Athletic Association ("WIAA")

By: *Doug Chickering*

Print Name Here: Doug Chickering

Its Executive Director

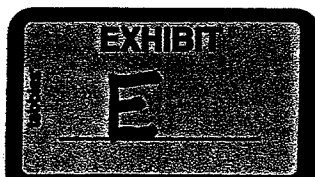
TELECAST RIGHTS AGREEMENT

THIS TELECAST RIGHTS AGREEMENT (the "Agreement"), dated as of August 1, 2007, is by and between the WISCONSIN INTERSCHOLASTIC ATHLETIC ASSOCIATION ("WIAA") and FOX SPORTS NET NORTH, LLC ("FSNN") (collectively, the "Parties").

1. RIGHTS GRANTED.

(a) Games. WIAA hereby grants to FSNN the sole and exclusive license and right throughout the universe, in perpetuity, to produce and Telecast (as defined below), and to sublicense for Telecast, in any and all languages, the seven (7) Wisconsin High School Football Championship Games to be played during each of the 2007-08, 2008-09 and 2009-10 academic years (individually and collectively, the "Game(s)"), on a live and/or delayed basis, in FSNN's sole discretion. All Games are currently scheduled to be played at Madison Camp Randall Stadium at the University of Wisconsin (the "Site"). All references to the Site herein shall apply to any replacement site; *provided, however*, that the site may only be changed by mutual written agreement of the Parties; *provided further, however*, that if the Parties cannot agree on a changed site, WIAA's decision regarding the site shall control, provided that FSNN shall have the right, in its sole discretion, to elect not to produce and Telecast any Games played at a changed site, or to terminate this Agreement with no continuing obligations to WIAA. The dates and times of the Games shall be mutually determined by the Parties; *provided, however*, that if the Parties cannot agree, WIAA's decision regarding the dates and times of the Games shall control; *provided further, however*, that if the Parties cannot agree on the dates and times of any of the Games, FSNN shall have the right, in its sole discretion, to elect not to produce and Telecast such Games pursuant to this Agreement, or to terminate this Agreement with no continuing obligations to WIAA. In the event that FSNN elects not to produce and Telecast any Games after the site, dates and times of the Games have been determined, FSNN shall notify WIAA in writing of such election no later than September 1 of the applicable Contract Year (as defined below). In the event that the site, dates and/or times of any of the Games change for any reason after FSNN has made its initial election to produce or to not produce such Games, WIAA shall promptly notify FSNN of such changes, and FSNN shall have ten (10) business days following such notification to elect to either produce and Telecast such Game(s) or to not produce and Telecast such Game(s), in FSNN's sole discretion.

(b) Telecasts. For purposes of this Agreement, Telecast shall mean any transmission of a video signal and/or audio signal, by any means of technology, whether presently existing or hereafter developed, including, without limitation, via standard television (free over-the-air television) and non-standard television (including, without limitation, basic, tier and/or premium cable distribution, direct broadcast satellite television ("DBS"), subscription television ("STV"), multi-point distribution systems ("MDS"), multiple multi-point distribution systems ("MMDS"), local multi-point distribution systems ("LMDS"), satellite master antennae television systems ("SMATV"), open video system ("OVS"), television receive-only ("TVRO"), closed-circuit television, radio, online (including, without limitation, Internet, www, cable modem and all other forms of online distribution now known or



hereafter developed), internet protocol television ("IPTV"), mobile/wireless, all interactive forms of distribution now known or hereafter developed, airline, theater, restaurant and hotel/motel distribution, narrow and broadband services, compact disc, CD-I, videocassette (including exclusive commercial distribution), videodisc, videogram, video dial tone, pay-per-view, high-definition format, video on demand ("VOD"), subscription video on demand ("SVOD"), via Fox Sports Net's video programming service currently known as "Fox College Sports" (or any successor network), and by any other manner or system. The foregoing shall include, without limitation, FSNN's right to use portions of the Games ("Clip(s)") and to Telecast the Games, from time to time, as filler programming (any Game Telecast in less than its entirety). In connection with Clip rights and filler programming, FSNN shall have no obligation to WIAA with regard to advertising inventory. The exclusive rights granted to FSNN herein shall preclude WIAA and its member schools, individually and collectively, from licensing or otherwise granting to any person, corporation, partnership, or other entity (collectively, a "Person") any right to produce and/or Telecast, whether live or on a delayed basis, any portion of any Game at any time. FSNN shall be entitled to one (1) live Telecast and unlimited re-Telecasts of the Games in perpetuity. FSNN shall also have the right, in perpetuity, to use excerpts of the Games for promotional purposes as set forth herein.

(c) Preemption. FSNN may preempt any Game Telecast in order to Telecast a news event or an event or program deemed by FSNN to be of public importance or significance. In addition, in the event that any Game Telecast conflicts with FSNN programming commitments, including, without limitation, national programming commitments, professional team commitments, collegiate programming commitments and/or live event programming, FSNN shall have the unlimited right, in FSNN's sole discretion, to Telecast such Game on a delayed basis, and/or to cease a Game Telecast prior to completion of such Game and/or begin a Game Telecast after such Game has commenced, as applicable, in order to honor such FSNN commitments, and FSNN shall use best efforts to replay such preempted Game Telecast within seven (7) days of preemption. Notwithstanding the foregoing, in the event that FSNN intends to initially Telecast any Game on a delayed basis due to a scheduling conflict, WIAA and FSNN shall work together to attempt to secure alternate live distribution for such Game, the selection of such alternate live distribution outlet to be approved by FSNN, such approval not to be unreasonably withheld; *provided, however*, that FSNN shall not incur any additional costs for such alternate live distribution, and in the event that alternate live distribution is secured for such Game, the applicable alternate live distribution outlet shall pay to FSNN a mutually agreed upon share of FSNN's production and transmission costs for such Game Telecast, and FSNN shall retain the right, but no obligation, to Telecast the applicable Game in FSNN's sole discretion.

(d) Use of Marks. WIAA hereby grants FSNN the right, without payment, to use, for purposes of the promotion of the Telecast of the Games and promotion of the FSNN and/or Fox Sports Net ("FSN") programming services, the name, logo, trademark, symbol, seal, emblem, insignia and other identity of WIAA and each of its member schools and the likenesses, voices and biographical information of the players, managers, coaches, officials and other persons of WIAA and its member

schools; *provided, however*, that FSNN shall not undertake, or shall immediately cease, such use if notified by WIAA in writing that WIAA reasonably believes that such use is contrary to the best interests of WIAA or its member schools.

(e) Copyright. Anything in this Agreement to the contrary notwithstanding, FSNN shall own, in perpetuity, all right, title, interest and copyrights in and to the Game Telecasts, and each of them (and all elements thereof), and all reproductions, excerpts and/or footage created in the process of producing the Game Telecasts or derived from the Game Telecasts, together with the performances embodied thereon. WIAA shall not redistribute, use or exploit, in any manner, any aspect of the footage contained in or created in connection with the production of the Game Telecasts without FSNN's prior written consent; *provided, however*, that WIAA shall be permitted, without the prior written approval of FSNN, to (i) use Game Telecast footage for internal, non-commercial use, which is not in conflict with the rights granted hereunder (*e.g.*, highlight tapes, recruiting videos, in-house productions and advertising needs, etc.), and (ii) duplicate and distribute copies of the Game Telecasts for home-video and home-DVD distribution only (*i.e.*, no other form of Telecast), provided that in each case WIAA shall provide FSNN with on-screen courtesy credit and shall not alter the screen or otherwise cover any FSNN or Fox Sports Net bug, graphic identifier or "Fox Box" appearing thereon. FSNN shall provide WIAA with one (1) Betacam SP copy of each Game Telecast within ten (10) business days of the conclusion of each Game.

2. TERM; EXCLUSIVE NEGOTIATION PERIOD; RIGHT TO MATCH.

(a) Unless otherwise terminated pursuant to the provisions hereof, the term of this Agreement shall be for a period of three (3) years, commencing on August 1, 2007 and ending on July 31, 2010 (the "Term"). Each year of the Term from August 1 through July 31 shall be deemed a "Contract Year."

(b) Commencing on May 1, 2010 and continuing through July 31, 2010 (the "Exclusive Negotiation Period"), WIAA shall negotiate exclusively and in good faith with FSNN with respect to the terms and conditions upon which WIAA shall grant FSNN the exclusive production and Telecast rights throughout the universe to the Wisconsin High School Football Championship Games to be played after the expiration of the Term, and WIAA shall use good faith efforts to enter into an agreement as soon as is practicable. Prior to the end of the Exclusive Negotiation Period, WIAA shall not negotiate with any other party with respect to such rights. If, at the end of the Exclusive Negotiation Period, the Parties have not reached agreement, WIAA shall then have the right to negotiate with other parties; *provided, however*, that FSNN shall have the right to match any other offer to telecast the Wisconsin High School Football Championship Games to be played after the expiration of the Term by providing written notice to WIAA within ten (10) business days of receiving written notice from WIAA of any such offer; *provided further, however*, that FSNN shall not be required to match any terms that cannot be met easily by one television entity as compared to another, and FSNN shall not be required by WIAA to Telecast any Game on any network or programming service

other than FSNN. Any non-cash items included in any such offer shall be allocated a monetary value for purposes of FSNN's right to match.

(c) The obligations of WIAA under this Section shall survive any termination of this Agreement for any reason other than a material breach by FSNN.

3. EXCLUSIVITY.

FSNN's license for the production and Telecast of the Games shall be exclusive in all media throughout the universe in perpetuity. WIAA agrees that there shall be no other live and/or delayed Telecast whatsoever (in over-the-air, cable, online/Internet distribution, or any other form of media on a local, regional or national basis) of any Game, or of any portion thereof. No other party shall have any other rights or ownership interest in the Games, or any portion thereof. For purposes of clarity only, and without limiting any other term of this Agreement, the rights granted to FSNN hereunder prevent any party, other than FSNN, from making available any of the Games, or portions thereof, on an internet website.

4. PRODUCTION FOR GAMES TO BE TELECAST.

(a) Personnel. FSNN will provide production staff and other personnel, facilities and services as FSNN determines, in its sole discretion, are required to produce the Game Telecasts. FSNN shall select, retain and compensate all on-air talent in connection with all Game Telecasts, including any and all Game play-by-play announcers, hosts and color commentators, in FSNN's sole discretion; *provided, however,* that FSNN shall consult with WIAA prior to selecting such on-air talent; *provided further, however,* that FSNN's decision regarding selection of on-air talent shall control.

(b) Access. WIAA shall provide to FSNN, its agents and personnel, as well as all FSNN production vehicles, complimentary access to all elements of the Games, including, without limitation, the Site, the participants, the coaches, the officials, and all contiguous activities, excluding player locker room access. FSNN shall receive proper working credentials, and a mutually agreed upon number of parking spaces as close to the Site as possible provided that, at a minimum, FSNN shall be provided with no less than a number of parking spots sufficient to accommodate all FSNN and FSNN-authorized personnel involved in support of each applicable Game Telecast.

(c) Format. WIAA shall (i) consult and coordinate with FSNN's coordinating producer prior to the Games to integrate the Game formats with FSNN's commercial format, and, if applicable, (ii) appoint a liaison officer to be responsible for and cooperate in calling time-outs and other structured interruptions so that FSNN's commercial format is satisfied and commercial and promotional announcements are properly spaced.

(d) Production Standards. WIAA shall provide FSNN, without charge, with suitable space and locations, as FSNN may determine at the time of its advance technical survey of the Site, for its announcers and for the installation and operation of all microphones, television cameras and related equipment to be used by FSNN in

connection with its production and transmission (including without limitation, if applicable, satellite uplink or fiber optic equipment) of the Game Telecasts. WIAA shall arrange for all electrical power as is necessary to operate all FSNN production equipment, including, if necessary, a generator, and shall reimburse FSNN for any FSNN out-of-pocket costs in connection therewith. In the event that the Site does not have sufficient lighting for FSNN-caliber broadcasts, as determined by FSNN in its sole discretion, WIAA shall supply such additional lighting at WIAA's sole cost. FSNN shall have the right to install, maintain in and remove from the Site and the surrounding premises such wires, cables and equipment as may be necessary for its coverage of the Games. FSNN shall have the right to bring into or adjacent to the Site mobile units for the transportation of equipment and personnel.

(e) Display. FSNN shall have the right to display its name and trademark on its equipment, and any platform or broadcasting booth used at the Site in such a manner and location as to be reasonably and readily apparent to both the spectators at the Site and the viewers watching the Game Telecasts as distributed by FSNN.

(f) Creative Control. At all times, FSNN has the sole and exclusive right to exercise creative control over the production and format of the Game Telecasts. The foregoing shall include, but is not limited to, on-air talent (subject to Section 4(a) above), television producers, directors, any production companies selected for the Game Telecasts and the placement of all in-Game elements, including, but not limited to, billboards, features, squeezebacks, live reads, etc. FSNN has the unlimited right to edit, augment and otherwise adapt the Game Telecasts, subject to the rights granted to WIAA herein to have included in the Game Telecasts certain WIAA-designated promotional inventory.

5. CONSIDERATION

(a) Rights Fees. FSNN shall pay an annual rights fee to WIAA in the total amount of Twenty-Thousand Dollars (\$20,000.00) during each Contract Year (the "Annual Rights Fee") for a total of Sixty Thousand Dollars (\$60,000.00) during the Term. Payment of the Annual Rights Fee shall be made by September 1 of each Contract Year of the Term. Notwithstanding the Annual Rights Fee set forth above, in the event that FSNN is not able to Telecast any of the seven (7) Games during any Contract Year, for any reason, FSNN shall be entitled to a 1/7 reduction in the Annual Rights Fee payable during such Contract Year for each such Game that FSNN is not able to Telecast, and in the event this Agreement is terminated pursuant to the terms hereof, FSNN shall not be obligated to pay the Annual Rights Fee for Contract Years following such termination.

(b) WIAA Commercial Inventory. In consideration of all rights granted in this Agreement, and subject to availability, WIAA shall receive a combination of one minute and thirty seconds (1.30) of promotional spots during each Telecast of each Game to be used solely for the promotion of WIAA (*i.e.*, no resale or other provision to advertisers or WIAA sponsors and no third party sponsor affiliation or tags); *provided, however*, that WIAA agrees that such promotional inventory shall not promote any other national, regional or local sports distribution outlet, including any network, channel or Internet programming service (*e.g.*, ABC, ESPN, ESPNU, ESPN2, ESPN.com, ESPN Radio, CSTV, TNT, TBS, Comcast, etc.). The promotional inventory shall be produced by WIAA at no cost to FSNN. To ensure inclusion within the Game Telecasts, all WIAA promotional spots must satisfy FSNN's technical delivery requirements, and must be delivered to FSNN no later than five (5) days prior to the applicable Game Telecast. In the event WIAA promotional spots are not properly delivered in a timely manner, FSNN shall have no obligation to Telecast such spots. The promotional inventory shall be reasonably acceptable to FSNN.

(c) FSNN Commercial Inventory. FSNN shall retain all remaining commercial inventory, including, without limitation, all national, regional and affiliate commercial inventory, all billboards and features, all remaining national, regional and affiliate promotion time, and all national direct response advertising time during each Telecast of each Game. FSNN shall have the right to insert into the Game Telecasts sponsorships, commercials, advertising, billboards and sponsored features of any kind or nature, by any means now known or hereafter devised, including, without limitation, virtual signage; *provided, however*, that FSNN shall be prohibited from selling any commercial inventory or sponsorship in the alcohol (including malt beverage), tobacco and gaming advertising categories. As between FSNN and WIAA, FSNN shall be entitled to retain all revenue derived from the sale of commercial inventory.

(d) FSNN Banners. At no cost to FSNN, FSNN shall be permitted to place a mutually agreed upon number of promotional banners, but in any event no fewer than two (2) banners promoting FSNN, FSN, or FSN national or regional news or other related programming at the Site during each Game so that they are readily apparent to the spectators at the Site and within camera angles. In addition, WIAA shall use best efforts to obtain similar banner placement at the site of all other WIAA championship events during the Term. All of such banners will be provided by FSNN.

(e) Game Programs. WIAA shall provide to FSNN, at no additional cost to FSNN, two (2) full-page advertisements (promoting FSNN, FSN and/or FSNN sponsors (in FSNN's sole discretion)) in each game program distributed at every WIAA championship event during the Term (including, without limitation, each Game), with artwork to be provided by FSNN; *provided, however*, that in each game program distributed at every WIAA championship swimming, golf, track, tennis and gymnastics event during the Term, WIAA shall use best efforts to provide to FSNN, at no additional cost to FSNN, a ¼ page, ½ page or full-page advertisement (promoting FSNN, FSN and/or FSNN sponsors (in FSNN's sole discretion)), with artwork to be provided by FSNN.

(f) Game Tickets. WIAA shall provide to FSNN, at no charge to FSNN, a minimum of twelve (12) lower-level tickets to each of the Games.

6. ACCESS AND FACILITIES.

(a) Access. Neither WIAA nor its member schools shall grant access to the Site to any other crews for purposes of obtaining game coverage, other than as specifically set forth herein or to a local news crew for purposes of a local newscast to be aired only after each Game has ended, and WIAA shall ensure that local news crews shall not interfere in any way with FSNN's camera positions at the Games. Press credentials issued to crews not affiliated with FSNN or the schools competing will restrict the use of Game footage to excerpts of two (2) minutes or less during news or sports programs, and will prohibit such crews from authorizing use of such footage by third parties.

(b) Still Photographer Access. WIAA agrees to provide FSNN's staff photographers with photographer's credentials equivalent to the highest grade of credentials given to print media and other photographers covering the Games.

7. ARRANGEMENTS: NAME AND LIKENESS.

WIAA shall be solely responsible for making all arrangements (including any compensation) with the owner(s) of the Site, and with all competitors, officials and other persons participating in or otherwise connected with the Games. Those arrangements shall accord to FSNN's rights under this Agreement including, without limitation, all name and likeness rights of all participants, officials, institutions and any other persons connected with the Games, necessary for FSNN's Telecast of the Games and the promotion and advertising thereof.

8. INTERVIEWS: FSNN EMPLOYEE ADMITTANCE.

Upon appropriate prior notice, WIAA agrees to use reasonable efforts to provide FSNN with access to WIAA's administrative officers, officials, players, coaches, and other appropriate personnel for the purpose of providing FSNN with material for use in promoting the Games and its half-time, pre-game and post-game interviews, and for use in connection with FSNN's news or similar programming. Employees and agents of FSNN shall be admitted to the Site free of charge to the extent necessary to accomplish any of the above purposes, and WIAA shall provide FSNN, free of charge, any necessary working media credential(s) (exclusive of parking).

9. INDEMNIFICATION.

Each Party agrees to hold harmless, defend, and indemnify the other against all claims, suits, actions, liens, debts, damages, costs, charges, and expenses, including court costs and reasonable attorneys' fees, and against all liability, losses, and damages of any nature whatever (a "Claim" or "Claims"), that the other Party shall or may sustain because of any material breach of any representation, warranty, agreement or other provision hereof, or out of any use of rights or material that were furnished by such Party in connection with this Agreement, or resulting from any

Party acts or omissions or any officer, employee, agent or subcontractor of such Party in the performance of this Agreement, on the condition that the indemnitee shall give prompt notice to the indemnitor of the applicable Claim or Claims. WIAA agrees to indemnify FSNN and hold FSNN harmless from all expenses, costs, and liabilities (including, but not limited to, legal fees and expenses) arising directly or indirectly out of suits, claims, or actions for libel, slander, copyright infringement, plagiarism, or misappropriation of rights resulting from the acts or omissions of WIAA or any officer, employee, agent, or subcontractor of WIAA in the performance of this Agreement. The provisions of this Section shall survive the termination of this Agreement.

10. ASSIGNMENT.

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by any Party without the prior written consent of the other Party; *provided, however,* that FSNN may, without such consent, assign this Agreement or any or all of its rights or obligations hereunder to its parent company, or any affiliate, subsidiary, or partnership in which it or its parent company has an ownership interest, or to any entity that acquires at least fifty percent (50%) of the assets of FSNN or the FSN North programming service. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, and no other person shall have any right, benefit or obligation under this Agreement as a third party beneficiary or otherwise.

11. CANCELLATION; POSTPONEMENT; FORCE MAJEURE.

If the staging, production or Telecast of any Game is prevented, canceled or interrupted due to any act of God, inevitable accident, strike or other labor dispute, fire, riot or civil commotion, threat or act of terrorism, government action or decree, inclement weather, failure of technical, production or television equipment, loss or blackout of the Telecast, or for any other reason beyond the reasonable control of WIAA or FSNN, then neither WIAA nor FSNN shall be obligated in any manner to the other with respect to such Game, but all other rights FSNN may have in this Agreement shall remain in effect and shall not be affected in any manner. If, however, any Game should be postponed, delayed or interrupted due to an act of force majeure, then FSNN shall have the right, in its sole and absolute discretion, to elect to produce and Telecast such Game on its rescheduled or continued date in accordance with all the terms hereof or to not produce and Telecast the rescheduled or continued Game, in which case FSNN shall not be obligated in any manner.

12. REPRESENTATIONS AND WARRANTIES.

(a) Each Party represents and warrants to the other, as to itself, that:

(i) it has the full and unrestricted right, power and authority to enter into this Agreement and to grant the rights and privileges granted herein;

(ii) the individual executing this Agreement on its behalf has been duly authorized, empowered and instructed to do so, and

(iii) neither this Agreement, nor the performance of any duty or obligation set forth herein, violates or shall constitute a breach of or default in any judgment, decree, contract, agreement, covenant, or understanding by which it is bound or is a party.

(b) WIAA represents and warrants to FSNN that all member schools have assigned all appropriate and necessary rights in and to the Games to WIAA.

(c) WIAA represents, warrants and covenants to FSNN that for each Game it has obtained any and all necessary rights, clearances and/or permissions to Telecast such Game, including, but not limited to:

(i) any necessary fees to any of the Game organizers;

(ii) any and all clearances and/or permissions necessary for each of the participants in the Game to play in and/or appear in the Game Telecast, including, without limitation, any required clearances or permissions from any regulatory, governing or organizing body;

(iii) securing all music master, mechanical, performance and synchronization rights as necessary for music played during the Game; and

(iv) any and all rights, clearances and/or permissions necessary to use all names, likenesses, trademarks and service marks of all teams, individuals and entities participating in or otherwise associated with the Games, including, without limitation, the right to use the name, logo, symbol, seal, emblem, and insignia of WIAA and each of its member schools for purposes of the promotion of the Telecast of the Games and promotion of the FSNN and/or the FSN programming services.

Upon request, WIAA shall furnish FSNN with copies of all such licenses, clearances and permissions.

13. FINANCIAL DISCLOSURE.

WIAA shall conform with Title 47 of the United States Code Sections 508 and 317 concerning broadcast matter and disclosures required thereunder, insofar as those Sections apply to persons furnishing program material for television broadcasting. Without limiting the foregoing, WIAA hereby certifies and agrees that it has no knowledge of any information relating to the Games that is required to be disclosed by it under Sections 508 and/or 317, that it will promptly disclose to FSNN any such information of which it hereafter acquires knowledge and that it shall not, without FSNN's prior written approval, include in the Games any matter for which any money, service, or other valuable consideration (as such terms are used in Sections 508 and/or 317) is directly or indirectly paid or promised to them by a third party, or accepted from or charged to a third party by them.

13. NO COMPETING PROMOTIONAL ELEMENTS.

WIAA agrees that neither it nor any of its member schools shall promote (*e.g.*, provide camera visible signage at the Site, or any public address announcements, jumbotron, videoboard or matrix messages, etc.) any national, regional or local full-time or majority of the time sports distribution outlet (*e.g.*, ABC, ESPN, ESPNU, ESPN2, ESPN.com, ESPN Radio, CSTV, TNT, TBS, Comcast, etc.) or any affiliated entities, other than FSNN or FSN at the Games or during any Game Telecast.

14. MISCELLANEOUS.

(a) Headings. Section and paragraph titles contained in this Agreement are inserted solely as a matter of convenience and for reference and in no way shall define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

(b) Notices. Any notices with respect to this Agreement shall be made by prepaid certified mail, return receipt requested, overnight courier service (for next day delivery), by facsimile or by personal delivery and shall be addressed to the Parties at their addresses herein contained or to such other address as a Party shall give notice to the other Party:

(i) As to WIAA:

Doug Chickering
Executive Director
Wisconsin Interscholastic Athletic Association
5516 Vem Holmes Drive
P.O. Box 267
Stevens Point, WI 54481
Telephone: (715) 344-8580
Facsimile: (715) 344-4241

(ii) As to FSNN:

Mike Dimond
Senior Vice President/General Manager
Fox Sports Net North
One Main Street, SE, Suite 600

with a copy to: Vice President, Business and Legal Affairs
c/o Fox Cable Networks
10201 W. Pico Blvd.
Building 103, Room 3152
Los Angeles, CA 90064
Telephone: (310) 369-0474
Facsimile: (310) 969-5698

(c) Agreement Not Contrary to Law. To the best knowledge and belief of the Parties hereto, this Agreement contains no provision that is contrary to any federal, state, or local ruling or regulation; *provided, however*, that if any provision of this Agreement, or any part hereof, shall at any time be finally determined to be invalid or unenforceable in whole or in part, under any applicable federal, state, or local law, ruling, or regulation by a court of competent jurisdiction, or by an administrative agency of the federal, state, or local government, or by an arbitrator with proper jurisdiction, then such provision or portion thereof, as appropriate, shall remain in effect only to the extent permitted, and the remaining provisions thereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

(d) Governing Law. This Agreement and the rights and obligations of the Parties under this Agreement will be governed by and construed in accordance with the internal laws of the State of California, without reference to conflict of law provisions. Each Party irrevocably and unconditionally: (i) submits to the general jurisdiction of the federal and state courts located in Los Angeles County, California; (ii) agrees that any action or proceeding concerning this Agreement will be brought exclusively in such courts; and (iii) waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding in any such court was brought in an inconvenient court and agrees not to claim or plead the same.

(e) Separate Entities. The Parties hereto are independent contractors. As to either Party, this Agreement does not create, nor shall be construed to create, an employer-employee, agency, partnership, or other representational relationship. No officer, employee, agent, servant, or independent contractor of either Party hereto shall be deemed at any time to be an employee, servant, or agent of the other Party hereto for any purpose whatsoever, and the Parties shall use best efforts to prevent any misrepresentation of said relationship.

(f) Waiver. The waiver of any breach of this Agreement by either Party hereto shall in no event constitute a waiver as to any future breach, whether similar or dissimilar in nature.

(g) Termination. In addition to FSNN's and WLAA's other rights at law and in equity, either Party may terminate this Agreement if the other Party has materially breached this Agreement and fails to cure such material breach within thirty (30) days after notice of the breach is sent by the non-breaching Party.

(h) Entire Agreement. This Agreement contains the entire understanding among the Parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, expressed or implied, whether oral or written. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by a writing signed by both Parties.

(i) Member Schools. In all instances in this Agreement in which WIAA has incurred an obligation, it shall be understood that, if such obligation is performable only by a member school, or by another institution, WIAA shall use best efforts to cause such school or other institution to perform such obligation.

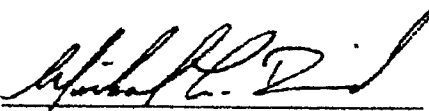
(j) No Other Payment by FSNN. Except as specifically provided in Section 5(a) of this Agreement, FSNN shall not be obligated to make any payment to WIAA or anyone else related to the Games (e.g., participants, the Site, etc.).

(k) Approval of FSN Logo. Any use by WIAA of the FSNN or FSN logo in connection with any Game Telecast or any use of the FSNN and/or FSN name in connection with any publicity or marketing of the Games, including, without limitation, all press releases related to the Games, must receive FSNN's prior written approval no less than ten (10) days prior to any such intended use or distribution.

(signature page follows)

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement the day and year first above written.

FOX SPORTS NET NORTH, LLC

By: 

Name: Mike Dimond

Title: Senior Vice President/General Manager

Date: 7/20/07

**WISCONSIN INTERSCHOLASTIC
ATHLETIC ASSOCIATION**

By: 

Name: Doug Chickering

Title: Executive Director

Date: 7-13-07



VISUAL IMAGE PHOTOGRAPHY, INC.

VISUAL IMAGE PHOTOGRAPHY, INC.

**WISCONSIN INTERSCHOLASTIC ATHLETIC
ASSOCIATION**

2008-13 STATE CHAMPIONSHIPS

**AGREEMENT FOR CONCESSION RIGHTS TO
VEND SPORTS PHOTOGRAPHY PRODUCTS**

Prepared especially for :

WIAA

Presented To:

Doug Chickering

Executive Director

Todd Clark

Communications Director

WIAA

Presented By:

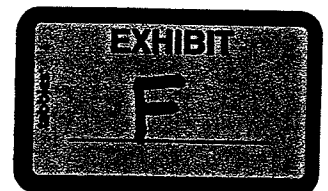
Tom Hayes – Owner & CEO

Bruce Brunner – Sales Manager

VIP, Inc.

Cedarburg, Wisconsin

Date Presented : October 8, 2008



Visit

W63 N582 Hanover Ave., Cedarburg, WI 53012

262.375.4457

262.375.4575

800.577.9570

www.vipis.com



VISUAL IMAGE PHOTOGRAPHY, INC.

Page 2

Obligations of VIP

- VIP shall perform all of its obligations under this Agreement at NO COST to the WIAA.
- VIP shall be solely responsible for providing, at VIP's expense, adequate photographic personnel at the venues ("Scheduled Venues) for the sports events listed below under the heading "Events Coverage" ("Covered Events"). VIP shall be solely responsible for any product displays and signage it desires to use at Scheduled Venues for the promotion of sales.
- VIP shall document the Covered Events by capturing (where practical and consistent with sound photographic practice) images of competitor action, crowd reaction, sponsors, sportsmanship, officials and awards presentations.
- VIP will provide CDs or DVDs to the WIAA containing all photos taken from Covered Events for use in WIAA printed materials and the WIAA website. CDs or DVDs will be sent within 45 days following the completion of each State Final season.
- VIP hereby grants the WIAA the right to use any photographs taken by VIP at Covered Events in WIAA ventures such as calendars, programs and bulletins even if such ventures are operated by the WIAA at a profit.
- VIP will provide the WIAA with complimentary photographs up to and including 20X30's in size for display at the WIAA corporate offices in Stevens Point, Wisconsin.
- VIP shall pay the WIAA a commission of ten percent of gross proceeds (net of sales taxes and shipping charges) from the sale by VIP of all products utilizing images captured by VIP at Covered Events, only to the extent such revenue exceeds \$1,000.00 for each of the Covered Events.
- VIP shall maintain an archive of at least three years of images while this Agreement is in force so images from prior years can be purchased.
- VIP shall handle all distribution arrangements and pay for all shipping and handling costs associated with the sale of photographic products.
- VIP shall post photographs taken on a vendor owned website in a timely manner and shall ship any purchased photographic products to customers in a timely fashion.
- VIP shall give prompt, courteous and efficient service to the public, perform work competently and be governed by the highest standards of honesty, integrity and fairness in all business dealings.
- VIP shall take no action that would reflect adversely on or injure the reputation of the WIAA. In the event the WIAA objects to any content produced by VIP, VIP shall immediately withdraw from public sale/distribution all products containing the objectionable content until such time as the WIAA's objections can be addressed and cured.

- VIP shall indemnify and hold the WIAA harmless from all claims, loss and damage arising from VIP's negligent, reckless or intentional conduct in the performance of VIP's obligations under this Agreement. VIP shall be responsible for all loss or damage relating to the operation of its business.
- VIP shall maintain and pay the premiums for insurance for all aspects of VIP's business operation including insurance for public liability, product liability and personal liability.
- Nothing in this Agreement shall be construed to create an employment or agency relationship between the WIAA and VIP. VIP shall, at all times relevant herein, serve as an independent contractor to the WIAA and VIP shall not be considered an agent of the WIAA. VIP shall not act as an agent of the WIAA, nor represent directly or by implication that VIP is an agent of the WIAA or assume any obligation on behalf of the WIAA.
- VIP along with the assistance and cooperation of the WIAA, will police the activities of so-called rogue photographers who have not secured any concession rights to take State Championship photographs for sale to the general public. Each party will share any information gathered regarding any violators. The WIAA and VIP will issue a cease and desist letter to any violating parties.

Obligations of the WIAA

- The WIAA warrants and represents that it has full authority to enter into this Agreement.
- The WIAA shall maintain a website link between the WIAA web page and the web page of VIP.
- VIP shall be designated the "Official Photography Partner" of the WIAA for each year this Agreement is in force. The WIAA guarantees VIP "exclusivity" with regard to the sale of any products using images from Covered Events, whether captured by VIP or not. The WIAA agrees to work in VIP's best interest by denying media credentials to non-news media photographers who sell any products using any image of a Covered Event.
- The WIAA shall issue a press release to all member schools announcing the renewal of the photography partnership with VIP.
- The WIAA will allow the inclusion of marketing materials, to be designed and printed by VIP, in WIAA pre-championship mailings to Athletic Directors and coaches per WIAA deadlines.
- The WIAA shall provide all necessary media credentials and parking passes to Scheduled Venues of Covered Events for photographers and staff of VIP performing its obligations under this Agreement.



VISUAL IMAGE PHOTOGRAPHY, INC.

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- The WIAA will offer an advertisement in all State Championship programs for any Covered Events at no cost to VIP. Advertisement size may vary based on program book size and space availability. VIP shall be solely responsible for designing all advertisements and providing them to the WIAA in time for program deadlines.
- The WIAA agrees to provide at least six public address and/or video announcements per contest at each Covered Event promoting VIP and its products as official photography partners of the WIAA. VIP shall be responsible for providing the WIAA with copy of the announcement contemplated in this provision.
- VIP shall be permitted to set up onsite displays and signage during each Covered Event in accordance with WIAA approval.
- The WIAA shall assist VIP in coordinating and securing team photographs and awards ceremony photographs at all Covered Events. The WIAA shall provide VIP with team information, including team rosters, season results and other similar information for use on VIP products.
- The WIAA grants VIP the right to use WIAA's proprietary marks and indicia on VIP products and marketing materials. VIP acknowledges the validity of the proprietary marks and indicia of the WIAA and acknowledges they are the sole property of the WIAA. VIP shall use the proprietary marks and indicia only in the exercise of the rights granted under this Agreement, including sales made after the expiration or termination hereof.

Event Coverage

Fall Sports

Girls Golf

Girls Individual Tennis

Girls Team Tennis

Girls Cross country

Girls Volleyball

Girls Swimming & Diving

Boys Cross Country

Boys Soccer

Boys Volleyball

Boys Football



VISUAL IMAGE PHOTOGRAPHY, INC.

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Winter Sports

Girls Hockey

Girls Gymnastics

Girls Basketball

Boys Swimming & Diving

Boys Wrestling

Boys Hockey

Boys Basketball

Spring Sports

Girls Track

Girls Soccer

Girls Softball

Boys Individual Tennis

Boys Team Tennis

Boys Track

Boys Golf

Boys Spring Baseball

Boys Summer Baseball

Company Representatives Handling the Project

- Tom Hayes – President & CEO
- Michael Barton – CFO
- Bruce Brunner – Sales Manager
- Brian Hurley – Chief Photographer
- Jennifer Fredericks – Customer Service
- Meghan Blaney – Graphics Designer

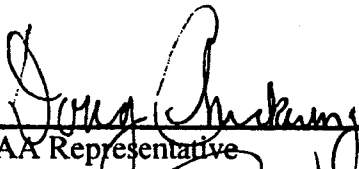


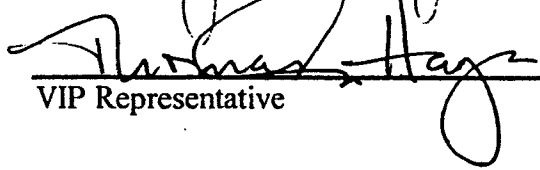
VISUAL IMAGE PHOTOGRAPHY, INC.

