

## **APPENDIX**

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**APPENDIX A**

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RECOMMENDED FOR PUBLICATION  
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 22a0217p.06

**UNITED STATES COURT OF APPEALS**

**FOR THE SIXTH CIRCUIT**

**No. 21-6088**

**[Filed: September 21, 2022]**

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JOE HAND PROMOTIONS, INC.,	)
<i>Plaintiff-Appellant,</i>	)
	)
<i>v.</i>	)
	)
JAMES H. GRIFFITH, JR., dba CJ's	)
Sports Bar; LISA LESLEY,	)
<i>Defendants-Appellees.</i>	)
	)

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Appeal from the United States District Court for the  
Eastern District of Tennessee at Knoxville.  
No. 3:20-cv-00382—Travis Randall McDonough,  
District Judge.

Argued: August 10, 2022

Decided and Filed: September 21, 2022

## App. 2

Before: CLAY, ROGERS, and STRANCH, Circuit  
Judges.

### COUNSEL

**ARGUED:** Jamie King, JAMIE KING, P.C., Kingwood, Texas, for Appellant. John T.D. Bathke, PHILLIPS & BATHKE, P.C., Chicago, Illinois, for Appellees. **ON BRIEF:** Brian L. Yoakum, EVANS PETREE, PC, Memphis, Tennessee, for Appellant. John T.D. Bathke, PHILLIPS & BATHKE, P.C., Chicago, Illinois, Jonathan LA Phillips, PHILLIPS & BATHKE, P.C., Peoria Heights, Illinois, for Appellees.

### OPINION

CLAY, Circuit Judge. Plaintiff Joe Hand Promotions, Inc. (“JHP”) appeals the district court’s grant of summary judgment in favor of Defendants James H. Griffith and Lisa Lesley (collectively, “Defendants”) in this copyright infringement suit brought under the Copyright Act, 17 U.S.C. §§ 106, 501. *See Joe Hand Promotions, Inc. v. Griffith*, No. 20-cv-382, 2021 WL 4899466, at \*5 (E.D. Tenn. Oct. 21, 2021). For the reasons set forth below, we **REVERSE** the district court’s order granting Defendants’ motion for summary judgment and **REMAND** with instructions to grant Plaintiff’s motion for partial summary judgment as to copyright standing and for further proceedings consistent with this opinion.

## **I. BACKGROUND**

### **A. Factual Background**

On August 26, 2017, a world famous boxer, Floyd Mayweather, and a famous mixed martial arts fighter, Conor McGregor, entered the ring to face one another in what has become one of the most legendary fights of all time (“the Fight”). See John Eligon & Victor Mather, *Mayweather v. McGregor: Highlights From Every Round*, N.Y. Times, Aug. 26, 2017. Showtime, Inc. produced the Fight, and it allowed individual viewers to livestream the Fight from Showtime’s website. *Joe Hand Promotions, Inc.*, 2021 WL 4899466, at \*1. Showtime charged individuals \$99.99 for these personal use licenses (i.e., to watch the Fight on a personal device in a non-commercial setting). Showtime also partnered with event promoters to issue commercial streaming licenses to public establishments (i.e., bars, movie theaters, and restaurants). On June 20, 2017, Showtime contracted with Mayweather Promotions, LLC (“Mayweather”) to “arrange for, present and promote” the Fight on August 26, 2017. (Distribution Agreement, R. 40-4, Page ID #348.) In this contract (the “Distribution Agreement”), Showtime “grant[ed] to [Mayweather] exclusively, the right to exhibit and distribute, and authorize the exhibition and distribution of, the [Fight] in the Territory live via the Internet.” (*Id.* at Page ID #357.) Defendants erroneously denied the existence of this contract between Showtime and Mayweather. (See Defs. Br. at

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14 (“[T]here are no agreements in the record between Showtime and [Mayweather].”).)<sup>1</sup>

Mayweather, in turn, enlisted smaller distributors to go out and issue commercial licenses and collect fees. JHP was one of these distributors. On August 1, 2017, JHP entered into a Commercial Licensing Agreement with Mayweather. In that contract, Mayweather gave JHP “the sole and exclusive third party license . . . to distribute . . . and authorize the public exhibition of the [Fight]” in a designated geographic area. (*Id.*) Accordingly, in the weeks leading up to the Fight, JHP promoted the event, sold commercial licenses to broadcast the event at bars and restaurants, and collected fees from those establishments. JHP charged hefty commercial licensing fees to air the Fight, ranging from \$3,700 to \$15,700 based on the establishment’s occupancy limits.

The Fight was not registered as a copyrighted work when it first aired on August 26, 2017. Around two months later, Showtime applied to register its copyright in the Fight, which the United States Copyright Office issued on October 26, 2017 (the “Copyright Registration”). The Copyright Registration listed Showtime as the sole author and claimant of the copyright. On November 21, 2017, three months after the Fight but less than a month after the Copyright Registration, Showtime signed a contract with JHP (the “Copyright Agreement”). Although not a party to the Copyright Agreement, Mayweather also signed the

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<sup>1</sup> Defendants filed a motion following oral argument seeking to rescind their contention that this agreement did not exist.

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agreement. The Copyright Agreement gave JHP “the exclusive right to distribute and publicly perform the [Fight] live on August 26, 2017.” (Copyright Agreement, R. 40-2, Page ID #262.) It further gave JHP “the exclusive right . . . to take enforcement actions with respect to any unauthorized exploitation of the Commercial Rights in the [Fight].” (*Id.*) Specifically, Showtime gave JHP “the right and standing, as exclusive assignee, to assert independent claims, solely in the name of JH[P], for copyright infringement under the copyright laws of the United States . . . solely relating to the unauthorized exploitation of the Commercial Rights in the [Fight].” (*Id.* at Page ID #263.) That is, Showtime gave JHP the exclusive right to sue anyone who livestreamed the Fight on August 26, 2017, without paying the required licensing fee. Accordingly, JHP began suing several restaurants and bars that aired the Fight without paying. *See, e.g., Joe Hand Promotions, 2021 WL 4899466, at \*1.*

At this stage, Defendants do not dispute that they livestreamed the Fight on August 26, 2017, on a TV screen at their bar, CJ’s Bar & Grill (“CJ’s”), without purchasing a commercial license. As a commercial establishment, CJ’s was required to pay a fee based on its occupancy limits in order to legally air the Fight on the bar’s TVs. Rather than pay for a commercial license, Defendants paid around \$99 for a personal license using Showtime’s website. Defendants then used an HDMI cable to connect a personal device to the TV at CJ’s and broadcast the Fight throughout the bar. Defendants advertised the event on CJ’s Facebook page, and they charged patrons \$6 for entry to the bar to watch the Fight.

