

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Georgia

In re NCAA Student-Athlete Name & Likeness
Plaintiff
v.
(consolidated caption continued from above line)
Licensing Litigation
Defendant
Civil Action No. 4:09-cv-01967 CW
(If the action is pending in another district, state where: Northern District of California)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: General Counsel, Turner Broadcasting Systems, Inc., One CNN Center, Atlanta, GA 30303

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Schedule A.

Place: Robbins Geller Rudman Dowd LLP, 3424 Peachtree Road, NE, Suite 1650, Atlanta, GA 30326
Date and Time: August 26, 2011, 9:30 am EST

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 08/01/2011

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Handwritten signature of attorney

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Plaintiff Ed O'Bannon et al. and all other "Antitrust Plaintiffs" in this consolidated action, who issues or requests this subpoena, are:

Bryan L. Clobes, Cafferty Faucher LLP, 1717 Arch Street, Suite 3610, Philadelphia, PA 19147

bclobes@caffertyfaucher.com; phone: (215) 864-2800

Civil Action No. 4:09-CV-01967 CW

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* TURNER BROADCASTING SYSTEMS, INC.  
was received by me on *(date)* 8-2-11

I served the subpoena by delivering a copy to the named person as follows: by handing to CHRISTINA  
HEYWARD, Process Specialist for CT Corp. at CT CORP., REG AGENT, 1201 PEACHTREE ST NE,  
ATLANTA GA 30361 on *(date)* 8-3-11 ; or

I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0

I declare under penalty of perjury that this information is true.

Date: 8-5-11

Bruce R Smith Jr  
*Server's signature*

BRUCE R. SMITH JR  
*Printed name and title*

PO BOX 7710  
ATLANTA GA 30357

*Server's address*

Additional information regarding attempted service, etc:

## **SCHEDULE A**

### **DEFINITIONS**

1. “Agreement” means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons, together with all modifications or amendments thereto.
2. “And” and “or” are terms of inclusion and not of exclusion, and shall be construed either disjunctively or conjunctively as necessary to bring within scope any answer that might otherwise be outside its scope.
3. “CAC” means the Second Consolidated Amended Class Action Complaint filed by Plaintiffs on May 16, 2011.
4. “Communicate” and “communication” means every manner or means of disclosure, transfer, or exchange of information, including the transmission and receipt of information of any kind (in the form of facts, ideas, inquiries, queries, data bits, or otherwise), by and/or through any means regardless of whether the transmittal was initiated or received by an individual or a system. Means of transmission include but are not limited to face-to-face conversations, regular mail, e-mail, voice mail, telegram, overnight delivery, courier delivery, telephone, facsimile, telex, text message, or instant messenger text.
5. “Concerning” means constituting, evidencing, reflecting, incorporating, effecting, including, regarding, or otherwise pertaining or relating, either directly or indirectly, or being in any way logically or factually connected to the subject matter of the inquiry or request. Requests for “documents concerning” any subject matter include documents concerning communication regarding that subject matter.
6. “Document” shall be construed as used and defined in Rule 34(a) of the Federal Rules of Civil Procedure and means the original and all non-identical copies of all written or

printed items, including, without limitation, letters, correspondence, memoranda, legal pleadings, calendars, diaries, day planners, travel records, lists, outlines, summaries, records of telephone conversations, telegrams, facsimiles, notes, reports, compilations, notebooks, work papers, graphs, charts, spreadsheets, blueprints, books, pamphlets, brochures, circulars, manuals, instructions, ledgers, drawings, sketches, photographs, videotapes, audiotapes, film and sound reproductions, e-mails, internal or external web site, compact discs, computer files and disks, sales, advertising and promotional literature, agreements, stored recordings, minutes or other records of meetings, all written or graphic records or representations of any kind, as well as all mechanical or electronic data, records, or other electronically stored information (“ESI”).

7. “Electronically stored information” (“ESI”) includes, without limitation, the following:
  - a. activity listings of electronic mail receipts and/or transmittals;
  - b. output resulting from the use of any software program, including, without limitation, any word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail, instant messages or bulletin board postings, operating and backup data, source codes, PRF files, PRC files, batch files, ASCII files and all miscellaneous media on which they reside regardless of whether said electronic data exists in an active file, a backup file or system, a deleted file or system, or a file fragment;
  - c. any and all items stored on computer memories, hard disks, floppy disks, CD-ROMs, magnetic tape, microfiche, or on any other device for storing or maintaining electronic data including, but not limited to, desktop computers, servers and other network computers, backup tapes or systems, laptop computers,

home or personal computers used for business purposes, a personal digital assistant, e.g. Palm Pilot, R.I.M., Blackberry, iPhone or similar device, external storage devices (such as “keychain” drives) and file folder tabs, or containers and labels appended or relating to any physical storage device associated with each original or copy of all documents requested herein.