Page 6

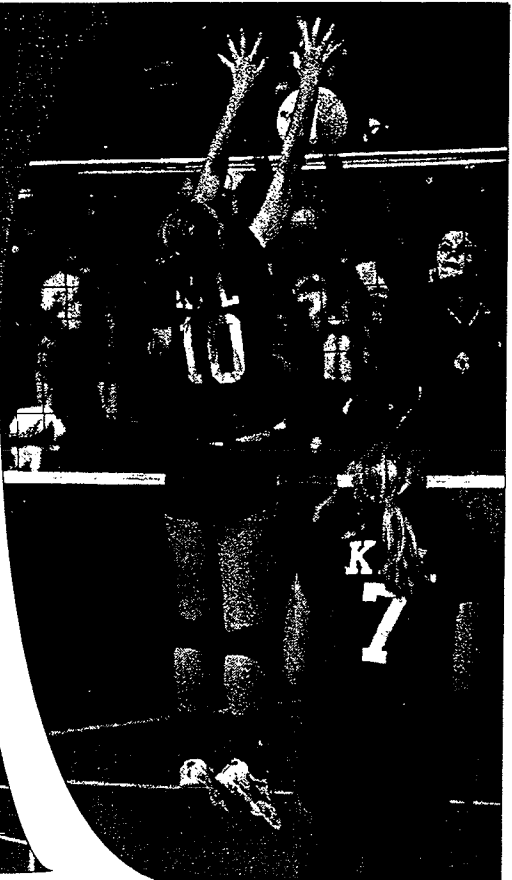
Term of the Agreement

This document sets forth an Agreement between the Wisconsin Interscholastic Athletic Association ("the WIAA") and Visual Image Photography, Inc. ("VIP") regarding photography and related services to be provided by VIP beginning October 1, 2008 and ending September 30, 2013. This Agreement may be terminated without cause by either party upon written notice given not later than July 1 in any year during the term hereof, to be effective as of September 30 of such year.

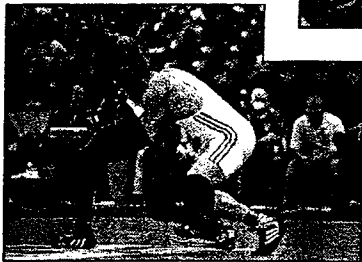
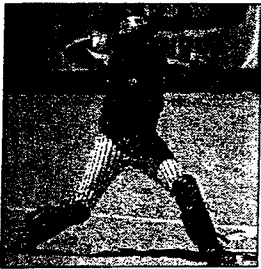
	Executive Director	10-21-08
WIAA Representative	Position	Date

	President	11-12-08
VIP Representative	Position	Date

2008-09 Media Policies Reference Guide



All photos courtesy of VIP



2008-09 Media Policies Reference Guide

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WISCONSIN INTERSCHOLASTIC ATHLETIC ASSOCIATION

5516 Vern Holmes Drive, P.O. Box 267, Stevens Point, WI 54481-0267

Telephone (715) 344-8580 – FAX (715) 344-4241

e-mail: info@wiaawi.org

Web site: <http://www.wiaawi.org>

Web Portal: <http://www.wiaa.tv>

Introduction

The Wisconsin Interscholastic Athletic Association acknowledges the responsibilities of legitimate news gathering media representatives in covering and reporting from WIAA-sponsored tournaments. We recognize and appreciate the interest and promotion generated by media coverage and the recognition given to the achievements of school teams and student-athletes.

The WIAA Media Policies Reference Guide is produced to inform statewide media of WIAA policies in effect for all levels of State Tournament Series competition and assist members of the media in providing comprehensive coverage to their communities.

All members of the media are responsible for reviewing the policies included in this reference guide. Policies contained in this guide refers to television, radio, print and internet media. These policies are not extended to regular-season interscholastic competition, but are effective at the start of post-season WIAA Tournament Series competition.

For more information, please contact us at:

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Wisconsin Interscholastic Athletic Association
5516 Vern Holmes Dr.
Stevens Point, WI 54481
(715) 344-8580/fax (715) 344-4241
e-mail: tclark@wiaawi.org

Joan Gralla, House Manager
Wisconsin Interscholastic Athletic Association
5516 Vern Holmes Dr
Stevens Point, WI 54481
(715) 344-8580/fax (715) 344-4241
e-mail: jgralla@wiaawi.org

General Policies

The WIAA has established regulations and guidelines to assist media with the requesting/issuing of working media credentials, parking permits, the use of equipment by news gathering media and the comprehension of WIAA property rights for State Tournament Series competitions.

Any noneditorial, commercial or other unauthorized use of any transmission, internet stream, photo, image, film, videotape, audio tape, writing, drawing or other depiction or description of any game, game action, game information (including game statistics), player interview, venue-associated activity, and any non-editorial or commercial use of any team school name or logo, is prohibited without written consent of the WIAA.

Credentials

Media credentials and accommodations for regional, sectional and State Tournament competitions are not transferable or for sale under any circumstances.

Requests for credentials must be made in accordance with WIAA policies through a legitimate newspaper, radio/TV station, magazine, internet network or recognized news-gathering organizations as determined by the WIAA. Credentials are reserved for adult members of the media only. The WIAA reserves the right to request company letterhead when determined necessary to verify credential requests.

Media requesting credentials to WIAA State Tournament events must submit a completed Credential Request Form. An on-line submittable form is located on the restricted area of the WIAA Media Center Web site. The form is also located in this guide (page 18) and in the WIAA Media Guides. Please submit the form by the published deadlines (see page 4).

The WIAA retains the right and sole discretion to confiscate and deny future credentials to any media organization or individual not adhering to WIAA policies stated in this manual. Credentials are issued by the WIAA to media organizations

to provide access for an individual or individuals who have a legitimate working relationship with an accredited media organization (as determined by the WIAA) in connection with the event for which the credential is issued.

By requesting and accepting the use of a WIAA credential, the media organization, its personnel and agents, together agree the bearer of the credential is performing a legitimate working function in attending the event. The credential is for use only in connection with the bearer's news and editorial coverage of the event.

Requesting Credentials

Requests for media credentials will be accepted and issued to members of the media and media organizations based on the following conditions:

1. Credentials for all regional and sectional levels of the Tournament Series will be issued by the tournament manager at the school hosting the event. All media are required to contact the host school athletic director or host tournament manager in advance of the event to make arrangements for credentials. Failure to contact host managers/athletic directors in advance may result in denied media privileges at tournament events.
2. Credential requests for State Tournaments must be submitted on a completed Credential Request Form. An on-line submittable form is located on the restricted area of the WIAA Media Center Web site. The form is also located in this guide (page 18) and in the WIAA Media Guides. Please submit the form by the published deadlines (see page 4). Forms submitted on-line are preferred. Email requests may also be accepted; however, any information or request not provided in an email that pertains to credential requests and accommodations as noted on the "Credential Request Form" (i.e. parking, phone line, etc.) will not receive consideration.
3. No credential requests or accommodations will be approved for persons not employed on staff or as freelance by contract of a recognized media organization. **Credentials must not be requested for and will not be granted to coaches, former coaches, family, friends or family of participants not employed by the requesting media organization.**
4. Requests must be received in the WIAA office no later than noon two days before the start of the respective State Tournament event (see "Credential Request Deadlines" section). **REQUESTS RECEIVED AFTER DEADLINES WILL NOT BE CONSIDERED.** In addition, no credentials will be issued to media that arrive at State Tournament venues without having verification by the WIAA of a credential request made by the prescribed deadline.
5. Verification of approved media credential requests will be posted on the restricted area of the WIAA Media Center Web site the morning of the credential request deadline date.
6. Any substitutions of approved credentials must be done by sports directors or editors contacting the WIAA prior to arriving at the State venue at (715) 344-8580.
7. The WIAA reserves the right and sole discretion to revoke current and deny future credentials to any media organization in violation of any WIAA media policies or provisions of credentials. Media organizations that violate credential policies are subject to legal liability, as well as all costs incurred in enforcing the terms of these policies, including but not limited to reasonable attorney fees.
8. Permission for local cable operators in relation to videotaping or airing Tournament Series events must be done by contacting When We Were Young Productions (608) 849-3200 ext. 225. Credentials will not be granted to cable operators not receiving clearance from WWY Productions.

Credential Provisions

1. The WIAA authorizes the number of credentials issued to any media organization. The WIAA media credential is issued to members of legitimate media outlets that have a professional working function (as determined by the WIAA) at WIAA State Tournament venues and events. The credential provides access to specified locations, venues and events for which the credential was issued. At certain tournaments, some areas may be restricted for radio, television, news print and photographers.

2. Credentials must be worn and displayed at all times while at the tournament venue for which the credential is issued.
3. Transfer or sale of credentials is prohibited and will result in immediate confiscation of credential and/or possible denial of future credentials to individual perpetrators or their affiliated media organization as determined by the WIAA.
4. The media work areas are available for professional working members of the media. Cheerleading in press boxes and media seating is unprofessional and will not be tolerated. Violators will have their media credentials revoked and be escorted out of the media area or press box by WIAA or security personnel.
5. Children, spouses and friends of media that are not officially employed by a media outlet are not permitted in media areas during or immediately following contests.
6. Any member of the media believed to be intoxicated, under the influence of mood-altering substances or acting in an unprofessional manner as determined by WIAA personnel will have their media credentials revoked and be escorted out of the media area with possible denial of future credentials to individual perpetrators and/or their affiliated media organization as determined by the WIAA.
7. A media credential does not allow access to team or participant locker rooms before, during or after any State Tournament competition. Coaches and participants may be available for interviews directly outside the locker rooms.

Credential Pick-up

All approved credentials can be picked up at the tournament venues. No credentials will be mailed prior to the tournaments. A photo ID may be required to claim passes at certain State Tournament venues. Please be prepared to show photo ID to receive all State media credentials.

Approved credentials will be placed in individual envelopes identified with each bearer's name. Credentials will be made available for pick-up at State venues approximately 1 hour, 30 minutes prior to the start of each day's competition.

For events at the Kohl Center (individual wrestling, boys basketball), credentials will be available at the Mifflin Street entrance to Lot 91. For events at Camp Randall Stadium (football), credentials can be picked up at the entrance to the parking ramp (Lot 17) on Engineering Drive. For events at the UW Field House (team wrestling), credentials will be available at the Gate C entrance to the Field House. Locations for credential pick-up may change. Any changes in credential pick-up locations will be communicated in State preview releases.

Credential pick-up at other State venues will be located at the designated "Will-Call" window. The "Will-Call" window at the Alliant Energy Center for State hockey is located at the east side ticket windows and located at the west side entrance for State girls basketball. Credential pick-up at other State Tournament venues are conveniently located at media entrances to restricted media areas.

Credential Maximum Request Limits

Television (not play-by-play): For TV stations covering the State Tournament for newscast purposes and not live broadcast, a maximum of two (2) credentials will be issued. An exception of three (3) credentials for TV stations located in the tournament host community will be permitted. Also see "Television/Cable Broadcast Policies."

Cable Access: Access for local cable access channels covering the State Tournament events can only be obtained through When We Were Young Productions. WYWYP will make arrangements for WIAA credentials.

Radio: A maximum of two (2) credentials will be issued to stations doing play-by-play of WIAA Tournament Series events. Any additional credentials must be approved by the WIAA. A maximum of one (1) credential will be issued for filing live reports or not originating any broadcasts or reports.

Daily Newspapers: For daily newspapers, a maximum of five (5) credentials, including photographers, will be issued to papers with a paid circulation of 30,000 or more. Daily papers under 30,000 paid circulation may receive a maximum of four

(4) credentials if teams in their primary coverage area are participating, and a maximum of two (2) credentials will be issued to dailies with under 30,000 paid circulation with no participating teams in their primary coverage area. Additional credential requests will be reviewed to determine if appropriate by the WIAA.

Weekly Newspapers: Weekly newspapers may be issued a maximum of two (2) credentials (including photographer) if teams competing are in their primary coverage area. A maximum of one (1) credential will be issued to weekly papers with no competing teams in their primary coverage range as determined by the WIAA.

Web site: Legitimate news gathering Web site organizations posting original content and information in a timely (daily) manner as determined by the WIAA may receive a maximum of two (2) credentials. Additional credential requests will be reviewed and determined if appropriate by the WIAA. Fan-based Web sites as determined by the WIAA will not be granted credentials. See credential criteria in "Internet Policies" section (page 13).

Specific Sports Publications: Legitimate sport-specific publications as determined by the WIAA may receive a maximum of three (3) credentials for their respective sport's State Tournament.

Photographers: Photographers without affiliation to any media organizations (i.e. professionals, yearbooks, etc.) will not be granted media credentials (also see "Photography Provisions" section).

Please contact Todd Clark or Joan Gralla at the WIAA with any special media credential requests (715) 344-8580.

2008-09 Credential Request Deadlines

Fall Sports	Tournament Dates	Credential Deadline
Golf (Girls)	Oct. 13-14, 2008	Noon, Oct. 10, 2008
Tennis (Girls), Individual	Oct. 16-18, 2008	Noon, Oct. 14, 2008
Tennis (Girls), Team	Oct. 24-25, 2008	Noon, Oct. 22, 2008
Cross Country	Nov. 1, 2008	Noon, Oct. 30, 2008
Soccer (Boys)	Nov. 6-8, 2008	Noon, Nov. 4, 2008
Volleyball (Girls)	Nov. 6-8, 2008	Noon, Nov. 4, 2008
Swimming & Diving (Girls)	Nov. 14-15, 2008	Noon, Nov. 12, 2008
Volleyball (Boys)	Nov. 14-15, 2008	Noon, Nov. 12, 2008
Football	Nov. 20-21, 2008	Noon, Nov. 18, 2008
Winter Sports	Tournament Dates	Credential Deadline
Swimming & Diving (Boys)	Feb. 20-21, 2009	Noon, Feb. 18, 2009
Wrestling, Individual	Feb. 26-28, 2009	Noon, Feb. 24, 2009
Hockey	March 5-7, 2009	Noon, March 3, 2009
Gymnastics	March 6-7, 2009	Noon, March 3, 2009
Wrestling, Team	March 6-7, 2009	Noon, March 3, 2009
Basketball (Girls)	March 12-14, 2009	Noon, March 10, 2009
Basketball (Boys)	March 19-21, 2009	Noon, March 17, 2009
Spring/Summer Sports	Tournament Dates	Credential Deadline
Tennis (Boys), Individual	June 4-6, 2009	Noon, June 2, 2009
Track & Field	June 5-6, 2009	Noon, June 3, 2009
Golf (Boys)	June 8-9, 2009	Noon, June 5, 2009
Soccer (Girls)	June 11-13, 2009	Noon, June 9, 2009
Softball	June 11-13, 2009	Noon, June 9, 2009
Tennis (Boys), Team	June 12-13, 2009	Noon, June 9, 2009
Baseball (Spring)	June 16-18, 2009	Noon, June 14, 2009
Baseball (Summer)	July 29-30, 2009	Noon, July 27, 2009

Member School Photo Credentials

The WIAA does not provide media credentials to member schools for students of schools advancing to the State Tournaments. However, each school that qualifies a team for the State Tournament is permitted one (1) "Student Photographer" credential in sports where applicable. A ticket must be purchased and a letter from the principal or athletic director identifying the individual as the recipient of the "Student Photographer" credential is required.

Only schools of competing teams may receive a student credential to photograph or tape a State Tournament event in applicable sports. Tapes or photos may not be sold, rented, loaned, loaded to the Web site or shared with other schools or local cable access stations. Any commercial sponsorship or financial gain from tapes is prohibited. Violation of this policy will subject the school to the broadcast rights fee.

A school which designates any outside entity for its "Student Photographer" pass forfeits the right to send its own film or video photographer to the State Tournament.

Parking Permit Ordering Policies

For most WIAA State Tournaments, media may utilize and purchase existing general parking at the venues. For events at the Kohl Center and Camp Randall in Madison, Wis., members of the media may request to purchase, at cost, parking permits from the WIAA.

Parking permits available through the WIAA are assigned on the basis of need and/or in order of requests. Any requests made for parking after the prescribed credential request deadline (see "Media Credential Request Deadlines" section) for the respective tournament may not be available.

All requests for parking will receive and be charged for all sessions of a tournament unless otherwise noted on the "Media Credential Request" form by the requesting media. Parking for subsequent games if a team in a media organization's coverage area wins or loses will be included and organizations will be charged regardless if the permits are used or not.

Requested parking permits will be included in an envelope with media credentials for events at the Kohl Center and Camp Randall (see "Credential Pick-up Policies" section). The media requesting parking permits should indicate on the "Credential Request Form" which individual(s) receive parking permits if parking requests are fewer than credential requests.

The WIAA reserves the right to refuse parking to any media organization failing to pay for parking ordered at any previous tournaments. The WIAA will invoice media organizations for parking fees following the tournaments.

Communication Lines

The WIAA secures a number of telephone, high-speed lines or wireless connections at State Tournament venues. All lines requested through the WIAA are shared lines. No dedicated lines throughout an entire tournament will be provided unless arrangements are made to install a dedicated line at cost to the media organization requesting the line (see "note" on page 6). Play-by-play radio broadcasts may request use of a phone line during their broadcasts at a cost indicated on the "Credential Request Form." Radio stations filing live reports will utilize "available lines" to file reports. Please indicate on the Credential Request Form if you plan to use a cell phone for broadcast or reports to help avoid invoicing for line usage fees.

Communication connection usage fees are \$25 for newspapers filing stories from State venues, \$25 for radios using phone lines to file live or taped reports back to stations, \$25 for internet companies using the lines to upload information on a regular basis but not on a continuous basis and \$75 for stations calling play-by-play for a game or segment of a game.

Note: Any media requesting or requiring to guarantee a dedicated line (exclusive line) for continual use during an entire tournament must make arrangements for the installation and charges with the host venue and telecommunications company and notify the WIAA. Media outlets with pre-existing dedicated lines at host venues will have those lines reserved for its use. However, seat locations adjacent to a media's dedicated phone jack is not guaranteed based on available media seating.

Photography Provisions

Guidelines and policies for photographers at WIAA State Tournaments and during the Tournament Series are determined by the WIAA and based on the nature of the activity and venue, and the official rules of the activity. Photographs taken with the issuance of credentials are strictly restricted to editorial and non-commercial uses and are restricted to newspapers, news and sports-related periodicals and Web sites, except with written consent of the WIAA Executive Staff. No resale of digital image files, photos, videotape or film by media organizations is permitted without written consent of the WIAA. The only permitted resale of images and/or photographs are those actually included and distributed in printed publications. Photographers issued WIAA credentials must adhere to all WIAA photography policies and provisions outlined in this section.

Photographs taken with the authoritative use of the media credential by news gathering media outlets are strictly for editorial, non-commercial use only. A license authorizing the sale of photographs of WIAA pre-State Tournaments (regionals and sectionals) is available through WIAA for a yearly fee of \$100. Please contact the WIAA if interested.

Any sale of photography, digital image files, videotape or film taken at State Tournament Series events is prohibited without written consent of the WIAA. Any photos, images or video taken with WIAA credentials are subject to rights, if any, of all third parties, including the individuals photographed.

Use of flash equipment and strobe lighting is permitted at all State Tournaments except the gymnastics championships, provided the use of such equipment does not interfere with or disrupt any action or administration of the event. It is the authority of the WIAA to determine if flash equipment is interfering or disrupting play at the State Tournament and the authority of game officials and tournament management at pre-State tournaments. Media intending to use flash and strobe equipment should meet with officials and tournament managers prior to regional and sectional contests to avoid potential problems.

During post-game celebrations and awards ceremonies, only the official WIAA photographer and the entity possessing the exclusive television broadcast rights are allowed inside the ceremony perimeter (as determined and controlled by WIAA personnel). All other photographers must remain at the ceremony perimeter.

Loose equipment bags or tripods are not allowed at courtside, on the sideline or in competition areas. Photographers must remain in areas designated for photographers as determined by the WIAA (see "Photographer Location Policies" section).

Photographers are prohibited from shooting in spectator areas that obstruct the view of spectators in their ticketed seats.

Photography Locations

The following outline provides the photography policies and the locations available for photographers at each sport's State championship venue. Please refer to the media instructions in State Tournament media packets at each State venue for additional information or changes to policies.

Baseball - National Federation rules prohibit media photographers from being present in any live ball areas. Photographers must remain in designated photo areas as determined by the WIAA. The designated photo areas at Spring Baseball are located in the photography box on the outfield side of the dugouts along the first and third base lines. The designated photo areas at Summer Baseball are located inside the fence on the outfield side of the dugouts along the first and third base lines. These locations are identified with a chalk outline. Access to the field is available during award ceremonies.

Basketball - Only photographers with properly displayed media credentials will be allowed access to courtside photo areas. These areas are at the edge of the court along the ends of the court, from the corner of the court to the free throw lane extended to the edge of the floor on each side of the baskets. No photographers are allowed on the floor along the sides of the court (along team benches and media row). Photographers must sit or kneel when the game is in progress. No television or press photography is allowed on the court during pregame warm-ups, during announcing of the starting lineups or anytime during the game with the exception of the official WIAA network and videographers.

Cross Country - Photographers with cameras and credentials will be allowed inside spectator ropes and restraining fences in designated areas for race starts and finishes as determined by the WIAA. Crossing in front of runners during the race on the course is strictly prohibited. At the finish chute, photographers must stay in designated roped-off areas. Photographers must stay out of all sand traps and off tee boxes and greens.

Football - Photographers will be allowed access to the sidelines with properly displayed credentials. Photographers are allowed behind the dotted line from the 30-yard line to the end zone and along the back end of the end zone. Photographers are not allowed in the team areas (30-yard line to 30-yard line) except for the official WIAA videographer, but may pass through the back of the team box to get to the other end of the field. However, they are not allowed to stop in the team area.

Golf - Photographers with properly displayed credentials may follow golfers. Photographers must shoot from the rough or cart paths, taking extreme caution not to interfere with contestant sight lines or disturb play in any manner as determined by the WIAA.

Gymnastics - This is the only tournament that prohibits flash and strobe photography because of the potential safety hazard to gymnasts. Photographers must remain outside the perimeter of the judges and must leave the floor after the event they are shooting is completed or when the gymnast has finished her routine. Photographers must refrain from moving at locations near apparatus during routines.

Hockey - Photographers with properly displayed credentials may shoot from nearly any location at the Coliseum where spectator views are not blocked. However, photographers other than the official WIAA photographer and videographer, are prohibited from shooting from the penalty box, team bench areas, the goal judge area and the player entrance areas.

Soccer - Photographers are prohibited from entering the playing field at anytime during a game, including shootouts. Photographers with properly displayed credentials are allowed to shoot during play on the sidelines and on the end lines directly inside ropes and fences not to encroach the sideline of the soccer field with the following two exceptions. Photographers are prohibited from shooting in the area directly behind the goal/penalty area on each end of the field during action or in front of the official bench and team benches at any time. It is permissible for photographers to move onto the playing area for pictures before and after games, during halftime and during intermissions between overtime periods.

Softball - National Federation rules prohibit media photographers from being present in any live ball areas. Photographers must remain in designated photo areas off the playing field as determined by the WIAA. The designated photo areas at Goodman Diamond are outside the fence in the opening between seating areas along the first and third base lines. In addition, photographers can shoot outside the fence down the lines in the outfield and in the designated camera area in the stands behind home plate. Access to the field is available during award ceremonies only.

Swimming & Diving - Photographers with properly displayed credentials may shoot from the designated areas on the pool deck and behind any roped-off areas. Permissible photographer areas are located on the control side of the pool, behind the timers' chairs and at the contestant seating area at the end of the pool opposite the starting blocks. Photographers are not allowed on the walkway where the awards stand is located or near the diving pool. Television photographers and photographers using flashes/lights pointed at the swimmers during turns, exchanges and starts are prohibited.

Tennis - Photographers with properly displayed credentials may shoot from nearly any location of the Stadium where spectator views are not blocked. No photography is permitted at courtside during matches. Media wishing courtside photos during warm-ups are required to request access from WIAA personnel prior to entering courts. Flash photography at courtside during warm-ups must receive permission from WIAA officials.

Track & Field - Updated guidelines for photographers at the new Veterans Memorial Stadium will be developed and communicated leading up to the State Meet. Access to the infield will be limited to photographers only and only in the designated areas. Anyone with a media or photo credential not shooting photography in these areas will be removed from the infield. In addition, any media photographer taking pictures from the infield outside of these prescribe areas will be removed. Access to all other field events are identical to spectators.

Volleyball - Photographers with properly displayed credentials may shoot from off the Sport Court floor on the side opposite the team benches during the entire tournament. Photographers may also shoot from off the court on each end during championship finals. Photographers must wait for a stoppage in play to move to other areas at each end of the courts.

Wrestling - Photographers with properly displayed credentials may shoot from designated areas at mat side at both team and individual tournaments. Photographers must remain off the mat and must vacate the area after the match they are shooting is completed. Television photographers are prohibited from using lights pointed at or near the mat.

Post-Game Interview Policies

No media is allowed on the floor or field for post-game/event interviews immediately after State Championship team contests, or before or during the awards ceremonies except for WIAA contracted services. The nature of each sport will determine the interview policy following State Tournament events as outlined for each sport as determined by the WIAA.

After all WIAA Tournament contests, the WIAA strongly encourages media to honor a five-minute "cooling off" period prior to interviewing participating coaches and players.

No media is allowed access to team or participant locker rooms before, during or after any State Tournament competition. Coaches and participants may be available for interviews directly outside the locker rooms. The following list outlines each sport's State Tournament post-contest interview policies.

Baseball - Members of the media wishing to interview coaches and participants following the State award ceremonies or after quarterfinal and semifinal games can locate and direct coaches and participants to a location off the field not to interfere with warm-ups of the next game or the administration of the event. Following the final game scheduled for each day, interviews may take place at a convenient location anywhere on the field. No interviews are allowed during pre-game warm-ups or during the contest without prior consent of the WIAA executive staff.

Basketball - A post-game media conference will take place in the media work room during the boys and girls State Tournaments. The coach and selected player(s) of the winning team will participate in an eight-minute media conference immediately following a live TV interview (5 minutes) after the game or after the awards ceremony if it is the championship game. The coach and player(s) of the losing team will follow with an eight-minute conference. The coach of the winning team may only participate in a brief on-court interview by the entity with exclusive telecast rights following each game prior to the media conference. No other interviews of coaches or participants are allowed prior to their participation in the media conference. Members of the media are allowed to interview willing coaches and participants following the media conference at a location outside the locker room. Consideration for team time schedules, as well as administrative and facility staffing expectations is appreciated following news conferences. No interviews are allowed during pre-game warm-ups, halftime or during the contest without consent of the WIAA. On occasion, WIAA personnel may allow for a brief television interview with a coach prior to the media conference by stations with a local team (as defined and determined by the WIAA) participating for newscast deadline relief purposes.

Cross Country - Members of the media wishing to interview coaches and participants may do so after runners have gone through the chutes and have entered the fenced-in area provided. Members of the media are allowed to interview coaches and participants following the State award ceremonies. No interviews are allowed with coaches or runners within 20 minutes prior to the start or during their respective races. Media personnel must stay out of all sand traps and off tee boxes and greens.

Football - Members of the media wishing to interview coaches and participants following the State award ceremonies can locate and direct coaches and participants to the area at the north end of the field immediately in front of the north bleachers, not near the playing field to avoid interfering with warm-ups of the next game or the administration of the event. No interviews are allowed during pre-game warm-ups, during the contest or immediately after the game without consent of the WIAA. The coach of the winning team may participate in a brief on-field interview by television with exclusive telecast rights following each game and/or immediately after the award ceremony.

Golf - Members of the media wishing to interview coaches and participants following the State award ceremonies or after rounds can locate and direct coaches and participants to a location away from the greens not to distract or interfere with play still in progress.

Gymnastics - Members of the media wishing to interview coaches and participants following the State award ceremonies or between rotations can locate and direct coaches and participants to a location away from apparatus not to interfere with warm-ups, the next rotation or the administration of the event. Following the final event scheduled for each day, interviews may take place at a convenient location anywhere in the gymnasium. No interviews are allowed during timed warm-ups or during an event.

Hockey - In absence of a possible post-game media conference, members of the media wishing to interview coaches and participants following the State award ceremonies or after quarterfinal and semifinal games can locate and direct coaches and participants to a location off the ice, preferably outside each respective team's locker room. No interviews will be allowed on the ice or in the team bench area. Following the final game scheduled for each day, interviews may take place at a convenient location anywhere not on the ice, team bench or inside the locker rooms. No interviews are allowed during pre-game warm-ups or during the contest.

Soccer - Members of the media wishing to interview coaches and participants following the State award ceremonies or after quarterfinal and semifinal games can locate and direct coaches and participants to a location off the playing field not to interfere with warm-ups of the next game or the administration of the event. Following the final game scheduled for each day, interviews may take place at a convenient location anywhere on the field. No interviews are allowed during pre-game warm-ups or during the contest.

Softball - Members of the media wishing to interview coaches and participants following the State award ceremonies or after quarterfinal and semifinal games can direct coaches and participants to outside the field access gate in the right field corner, not to interfere with warm-ups of the next game or the administration of the event. No interviews are allowed during pre-game warm-ups or during the contest.

Swimming & Diving - Members of the media wishing to interview coaches and participants following an event or State award ceremonies can locate and direct coaches and participants to a location at the control side of the pool deck or off the pool deck not to interfere with events in progress or administration of the meet.

Tennis - Members of the media wishing to interview coaches and participants following a match or State award ceremonies can locate and direct coaches and participants to a location off the playing court areas not to interfere with matches in progress or administration of the event.

Track & Field - Members of the media wishing to interview coaches and participants following an event or State award ceremonies can locate and direct coaches and participants to a location anywhere except on the infield of the track. Following awards ceremonies, those student-athletes receiving medals will be escorted and made available for interviews in the media work area located at the southwest end of the track.

Volleyball - Members of the media wishing to interview coaches and participants following the State award ceremonies or after quarterfinal and semifinal games can locate and direct coaches and participants to a location away from the playing courts not to interfere with warm-ups of the next game or the administration of the event. Following the final game scheduled for each day, interviews may take place at a convenient location off the playing courts in the general direction of the respective locker rooms. No interviews are allowed during pre-game warm-ups or during the contest.

Wrestling - Members of the media wishing to interview coaches and participants following a match or State award ceremonies can locate and direct coaches and participants to a location not interfering with the matches in progress or administration of the event. Preferred interview areas are in the corridors below the grandstands in the Kohl Center and in the corridor below the grandstands at the UW Field House.

Radio, Television and Cable Policies

By submitting the application for broadcast, stations agree to abide by all WIAA regulations and policies regarding the broadcast of events during the entire WIAA Tournament Series to include prohibited advertising and sponsorships as determined by the WIAA as outlined in the "Advertising" section.

WIAA radio, television, cable and internet policies relate to broadcasts during the WIAA State Tournament Series. There is no WIAA jurisdiction over regular-season radio, television, cable or internet broadcasts of high school interscholastic competition, but 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.

No fees for regular-season broadcasts are required by the WIAA, but local schools and participating teams may wish to require a fee or to recover any expenses incurred (i.e. power, scaffolding, seats lost due to camera positions, tickets sales lost by spectators staying home and watching, etc.).

The WIAA reserves the right to require two minutes of advertising or promotional inventory to be included in any or all radio or television broadcasts, as well as Web casts of WIAA Tournament Series events as determined by the WIAA.

Radio, television and cable stations and operators also considering streaming audio or video on the internet must abide by all internet policies as written in this guide (see "Internet Policies"). There is no fee for live report "updates" of pre-State Tournament events provided no play-by-play is done. There is a \$25 fee for live or taped radio reports from State Tournament venues.

All radio and internet streaming broadcast rights and credential requests for all State Tournaments will be issued by the WIAA. To apply for play-by-play or live report "update" rights for State Tournament events, radio stations must complete and submit the "Media Credential Request" form located in the back of this publication or in the WIAA Media Guides (make copies of the form). Completed forms with station manager or sports director signature must be faxed to the WIAA by noon at least two business days before the first day of a given tournament or as outlined in the "Credential Request Deadline" section of this guide. Please review the "Requesting Credentials" section for additional credential request policies.

Television stations and cable operators must make arrangements with When We Were Young Productions (608) 849-3200 ext. 225 to inquire about television broadcast or internet video streaming permission prior to the date of the contest. Entities not adhering to permission policies are subject to fines imposed by the rights holder.

Applying for Regional and Sectional Radio Rights

1. To apply for play-by-play and live report broadcast rights for regional and sectional events, radio stations must complete the "Radio/Internet Broadcasting Application" located on page 17 of this publication or in the WIAA Media Guides (make copies of the applications). Completed applications for broadcast with station manager signature should be mailed or faxed to the tournament site and the WIAA at least two days before the first game of a given tournament. Host managers must receive approval from the WIAA to reject any applications to broadcast. Stations are required to contact host tournament managers to notify of their intentions to broadcast any contest(s) during a regional or sectional and make arrangements for entry access. Host managers are expected to furnish free admission for two working persons.
2. Stations are no longer required to include a list of sponsors and advertisers with the application. However, 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 during broadcasts are prohibited (see "Advertising" and "Applicable Radio Regulations and Definitions" sections).

Applying for Regional and Sectional Television/Web/Cable Rights

1. Live or tape-delayed television broadcast rights for regional and sectional events by television stations, cable operators and internet sites is prohibited without consent of When We Were Young Productions.
2. 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, cable operators or Web stream entities receive permission from When We Were Young Productions to broadcast/stream in advance.
3. Media sending a reporter to cover the WIAA Tournament Series for newscast purposes should practice the professional courtesy to contact tournament host managers with their intent to cover the event. Failure to notify tournament managers in advance may result in denied media privileges at tournament events.

Radio/Television/Web/Cable Regulations and Definitions

A "broadcast" is defined as the airing/streaming or intent of airing/streaming the entire duration of tournament games or complete session of games from the time the broadcast/stream begins to the time the broadcast/stream 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 or Web stream," 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.

Live Report "updates" are airing/streaming updates on results or general information about the competition or event but contains no play-by-play description of live contests.

"State Tournament Series," "Tournament Series" and the "WIAA Tournament" refers to all the WIAA sponsored events contested at the regional, sectional and State levels.

Stations or internet entities 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.

Broadcast and Web streaming rights fees (page 16) are applicable for stations and/or Internet sites that pick-up live or delayed feeds from another station, Web site or cable operator.

The WIAA reserves the right to revoke or deny the broadcast or streaming rights of any stations or operators 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.

Regional and sectional host tournament managers are authorized to refund fees if the station or Web site has a legitimate reason for not being able to broadcast or stream after they planned to do so and/or indicated to the manager in advance it will not be broadcasting or streaming if the school it is following is eliminated from the tournament. Host managers are expected to furnish free admission for two working persons.

A tape-delayed radio, television or cable broadcast, or Web cast is prohibited from airing/streaming until three hours after the start of the respective event being aired/streamed on a tape-delayed basis. Permission to air or stream any content delayed must come from When We Were Young Productions or the station/network with exclusive television rights.

