

# **EXHIBIT B**

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CBS BROADCASTING, INC.

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION

11 EDWARD O'BANNON, et al.,

Plaintiff,

v.

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

16 Defendants.

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

**NON-PARTY CBS BROADCASTING  
INC.'S BRIEF IN SUPPORT OF  
DEFENDANT NATIONAL  
COLLEGIATE ATHLETIC  
ASSOCIATION'S  
ADMINISTRATIVE MOTION TO  
SEAL CONFIDENTIAL TRIAL  
EXHIBITS**

Honorable Claudia Wilken

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18 Non-party CBS Broadcasting Inc. ("CBS") respectfully submits this brief in support of  
19 Defendant National Collegiate Athletic Association's ("NCAA") Administrative Motion to Seal  
20 Confidential Trial Exhibits. In particular, CBS seeks to prevent the public disclosure of the  
21 terms of a highly confidential agreement, the Multi-Media Agreement between Turner  
22 Broadcasting System, Inc. ("TBS"), CBS and the NCAA, dated April 22, 2010 (the "Multi-  
23 Media Agreement"). The parties have indicated they may seek to admit the Multi-Media  
24 Agreement, in whole or in part, in the trial in this matter as Plaintiffs' proposed Trial Exhibit  
25 400. The NCAA designated the Multi-Media Agreement as "Highly Confidential – Outside  
26 Counsel Only" under the terms of a protective order entered in this case.

27 CBS will be irreparably injured if the highly confidential portions of the Multi-Media  
28 Agreement are disclosed in the public record, because such disclosure would put CBS at a

1 competitive disadvantage in future negotiation efforts. Indeed, the Court previously recognized  
2 that portions of this agreement contained competitively sensitive information, public disclosure  
3 of which would harm the parties to the agreement, including CBS. *See* Case No. 09-CV-1967-  
4 CV, Dkt. No. 626 at 8. Given the highly confidential nature of the Multi-Media Agreement and  
5 the limited relevance of the redacted terms to the proceedings in this case, CBS respectfully  
6 requests that the Court order that the parties rely on the previously redacted version of the  
7 Multi-Media Agreement already on the record. In the alternative, CBS respectfully requests  
8 that the Court order that the trial exhibit be kept under seal and that appropriate measures be  
9 taken during trial to prevent disclosure of these terms, so as to protect the competitive interests  
10 of non-party CBS.

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

12 The Multi-Media Agreement is a current agreement between CBS, TBS and the NCAA  
13 relating to the distribution rights for the NCAA Division I Men’s Basketball Championship.  
14 *See* Declaration of Daniel Weinberg, dated June 9, 2014 (filed contemporaneously with this  
15 brief) (“Weinberg Decl.”) at ¶ 4. The Multi-Media Agreement was heavily negotiated and CBS  
16 takes steps to ensure that it is kept highly confidential by CBS. *Id.* at ¶ 7-8.

17 CBS understands that the parties previously have relied on heavily excerpted and  
18 redacted versions of the Multi-Media Agreement. In support of their motion for class  
19 certification, the Antitrust Plaintiffs filed an exhibit containing excerpts of the Multi-Media  
20 Agreement with redactions that disclosed only the table of contents and selected provisions on  
21 four pages out of the forty-seven page agreement. *See* Case No. 09-CV-1967, Dkt. No. 655.  
22 The Court recognized that these redactions covered “competitively sensitive portions” of the  
23 Multi-Media Agreement and agreed that they “balance[d] the public interest in judicial records  
24 against the interests of the NCAA and nonparties Turner and CBS in protecting their  
25 competitive standing.” *See id.*, Dkt. No. 626 at 8. The NCAA also filed a redacted version of  
26 an excerpt from the Multi-Media Agreement in support of its motion for summary judgment,  
27 containing only one page from the Multi-Media Agreement. *See id.*, Dkt. No. 931-8. In ruling  
28 on the NCAA’s motion to seal the redacted provisions in this excerpt from the Multi-Media

1 Agreement, the Court agreed that paragraph 13.1 of the agreement could be used by competing  
2 broadcasters to gain a competitive advantage in future negotiations. *Id.*, Dkt. No. 989 at 11.

3 **B. Public Disclosure of the Redacted Terms of the Multi-Media Agreement**  
4 **Will Cause Competitive Harm to CBS**

5 The nonpublic provisions of the Multi-Media Agreement contain competitively  
6 sensitive information, including content licensing terms and licensing rights obtained for  
7 consideration that are highly sensitive to CBS. Weinberg Decl. at ¶ 7. CBS competes with a  
8 number of entities to obtain rights to manage and distribute content, and takes steps to ensure  
9 that the Multi-Media Agreement and the highly confidential information therein are not  
10 disclosed outside of a group of persons within CBS who have a business reason to know their  
11 contents. *Id.* at ¶ 7-8. Public disclosure of such information could benefit third parties who  
12 wish to participate in future negotiations for the licensing and distribution of NCAA content,  
13 including competitors of CBS. In particular, the redacted terms of the Multi-Media Agreement  
14 were heavily negotiated, and if the terms therein are publicly disclosed, entities with which  
15 CBS negotiates for rights, and entities with which CBS competes to obtain rights, will be able  
16 to use knowledge of those terms to the detriment of CBS in its efforts to negotiate future rights  
17 agreements. *Id.* at ¶ 8.

18 In addition, the Multi-Media Agreement has an express confidentiality clause, providing  
19 that no party may distribute a public statement or disclose the terms of the Agreement “without  
20 the prior approval of all other Parties to the Agreement.”

21 **CONCLUSION**

22 CBS respectfully requests that the Court order the parties rely on the previously  
23 redacted versions of the Multi-Media Agreement already on the record, or in the alternative,  
24 requests that the Multi-Media Agreement remain under seal to prevent public disclosure of  
25 sensitive business information, and that appropriate measures be taken during trial to prevent  
26 disclosure of these terms.

1 Dated: June 9, 2012  
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Respectfully submitted,  
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