

# **EXHIBIT A**

1 James A. Lamberth (Ga. Bar No. 431851)  
TROUTMAN SANDERS LLP  
2 600 Peachtree Street, N.E.  
Suite 5200  
3 Atlanta, Georgia 30308  
Telephone: (404) 885-3000  
4 Facsimile: (404) 885-3900  
Email: [james.lamberth@troutmansanders.com](mailto:james.lamberth@troutmansanders.com)

5  
6 Counsel for Non-Party Turner Broadcasting System, Inc.

7  
8 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
9 **OAKLAND DIVISION**

10 EDWARD O'BANNON, *et al.*,

11 Plaintiffs,

12 v.

13 NATIONAL COLLEGIATE ATHLETIC  
14 ASSOCIATION; COLLEGIATE  
15 LICENSING COMPANY; and  
ELECTRONIC ARTS INC.,

16 Defendants.  
17

Case No. 4:09-CV-3329-CW

**NON-PARTY TURNER BROADCASTING  
SYSTEM, INC.'S BRIEF IN SUPPORT OF  
DEFENDANT NCAA'S ADMINISTRATIVE  
MOTION TO SEAL CONFIDENTIAL TRIAL  
EXHIBITS**

Judge: Hon. Claudia Wilken

18 Non-party Turner Broadcasting System, Inc. ("TBS, Inc.") respectfully submits this brief  
19 in support of the Defendant National Collegiate Athletic Association's ("NCAA") Administrative  
20 Motion to Seal Confidential Trial Exhibits. Specifically, TBS, Inc. seeks to prevent the public  
21 disclosure of the terms of two highly confidential agreements between TBS, Inc. and the NCAA  
22 that the parties in the above-captioned case have indicated they may seek to admit in whole or in  
23 part during the trial of this matter: (1) the Multi-Media Agreement Between TBS, Inc., CBS  
24 Broadcasting Inc. ("CBS"), and the NCAA dated April 22, 2010 (the "Multimedia Agreement")  
25 and (2) the Digital Rights Agreement between Turner Sports Interactive, Inc. and the NCAA  
26 dated August 23, 2010 (the "Digital Rights Agreement"). Both of these agreements were  
27 designated "Highly Confidential – Outside Counsel Only" pursuant to the protective order  
28 entered in this case, and the parties previously agreed to redact the highly confidential provisions

1 of these agreements when relying on them for their claims or defenses. This Court previously  
2 recognized that portions of both of these agreements contain competitively sensitive information  
3 and that public disclosure of the full terms of the agreement would harm the parties to the  
4 agreements, including TBS, Inc. *See* Case No. 09-CV-1967-CW, ECF No. 576 at 4-5; *id.*, ECF  
5 No. 626 at 8; *id.*, ECF No. 645 at 3-4. TBS, Inc. will be irreparably injured if the highly  
6 confidential parts of these agreements are admitted into the public record.

7 It is not apparent how any of the redacted terms of the Multi-Media Agreement or the  
8 Digital Rights Agreement are relevant to the issues that will be litigated at trial. This is illustrated  
9 by the fact that when the parties previously relied on these agreements in this case, they used  
10 excerpts of these agreements in which most of the substantive terms were omitted or redacted.  
11 Despite this fact, counsel for TBS, Inc. understands that the parties have been unable to reach an  
12 agreement to use the previously redacted versions of these agreements already in the record as  
13 exhibits at trial. Given the highly confidential nature of the Multi-Media Agreement and the  
14 Digital Rights Agreement and the limited relevance they have in these proceedings, TBS, Inc.  
15 respectfully requests that the Court order the parties to rely on the previously redacted versions of  
16 the Multi-Media Agreement and the Digital Rights Agreement already on file in the record or, in  
17 the alternative, to admit the terms of the Digital Rights Agreement under seal so as to protect the  
18 competitive interests of TBS, Inc., which is not a party to this litigation.