Radio and Web sites approved by the WIAA to broadcast or stream Tournament Series events are prohibited from feeding its broadcast to any other station(s) or Web sites without additional rights fees being assessed.

Radio stations and Web sites may use the "Radio/Internet Broadcast Application" to submit requests for pre-State events to host managers. In addition, radio and Web sites are also required to apply for pre-State WIAA broadcast rights before accepting a feed or adding a link to a cybercast from another station or Web site and must adhere to all fees, rules, regulations and policies in this guide.

No taped-delayed broadcast or Web cast of any WIAA Tournament Series event is permitted during the exclusive live coverage of the WIAA State Tournament in the same sport.

The use of video, audio and tape exceeding two minutes by the originating station, publication or Web site for any purpose other than highlights on regularly scheduled news or sports broadcasts, or on a Web page is prohibited.

The following list of rules apply for commercial television stations and Web sites covering the WIAA State Tournament Series for newscast purposes:

1. 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 or Web sites 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.
2. Use of film, video, audio, tape, etc., is limited to regularly scheduled news, sports programs or Web site, and use on such programs is limited to no more than two 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, audio, tape, etc., beyond five days from the last day of a tournament is prohibited outside of regularly scheduled news and sports broadcasts without written consent of the WIAA.

No rights fees will be required for schools wishing to air tape-delayed broadcast/streams on their school's educational channel on local cable systems or school's Web site.

The WIAA reserves the right to consider applications for radio and internet broadcast rights on an individual basis.

Radio Priority Criteria

The WIAA will make every attempt to provide adequate broadcast facilities for all stations that are approved to broadcast WIAA State Tournament events. If demand for broadcasts exceed available accommodations, first consideration will be given according to the following criteria, as determined by the WIAA, in order:

1. The WIAA network (if applicable)
2. The WIAA network affiliate stations (if applicable)
3. To local stations of participating teams that have broadcast a participating team's games with regularity
4. To regional stations of participating teams that have broadcast a participating team's games periodically
5. To stations in the host community and area
6. Web site audio-only streaming (in above order)
7. Other

Television Priority Criteria

The WIAA will make every attempt to provide adequate broadcast facilities for all stations that are approved to broadcast State Tournament events. If demand for broadcasts exceed available accommodations, first consideration will be given according to the following criteria, as determined by the WIAA, in order:

1. Television stations and WIAA networks/partners broadcasting or Web streaming live
2. Television stations and WIAA networks/partners broadcasting or Web streaming tape delayed
3. Local television stations taping for sports highlights within newscasts or video on Web site
4. Other media recording highlights for Web

Internet Policies

The WIAA reserves the right to grant, issue and deny credentials to any internet service organizations based on the interpretation and intent of these policies determined by the WIAA. In cases deemed unique by the Association, these policies may be amended. The WIAA and its exclusive rights partners retain the rights to all video, audio, digital images or data taken at a WIAA Tournament Series event.

Applying for Internet Media Credentials

Internet organizations meeting WIAA internet credential criteria may receive media credentials by making a formal request for credentials for each State Tournament event by submitting the WIAA "Credential Request Form" provided in a submittable form online located on the restricted area of the Media Center. The form is also provided in this manual and in the WIAA Media Guides.

The internet organization may be required to submit its internet address and certifiable traffic numbers to the WIAA prior to approval of credential requests.

Video streaming rights of WIAA regional, sectional and State Tournaments are operated by contractual partners of the WIAA. Audio streaming rights of WIAA State Tournaments are property of the WIAA.

To be considered for a WIAA media credential, internet organizations must be determined to be a legitimate news-gathering organization and meet the following criteria established by the WIAA:

1. High school sports content on the site is available without restrictions or subscriber/user fees.
2. The site has demonstrated a history and reputation for covering high school sports on a timely basis.
3. Content on the site is original and news-gathering in nature, updated on a daily basis in the form of stories, game stories and updates, comprehensive scores, standings, statistics or streaming.
4. Site is not a personal page or content and demographic audience is not a fan-based site of one school or a small number of schools.
5. Sites with content, forums or advertising (see "Advertising" section on page 15) not in compliance with the mission or media policies of WIAA, or associated with any promotion or link to material deemed inappropriate, as determined by the WIAA, will not be granted credentials.

Applicable Regulations and Definitions

Internet and Web site are interchangeable terms for the purpose of WIAA regulations and definitions. A cybercast is defined in this section as a data, audio or video transmission or stream on the internet.

"Real-time," or tape-delayed account/transmission by audio streaming, video streaming, digital images or data, including game statistics and scores, is exclusive property of the WIAA and rights-granted entities. Any account/transmitting of real-time video, audio, digital images or data is prohibited on-site or off-site without consent of the WIAA. Web blogs not posting continuous play-by-play accounts of game or event action are permitted if determined by the WIAA to be in compliance with the mission and media policies of WIAA, and if they are not associated with any promotion, reference or link to material deemed inappropriate or not in the best interest of the WIAA.

The WIAA owns the rights to transmit, upload, stream or display content live during WIAA events and reserves the right to grant exclusive and nonexclusive rights or not to grant those rights on an event-by-event basis.

"Real-time" or "live" transmissions are defined as written, audio, video or digital image accounts of a WIAA State Tournament Series event, including data such as play-by-play, statistics and scores, while an event is in progress. Any "real-time," or delayed transmission by audio streaming, video streaming, digital images or data, including game statistics can not infringe on existing or duplicate content already provided by another party granted exclusive rights by the WIAA.

Web sites of traditional media (newspaper, radio, television) may be issued credentials, but are not allowed "real-time" or "live" transmission by audio streaming, video streaming, digital image or other data, including game play-by-play, statistics and scores without consent and rights granted by the WIAA.

Web sites given permission by the WIAA to transmit "real-time" or "live" audio or video streaming are subject to cybercast rights and line-usage fees and must adhere to all broadcast regulations, fees and advertising policies of the WIAA outlined in this guide.

Radio stations with Web sites will not be charged additional internet transmission fees if originating transmission is of similar nature and is not in competition with an exclusive rights-granted, fee-paying organization. For example, radio stations will not be charged an additional broadcast fee for streaming audio that originates for over-the-air broadcasts and is simultaneously streamed on the official flagship station's Web site only. Network stations or any other stations or Web sites may not link streamed audio unless those stations are also broadcasting the identical audio over-the-air. Any stations or Web sites not airing the broadcast of the network feed but links to the audio streaming of the event is subject to the cybercast rights fees. Requests for such permission must be indicated on the WIAA "Radio/Internet Broadcast Application." Any State Tournament cybercast permission must be clear through the WIAA. In addition, a radio station or Web site is required to apply and receive WIAA broadcast or cybercast rights approval before accepting a feed or adding a link to a cybercast from another station or Web site and must adhere to all rules, regulations and policies in this manual.

Newspapers transmitting "real-time" or "live" text, audio, image or video depicting action of State Tournament events is considered similar to that of a play-by-play radio or television broadcast and are subject to rights fees. Web blogs not posting continuous play-by-play accounts of game or event action are not subject to rights fees unless determined by the WIAA to be a live depiction of event action.

Also, any radio streaming "real-time" video are subject to exclusive rights agreements and cybercast fees. In addition, any television streaming "real-time" audio other than that of the fee-paying, rights-granted television broadcast is subject to the cybercast rights fees.

Credentials for approved organizations will be accommodated on a credential availability basis, but approved Web site credentials do not guarantee access to phone lines or seating. Due to space restrictions, Web site personnel and Web site photographers may not be granted credentials.

Traditional state, regional or national media sources (newspapers, radio or television) staffed by full-time employees for its internet operations may receive a maximum of two credentials with intent of reporting on WIAA State Tournament events.

Legitimate internet-only news organizations, as determined by the WIAA, with the intent of reporting on WIAA State Tournament events will be restricted and limited to two credentials due to space and facility restrictions. They are also subject to exclusive rights agreements, line-usage, and conceivably, cybercast rights fees and permissions.

All images captured at WIAA State Tournament Series are property of the WIAA. The WIAA allows legitimate media agencies to utilize digital images and photographs for the noncommercial purpose of reporting the events only. Photographs, digital images, written or audio transcripts, or video may not be sold without written consent from the WIAA.

Advertising

The WIAA retains the right to require stations to submit in writing, upon WIAA request, any and all advertisements or sponsorships during a radio, television or internet broadcast of WIAA Tournament Series competition.

The WIAA reserves the right to approve or reject any sponsorship or advertisement for any product, service or opinion. For any part or segment of an entire broadcast/Webcast originating from the tournament site, the WIAA strictly prohibits the sponsorship and advertising of tobacco products, lottery/gambling, alcoholic beverages, mood-altering substances or lewd subject matter. Businesses with the primary purpose of selling any of these prohibited products are also prohibited from advertising on all broadcasts throughout the WIAA State Tournament Series. Businesses in which these products are available in a secondary capacity may advertise on WIAA Tournament broadcasts. However, the WIAA prohibits the referring to the sale of these prohibited products or establishments within the businesses where the primary purpose is the sale of prohibited products. Also prohibited from any WIAA Tournament broadcast is the reading of a list that includes prohibited advertisers or sponsors, including the name and/or locations of businesses, products or services.

Television, radio, print, Web sites or any other media are prohibited from referring, implying or using words/language that recognizes or identifies a business or organization as an "official sponsor" of any WIAA State Tournament Series event under the auspices of the WIAA. This includes any live broadcast or cybercast events; rebroadcast of events; any printed accounts; any commercials, advertisements or sponsorships; and any references made by writers and broadcasters during Tournament Series events. Television, radio, print, Web sites and any other media may use language that the tournament *coverage* or *broadcast* is sponsored by an advertiser or sponsor.

The WIAA reserves the right and responsibility to cancel any and all broadcast and broadcast rights for an event in progress and subsequent WIAA Tournament events for any station found to have violated the provisions of the WIAA's advertising policy.

STATE OF WISCONSIN:

CIRCUIT COURT

PORTAGE COUNTY

WISCONSIN INTERSCHOLASTIC ATHLETIC
ASSOCIATION,

Plaintiff,

Case No. 08-CV-629

and

AMERICAN-HIFI, INC., a/k/a When We Were
Young (WWWY), WKOW TELEVISION, INC.,
WAOW-WYOW TELEVISION, INC., WXOW-
WQOW TELEVISION, INC., FOX SPORTS NET
NORTH, LLC, VISUAL IMAGE PHOTOGRAPHY,
INC.,

Plaintiffs pursuant to Wis. Stats.
§ 803.03,

v.

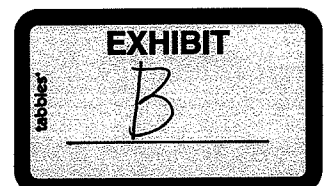
GANNETT CO., INC. and WISCONSIN
NEWSPAPER ASSOCIATION, INC. (WNA),

Defendants.

NOTICE OF FILING OF REMOVAL

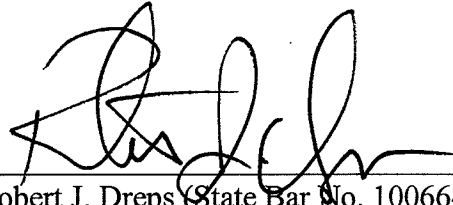
TO: Bernadette A. Flatoff, Clerk
Portage County Circuit Court
1516 Church Street
Stevens Point, WI 54481-3501

Defendants Gannett Company, Inc. and Wisconsin Newspaper Association, Inc., by
counsel, in accordance with 28 U.S.C. § 1446(d), hereby gives notice to the Clerk of the Circuit
Court of Portage County, Wisconsin, and to Gerald M. O'Brien, as attorney for Plaintiff
Wisconsin Interscholastic Athletic Association, that on this 17th day of March, 2009, the
Defendants filed a Notice of Removal with the United States District Court for the Western
District of Wisconsin, and that this case has been removed to that court. A true and correct copy



of the Notice of Removal is attached as Exhibit A. The filing of the Notice of Removal, together with the filing of this Notice of Filing Notice of Removal, effects immediate removal of the action from this Court to the United States District Court for the Western District of Wisconsin.

Dated this 17th day of March, 2009.



Robert J. Dreps (State Bar No. 1006643)
Monica Santa Maria (State Bar No. 1056390)
GODFREY & KAHN, S.C.
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Fax: 608-257-0609
Email: rdreps@gklaw.com

Attorneys for Defendants, Gannett Co., Inc. and
Wisconsin Newspaper Association, Inc.

3590736_1

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2009, I caused copies of the foregoing NOTICE OF FILING NOTICE OF REMOVAL to be served on the following via first class mail, postage prepaid:

Gerald M. O'Brien
Anderson O'Brien Bertz Skrenes & Golla
1257 Main Street
P.O. Box 228
Stevens Point, WI 54481-0228
Attorneys for Plaintiff Wisconsin Interscholastic Athletic Association

American-HIFI, Inc.
a/k/a When We Were Young (WWWY)
501 Moravian Valley Road
Waunakee, WI 53597
Plaintiff

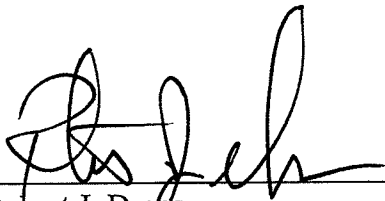
WKOW Television, Inc.
5727 Tokay Blvd.
Madison, WI 53719
Plaintiff

WAOW-WYOW Television, Inc.
1908 Grand Avenue
Wausau, WI 54403
Plaintiff

WXOW-WQOW Television, Inc.
3705 County Highway 25
LaCrescent, MN 55947
Plaintiff

Fox Sports Net North LLC
10201 West Pico Blvd.
Building 103, Room 3152
Los Angeles, CA 90064
Plaintiff

Visual Image Photography, Inc.
W63 N582 Hanover Avenue
Cedarburg, WI 53012
Plaintiff



Robert J. Dreps

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
WISCONSIN INTERSCHOLASTIC ATHLETIC ASSOCIATION, and
AMERICAN-HIFI, INC, a/k/a When We Were Young (WWWY), WKOW
TELEVISION, INC., et al. Plaintiffs pursuant to Wis. Stats. Sec. 803.03

(b) County of Residence of First Listed Plaintiff Portage
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Gerald M. O'Brien, Anderson, O'Brien, Bertz, Skrenes & Golla
1257 Main Street, PO Box 228, Stevens Point, WI 54481-0228
715-344-0890 for WIAA

DEFENDANTS
WISCONSIN NEWSPAPER ASSOCIATION, INC. (WNA), and
GANNETT CO., INC,

County of Residence of First Listed Defendant Dane
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)
Robert J. Dreps, Godfrey & Kahn, S.C.
One East Main Street, PO Box 2719, Madison, WI 53701-2719
608-257-3911

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

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| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

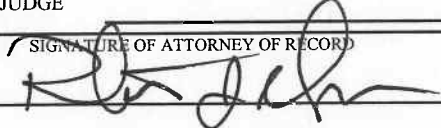
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REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1331, 1441 and 1446
Brief description of cause:
Declaratory Judgment Action

VII. REQUESTED IN COMPLAINT:
 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ _____
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE March 17, 2009
SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY
RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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NOTICE TO COUNSEL:

To enable judges and magistrate judges of the court to evaluate possible disqualification or recusal, counsel for a private (non-governmental) business, company, or corporation shall submit at the time of initial pleading this statement of corporate affiliations and financial interest.

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

Wisconsin Interscholastic Athletic Assoc., et al.

Case No. 09-cv-0155

v.

Gannett Co., Inc., et al.

DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST

I, the undersigned counsel of record for Wisconsin Interscholastic Athletic Association, make the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation?

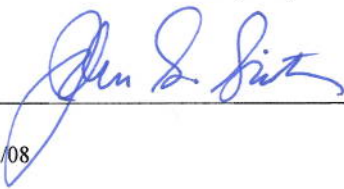
YES NO

If the answer is YES, list below and identify the parent corporation or affiliate and the relationship between it and the named party:

2. Is there a publicly owned corporation, not a party to this case, that has a financial interest in the outcome?

YES NO

If the answer is YES, list the identity of such corporation and the nature of the financial interest to the named party:



Date: April 13, 2009

NOTICE TO COUNSEL:

To enable judges and magistrate judges of the court to evaluate possible disqualification or recusal, counsel for a private (non-governmental) business, company, or corporation shall submit at the time of initial pleading this statement of corporate affiliations and financial interest.

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

Wisconsin Interscholastic Athletic Assoc., et al.

Case No. 09-cv-0155

v.

Gannett Co., Inc., et al.

DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST

I, the undersigned counsel of record for American-HiFi, Inc. a/k/a When We Were Young, make the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation?

YES NO

If the answer is YES, list below and identify the parent corporation or affiliate and the relationship between it and the named party:

2. Is there a publicly owned corporation, not a party to this case, that has a financial interest in the outcome?

YES NO

If the answer is YES, list the identity of such corporation and the nature of the financial interest to the named party:



Date: April 13, 2009

**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.

ANSWER TO DEFENDANTS' COUNTERCLAIMS

Plaintiff and Counterdefendant Wisconsin Interscholastic Athletic Association (hereafter "WIAA") by its attorneys hereby answers Defendants and Counterclaimants Gannett Co., Inc., ("Gannett") and Wisconsin Newspaper Association, Inc.'s ("WNA") (hereafter collectively "Defendants") Counterclaims ("Counterclaims") as follows:

INTRODUCTION

1. Answering Paragraph 1, admits that the Counterclaims on their face purport to assert claims under 42 U.S.C. § 1983 and 28 U.S.C. § 2201 requesting prospective declaratory and injunctive relief; admits that in the Counterclaims Defendants allege a deprivation of Defendants' purported rights under the Copyright Act and their purported rights under the First and Fourteen Amendments; and denies each and every remaining allegation of Paragraph 1 of the Counterclaims, including that Defendants seek "equal access to cover and report" WIAA sponsored athletic events.

2. Denies the allegations of Paragraph 2.

3. Denies allegations of Paragraph 3.

JURISDICTION AND VENUE

4. Answering Paragraph 4, admits that Defendants' Counterclaims on their face purport to be claims for declaratory and injunctive relief arising under the First and Fourteenth Amendments to the United States Constitution, the Civil Rights Act, 42 U.S.C. § 1983 *et seq.*, the Copyright Act and 28 U.S.C. § 2201; admits that the Court has jurisdiction over the general subject matter of Defendants' Counterclaims under 28 U.S.C. § 1331; admits WIAA is subject to personal jurisdiction in this judicial district; and otherwise denies the remaining allegations.

5. Answering Paragraph 5, admits that venue is proper in this District; and otherwise denies the remaining allegations.

PARTIES

6. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6.

7. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7.

8. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8.

9. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9.

10. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10.

11. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11.

12. Answering Paragraph 12, admits that WIAA is a nonprofit, voluntary and

unincorporated association with its principal place of business at 5516 Vern Holmes Drive, Stevens Point, Wisconsin 54481 and that members include public and private senior high schools, public and private middle and junior schools, statewide schools, specialty schools, and religious and independent schools in the State of Wisconsin.

WIAA'S RELATIONSHIP WITH THE PUBLIC SCHOOL SYSTEM

13. Answering Paragraph 13, states that the 2008-09 WIAA Senior High School Handbook and WIAA IRS Form 990 (2006-07) speak for themselves; admits that one of WIAA's many purposes, as stated in its 2008-09 Senior High School Handbook, is the promotion of uniformity of standards in interscholastic athletic competition, and states that, in addition, WIAA has the stated purpose to organize, develop, direct, and control an interscholastic athletic program that will promote opportunities for member schools participation, which opportunities include the prospect of participating in post-season WIAA-sponsored, controlled, and funded tournaments, i.e., sectional, regional, and state finals ("WIAA-Sponsored Tournaments"), which are distinct and separate from regular season competition; states that in order to further its purpose of administrating, organizing, and funding these WIAA-Sponsored Tournaments, WIAA has issued numerous policies that relate solely to WIAA-Sponsored Tournaments, including Spectator/Crowd Conduct Policies and Radio and Television broadcast policies and the 2008-09 Media Policies and Reference Guide; states that these policies are not extended to regular-season interscholastic competition, but are effective at the start of post-season WIAA Tournament Series competition; and states that WIAA has no jurisdiction over regular season spectator and conduct policies, broadcasting or other transmissions, and exercises such control only over its WIAA-Sponsored Tournaments.

14. Denies the allegations of Paragraph 14.

15. Answering Paragraph 15, admits that its voluntary members include all public senior high schools in the State of Wisconsin, in addition to private high schools, public and private middle and junior schools, statewide schools, specialty schools, and religious and independent schools; and states that, on information and belief, at least 55 of its members are non-public schools; and admits that the majority of its members are public high schools and that the majority of athletic participants in its WIAA-Sponsored Tournaments are public high school students.

16. Answering Paragraph 16, admits that the executive and administrative powers of WIAA are vested in the Board of Control, and that the Board of Control is comprised of eleven members, seven of whom represent particular high school districts, each of which is comprised of both public and non-public schools in particular geographic regions; states that of the three “at-large” members, at least one must be an administrator of a member nonpublic school; states that the eleventh Board member is appointed by the Wisconsin Association of School Boards; states that, in addition, the Board of Control must employ an Executive Director to make decisions as necessary for the proper operation of association business, who cannot be a member of the Board of Control nor employed by or under the control of any school district, public or private; and denies the remaining allegations.

17. Answering Paragraph 17, admits that its activities are not expressly authorized by statute and that it operates independently from the Department of Public Instruction (“DPI”); denies that it issues joint guidelines on athletics with DPI; admits that it has issued joint publications with DPI related solely to non-discrimination issues that provide direction regarding equity in athletics; denies that it makes a liaison available to DPI; admits that DPI does not exercise control over WIAA’s activities; and denies the remaining allegations.

18. Answering Paragraph 18, admits that member schools may face certain penalties for violating WIAA rules or regulations, including, in certain circumstances, the sanctions listed in Paragraph 18 with respect to participation in WIAA activities; and states that, on information and belief, it has not expelled a school from WIAA in at least twenty-five years.

19. Denies the allegations of Paragraph 19; and states that although non-member schools cannot receive WIAA services or participate in WIAA-Sponsored Tournaments, non-members schools may participate in interscholastic athletics with WIAA member schools, with other non-member schools, and with schools in other states.

20. Answering Paragraph 20, states that regular season events are sponsored by member schools and held at member school facilities; states that it lacks information about the funding used to construct and maintain member school facilities; states that WIAA has no information with regard to, and lacks any control over, media or public access to regular season school-sponsored events; states that WIAA-Sponsored regional and sectional tournament events are held at member school facilities; states that member schools hosting regional or sectional events receive a share of the gate receipts; states that WIAA-Sponsored State Tournament events are held at facilities rented by WIAA; states that at WIAA-sponsored events public entrance is permitted subject to any applicable entrance fee, the policies of the tournament site, and WIAA's Spectator/Crowd Conduct Policies; and states that WIAA-Sponsored Tournament events are open to the media, subject to WIAA's media policies.

21. Answering Paragraph 21, on information and belief, denies that public school districts have constructed press boxes and other designated facilities for the purpose of encouraging news coverage of "WIAA-sponsored athletic events"; states that, on information and belief, facilities commonly referred to as public school "press boxes" are, in fact, areas

designated for persons involved in the administration and operation of the games, such as public announcers, scorekeepers, and clock operators, and that these facilities are sometimes made available to media representatives when space permits; admits that traditional newsgathering, including traditional newspaper reporting, of high school sports is a long-standing tradition in Wisconsin; and states that WIAA has issued media policies to assist members in providing comprehensive coverage in their communities.

22. Answering Paragraph 22, admits that it has policies for credentialing media members at WIAA-Sponsored Tournaments at the state level; denies that WIAA credentials media members at events occurring at host schools; states that host school managers may issue credentials for host school events; denies that WIAA denies media access to WIAA-Sponsored Tournaments; denies that WIAA controls access to designated news facilities and vantage points at “host schools”; admits that WIAA reserves the right to deny future credentials to credentialed individuals who violate WIAA media policies; denies that WIAA instructs “host schools” or “leased facilities” not to admit news media without its consent during any athletic events, whether school-sponsored or WIAA-Sponsored; and denies any remaining allegations.

23. Answering Paragraph 23, admits that approximately 90% of its annual budget comes from a combination of dues paid by member schools and gate receipts from WIAA-Sponsored Tournament events, and further states that it depends upon the revenue it generates at its WIAA-Sponsored Tournament events to fund the vast majority of its annual budget.

24. Answering Paragraph 24, states that the contracts speak for themselves; and denies the remaining allegations.

ALLEGATIONS REGARDING PHOTOGRAPHY

25. Answering Paragraph 25, admits that WIAA's 2008-09 Media Policies Reference Guide states that sale of photography, digital image files, videotape, or film taken at State Tournaments Series events is prohibited without written consent of WIAA; states that WIAA informed media organizations, including a representative of the Defendant WNA and representatives of Defendant Gannett, in August 2007 that WIAA would allow the media to sell photographs taken at WIAA-Sponsored Tournament events; further states that WIAA places no restrictions on the taking of photographs and videotape by the general public for non-commercial use and that it makes no effort to attempt to control the use of images for editorial or news-related purposes; and states that WIAA prohibits only noneditorial, commercial or otherwise unauthorized use of any photographs, images, film, videotape, or other depiction of its WIAA-Sponsored Tournament events without written consent of WIAA; and denies the remaining allegations.

26. Denies the allegations of Paragraph 26; states that WIAA charges a *yearly* fee of \$100 for a license authorizing the commercial sale of photographs taken at regional and sectional tournaments; states that WIAA does not restrict the use of photographs for editorial or news-related purposes; and states that there is no licensing requirement for photography at regular season games.

27. Answering Paragraph 27, states that the contract referenced speaks for itself; denies that WIAA gives Visual Image Photography ("VIP") "favored access and coverage rights" to any athletic competition; admits that for certain awards ceremonies, VIP is placed in a designated area approximately three feet closer to the stage than other media in order to provide unobstructed award ceremony images for WIAA use and for tournament participants to

purchase, but denies that VIP is given any contractual rights with respect to regional and sectional tournament events; and denies the remaining allegations.

28. Answering Paragraph 28, states that the contract speaks for itself; further states that WIAA has never directed VIP to withdraw from sale any product under this prohibition; states that the prohibition has been uniformly interpreted to refer to lewd, vulgar, or offensive materials; and denies the remaining allegations.

29. Answering Paragraph 29, admits that WIAA did not specifically request a bid from Defendants; states that, on information and belief, at no time before or after the contract was signed have Defendants or any other entity approached WIAA expressing an interest in providing comprehensive photography services to all 25 WIAA-Sponsored tournament events, as VIP does; states that VIP was the only entity to approach WIAA with an offer to provide services for all 25 WIAA-Sponsored Tournaments; and denies the remaining allegations.

30. Answering Paragraph 30, admits that a dispute arose in February 2007 between WIAA and WNA with regard to the right to sell certain photographs commercially; denies that any rights granted to VIP conflicted with Defendants' access to WIAA-Sponsored Tournament events; states that WIAA has always afforded and continues to afford equal access to all media for WIAA-Sponsored Tournament events; and denies the remaining allegations.

31. Answering Paragraph 31, admits that WIAA has not enforced policies that prohibit WNA members from the sale of photographs; denies that WIAA has granted preferential access to VIP at tournament events; admits that WIAA has not edited its Media Guide and documents regarding media credentials to remove these stated former policies, but states that it has informed media organizations, including both WNA and Gannett, that these policies will not be enforced; and denies the remaining allegations.

32. Answering Paragraph 32, denies that WIAA has threatened to withhold credentials (or has actually withheld credentials) from any WNA members; states that it is without information regarding whether WNA members have been deterred from selling photographs taken at WIAA-Sponsored Tournament events, and on that basis denies these allegations; and denies the remaining allegations.

ALLEGATIONS REGARDING INTERNET TRANSMISSION

33. Answering Paragraph 33, states that the document referenced in Paragraph 33 speaks for itself; and denies the remaining allegations.

34. Answering Paragraph 34, denies that either WIAA or, on information and belief, American-HiFi, Inc., a/k/a When We Were Young (“WWWY”) have placed any restrictions on Defendants’ ability to report WIAA-Sponsored Tournament events; states that WIAA has taken affirmative steps at its own expense to encourage the use of Internet technology for legitimate reporting of WIAA-Sponsored Tournament events (e.g., adding wireless internet access and additional phone lines for the media reporting); denies that WWWWY has been given “unfettered discretion whether and under what circumstances Newspapers may use Internet Streaming or other restricted technologies to report tournament events”; states that several documents contain provisions governing use of Internet streaming technologies at WIAA events; states that the WIAA Media Guide speaks for itself; and denies the remaining allegations.

35. Answering Paragraph 35, admits that WIAA has authorized WWWWY to charge fees for live or delayed video transmissions at certain WIAA-Sponsored Tournament events; admits that WIAA has authorized WWWWY to extend transmission rights to licensees subject to WIAA media policies; states that WIAA’s contract with WWWWY and the WIAA Media Guide speak for themselves; and denies the remaining allegations.

36. Answering Paragraph 36, admits that WIAA charges \$50 for non-exclusive radio broadcasts, including audio transmissions, of regional and sectional WIAA-Sponsored events, and \$100 for non-exclusive radio broadcasts, including audio transmissions, of state final WIAA-Sponsored events; denies that this practice is “contrary to its policies on Internet streaming”; and denies the remaining allegations.

37. Denies the allegations of Paragraph 37.

38. Answering Paragraph 38, admits that WIAA did not specifically request a bid from Defendants; states that, on information and belief, at no time before or after the contract was signed have Defendants or any other entity approached WIAA expressing an interest in providing internet transmission services to all 25 of WIAA-Sponsored Tournament events; and states that WWY was the only entity to approach WIAA with an offer to provide services for all 25 WIAA-Sponsored Tournaments.

39. Answering Paragraph 39, admits that, on information and belief, *The Post-Crescent* transmitted via live internet streaming WIAA-Sponsored Tournament football games listed in Paragraph 39 of the Counterclaims without the consent of WIAA or WWY; denies that this constituted “reporting” of these events; admits that, on information and belief, WWY did not transmit these contests; states that on information and belief the host school athletic directors were unaware of the transmission of these games via live Internet streaming at the time it occurred; states that WIAA is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the objection or non-objection of the host schools, and on that basis denies them; and denies the remaining allegations.

40. Answering Paragraph 40, denies that Gannett newspapers were refused permission to report the WIAA-Sponsored Tournament games listed in Paragraph 40 of the

Counterclaim; denies that Gannett newspapers were refused permission to transmit live video streams of those games over the Internet; states that, on information and belief, Gannett newspapers requested permission to transmit live streams of those contests and was told that permission would be granted upon payment of a \$250 rights fee and agreement to abide by WIAA media policies; admits that, on information and belief, WWY did not transmit these contests; and denies the remaining allegations.

41. Answering Paragraph 41, admits that, on information and belief, *The Post-Crescent*, without permission of WIAA or WWY, and without the permission or knowledge of the host school, posted on its website the unauthorized live stream transmission of the November 8, 2008 football game between Appleton North High School and Stevens Point Area High School; admits that, on information and belief, WWY contacted *The Post-Crescent* and requested that it remove the unauthorized content from its website and otherwise comply with the media policies of WIAA and WWY, including payment of the required fee and surrender of the material created without authorization; admits that, on information and belief, *The Post-Crescent* has refused to date to comply with WIAA policies; and states that it is without information or knowledge sufficient to form a belief as to the truth of remaining allegations.

42. Answering Paragraph 42, denies that it has instructed any host schools or leased facilities to refuse permission to any news organization to report WIAA-Sponsored Tournament events; admits it has instructed its member schools and facilities to deny permission to transmit live action from WIAA-Sponsored Tournament events via Internet streaming without permission of WIAA or WWY, in accordance with WIAA's policies; denies that it has otherwise restricted the use of Internet streaming; states that its policies permit the use of up to two minutes of recorded live action in news broadcasts; and denies the remaining allegations.

43. Denies the allegations of Paragraph 43.

OTHER ALLEGATIONS REGARDING WIAA INTERNET POLICIES

44. Answering Paragraph 44, states that the pleadings in this case speak for themselves.

45. Answering Paragraph 45, admits that WIAA has not granted or attempted to grant anyone the exclusive right to write about WIAA-Sponsored Tournament events; denies that WIAA has attempted to restrict or censor written reports of WIAA-Sponsored Tournament events by WNA members; states that WIAA's policies consider that newspapers transmitting real-time or live text, audio, image or video depicting action from State Tournament events to be subject to rights fees; states that web blogs not posting continuous play-by-play accounts of the game or event action are not subject to rights fees; and denies the remaining allegations.

46. Answering Paragraph 46, denies that WIAA contends WNA members in Milwaukee and Madison violated WIAA's "exclusive rights contracts" by live blogging during WIAA-Sponsored football championships; admits that WIAA contends that WNA's real time live blogging during certain football championship games last fall constituted play-by-play transmissions that required payment of license fees; admits that WIAA requested payment of the appropriate license fees; admits that, on information and belief, the license fees have not been paid; and denies the remaining allegations.

47. Denies the allegations of paragraph 47.

48. Denies the allegations of Paragraph 48.

**Count 1 –
U.S. Const. amd. I and 42 U.S.C. § 1983**

49. Answering Paragraph 49, incorporates by reference its responses and denials in paragraphs 1-48.

50. Answering Paragraph 50, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

51. Answering Paragraph 51, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

52. Answering Paragraph 52, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

53. Answering Paragraph 53, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

54. Answering Paragraph 54, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

55. Answering Paragraph 55, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

56. Answering Paragraph 56, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

57. Denies the allegations of Paragraph 57.

58. Denies the allegations of Paragraph 58.

**Count 2 –
U.S. Const. amend. XIV and 42 U.S.C. § 1983**

59. Answering Paragraph 59, incorporates by reference its responses and denials in paragraphs 1-58.

60. Answering Paragraph 60, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

61. Answering Paragraph 60, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

62. Denies the allegations of Paragraph 62.

63. Denies the allegations of Paragraph 63.

**Count 3 –
Copyright Act, 17 U.S.C. §§ 101 *et seq.***

64. Answering Paragraph 64, incorporates by reference its responses and denials in paragraphs 1-63.

65. Answering Paragraph 65, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

66. Answering Paragraph 66, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

67. Answering Paragraph 67, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

68. Answering Paragraph 68, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

69. Answering Paragraph 69, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

70. Answering Paragraph 70, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

71. Answering Paragraph 71, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

72. Answering Paragraph 72, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

73. Answering Paragraph 73, states that it contains legal conclusions to which no response is required; and otherwise denies the allegations.

74. Denies any allegation to the extent it is not specifically addressed above.

AFFIRMATIVE AND ADDITIONAL DEFENSES

1. NO STATE ACTOR: Defendants' Counterclaims are barred, in whole or in part, because WIAA is a private, voluntary and unincorporated association. It is not a state actor and is therefore not subject to 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution.

2. ADMINISTRATIVE NECESSITY: Defendants' Counterclaims are barred, in whole or in part, because as the administrator and sponsor of WIAA-Sponsored events, WIAA has the right to protect the purpose, organization, and value of these events by developing reasonable policies, including the transmission via internet of its competitions.

3. PROPRIETARY CAPACITY: Should the Court determine that WIAA is a state actor for purposes of this litigation, Defendants' Counterclaims are barred, in whole or in part, because WIAA acts in a proprietary function in sponsoring its WIAA-Sponsored Tournament events.