## B. Procedural Background

After discovering that Defendants livestreamed the Fight without paying for a commercial license, JHP sued them for copyright infringement under the Copyright Act, 17 U.S.C. §§ 106, 501.<sup>2</sup> After discovery, the parties filed cross motions for summary judgment. The district court granted Defendants' motion after finding that JHP did not own the copyright to the Fight on the day it aired. *See Joe Hand Promotions*, 2021 WL 4899466, at \*2. The district court found that the Copyright Agreement between Showtime purported to give JHP an exclusive right in the copyrighted work retroactively. *See id.* at \*5. However, the district court concluded that such retroactive transfers were essentially worthless. *See id.* It therefore concluded that the Copyright Agreement merely gave JHP the right to sue for past copyright infringement. *See id.* at \*4–\*5. According to the district court, to have a cause of action under Copyright Act, plaintiffs must own some exclusive right beyond the right to sue. *Id.* at \*4 (citing *John Wiley & Sons, Inc. v. DRK Photo*, 882 F.3d 394 (2d Cir. 2018)). Believing that Showtime merely gave JHP a right to sue, the district court concluded that JHP did not have a cause of action for copyright infringement because it “did not own the copyright to the [Fight] when it was displayed at [CJ’s].” *Id.* at \*2. The court therefore granted Defendants' motion for

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<sup>2</sup> JHP also brought a claim for internet piracy under the Communications Act of 1934, 47 U.S.C. §§ 553, 605. This claim was dismissed by the district court before summary judgment, and it is not at issue in this appeal. *See Joe Hand Promotions*, 2021 WL 4899466, at \*2.

summary judgment. *Id.* at \*5. JHP timely appealed and this Court heard oral arguments on August 10, 2022.

## II. DISCUSSION

### A. Standard of Review

“The Court reviews a district court’s grant of summary judgment de novo.” *Clabo v. Johnson & Johnson Health Care Sys., Inc.*, 982 F.3d 989, 992 (6th Cir. 2020) (citing *Rocheleau v. Elder Living Const., LLC*, 814 F.3d 398, 400 (6th Cir. 2016)). Summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A dispute of a material fact is genuine so long as ‘the evidence is such that a reasonable jury could return a verdict for the non-moving party.’” *Kirilenko-Ison v. Bd. of Edu. of Danville Indep. Schs.*, 974 F.3d 652, 660 (6th Cir. 2020) (quoting *Jackson v. VHS Detroit Receiving Hosp., Inc.*, 814 F.3d 769, 775 (6th Cir. 2016)).

### B. Analysis

The issue in this appeal is whether JHP has a cause of action against Defendants for livestreaming the Fight without a commercial license. The Copyright Act creates a federal cause of action for copyright infringement. *See* 17 U.S.C. § 501. It provides that “[t]he legal or beneficial owner of an exclusive right under a copyright is entitled . . . to institute an action for any infringement of that particular right.” *Id.* § 501(b). Therefore, to sue Defendants for copyright infringement, JHP must own some interest in the copyright. *See Bridgeport Music. WM Music Corp.*, 508

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F.3d 394, 398 (6th Cir. 2007) (“Copyright infringement has two elements: ‘(1) ownership of a valid copyright; and (2) copying of constituent elements of the work that are original.’” (quoting *Stromback v. New Line Cinema*, 384 F.3d 283, 293 (6th Cir. 2004))).

The author of a protected work is considered the original owner of a copyright. 17 U.S.C. § 201(a). The owner holds certain “exclusive rights” in the work. *Id.* § 106. Those “exclusive rights” are listed in § 106 of the Copyright Act, and they include the right to reproduce, distribute, perform, and display the work. *Id.* There is some dispute over whether the list of exclusive rights extends beyond those enumerated in § 106. Relevant to this appeal, the Second and Ninth Circuits have held that possessing a bare right to sue, without any additional exclusive right, does not amount to ownership of a copyrighted work. *See John Wiley*, 882 F.3d at 410 (“[T]he [Copyright] Act does not permit a plaintiff assignee to bring a claim for infringement without also having or having had a legal or beneficial ownership in some exclusive right under part of the allegedly infringed copyright.”); *Silvers v. Sony Pictures Ent., Inc.*, 402 F.3d 881, 883 (9th Cir. 2005) (same). This Court has not weighed in on this issue.

The exclusive rights in a copyrighted work are freely alienable. “[T]he ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law.” 17 U.S.C. § 201(d)(1). Each exclusive right can be transferred individually, and each right can be further subdivided and owned separately by different parties. *Id.* § 201(d)(1)–(2); *see also id.* § 101 (defining “[c]opyright

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owner” as “the owner of that *particular* right” (emphasis added)). Owners may transfer their exclusive rights “by any means of conveyance” including by assigning the right to a third party or by giving that party an exclusive license. *Id.* § 201(d)(1); *see also id.* § 101 (defining “transfer of copyright ownership”). “The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title,” including the right to sue for infringement of the owner’s rights. *Id.* §§ 201(d)(2), 501(b).

