

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 EDWARD O'BANNON, et al.

No. C 09-3329 CW

4 Plaintiffs,

ORDER GRANTING IN  
PART MOTIONS TO  
SEAL (Docket Nos.  
177, 178)

5 v.

6 NATIONAL COLLEGIATE ATHLETIC  
7 ASSOCIATION; ELECTRONIC ARTS  
8 INC.; and COLLEGIATE LICENSING  
COMPANY,

9 Defendants.

10 \_\_\_\_\_ /

11 On June 4, 2014, non-parties Conference USA (CUSA) and the  
12 Big 12 Conference each moved to seal certain trial exhibits and to  
13 close the courtroom during testimony concerning those exhibits.  
14 Plaintiffs oppose both motions. After considering the  
15 conferences' submissions and Plaintiffs' opposition, the Court  
16 grants the motions in part and denies them in part.

17 DISCUSSION

18 Trial exhibits may only be sealed for compelling reasons.  
19 Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1178-79 (9th  
20 Cir. 2006). "The party requesting the sealing order must  
21 articulate compelling reasons supported by specific factual  
22 findings that outweigh the general history of access and the  
23 public policies favoring disclosure, such as the public interest  
24 in understanding the judicial process." Id. at 1178-79 (internal  
25 citations and alterations omitted). "In turn, the court must  
26 conscientiously balance the competing interests of the public and  
27 the party who seeks to keep certain judicial records secret." Id.  
28 at 1179 (internal citations and alterations omitted). "The mere

1 fact that the production of records may lead to a litigant's  
2 embarrassment, incrimination, or exposure to further litigation  
3 will not, without more, compel the court to seal its records."  
4 Id. (citing Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d  
5 1122, 1136 (9th Cir. 2003)). Nor will the moving party's  
6 reference to a "stipulation or protective order that allows a  
7 party to designate certain documents as confidential." Civil L.R.  
8 79-5(d)(1)(A).

9 Here, CUSA and the Big 12 move to seal portions of certain  
10 broadcast licensing agreements, related term sheets, a 2009  
11 memorandum written by a conference commissioner, and a 2009 e-mail  
12 exchange between conference and university administrators. The  
13 conferences assert that these documents are sealable because they  
14 contain trade secrets and other proprietary information.

15 The conferences' sealing requests are overbroad. They seek  
16 to seal hundreds of pages of licensing agreements, only some of  
17 which actually contain potentially sensitive information. Indeed,  
18 some portions of these agreements became public months ago when  
19 they were submitted as supporting exhibits in connection with  
20 other motions filed in this case. See, e.g., Docket No. 811-4 in  
21 case no. 09-1967 (opening page of licensing agreement between CUSA  
22 and CSTV Networks); Docket No. 808-15 in case no. 09-1967 (opening  
23 two pages of licensing agreement between Big 12, ABC, and ESPN).  
24 The conferences have not presented any compelling reasons for  
25 sealing these licensing agreements in their entirety nor have they  
26 identified compelling reasons for sealing any portions of the  
27 memorandum or e-mail exchange.  
28

1 That said, certain portions of the licensing agreements are  
2 sealable. In particular, the specific dollar amounts mentioned in  
3 the agreements may be sealed because their public disclosure could  
4 hinder the conferences' ability to negotiate licensing agreements  
5 with broadcasters in the future. The parties shall therefore  
6 refrain from referring to these dollar amounts during the trial  
7 and redact these dollar amounts from any exhibits submitted to the  
8 Court or displayed on the courtroom monitors. All other  
9 information contained in the broadcasting licenses shall remain  
10 unsealed. The memorandum and e-mail exchange shall also remain  
11 unsealed.

12 CONCLUSION

13 For the reasons set forth above, CUSA's motion to seal  
14 (Docket No. 177) and the Big 12's motion to seal (Docket No. 178)  
15 are GRANTED in part and DENIED in part. The parties shall refrain  
16 from referring to the sealable information contained in the  
17 conferences' licensing agreements and displaying any sealable  
18 information on the courtroom monitors during the trial. The  
19 courtroom will not be closed during any discussion or testimony  
20 concerning these exhibits.

21 IT IS SO ORDERED.

22  
23 Dated: 6/10/2014

  
CLAUDIA WILKEN  
United States District Judge