4. REASONABLENESS: Defendants' Counterclaims are barred, in whole or in part, because WIAA's policies, including policies regarding transmission via the Internet, are reasonable time, place, and manner restrictions.

5. NO LIMITATIONS ON REPORTING: Defendants' Counterclaims are barred, in whole or in part, because WIAA does not restrict the reporting of WIAA-Sponsored Tournament

events.

6. NO LIMITATIONS ON MEDIA ACCESS: Defendants' Counterclaims are barred, in whole or in part, because WIAA does not limit or restrict media access to WIAA-Sponsored Tournament events.

7. SCOPE OF COPYRIGHT LAWS: Defendants' Counterclaims are barred, in whole or in part, because WIAA-Sponsored Tournament events do not fall within the subject matter of copyright, nor does the Copyright Act, 17 U.S.C. §§ 101 *et seq.*, preempt any claims or rights WIAA has in WIAA-Sponsored Tournament events.

8. UNAUTHORIZED COPYRIGHT: Defendants' Counterclaims are barred, in whole or in part, because Defendants' do not have a valid and/or enforceable copyright in unauthorized transmissions of WIAA-Sponsored Tournament events. Any such materials Defendants purport to claim right to under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*, were created in breach of the express media policies of WIAA, policies to which Defendants consented when entering WIAA-Sponsored events.

9. NON-JUSTICIABILITY: Defendants Counterclaims, including without limitation Paragraphs 25-32 and 44-58, are barred, in whole or in part, because they present no case or controversy, and are therefore non-justiciable.

10. MOOTNESS: Defendants' Counterclaims are barred, in whole or in part, because current policies and practices of WIAA render the Counterclaims moot.

11. UNCLEAN HANDS: Defendants' Counterclaims are barred, in whole or in part, by the doctrine of unclean hands.

12. CONSENT: The Defendants' Counterclaims are barred, in whole or in part, because Defendants consented to the policies and practices complained of in the counterclaims.

13. LACHES, WAIVER, AND ESTOPPEL: Defendants' Counterclaims are barred, in whole or in part, by the defenses of laches, waiver, and estoppel.

14. FAILURE TO STATE A CLAIM: The Counterclaims, and each cause of action therein, do not state facts sufficient to constitute a cause of action against WIAA.

15. NO ATTORNEYS' FEES: Defendants are not entitled to an award of attorneys' fees or costs.

16. WIAA hereby reserves the right to add additional affirmative defenses as necessary based on information obtained during investigation or discovery. Nothing contained herein shall be deemed to impose upon Fourth-Party Defendants any burden of proof not imposed by applicable substantive law.

PRAYER FOR RELIEF

WHEREFORE, WIAA requests that the Court:

- A. Dismiss the Counterclaims against WIAA on the merits, with prejudice;
- B. Award WIAA reasonable attorneys' fees, costs and expenses incurred herein; and
- C. Award WIAA all other relief the Court deems just and equitable.

Dated this 13th day of April, 2009.

Respectfully submitted,

PERKINS COIE, LLP

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*Attorneys for the Plaintiffs Wisconsin
Interscholastic Athletic Association*

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.

STIPULATION TO CHANGE CAPTION AND DISMISS PARTIES

It is hereby stipulated by and between the parties to this action, by their undersigned counsel, respectively, that the following plaintiffs in the original removed action: WKOW Television, Inc.; WAOW-WYOW Television, Inc.; WXOW-WQOW Television, Inc., Fox Sports Net North, LLC; and Visual Image Photography, Inc.; may be dismissed without prejudice and that the caption of this matter may be revised as above.

Dated this 13~~th~~ day of April 2009

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*Attorneys for Defendants Gannett Co., Inc.,
and Wisconsin Newspaper Association, Inc.*

BY THE COURT:

So ordered

United States District Judge
for the Western District of Wisconsin

**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.

JOINT PRELIMINARY PRETRIAL REPORT

Pursuant to Fed. R. Civ. P. 26(f), counsel for the parties in this action met and conferred on April 28, 2009, regarding a discovery plan and case schedule. The parties submit this Joint Preliminary Pretrial Conference statement in anticipation of the Telephonic Preliminary Pretrial Conference set for May 5, 2009, at 9:30 AM.

PROPOSED DISCOVERY PLAN

A. Case Schedule

EVENT	PLAINTIFF	DEFENDANT
Rule 26(a)(1) Initial Disclosures and Agreed Start of Discovery	May 26, 2009	
Deadline to Amend Pleadings Without Leave of the Court	June 1, 2009	
Opening Expert Reports	August 3, 2009	
Rebuttal Expert Reports	September 4, 2009	
Dispositive Motions Cut-Off	September 25, 2009	
Discovery Cut-Off	December 18, 2009	
Settlement Letter	December 21, 2009	
Rule 26(a)(3) Pretrial Disclosures including	December 28, 2009	

exchange of Trial Exhibit Lists, Trial Exhibits, and Deposition Designations	
Objections to Rule 26(a)(3) Pretrial Disclosures, Rebuttal Trial Exhibits, Counter Deposition Designations, and Motions in Limine	January 11, 2010
Remaining Objections to Rule 26(a)(3) Pretrial Disclosures	January 18, 2010
Final Pretrial Conference	January 14, 2010
Trial Date	January 25, 2010

B. Information Required by the Standing Order

1. Nature of the case

Wisconsin Interscholastic Athletic Association (“WIAA”) is a nonprofit organization that sponsors statewide high school athletics tournaments in Wisconsin. The WIAA has issued media policies to control the transmission or “streaming” of its sponsored tournament events via internet. In addition, it has entered into a contract granting American-HiFi, Inc. exclusive rights to transmit certain athletic tournament events over the internet.

Defendants Gannett Co., Inc. (“Gannett”) and Wisconsin Newspaper Association, Inc. (“WNA”) are media organizations whose members report on these events. WNA and Gannett have alleged that the WIAA’s media policies and contract with American-HiFi, Inc. violate, under color of state law, the First and Fourteenth Amendments to the United States Constitution and that any claim WIAA has to control the transmission of its events is preempted by the copyright act, 17 U.S.C. §§ 101 *et seq.*

WIAA seeks a declaratory judgment that it has the right to control the transmission of WIAA events, that it can enter into licenses for this purpose, that it may require payment of a licensing fee and compliance with its media policies, and that its policies do not violate

Defendants' rights under the First or Fourteenth Amendments to the United States Constitution, or any other legal doctrine. WNA and Gannett have filed a counterclaim asserting that WIAA's media policies violate, under color of state law, their rights under the First and Fourteenth Amendments to the United States Constitution, and that WIAA's claim to relief is preempted by the copyright act.

2. Names of related cases

There are no related cases between the parties.

3. Material factual and legal issues to be resolved

The following factual and legal issues must be resolved in the current case:

- Whether the WIAA controls the right to transmit WIAA-sponsored tournament games over the Internet;
- Whether the WIAA has the right to grant an exclusive or non-exclusive license to transmit WIAA-sponsored tournament games;
- Whether the WIAA may require payment of a licensing fee and compliance with the WIAA's media policies as a condition of any license to transmit WIAA-sponsored tournament games;
- Whether the WIAA's claims are preempted by the copyright act, 17 U.S.C. §§ 101 *et seq.*;
- Whether the WIAA is a state actor under 42 U.S.C. § 1983; and
- Whether WIAA's current policies concerning the Internet transmission of its WIAA-sponsored tournament games violate, under color of state law, Defendants' rights under the First or Fourteenth Amendments to the United States Constitution.

4. Description of any amendments to the pleadings the Parties Intend to Make

Counsel are not presently aware of the need to amend any pleadings but reserve the right to seek such amendment going forward.

5. Identity of any new parties to be added.

Neither party is presently aware of any parties that would need to be added to this case. However, Fox Sports North has indicated to Defendants that it may seek to enter the action.

6. Estimated trial length

The plaintiff anticipates the trial lasting 5 trial days; the defendants anticipate a trial lasting three (3) days.

7. Any other matters affecting the just, speedy and inexpensive disposition of this case, or which the court should take into account in setting the schedule.

Neither party is presently aware of additional issues impacting the schedule.

C. Other Items

1. Commencement of discovery

The parties agree that they shall refrain from the commencement of any discovery until May 26, 2009.

2. Electronic service

The parties agree that service by electronic means shall be allowed as set forth in Fed. R. Civ. P. 5(b)(2)(D) and that such service shall be complete upon transmission, provided that the sender does not receive any indication that such electronic transmission was unsuccessful. The parties agree that when a party may or must act within a specified time after service, regardless of the form of service, 3 days are added after that period that would otherwise expire under Federal Rule 6(a), unless the Court specifies or the parties agree on a different time period in which to respond.

Service on Plaintiff will be made to at least the following counsel:

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And

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AND

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Service on Defendant will be made to at least the following counsel:

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Monica Santa Maria
MSantaMaria@gklaw.com
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Madison, Wisconsin 53703

3. Electronic copies

The parties agree that copies of all written discovery requests and responses to written discovery requests shall be provided and/or served electronically and that copies of all proposed findings of fact as required by the Court's standing order shall be provided and/or served electronically.

4. Protective order

The parties agree to cooperate with respect to any needed protective orders and reserve the right to bring the issue to the Court's attention if they cannot agree.

5. Draft expert reports

The parties agree that draft expert reports and communications with experts will not be subject to discovery. All materials that an expert considered as part of his or her final expert report, however, shall be discoverable.

6. Number of depositions

The parties agree that it is unlikely that more depositions will be needed than are permitted without leave of court under Rule 30(a)(2)(A)(i). The parties also agree that no more time should be needed for any deposition, including one under Rule 30(b)(6), than is permitted without leave of court under Rule 30(d)(1). Should discovery reveal that additional party or Rule 30(b)(6) depositions are necessary, the parties will meet and confer and not unreasonably deny any such request for such additional depositions.

7. Number of interrogatories

The parties agree to the limitations imposed on interrogatories per the Federal Rules of Civil Procedure.

8. Document production

The parties agree to discuss and seek agreement on protocols with respect to the identification, review and production of electronically stored information, should such discovery be necessary. Electronically stored information shall be produced in an electronic format to be agreed upon by the parties and on a rolling basis.

Each party reserves the right to request and receive any document in color as needed and such request shall not be unreasonably denied.

The parties have agreed to negotiate in good faith on the following issues:

- a. Production of electronically stored information on the basis of search terms to be agreed upon by the parties;
- b. Scheduled timing for updating the production of electronically stored information during the course of litigation;
- c. Defining the scope of production of electronically stored information that is “not reasonably accessible because of undue burden or cost,” including without limitation the identification of such information and procedures to compel production of such information, including cost allocation; and
- d. Claims of privilege and work product. The parties agree in principle that the inadvertent production or disclosure of privileged or otherwise protected materials shall not be deemed per se a waiver or impairment of any claim of privilege or protection. The parties will negotiate in good faith an agreement concerning inadvertent production.

9. Stipulations

The parties have agreed to negotiate in good faith to identify undisputed factual issues appropriate for stipulation.

Dated this 30th day of April 2009

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*Attorneys for Defendants Gannett Co., Inc.,
and Wisconsin Newspaper Association, Inc*

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.

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April, 2009, I caused a copy of **Joint Pretrial Conference Report** to be served via CM/ECF for the Western District of Wisconsin on the following:

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Monica Santa Maria
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rdreps@gklaw.com
msantamaria@gklaw.com

Dated this 30th day of April, 2009.

/s/ Laura E. Distin

Laura E. Distin

KELLY & BERENS, P.A.

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JUSTI RAE MILLER
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May 1, 2009

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(612) 349-6416

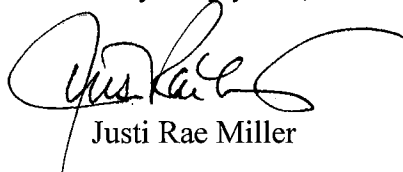
The Honorable Stephen L. Crocker
Clerk of Court, US District Court
Western District of Wisconsin
120 N. Henry Street, Room 320
P.O. Box 432
Madison, Wisconsin 53701-0432

Re: *Wisconsin Interscholastic Athletic Ass'n et al. v. Gannett Co., Inc. et al.*,
Civil No.: 09-CV-155

Dear Judge Crocker:

This letter is intended to serve as notice that Fox Sports Net North, LLC, through its counsel, Kelly & Berens, P.A., will participate in the telephone pretrial conference in the above-referenced matter before the Honorable Stephen L. Crocker, United States Magistrate Judge, scheduled for May 5, 2009 at 9:30 a.m. Fox Sports Net North will participate in the pretrial conference in anticipation of its intervention by motion in this matter—a motion that will not be opposed, according to representations by counsel for both the plaintiffs and the defendants, once it is filed. As previously directed by the Court, call information will be obtained from counsel for plaintiffs.

Very truly yours,



Justi Rae Miller

SAA:nam

cc: John S. Skilton, Esq.
Gerald O'Brien, Esq.
Robert J. Dreps, Esq.
Barbara P. Berens, Esq.

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

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

Plaintiffs,

PRELIMINARY PRETRIAL
CONFERENCE ORDER

v.

09-cv-155-slc

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

Defendants.

This court held a telephonic preliminary pretrial conference on May 5, 2009. Both sides were represented by counsel. The court set the schedule for this case and advised the parties that their conduct throughout this case is governed by this pretrial conference order and the attachments to it.

I. Amendments to the Pleadings: June 1, 2009

Amendments to the pleadings pursuant to Rules 13-15 and 20-21 must be filed and served not later than the date set forth above. The court routinely accepts amendments filed within the deadline. A party may not amend its pleadings after the deadline without leave of court, which will be granted only upon a showing of good cause for the late amendment and lack of prejudice to the other parties. The longer a party waits to seek leave to amend, the less likely the court will allow amendment.

2. Disclosure of Experts: Proponent: August 3, 2009

Respondent: September 4, 2009

All disclosures mandated by this paragraph must comply with the requirements of Rule 26(a)(2)(A), (B) and (C). There shall be no third round of rebuttal expert reports. Supplementation pursuant to Rule 26(e)(1) is limited to matters raised in an expert's first report, must be in writing and must be served not later than five calendar days before the expert's deposition, or before the general discovery cutoff if no one deposes the expert. Any employee of a party who will be offering expert opinions during any phase of this case must comply with all of these disclosure requirements.

Failure to comply with these deadlines and procedures could result in the court striking the testimony of a party's experts pursuant to Rule 37. The parties may modify these deadlines and procedures only by unanimous agreement or by court order.

3. Deadline for Filing Dispositive Motions: September 25, 2009

Dispositive motions may be filed and served by any party on any date up to the deadline set above. All dispositive motions must be accompanied by supporting briefs. All responses to any dispositive motion must be filed and served within 21 calendar days of service of the motion, which the court presumes is the date the motion is filed with the court. Any reply by the movant must be filed and served within 10 calendar days of service of the response, which the court presumes to be the date the response is filed with the court. A party is not entitled to

additional time under Rule 6(e) to file and serve documents related to a dispositive motion. The parties may not modify this schedule without leave of court.

If any party files a motion for summary judgment, all parties must follow this court's procedure governing such motions, a copy of which is attached to this order. The court will not consider any document that does not comply with its summary judgment procedure. A party may not file more than one motion for summary judgment in this case without leave of court.

Parties are to undertake discovery in a manner that allows them to make or respond to dispositive motions within the scheduled deadlines. The fact that the general discovery deadline cutoff, set forth below, occurs after the deadlines for filing and briefing dispositive motions is not a ground for requesting an extension of the motion and briefing deadlines.

4. Settlement Letters: December 18, 2009

Counsel for each party must submit to the clerk of court a settlement letter not later than the date set forth above. Counsel shall e-mail their settlement letter to ClerkofCourt@wiwd.uscourts.gov. The letter should contain the terms and conditions upon which the counsel's client(s) would agree to settle this case. Such letters should be marked "Under Seal" and should not be sent to opposing counsel. Such letters will not become part of the record in this case. Upon receipt of the letters, the court will initiate settlement discussions with counsel.

5. Discovery Cutoff: December 18, 2009

All discovery in this case must be completed not later than the date set forth above, absent written agreement of all parties to some other date. Absent written agreement of the parties or a court order to the contrary, all discovery must conform with the requirements of Rules 26 through 37 and 45.

Rule 26(a)(1) governs initial disclosures unless the parties agree in writing to the contrary.

The following discovery materials *shall not* be filed with the court unless they concern a motion or other matter under consideration by the court: interrogatories; responses to interrogatories; requests for documents; responses to requests for documents; requests for admission; and responses to requests for admission.

Deposition transcripts *shall* be filed with the court promptly after preparation. All deposition transcripts must be in compressed format. The court will not accept duplicate transcripts. The parties must determine who will file each transcript.

A party may not file a motion regarding discovery until that party has made a good faith attempt to resolve the dispute. All efforts to resolve the dispute must be set forth in any subsequent discovery motion filed with this court. By this order, the court requires all parties to a discovery dispute to attempt to resolve it quickly and in good faith. Failure to do so could result in cost shifting and sanctions under Rules 37(a)(4) and 37(b)(2).

This court also expects the parties to file discovery motions promptly if self-help fails. Parties who fail to do so may not seek to change the schedule on the ground that discovery proceeded too slowly to meet the deadlines set in this order.

All discovery-related motions must be accompanied by a supporting brief, affidavit, or other document showing a *prima facie* entitlement to the relief requested. Any response to a discovery motion must be served and filed within seven calendar days of service of the motion, which the court presumes is the date the motion is filed with this court. Replies may not be filed unless requested by the court. A party is not entitled to additional response time under Rule 6(a) or Rule 6(e), F.R.Civ.P. beyond the seven calendar days ordered herein.

For all purposes in this case, Rule 6(e) shall apply only to documents mailed via the United States Postal Service. Use of any other courier or express service shall be deemed personal service as of the date of delivery for the purpose of computing time limits.

6 Rule 26(a)(3) Disclosures *and* all motions in limine: January 15, 2010

Objections: January 22, 2010

Note well: the parties also must submit courtesy copies of all these submissions to chambers.

7. Final Pretrial Submissions

Not later than 28 days before trial each party shall serve on all other parties all materials specified in Rule 26(a)(3)(A), (B) and (C).

Not later than 14 days before trial the parties shall complete the tasks listed in Paragraph 1.A. - 1.H. of the court's standing order in non-jury cases (copy attached).

Not later than seven calendar days before trial the parties shall complete the tasks listed in Paragraphs 2 - 4 of the court's standing order in non-jury cases.

If a party chooses to submit a trial brief (which is optional) it must file and serve its brief not later than three calendar days before trial. Same day service is required.

As noted earlier in this order, deposition transcripts are to be filed promptly with the Clerk of Court upon preparation; any deposition that has not been filed with the Clerk of Court by close of business two work days before trial shall not be used by any party for any purpose at trial.

8. Trial: February 8, 2010 at 9:00 a.m.

Because this case will be tried by a district judge who has not been appointed yet, this trial date is subject to change. Trial shall be to the court. The parties estimate that this case will take three to five days to try. Absent further order of this court, the issues to be tried shall be limited to those identified by the parties in their pretrial conference report to the court. The court shall try the issues of liability and damages without bifurcation. A copy of this court's procedural order for non-jury cases is attached.

This case will be tried in an electronically equipped courtroom and the parties shall present their evidence using this equipment. Counsel shall ensure the compatibility of any of

their personal equipment with the court's system prior to the final pretrial conference or shall forfeit their right to use any personal equipment that is not compatible with the court's system.

9. Reporting Obligation of Corporate Parties.

All parties that are required to file a disclosure of corporate affiliations and financial interest form have a continuing obligation throughout this case promptly to amend that form to reflect any changes in the answers.

Entered this 5th day of May, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

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PRELIMINARY PRETRIAL CONFERENCE PACKET
IN CASES ASSIGNED TO JUDGE CRABB

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MANDATORY ELECTRONIC FILING OF ALL COURT DOCUMENTS

Electronic Case Filing is the standard way of doing business with the District Court in the Western District of Wisconsin. Effective January 22, 2008, electronic filing is mandatory in all civil and criminal case pending the newly filed.

Information on electronic filing and the court's administrative procedures are available on our website: www.wiwd.uscourts.gov under CM/ECF News. Resources include Administrative Procedures, Frequently Asked Questions, User Manual, and contact information.

Each lawyer must complete and sign a Lawyer Registration Form, which can be accessed at <http://attorneyreg.wiwd.uscourts.gov>. The registration form requires the Filing User's name, address, telephone number, and Internet e-mail address. Upon completion of the electronic registration form, the lawyer prints a copy, signs the form and mails it to the clerk's office. The clerk's office will retain this signed registration on file. To ensure that the clerk's office has correctly entered a registering lawyer's e-mail address in the System, the clerk's office will send the lawyer an e-mail message which will include a login and password.

HELPFUL TIPS FOR FILING
A SUMMARY JUDGMENT MOTION
IN CASES ASSIGNED TO JUDGE BARBARA B. CRABB

Please read the attached directions carefully – doing so will save your time and the court’s.

REMEMBER:

1. All facts necessary to sustain a party’s position on a motion for summary judgment must be explicitly proposed as findings of fact. This includes facts establishing jurisdiction. (Think of your proposed findings of fact as telling a story to someone who knows nothing of the controversy.)

2. The court will not search the record for factual evidence. Even if there is evidence in the record to support your position on summary judgment, if you do not propose a finding of fact with the proper citation, the court will not consider that evidence when deciding the motion.

3. A fact properly proposed by one side will be accepted by the court as undisputed unless the other side properly responds to the proposed fact and establishes that it is in dispute.

4. Your brief is the place to make your legal argument, not to restate the facts. When you finish it, check it over with a fine tooth comb to be sure you haven’t relied upon or assumed any facts in making your legal argument that you failed to include in the separate document setting out your proposed findings of fact.

5. A chart listing the documents to be filed by the deadlines set by the court for briefing motions for summary judgment or cross-motions for summary judgment is printed on the last page of the procedures.

MEMORANDUM TO PRO SE LITIGANTS
REGARDING SUMMARY JUDGMENT MOTIONS
IN CASES ASSIGNED TO JUDGE CRABB

This court expects all litigants, including persons representing themselves, to follow this court's Procedures to be Followed on Motions for Summary Judgment. If a party does not follow the procedures, there will be no second chance to do so. Therefore, PAY ATTENTION to the following list of mistakes pro se plaintiffs tend to make when they oppose a defendant's motion for summary judgment:

- Problem: The plaintiff does not answer the defendant's proposed facts correctly.

Solution: To answer correctly, a plaintiff must file a document titled "Response to Defendant's Proposed Findings of Fact." In this document, the plaintiff must answer each numbered fact that the defendant proposes, using separate paragraphs that have the same numbers as defendant's paragraphs. See Procedure II.D. If plaintiff does not object to a fact that the defendant proposes, he should answer, "No dispute."

- Problem: The plaintiff submits his own set of proposed facts without answering the defendant's facts.

Solution: Procedure II.B. allows a plaintiff to file his own set of proposed facts in response to a defendant's motion ONLY if he thinks he needs additional facts to prove his claim.

- Problem: The plaintiff does not tell the court and the defendant where there is evidence in the record to support his version of a fact.

Solution: Plaintiff must pay attention to Procedure II.D.2., which tells him how to dispute a fact proposed by the defendant. Also, he should pay attention to Procedure I.B.2., which explains how a new proposed fact should be written.

- Problem: The plaintiff supports a fact with an exhibit that the court cannot accept as evidence because it is not authenticated.

Solution: Procedure I.C. explains what may be submitted as evidence. A copy of a document will not be accepted as evidence unless it is authenticated. That means that the plaintiff or someone else who has personal knowledge what the document is must declare under penalty of perjury in a separate affidavit that the document is a true and correct copy of what it appears to be. For example, if plaintiff wants to support a proposed fact with evidence that he received a conduct report, he must submit a copy of the conduct report, together with an affidavit in which he declares under penalty of perjury that the copy is a true and unaltered copy of the conduct report he received on such and such a date.

NOTE WELL: If a party fails to respond to a fact proposed by the opposing party, the court will accept the opposing party's proposed fact as undisputed. If a party's response to any proposed fact does not comply with the court's procedures or cites evidence that is not admissible, the court will take the opposing party's factual statement as true and undisputed. You'll find additional tips for making sure that your submissions comply with the court's procedures on page 9 of this packet.

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

PROCEDURE TO BE FOLLOWED ON MOTIONS FOR SUMMARY JUDGMENT

I. MOTION FOR SUMMARY JUDGMENT

A. Contents:

1. A motion, together with such materials permitted by Rule 56(e) as the moving party may wish to serve and file; and
2. In a separate document, a statement of proposed findings of fact or a stipulation of fact between or among the parties to the action, or both; and
3. Evidentiary materials (see I.C.); and
4. A supporting brief.

B. Rules Regarding Proposed Findings of Fact:

1. Each fact must be proposed in a separate, numbered paragraph, limited as nearly as possible to a single factual proposition.
2. Each factual proposition must be followed by a reference to evidence supporting the proposed fact. For example,

“1. Plaintiff Smith bought six Holstein calves on July 11, 2006.
Harold Smith Affidavit, Jan. 6, 2007, p.1, ¶ 3.”

3. The statement of proposed findings of fact shall include ALL factual propositions the moving party considers necessary for judgment in the party's favor. For example, the proposed findings shall include factual statements relating to jurisdiction, the identity of the parties, the dispute, and the context of the dispute.
4. The court will not consider facts contained only in a brief.

C. Evidence

- I. As noted in I.B. above, each proposed finding must be supported by admissible evidence. The court will not search the record for evidence. To support a proposed fact, you may use:
 - a. Depositions. Give the name of the witness, the date of the deposition, and page of the transcript of cited deposition testimony;
 - b. Answers to Interrogatories. State the number of the interrogatory and the party answering it;
 - c. Admissions made pursuant to Fed. R. Civ. P. 36. (state the number of the requested admission and the identity of the parties to whom it was directed); or
 - d. Other Admissions. The identity of the document, the number of the page, and paragraph of the document in which that admission is made.
 - e. Affidavits. The page and paragraph number, the name of the affiant, and the date of the affidavit. (Affidavits must be made by persons who have first hand knowledge and must show that the person making the affidavit is in a position to testify about those facts.)
 - f. Documentary evidence that is shown to be true and correct, either by an affidavit or by stipulation of the parties. (State exhibit number, page and paragraph.)

II. RESPONSE TO MOTION FOR SUMMARY JUDGMENT

A. Contents:

1. A response to the moving party's proposed finding of fact; and
2. A brief in opposition to the motion for summary judgment; and
3. Evidentiary materials (See I.C.)

B. In addition to responding to the moving party's proposed facts, a responding party may propose its own findings of fact following the procedure in section I.B. and C. above.

1. A responding party should file additional proposed findings of fact if it needs them to defeat the motion for summary judgment.

2. The purpose of additional proposed findings of fact is to SUPPLEMENT the moving party's proposed findings of fact, not to dispute any facts proposed by the moving party. They do not take the place of responses. Even if the responding party files additional proposed findings of fact, it MUST file a separate response to the moving party's proposed findings of fact.
- C. Unless the responding party puts into dispute a fact proposed by the moving party, the court will conclude that the fact is undisputed.
- D. Rules Regarding Responses to the Moving Party's Proposed Factual Statements:
1. Answer each numbered fact proposed by the moving party in separate paragraphs, using the same number.
 2. If you dispute a proposed fact, state your version of the fact and refer to evidence that supports that version. For example,

Moving party proposes as a fact:

"1. Plaintiff Smith purchased six Holstein calves from Dell's Dairy Farm on July 11, 2006. Harold Smith Affidavit, Jan. 6, 2007, p.1, ¶ 3."

Responding party responds:

"1. Dispute. The purchase Smith made from Dell's Dairy Farm on July 11, 2006 was for one Black Angus bull John Dell Affidavit, Feb. 1, 2007, Exh. A."

3. The court prefers but does not require that the responding party repeat verbatim the moving party's proposed fact and then respond to it. Using this format for the example above would lead to this response by the responding party:

"1. *Plaintiff Smith purchased six Holstein calves from Dell's Dairy Farm on July 11, 2006. Harold Smith Affidavit, Jan. 6, 2007, p.1, ¶ 3.*

"**Dispute.** The purchase Smith made from Dell's Dairy Farm on July 11, 2006 was for one Black Angus bull." John Dell Affidavit, Feb. 1, 2007, Exh. A."

4. When a responding party disputes a proposed finding of fact, the response must be limited to those facts necessary to raise a dispute. The court will disregard any new facts that are not directly responsive to the proposed fact. If a responding party believes that more facts are necessary to tell its story, it should include them in its own proposed facts, as discussed in II.B.

E. Evidence

1. Each fact proposed in disputing a moving party's proposed factual statement and all additional facts proposed by the responding party must be supported by admissible evidence. The court will not search the record for evidence. To support a proposed fact, you may use evidence as described in Procedure I.C.1. a. through f.
2. The court will not consider any factual propositions made in response to the moving party's proposed facts that are not supported properly and sufficiently by admissible evidence.

III. REPLY BY MOVING PARTY

A. Contents:

1. An answer to each numbered factual statement made by the responding party in response to the moving party's proposed findings of fact, together with references to evidentiary materials; and
 2. An answer to each additional numbered factual statement proposed by the responding party under Procedure II.B., if any, together with references to evidentiary materials; and
 3. A reply brief; and
 4. Evidentiary materials (see I.C.)
- B. If the responding party has filed additional proposed findings of fact, the moving party should file its response to those proposed facts at the same time as its reply, following the procedure in section II.
- C. When the moving party answers the responding party's responses to the moving party's original proposed findings of fact, and answers the responding party's additional proposed findings of fact, the court prefers but does not require that the moving party repeat verbatim the entire sequence associated with each proposed finding of fact so that reply is a self-contained history of all proposed facts, responses and replies by all parties.

IV. SUR-REPLY BY RESPONDING PARTY

A responding party shall not file a sur-reply without first obtaining permission from the court. The court only permits sur-replies in rare, unusual situations.

MOTION FOR SUMMARY JUDGMENT

Deadline 1 (All deadlines appear in the Preliminary Pretrial Conference Order Sent to the Parties Earlier)	Deadline 2	Deadline 3
moving party's motion		
moving party's brief	non-moving party's response brief	moving party's reply brief
moving party's proposed findings of fact	non-moving party's response to moving party's proposed findings of fact	moving party's reply to non-moving party's response to moving party's proposed findings of fact
	non-moving party's additional proposed findings of fact	moving party's response to non-moving party's additional proposed findings of fact, if any.

CROSS MOTIONS FOR SUMMARY JUDGMENT

Deadline 1 (All deadlines appear in the Preliminary Pretrial Conference Order Sent to the Parties Earlier)	Deadline 2	Deadline 3
defendant's motion		
defendant's brief	plaintiff's response brief	defendant's reply brief
defendant's proposed findings of fact	plaintiff's response to defendant's proposed findings of fact	defendant's reply to plaintiff's response to defendant's proposed findings of fact
plaintiff's motion		
plaintiff's brief	defendant's response brief	plaintiff's reply brief
plaintiff's proposed findings of fact	defendant's response to plaintiff's proposed findings of fact	plaintiff's reply to defendant's response to plaintiff's proposed findings of fact

PROCEDURES GOVERNING FINAL PRETRIAL CONFERENCE
IN CASES ASSIGNED TO JUDGE CRABB

1. The preliminary pretrial conference order tells the parties what documents must be submitted for the final pretrial conference and what the deadlines are for submitting them.

2. The court's standard voir dire questions and standard jury instructions are attached to this order and will be asked in every case. The parties should not duplicate the standard questions or instructions.

3. A party must submit to the court an electronic copy of any proposed additional voir dire questions, proposed form of special verdict and proposed jury instructions in full electronic text (that is, not just by citation) by e-mailing them to chambers in WordPerfect or Microsoft Word format to wiwd_bbc@wiwd.uscourts.gov. **The subject line of the e-mail sent to chambers must include the case number and the phrase Final Pretrial Submissions.**

4. Proposed jury instructions shall be submitted in the following form:

- A. Pattern instructions are to be requested by reference to the source (e.g., court's standard instruction or Devitt & Blackmar, § 18.01); and
- B. Special instructions or pattern instructions, whether modified or not, must be presented double-spaced with one instruction per page, and each instruction shall show the identity of the submitting party, the number of the proposed instruction, and the citation of the pattern instruction, decision, statute, regulation or other authority supporting the proposition stated, with any additions underscored and any deletions set forth in parentheses. **The e-mail version of a party's proposed instructions must follow this format.**

5. The court retains the discretion to refuse to entertain voir dire questions, special verdict forms, or jury instructions not submitted in accordance with this order or the preliminary pretrial conference order unless the subject of the request is one arising during trial that could not reasonably have been anticipated prior to trial.

6. Each party shall be represented at the final pretrial conference by the lawyer who will actually try the case unless the party is proceeding pro se, in which case the pro se party must appear. A party represented by counsel shall also be present in person unless

- A. Counsel has been delegated the full authority to settle the case; or
- B. Attendance in person is impossible and arrangements are made for communication by telephone during the entire duration of the conference for the purpose of acting upon settlement proposals.

PROCEDURES FOR TRIAL EXHIBITS
IN CASES ASSIGNED TO JUDGE CRABB

Before trial, the parties are to label all exhibits that may be offered at trial. Before the start of trial, the parties are to provide the deputy clerk with a list of all exhibits. Exhibits for use at trial are not subject to the electronic filing procedures, but are to be filed conventionally. Counsel are to retain the original exhibits following trial.

1. Each party is to label all exhibits.
2. If more than one defendant will be offering exhibits, that defendant should add an initial identifying the particular defendant to the label.
3. Each party is to submit a list of their exhibits. The party should state to whom the exhibits belong, the number of each exhibit and a brief description.
4. Each party is to provide the court with the original exhibit list and a copy of each exhibit that may be offered for the judge's use.
5. As a general rule, the plaintiff should use exhibit numbers 1-500 and the defendant should use exhibit numbers 501 and up.
6. Each party is to maintain custody of his or her own exhibits throughout the trial.
7. At the end of trial, each party is to retain all exhibits that become a part of the record. It is each party's responsibility to maintain his or her exhibits and to make arrangements with the clerk's office for inclusion of the exhibits in the appeal record, if there is an appeal.
8. Each party should be aware that once reference is made to an exhibit at trial, the exhibit becomes part of the record, even though the exhibit might not be formally offered or might not be received.

Any questions concerning these instructions may be directed to the clerk's office at (608) 264-5156.

Entered this 19th day of May, 2006.

BY THE COURT:

BARBARA B. CRABB
District Judge

COURT'S STANDARD VOIR DIRE QUESTIONS
IN CASES ASSIGNED TO JUDGE CRABB

1. Statement of the case. (A very brief, concise description of the plaintiff(s)' claims and the defendant(s)' defenses.)

Has any one of you ever heard of this case before today? How? When? When you heard about it, did you form any opinion concerning the case? Do you believe that your ability to serve impartially as a juror in this case has been affected by what you have heard about it?

2. The trial of this case will begin _____ and will last _____ days. Is there any one of you who would be unable to serve as a juror during this time?
3. Ask counsel to stand and tell the jury where they practice and with whom. Ask panel whether anyone knows counsel or their associates or partners.
4. Ask counsel to introduce the parties. Ask panel whether anyone knows any of the parties. (If any party is a corporation, have counsel identify the nature of the corporation's business, its major subsidiaries, or its parent corporation, and where it conducts business. Ask whether anyone on the panel is stockholder of corporation or has had business dealings with it.)
5. Question to each prospective juror.