Thus, copyright ownership operates like the common analogy of a bundle of sticks. The author, as the original owner, holds all of the exclusive rights in the protected work. *Id.* § 106, 201. The author may transfer any one of these sticks, in whole or in part, to a third party. *Id.* § 201(d)(1). Anyone holding a stick, or a part of a stick, can sue anyone who infringes on that right. For example, anyone holding a right to distribute a copyrighted work in California can sue infringers in California, but not in New York. The right to enforce is only as broad as the exclusive right held.

In addition to the ownership requirement, the Copyright Act includes a few other limitations on who can sue for copyright infringement. It limits the right to sue to those who owned the exclusive right at the time of the infringement. 17 U.S.C. § 501(b). It also provides that “no civil action for infringement of the copyright . . . shall be instituted until preregistration or registration of the copyright claim has been made” with the United States Copyright Office. *Id.* § 411(a).

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Therefore, the default rule is that only those who owned an exclusive right in a registered copyright at the time of the infringement may bring suit.

However, the Copyright Act extends special treatment to live broadcasts. *See id.* § 411(c). When the copyrighted work “consist[s] of sounds, images, or both, the first fixation of which is made simultaneously with its transmission”—that is, when the copyrighted work is a broadcast of a live event—then the Copyright Act allows an owner to sue for infringement of an unregistered copyright so long as the owner registers the copyright within three months of the live broadcast. *See id.*; *see Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 888 (2019). Stated differently, although copyright registration is ordinarily a requirement to bring suit, “[s]uch registration is not a condition of copyright protection.” 17 U.S.C. § 408(a) (emphasis added). Rather, as the Supreme Court has described it, the registration requirement “is akin to an administrative exhaustion requirement that the owner must satisfy before suing to enforce ownership rights.” *Fourth Estate*, 139 S. Ct. at 888.

With this legal framework in mind, we turn to the question now before us: did the November 21, 2017, Copyright Agreement between Showtime and JHP give JHP the right to sue for copyright infringements occurring on August 26, 2017. We conclude that it did.

Defendants argue that JHP did not own any exclusive rights in the Fight on the day it aired. They recognize that the Copyright Agreement purportedly transferred “the exclusive right to distribute and

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publicly perform” the Fight live on August 26, 2017. (Copyright Agreement, R.40-2, Page ID #262.) But they argue that this exclusive right was, in effect, illusory because the Fight had already aired by the time Showtime and JHP entered into the Copyright Agreement. Because these exclusive rights were illusory, Defendants argue that the Copyright Agreement merely gave JHP a bare right to sue. Pointing to case law from the Second and Ninth Circuits, Defendants conclude that JHP does not have a cause of action under the Copyright Act because the bare right to sue is insufficient give JHP ownership of an exclusive right.

In response, JHP argues that the plain language of the Copyright Agreement retroactively gave JHP exclusive rights in the live broadcast on August 26, 2017. To the extent that the language of the Copyright Agreement is unclear, it argues that Showtime intended to retroactively give JHP the exclusive right to distribute the Fight on the day it aired as well as the right to sue violators for copyright infringement. As evidence of this intent, JHP points to the Commercial Licensing Agreement between Mayweather and JHP on August 1, 2017. JHP does not have much to say about whether the Copyright Act allows such a retroactive transfer of exclusive rights.

These arguments touch on complicated questions of copyright law including when copyright protection in a live broadcast first arises, whether or how an author may transfer exclusive rights in a live event before registering a copyright, and whether an author can retroactively transfer exclusive rights. However, we do

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not need to get into these issues to resolve this case. We conclude that the Copyright Agreement gave JHP an enforceable right to sue Defendants because it formalized a series of earlier agreements under which JHP went about exclusively licensing and distributing the Fight to commercial establishments in a specific region *before* the Fight aired.

The earlier agreements between Showtime, Mayweather, and JHP gave JHP an exclusive license to distribute the streaming rights to commercial establishments to air the Fight *live* on August 26, 2017. On June 20, 2017, Showtime and Mayweather signed the Distribution Agreement. In that agreement, Showtime “grant[ed] to [Mayweather] exclusively, the right to exhibit and distribute, and authorize the exhibition and distribution of, the [Fight] in the Territory live via the Internet.” (Distribution Agreement, R. 40-4, Page ID #357.) The Distribution Agreement thus gave Mayweather one of Showtime’s sticks from its bundle, making Mayweather an “owner” under the Copyright Act. *See* 17 U.S.C. §§ 106(3)–(4), 201(d), 204. Admittedly, at this point, the Fight had not happened, and Showtime did not hold a registered copyright. But copyright protection can arise before registration, *see Fourth Estate*, 139 S. Ct. at 887–88, and nothing prevented Showtime from transferring some of the sticks in its bundle in anticipation of the Fight, even before applying for a copyright registration. In this case, Showtime did just that by giving exclusive rights to Mayweather in the Distribution Agreement. Mayweather turned around and transferred those sticks (or parts of those sticks) to JHP. On August 1, 2017, JHP and Mayweather signed the Commercial

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Licensing Agreement.<sup>3</sup> In that contract, Mayweather gave JHP “the sole and exclusive third party license . . . to distribute . . . and authorize the public exhibition of the [Fight]” in a designated geographic area. (Commercial Licensing Agreement, R. 40-2, Page ID #247.) This contract explicitly stated that it was transferring JHP an exclusive right as defined in the Copyright Act, stating that “JHP holds the right to authorize the exhibition of the [Fight] publicly *within the meaning of 17 U.S.C. § 106(4), (5).*” (*Id.* at Page ID #251 (emphasis added).) That statutory provision defines “exclusive rights” as including the rights to display and perform the work publicly. 17 U.S.C. § 106(4)–(5).