19 **A. The Multi-Media Agreement**

20 The Multi-Media Agreement is the current agreement between TBS, Inc., CBS, and the  
21 NCAA relating to the distribution rights for the NCAA Division I Men's Basketball  
22 Championship. *See* Decl. of Tina K. Shah dated June 9, 2014 (filed contemporaneously with this  
23 brief) ("Shah Decl."), ¶ 5. The Multi-Media Agreement was heavily negotiated and is considered  
24 highly confidential by TBS, Inc. *Id.*, ¶¶ 7, 9. The NCAA designated the Multi-Media Agreement  
25 as "Highly Confidential – Outside Counsel Only" under the terms of the protective order in this  
26 case. *See* Decl. of Robert J. Wierenga in Supp. of Antitrust Pls.' Mot. to Seal (Case No. 09-CV-  
27 1967, ECF No. 539), ¶ 64.

28 Both the Antitrust Plaintiffs and the NCAA previously have relied on heavily excerpted

1 and redacted versions of the Multi-Media Agreement. In support of their motion for class  
2 certification, the Antitrust Plaintiffs filed an exhibit containing excerpts of the Multi-Media  
3 Agreement with redactions that disclosed only the table of contents and selected provisions on  
4 four pages out of the forty-seven page agreement. *See* Case No. 09-CV-1967, ECF No. 655. The  
5 Court recognized that these redactions covered “competitively sensitive portions” of the Multi-  
6 Media Agreement and agreed that they “balance[d] the public interest in judicial records against  
7 the interests of the NCAA and nonparties Turner and CBS in protecting their competitive  
8 standing.” *See id.*, ECF No. 626 at 8. The NCAA also filed a redacted version of an excerpt from  
9 the Multi-Media Agreement in support of its motion for summary judgment, containing only one  
10 page from the Multi-Media Agreement. *See id.*, ECF No. 931-8. In ruling on the NCAA’s  
11 motion to seal the redacted provisions in this excerpt from the Multi-Media Agreement, the Court  
12 agreed that paragraph 13.1 of the agreement “could be used by competing broadcasters to gain a  
13 competitive advantage over TBS in future negotiations for broadcast distribution rights.” *Id.*,  
14 ECF No. 989 at 11.

15 **B. The Digital Rights Agreement**

16 The Digital Rights Agreement is the current agreement between the NCAA and Turner  
17 Sports Interactive, Inc., a subsidiary of TBS, Inc., relating to the distribution of certain content  
18 across digital platforms. *See* Shah Decl., ¶ 4. The redacted provisions of the Digital Rights  
19 Agreement contain highly confidential information. *Id.*, ¶ 5. The NCAA designated the Digital  
20 Rights Agreement as “Highly Confidential – Outside Counsel Only” under the terms of the  
21 protective order in this case. *See* Decl. of Robert J. Wierenga in Supp. of Antitrust Pls.’ Mot. to  
22 Seal (Case No. 09-CV-1967, ECF No. 539), ¶ 31.

23 The Antitrust Plaintiffs previously relied on the redacted version of the Digital Rights  
24 Agreement. Specifically, in support of their motion for class certification, the Antitrust Plaintiffs  
25 filed an exhibit that redacted the key provisions of the Digital Rights Agreement. *See* Case No.  
26 09-CV-1967-CW, ECF No. 653. The Court found that there was good cause to redact these  
27 provisions to protect the interests of TBS, Inc. *See id.*, ECF No. 645 at 3-4.  
28

1           **C.     Public Disclosure of the Redacted Terms of the Multi-Media Agreement and**  
2           **the Digital Rights Agreement Will Cause Competitive Harm to TBS, Inc.**