8. “Licensing Agreement” means any Agreement concerning the purchase, sale, broadcast, rebroadcast, licensing, sub-licensing, marketing, or any commercial exploitation whatsoever of the name, image or likeness of any Student Athlete, or Student Athlete Product, as well as any amendments or side-letters to such an Agreement.

9. “Meeting” means, without limitation, any assembly, convocation, encounter, or contemporaneous presence (whether in person or via electronic, computer-assisted, digital, analog or telephonic method of communication) of two or more persons for any purpose, whether planned or arranged, scheduled or not.

10. “NCAA” means the National Collegiate Athletic Association.

11. “NCAA Member” or “NCAA Members” means any NCAA Division I or Football Subdivision member Conference, University, or College.

12. “NCAA Division I Football Bowl” (formerly known until 2006 as “Division I-A”) means the NCAA Division I football subdivision consisting of the Atlantic Coast Conference, the Big 12 Conference, the Big East Conference, the Big Ten Conference, Conference USA, Division I FBS Independents, the Mid-American Conference, the Mountain West Conference, the Pacific-12 Conference, the Southeastern Conference, the Sun Belt Conference, and the Western Athletic Conference.

13. “NCAA Division I Football Championship” means the NCAA Division I football subdivision consisting of the Big Sky Conference, the Big South Conference, the Colonial Athletic Association, Division I FCS Independents, the Great West Conference, the Ivy League, the Mid-Eastern Athletic Conference, the Missouri Valley Football Conference, the Northeast Conference, the Ohio Valley Conference, the Patriot League, the Pioneer Football League, the Southern Conference, the Southland Conference, and the Southwestern Athletic Conference.

14. “NCAA Men’s Division I Basketball” means the NCAA Division I men’s basketball teams consisting of the America East Conference, the Atlantic 10 Conference, the Atlantic Coast Conference, the Atlantic Sun Conference, the Big 12 Conference, the Big East Conference, the Big South Conference, the Big Sky Conference, the Big Ten Conference, the Big West Conference, the Colonial Athletic Association, Conference USA, the Great West Conference, the Horizon League, the Ivy League, the Metro Atlantic Athletic Conference, the Mid-American Conference, the Mid-Eastern Athletic Conference, the Missouri Valley Conference, the Mountain West Conference, the Northeast Conference, the Ohio Valley Conference, the Pacific-12 Conference, the Patriot League, the Southeastern Conference, the Southern Conference, the Southland Conference, the Southwestern Athletic Conference, the Sun Belt Conference, the Summit League, the West Coast Conference, and the Western Athletic Conference.

15. “Person” means, without limitation, any individual, corporation, any form of partnership, limited liability company, proprietorship, joint venture, association, government entity, group or other form of legal entity.

16. “Relating to,” “referring to,” “regarding,” or “with respect to” mean, without limitation, the following concepts: concerning, discussing, describing, reflecting, dealing with,

pertaining to, analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting, or otherwise involving, in whole or in part.

17. “Student Athlete” or “Student Athletes” means all individuals that currently compete on an NCAA Division I College or University men’s basketball team or an NCAA Division I Football Bowl or NCAA Division I Football Championship team (“Current Student Athletes”), or who previously competed on such team but have permanently ceased competing on such team for reasons including, but not limited to, graduation, exhaustion of eligibility, injury, voluntary decisions to cease competing, and involuntary separations from teams due to decisions by coaches, schools, conferences, and/or the NCAA (“Former Student Athletes”).

18. “Student Athlete Product” means any Product or Service that contains or incorporates the names, images, and /or likenesses of one or more Student Athletes, including, without limitation, broadcasts, rebroadcasts, DVDs, video games, video on-demand services, game films and clips, television commercials, films, documentaries, corporate productions, website content, photos, action figures, trading cards, posters and apparel.

19. “Turner” and “You” “Your” or “Your Company” mean Turner Broadcasting System Inc., its predecessors, successors, parents, subsidiaries, departments, divisions, joint ventures, and affiliates, including without limitation any organization or entity that Comcast Corporation manages or controls, together with all present and former directors, officers, employees, agents, representatives or any persons acting or purporting to act on behalf of Comcast Corporation or any of the foregoing. These terms shall specifically include, without being limited to, TBS Networks, Turner Sports, Turner Entertainment Digital, truTV, TNT, TBS,

Turner Sports Interactive, Turner-SI Digital, and Turner Sports and Entertainment Digital Network.

