

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

5 Attorneys for Non-Party Turner Broadcasting System, Inc.

6  
 7 **UNITED STATES DISTRICT COURT**  
 8 **NORTHERN DISTRICT OF CALIFORNIA**  
 9 **OAKLAND DIVISION**

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

11 Plaintiffs,

12 v.

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

15 Defendants.

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

**SECOND DECLARATION OF TINA K.  
 SHAH IN SUPPORT OF DEFENDANT  
 NCAA'S ADMINISTRATIVE MOTION TO  
 SEAL CONFIDENTIAL TRIAL EXHIBITS**

Judge: Honorable Claudia Wilken

16  
 17  
 18 I, TINA K. SHAH, declare and state as follows:

19 1. I am an Assistant General Counsel with Turner Broadcasting System, Inc. ("TBS,  
 20 Inc."). I am over 18 years of age and competent to give this declaration. The following facts are  
 21 based on my personal knowledge.

22 2. This declaration supplements the declaration I submitted on June 9, 2014 in  
 23 support of the Defendant National Collegiate Athletic Association ("NCAA")'s Administrative  
 24 Motion to Seal Confidential Trial Exhibits. This second declaration responds to the Plaintiffs'  
 25 opposition to the NCAA's motion to seal. In their opposition brief, Plaintiffs identify specific  
 26 provisions of the the Multi-Media Agreement between TBS, Inc., CBS Broadcasting Inc.  
 27 ("CBS"), and the NCAA dated April 22, 2010 (the "Multi-Media Agreement") and the the Digital  
 28 Rights Agreement between Turner Sports Interactive, Inc. and the NCAA dated August 23, 2010

SECOND DECLARATION OF TINA K. SHAH IN  
 SUPPORT OF NCAA'S MOTION TO SEAL  
 CASE NO. 4:09-CV-3329-CW

1 (the “Digital Rights Agreement”) that they seek to admit on the public record in this case. I  
2 understand that the Plaintiffs are not seeking to disclose any other previously sealed or redacted  
3 provisions of the Multi-Media Agreement or the Digital Rights Agreement in the versions of  
4 those agreements used at trial. As I explained in my first declaration dated June 9, 2014, those  
5 redacted provisions of the Multi-Media Agreement and the Digital Rights Agreement were  
6 heavily negotiated by TBS, Inc. and/or its subsidiaries or affiliates and contain competitively  
7 sensitive information, and they should remain redacted from any publicly filed versions of those  
8 agreements. In this declaration, I focus specifically on certain provisions of the Multi-Media  
9 Agreement on which the parties have been unable to agree with respect to disclosure.

10 3. Specifically, the “Definitions” in Section 1 of the Multi-Media Agreement include  
11 certain terms that are specific to the Multi-Media Agreement and which were heavily negotiated  
12 by the parties and contain competitively sensitive information. In particular, the terms “(g)  
13 Broadcaster Multi-Sport Package” and “(h) Broadcaster Platform” are non-standard definitions  
14 that describe aspects of the scope of the broadcasting rights and restrictions on those rights that  
15 were heavily negotiated by the parties. Disclosure of these definitions would reveal  
16 competitively sensitive information to content providers and potential competitors and cause  
17 competitive harm to TBS, Inc.

18 4. The “Broadcaster Rights and Restrictions” provisions in Section 2 of the Multi-  
19 Media Agreement govern the scope of the broadcasters’ rights with respect to the telecast and  
20 distribution of the NCAA Division I men’s basketball tournament. These provisions are not  
21 standard contract provisions and were heavily negotiated by the parties, and their contents are  
22 competitively sensitive to TBS, Inc. Disclosure of these specific terms will harm TBS, Inc. in  
23 future contract negotiations for the distribution of similar sports content. Specifically, if the  
24 provisions in Section 2 of the Multi-Media Agreement are publicly disclosed, other content  
25 providers will use their knowledge of these provisions in their negotiations with TBS, Inc.,  
26 including by potentially demanding similar provisions in their own rights agreements with TBS,  
27 Inc. Similarly, TBS, Inc.’s competitors will use their knowledge of these provisions to offer  
28 similar provisions in their negotiations with content providers, undermining TBS, Inc.’s

1 competitive position.

2           5.       The “Promotional Inventory” provisions in Section 9.5 of the Multi-Media  
3 Agreement govern promotional obligations, and they represent an important part of the value  
4 provided in the agreement. These terms are not standard terms and were heavily negotiated by  
5 the parties. Disclosure of these specific terms concerning promotional obligations will harm  
6 TBS, Inc. in future contract negotiations for the distribution of similar sports content.  
7 Specifically, if the provisions in Section 9.5 of the Multi-Media Agreement are publicly  
8 disclosed, other content providers will use their knowledge of these provisions in their  
9 negotiations with TBS, Inc., including by potentially demanding similar provisions in their own  
10 rights agreements with TBS, Inc. Similarly, TBS, Inc.’s competitors will use their knowledge of  
11 these provisions in their negotiations with content providers, undermining TBS, Inc.’s  
12 competitive position.

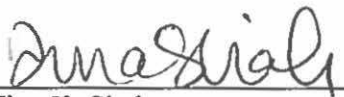
13           6.       Exhibit B to the Multi-Media Agreement (“NCAA Royalties”) describes the  
14 amount of payments made by the parties and the schedule upon which those payments are made.  
15 These issues were heavily negotiated by the parties. Although the Plaintiffs contend that the  
16 NCAA has publicly disclosed the total amount of the payments it is owed under the Multi-Media  
17 Agreement, the payment schedule is variable over time and the schedule of payments is  
18 competitively sensitive information for TBS, Inc. Disclosure of the payment schedule will harm  
19 TBS, Inc. in future contract negotiations for the distribution of similar sports content.  
20 Specifically, if the terms of Exhibit B to the Multi-Media Agreement are publicly disclosed, other  
21 content providers will learn what payment structure TBS, Inc. was willing to accept and use that  
22 knowledge to their advantage when negotiating the payment terms of their own rights agreements  
23 with TBS, Inc. Similarly, TBS, Inc.’s competitors will use their knowledge of the payment  
24 structure to undermine TBS, Inc.’s competitive position.

25           7.       While the NCAA also has sought to protect the Multi-Media Agreement and the  
26 Digital Rights Agreement from public disclosure, TBS, Inc., as a telecaster, has different  
27 competitive interests than the NCAA and would suffer different harm than the NCAA if the  
28 competitively sensitive provisions of those agreements are disclosed.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on June 11, 2014.

  
Tina K. Shah