Please stand up and tell us about yourself.

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse or domestic partner.

Any military service, including branch, rank and approximate date of discharge.

How far you went in school and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

6. Question to panel regarding prior experience with court proceedings:

- a. Have any of you ever been a party to a lawsuit? Describe circumstances.
- b. Have any of you ever been a witness in a lawsuit?
- c. How many of you have served previously on a jury?
- d. Of those of you who have sat on a jury, were you ever the foreperson on a jury? Describe your experience.
- e. Do any of you know any of the other persons on the jury panel?

7. Question to panel in personal injury cases:

In this case the plaintiff is alleging that he suffered injuries [describe in summary fashion, for example, he was burned, or he suffered a broken leg and ankle] in an [automobile, horseback riding, industrial, farm, etc.] accident.

- a. Has any one of you ever suffered similar injuries? Describe. Do you have any residual effects of your injury?
- b. Do you have close friends or relatives who have suffered similar injuries?
- c. Were you ever in an accident involving [an automobile, farm machinery, industrial machine, etc.)?
- d. Do you have any close friends or relatives who have been in an accident of this kind?

8. Question to panel. At the end of the case I will give you instructions that will govern your deliberations. You are required to follow those instructions, even if you do not agree with them. Is there any one of you who would be unable or unwilling to follow the instructions?

9. Question to panel. Do any of you have opinions, whether positive or negative, about people who go to court to obtain relief for wrongs they believe they have suffered?

10. Question to panel. Do you know of any reason whatsoever why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

STANDARD JURY INSTRUCTIONS – CIVIL*

*These instructions are used in cases before the Honorable Barbara B. Crabb, District Judge

I. INTRODUCTORY INSTRUCTION

Members of the jury, we are about to begin the trial of the case. Before it begins, I will give you some instructions to help you understand how the trial will proceed, how you should evaluate the evidence, and how you should conduct yourselves during the trial.

The party who begins the lawsuit is called the plaintiff. In this action, the plaintiff is _____ . The parties against whom the suit is brought are called the defendants. In this action, the defendants are _____ .

[Describe claims and basic legal elements of claims and defenses]

The case will proceed as follows:

First, plaintiff's counsel will make an opening statement outlining plaintiff's case. Immediately after plaintiff's statement, defendants' counsel will also make an opening statement outlining defendants' case. What is said in opening statements is not evidence; it is simply a guide to help you understand what each party expects the evidence to show.

Second, after the opening statements, the plaintiff will introduce evidence in support of his claim. At the conclusion of the plaintiff's case, the defendants may introduce evidence. The defendants are not required to introduce any evidence or to call any witnesses. If the defendants introduce evidence, the plaintiff may then introduce rebuttal evidence.

Third, after the evidence is presented, the parties will make closing arguments explaining what they believe the evidence has shown and what inferences you should draw from the evidence. What is said in closing argument is not evidence. The plaintiff has the right to give the first closing argument and to make a short rebuttal argument after the defendants' closing argument.

Fourth, I will instruct you on the law that you are to apply in reaching your verdict.

Fifth, you will retire to the jury room and begin your deliberations.

You will hear the term "burden of proof" used during this trial. In simple terms, the phrase "burden of proof" means that the party who makes a claim has the obligation of proving that claim. At the end of the trial, I will instruct you on the proper burden of proof to be applied in this case.

The trial day will run from 9:00 a.m. until 5:30 p.m. You will have at least an hour for lunch and two additional short breaks, one in the morning and one in the afternoon.

During recesses you should keep in mind the following instructions:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. The parties to this lawsuit have a right to expect from you that you will keep an open mind throughout the trial. You should not reach a conclusion until you have heard all of the evidence and you have heard the lawyers' closing arguments and my instructions to you on the law, and have retired to deliberate with the other members of the jury.

Second, do not permit any third person to discuss the case in your presence. If anyone tries to talk to you despite your telling him not to, report that fact to the court as soon as you are able. Do not discuss the event with your fellow jurors or discuss with them any other fact that you believe you should bring to the attention of the court.

Third, although it is a normal human tendency to converse with people with whom one is thrown in contact, please do not talk to any of the parties or their attorneys or witnesses. By this I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no

other way can all parties be assured of the absolute impartiality they are entitled to expect from you are jurors.

Fourth, do not read about the case in the newspapers, or listen to radio or television broadcasts about the trial. If a newspaper headline catches your eye, do not examine the article further. Media accounts may be inaccurate and may contain matters that are not proper for your consideration. You must base your verdict solely on the evidence produced in court.

Fifth, no matter how interested you may become in the facts of the case, you must not do any independent research, investigation or experimentation. Do not look up materials on the internet or in other sources. [do not visit the site of the incident] [or perform any kind of experiment.] Again, you must base your verdict solely on the evidence produced in court.

Credibility of Witnesses

In deciding the facts, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it. In considering the testimony of any witness, you may take into account many factors, including the witness's opportunity and ability to see or hear or know the things the witness testified about; the quality of the witness's memory; the witness's appearance and manner while testifying; the witness's interest in the outcome of the case; any bias or prejudice the witness may have; other evidence that may have contradicted the witness's testimony; and the reasonableness of the witness' testimony in light of all the evidence. The weight of the evidence does not necessarily depend upon the number of witnesses who testify.

Depositions

During the course of a trial the lawyers will often refer to and read from depositions. Depositions are transcripts of testimony taken while the parties are preparing for trial. Deposition testimony is given under oath just like testimony on the trial. You should give it the same consideration you would give it had the witnesses testified here in court.

Objections

During the trial, you will hear the lawyers make objections to certain questions or to certain answers of the witnesses. When they do so, it is because they believe the question or answer is legally improper and they want me to rule on it. Do not try to guess why the objection is being made or what the answer would have been if the witness had been allowed to answer it.

If I tell you not to consider a particular statement that has already been made, put that statement out of your mind and remember that you may not refer to it during your deliberations.

Questions

During the trial, I may sometimes ask a witness questions. Please do not assume that I have any opinion about the subject matter of my questions.

If you wish to ask a question about something you do not understand, write it down on a separate slip of paper. If, when the lawyers have finished all of their questioning of the witness, the

question is still unanswered to your satisfaction, raise your hand, and I will take the written question from you, show it to counsel, and decide whether it is a question that can be asked. If it cannot, I will tell you that. I will try to remember to ask about questions after each witness has testified.

Notetaking

The clerk will give each of you a notepad and pencil for taking notes. This does not mean you have to take notes; take them only if you want to and if you think they will help you to recall the evidence during your deliberations. Do not let notetaking interfere with your important duties of listening carefully to all of the evidence and of evaluating the credibility of the witnesses. Keep in mind that just because you have written something down it does not mean that the written note is more accurate than another juror's mental recollection of the same thing. No one of you is the "secretary" for the jury, charged with the responsibility of recording evidence. Each of you is responsible for recalling the testimony and other evidence.

Although you can see that the trial is being reported, you should not expect to be able to use trial transcripts in your deliberations. You will have to rely on your own memories.

Evidence

Evidence at a trial includes the sworn testimony of the witnesses, exhibits admitted into the record, facts judicially noticed, and facts stipulated by counsel. You may consider only evidence that is admitted into the record.

In deciding the facts of this case, you are not to consider the following as evidence: statements and arguments of the lawyers, questions and objections of the lawyers, testimony that I instruct you to disregard, and anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Evidence may be either direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness said or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You are to decide how much weight to give any evidence.

Contradictory or Impeaching Evidence

A witness may be discredited by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

If you believe any witness has been discredited, it is up to you to decide how much of the testimony of that witness you believe.

If a witness is shown to have given false testimony knowingly, that is, voluntarily and intentionally, about any important matter, you have a right to distrust the witness's testimony about other matters. You may reject all the testimony of that witness or you may choose to believe some or all of it.

The general rule is that if you find that a witness said something before the trial that is different from what the witness said at trial you are to consider the earlier statements only as an aid

in evaluating the truthfulness of the witness's testimony at trial. You cannot consider as evidence in this trial what was said earlier before the trial began.

There is an exception to this general rule for witnesses who are the actual parties in the case. If you find that any of the parties made statements before the trial began that are different from the statements they made at trial, you may consider as evidence in the case whichever statement you find more believable.

Drawing of Inferences

You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts you find have been proved, such reasonable conclusions as seem justified in the light of your own experience and common sense.

Experts

A person's training and experience may make him or her a true expert in a technical field. The law allows that person to state an opinion here about matters in that particular field. It is up to you to decide whether you believe the expert's testimony and choose to rely upon it. Part of that decision will depend on your judgment about whether the expert's background of training and experience is sufficient for him or her to give the expert opinion that you heard, and whether the expert's opinions are based on sound reasons, judgment, and information.

During the trial, an expert witness may be asked a question based on assumptions that certain facts are true and then asked for his or her opinion based upon that assumption. Such an opinion is of use to you only if the opinion is based on assumed facts that are proven later. If you find that the assumptions stated in the question have not been proven, then you should not give any weight to the answer the expert gave to the question.

II. POST-TRIAL INSTRUCTIONS

Introduction

Ladies and Gentlemen of the Jury:

Now that you have heard the evidence and the arguments, I will give you the instructions that will govern your deliberations in the jury room. It is my job to decide what rules of law apply to the case and to explain those rules to you. It is your job to follow the rules, even if you disagree with them or don't understand the reasons for them. You must follow all of the rules; you may not follow some and ignore others.

The decision you reach in the jury room must be unanimous. In other words, you must all agree on the answer to each question.

Your deliberations will be secret. You will never have to explain your verdict to anyone.

If you have formed any idea that I have an opinion about how the case should be decided, disregard that idea. It is your job, not mine, to decide the facts of this case.

The case will be submitted to you in the form of a special verdict consisting of ___ questions. In answering the questions, you should consider only the evidence that has been received at this trial.

Do not concern yourselves with whether your answers will be favorable to one side or another, or with what the final result of this lawsuit may be.

Note that certain questions in the verdict are to be answered only if you answer a preceding question in a certain manner. Read the introductory portion of each question very carefully before you undertake to answer it. Do not answer questions needlessly.

Burden of Proof

When a party has the burden to prove any matter by a preponderance of the evidence, it means that you must be persuaded by the testimony and exhibits that the matter sought to be proved is more probably true than not true. You should base your decision on all of the evidence, regardless of which party presented it.

Middle Burden of Proof

In answering question ___, you are instructed that the burden is on the plaintiff to convince you to a reasonable certainty by evidence that is clear, satisfactory, and convincing that the answer should be "yes."

Answers Not Based on Guesswork

If, after you have discussed the testimony and all other evidence that bears upon a particular question, you find that the evidence is so uncertain or inadequate that you have to guess what the answer should be, then the party having the burden of proof as to that question has not met the required burden of proof. Your answers are not to be based on guesswork or speculation. They are to be based upon credible evidence from which you can find the existence of the facts that the party must prove in order to satisfy the burden of proof on the question under consideration.

Selection of Presiding Juror; Communication with the Judge; Verdict

When you go to the jury room to begin considering the evidence in this case you should first select one of the members of the jury to act as your presiding juror. This person will help to guide your discussions in the jury room.

You are free to deliberate in any way you decide or select whomever you like as a presiding juror. However, I am going to provide some general suggestions on the process to help you get started. When thinking about who should be presiding juror, you may want to consider the role that the presiding juror usually plays. He or she serves as the chairperson during the deliberations and has the responsibility of insuring that all jurors who desire to speak have a chance to do so before any vote. The presiding juror should guide the discussion and encourage all jurors to participate.

Once you are in the jury room, if you need to communicate with me, the presiding juror will send a written message to me. However, don't tell me how you stand as to your verdict.

As I have mentioned before, the decision you reach must be unanimous; you must all agree.

When you have reached a decision, the presiding juror will sign the verdict form, put a date on it, and all of you will return with the verdict into the court.

Suggestions for Conducting Deliberations:

In order to help you determine the facts, you may want to consider discussing one claim at a time, and use my instructions to the jury as a guide to determine whether there is sufficient evidence to prove all the necessary legal elements for each claim or defense. I also suggest that any public votes on a verdict be delayed until everyone can have a chance to say what they think without worrying what others on the panel might think of their opinion. I also suggest that you assign separate tasks, such as note taking, time keeping and recording votes to more than one person to help break up the workload during your deliberations. I encourage you at all times to keep an open mind if you ever disagree or come to conclusions that are different from those of your fellow jurors. Listening carefully and thinking about the other juror's point of view may help you understand that juror's position better or give you a better way to explain why you think your position is correct.

III. DAMAGES**General**

On the damages question, the party asking for damages has the burden of convincing you, by the preponderance of the evidence, both that he or she has been injured or damaged and the amount of the damages.

The party seeking damages need not produce evidence that is as exact as the evidence needed to support findings on other questions in the verdict. Determining damages involves the consideration of many different factors that cannot be measured precisely. In determining the damages you must base your answer on evidence that reasonably supports your determination of damages under all of the circumstances of the case. You should award as damages the amount of money that you find fairly and reasonably compensates the named party for his or her injuries.

Do not measure damages by what the lawyers ask for in their arguments. Their opinions as to what damages should be awarded should not influence you unless their opinions are supported by the evidence. It is your job to determine the amount of the damages sustained from the evidence you have seen and heard. Examine that evidence carefully and impartially. Do not add to the damage award or subtract anything from it because of sympathy to one side or because of hostility to one side. Do not make any deductions because of a doubt in your minds about the liability of any of the parties.

Income Taxes

You must not add to any award of damages any money to compensate the plaintiff for state or federal income taxes. Damages received as an award for personal injuries are exempt from income taxes. On the other hand, you must not subtract any money from your award of damages just because the plaintiff is not required to pay income taxes.

Pain and Suffering

In determining how much money will fairly and reasonably compensate plaintiff for past pain and suffering [disability] [disfigurement] [mental anguish] [loss of capacity for enjoyment of life],

you should consider any pain and suffering, mental anguish and apprehension, sorrow and anxiety plaintiff has endured from the time of the incident up to the present time. There is no exact standard for deciding how much to award plaintiff for these damages. Your award should be fair and just in the light of the evidence.

Aggravation of Pre-existing Injury or Condition

The evidence shows that the plaintiff was previously injured when _____. If the injuries plaintiff received at _____ aggravated any physical, mental or emotional condition resulting from the earlier injury or injuries, you should award fair and reasonable compensation for such aggravation. However, you should award compensation only if you find the aggravation of the existing condition was a natural result of the injuries received at _____.

Duty to Mitigate Damages

_____ A person who has been damaged may not recover for losses that he or she could have reduced by reasonable efforts. "Reasonable efforts" do not include efforts that might cause serious harm or subject the person making the effort to an unreasonable risk, unreasonable inconvenience, unreasonable expense, disorganization of his or her business or loss of honor and respect.

If you find that a reasonable person would have taken steps to reduce the loss, and if you find that the plaintiff did not take such steps, then you should not include as damages any amount the plaintiff could have avoided. If you find that a reasonable person would not have taken steps to reduce the loss under all of the circumstances existing in the case, then you should not consider the plaintiff's failure to act when you determine damages.

It is defendants' burden to satisfy you by the greater weight of the credible evidence that plaintiff should have taken steps to reduce the loss and failed to do so.

Mortality Tables

_____ In answering the question of future damages as a result of plaintiff's injuries, you may take into consideration the fact that at this time _____ is _____ years of age. According to the mortality tables, plaintiff has a life expectancy of ____ years.

Although a mortality table giving the expectancy of life of a person of _____'s age, was received in evidence as an aid in determining such expectancy, it is not conclusive or binding upon you. Such tables are based upon averages, and there is no certainty that any person will live the average duration of life rather than a longer or shorter period. In order to determine the probable length of life of _____, you should take into consideration all of the facts and circumstances established by the credible evidence bearing upon that subject.

Future Earnings

In determining the amount of damages for any loss of _____ that will be incurred in the future, it is your duty to determine the present worth of such future damages.

By present worth, I am referring to the fact that a lump sum of money received today is worth more than the same sum paid in installments over a period of months or years. A sum received today can be invested and earn money at current interest rates. Your answer will reflect the present value in dollars of an award of future damages if you make a reduction for the earning power of money.

Keep in mind that this instruction does not apply to the portion of future damages that represents future pain and suffering. In computing the amount of future damages, you may take into account economic conditions, present and future, and the effects of inflation.

The fact that I have instructed you on the proper measure of damages does not mean I have any view about the verdict in this case. These instructions on damages are only for your guidance in the event that you should find in favor of plaintiff on the question of liability.

Punitive Damages

If you answered "yes" to Question No. ____, you may award punitive damages in addition to compensatory damages. You are not required to make any award of punitive damages, but you may do so if you think it is proper under the circumstances to make such an award as an example or punishment to deter the defendant and others from offending in a similar manner in the future. In deciding whether to make an award of punitive damages you may also consider the seriousness of the offense committed.

Punitive damages may be awarded even if the violation of plaintiff's rights resulted in only nominal compensatory damages. That is, even if the plaintiff can show no damages or other injury as a result of a defendant's actions, if the defendant acted with deliberate indifference to plaintiff's rights, punitive damages may be awarded.

Punitive damages are never a matter of right. It is in the jury's discretion to award or withhold them. Punitive damages may not be awarded unless the defendant acted with deliberate indifference to the plaintiff's rights. Even if you find that the violations were reckless or deliberate, you may withhold or allow punitive damages as you see fit.

If you find that a defendant's conduct was motivated by evil motive or intent, such as ill will or spite or grudge either toward the injured person individually or toward all persons such as plaintiff, then you may find that the defendant deliberately violated the plaintiff's rights.

Acts are reckless when they represent a gross departure from ordinary care in a situation where a high degree of danger is apparent. If the defendant was in a position in which he certainly should have known that his conduct would violate the plaintiff's rights, and proceeded to act in disregard of that knowledge and of the harm or the risk of harm that would result to the plaintiff, then he acted with reckless disregard for the plaintiff's rights.

In answering this question, you are instructed that the burden is on the plaintiff to convince you to a reasonable certainty by evidence that is clear, satisfactory, and convincing that the answer should be "yes."

PROCEDURES FOR CALLING WITNESSES TO TRIAL IN CASES ASSIGNED TO JUDGE CRABB

At trial, plaintiff will have to be ready to prove facts supporting his claims against the defendants. One way to offer proof is through the testimony of witnesses who have personal knowledge about the matter being tried. If a party wants witnesses to be present and available to testify on the day of trial, the party must follow the procedures explained below. (“Party” means either a plaintiff or a defendant.) These procedures must be followed whether the witness is:

- 1) A defendant to be called to testify by a plaintiff; or
- 2) A plaintiff to be called to testify by a defendant; or
- 3) A person not a party to the lawsuit to be called to testify by either a plaintiff or a defendant.

I. PROCEDURES FOR OBTAINING ATTENDANCE OF INCARCERATED WITNESSES WHO AGREE TO TESTIFY VOLUNTARILY

An incarcerated witness who tells a party that he is willing to attend trial to give testimony cannot come to court unless the court orders his custodian to let him come. The Court must issue an order known as a writ of habeas corpus ad testificandum. This court will not issue such a writ unless the party can establish to the court’s satisfaction that

- 1) The witness has agreed to attend voluntarily; and
- 2) The witness has actual knowledge of facts directly related to the issue to be tried.

A witness’s willingness to come to court as a witness can be shown in one of two ways.

- a. The party can serve and file an affidavit declaring under penalty of perjury that the witness told the party that he or she is willing to testify voluntarily, that is, without being subpoenaed. The party must say in the affidavit when and where the witness informed the party of this willingness;

OR

b. The party can serve and file an affidavit in which *the witness* declares under penalty of perjury that he or she is willing to testify without being subpoenaed.

The witness's actual knowledge of relevant facts may be shown in one of two ways.

a. The party can declare under penalty of perjury that the witness has relevant information about the party's claim. However, this can be done only if the *party* knows first-hand that the witness saw or heard something that will help him prove his case. For example, if the trial is about an incident that happened in or around a plaintiff's cell and, at the time, the plaintiff saw that a cellmate was present and witnessed the incident, the plaintiff may tell the court in an affidavit what happened, when and where the incident occurred, who was present, and how the witness was in a position to see or hear what occurred;

OR

b. The party can serve and file an affidavit in which *the witness* tells the court what happened, when and where the incident occurred, who was present, and how the witness was in a position to see or hear what occurred.

Not later than four weeks before trial, a party planning to use the testimony of an incarcerated witness who has agreed to come to trial must serve and file a written motion for a court order requiring the witness to be brought to court at the time of trial. The motion must

- 1) State the name and address of the witness; and
- 2) Come with an affidavit described above to show that the witness is willing to testify and that the witness has first-hand knowledge of facts directly related to the issue to be tried.

When the court rules on the motion, it will say who must be brought to court and will direct the clerk of court to prepare the necessary writ of habeas corpus ad testificandum.

II. PROCEDURE FOR OBTAINING THE ATTENDANCE OF INCARCERATED WITNESSES WHO REFUSE TO TESTIFY VOLUNTARILY

If an incarcerated witness refuses to attend trial, TWO separate procedures are required. The court will have to issue a writ of habeas corpus ad testificandum telling the warden to bring the witness to trial and the party must serve the witness with a subpoena.

Not later than four weeks before trial, the party seeking the testimony of an incarcerated witness who refuses to testify voluntarily must file a motion asking the court to issue a writ of habeas corpus ad testificandum and asking the court to provide the party with a subpoena form. (All requests from subpoenas from pro se litigants will be sent to the judge for review before the clerk will issue them.)

The motion for a writ of habeas corpus ad testificandum will not be granted unless the party submits an affidavit

- 1) Giving the name and address of the witness; and
- 2) Declaring under penalty of perjury that the witness has relevant information about the party's claim. As noted above, this can be done only if the *party* knows first-hand that the witness saw or heard something that will help him prove his case. In the affidavit, the party must tell the court what happened, when and where the incident occurred, who was present, and how the witness was in a position to see or to hear what occurred.

The request for a subpoena form will not be granted unless the party satisfies the court in his affidavit that

- 1) The witness refuses to testify voluntarily;
- 2) The party has made arrangements for a person at least 18 years of age who is not a party to the action to serve the subpoena on the witness; or
- 3) The party is proceeding in forma pauperis, has been unable to arrange for service of the subpoena by a person at least 18 years of age who is not a party to the action and needs assistance from the United States Marshal or a person appointed by the court.

If the court grants the party's request for a subpoena for an incarcerated witness, it will be the party's responsibility to complete the subpoena form and send it to the person at least 18 years of age who will be serving the subpoena or to the United States Marshal, if the court has ordered that the subpoena be served by the Marshal. The address of the United States Marshal is 120 N. Henry St., Suite 440, Madison, Wisconsin, 53703. If the subpoena is not received by the marshal at least two weeks in advance of trial, the marshal may not have enough time to serve the subpoena on the party's witness.

III. UNINCARCERATED WITNESSES WHO AGREE TO TESTIFY VOLUNTARILY

It is the responsibility of the party who has asked an unincarcerated witness to come to court to tell the witness of the time and date of trial. No action need be sought or obtained from the court.

IV. UNINCARCERATED WITNESSES WHO REFUSE TO TESTIFY VOLUNTARILY

If a prospective witness is not incarcerated, and he or she refuses to testify voluntarily, no later than four weeks before trial, the party must serve and file a request for a subpoena form. All parties who want to subpoena an unincarcerated witness, even parties proceeding in forma pauperis, must be prepared to tender an appropriate sum of money to the witness at the time the subpoena is served. The appropriate sum of money is a daily witness fee and the witness's mileage costs. In addition, if the witness's attendance is required for more than one trial day, an allowance for a room and meals must be paid. The current rates for daily witness fees, mileage costs and room and meals may be obtained either by writing the clerk of court at P.O. Box 432, Madison, Wisconsin, 53703, or calling the office of the clerk at (608) 264-5156.

Before the court will grant a request for a subpoena form for an unincarcerated witness, the party must satisfy the court by affidavit declared to be true under penalty of perjury that

1) The witness refuses to testify voluntarily;

2) The party has made arrangements for a person at least 18 years of age who is not a party to the action to serve the subpoena on the witness; or

3) The party is proceeding in forma pauperis, has been unable to arrange for service of the subpoena by a person at least 18 years of age who is not a party to the action and needs assistance from the United States Marshal or a person appointed by the court; and

4) The party is prepared to tender to the marshal or other individual serving the subpoena a check or money order made payable to the witness in an amount necessary to cover the daily witness fee and the witness's mileage, as well as costs for room and meals if the witness's appearance at trial will require an overnight stay.

If the court grants the party's request for a subpoena for an unincarcerated witness, it will be the party's responsibility to complete the subpoena form and send it to the person at least 18 years of age who will be serving the subpoena or to the United States Marshal, if the court has ordered that the subpoena be served by the marshal, together with the necessary check or money order. The address of the United States Marshal is 120 N. Henry St., Suite 440, Madison, Wisconsin, 53703. If the subpoena is not received by the marshal at least two weeks in advance of trial, the marshal may not have enough time to serve the subpoena on the party's witness.

V. SUMMARY

The chart below may assist in referring you to the section of this paper which sets forth the appropriate procedure for securing the testimony of witnesses in your case.

WITNESSES			
INCARCERATED		UNINCARCERATED	
VOLUNTARY A court order that the witness be brought to court is required. Papers are due 4 weeks before trial.	INVOLUNTARY A court order that the witness be brought to court and a subpoena are required. A motion must be served & filed 4 weeks before trial. Subpoena forms must be completed 2 weeks before trial.	VOLUNTARY Nothing need be sought or obtained from the court.	INVOLUNTARY Pro se parties must obtain an order granting issuance of a subpoena. Papers are due 4 weeks before trial. Completed forms and fees are due 2 weeks before trial.

Office of the Clerk
**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

120 North Henry Street, Room 320 • P.O. Box 432 • Madison, WI 53701-0432 • 608-264-5156

October 27, 2006

MEMO TO COUNSEL

If a case is **settled on the weekend before trial**, the court should be notified immediately by calling Clerk of Court Peter Oppeneer at (608) 287-4875. This notification will enable the Clerk to call off unneeded jurors and to advise the trial judge to discontinue working on the case. The same procedure should be followed to report last-minute emergencies which might affect the start of the trial.

**ORDER IN NON-JURY CASES
ASSIGNED TO JUDGE CRABB**

Counsel are hereby directed to observe the following requirements in preparing for the trial to the court in this case:

I. No later than TWO WEEKS IN ADVANCE OF THE TRIAL counsel are to confer for the following purposes:

A. To enter into comprehensive written stipulations of all uncontested facts in such form that they can be offered at trial as the first evidence presented by the party desiring to offer them. If there is a challenge to the admissibility of some uncontested facts that one party wishes included, the party objecting and the grounds for objection must be stated.

B. To make any deletions from their previously-exchanged lists of potential trial witnesses.

C. To enter into written stipulations setting forth the qualifications of expert witnesses.

D. To examine, mark, and list all exhibits that any party intends to offer at trial. (A copy of this court's procedures for marking exhibits is contained in this packet.)

E. To agree as to the authenticity and admissibility of such exhibits so far as possible and note the grounds for objection to any not agreed upon.

F. To agree so far as possible on the contested issues of law.

G. To examine and prepare a list of all depositions and portions of depositions to be read

into evidence and agree as to those portions to be read. If any party objects to the admissibility of any portion, the name of the party objecting and the grounds shall be set forth.

H. To explore the prospects of settlement.

It shall be the responsibility of plaintiff's counsel to convene the conference between counsel and, following that conference, to prepare the Pretrial Statement described in the next paragraph.

2. No later than ONE WEEK PRIOR TO THE TRIAL, plaintiff's counsel shall submit a Pretrial Statement containing the following:

A. The parties' comprehensive written stipulations of all uncontested facts.

B. The probable length of trial.

C. The names of all prospective witnesses. Only witnesses so listed will be permitted to testify at the trial except for good cause shown.

D. The parties' written stipulation setting forth the qualifications of all expert witnesses.

E. Schedules of all exhibits that will be offered in evidence at the trial, together with an indication of those agreed to be admissible and a summary statement of the grounds for objection to any not agreed upon. Only exhibits so listed shall be offered in evidence at the trial except for good cause shown.

F. An agreed statement of the contested issues of law supplemented by a separate statement by each counsel of those issues of law not agreed to by all parties.

G. A list of all depositions and portions of depositions to be offered in evidence, together with an indication of those agreed to be admissible and summary statements of the grounds for objections to any not so agreed upon. If only portions of a deposition are to be offered, counsel should mark the deposition itself with colored markers identifying the portions each party will rely upon.

3. No later than ONE WEEK PRIOR TO TRIAL, each counsel shall file with the court and serve upon opposing counsel a statement of all the facts that counsel will request the court to find at the conclusion of the trial. In preparing these statements, counsel should have in mind those findings that will support a judgment in their client's favor. The proposed findings should be complete. They should be organized in the manner in which counsel desire them to be entered. They should include stipulated facts, as well as facts not stipulated to but which counsel expect to be supported by the record at the conclusion of the trial. Those facts that are stipulated to shall be so marked.

4. Along with the proposed findings of fact required by paragraph 3 of this order, each counsel shall also file and serve a proposed form of special verdict, as if the case were to be tried to a jury.

5. Before the start of trial, each counsel shall submit to the court a complete set of counsel's pre-marked trial exhibits to be used by the judge as working copies at trial.

6. If counsel wish to submit trial briefs, they are to do so no later than THREE WORKING DAYS PRIOR TO TRIAL. Copies of briefs must be provided to opposing counsel.

Final pretrial submissions are to be filed as stated above with no exceptions. Failure to file or repeated and flagrant violations may result in the loss of membership in the bar of this court.

Entered this 27th day of October, 2006.

BY THE COURT:

BARBARA B. CRABB
District Judge

ORDER REGARDING TIMELY PRESENTATION
OF TRIAL WITNESSES AND TRIAL EVIDENCE

The parties must have all witnesses and other evidence ready and available for timely presentation at trial in order to prevent delay. Failure to comply with this order will be grounds for an order precluding the presentation of any additional evidence by the non-complying party.

Entered this 27th day of October, 2006.

BY THE COURT:

BARBARA B. CRABB
District Judge

NOTICE TO COUNSEL:

To enable judges and magistrate judges of the court to evaluate possible disqualification or recusal, counsel for a private (non-governmental) business, company, or corporation shall submit at the time of initial pleading this statement of corporate affiliations and financial interest.

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

Wisconsin Interscholastic Athletic Assoc., et al.

Case No. 09-cv-155-slc

v.

Gannett Co., Inc and WNA

DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST

Gannett Co., Inc. makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation?


YES NO

If the answer is YES, list below and identify the parent corporation or affiliate and the relationship between it and the named party:

2. Is there a publicly owned corporation, not a party to this case, that has a financial interest in the outcome?

YES NO

If the answer is YES, list the identity of such corporation and the nature of the financial interest to the named party:



Date: July 23, 2009

NOTICE TO COUNSEL:

To enable judges and magistrate judges of the court to evaluate possible disqualification or recusal, counsel for a private (non-governmental) business, company, or corporation shall submit at the time of initial pleading this statement of corporate affiliations and financial interest.

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

Wisconsin Interscholastic Athletic Assoc., et al.

Case No. 09-cv-155-slc

v.

Gannett Co., Inc and WNA

DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST

Wisconsin Newspaper Association, Inc. makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation?

YES NO

If the answer is YES, list below and identify the parent corporation or affiliate and the relationship between it and the named party:

2. Is there a publicly owned corporation, not a party to this case, that has a financial interest in the outcome?

YES NO

If the answer is YES, list the identity of such corporation and the nature of the financial interest to the named party:



Date: July 23, 2009

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.

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2009, I caused copies of the following documents:

- **DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST FOR GANNETT CO. INC;** and
- **DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST FOR WISCONSIN NEWSPAPER ASSOCIATION, INC.**

to be electronically filed with the Clerk of Court using the ECF system which will send notification to the following ECF participants:

Gerald M. O'Brien
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Justi Rae Miller
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Suite 3720
Minneapolis, MN 55402
jmiller@kellyandberens.com

Dated this 23rd day of July 2009.

/s/ Matthew P. Veldran
Matthew P. Veldran

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

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

Plaintiffs,

Case No. 09-cv-0155

v.

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

Defendants.

**JOINT MOTION TO AMEND
PRELIMINARY PRETRIAL CONFERENCE ORDER**

Plaintiffs Wisconsin Interscholastic Athletic Association and American-Hifi, Inc. and defendants Gannett Co., Inc. and Wisconsin Newspaper Association, Inc., jointly move the Court for an order amending the deadlines for disclosure of experts in the Preliminary Pretrial Conference Order.

WHEREAS, pursuant to the preliminary pretrial conference order of the Court, the Plaintiff's expert disclosures must be disclosed no later than August 3, 2009; Defendants' expert disclosures must be disclosed no later than September 4; and

WHEREAS, the parties wish to extend the dates by which their expert disclosures must be filed;

NOW, THEREFORE, IT IS STIPULATED AND AGREED:

1. Plaintiff's initial expert disclosures must be disclosed no later than August 17, 2009; and

2. Defendants' expert disclosures must be disclosed no later than September 18, 2009.

For the foregoing reasons, the parties respectfully request that this Court grant this motion.

Dated this 29th day of July, 2009.

Respectfully submitted,

PERKINS COIE, LLP

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GODFREY & KAHN, S.C.

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Inc. and Wisconsin Newspaper Association,
Inc.*

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.

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of July, 2009, I caused a copy of **Joint Motion to Amend Preliminary Pretrial Conference Order** to be served via CM/ECF for the Western District of Wisconsin on the following:

Robert J. Dreps
Monica Santa Maria
GODFREY & KAHN, S.C.
1 East Main Street, Suite 500
Madison, WI 53703
rdreps@gklaw.com
msantamaria@gklaw.com

Dated this 29th day of July, 2009.

/s/ Laura E. Distin

Laura E. Distin

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

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

Plaintiffs,

Case No. 09-cv-0155

v.

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

Defendants.

**SECOND JOINT MOTION TO AMEND
PRELIMINARY PRETRIAL CONFERENCE ORDER**

Plaintiffs Wisconsin Interscholastic Athletic Association and American-Hifi, Inc. and defendants Gannett Co., Inc. and Wisconsin Newspaper Association, Inc. jointly move the Court for an order amending the deadlines for disclosure of experts and filing dispositive motions in the Preliminary Pretrial Conference Order.

WHEREAS, pursuant to the Court's text-only order (Dkt. #18) granting the parties' Joint Motion to Amend Preliminary Pretrial Conference Order (Dkt. #17), the Proponent's expert disclosures must be disclosed no later than August 17, 2009, and Respondents' expert disclosures must be disclosed no later than September 18, 2009; and

WHEREAS, pursuant to the Preliminary Pretrial Conference Order of the Court (Dkt. #14), all dispositive motions must be filed and served no later than September 25, 2009; and

WHEREAS, the parties wish to extend the dates by which their expert disclosures must be filed; and

WHEREAS, the parties wish to extend the date by which their dispositive motions must be filed;

NOW, THEREFORE, IT IS STIPULATED AND AGREED:

1. Proponent's initial expert disclosures must be disclosed by September 14, 2009;
2. Respondents' expert disclosures must be disclosed by October 16, 2009; and
3. Dispositive motions must be filed and served by December 18, 2009.

For the foregoing reasons, the parties respectfully request that this Court grant this motion.

Dated this 25th day of August, 2009.