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<sup>3</sup> Defendants argue that JHP forfeited any argument using the Commercial Licensing Agreement as evidence of Showtime and JHP’s intent when signing the Copyright Agreement. Specifically, they claim that “JHP did not make any argument concerning the [Commercial Licensing] Agreement in either its own motion for summary judgment or in its response to [Defendants’] motion for summary judgment, which is the subject of this appeal.” (Defs. Br. at 8–9.) But JHP’s motion for summary judgment *did* point to the Commercial Licensing Agreement as evidence that it held an exclusive right on the day of the Fight. JHP specifically noted that: “Through an agreement with the promoters of the Event,”—*i.e.*, the August 1, 2017, Commercial Licensing Agreement with Mayweather—“[JHP] was licensed to exhibit the Event at commercial locations, such as bars, restaurants, clubs, lounges, and other commercial establishments throughout the State of Tennessee.” (Pl. Mot. Summ. J., R. 40, Page ID #204.) Accordingly, Defendants’ forfeiture arguments are without merit. *See Bard v. Brown Cnty.*, 970 F.3d 738, 749 (6th Cir. 2020) (quoting *United States v. Huntington Nat'l Bank*, 574 F.3d 329, 332 (6th Cir. 2009)).

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In the lead up to the Fight, even without the benefit of a registered copyright, these three entities—Showtime, Mayweather, and JHP—went about carving out their respective rights. These rights, including the exclusive right to distribute the Fight to commercial establishments, were outlined in the Distribution Agreement and the Commercial Licensing Agreement, both of which took effect *before* the Fight aired on August 26, 2017. However, the question remains whether the November 21, 2017, Copyright Agreement was intended to bestow some new and additional right to JHP, or whether it merely reiterated and reaffirmed the parties' understandings of their preexisting rights with the added benefit of a newly registered copyright. The Copyright Agreement does not expressly answer this question. Nowhere does it state that it intended to formalize existing arrangements, nor does it mention the Distribution Agreement or the Commercial Licensing Agreement. However, the earlier agreements provide necessary context for the Copyright Agreement. *See Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tenn., Inc.*, 566 S.W.3d 671, 694 (Tenn. 2019).<sup>4</sup> And, because none of these agreements conflict with one another, we may turn to them to discern Showtime and JHP's intent when entering into the later Copyright Agreement. *See id.* at 696. Viewing these agreements together, the Copyright Agreement merely intended to reiterate that JHP's existing exclusive license in the live Fight remained intact

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<sup>4</sup> The parties agree that Tennessee's principles of contract law govern the interpretation of the Copyright Agreement.

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even in the wake of Showtime's formal Copyright Registration.

Unlike the extensive terms and conditions found in the earlier Distribution Agreement and Commercial Licensing Agreement, which numbered 36 and 15 pages respectively, the Copyright Agreement was barely three pages long. Outside of the definitions and some boilerplate provisions, it had two substantive provisions which provided that: (1) "JH[P] has been granted the sole and exclusive Commercial Rights . . . in the Territory in the [Fight], under the copyright laws of the United States" with Commercial Rights defined as the "exclusive right to distribute and publicly perform the [Fight] live on August 26, 2017 to Commercial Premises in the Territory;" and (2) "JH[P] has the exclusive right in the Territory to take enforcement measures" in connection with its exclusive rights in the distribution of commercial licenses. (Copyright Agreement, R. 40-2, Page ID #262.) The first provision mirrors the exclusive license that Showtime gave to Mayweather, and that Mayweather then gave JHP, *before* the Fight. Although Showtime and JHP were the only parties to the Copyright Agreement, they nonetheless had Mayweather sign and say that it accepted and agreed to the terms therein.

We conclude that, by using a barebone contract signed by all of the parties involved in the days leading up to the Fight, it is clear that Showtime and JHP intended the Copyright Agreement to formalize existing rights in the wake of Showtime's newly obtained Copyright Registration. In effect, everyone involved came together after the Copyright

Registration and concluded, in the Copyright Agreement, that the new registration did not change anything. The status of the copyright may have changed on October 26, 2017, but the nature of the exclusive rights and interests of these three parties remained untouched. If the Copyright Agreement was an entirely new transfer of rights from Showtime to JHP, there would be no need for Mayweather to agree. The Copyright Agreement only makes sense as an extension of the earlier agreements.

Defendants' position is seemingly that the Copyright Agreement was a standalone transfer of rights wholly apart from the earlier agreements. They argue that the Copyright Agreement was, in essence, a sham because it purported to transfer an exclusive right in a live event that had already happened. The district court agreed. *See Joe Hand Promotions*, 2021 WL 4899466, at \*5 ("The exclusive right to perform the [Fight] live is utterly meaningless once the [Fight] has already occurred, and, thus, can never be performed 'live' again."). But the Copyright Registration listed Showtime as the sole author and claimant of the copyrighted work, and copyright ownership "vests initially in the author . . . of the work." 17 U.S.C. § 201(a). If the Copyright Registration could be interpreted as returning all of the exclusive rights back to the author of the Fight (Showtime), then the Copyright Agreement clarified that the new registration did not alter JHP's preexisting exclusive license to distribute the Fight to commercial establishments within its geographic zone.

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Because we conclude that the Copyright Agreement merely reiterated the existing distribution of rights, we need not reach the bulk of the parties' arguments. The parties focus on whether the Copyright Agreement could legally transfer an exclusive right retroactively. Even if such a retroactive transfer could theoretically be legally valid, Defendants argue that the Copyright Agreement, as a factual matter, was not intended to be retroactive. Because the Copyright Agreement merely codified earlier transfers in the wake of the *post hoc* Copyright Registration, there is no retroactivity issue. By extension, we need not address Defendants' arguments that the Copyright Agreement gave JHP a bare right to sue, which they claim is at odds with the Second and Ninth Circuits' interpretation of the Copyright Act. The Copyright Agreement simply reaffirmed that JHP held an exclusive right to distribute the Fight to commercial establishments in advance of the live Fight. Even though the Copyright Agreement was signed at a later date, JHP acted as though it held the exclusive right well in advance of the Fight. Indeed, it advertised the Fight, distributed the livestream, and collected fees from commercial establishments that wanted to air the Fight live. By viewing the Copyright Agreement in a vacuum and ignoring the parties' earlier agreements and conduct, Defendants ignore Showtime and JHP's intent when entering the contract.

