

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.



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 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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Video: Local Athletes Upset Their Photos Turn Up On Gay Porn Sites



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Meet...Allison Stokke

by Erik Gunther
May 18, 2007

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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.

Takeaways

Allison Stokke became an overnight celebrity for the wrong reasons

Her photograph was used without her consent but she could not take legal action to stop it

Sources:

<http://www.latimes.com/sports/highschool/la-sp-stokke2jun02,0.6647011.story?page=1&coll=la-home-center>

http://www.washingtonpost.com/wp-dyn/content/article/2007/05/28/AR2007052801370_2.html

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