Respectfully submitted,

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*Attorneys for the Plaintiffs Wisconsin
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American-Hifi, Inc.*

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Inc. and Wisconsin Newspaper Association,
Inc.*

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.

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 2009, I caused a copy of **Second Joint Motion to Amend Preliminary Pretrial Conference Order** to be served via CM/ECF for the Western District of Wisconsin on the following:

Robert J. Dreps
Monica Santa Maria
GODFREY & KAHN, S.C.
1 East Main Street, Suite 500
Madison, WI 53703
rdreps@gklaw.com
msantamaria@gklaw.com

Dated this 25th day of August, 2009.

/s/ Laura E. Distin

Laura E. Distin

**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.

**LIMITED JOINT STIPULATION OF THE
WISCONSIN INTERSCHOLASTIC ATHLETIC ASSOCIATION,
GANNETT CO., INC., AND THE
WISCONSIN NEWSPAPER ASSOCIATION, INC.**

Now come Plaintiff Wisconsin Interscholastic Athletic Association (“WIAA”) and Defendants Gannett Co., Inc. (“Gannett”) and the Wisconsin Newspaper Association, Inc. (“WNA”), by and through their undersigned counsel, and, for purposes of this action only, and otherwise fully preserving WIAA’s position that in other factual contexts the WIAA is not a "state actor" under Wisconsin or federal law and controlling precedents, hereby stipulate under the facts of this case, and in the express and limited context of the allegations of the Defendants, Gannett and WNA, concerning WIAA's rights to control internet access to, broadcast of, and use of, transcriptions, recordings, pictures, filming, or transmission of WIAA-sponsored games and events, that WIAA may be considered by the Court in this action only to be a "state actor" for purposes of Defendants’ claims under 42 U.S.C. § 1983. WIAA contends that it has not fully litigated, argued, or defended its properly recognized status as a non-state actor in this action or any other, and it reserves the full spectrum of its rights to do so in future litigation not involving

the parties to this action when and if the factual and legal contours of such a case so warrant. WIAA's limited stipulation under the unique circumstances of this action and the peculiar interests and expediencies implicated thereby that it may be considered for purposes of this case only to be a "state actor" by the Court in no way impairs or impacts its ability, intention, and right to fully litigate, argue, and defend its proper consideration as a non-state actor in any future action, controversy, or dispute not involving the parties to this action.

Dated this 31st day of December, 2009.

Dated this 31st day of December, 2009.

GODFREY & KAHN, S.C.

MAWICKE & GOISMAN, S.C.

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By: s/ Jennifer S. Walther

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

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

Plaintiffs,

Case No. 09-cv-0155

v.

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

Defendants.

**JOINT MOTION TO AMEND
SCHEDULING ORDER**

Plaintiffs Wisconsin Interscholastic Athletic Association (“WIAA”) and American-Hifi, Inc. and defendants Gannett Co., Inc. and Wisconsin Newspaper Association, Inc., jointly move the Court for an order amending the deadlines for dispositive motions in this case. Per the Court’s Order of September 16, 2009, Dkt. No. 22, the deadline for dispositive motions in this case is currently January 15, 2010. The parties respectfully request an extension of seven days to this and related deadlines, as detailed below. This request is made to accommodate counsel for WIAA, who prior to the holiday season were consumed with trial obligations in another jurisdiction lasting approximately one month, and to accommodate on-going discovery responsibilities in this case. The parties do not believe that this request will otherwise affect the pre-trial schedule entered by the Court.

WHEREAS, pursuant to the Court’s Order dispositive motions must be filed no later than January 15, 2009; and

WHEREAS, for the reasons stated above, the parties agree to extend the dates relating to their dispositive motions by seven days;

NOW, THEREFORE, IT IS STIPULATED AND AGREED:

1. All dispositive motions must be filed no later than January 22, 2010;
2. All responses to dispositive motions must be filed no later than February 12, 2010; and
3. All replies to dispositive motions must be filed no later than February 22, 2010.

For the foregoing reasons, the parties respectfully request that this Court grant this motion.

Dated this 8th day of January, 2010.

Respectfully submitted,

PERKINS COIE, LLP

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*Attorneys for the Plaintiffs Wisconsin
Interscholastic Athletic Association and
American-Hifi, Inc.*

GODFREY & KAHN, S.C.

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*Attorneys for the Defendants Gannett Co.,
Inc. and Wisconsin Newspaper Association,
Inc.*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

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

Plaintiffs,

Case No. 09-CV-0155

v.

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

Defendants.

MOTION OF ARIZONA INTERSCHOLASTIC ASSOCIATION, INC.
FOR LEAVE TO FILE AMICUS BRIEF AND SUPPORTING DECLARATION

Arizona Interscholastic Association, Inc. ("AIA"), by its attorneys, hereby moves the court for an order granting AIA leave to file a brief as Amicus Curiae in this action. The grounds for this motion are that AIA has an interest in this action in its capacity as an association of private and public high schools in the state of Arizona, dedicated to the development, direction and regulation of interscholastic activities among its member schools. AIA has a proprietary interest in the events its sponsors, which include state tournament athletic events involving its member schools. Because of the manner in which AIA manages media access and broadcast rights relating to the events it sponsors, it is situated in such a way that it is able to provide a unique perspective on the issues before this court.

This motion is supported by the brief AIA proposes to file (attached hereto as Exhibit A) and further supported by the Declaration of Charles C. Schmidt in Support of Motion of Arizona Interscholastic Association, Inc. for Leave to File Amicus Brief.

Respectfully submitted this 22nd day of January, 2010.

BARBARA A. NEIDER

/s/ Barbara A. Neider
Attorney for Amicus Curiae
Arizona Interscholastic Association,
Inc.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

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

Plaintiffs,

Case No. 09-CV-0155

v.

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

Defendants.

BRIEF OF AMICUS CURIAE ARIZONA INTERSCHOLASTIC ASSOCIATION, INC.
IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

INTEREST OF AMICUS CURIAE

I. BACKGROUND.

The Arizona Interscholastic Association, Inc. (“AIA”) is a non-profit Arizona corporation, with its principal office located in Phoenix, Arizona. (Declaration of Charles C. Schmidt in Support of Motion of Arizona Interscholastic Association, Inc. to File Amicus Brief and Supporting Declaration (“Schmidt Dec.”) ¶ 2.) Established in 1925, AIA is a voluntary association of public and private high schools that serves to supplement the overall aims and objectives of secondary schools by organizing, developing, directing and regulating interscholastic activities among member schools. (*Id.*) AIA strives to initiate and pursue policies that will safeguard the educational value

of interscholastic contests and cultivate cooperation, friendship and good sportsmanship among member schools. AIA seeks to encourage maximum student participation and to organize events in a manner that ensures fair and equitable competition. AIA also seeks to ensure the safety of high school youth who participate in athletics and other interscholastic activities and to prevent the commercial and other exploitation of student participants. (*Id.* ¶ 3.)

AIA currently has 275 member schools, who in turn have an enrollment of 311,893 students. (*Id.* ¶ 4.) AIA's operations are financed in part by membership dues and participation fees. In addition to paying annual dues and fees, AIA members must agree to abide by all AIA rules and regulations as a condition of membership. This includes rules on student eligibility, practices, non-school participation, recruitment, use of drugs, alcohol and tobacco, and other rules and regulations designed to protect the health and safety of student participants. (*Id.* ¶ 5.)

AIA conducts state tournaments for its member schools. These tournaments typically consist of several rounds of play, resulting in the "crowning" of a state champion. State tournaments require significant coordination and funding. It is doubtful that Arizona high school athletes would be able to participate in state tournament play absent the resources that AIA makes available. (*Id.* at ¶ 6.)

II. AIA HAS A POLICY THAT REGULATES MEDIA ACCESS TO AIA-SPONSORED EVENTS AND WOULD BE HARMED BY A DECISION GRANTING DEFENDANTS THE RELIEF THEY REQUEST.

AIA and other similar interscholastic associations would be harmed if the defendants in this action are granted the relief they have requested. Although a decision by this court would not be controlling on the courts in Arizona or in other states, it may be viewed as persuasive authority by those courts. Accordingly, AIA believes it is important that the court consider the far-reaching effects of its decision and its potential impact on AIA and other interscholastic associations throughout the country.

Like the WIAA, AIA has established a policy relating to media coverage of the events it sponsors. (*Id.* ¶ 7 and Ex. A.) The current policy was adopted in 2008, with input from Gannett Co., Inc., one of the defendants in this case. (*Id.* ¶ 7.) Pursuant to AIA's policy, members of the media who wish to have access to a facility for purposes of covering an AIA-sponsored event must first obtain a media credential from AIA. (*Id.* Ex. A ¶ 1.) Those who are issued credentials by AIA must agree to abide by the AIA's rules. (*Id.* Ex. A ¶ 6) There are several additional aspects of the credentials that bear on the issues involved in this case.

First, AIA prohibits the transmission and distribution of any broadcast on a live basis or any live audio or video description of any game action while it is still in progress, absent rights granted in accordance with a specific written contract with AIA. (*Id.* Ex. A ¶ 4.) Up to five minutes of video footage of a game or of interviews taken at an event may be used by the credentialed media agency, but only for news broadcasts, dedicated

highlight shows, weekly coaches shows and athletic activity-specific shows. (*Id.* Ex. A ¶ 3.) There is no prohibition against updating scores of the contest while the contest is in progress (except from the courtside/field side), nor is there any restriction on reports concerning non-event activities, other than on a live basis from inside the facility. (*Id.* Ex. A ¶ 4.)

Second, AIA limits the use of the descriptions, accounts, photographs, films, audio or visual recordings, or drawings of or relating to an event “primarily to news and editorial coverage of the event.” (*Id.* Ex. A ¶ 2.) Such materials may not be “exploited by the [media] agency for commercial purposes.” (*Id.*) An exception is made for the sale of photographs to “ultimate consumers” who agree not to resell the photographs or use them for commercial purposes. (*Id.*) Photographs taken during an AIA event by credentialed media may be sold only if the sale includes an acknowledgment that the photos were obtained at an AIA event and with the permission of AIA. (*Id.*)

Third, AIA tries to ensure that those who receive credentials are reputable individuals or entities. Each year, AIA receives hundreds of requests for credentials. Not all requests are granted. Rather, AIA carefully reviews each request in accordance with pre-established criteria to ensure that the member of the media making the request is affiliated with a properly accredited agency that has a legitimate media-related function in connection with the event at issue. (*Id.* ¶ 8.) Credentials are not issued, for example, to members of the media who are not reporting the news, but who instead wish to use the photos they take for commercial purposes (*e.g.*, selling mugs, t-shirts and the like with

images of student athletes). Similarly, persons looking for the opportunity to take photos they can post in chat rooms or on message boards will not be granted credentials, nor will recruiters desiring to sell highlight tapes to students or their parents. Walk-ins are not permitted and credentials are checked at the events. (*Id.* ¶ 9.) Credentials are expressly nontransferable and may be revoked at AIA's discretion. (*Id.* Ex. A ¶ 1.)

Finally, a person or entity accepting AIA's media credential agrees to assume all risks incident to his or her attendance at the event and releases AIA from any liability arising in connection with their attendance at the event or the creation and use of materials relating to the event. (*Id.* Ex. A ¶ 5.) The person or entity obtaining the credentials also agrees to indemnify, defend and hold harmless AIA from any liability, loss, or expense arising out of the issuance of the credentials, the person's presence at the facility or any other activity connected with the event, including any claims that the materials infringe on the intellectual property rights, publicity rights, or any other rights of any third person. (*Id.*)

The AIA credentialing process applies to all competitive activities sponsored by the AIA. Thus, the AIA maintains the right to control media access to competitive academic events, as well as competitive sporting events. (*Id.* ¶ 11.)

As noted above, AIA's media policy retains for AIA the exclusive right to broadcast tournament games on a live basis. Since September, 2009, AIA has been broadcasting tournament games via live streaming and on-demand streaming over its own website, AIA365.com. In addition to streaming tournament games, the website is used to

permit schools to stream regular season events if they wish to do so. The AIA365.com website not only permits students, their parents and other fans to view games they might not otherwise be able to view, but also serves as a significant source of revenue to AIA, given AIA's ability to sell sponsorships and advertising space on the website. (*Id.* ¶ 12). Revenue from sponsors and advertisers since September, 2009 totals close to \$150,000. (*Id.*) Although it is still relatively new, the website is heavily utilized. In December, 2009, the website recorded 1.6 million streams. (*Id.* ¶ 13.)

In recent years, an additional and significant source of revenue for AIA was a contract that it had with Cox Broadcasting, an Arizona broadcasting company, for the rights to television broadcasting of certain AIA-sponsored athletic events. In exchange for granting Cox the exclusive right to produce and broadcast state tournament games, AIA was able to obtain significant consideration from Cox, both in cash and in-kind. In-kind consideration included the commitment by Cox to produce and broadcast less popular tournament events that otherwise would have received no live video coverage at all (like volleyball and softball), the production and broadcasting of promotional spots promoting viewership of and attendance at the games, and broadcasts of post-game productions for various state tournament events. (*Id.* ¶ 14.) AIA also was able to control the advertising that would be shown in connection with broadcasts to ensure that it did not promote alcohol, gaming or any adult entertainment products or services. (*Id.* ¶ 15.)

AIA's contract with Cox expired in mid-2009 (*Id.* ¶ 17.) AIA continues to explore the possibility of granting television broadcasting rights for its tournament games. (*Id.*)

ARGUMENT

The court should grant WIAA's motion for summary judgment. Protecting the proprietary interests of associations such as AIA and WIAA in the events they sponsor is important because it allows the associations to receive the financial benefits flowing from the product they have produced. It also allows the associations to address safety concerns through appropriate restrictions on access to and use of photographs and video images of student athletes. Absent an association's ability to control who may and may not broadcast association-sponsored events, the association would lose both the financial and the non-financial benefits arising out of its production of these events.

I. AIA'S ABILITY TO AWARD EXCLUSIVE BROADCAST RIGHTS IS OF SIGNIFICANT FINANCIAL VALUE TO AIA.

As history has shown, the right to broadcast state tournament events is a valuable commodity. In the past, when AIA contracted with an outside party for such services, it was paid significant fees and received significant non-monetary consideration. (*Id.* ¶¶ 14-15.) When AIA undertook to broadcast events on its own, it was able to obtain significant consideration from sponsors who purchased advertising space on AIA's website. (*Id.* ¶ 12.) Exclusivity adds value. (*Id.* ¶ 18.) If AIA cannot market exclusive broadcast rights, it will not be able to obtain nearly as high a price as it can obtain for exclusive rights. (*Id.*) Similarly, AIA's ability to sell advertising on its own website would be harmed significantly if another party could enter the market and stream live or on-demand video of AIA-sponsored games, thus diluting AIA's viewership. (*Id.* ¶ 19.)

Having sufficient funding in place permits AIA to improve its programs and to increase access to athletic and other interscholastic activities, to the benefit of all students who attend member schools. (*Id.* ¶ 20.) Pursuant to AIA's business model, at the end of each school year, AIA's net revenues are rebated back to its member schools, including member schools who were not participants in the state tournaments. The schools are free to use this money to defray athletic fees that they would otherwise charge student athletes or for other purposes, as they see fit. (*Id.* ¶ 22.) AIA's ability to help member schools and their students in this fashion would be reduced if AIA did not have the ability to grant (or retain) exclusive rights to stream events it sponsors over the internet or to grant exclusive television broadcast rights. (*Id.* ¶ 23.)

Based on past experience, AIA believes that both its website streaming of events and its ability to license internet and television broadcasts on an exclusive basis will be increasing sources of revenue for AIA in the future. (*Id.* ¶ 24.)

II. AIA'S ABILITY TO CONTROL THE MANNER IN WHICH AIA-SPONSORED EVENTS ARE BROADCAST PROVIDES OTHER IMPORTANT BENEFITS TO AIA AND ITS MEMBER SCHOOLS.

AIA's proprietary interest in the media/broadcast rights associated with the events it sponsors has provided benefits to AIA and its members beyond the direct revenue associated with marketing those rights.

In its past negotiations over broadcast rights, AIA was able to use the exclusive nature of its television rights it was granting to obtain additional consideration in the form of production services, air time for public service announcements and post-game

broadcasts of events—consideration a third party would be unlikely to provide if it were not guaranteed the exclusive right to broadcast the events. Similarly, AIA also was able to leverage the exclusive nature of the rights by requiring coverage of less popular events (such as volleyball and cross country) in exchange for broadcast rights to more popular events (such as football). (*Id.* ¶¶ 14-16.) At present, revenue generated from the exclusive video streaming on AIA’s AIA365.com website is used in a similar fashion. Through its sponsorships and advertisers, AIA is able to present live-streaming of tournament games in 22 sports. (*Id.* ¶ 21.) AIA’s ability to choose who would be the recipient of exclusive broadcast rights also permitted AIA to place reasonable restrictions on the advertising that would be shown during broadcasts of events—thus preventing ads for alcohol, gaming and adult entertainment from being shown in the middle of a broadcast depicting high school youth. (*Id.* ¶ 15.) If broadcasters had the ability to show any AIA-sponsored event they wanted to, AIA would not be able to obtain these benefits for its member schools. (*Id.* ¶¶ 16, 18, 23.)

One of AIA’s goals is to ensure that high school students who participate in athletic and other activities can do so in a safe environment. Being able to control access to events and the broadcast rights for those events has helped AIA achieve this goal. (*Id.* ¶ 25.)

The high demand for media access to high school events has raised safety concerns which, in turn, have caused AIA to impose limits on the number of media credentials that will be granted for any particular event. The risk of injury to a player or a

referee, for example, from running into a television camera is much higher if there are multiple cameramen covering an event or if the cameramen are not restricted to areas that have been set aside for members of the press. (*Id.* ¶ 26.) Several years ago, a participant in an AIA-sponsored event collided with a television cameraman, causing series injury to the cameraman. (*Id.* ¶ 27.) AIA's ability to grant exclusive rights to live broadcasts allows it to make sure that only a safe number of media credentials are issued for any particular event and that television or video cameras are restricted to safe locations. (*Id.* ¶ 28.)

AIA is also concerned about the safety of its participants in other respects. As mentioned above, media credentials are not issued to all who apply. Rather, AIA carefully screens those who apply for credentials to make sure that applicants are reputable members of the media who will use the images only for news reporting purposes. (*Id.* ¶ 8.) If anyone could attend and broadcast any event, AIA would not be able to put these safeguards in place. (*Id.* ¶ 10.)

One of the reasons AIA instituted its credentialing policy was to address safety issues relating to the inappropriate use of photos taken at high school events. For example, the San Diego news reported in 2008 that photos of dozens of unsuspecting high school boys water polo players were found on five gay-oriented websites. (*Id.* ¶ 29 and Ex. B.) In another case, a female California high school pole vaulter became the target of lewd internet banter as a result of a photo "strewn across babe forums" on the web. (*Id.* ¶ 30 and Ex.C.) This internet exposure resulted in large numbers of individuals

who had no interest in reporting the event, but who could best be characterized as stalkers, showing up at track meets to take additional photos. This raised obvious concerns about safety and sexual exploitation. (*Id.* ¶ 30.) AIA hopes to be able to avoid subjecting its high school student athletes to similar abuse by limiting media credentials to only those who have established themselves as reputable members of the media. (*Id.* ¶ 31.)¹ Requiring those receiving credentials to abide by the limitations AIA has placed on the use of images taken at AIA-sponsored events also may serve as a deterrent by assisting AIA in pursuing legal action against those who seek to exploit high school athletes through inappropriate use of such images. (*Id.* ¶ 33.)

Finally, AIA has a legitimate interest in minimizing its own liability, to the extent it can, with respect to media coverage of its events. Addressing the safety concerns mentioned above will help limit AIA's exposure to claims. In addition, AIA's proprietary interest in the events it sponsors allows AIA to require those who obtain credentials to agree to release AIA from liability for any losses they may incur in connection with the event being covered or any subsequent use of the images or broadcasts of that event. AIA also requires those who receive media credentials to indemnify, defend and hold harmless AIA against any claims that might arise in connection with the issuance of the credentials. (*Id.* Ex. A ¶ 5.) If AIA were unable to

¹ While amateur photography by a fan could create similar issues, amateur photographers are not granted access to the same prime viewing and news-gathering areas as are members of the media. (*Id.* ¶ 32.)

restrict access to its events and to limit the use of images captured at those events, it likely would not be able to obtain any such agreements. (*Id.* ¶ 34.)

CONCLUSION

The issues raised in this action are not unique to the WIAA. Like the WIAA, AIA provides an important service to member schools by organizing and producing state tournament events in a variety of sports and academic areas. Protecting the proprietary media-related rights of interscholastic associations like the WIAA is critical to the associations' ability to carry out their goals of maximizing both student participation and media coverage of sponsored events, while at the same time ensuring the safety of all participants. Accordingly, AIA respectfully requests that the court grant the WIAA the relief it has requested.

Dated: January 22, 2010.

BARBARA A. NEIDER

/s/ Barbara A. Neider

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

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

Plaintiffs,

Case No. 09-CV-0155

v.

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

Defendants.

DECLARATION OF CHARLES C. SCHMIDT IN SUPPORT OF
MOTION OF ARIZONA INTERSCHOLASTIC ASSOCIATION, INC. FOR LEAVE
TO FILE AMICUS BRIEF AND SUPPORTING DECLARATION

1. I am the Chief Operating Officer of the Arizona Interscholastic Association, Inc. ("AIA"). I make this declaration on the basis of my personal knowledge.
2. AIA is a non-profit Arizona corporation, with its principal office located in Phoenix, Arizona. Established in 1925, AIA is a voluntary association of public and private high schools that serves to supplement the overall aims and objectives of secondary schools by organizing, developing, directing and regulating interscholastic activities among member schools.
3. AIA strives to initiate and pursue policies that will safeguard the educational value of interscholastic contests and cultivate cooperation, friendship and good sportsmanship among member schools. AIA seeks to encourage maximum student

participation and to organize events in a manner that ensures fair and equitable competition. AIA also seeks to ensure the safety of high school youth who participate in athletics and other interscholastic activities and to prevent the commercial and other exploitation of student participants.

4. AIA currently has 275 member schools, who in turn have an enrollment of 311,893 students.

5. AIA's operations are financed in part by membership dues and participation fees. In addition to paying annual dues and fees, AIA members must agree to abide by all AIA rules and regulations as a condition of membership. This includes rules on student eligibility, practices, non-school participation, recruitment, use of drugs, alcohol and tobacco, and other rules and regulations designed to protect the health and safety of student participants.

6. AIA conducts state tournaments for its member schools. These tournaments typically consist of several rounds of play, resulting in the "crowning" of a state champion. State tournaments require significant coordination and funding. It is doubtful that Arizona high school athletes would be able to participate in state tournament play absent the resources that AIA makes available.

7. Like the WIAA, AIA has established a policy relating to media coverage of the events it sponsors. A true and correct copy of the policy is attached as Exhibit A. The current policy was adopted in 2008, with input from Gannett Co., Inc., one of the defendants in this case.

8. AIA tries to ensure that those who receive credentials are reputable individuals or entities. Each year, AIA receives hundreds of requests for credentials. Not all requests are granted. Rather, AIA carefully reviews each request in accordance with pre-established criteria to ensure that the member of the media making the request is affiliated with a properly accredited agency that has a legitimate media-related function in connection with the event at issue.

9. Credentials are not issued, for example, to members of the media who are not reporting the news, but who instead wish to use the photos they take for commercial purposes (*e.g.*, selling mugs, t-shirts and the like with images of student athletes). Similarly, persons looking for the opportunity to take photos they can post in chat rooms or on message boards will not be granted credentials, nor will recruiters desiring to sell highlight tapes to students or their parents. Walk-ins are not permitted and credentials are checked at the events.

10. If anyone could attend and broadcast any event, AIA would not be able to put these safeguards in place.

11. The AIA credentialing process applies to all competitive activities sponsored by the AIA. Thus, the AIA maintains the right to control media access to competitive academic events, as well as competitive sporting events.

12. Since September, 2009, AIA has been broadcasting tournament games via live streaming and on-demand streaming over its own website, AIA365.com. In addition to streaming tournament games, the website is used to permit schools to stream regular season events if they wish to do so. The AIA365.com website not only permits students,

their parents and other fans to view games they might not otherwise be able to view, but also serves as a significant source of revenue to AIA, given AIA's ability to sell sponsorships and advertising space on the website. Revenue from sponsors and advertisers since September, 2009 totals close to \$150,000.

13. Although it is still relatively new, the website is heavily utilized. In December, 2009, the website recorded 1.6 million streams.

14. In recent years, an additional and significant source of revenue for AIA was a contract that it had with Cox Broadcasting, an Arizona broadcasting company, for the rights to television broadcasting of certain AIA-sponsored athletic events. In exchange for granting Cox the exclusive right to produce and broadcast state tournament games, AIA was able to obtain significant consideration from Cox, both in cash and in-kind. In-kind consideration included the commitment by Cox to produce and broadcast less popular tournament events that otherwise would have received no live video coverage at all (like volleyball and softball), the production and broadcasting of promotional spots promoting viewership of and attendance at the games, and broadcasts of post-game productions for various state tournament events.

15. AIA also was able to control the advertising that would be shown in connection with broadcasts to ensure that it did not promote alcohol, gaming or any adult entertainment products or services.

16. It is unlikely that Cox would have provided this additional consideration if AIA had not been able to grant Cox exclusive broadcasting rights.

17. AIA's contract with Cox expired in mid-2009. AIA continues to explore the possibility of granting television broadcasting rights for its tournament games.

18. Exclusivity adds value. If AIA cannot market exclusive broadcast rights, it will not be able to obtain nearly as high a price as it can obtain for exclusive rights.

19. AIA's ability to sell advertising on its own website also would be harmed significantly if another party could enter the market and stream live or on-demand video of AIA-sponsored games, thus diluting AIA's viewership.

20. Having sufficient funding in place permits AIA to improve its programs and to increase access to athletic and other interscholastic activities, to the benefit of all students who attend member schools.

21. Revenue generated from the exclusive video streaming on AIA's AIA365.com website has enabled AIA to present live-streaming of tournament games in 22 sports.

22. Pursuant to AIA's business model, at the end of each school year, AIA's net revenues are rebated back to its member schools, including member schools who were not participants in the state tournaments. The schools are free to use this money to defray athletic fees that they would otherwise charge student athletes or for other purposes, as they see fit.

23. AIA's ability to help member schools and their students in this fashion would be reduced if AIA did not have the ability to grant (or retain) exclusive rights to stream events it sponsors over the internet or to grant exclusive television broadcast rights.

24. Based on past experience, AIA believes that both its website streaming of events and its ability to license internet and television broadcasts on an exclusive basis will be increasing sources of revenue for AIA in the future.

25. One of AIA's goals is to ensure that high school students who participate in athletic and other activities can do so in a safe environment. Being able to control access to events and the broadcast rights for those events has helped AIA achieve this goal.

26. The high demand for media access to high school events has raised safety concerns which, in turn, have caused AIA to impose limits on the number of media credentials that will be granted for any particular event. The risk of injury to a player or a referee, for example, from running into a television camera is much higher if there are multiple cameramen covering an event or if the cameramen are not restricted to areas that have been set aside for members of the press.

27. Several years ago, a participant in an AIA-sponsored event collided with a television cameraman, causing serious injury to the cameraman.

28. AIA's ability to grant exclusive rights to live broadcasts allows it to make sure that only a safe number of media credentials are issued for any particular event and that television or video cameras are restricted to safe locations.

29. One of the reasons AIA instituted its credentialing policy was to address safety issues relating to the inappropriate use of photos taken at high school events. For example, the San Diego news reported in 2008 that photos of dozens of unsuspecting high school boys water polo players were found on five gay-oriented websites. Attached

as Exhibit B is a true and correct copy of an article posted on the web concerning this incident.

30. Attached as Exhibit C are two articles that were posted on the web concerning a female California high school pole vaulter who became the target of lewd internet banter as a result of a photo “strewn across babe forums” on the web (Ex. C, p. 1). This internet exposure resulted in large numbers of individuals who had no interest in reporting the event, but who could best be characterized as stalkers, showing up at track meets to take additional photos. This raised obvious concerns about safety and sexual exploitation.

31. AIA hopes to be able to avoid subjecting its high school student athletes to similar abuse by limiting media credentials to only those who have established themselves as reputable members of the media.

32. While amateur photography by a fan could create similar issues, amateur photographers are not granted access to the same prime viewing and news-gathering areas as are members of the media.

33. Requiring those receiving credentials to abide by the limitations AIA has placed on the use of images taken at AIA-sponsored events also may serve as a deterrent by assisting AIA in pursuing legal action against those who seek to exploit high school athletes through inappropriate use of such images.

34. If AIA were unable to restrict access to its events and to limit the use of images captured at those events, it likely would not be able to obtain any agreements

limiting its liability or requiring indemnification from those who are granted media credentials.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 22, 2010, in Phoenix, Arizona.



Charles C. Schmidt

NOTE: Acceptance and possession of an AIA media credential constitutes agreement to the following conditions placed on their use.

Arizona Interscholastic Association, Inc. – July 1, 2009 – June 30, 2010

This working credential is issued as a courtesy to an accredited agency for the sole purpose of providing facility access to the accredited agency's employee who has a legitimate working function (media) in connection with Arizona Interscholastic Association (AIA) athletic and activity events. This credential is **non-transferable** and may be revoked at any time without cause. Any unauthorized use of this credential subjects the bearer to immediate ejection from the facility and prosecution for criminal trespass or other legal action, and potential loss of all privileges for the organization to whom this credential is issued. The AIA reserves the right to terminate this credential upon notice to the organization and to change the terms and conditions for issuance of any subsequent credential to the organization. Furthermore, the permission granted below shall not be assigned, transferred or disposed of to any third party.

Subject to all restrictions contained in this credential, this credential authorizes the agency's use, **primarily for news and editorial coverage of the event**, of the descriptions, accounts, photographs, films, audio or video recordings, or drawings of or relating to the event (including, without limitation, any interviews, press conferences or other facility activities relating to the event) taken, made, created, or compiled by the agency's employee (collectively "Agency Materials"). For the avoidance of doubt, Agency Materials may not be exploited by the agency for commercial purposes. Agencies may sell photographs to ultimate consumers who agree not to resell the photographs or use them in any way for a commercial purpose. Photographs obtained during an AIA event by credentialed media personnel that are sold to an ultimate consumer must contain acknowledgement that it was so obtained at and with the permission of AIA. Any other use or attempted use by the employee of the Agency Materials, including any distribution of Agency Materials to third parties other than ultimate consumers (e.g. newspaper readers) and other media outlets through a shared content distribution platform (for example, the Associated Press) at any time and for any purpose, is expressly prohibited, unless the agency has obtained the advance written permission of the AIA Executive Staff for such other use. As between the agency or the employee and the AIA, the AIA shall remain the exclusive owner of all copyrights, trademarks, and other proprietary rights in its names, logos and uniform designs.

Any film, video, or digital video of a portion of the event, not to exceed five (5) minutes, which includes footage of the game and interviews taken at the event, may only be used by the individual's organization for news broadcasts, dedicated highlight shows, weekly coach's shows and athletic/activity specific shows, and may be streamed and posted on news information websites. Except for other media outlets participating in shared content distribution programs such as the Associated Press, only the specific organization to which this credential is issued may stream, post or air such video, audio, pictures, photographs, or other non-text based accounts or descriptions of the event in any media. Use of film, video, or digital video in any other manner or on any other media distribution platform without the advance written permission of the AIA is expressly prohibited.

The transmission and distribution of any broadcast on a live basis or any live audio or video description of any game action while it is still in progress without rights granted in accordance with a specific written contract with AIA is strictly prohibited. This prohibition does not apply to reports on the non-event activities (other than on a live basis from inside the facility) for broadcast within a newscast and is not precluded from reporting or updating a score of a contest while it is in progress except from courtside/field side.

The agency accepting this credential assumes all risk incident to, and hereby releases the AIA from any and all liability arising in connection with, attending the event and creating and using Agency Materials. The agency agrees to indemnify, defend, and hold harmless the AIA from and against all liability, loss, damage or expense arising out of the issuance of this credential, the employee's presence in the facility, or any other activity of the agency or employee in connection with the event (including without limitation, any claims that Agency Materials infringe the intellectual property rights, publicity rights, or any rights of any third party). In no event shall the AIA be liable to the agency or employee for any incidental, special, indirect, punitive, or consequential damages arising out of or relating to this credential.

Acceptance of this credential constitutes agreement by the individual accepting the credential, the bearer, and the agency to abide by the foregoing conditions. Thank you for your cooperation.



Arizona Interscholastic Association, Inc.

10News.com

Pictures Of Teen Water Polo Players Found On Gay Porn Sites

POSTED: 11:24 am PST January 20, 2008
UPDATED: 6:02 pm PST January 22, 2008

IRVINE, Calif. -- San Diego County parents are outraged Sunday at the news that secret photos of young water polo athletes have turned up on gay porn Web sites, it was reported Sunday.

Police at UC Irvine said the photos may be the work of a UCI police dispatcher, and have notified parents that the photos are on the Web.

Unauthorized photos of dozens of apparently-unsuspecting high school boys water polo players, some as young as 14, were found on five gay-oriented Web sites, the Orange County Register reported. The boys are from at least 11 Orange County high schools, and well as schools in Los Angeles and San Diego counties.

"It's disgusting ... No high school athlete should worry about their picture being taken during the game," said one Orange County coach, who confirmed photos on a Web site included members of his team.

UC Irvine police confirmed to the Register that they are investigating whether the photos are the work of Scott Cornelius, a UCI police dispatcher.

Cornelius was granted a photo credential to the 2007 Junior World Water Polo Championships at Los Alamitos last summer, said Joan Gould, an international water polo official and spokeswoman for a group of Orange County water polo parents.

UCI police said Cornelius remains on active duty.

A university police department detective, Shaun Devlin, sent an e-mail to several parents last week confirming that police were investigating the matter, the Register reported.

Peter Yu, director of Drake University's Intellectual Property Law Center, said photos taken at public events like high school sports competitions are generally protected by the Constitution.

"This is why we have to enact some stricter laws to protect our kids," said Assemblyman Cameron Smyth, R-Santa Clarita, in an interview with the Register. Smyth has authored a bill that would make it illegal to use Internet images to inflict harm on children.

The proposed Surrogate Stalker Act was prompted by Jack McClellan, who last year photographed children at California schools and playgrounds and placed them on a Web site described by law enforcement officials as popular with pedophiles.

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Our crack team of editors takes a closer look at the hottest trends on Yahoo! Buzz.

Meet...Allison Stokke

by Erik Gunther
May 18, 2007

Buzz up! Vote Now

The latest hot chick to bubble up from bountiful blog linkage is high school athlete Allison Stokke. Pics of the teenage pole-vaulter are now strewn across babe forums across the Web. While there were zero searches on the SoCal high school senior one month ago, queries on her name now number in the thousands.

We couldn't locate the origin of the Stokke phenomenon, but we did find a number of interesting related searches. Queries on "allison stokke pictures," "allison stokke facebook," and "allison stokke myspace" have all soared over the past week.

This semi-underground phenom isn't a big name...yet. However, with interested dudes accounting for 95% of the interest in the young beauty, it's only a matter of time before she breaks out on a bigger scale.

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Sexual Assault Via the Internet: The Case of Allison Stokke

How Internet Blogs Wrecked the Life of a Teenage Girl

By Michael Lutz

Can clicking on a link to a picture or video of an attractive woman constitute assault? For the majority of women's images on the internet, there is an unwritten code of consent that governs voyeurism; women in various states of (un)dress willingly post pictures of themselves to be viewed by others. However, there are exceptions to this rule, such as the case of Allison Stokke.