In sum, JHP owned the exclusive right to distribute and publicly display the Fight on the day it aired, August 26, 2017. The copyright was registered within three months of the alleged infringement, as required to sue for copyright infringements in live telecasts. 17

U.S.C. § 411(c). Accordingly, JHP has a cause of action against anyone who violated its exclusive rights on the day of the Fight, including Defendants. *See id.* § 501(b).

### **III. CONCLUSION**

For these reasons, we **REVERSE** the district court's order granting Defendants' motion for summary judgment and **REMAND** with instructions to grant Plaintiff's motion for partial summary judgment on the issue of copyright standing and for further proceedings consistent with this opinion.

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**APPENDIX B**

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

**Case No. 3:20-cv-382**

**[Filed: October 20, 2021]**

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JOE HAND PROMOTIONS, INC.,	)
	)
	)
<i>Plaintiff,</i>	)
	)
v.	)
	)
JAMES H. GRIFFITH, Jr., d/b/a CJ'S	)
SPORTS BAR, and LISA LESLEY	)
	)
<i>Defendants.</i>	)
	)

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Judge Travis R. McDonough

Magistrate Judge H. Bruce Guyton

**MEMORANDUM OPINION**

Before the Court are Plaintiff Joe Hand Promotions, Inc.'s ("Joe Hand") motion for partial summary judgment (Doc. 39) and Defendants Lisa Lesley and James Griffith, Jr.'s motion for summary judgment (Doc. 41) and motion for sanctions (Doc. 48). Defendants Lesley and Griffith's motions motion for

summary judgment is **GRANTED** (Doc. 41). Because the Court grants Defendants' motion for summary judgment, Plaintiff Joe Hand's motion for partial summary judgment (Doc. 39) and Defendants Lesley and Griffith's motion for sanctions (Doc. 48) are **DENIED**.

## I. BACKGROUND

James Griffith, Jr. owns and operates CJ's Sports Bar ("the Bar") in Kingsport, Tennessee. (Doc. 40-7, at 17.) Lisa Lesley is an employee of the Bar. (*Id.* at 49.) Joe Hand is a business that licenses sports and entertainment programming to commercial establishments. (Doc. 40, at 1.)

On August 26, 2017, Floyd Mayweather and Conor McGregor engaged in a prizefight that was broadcast live ("the Event"). (Doc. 41-1, at 3.) Showtime, Inc., owned the copyright to the Event and made the Event available for non-commercial streaming from its website. (Doc. 40-2, at 49.) Nearly three months later, on November 21, 2017, Joe Hand entered into an agreement with Showtime ("the Agreement"), in which Showtime purportedly granted Joe Hand "sole and exclusive Commercial Rights" in the Event; however, despite this ostensibly sweeping phrase, the Agreement defined these rights as "[t]he exclusive right to distribute and publicly perform the Event live on August 26, 2017[,] to Commercial Premises in the Territory." (*Id.* at 46.)<sup>1</sup> The Agreement also contained an "Enforcement of Rights" provision:

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<sup>1</sup> Obviously, by the date of the Agreement, it was impossible for Joe Hand to do anything with the Event "live" on August 26, 2017.

Insofar as [Showtime] is concerned, [Joe Hand] shall have the right and standing, as exclusive assignee, to assert independent claims, solely in the name of [Joe Hand], for copyright infringement under the copyright laws of the United States . . . solely relating to the unauthorized exploitation of the Commercial Rights in the Event in the Territory.

(*Id.* at 47.) The Agreement further stated that Joe Hand

has the exclusive right in the Territory to take enforcement measures, prosecute and commence legal actions with respect to any unauthorized exploitation of the Commercial Rights [and that Showtime] hereby assigns and grants to [Joe Hand] such rights, interests or powers in the Event as are held by [Showtime] solely to the extent necessary . . . to enable [Joe Hand] to enforce and to initiate legal proceedings . . . for copyright infringement.

(*Id.* at 46.) Joe Hand purportedly licensed the Event to commercial establishments and based its rates upon the attendance or seating capacity of the commercial establishments sublicensing the Event. (*Id.* at 28.) For an establishment with a seating capacity of 101 to 150 persons, Joe Hand charged \$5,200 to license the Event. (Doc. 40-3, at 1.)

Prior to the Event, the Bar posted or shared multiple posts on its Facebook page promoting the Event and encouraging individuals to buy tickets. (*Id.* at 7-12.) Lesley rented the Bar on the night of August

26, 2021, for \$1,000, collecting six dollars each from patrons at the door, and purchased the program from Showtime’s website for viewing at the Bar. (*Id.* at 18–20; Doc. 41-1, at 3; Doc. 40-2, at 5; Doc. 40-7, at 27.) Lesley did not, however, license the Event for the Bar through Joe Hand. (*See* Doc. 47, at 9.) Instead, Lesley used an HDMI cable to hook up her computer—which she used to buy and stream the Event for \$99—to a television so patrons could watch the Event together on a larger screen. (*Id.*) No one from the Bar contacted Joe Hand about broadcasting the Event. (Doc 41-1, at 3.) Griffith received money from the food and beverages sold during the Event but did not receive any of the door charge collected by Lesley. (*Id.*; Doc. 40, at 5.)

On August 26, 2020, Joe Hand instituted the present action for copyright infringement and internet piracy. The Court previously dismissed Joe Hand’s claim for internet piracy, (*see* Doc. 31), and a single count of copyright infringement remains. The parties have fully briefed their cross-motions for summary judgment (Docs. 40, 41, 47, 49), and the motions are ripe for adjudication.

## II. STANDARD OF REVIEW

Summary judgment is proper when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The Court views the evidence in the light most favorable to the nonmoving party and makes all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574,

587 (1986); *Nat'l Satellite Sports, Inc. v. Eliadis Inc.*, 253 F.3d 900, 907 (6th Cir. 2001).