### **INSTRUCTIONS**

1. You shall produce all responsive documents that are in your possession, custody or control. A document shall be deemed to be within your control if you have the right to secure the document or a copy of the document from another person having possession or custody of the document.

2. Pursuant to the Federal Rules of Civil Procedure, you are to produce, for inspection and copying by Plaintiff, original documents as they are kept in the usual course in their original folders, binders, covers, and containers or facsimile thereof, or, with respect to electronic data, in their native format. Alternatively, you shall organize and label the documents to correspond with the categories in these requests. If the original is not in your custody, then a copy thereof, and all non-identical copies which differ from the original or from the other copies produced for any reason, including, without limitation, the making of notes thereon.

3. These requests cover the period January 1, 2000 through the present.

4. These requests are specifically intended to encompass any data or information maintained in any form of computer memory or on computer hard drives, diskettes or back-up tapes, including any word processing or spread sheet programs or electronic mail systems, or in any form of electronic or computer-related storage, whether or not you currently have "hard copy" printouts of the same.

5. All documents that are stored in electronic or computer format shall be



produced on a CD where possible as well as in hard copy where possible. Documents stored in electronic form or format of any kind are to be produced in their original native format, including all “metadata” or other electronic components of the information relating to or comprising such documents in their entirety, including all information concerning the date(s) the document was created, modified or distributed, and the author(s) and recipient(s) of the document. Documents stored in electronic form shall not be converted to any different form, such as paper, “TIF” or “PDF” images.

6. If you claim any form of privilege or any other objection, whether based on statute, common law or otherwise as a ground for not producing any requested document, please furnish a list identifying each document for which the privilege or other objection is claimed together with the following information:

- a. the privilege being asserted;
- b. the person on whose behalf the privilege is asserted;
- c. a precise statement of the facts upon which the claim of privilege is based;
- d. the following information describing each purported privileged document:

- (1) a brief description sufficient to identify the document’s nature, i.e., agreement, letter, memorandum, tape, etc.;
- (2) the subject matter and purpose of the document;
- (3) the date the document was prepared;
- (4) the date the document bears;
- (5) the date the document was sent;

- (6) the date the document was received;
- (7) the identity of the person preparing the document;
- (8) the identity of the person sending the document;
- (9) the names of the persons who received the document;
- (10) the identity of each person to whom the document was sent or was intended to be sent or was intended to have been sent, including all addressees and all recipients of copies;
- (11) the identity of each person to whom the document's contents have been disclosed;
- (12) a precise description of the place where each copy of that document is kept, including the title or description of the file in which said document may be found and the location of such a file; and
- (13) a statement as to whom each identified person represented or purported to represent at all relevant times.

7. If a portion of any document responsive to these requests is withheld under claim of privilege, any non-privileged portion of such document must be produced with the portion claimed to be privileged redacted. Whenever a document is not produced in full or is produced in redacted form, so indicate on the document and state with particularity the reason or reasons it is not being produced in full, and describe to the best of your knowledge, information and belief, and with as much particularity as possible, those portions of the document which are not being produced.

8. You are to produce each document requested herein in its entirety, with attachments and enclosures without deletion or excision (except as qualified by Instructions

5 and 6 above) regardless of whether you consider the entire document to be relevant or responsive to the requests. All pages now stapled or fastened together should be produced, stapled or fastened together, and each document that you cannot legibly copy should be produced in its original form. Documents not otherwise responsive to any of the discovery requests herein must be produced if such documents are attached to a document called for by these requests. Whenever a document or group of documents is removed from a file folder, binder, file drawer, file box, notebook, or other cover or container, a copy of the label of such cover or other container must be attached to the document or group of documents.

9. If a document responsive to these requests was at any time in your possession, custody or control, but is no longer available for production, as to each such document, state the following information:

- a. whether the document is missing or lost;
- b. whether the document has been destroyed;
- c. whether the document has been transferred or delivered to another person, and, if so, to whom the document was transferred and at whose request;
- d. whether the document has been otherwise disposed of; and
- e. a precise statement of the circumstances surrounding the disposition of the document and the date of its disposition.

#### **DOCUMENTS REQUESTED**

1. All organizational charts or other documents sufficient to show the organization of any division, department, unit or subdivision of Turner that had any role with respect to

Licensing Agreements, or the purchase, sale, broadcast, rebroadcast, licensing, marketing or commercial exploitation of any Student Athlete Product.

2. All personnel directories or other documents sufficient to identify all persons within Turner who had any responsibility relating to the purchase, sale, broadcast, rebroadcast, licensing or marketing of any Student Athlete Product.

3. All Licensing Agreements.

4. All Agreements for television broadcast or rebroadcast of games involving NCAA Division I Football Bowl or NCAA Men's Division I Basketball.