3           TBS, Inc. is in the business of managing and distributing content on multiple television  
4 programming services and other platforms. *See* Shah Decl., ¶ 3. TBS, Inc. is also in the business  
5 of managing and operating digital businesses, including distributing content on digital platforms  
6 and creating applications and services for those platforms. *See id.*, ¶ 4. TBS, Inc. frequently  
7 negotiates rights agreements with third party content providers in the sports, entertainment, and  
8 news industries, which provide TBS, Inc. and its subsidiaries and affiliates with rights to manage  
9 and distribute such content on various television programming services and platforms. *Id.*, ¶ 3.  
10 TBS, Inc. also frequently negotiates digital rights agreements with third party content providers in  
11 the sports, entertainment, and news industries, which provide TBS, Inc. and its subsidiaries and  
12 affiliates with rights to distribute such content on behalf of such third parties across digital  
13 platforms (e.g., NBA.com, PGA.com, BleacherReport.com). *Id.*, ¶ 4. TBS, Inc. competes with a  
14 number of different entities in its effort to obtain rights to manage and distribute content across its  
15 television programming services and digital platforms. *Id.*, ¶ 8. Many of the terms of the rights  
16 agreements that TBS, Inc. enters into with content providers are heavily negotiated. *Id.*, ¶ 9. In  
17 particular, the redacted terms of the Multi-Media Agreement and the Digital Rights Agreement  
18 were heavily negotiated, and their contents are competitively sensitive to TBS, Inc. *Id.*, ¶¶ 7, 9.  
19 TBS, Inc. takes steps to ensure that the Multi-Media Agreement and the Digital Rights  
20 Agreement are not disclosed outside of a group of persons within TBS, Inc. who have a business  
21 reason to know their contents. *Id.*, ¶ 7.

22           If the heavily-negotiated provisions of the Multi-Media Agreement are publicly disclosed,  
23 the terms to which TBS, Inc. agreed will be available to both those entities with which TBS, Inc.  
24 negotiates for distribution rights and those entities with which TBS, Inc. competes to obtain  
25 distribution rights. *Id.*, ¶ 11. Knowledge of those terms could then be used strategically to TBS,  
26 Inc.'s detriment by a content provider in its negotiations with TBS, Inc. or by a competitor in its  
27 efforts to obtain the same distribution rights for which TBS, Inc. is negotiating. *Id.* If the content  
28 of these redacted provisions is disclosed to the public, TBS, Inc. is likely to be harmed in its

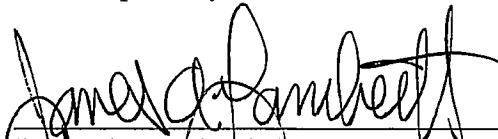
1 efforts to negotiate future rights agreements. *Id.*

2 Similarly, if the heavily-negotiated provisions of the Digital Rights Agreement are  
3 publicly disclosed, the terms to which TBS, Inc. agreed will be available to both those entities  
4 with which TBS, Inc. negotiates for digital rights and those entities with which TBS, Inc.  
5 competes to obtain digital rights. *Id.*, ¶ 13. Knowledge of those terms could then be used  
6 strategically to TBS, Inc.'s detriment by a content provider in its negotiations with TBS, Inc. or  
7 by a competitor in its efforts to obtain the same digital rights for which TBS, Inc. is negotiating.  
8 *Id.* If the content of these redacted provisions is disclosed to the public, TBS, Inc. is likely to be  
9 harmed in its efforts to negotiate future rights agreements. *Id.*

10 **CONCLUSION**

11 Public disclosure of the terms of the Multi-Media Agreement and the Digital Rights  
12 Agreement will hurt TBS, Inc.'s ability to negotiate future contracts for the distribution of sports  
13 content over television programming services and digital platforms. Accordingly, TBS, Inc.  
14 respectfully requests that the Court order the parties to rely on the previously redacted versions of  
15 the Multi-Media Agreement and the Digital Rights Agreement already on file in the record. In  
16 the alternative, TBS, Inc. requests that the terms of the Multi-Media Agreement and the Digital  
17 Rights Agreement remain under seal so that they will not be publicly disclosed.

18 This 9th day of June, 2014.

19   
20 \_\_\_\_\_  
21 James A. Lamberth (Ga. Bar No. 431851)  
22 TROUTMAN SANDERS LLP  
23 600 Peachtree Street, N.E.  
24 Suite 5200  
25 Atlanta, Georgia 30308  
26 Telephone: (404) 885-3000  
27 Facsimile: (404) 885-3900  
28 james.lamberth@troutmansanders.com

*Counsel for Non-Party Turner Broadcasting  
System, Inc.*

22383784v4