The moving party bears the burden of demonstrating that there is no genuine dispute as to any material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Leary v. Daeschner*, 349 F.3d 888, 897 (6th Cir. 2003). The moving party may meet this burden either by affirmatively producing evidence establishing that there is no genuine issue of material fact or by pointing out the absence of support in the record for the nonmoving party's case. *Celotex*, 477 U.S. at 325. Once the movant has discharged this burden, the nonmoving party can no longer rest upon the allegations in the pleadings; rather, it must point to specific facts supported by evidence in the record demonstrating that there is a genuine issue for trial. *Chao v. Hall Holding Co., Inc.*, 285 F.3d 415, 424 (6th Cir. 2002).

At summary judgment, the Court may not weigh the evidence; its role is limited to determining whether the record contains sufficient evidence from which a jury could reasonably find for the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). A mere scintilla of evidence is not enough; the Court must determine whether a fair-minded jury could return a verdict in favor of the non-movant based on the record. *Id.* at 251–52; *Lansing Dairy, Inc. v. Espy*, 39 F.3d 1339, 1347 (6th Cir. 1994). If not, the Court must grant summary judgment. *Celotex*, 477 U.S. at 323.

The standard of review when parties file cross-motions for summary judgment is the same as when

only one party moves for summary judgment. *Taft Broad. Co. v. United States*, 929 F.2d 240, 248 (6th Cir. 1991). When there are cross-motions for summary judgment, the court must “evaluate each party’s motion on its own merits, taking care in each instance to draw all reasonable inferences against the party whose motion is under consideration.” *Id.* In considering cross motions for summary judgment, the court is “not require[d] . . . to rule that no fact issue exists.” *Begnaud v. White*, 170 F.2d 323, 327 (6th Cir. 1948).

### III. ANALYSIS

Lesley and Griffith assert they are entitled to summary judgment on Joe Hand’s copyright-infringement claim because Joe Hand did not own the copyright to the Event when it was displayed at the Bar. (Doc. 41, at 1.) Further, Griffith asserts that he did not benefit financially from the infringement and, therefore, cannot be held vicariously liable. (*Id.* at 9.) In evaluating Lesley and Griffith’s motion, the Court draws all inferences in favor of the nonmovant, Joe Hand. *See Matsushita Elec. Indus.*, 475 U.S. at 587.

Lesley and Griffith contend that Joe Hand did not own the copyright at the time the Bar broadcasted the Event, and, therefore, it lacks standing to bring an action for copyright infringement. Lesley and Griffith claim that either (1) the Agreement between Joe Hand and Showtime, the copyright owner, was merely an assignment of a right to sue, or, alternatively, that (2) the Agreement was not retroactive to the date of the Event. (Doc. 41-1, at 7.)

To succeed on a claim for copyright infringement, the party alleging infringement must prove ownership of a valid copyright. *Bridgeport Music v. WM Music Corp.*, 508 F.3d 394, 398 (6th Cir. 2007); *see also* 17 U.S.C. § 201(d)(2). Ownership can be transferred through “an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright.” 17 U.S.C. § 101. Once ownership is established, section 201(d) provides that “[t]he owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner.” 17 U.S.C. § 201(d)(2). This includes the right to bring an action for infringement. *See* 17 U.S.C. § 501.

The Sixth Circuit has stated that even though federal law governs copyrights generally, “state law is not displaced merely because [a] contract relates to intellectual property.” *Cincom Sys., Inc. v. Novelis Corp.*, 581 F.3d 431, 437 (6th Cir. 2009). So long as a federal copyright policy is not affected, “state contract law will govern the interpretation of a license because a license is merely a type of contract.” *Id.* (citing *In re CFLC*, 89 F.3d 673, 677 (9th Cir. 1996)); 5 PATRY ON COPYRIGHT § 129 (2021). The same framework applies to the analysis of an assignment agreement because it, too, is a type of contract. Because Lesley and Griffith’s argument poses a question of contract interpretation, the Court will look to Tennessee law to determine whether the Agreement in this case was retroactive to the date of the Event, keeping in mind that “[a] copyright license [or assignment] must be construed in accordance with the purposes underlying federal

copyright law.” *Oracle Am., Inc. v. Hewlett Packard Enter. Co.*, 971 F.3d 1042, 1051 (9th Cir. 2020); *see also Design Basics, LLC v. Chelsea Lumber Co.*, 977 F. Supp. 2d 714, 730 (E.D. Mich. 2013).

The language of the contract is the starting point for ascertaining the parties’ intent. *Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 611 (Tenn. 2006). “It is well-settled that the language used in a contract must be taken and understood in its plain, ordinary, and popular sense.” *Fisher v. Revell*, 343 S.W.3d 776, 779 (Tenn. Ct. App. 2009) (citing *Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth, Inc.*, 521 S.W. 578 (Tenn. 1975)). “Provisions in a contract should be construed in harmony with each other, if possible, to promote consistency and to avoid repugnancy between the various provisions of a single contract.” *Id.* (quoting *Guiliano v. Cleo, Inc.*, 995 S.W. 2d, 88, 95 (Tenn. 1999)). Contract interpretation is typically a question of law. *Planters Gin Co. v. Fed. Compress & Warehouse Co., Inc.*, 78 S.W.3d 885, 890 (Tenn. 2002).

There is no dispute that Showtime is the original owner of the copyright to the Event. (Doc. 40-2, at 1.) However, Lesley and Griffith assert that the Agreement between Showtime and Joe Hand does not constitute a valid transfer of an exclusive right under the Copyright Act. (Doc. 41-1, at 7.) Among the exclusive rights granted to copyright owners are the rights to “reproduce the copyrighted work in copies or phonorecords,” “to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending,” and, in the case of “motion picture[s] and other

audiovisual work[s], to display the copyrighted work publicly.” 17 U.S.C. §§ 106(1), (3), (5). Among the rights conveyed from Showtime to Joe Hand is “the exclusive right to distribute and perform the Event live on August 26, 2017 to Commercial Premises in the Territory.” (Doc. 40-2, at 46.) The right to “distribute and perform” the Event is within the bounds of the Copyright Act, 17 U.S.C. § 106, and the transfer was conducted through a permissible method. *Id.* § 101. Consequently, the Court will assume, for the purposes of this motion, that the Agreement assigned Joe Hand an exclusive right under the Copyright Act, and, with it, the accompanying enforcement rights.