5. All documents related to any requested or received release or consent by a Current Student Athlete with respect to the license, sale, broadcast, rebroadcast, use or display of his or her name, image or likeness.

6. All documents related to any requested or received release or consent by a Former Student Athlete with respect to the license, sale, broadcast, rebroadcast, use or display of his or her name, image or likeness.

7. All documents concerning ownership of rights in the name, likeness or image of any Student Athlete.

8. All documents relating to any communication, discussion or meeting between you and any other person(s), concerning the ownership of rights in the name, image or likeness of any Student Athlete or Student Athlete Product.

9. Documents sufficient to identify any Student Athlete Product purchased, sold licensed, marketed, or commercially exploited in any manner, by you.

10. All documents relating to the purchase, broadcast, rebroadcast, licensing, marketing, or commercial exploitation of any Student athlete Product including, but not limited

to, reports of the number of units or dollar volume of Student Athlete Product that you sold or licensed during any financial reporting period.

11. All documents concerning monies paid by or received by you pursuant to, or on account of any Licensing Agreement, including, but not limited to, e-mails, correspondence, memoranda, general ledger entries, financial statements and accounting records

12. Any report, business plan, analysis, budget, forecast, projection, estimate, memoranda, letter or study relating to any Licensing Agreement or to the purchase, sale, broadcast, rebroadcast, licensing, marketing, or commercial exploitation of any Student Athlete Product, including, but not limited to, annual budgets, annual reports, annual plans or reports.

13. All documents provided by you to, or received by you from any Student Athlete, or any person acting on the behalf of the Student Athlete, concerning the purchase, sale, broadcast, rebroadcast, licensing, marketing, or commercial exploitation the name, likeness or image of the Student Athlete, or any Student Athlete Product.

14. All communications concerning all documents provided by you to, or received by you from any Student Athlete, or any person acting on the behalf of a Student Athlete, with respect to the purchase, sale, broadcast, rebroadcast, licensing, marketing, or commercial exploitation the name, likeness or image of the Student Athlete, or any Student Athlete Product.

15. All documents including, but not limited to, membership lists, meeting announcements, agendas, minutes, notes, attendance lists, expense reports, handouts, or correspondence, concerning any licensing-related issues discussed or communicated by any trade association or industry association, including but not limited to (a) National Association of Collegiate Directors of Athletics; (b) International Collegiate Licensing Association; (c) National

Association of Collegiate Marketing Administrators; and (d) College Athletic Business Management Association.

16. All reports, statistical bulletins or other documents that you have submitted to or received from any trade association or industry organization including, but not limited to, those identified above, relating to pricing, sales, licensing, marketing, costs, revenue or profits from any Licensing Agreement or any Student Athlete Product.

17. All documents relating to the "NCAA Vault" created by Thought Equity Motion.

18. All documents relating to Collegiate Images or XOS Digital.

19. All documents relating to IMG College or any IMG entity.

20. All documents relating to the Licensing Resource Group.

21. All documents relating to Strategic Marketing Affiliates.

22. All documents relating to your policy or practice regarding the retention, destruction, disposal or preservation of written documents, including the retention, destruction, disposal or preservation of ESI.

23. All documents containing or referring to written policies, procedures and guidelines related to your computer systems, electronic data, email and electronic media including, but not limited to: (i) Backup tape rotation procedures and schedules; (ii) Electronic data retention, preservation and destruction schedules; (iii) Employee usage policies for company computers and other technology, including PDA's and other hand-held devices; (iv) Company-wide monitoring software; (v) Password, encryption and other security protocols; (vii) Labeling standards for diskettes, CDs, DVDs and other removable media; (viii) Email storage conventions (e.g. limitations on mailbox sizes/storage locations; schedules and logs for storage); (ix) Help features or documentation; (x) Electronic media deployment, allocation and maintenance

procedures for new employees, current employees or departed employees; (xi) Software and hardware upgrades (including patches), as well as who and what organization conducted such upgrades; and (xii) Personal or home computer usage policies for work-related activities.

24. Documents sufficient to identify or describe your electronic data processing systems, software, programs and outputs thereof, including all mainframe systems, linked area networks and word processing, electronic mail, personal information managers, calendar or spreadsheet programs used by you to record, store, compute analyze or retrieve any information relating to any Licensing Agreement or any Student Athlete Product.

25. All documents referencing or referring to the CAC, and/or the present litigation, also known as the *O'Bannon* and/or *Keller* litigation.

26. All documents referring to the “collegiate licensing market,” the “college licensing market,” or any other college-based market.

27. All documents constituting an analysis of any college-based market, such as PowerPoint presentations, memorandums, strategic plans, or white papers.