Ms. Stokke, if you haven't heard by now, is a 4.0+ student at Newport Harbor High School, where she broke five national records in pole vaulting and earned a scholarship to the University of California, according to a recent article in the Washington Post. However, the article that appeared in the Post, and other press appearances by Ms. Stokke, had little to do with her athletic and scholarly achievements. The real story here was about sexual norms, the internet, and law in the United States.

Photographs of Ms. Stokke were originally taken by a track and field journalist for a California track website, according to the Post article. These photos circulated on athletic websites with relatively small viewerships until making their way to withleather.com, a sports blog with a readership of over one million per month. According to the Post article, "more than 20 message boards and 30 blogs" linked to the picture of Stokke, and before long the photo was all over the internet, being leered at by hundreds of thousands.

The photos themselves are nowhere near sordid; indeed, the content is tame. At the same time, the elements of the photo seem to question where the border of "acceptable" voyeuristic behavior lies. Stokke is dressed in standard athletic gear, being at a track meet. While such uniforms are not particularly revealing, they are very form fitting—presumably to reduce wind resistance. Even the most evenhanded descriptions of the photos, however—like the one in the Washington Post article—take time to note Stokke's "olive skin" and "bared midriff." In addition, Stokke herself is 18—a fantasy age of perverts, old enough to "legally" be considered an adult, but just barely. However, some of the photos were taken when she was younger.

In addition to questioning cultural norms of sexuality, the unwanted circulation of the photographs brings up complicated legal questions. In an article for the L.A. Times, Eugene Volokh, a UCLA professor of 1st Amendment law, notes that "'If somebody puts up a picture taken by someone else, the photographer can sue - though it's not clear he'd always win - but Allison Stokke can't sue.'" Stokke herself noted that "Even if none of it is illegal, it just all feels really demeaning."

Even if the law cannot help Stokke control the use of her own image, it seems that there is a glimmer of hope that the right thing will be done. A phone call and a letter from the Stokke family succeeded in shutting down the unofficial Allison Stokke fan page, which now reads, "Farewell. Sorry for having contributed to the unwanted attention, Allison. We think you're a phenomenal athlete and wish you the best of luck in your academic and athletic endeavors."

Additionally, on the message boards of Letsrun.com, one of the earlier sources of the Stokke photos, posters mulled the negative consequences of their actions in relation to the Washington Post article. One poster remarked that "The point here is that seemingly benign behavior (clicking on a link to a picture of a high school girl) is traumatizing to some degree an innocent party (the high school girl). The point is that there really seems to be a substantial difference between locker room talk on one hand and locker room talk amplified 10,000 times via the internet and photography on the other. Locker room talk is most often probably less than ideal for all parties, but what's happened to this girl is much more substantial and potentially damaging." We can only hope that more voices like this are heard in the wake of Allison Stokke's unfortunate experience.

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

WISCONSIN INTERSCHOLASTIC ATHLETIC
ASSOCIATION and AMERICAN HI-FI, INC,

Plaintiffs,

Case No.: 09-CV-155-SLC

v.

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

Defendants.

PROPOSED FINDINGS OF FACT IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THEIR COUNTERCLAIM

Gannett Company, Inc. and Wisconsin Newspaper Association, Inc. (collectively, "Defendants"), by and through their counsel, Godfrey & Kahn, S.C., submit the following Proposed Findings of Fact in support of Defendants' Motion for Summary Judgment on Their Counterclaim.

Jurisdiction and Venue

1. On December 5, 2008, Wisconsin Interscholastic Athletic Association ("WIAA") filed a complaint in Portage County, Wisconsin that joined as plaintiffs American Hi-Fi, Inc. d/b/a When We Were Young Productions ("WWWY") and other media companies that are no longer participating in this action. *See* Notice of Removal by Defs. (Dkt. #1, Ex. A (Complaint, Case No. 08-CV-629 (Portage County Dec. 5, 2008)) ("Compl.").

2. In the Complaint, the WIAA sought a declaratory judgment that it held "ownership rights in any transmission, internet stream, photo, image, film, videotape, audiotape, writing,

drawing or other depiction or description of any game, game action, game information, or any commercial used of the same of an athletic event” sponsored by WIAA. Compl. (Dkt. #1, Ex. A) at 5.

3. The WIAA alleged that a newspaper owned by Gannett Company, Inc. (“Gannett”) violated the WIAA’s exclusive rights and ownership by live Internet streaming, without permission, a high school football game between Appleton North High School and Stevens Point Senior High School on November 8, 2008 in Portage County, Wisconsin. Compl. (Dkt. #1, Ex. A), ¶ 14.

4. On March 17, 2008, the Defendants removed the action to this court. Notice of Removal by Defs. (Dkt. #1).

5. On March 24, 2008, the Defendants answered the Complaint and additionally asserted counterclaims seeking declaratory and injunctive relief under 42 U.S.C. § 1983 and the Copyright Act, 17 U.S.C. §§ 101 *et seq.* based on the WIAA’s discriminatory policies. Defendants’ Answer, Defenses and Counterclaim (Dkt. #2), p. 17.

6. On April 13, 2009, the WIAA and WWVY, collectively “Plaintiffs,” filed an amended complaint seeking a declaration that the WIAA controls the right to transmit WIAA-sponsored tournament games over the Internet, that it has the right to grant exclusive and non-exclusive licenses to transmit such games, that it may require licensing fees and compliance with the WIAA’s media policies as a condition of any license to transmit such games, and that the WIAA’s Internet transmission policies do not violate the Defendants’ constitutional or statutory rights. First Amended Complaint (Dkt. #7) (“Am. Compl.”), ¶ 37.

Parties

7. The WIAA is a voluntary, unincorporated and nonprofit organization with its principal place of business at 5516 Vern Homes Drive, Stevens Point, Wisconsin 54482. Stipulation of Background Facts (Dkt. #26) (“Jt. Stip.”), ¶ 1.

8. The WIAA is a state actor for the purposes of this litigation. Limited Joint Stipulation of the Wisconsin Interscholastic Athletic Association, Gannett Co., Inc. and the Wisconsin Newspaper Association, Inc. (Dkt. #23).

9. The WIAA organizes, develops, directs and controls high school interscholastic athletic programs and sponsors tournament series in WIAA recognized sports. Jt. Stip. (Dkt. #26), ¶ 2; Am. Compl. (Dkt. #7), ¶ 16. The WIAA has been organizing such programs since 1896. Am. Compl. (Dkt. #7), ¶ 16. All Wisconsin public high schools, except for some public virtual and charter schools, are WIAA members. Other WIAA members include private high schools, public and private middle schools, and specialty schools. Jt. Stip. (Dkt. #26), ¶ 2; Am. Compl. (Dkt. #7), ¶¶ 4, 13.

10. Plaintiff WWVY is a Wisconsin corporation with its principal place of business at 501 Moravian Valley Road, Waunakee, Wisconsin 53597. Jt. Stip. (Dkt. #26), ¶ 3.

11. WWVY engages in the business of video productions, including Internet streaming, and sales of WIAA tournament events on DVD. Jt. Stip. (Dkt. #26), ¶ 4; Affidavit of Matthew P. Veldran, Jan. 22, 2010 (“Veldran Aff.”), ¶¶ 7-8, 10.

12. Wisconsin Newspaper Association, Inc. (“WNA”) is a non-stock Wisconsin association of Wisconsin daily, weekly, and bi-weekly newspapers with its principal place of business at 1901 Fish Hatchery Road, P.O. Box 259837, Madison, Wisconsin 53725-9837. Jt. Stip. (Dkt. #26), ¶ 5.

13. Gannett is a Delaware corporation that publishes newspapers across the United States, including 10 daily newspapers and approximately 19 non-daily newspapers in Wisconsin.

Gannett's daily Wisconsin publications are:

<i>The Post-Crescent</i> (Appleton)	<i>The Sheboygan Press</i>
<i>The Reporter</i> (Fond du Lac)	<i>Wausau Daily Herald</i>
<i>Herald Times Reporter</i> (Manitowoc)	<i>Stevens Point Journal</i>
<i>Oshkosh Northwestern</i>	<i>Daily Tribune</i> (Wisconsin Rapids)
<i>Green Bay Press-Gazette</i>	<i>Marshfield News-Herald</i>

Jt. Stip. (Dkt. #26), ¶ 7.

WIAA Media Policies

14. The WIAA publishes an annual Media Policies Reference Guide (“Media Guide”) whose policies apply to all post-season WIAA tournament events, which consist of regional, sectional and state finals. Jt. Stip. (Dkt. #26), ¶ 8.

15. The WIAA's policies are intended, in part, to “assist media” with issues related to “WIAA property rights.” Jt. Stip. (Dkt. #26, Ex. B) at 1 (General Policies).

Commercial Use of Images

16. WIAA prohibits the commercial or unauthorized use of images of WIAA tournament events without its permission:

Any non-editorial, commercial or other unauthorized use of any transmission, internet stream, photo, image, film, videotape, audio tape, any play-by-play depiction or description of any competition and/or game action and/or any non-editorial or commercial use of any team school name or logo, is prohibited without written consent of the WIAA.

Jt. Stip. (Dkt. #26, Ex. B) at 1 (General Policies).

Revoking credentials and transmission rights

17. The WIAA distinguishes between credentials, on the one hand, and transmission rights and fees, on the other. Jt. Stip. (Dkt. #26, Ex. B) at 12 (Comprehensive Policy #7: media

credential not a grant for live transmission rights); Jt. Stip. (Dkt. #26, Ex. B) at 2 (Requesting Credentials #7: may revoke credentials for failure to pay rights fees); Am. Compl. (Dkt. #7), ¶ 23 (requests for video transmission rights made to WWVY); Affidavit of John W. Dye, Jan. 22, 2010 (“Dye Aff.”), ¶ 21 and Ex. C (credential requests made to WIAA); *see also* Monica Santa Maria Decl. in Support of Defs.’ Mot. for Summ. J. on Their Counterclaim, Jan. 22, 2010 (“Santa Maria Decl.”), Ex. B, Interrog. Resp. No. 11 (WIAA does not recognize media’s right to fix images of WIAA tournament events in a tangible medium absent WIAA’s permission to do so).

18. The WIAA does not impose a media credentials fee but does limit the number of credentials that are issued for a tournament event. Dye Aff., ¶ 21 and Ex. C; Jt. Stip. (Dkt. #26, Ex. B) at 4.

19. The WIAA policies permit a media member with credentials to report on tournament events using certain reporting techniques, such as writing newspaper articles; the WIAA policies do not permit media members to engage in any activity covered by WIAA’s exclusive media contracts or WIAA’s play-by-play definition without permission and payment of a rights fee. Jt. Stip. (Dkt. #26, Ex. B) at 12 (Comprehensive Policy #7, #8); Am. Compl. (Dkt. #7), ¶ 26 (WIAA permits media to report outcome of games, describe game events, and provide public with factual information related to games).

20. The WIAA enforces compliance with its media policies by reserving the right to deny future credentials to or revoke current credentials of media members:

The WIAA reserves the right to grant, issue, revoke and deny credentials to any media or Internet site organizations based on the interpretation and intent of these policies determined by the WIAA. In cases deemed unique by the Association, these policies may be amended. The WIAA and its exclusive rights partners

retain the rights to all commercial use of video, audio, or textual play-by-play transmitted at a WIAA Tournament Series event. Furthermore, the WIAA owns the rights to transmit, upload, stream or display content live during WIAA events and reserves the right to grant exclusive and nonexclusive rights or not to grant those rights on an event-by-event basis.

Jt. Stip. (Dkt. #26, Ex. B) at 12 (Comprehensive Policy #1).

21. Loss of credentials is at the WIAA's sole discretion:

The WIAA reserves the right and sole discretion to revoke current and deny future credentials to any media organization in violation of any WIAA media policies, failure to pay rights fees or any other provisions of credentials. Media organizations that violate credential policies are subject to legal liability, as well as all costs incurred in enforcing the terms of these policies, including but not limited to reasonable attorneys fees.

Jt. Stip. (Dkt. #26, Ex. B) at 2 (Requesting Credentials #7).

22. In addition, the WIAA reserves the right to revoke transmission rights from media members whose content or comments the WIAA considers inappropriate:

The WIAA also reserves the right to revoke or deny the video, audio or text transmission rights of any media or Internet sites that include in any part of its transmission of WIAA Tournament events, including pre-game and post-game shows, content or comments considered inappropriate or incompatible with the educational integrity of the tournament or host institution from which the transmission is originated.

Jt. Stip. (Dkt. #26, Ex. B) at 12 (Comprehensive Policy #3).

Video and Audio Transmission Policies

23. Under the current media policies, the WIAA and the rights holder have joint discretion to grant permission, enforce policies and determine video transmission policies:

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/or physical media. All permission granted, policies enforced and fees required will be at the sole discretion of the WIAA and the rights

holder. Detailed information regarding polices and fees are available upon request from When We Were Young Productions (608) 849-3200.

Jt. Stip. (Dkt. #26, Ex. B) at 17 (Video Transmissions).

24. The current policy differs from the prior policy in effect in 2008-09 in that the prior policy granted sole discretion to the 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/or physical media. All permission granted, policies enforced and fees required will be at the sole discretion of the rights holder. Detailed information regarding polices and fees are available upon request from When We Were Young Productions (608) 849-3200 ext. 225.

Jt. Stip. (Dkt. #26, Ex. A) at 16 (Television/Cable/Internet Video).

25. The WIAA prohibits the use of video exceeding two minutes by the originating station, publication or Internet site—other than by the exclusive video production rights holder—for any purpose other than highlights on regularly scheduled news or sports broadcasts or on a Web page. Jt. Stip. (Dkt. #26, Ex. B) at 12 (Video #3).

26. The WIAA prohibits sales of video of Tournament Series action without written consent from the WIAA and its respective licensed video production partner. Jt. Stip. (Dkt. #26, Ex. B) at 13 (Video #6).

27. The WIAA imposes a \$50 rights fee for regional and sectional events and a \$100 rights fee for state events on any commercial radio station seeking permission to produce a live audio transmission. Jt. Stip. (Dkt. #26, Ex. B) at 17 (Audio/Text Transmissions). The WIAA permits multiple radio stations to transmit the same game upon payment of the requisite fees. Jt. Stip. (Dkt. #26, Ex. B) at 4.

Play-by-Play

28. The WIAA asserts exclusive property rights over real-time and tape-delayed audio, video and text transmissions of play-by-play descriptions of WIAA tournament events, including written accounts in Internet blogs, forums, and “tweets” produced through the Twitter messaging service. Jt. Stip. (Dkt. #26, Ex. B) at 12 (Comprehensive Policy #2) and at 14 (Text #2). Such text transmissions are subject to a text transmission fee, and in the absence of WIAA’s consent, are prohibited both on-site and off-site. Jt. Stip. (Dkt. #26, Ex. B) at 12 (Comprehensive Policy #2, #4) and at 14 (Text #2).

29. The WIAA currently charges a per event text transmission fee (for text transmissions constituting play-by-play) of \$20 for sectional and regional games and \$30 for state finals games. Jt. Stip. (Dkt. #26, Ex. B) at 17.

30. In 2008, WIAA charged a \$100 per event text transmission fee to two newspapers for blogs which the WIAA determined, after the fact, included play-by-play descriptions. Affidavit of Michael Davis, Jan. 21, 2010 (“Davis Aff.”), ¶¶ 4-5; Davis Aff., Ex. B; Declaration of Greg Sprout, Jan. 21, 2010 (“Sprout Decl.”), ¶ 5-6; Sprout Decl., Ex. B.

31. The WIAA did not define the term “play-by-play” in its 2008-09 Media Policies Reference Guide. *See* Jt. Stip. (Dkt. #26, Ex. A).

32. The WIAA did imply, however, that a rights fee might be required for play-by-play text transmissions through two of its policies:

Web blogs not posting continuous play-by-play accounts of game or event action are permitted if determined by the WIAA to be in compliance with the mission and media policies of WIAA, and if they are not associated with any promotion, reference or link to material deemed inappropriate or not in the best interest of the WIAA.

Jt. Stip. (Dkt. #26, Ex. A) at 14 (paragraph 1).

There is no fee for live report “updates” of pre-State Tournament events provided no play by play is done.

Jt. Stip. (Dkt. #26, Ex. A) at 10 (Radio, Television and Cable Policies, paragraph 5).

33. The WIAA’s current media policies include a definition of live play-by-play:

A live or real-time play-by-play is defined as transmitting a live (while the event/game is in progress from beginning to conclusion) written, audio or video description (identifying competitors with descriptions or results of game action) of all or a significant number of plays/events occurring sequentially during a game/event.”

Jt. Stip. (Dkt. #26, Ex. B) at 11 (Transmission Terms #3).

Photography: Exclusive Contract and 2007 Dispute

34. The WIAA has executed a contract with Visual Image Photography, Inc. (“VIP”) that grants VIP certain exclusive photography rights for a five-year period from October 1, 2008 to September 30, 2013. Jt. Stip. (Dkt. #26), ¶ 10; Jt. Stip. (Dkt. #26, Ex. C). Prior to October 1, 2008, the WIAA had another exclusive rights contract with VIP. *See* Ans. to Defs.’

Counterclaims (Dkt. #5), ¶ 30 (discussing 2007 dispute related to rights granted to VIP).

35. The WIAA previously prohibited the “resale of images and/or photographs [except those] actually included and distributed in printed publications,” and “sale of photography, digital image files, videotape or film” from tournament events without written consent of the WIAA. Jt. Stip. (Dkt. #26, Ex. A) at 6.

36. In February 2007, a dispute arose between the WIAA and WNA member newspapers over the practice by certain newspapers, without the WIAA’s permission, of selling photographs of WIAA tournament events that were not published in print. *Ans. to Defs.’* Counterclaims (Dkt. #5), ¶ 30. In response to their objection, the WIAA informed media organizations, including the WNA and Gannett, that it would not enforce its prohibition on

photography sales. *Id.*, ¶ 31. However, the WIAA did not remove the disputed policies restricting such photography sales until the 2009-10 edition of the Media Guide. *Id.*, ¶ 31; *see* Jt. Stip. (Dkt. #26, Ex. B) at 6 (sale of photographs now permitted).

37. The WIAA’s contract with VIP prohibits VIP from taking any “action that would reflect adversely on or injure the reputation of the WIAA” and requires that VIP, at WIAA’s direction, “shall immediately withdraw from public sale/distribution all products containing objectionable content.” Jt. Stip. (Dkt. #26, Ex. C) at 2.

38. The WIAA currently prohibits the “noneditorial, commercial, or otherwise unauthorized use of any photographs, images, film, videotape or other depictions” of WIAA-sponsored tournament events without written consent of the WIAA. Ans. to Defs.’ Counterclaims, (Dkt. #5), ¶ 25.

Online Reporting Background

39. Live streaming, which involves transmitting a live event for public viewing on a website, is a technology that many news media, including more recently newspapers, have used since the early 2000s. Affidavit of Danny L. Flannery, Jan. 21, 2010 (“Flannery Aff.”), ¶ 6.

40. Gannett newspapers have had access to a fairly mobile and easy to use Internet streaming platform, Livestream, since summer 2008. Declaration of Joel Christopher in Support of Defs.’ Mot. for Summ. J. on Their Counterclaim, Jan. 22, 2010 (“Christopher Decl.”), ¶ 13; *see also* Flannery Aff., ¶¶ 7-8.

41. Since September 2008, *The Post-Crescent* has live streamed more than 125 events, including high school sports, general news, 2008 Election coverage, Wisconsin Supreme Court debates, political debates, community events, interviews with newsmakers and health care

officials, and weekly programs produced by the newspaper. Christopher Decl., ¶¶ 8, 14; Flannery Aff., ¶¶ 8-9.

42. Internet streaming provides a unique reporting opportunity for live coverage of events that cannot be replicated by other technology. It allows newspapers to reach a broader geographic and demographic audience than their print editions, to report on a game in an entirely different way than print reporting, and to provide real-time coverage. Flannery Aff., ¶¶ 7, 8, 15, 22; Dye Aff., ¶ 15 (streaming high school sports games likely to increase audience); Christopher Decl., ¶ 3(d); *see also* Flannery Aff., ¶ 8 (*The Post-Crescent* shared its feed of a Wisconsin Supreme Court debate with all members of the WNA throughout the state); Answer to Defs.’ Counterclaims (Dkt. #5), ¶ 39 (distinguishing Internet streaming from a newspaper’s other reporting techniques).

43. An Internet stream of a high school athletic event by a newspaper is not a stand-alone production. Due to a website’s capabilities, a newspaper can collect many sources and types of information about the event, including the stream and other information not included in the newspaper’s print edition, and make them available as a collection to an online visitor. Dye Aff., ¶¶ 4-6, 10; Christopher Decl., ¶ 3(a).

44. Newspapers consistently seek ways to expand and engage their website audience. *See* Dye Aff., ¶¶ 6, 14-16; Flannery Aff., ¶¶ 8, 14; Christopher Decl., ¶ 3(d).

45. *The Post-Crescent*’s Internet streams have generated significant interest and drawn viewers from across the country and even from overseas. Viewers have communicated to *The Post-Crescent* that the newspaper’s online efforts give them an opportunity to connect with their families and alma maters in a way that is not available to them anywhere else. Flannery Aff., ¶¶ 23-26.

46. Both *The Post-Crescent* and the *Green Bay Press-Gazette* use technology, called Coverit Live, to produce on-line conversations. Christopher Decl., ¶ 4; Dye Aff., ¶ 16. Coverit Live is an interactive conversation that displays words, images, polls, audio and video. During a Coverit Live conversation, members of the public submit comments about a live event to be approved and posted by *The Post-Crescent* staff member moderating the conversation. Christopher Decl., ¶ 4; Dye Aff., ¶ 19.

47. Coverit Live conversations are saved simultaneously with their transmission. Christopher Decl., ¶ 5.

48. Because the WIAA definition of play-by-play is vague, editors cannot give their reporters and editors appropriate guidance about what actions might violate the policy or trigger application of the rights fee. Flannery Aff., ¶ 12; Dye Aff., ¶ 19.

49. Editors fear running afoul of the WIAA's play-by-play restrictions or being fined after the fact. Dye Aff., ¶ 19. As a result, newspaper staff must moderate comments from Coverit Live participants before posting them to avoid producing a conversation the WIAA might later determine included "play-by-play." *Id.*

50. Requiring reporters and editors to second-guess whether comments have crossed the play-by-play threshold could cause reporters to limit news coverage; editors must weigh whether reporting two consecutive game events might meet the WIAA's definition of "play-by-play." Dye Aff., ¶ 19.

51. After-the-fact invoicing does not allow newspapers to budget in advance for the necessary expenditures to cover a game. Flannery Aff., ¶ 12.

52. The equipment necessary to live stream an event is not bulky and most tournament venue press boxes can accommodate more than one streaming crew. Christopher Decl., ¶ 20; *see*

also id., ¶ 19 (describing streaming equipment); Affidavit of Ricardo D. Arguello, Jan. 22, 2010 (“Arguello Aff.”), ¶ 5 (press box at streamed game large enough to accommodate another crew); Affidavit of Brett C. Christopherson, Jan. 22, 2010 (“Christopherson Aff.”), ¶ 5 (press boxes at streamed game large enough to accommodate another crew).

53. Live streaming, Coverit Live conversations and blogs are all expressive activity that require and incorporate editorial decisions. Flannery Aff., ¶¶ 16-21; Dye Aff., ¶ 19; Christopher Decl. ¶¶ 4, 7, 10-11, 17, 21-22; *see also* Christopher Decl., Ex. A, B (excerpts of Coverit Live conversations); Davis Aff., Ex. A (blog excerpt).

Internet Streaming: Exclusive Contract and 2008 Dispute

54. On May 20, 2005, the WIAA executed a ten-year, no-bid contract with WWVY (“WWVY Contract”) which grants WWVY “the exclusive right to produce, sell, and distribute all WIAA tournament series and championship events for all WIAA sports with the exception of existing contracts” as of the date of the contract’s execution. Jt. Stip. (Dkt. #26), ¶ 11 and Ex. D, at p. *1 (at I(a)), *3; *see* Ans. to Defs.’ Counterclaims (Dkt. #5), ¶ 38 (WIAA did not seek bids from Defendants); *see* Santa Maria Decl., Ex. E, ¶ 7 (Todd Clark of the WIAA describing history of WWVY contract).

55. The WIAA’s contract with WWVY includes the exclusive rights to Internet stream all WIAA tournament events with the exception of Football State Finals, Boys and Girls Basketball State Tournaments, and Boys and Girls Hockey State Finals. Jt. Stip. (Dkt. #26), ¶ 11.

56. The contract permits WWVY to meet its production “goals” by subcontracting out its video-production rights to other media companies:

American-HiFi/When We Were Young Productions will agree to produce directly or through an affiliate all WIAA tournament series and championship events. Our production goals would be as follows for all sports:

- i. 100% of all state tournaments
- ii. 50% of all sectional events
- iii. 25% of all regional events

Jt. Stip. (Dkt. #26, Ex. D) at II(a).

57. The WWY's Contract requires WWY to make payments to the WIAA under the following formula:

- i. [WWY] will establish a tournament/event production cost that encompasses all business related expenses to produce the tournament or event.
- ii. [WWY] will receive 100% of all revenues generated by the distribution of the tournament/event up until all of the costs have been recaptured.
- iii. All revenues generated after the tournament/event cost has been recaptured will be split 50% to the WIAA and 50% to [WWY] with the exception of physical media sales.
- iv. All sales of physical media after the initial cost has been recaptured will be split 20% to the WIAA and 80% to [WWY].

Jt. Stip. (Dkt. #26, Ex. D), at p. 2, at V.

58. The WIAA has authorized WWY to fine media who do not seek prior permission to stream a game:

All media and/or Internet parties interested in video transmission of WIAA Tournament Series events must make arrangements with When We Were Young Productions (608) 849-3200 to inquire about video transmission or Internet transmission permission prior to the date of the contest. Entities not adhering to permission policies are subject to fines imposed by the rights holder. Live or tape-delayed video transmission rights of regional and sectional events by television stations, cable operators and Internet sites is

prohibited without consent of the WIAA and When We Were Young Productions.

Jt. Stip. (Dkt. #26, Ex. B), at 14 (Video #1).

59. WWVY markets both its own and its licensed affiliates' productions of WIAA tournament events on a website accessible through www.wiaa.tv. Veldran Aff., ¶¶ 3, 11; Santa Maria Decl., Ex. F.

60. Before the WIAA signed the contract with WWVY, media entities other than WWVY were broadcasting WIAA tournament events and did not pay any rights fee to the WIAA. In fact, the WIAA states that “in some instances local community access channels would broadcast local games. The WIAA received no direct revenue from these local community access broadcasts.” Santa Maria Decl., Ex. E, ¶ 5.

61. Twenty-two affiliates have produced the 2006, 2007, 2008 and 2009 WIAA Girls Basketball sectional and regional games that are offered for sale on www.wiaa.tv, including community access channels. Some affiliates have also produced state finals games of other sports. Veldran Aff., ¶¶ 11, 12.

62. The WIAA states that WWVY provides it with “costly” services including scoreboard video programming at some tournament events and web transmissions of mandatory WIAA sport rule meetings. Santa Maria Decl., Ex. E, ¶ 9.

63. In 2008, *The Post-Crescent* live streamed the following four WIAA football games, all of which involved one or more local teams:

October 28, 2008	Green Bay Preble High School v. Appleton North High School
October 28, 2008	New London High School v. Waupaca High School
November 1, 2008	Appleton North High School v. Bay Port High School
November 8, 2008	Appleton North High School v. Stevens Point High School

Christopher Decl., ¶ 16.

64. The streams consisted of video images accompanied by audio commentary by two commentators. No other media entity streamed these games. Christopher Decl., ¶ 16; *see also* Christopher Decl., Ex. C, D and E.

65. *The Post-Crescent* generally saves Internet streams simultaneously with their transmission. Christopher Decl., ¶ 19. All but one of the game transmissions identified in paragraph 63 above was saved simultaneously with its broadcast; the New London/Waupaca game was not saved because of poor production quality. *Id.* at ¶ 28.

66. Neither WIAA employees nor any other non-Gannett employees participated in the technical production of *The Post-Crescent's* Livestream transmissions of the games identified in paragraph 63 above. *See* Christopher Decl., ¶ 27.

67. On October 28, 2008, the *Green Bay Press Gazette* posted on its website a copy of the *The Post-Crescent's* stream of the October 28, 2008 game involving Green Bay Preble High school. Dye Aff., ¶ 12.

68. On October 29, 2008, Tim Eichorst, President of WWVY, emailed John Dye, the Executive Editor of the *Green Bay Press-Gazette*, regarding the newspaper's posting of the Internet stream of the Green Bay Preble/Appleton North football game. Dye Aff., ¶¶ 2, 12, and Ex. B.

69. In the email, Eichorst stated, in part, that:

John, it has been brought to my attention that your organization produced a WIAA tournament series event football game last evening between Appleton North and Green Bay Preble.

...

You may, or may not, be aware that When We Were Young Productions holds the exclusive rights to these events and any full game production must be cleared through us and appropriate rights fees are charged. The fees for a live or delayed single camera

internet stream is \$250/game. For a multicamera event it is \$1500/game.

If you wish to keep this video on your site I will need you to remit the rights fee. If not, then please remove this from your site.

Dye Aff., Ex. B.

70. The Internet stream of the game was removed from the *Green Bay Press-Gazette's* site on or before October 30, 2008, and no “rights fee” was remitted to WWVY. Dye Aff., ¶ 12.

71. On October 31, 2008, Tim Knoeck of WWVY left a voicemail with Dan Flannery, the Executive Editor of the *The Post-Crescent*, in which he stated that he had noticed *The Post-Crescent* had streamed a WIAA football playoff game and that this was illegal. Flannery Aff., ¶¶ 2, 27. He stated that he owned the copyrights to those games and that he distributed them. *Id.*, ¶ 27. He stated that no one had been given permission to do the stream and that it had been against his and the WIAA's wishes. *Id.*

72. On October 28, 2008, Eichorst emailed Sherman Williams of the *Milwaukee Journal Sentinel* and provided him with the licensing terms then applicable to a media entity seeking permission to Internet stream a WIAA tournament game:

- pay a fee of \$250 (single camera production) or \$1500 (multi-camera production);
- send WWVY the master copy of the game to market;
- the media entity is prohibited from selling copies of the game to anyone; and
- WWVY will remit 20% of the gross sales .

Affidavit of Sherman Williams, Jan. 20, 2010 (“Williams Aff.”), ¶¶ 2, 3, and Ex. A.

73. WIAA has instructed schools hosting WIAA tournament events to deny media members permission to live stream tournament events without WIAA's or WWVY's permission. Ans. to Defs.' Counterclaims (Dkt. #5), ¶ 42.

74. On November 1 and 8, 2008, three Gannett newspapers were denied permission to live stream four WIAA football tournament games by representatives of the host schools. Each representative cited the WIAA's media policies when issuing the denial. Affidavit of James R. Matthews, Jan. 22, 2010 ("Matthews Aff."), ¶¶ 2-5; Affidavit of Michael T. Woods, Jan. 22, 2010 ("Woods Aff."), ¶¶ 2-4; Declaration of Robert B. Ebert, Jan. 21, 2010 ("Ebert Decl."), ¶¶ 1, 4-6.

75. No other media entity streamed those games. Matthews Aff., ¶ 6; Woods Aff., ¶ 5; Ebert Aff., ¶¶ 4, 6.

76. The WIAA states that its exclusive contracts and licensing scheme is necessary to protect its revenue sources. Am. Compl. (Dkt. #7), ¶ 28.

77. The WIAA's expert witness has reasoned that:

Indeed, in this regard WWVY's interest in exclusivity, and the WIAA's interest in limiting internet transmissions of its games [is] 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.

Santa Maria Decl., Ex. C, ¶ 40.

78. WIAA asserts that:

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.

Santa Maria Decl., Ex. B, Interrog. Resp. No. 11.

79. In 2008, WIAA received \$60,000 from WWVY. Santa Maria Decl., Ex. E, ¶ 8; Santa Maria Decl., Ex. G at *3.

Public, Taxpayer-Supported Events

80. High school sports and decisions that affect high school athletic programs generate significant community interest, support and participation. Affidavit of David Schmidt, Jan. 22, 2010 (“Schmidt Aff.”), ¶¶ 12-13; *see also* Flannery Aff., ¶ 28.

81. Newspapers have a long-standing tradition of reporting on regular season and tournament high school games. Because of the significant interest high school sports generate, the *Green Bay Press-Gazette* does not limit or intend to limit in the future its reporting to only the most popular sports. The newspaper’s high school sports coverage extends back at least 94 years. Dye Aff., ¶¶ 6-11, Ex. A.

82. The *Green Bay Press-Gazette* news operation employs fifty-three full-time employees and five part-time employees. All but two or three of those staffers perform at least some duties related to high school sports coverage in the course of a calendar year. Dye Aff., ¶ 9.

83. Because of the interest such reporting generates, a local newspaper that was denied credentials to report on WIAA tournament games would suffer significant damage and would likely lose a significant percentage of its print readership and online audience. *See* Flannery Aff., ¶ 13.

84. A fee of \$250 per event is an excessive fee for a local newspaper like the *Green Bay Press-Gazette*, which provides regular and extensive coverage of numerous WIAA tournament events throughout the year. If the newspaper had to pay such a fee for each tournament event,

the newspaper would not be able to report on as many WIAA tournament events using Internet streaming technology as it would otherwise. Dye Aff., ¶ 17.

85. Interscholastic athletics are an integral part of Wisconsin high school students' education. Schmidt Aff., ¶ 5; *see also* Flannery Aff., ¶ 28; Santa Maria Decl., Ex. D at *2, Art. II, Sec. 1(c).

86. WIAA tournaments provide important opportunities for participating athletes and generate significant interest among some members of the public. Am. Compl. (Dkt. #7), ¶¶ 13, 14.

87. Media coverage of high school sports has played a substantial role in generating community support and interest in WIAA tournament events. Jt. Stip. (Dkt. #26, Ex. B) at 1 (General Policies); *see also* Schmidt Aff., ¶ 13 (media's role in generating community support and interest). The WIAA itself

acknowledges the responsibilities of legitimate news gathering media representatives in covering and reporting from WIAA-sponsored tournaments. We recognize the interest and promotion generated by media coverage and the recognition given to the achievements of school teams and student athletes.

Jt. Stip. (Dkt. #26, Ex. B) at 1 (General Policies).

88. The WIAA's constitution states that its purpose includes "[t]o emphasize interscholastic athletics as a partner with other school activities in the total educational process." Santa Maria Decl., Ex. D at *2 Art. II, Sec. 1(c).

89. School districts excuse student athletes and their coaches from classes so they may participate in interscholastic games and may also excuse student-fans so they may attend tournament events to support their classmates. Typically, neither the student athletes nor their coaches are required to make up the missed classroom hours. *See* Schmidt Aff., ¶¶ 6-8.

90. Interscholastic athletics play a part in the lives of not only the student-athletes themselves, but additionally, in the lives of their non-participating classmates. For many students, school life is framed by the sports culture of their school and communities. Their participation in pep rallies, as spectators and general support of both male and female sports teams, make them a part of what is important in the school beyond academics. Schmidt Aff., ¶¶ 5, 7; Flannery Aff., ¶ 28.