Nonetheless, the question remains whether Joe Hand owned any exclusive right at the time of the live presentation of the Event in August 2017. “The legal or beneficial owner of an exclusive right under a copyright is entitled . . . to institute an action for any infringement . . . committed while he or she is the owner of it,” 17 U.S.C. § 501(b), so the determinative question here is whether Joe Hand owned the copyright at the time of the Event. Lesley and Griffith assert that, even if Joe Hand owns an exclusive right or rights under § 106, it did not own these rights at the time of the Event because the Agreement was not executed until November 2017—nearly three months after the Event was broadcast. (Doc. 40-2, at 46; Doc. 41-1, at 7.)

The Agreement provides that Joe Hand possesses “[t]he exclusive right to distribute and publicly perform the Event *live* on August 26, 2017 to Commercial Premises in the Territory.” (Doc. 40-2, at 46 (emphasis added).) “Live” is defined as “[b]roadcast while actually

being performed; not taped or recorded.” THE AM. HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1024 (4th ed. 2000) (emphasis added). The use of “live” therefore indicates that the Agreement was meant to reach back to August 26, 2017, the date the Event was occurring and broadcasted live.

However, the parties’ stated intent in forming this contract does not square with the purposes, and the text, of the federal Copyright Act, which “does not permit copyright holders to choose third parties to bring suits on their behalf.” *ABKCO Music, Inc. v. Harrisongs Music, Ltd.*, 944 F.2d 971, 980 (2d Cir. 1991). While the Sixth Circuit has not yet directly addressed this question, other courts of appeals have held that the conveyance of a “bare right to sue” is insufficient to convey standing for copyright infringement. *See, e.g., John Wiley & Sons, Inc. v. DRK Photo*, 882 F.3d 394 (2d Cir. 2018); *Silvers v. Sony Pictures Entertainment, Inc.*, 402 F.3d 881 (9th Cir. 2005). In *John Wiley*, the Second Circuit closely analyzed the text of the Copyright Act and concluded that courts should not “inject an additional untethered right to sue” into the exclusive rights granted by § 106. *John Wiley*, 882 F.3d at 406. The Ninth Circuit has likewise stated that “the right to sue is not an exclusive right” under the Copyright Act. *Silvers*, 402 F.3d at 884; *see also ABKCO Music*, 944 F.2d at 980 (noting that an “assignee is only entitled to bring actions for infringements that were committed while it was the copyright owner and the assignor retains the right to bring actions accruing during its ownership of the right, even if the actions are brought subsequent to the assignment”).

The Agreement between Joe Hand and Showtime purportedly grants an exclusive right—the exclusive right to perform the broadcast live on the date of the Event. It further grants the right to initiate enforcement actions for the violation of the exclusive right. (Doc. 52, at 2.) Lesley and Griffith, however, identify a troublesome wrinkle: the Agreement was not executed until November 2017, three months after the Event. Consequently, while the Agreement does not convey an “untethered” or “bare” right to sue, it is no more than a thinly-veiled attempt to evade the carefully drawn congressional boundaries delineating the right to sue for copyright infringement. *See* 17 U.S.C. § 501(b); *see also Righthaven LLC v. Hoehn*, 716 F.3d 1166, 1169 (9th Cir. 2013) (holding that assignments for the purposes of prosecuting infringement suits “after the alleged infringements occurred, but before [plaintiff] filed [the] suits” was insufficient to confer standing under the Copyright Act, even after the parties executed a subsequent agreement indicating that the assignment “convey[ed] all ownership rights in” the works); *HyperQuest, Inc. v. N'Site Solutions, Inc.*, 632 F.3d 377 (7th Cir. 2011) (“It is the substance of the agreement, not the labels that it uses, that controls our analysis.”).

The exclusive right to perform the Event live is utterly meaningless once the Event has already occurred, and, thus, can never be performed “live” again. And Showtime did not assign any additional prospective or derivative rights in the Event that allow the Court to reach another conclusion regarding the value of the transfer. *See Righthaven*, 716 F.3d at 1169 (“When determining whether a contract has

transferred exclusive rights, we look not just at the labels the parties use but also the substance and effect of the contract.”). Even drawing all inferences in favor of Joe Hand, the Court must conclude that this Agreement would, if effectuated, merely enable Joe Hand to prosecute infringement actions and was not intended to convey any meaningful exclusive rights under the Copyright Act.

Had this Agreement been executed prior to the Event, it is quite probable that Joe Hand would be able to maintain this suit. However, the Agreement was executed months after the Event, and, as a result, the Court concludes that the Agreement is a disguised assignment of the right to sue. *See DRK Photo v. McGraw-Hill Global Educ. Holdings, LLC*, 870 F.3d 978, 985 (9th Cir. 2017) (“[T]he purported transfer of legal title coupled with the transfer of accrued claims does not confer standing when the transaction, in substance and effect, merely transfers the right to sue.” (internal citations omitted)). The Court is cognizant of the fact that it is rendering the conveyance of the exclusive right to perform the Event live valueless, a disfavored outcome under Tennessee principles of contract interpretation. *See Lovett v. Cole*, 584 S.W.3d 840, 861 (Tenn. Ct. App. 2019) (noting that “the law of contract interpretation militates against interpreting a contract in a way that renders a provision superfluous” (citing *Crossville Med. Oncology, P.C. v. Glenwood Sys., LLC*, 610 Fed. App’x 464, 468 (6th Cir. 2015))). However, allowing Joe Hand to maintain this suit would ignore the plain language of the Copyright Act and would invite parties to frustrate Congress’s intent with mere clever drafting, no matter how