91. Ashwaubenon and other Wisconsin public school districts spend significant amounts of money each year for interscholastic athletics. The 2009-2010 Ashwaubenon budget includes the following expected expenditures:

- a. coach salaries, approximately \$120,000
- b. athletic facilities: high school sports facilities are multiple use spaces. Our gymnasiums, swimming pool and playing fields get used by community groups and our Village Park and Recreation Department on a regular basis. There are maintenance costs to all of these spaces, but it is difficult to break out direct costs.
- c. team equipment, about \$12,000
- d. travel to/from events, approximately \$35,000
- e. entry fees, \$7,500
- f. officials, approximately \$21,000
- g. WIAA general dues, approximately \$1,100 (2008)

Schmidt Aff., ¶ 14.

92. Ashwaubenon may also expend funds to pay supervisory personnel when student-fans travel to state tournament games to support their classmates. Schmidt Aff., ¶ 9.

93. The 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. Santa Maria Decl., Ex. A, Request to Admit No. 12.

Dated this 22nd day of January, 2010.

s/Monica Santa Maria

Robert J. Dreps

Monica Santa Maria

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*Attorneys for Defendants, Gannett Co., Inc. and
Wisconsin Newspaper Association, Inc.*

4422046_3

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.

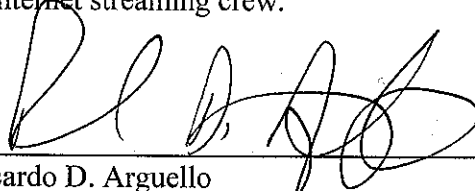
AFFIDAVIT OF RICARDO D. ARGUELLO

STATE OF WISCONSIN)
) ss
COUNTY OF OUTAGAMIE)

Ricardo D. Arguello, being duly sworn on oath, states as follows:

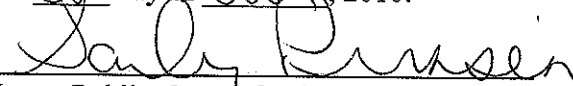
1. I have personal knowledge of the facts stated herein and, if called upon to do so, could and would testify competently.
2. I am a sports reporter for *The Post-Crescent*, where I have been employed since 2006.
3. On October 28, 2008, I attended the New London High School vs. Waupaca High School football game to report on the game with Tim Froberg, a reporter for *The Post-Crescent*. We had press credentials to enter the press box.
4. Tim and I live streamed the game from the press box. We used a camera positioned on a tripod and a laptop, all of which were clearly visible to any one else in the press box.

5. No one else in the press box conducted Internet streaming of the event. The press box was large enough to accommodate more than one Internet streaming crew.



Ricardo D. Arguello

Subscribed and sworn to before me
this 22 day of Jan, 2010.



Notary Public, State of Wisconsin
My Commission: 4-8-12

4585119_1

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

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

Plaintiffs,

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v.

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

Defendants.

**DECLARATION OF JOEL CHRISTOPHER IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
ON THEIR COUNTERCLAIM**

I, Joel Christopher, declare and state as follows:

1. I have personal knowledge of the facts stated herein and, if called upon to do so, could and would testify competently.

2. I am the Digital Content Editor at *The Post-Crescent*, a publication owned by Gannett Company, Inc. ("Gannett"), and have been employed in this position since December 2006. I have been professionally employed in journalism for approximately 15 years. My prior experience includes: *Watertown Daily Times*, news and sports writer; *Wausau Daily Herald*, sports reporter, assigning editor, metro editor, managing editor; and *The Post-Crescent* metro editor, digital content editor (current).

3. As Digital Content Editor, I oversee *The Post-Crescent's* online operations and supervise and direct the work of Local Desk news reporters and junior editors. More specifically, my duties are as follows:

a. I oversee *The Post-Crescent's* local report, with a particular emphasis on online operations and a focus on deep Web site layering. Deep Web site layering refers to providing as much content, and related content, as possible within a single story file. A story about the conviction of a person charged with homicide, for instance, will feature the text story, but also could include links to past coverage, photo galleries, videos, live Internet streaming, live online conversations, special pages, public records and reports from other news organizations. Deep Web site layering also involves making sure the organization adheres tightly to search engine optimization, a process of identifying and using the best keywords and internal and external links to drive Web searches to *The Post-Crescent's* content.

b. I supervise and direct the work of Local Desk news reporters and junior editors, and supervise and direct the work of other staff members as appropriate when they are working on online initiatives. My supervision of staff members and junior editors is broad. It requires planning, and budgeting stories and multimedia; reviewing and editing print and multimedia work; collaborating with other news organizations on coverage; learning and teaching new programs, strategies and tools for creating or bolstering online content; working with other departments such as marketing or advertising to refine our interactions with readers; and working with other employees throughout Gannett, to increase collaboration and share new skills and approaches.

c. I am responsible, in conjunction with Terry Lipshetz, the Digital Operations Editor, and under the direction of the managing and executive editors, for Internet streaming conducted by Post-Crescent staff members. I supervise our interactive initiatives, including blogging, social media such as Twitter and Facebook and real-time

events such as Coverit Live. I also sometimes serve as an on-site cameraman or in-office producer of livestreamed Internet events.

d. Finally, I am charged with seeking ways to improve our site and expand our online audience. For example, new software products like Livestream (Internet streaming software) and Coverit Live (online conversation software) have become important tools for us as we try to find new ways to reach our audience.

4. Coverit Live is an interactive conversation that displays words, images, polls, audio and video. During a Coverit Live conversation, members of the public submit comments about a live event to be approved and posted by *The Post-Crescent* staff member moderating the conversation. The conversation, which appears at www.coveritlive.com and runs in a window embedded in a story file on www.postcrescent.com, is created and monitored by a moderator. It runs for a distinct time, with a defined starting point, and requires participants to actively seek out and engage in the conversation. A Coverit Live conversation may be paired with a corresponding Livestream production in the same browser window or may stand alone.

5. Coverit Live conversations are saved to *The Post-Crescent's* server simultaneously with their transmission. Similarly, any blogs produced by *The Post-Crescent* are also saved simultaneously with their transmission. Attached to this affidavit, as Exhibits A and B, are screen captures from two representative Coverit Live conversations posted on www.postcrescent.com.

6. *The Post-Crescent* has produced numerous conversations, using Coverit Live technology, of high school sporting events, including postseason contests, both by itself and in conjunction with the *Green Bay Press-Gazette*, *The Northwestern* in Oshkosh and *The Reporter* in Fond du Lac. *The Post-Crescent* has also used the Coverit Live technology to produce

conversations on a variety of other topics, including high-interest criminal trials, winter weather storms and Black Friday shopping.

7. Since November 2008 *The Post-Crescent* has produced more than 75 Coverit Live conversations, many of them paired with Livestream productions. The conversations draw a wide variation in response from online viewers depending on how specialized the conversation is, from as few as 10 participants for our first few productions of the Varsity Roundtable prep sports program to as many as 2,200 participants for the announcement that Brett Favre had signed with the Minnesota Vikings. As with Livestream productions, reader response to Coverit Live conversations has been overwhelmingly positive. People enjoy the real-time information gathering and interaction with our staff and each other, and they make a point of telling us so.

8. We have used Livestream to produce more than 125 events since September 2008, including high school sporting events, political appearances and debates, court proceedings and community presentations. I serve as the primary producer for news and sporting events and have produced the majority of our streaming events.

9. Producing a Livestream event involves launching the Web-based Livestream program; entering the studio (a Web page with the tools necessary to activate the camera, record the production and control the overlays and ticker, among other tasks); alerting readers when it goes live by changing graphics and language on www.postcrescent.com, and sending text alerts and tweets; and handling the information presented in the ticker (the text that scrolls from left to right at the bottom of the page) and the overlay (the bar that includes text that can be activated to appear on the bottom fifth of the viewer window).

10. As producer, if the Livestream production is accompanied by a Coverit Live conversation, I also simultaneously moderate the conversations. The moderator adds his or her

own comments, approves comments from others, creates and posts polls, and adds other media elements, particularly still photography. Much of our efforts at producing live events has focused on high school athletics, and we've hosted Coverit Live conversations – with fans in attendance at the athletic facility, listening to the game over the radio or watching it on television – during the 2009 baseball and football state tournaments.

11. The standards the moderator uses when approving and posting comments for a Coverit Live conversation are grounded in common sense: Engage readers, keep the conversation on topic, answer questions and maintain a civil tone. It's an organic conversation, and as a fluid and unpredictable event, moderation is simply applying best editorial judgment and experience to keeping the conversation lively, engaging and purposeful.

12. *The Post-Crescent* made its first foray into live streaming during the homicide trial of Steven Avery in February/March 2007. During the six-week trial, I supervised our online efforts, including the live streaming of the proceedings. That first effort required us to work closely with other media to acquire and present the feed, but in 2008, Gannett made available to *The Post-Crescent* software that allowed us to create our own streaming productions. The interface — originally called Mogulus, but now called Livestream — allows us to present live events from offsite to visitors to *The Post-Crescent's* website, www.postcrescent.com.

13. Once we had access to the much simpler and more mobile Livestream technology we began to seek out and regularly produce streaming events. Our efforts increased in September 2008 with regular productions of live events. We expanded to high school football that fall once we confirmed that we could use wireless connections to successfully transmit live sporting events.

14. Our productions are produced on any of a number of different “channels.” Channels are specific studios, which in turn are Web pages that contain the tools we need to produce a livestream and allow us to direct readers to a specific URL to view the programming and to save related content in the same on-demand library. As of December 31, 2009, since we’ve regularly used Livestream technology, we have produced 72 events on Channel 1, our general news channel; 35 events on Channel 2, our sports channel with an emphasis on live high school sporting events; 10 events on Election 08, the channel established for live coverage during the 2008 election cycle; 11 events on Football for Lunch, the channel established for our weekly pro football program; and several events on Gannett Wisconsin Media, the joint channel established for events of interest to multiple Gannett Wisconsin Media sites.

15. Our streaming efforts initially required only the investment in a dedicated laptop for the offsite production because the video equipment we already had invested in works equally well for video or streaming. However, we have significantly altered staffing to accommodate our streaming efforts by shifting the focus of many staff members to accommodate our growing online operations. We have 10 staff members across the news, sports and copy desks who are trained to varying levels in Livestream, and we have created specific shifts for copy desk members and select reporters to engage in multimedia or online work.

16. In 2008, *The Post-Crescent* streamed the following WIAA-sponsored football tournament games involving one or more local schools:

- | | |
|------------------|---|
| October 28, 2008 | Green Bay Preble High School v. Appleton North High School
on-site cameraman: Kate McGinty
on-site announcers: Brett Christopherson, Appleton West coach
Brent Engen
producer: Terry Lipshetz |
| October 28, 2008 | New London High School v. Waupaca High School
on-site cameraman: Ricardo Arguello |

on-site announcers: Ricardo Arguello, Tim Froberg
producer: Joel Christopher

November 1, 2008 Appleton North High School v. Bay Port High School
on-site cameraman: Ricardo Arguello
on-site announcers: Ricardo Arguello, Brett Christopherson
producer: Joel Christopher

November 8, 2008 Appleton North High School v. Stevens Point High School¹
on-site cameraman: Ricardo Arguello
on-site announcers: Ricardo Arguello, Brett Christopherson
producer: Joel Christopher

17. The procedures *The Post-Crescent* followed to produce the Internet streaming of the football tournament games referenced in ¶ 16 above is as follows: To produce a Livestream webcast of a high school football game, we've determined it's most effective to send a two-person team to the site with a producer back in the office. Both members of the two-person team announce the game and provide commentary. The producer handles bringing the event live on the website, www.postcrescent.com, sending out alerts when it goes live and creating and changes the text ticker on the bottom of the screen and screen-overlays that provide vital information, including the score and time remaining in the contest. Of the two-person on-site team, one also fulfills traditional print coverage duties. While the game is occurring, one person is operating the camera and providing commentary, both purely online tasks. The other is taking statistics and notes for later print efforts, and providing commentary for online efforts. After the game is over, the cameraman is done and the person who was taking statistics and notes flips into pure print mode to do traditional interviewing for a written story.

18. Prior to each game, *The Post-Crescent* applied for press credentials to gain admission to the press box. WIAA, through its representation at the host school, granted *The*

¹ Due to technical difficulties, the first quarter of this match was not streamed or recorded.

Post-Crescent press credentials for each of the games. On each of the above-referenced game days, the two-person on-site team arrived at the stadium with camera gear in full view, gained admittance to the press box and set up the laptop, camera and microphones in preparation for the live stream.

19. The camera was placed on a tripod inside the press box and was maintained in a single position throughout the game. Although the tripod was stationary, the camera could be panned to follow the game action. The camera was connected to the laptop computer and the microphones are connected through the camera. The laptop relays both video and audio to the Livestream studio. Games are recorded within the studio software by the producer, and saved to a server for looping, future replays and archiving. We can make a hard copy (DVD) of any of the games saved to the server.

20. The equipment necessary to stream a game — consisting principally of the camera, tripod and laptop — are not bulky. I have significant experience, gained through six years as a professional sports reporter, in press boxes at high school tournament venues across the state. There is a wide variance in the size and quality of a press box at high school sporting events depending on the facility, but it's accurate to say that the majority of press boxes are large enough to accommodate more than one crew engaged in Internet streaming.

21. During the transmission one or both sports reporters, and in one case a high school football coach, provided simultaneous play-by-play descriptions of and commentary on the game action. The image of what was being transmitted was visible on the laptop during the transmission. The descriptions and commentary were transmitted live and simultaneously saved along with the transmitted images. Throughout the transmission, the cameraman actively controlled the camera and decided when to pan, zoom in or zoom out.

22. The streaming event is supervised by a producer who typically works from *The Post-Crescent* office. The producer creates, edits and updates the ticker (the text that scrolls from left to right at the bottom of the page) and the overlay (the transparent tab with text that appears above the ticker but over the field of the Livestream). The ticker, which does not obscure the Livestream image frame, includes information about the announcers and what colors the teams are wearing, as well as additional information as deemed necessary by the producer. The ticker is not recorded — it is a separate element of the production — and can be changed at any time during the Livestream or when the stream is looping. That allows us to alert people to the fact they are watching a replay, to direct them to the on-demand feature and to promote upcoming productions. The ticker does not appear if the stream is recorded to a DVD. The overlay can be activated and deactivated by the producer, and it obscures the bottom fifth of the Livestream frame. It is part of the Livestream and appears online when the production is looped or viewed through our on-demand feature, but it does not appear if the production is recorded to DVD from the on-demand library.

23. Games appear on the Web site until the next Livestream. They are identified as recordings in the ticker, which is updated when the Livestream begins to loop to alert viewers that it is a recording. Livestreams are also added to the on-demand library, where they can be accessed until such time as we remove them from the on-demand library. We have not removed recorded Livestreams except in a few circumstances where the production quality was not up to our standards. We have not offered to sell any recordings of events we have livestreamed.

24. All the equipment necessary for *The Post-Crescent* to stream a game is brought by *The Post-Crescent's* crew. In particular, the crew does not need access to the host school's or WIAA's telephone lines. A Livestream event can be produced through use of a broadband card

purchased by *The Post-Crescent* to transmit the video and audio to the studio. The four games referenced in ¶ 16 were all transmitted using *The Post-Crescent's* broadband card.

25. On other occasions, however, *The Post-Crescent* has made use of the host school's Ethernet connection or wireless signals, when those have been stronger than a broadband connection. The host schools that have allowed us to use their Internet connections have always done so without charge. In some cases, schools have specifically wired for our Ethernet use, or configured our laptop to allow it to access their secure wireless connection.

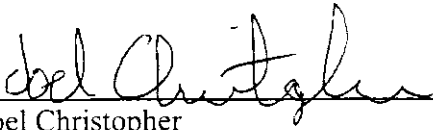
26. We have never used WIAA-provided Internet access for Livestreaming. We have paid to use the Internet connections provided at state tournament venues in Madison and La Crosse to send still images and text, but again, not for Livestreaming, and only when it was the only option. As broadband technology improves, we intend to use it more and more and avoid paying for access at places like Camp Randall Stadium or the Kohl Center where we are currently compelled to pay because there is no other option.

27. Only Gannett employees were involved in creating the October and November 2008 productions referenced in ¶ 16, although Appleton West coach Brent Engen contributed commentary analysis in the Oct. 28 Green Bay Preble vs. Appleton North high school game.

28. I was asked by Gannett's counsel in this case to locate recordings of the Livestreams of the four high school football playoff games produced by *The Post-Crescent* in 2008 and referenced in ¶ 16 above. The New London vs. Waupaca game was the only one not saved because of the poor quality of the production. The other three games are attached to this affidavit as Exhibits C, D and E.

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

Dated this 21st day of January, 2010.





Joel Christopher

4535728_2

EXHIBIT A

Wisconsin Winter Storm (12-09-2009)

You are viewing a feed that contains frequently updated content. When you subscribe to a feed, it is added to the Common Feed List. Updated information from the feed is automatically downloaded to your computer and can be viewed in Internet Explorer and other programs. Learn more about feeds.

-  Add this feed to iGoogle
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6:18

Wednesday, December 09, 2009, 6:18:43 PM

COVER IT LIVE Thank you for reading today.

Thousands of Users. Millions of Readers.
Free and simple to use. Try CoverItLive today!

6:18 Joel Christopher

Wednesday, December 09, 2009, 6:18:36 PM

Thanks for joining us everyone, and stay safe and warm! It's going to be cold out there tonight and tomorrow, and the roads will still be challenging.

5:47 Joel Christopher

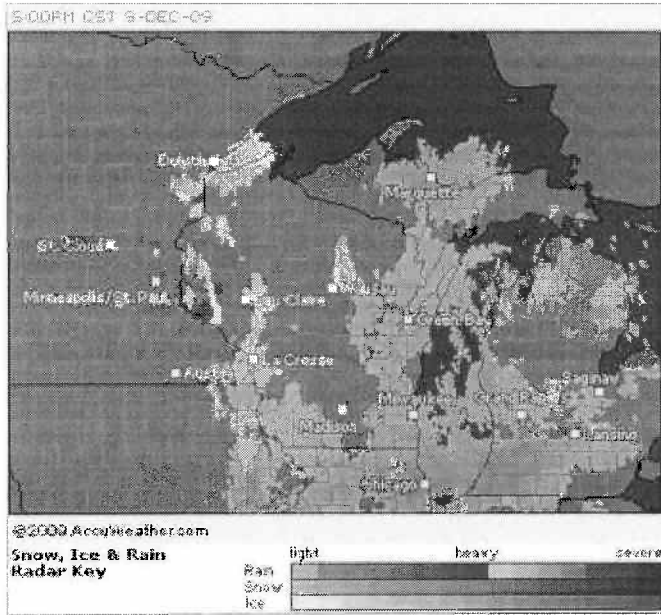
Wednesday, December 09, 2009, 5:47:51 PM


We'll keep our conversation open a while longer, although it seems to be petering out with the storm. But if you have any last questions or stories to share, we'd love to hear from you before we end this.

5:43

Wednesday, December 09, 2009, 5:43:19 PM





 phpPdp6weather541pm.jpg

5:43 Terry Lipshetz


Wednesday, December 09, 2009, 5:43:16 PM

Have one more radar image to share from our [weather page](#). As you can see, most of the storm has moved through, although it's not quite finished. This image is from 5 p.m.

5:18

Wednesday, December 09, 2009, 5:18:39 PM



 phpE49u9XWinter17.jpg

5:18 Joel Christopher


Wednesday, December 09, 2009, 5:18:37 PM

Molly Fassbender, 8, climbs the sledding hill today at Prairie Hill Park in Appleton.
Post-Crescent photo by Kirk Wagner.

5:09

Wednesday, December 09, 2009, 5:09:56 PM



 phpIpPu6fWinter16.jpg

5:08 Joel Christopher

Wednesday, December 09, 2009, 5:08:37 PM

Troy Sweeney flies over a jump today on the sledding hill in Prairie Hill Park in Appleton.
Post-Crescent photo by Kirk Wagner.

4:52 Comment From John Lee

Wednesday, December 09, 2009, 4:52:55 PM

A snow fall total posted by the Weather Service, provided by a trained spotter, put the total drop at Darboy at 14.3 inches. If that becomes official, it would move this storm to the top seven highest two-day totals, according to figures put out by the National Weather Service at Green Bay yesterday.

4:38 Ben Jones

Wednesday, December 09, 2009, 4:38:13 PM

Mike Goetzman, a DOT spokesman, said motorists should avoid travel tonight. If you do have to drive, slow down. "The speed limit figures on that black and white sign you could probably cut in half or more," he said.

4:32 Joel Christopher

Wednesday, December 09, 2009, 4:32:19 PM




Thanks, Bob, for the photos!

4:32 Ben Jones

EXHIBIT B

Favre Signing With Vikings

You are viewing a feed that contains frequently updated content. When you subscribe to a feed, it is added to the Common Feed List. Updated information from the feed is automatically downloaded to your computer and can be viewed in Internet Explorer and other programs. Learn more about feeds.

-  Add this feed to iGoogle
-  Subscribe to this feed in Google Reader
-  Subscribe to this feed

6:44

Tuesday, August 18, 2009, 6:44:32 PM

COVER IT LIVE Thank you for reading today.

Thousands of Users. Millions of Readers.
Free and simple to use. Try CoveritLive today!


6:43 Joel Christopher

Tuesday, August 18, 2009, 6:43:19 PM

All right, folks. Thanks for participating in this live chat! It'll be available for replay at www.postcrescent.com.


6:40 dfolkens via twitter

Tuesday, August 18, 2009, 6:40:51 PM

 @arikhanson You're right that I just think the #favre drama is fun. Scared tho??? Come on (points to scoreboard). #Steelers6Rings


6:40 MEHarty via twitter

Tuesday, August 18, 2009, 6:40:30 PM

 RT @ScottGoldberg: As far as I can tell, there's consensus on one thing today: Jesus wouldn't get as much time on our air as #Favre just did


6:28 gocatallina via twitter

Tuesday, August 18, 2009, 6:28:45 PM

 A Favreolicious day! What a great day for Minnesota #favre

6:23 Chadcapp via twitter

Tuesday, August 18, 2009, 6:23:20 PM

 Update: Zygi Wilf changes his mind on #Favre, when he realizes that he doesn't actually own him.



6:23 FliccsBeats via twitter


Tuesday, August 18, 2009, 6:23:18 PM

 **#Favre** is a **#Viking**.....oh well he wont last the whole season**6:23 rel407 via twitter**


Tuesday, August 18, 2009, 6:23:14 PM

 **#Favre** is gonna be in the NFL until he croaks. I like you, but retire dude..**6:23 Smokeowtt via twitter**


Tuesday, August 18, 2009, 6:23:01 PM

 Hey does anyone know how many TDs **#favre** scored for the opposing teams **#nfl****6:22 bearflash via twitter**

Tuesday, August 18, 2009, 6:22:31 PM

 6-10 career record at the Big Inflatable Toilet, that sounds like a perfect Vikings season to me **#packers #nfl****6:22 GTRacer347 via twitter**

Tuesday, August 18, 2009, 6:22:28 PM

 Aw heck, this is going to be the best & most watched, most talked about football season ever! **#Favre #Vikings #Packers #football #NFL****6:22 bearflash via twitter**


Tuesday, August 18, 2009, 6:22:23 PM

 If he says Chilly one more time I'm going to stab an ice pick into my fucking temple **#packers #nfl****6:21 Solo_ist via twitter**

Tuesday, August 18, 2009, 6:21:43 PM

 when the Vikes start losing, it will be hard 4 Childress to rally his team. Liar! **#NFL #VIKINGS #Bears****6:21 HughWoolard via twitter**

Tuesday, August 18, 2009, 6:21:08 PM


 Told my boss that I retired today. Told him I'd come back tomorrow morning. He told me to stop reading the sports page. **#Favre**

6:20 WisSmokeFan via twitter

Tuesday, August 18, 2009, 6:20:50 PM

 It is good to see Brett **#Favre** happy. I am ordering a #4 Viks jersey 2 go with my Packers & Jets ones.**6:20 wcdixon via twitter**

Tuesday, August 18, 2009, 6:20:26 PM

 as a longtime Vikings fan, still not sure what I think of this http://www.twincities.com/ci_13150551 **#Favre****6:17 Comment From Guest**

Tuesday, August 18, 2009, 6:17:38 PM

Even Kare 11 is sick of him -- and replaced him with a screen of GREEN!

6:17 Comment From ManfromAppleton

Tuesday, August 18, 2009, 6:17:37 PM

Chilly ... You just blew smoke up your team ... Why should they believe anything you say or do anymore?

6:12 TerryLipshetz

Tuesday, August 18, 2009, 6:12:57 PM

Childress: "You can't get a hit if you don't swing the bat."

6:09 Comment From GirlfromWI

Tuesday, August 18, 2009, 6:09:44 PM

I don't accept the apology....it isn't real,

6:08 TerryLipshetz

Tuesday, August 18, 2009, 6:08:34 PM

Favre: "I'm in it for the right reasons, and if people can't understand that, I'm sorry."

6:07 Comment From Guest

Tuesday, August 18, 2009, 6:07:14 PM

If he's admitting that he is going to be restricted physically from much of what the team needs to do, then how is he really a "perfect fit" for the Vikings?

6:06 larsipoo via twitter

Tuesday, August 18, 2009, 6:06:14 PM


 there should be a hashtag that fully encompasses my feelings regarding brett favre right now. any suggestions? **#favre**

EXHIBIT C

(DVD of Green Bay Preble v. Appleton North HS)

EXHIBIT D

(DVD of Appleton North HS v. Bay Port HS - Part 1)

EXHIBIT D

(DVD of Appleton North HS v. Bay Port HS - Part 2)

EXHIBIT E


(Appleton North HS v. Stevens Point HS - Part 1)

EXHIBIT E


(Appleton North HS v. Stevens Point HS - Part 2)

4. On November 1, 2008, I and Ricardo Arguello, a sports reporter for *The Post-Crescent*, attended the Appleton North High School vs. Bay Port High School football game and the Appleton North High School vs. Stevens Point High School football game to report on the games. We had press credentials to enter the press box from where we live streamed the games. We used a camera positioned on a tripod and a laptop, all of which were clearly visible to any one else in the press box.

5. No one else in the press boxes conducted Internet streaming of any of these events. The press boxes were large enough to accommodate more than one Internet streaming crew.


Brett C. Christopherson

Subscribed and sworn to before me
this 22 day of Jan, 2010.


Notary Public, State of Wisconsin
My Commission: 4-8-12

4585051_1

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.

AFFIDAVIT OF MICHAEL DAVIS

STATE OF WISCONSIN)
) ss
COUNTY OF DANE)

Michael Davis, being duly sworn on oath, states as follows:

1. I have personal knowledge of the facts stated herein, and if called upon to do so, could and would testify competently.
2. I am the Editor of the website for the *Milwaukee Journal Sentinel* and Journal Interactive, www.jsonline.com, and have been employed in that position since 2000. Journal Interactive is a division of Journal Sentinel, Inc. As the website's Editor, my responsibilities include managing the website and its content in coordination with the newsroom.
3. The newspaper's staff members cover newsworthy community events using a variety of technologies, including text reports summarizing, analyzing or describing live events. These text reports may take various forms, including Internet blogging.
4. In November 2008, David Heller, a JSOnline sports producer transmitted live text reports of 7 high school football tournament games sponsored by the Wisconsin Interscholastic

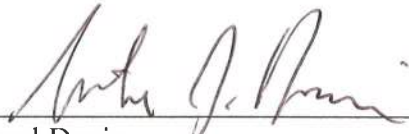
Athletic Association (“WIAA”). A true and correct copy of an excerpt from one of those text reports is attached to this affidavit as Exhibit A.

5. The WIAA subsequently invoiced Journal Interactive a \$100 “Play-by-Play Blogging fee” for each of those 7 text reports. On November 25, 2008, the WIAA sent a second request for payment. A true and correct copy of the second request is attached to this affidavit as Exhibit B.

6. The *Milwaukee Journal Sentinel* contacted Todd Clark, the WIAA Director of Communications, to discuss the invoice. The newspaper did not pay the invoice.

7. Since being invoiced, after the fact, for transmitting Internet text reports, the *Milwaukee Journal Sentinel* engages in live blogging from selective WIAA events. The newspaper includes less strict play-by-play descriptions and, instead, focuses on analysis, commentary and other descriptions of the events.

FURTHER, AFFIANT SAYETH NAUGHT



Michael Davis

Subscribed and sworn to before me
this 21 day of January, 2010.



Susan M. Nelson

Notary Public, State of Wisconsin

My Commission: expires on March 31, 2013



4549908_3

EXHIBIT A

Hello again from Camp Randall for today's Division 2 title game. It is cold, but sunny.
Friday November 21, 2008 12:52

12:55

Defending champion Kimberly is averaging more than 46 points per game during the playoffs

Vernona is in the stats title game for the first time.
Friday November 21, 2008 12:55

1:00

[Comment From LeeLee:]

I played at Kimberly, coached at Kimberly and my dad coached there for over 30 years. We are amazed and very excited that Kimberly has become so dominant in football. Good Luck and Go Big Red!
Friday November 21, 2008 1:00 Lee

1:01

Some Kimberly stats:

Benny DeBruin - 956 yards rushing, 15 TDs
Ryan VanAsten - 738 yards rushing, 13 TDs
Tyler Wolf - 1,540 yards passing, 22 TDs; 482 yards rushing, 8 TDs
Jayme Wells - 1,020 yards receiving, 15 TDs
Friday November 21, 2008 1:01

1:02

Some Verona stats:

Cameron Bathe - 1,576 yards rushing, 16 TDs
Mason Meyer - 554 yards rushing, 10 TDs
Trevor Burmeister - 1,320 yards passing, 15 TDs
Friday November 21, 2008 1:02

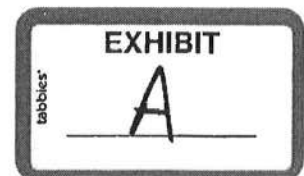
1:02

[Comment From Darren McKayDarren McKay:]
Verona alum class of '83 rooting for the Wildcats.
Friday November 21, 2008 1:02 Darren McKay

1:02

[Comment From GuestGuest:]

I also have strong Kimberly ties and have been following them all year. I'm actually hoping for a close game, we haven't seen one ALL YEAR!
Friday November 21, 2008 1:02 Guest



1:03

Closest game for Kimberly - 16 points, another 17 points, the rest were 30+-point wins
Friday November 21, 2008 1:03

1:04

[Comment From Mike (2)Mike (2):]
I saw Kimberly play twice, quite overrate if you ask me
Friday November 21, 2008 1:04 Mike (2)

1:04

[Comment From Mike (2)Mike (2):]
Of course my last comment was sarcasm
Friday November 21, 2008 1:04 Mike (2)

1:06

Kimberly 13-0
Verona 12-1, only loss to Middleton, the co-champs (with Verona) of the Big Eight Conference
Friday November 21, 2008 1:06

1:06

Verona will get the ball first
Friday November 21, 2008 1:06

1:07

Check that, Verona starts with the ball and has it at the 27
Friday November 21, 2008 1:07

1:08

After a short run, a pass is incomplete, so a quick third-and-7.
Friday November 21, 2008 1:08

1:08

[Comment From dougdoug:]
hey, what is the fan sections like, packed?which team has more fans?
Friday November 21, 2008 1:08 doug

1:08

I can't see the Kimberly side (right underneath us), but a good-sized crowd for Verona.

And a pass to Matt Kessenich is snared by the Verona sideline at their own 48
Friday November 21, 2008 1:08

1:09

[Comment From NastyNasty:]

Why isnt Wisconsin recruiting Wells from Kimberly...I think they are making a mistake on this one....

Friday November 21, 2008 1:09 Nasty

1:09

Don't know. You'd have to ask coach Bielema. ;) :)

Friday November 21, 2008 1:09

1:10

A couple of runs by Cameron Bathe and Verona has third-and-6.

Friday November 21, 2008 1:10

1:10

And Verona calls timeout, 9:46 left in the 1st, no score.

Friday November 21, 2008 1:10

1:11

[Comment From SteveSteve:]

Ya, Wells is a freak of an athlete. He is D-1 quality, but he also an unbelievable baseball player.

Friday November 21, 2008 1:11 Steve

1:11

Someone today told me Iowa State for Wells; we'll see I guess.

Friday November 21, 2008 1:11

1:12

Fake handoff, and Matt Craggs runs down Burmeister for a sack

Friday November 21, 2008 1:12

1:12

Punt takes a bounce and rolls out of bounds at the 10
Friday November 21, 2008 1:12

1:13

[Comment From SteveSteve:]
Wells signed a baseball scholarship for Northern Illinois University.
Friday November 21, 2008 1:13 Steve

1:13

[Comment From NastyNasty:]
klein is going to Iowa St
Friday November 21, 2008 1:13 Nasty

1:14

After a short run, Wolf completes a pass to Appleton, who gets to the 34 for a first down.
Friday November 21, 2008 1:14

1:15

DeBruin gets 5 then Kimberly goes with an empty backfield, but Wolf keeps it and gains 4. Third-
and-1.
Friday November 21, 2008 1:15

1:16

DeBruin right up the middle through a big hole. He gets to the 43 for another first down.
Friday November 21, 2008 1:16

1:16

[Comment From MagicMagic:]
Give some credit to Jon Malin for pushing for one of the best weight rooms in the state
Friday November 21, 2008 1:16 Magic

1:17

Kimberly across midfield after Wolf fights for 9 then Schumacher gets to the 32
Friday November 21, 2008 1:17

1:18

A pass to Wells for 7 and then DeBruin runs it to the 21. The Papermakers having little problem moving the ball here.
Friday November 21, 2008 1:18

1:19

FYI - Bret Bielema down on the sideline watching the game
Friday November 21, 2008 1:19

1:19

DeBruin now down to the 16
Friday November 21, 2008 1:19

1:19

DeBruin again, fighting his way close to a first

EXHIBIT B

INVOICE NO.: 5165jg

Wisconsin Interscholastic Athletic Association
P.O. Box 267
Stevens Point, WI 54481-0267
Telephone (715) 344-8580 -- FAX (715) 344-4241

November 25, 2008

Todd Clark
320

DAVE HELLER
JORUNAL INTERACTIVE
333 W STATE ST
MILWAUKEE WI 53201

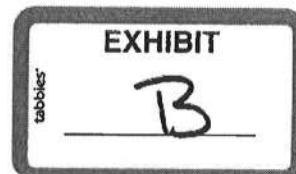
SECOND REQUEST

	Cost	
	Each	Total
_____ 2008 State Football Phone Line Fee		
_____ 2008 State Football Wireless Fee		
<u>X</u> 2008 State Football Live Play-by-Play Blogging Fee	100/gm	700.00
<u>X</u> 2008 State Football Parking Fee		20.00
_____ 2008 State Girls Volleyball Broadcast Fee		
_____ 2008 State Girls Volleyball Wireless Fee		
_____ 2008 State Girls Volleyball Phone Line Fee		
_____ 2008 State Boys Volleyball Phone Line Fee		
_____ 2008 State Boys Volleyball Wireless Fee		
_____ 2008 State Boys Volleyball Broadcast Fee		
_____ 2008 State Boys Soccer Wireless Access Fee		
_____ 2008 State Boys Soccer Broadcast Fee		
_____ 2008 State Girls Swimming Wireless Access		

Total Amount Due \$720.00

Return copy with your payment in enclosed envelope.
Please make your check payable to the Wisconsin Interscholastic Athletic Association.

PAYMENT IS DUE WITHIN 30 DAYS OF INVOICE



WNA000670