metaphysically impossible it is to retroactively obtain an exclusive right to something that could only have existed in the past: the right to display the Event “live.” Lesley and Griffith are correct: there is absolutely no evidence that Joe Hand owned an exclusive right at the time of the infringement on August 26, 2017. Therefore, it cannot maintain this action for infringement against Lesley and Griffith. 17 U.S.C. § 501(b). There is nothing left for a jury to determine. *See Planters Gin*, 78 S.W.3d at 890 (after a court “decid[es] the legal effect of the words, there is no genuine factual question left for the jury to decide.”). Therefore, the Court **GRANTS** Lesley and Griffith’s motion for summary judgment (Doc. 41) and **DENIES** Joe Hand’s motion for partial summary judgment (Doc. 39). Because the Court denies Joe Hand’s motion for summary judgment, it is unnecessary to analyze Defendants’ motion for sanctions, as Lesley and Griffith seek only the exclusion of certain evidence as a sanction.

#### **IV. CONCLUSION**

For the foregoing reasons:

1. Defendants’ motion for sanctions (Doc. 48) is **DENIED**.
2. Defendants’ motion for summary judgment (Doc. 41) is **GRANTED**.
3. Plaintiff’s motion for partial summary judgment (Doc. 39) is **DENIED**.

**AN APPROPRIATE JUDGMENT SHALL ENTER.**

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*/s/ Travis R. McDonough*  
**TRAVIS R. MCDONOUGH**  
**UNITED STATES DISTRICT**  
**JUDGE**

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**APPENDIX C**

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

**Case No. 3:20-cv-382**

**[Filed: October 20, 2021]**

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JOE HAND PROMOTIONS, INC.,	)
	)
	)
<i>Plaintiff,</i>	)
	)
v.	)
	)
JAMES H. GRIFFITH, Jr., d/b/a CJ'S	)
SPORTS BAR, and LISA LESLEY,	)
	)
<i>Defendants.</i>	)
	)

---

Judge Travis R. McDonough

Magistrate Judge H. Bruce Guyton

**JUDGMENT ORDER**

In accordance with the contemporaneously filed Memorandum Opinion, this action is **DISMISSED WITH PREJUDICE**. The Clerk is hereby **DIRECTED** to CLOSE the case.

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*/s/ Travis R. McDonough*  
**TRAVIS R. MCDONOUGH**  
**UNITED STATES DISTRICT**  
**JUDGE**

ENTERED AS A JUDGMENT

s/ LeAnna R. Wilson  
CLERK OF COURT

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## APPENDIX D

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### UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 21-6088

[Filed: November 4, 2022]

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JOE HAND PROMOTIONS, INC.,	)
	)
Plaintiff-Appellant,	)
	)
v.	)
	)
JAMES H. GRIFFITH, JR., D CJ'S	)
SPORTS BAR; LISA LESLEY,	)
	)
Defendants-Appellees.	)
	)

---

### O R D E R

**BEFORE:** CLAY, ROGERS, and STRANCH,  
Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

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Therefore, the petition is denied.

**ENTERED BY ORDER OF THE  
COURT**

/s/ Deborah S. Hunt  
**Deborah S. Hunt, Clerk**

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## APPENDIX E

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### STATUTORY PROVISIONS INVOLVED

#### 17 U.S.C. § 101 - Definitions

Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

An “anonymous work” is a work on the copies or phonorecords of which no natural person is identified as author.

An “architectural work” is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.

“Audiovisual works” are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

The “Berne Convention” is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto.

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The “best edition” of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

A person’s “children” are that person’s immediate offspring, whether legitimate or not, and any children legally adopted by that person.

A “collective work” is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A “compilation” is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term “compilation” includes collective works.

A “computer program” is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

“Copies” are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “copies” includes the material object, other than a phonorecord, in which the work is first fixed.

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“Copyright owner”, with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

A “Copyright Royalty Judge” is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.

A work is “created” when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work”.

A “device”, “machine”, or “process” is one now known or later developed.

A “digital transmission” is a transmission in whole or in part in a digital or other non-analog format.

To “display” a work means to show a copy of it, either directly or by means of a film, slide, television

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image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

An “establishment” is a store, shop, or any similar place of business open to the general public for the primary purpose of selling goods or services in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.

The term “financial gain” includes receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works.

A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is “fixed” for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

A “food service or drinking establishment” is a restaurant, inn, bar, tavern, or any other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink, in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.

The “Geneva Phonograms Convention” is the Convention for the Protection of Producers of

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Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland, on October 29, 1971.

The “gross square feet of space” of an establishment means the entire interior space of that establishment, and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise.

The terms “including” and “such as” are illustrative and not limitative.

An “international agreement” is—

- (1) the Universal Copyright Convention;
- (2) the Geneva Phonograms Convention;
- (3) the Berne Convention;
- (4) the WTO Agreement;
- (5) the WIPO Copyright Treaty;
- (6) the WIPO Performances and Phonograms Treaty; and
- (7) any other copyright treaty to which the United States is a party.

A “joint work” is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

“Literary works” are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature

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of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.

The term “motion picture exhibition facility” means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.

“Motion pictures” are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

To “perform” a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

A “performing rights society” is an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

“Phonorecords” are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise

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communicated, either directly or with the aid of a machine or device. The term “phonorecords” includes the material object in which the sounds are first fixed.

“Pictorial, graphic, and sculptural works” include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.

For purposes of section 513, a “proprietor” is an individual, corporation, partnership, or other entity, as the case may be, that owns an establishment or a food service or drinking establishment, except that no owner or operator of a radio or television station licensed by the Federal Communications Commission, cable system or satellite carrier, cable or satellite carrier service or programmer, provider of online services or network access or the operator of facilities therefor, telecommunications company, or any other such audio or audiovisual service or programmer now known or as may be developed in the future, commercial subscription music service, or owner or operator of any

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other transmission service, shall under any circumstances be deemed to be a proprietor.

A “pseudonymous work” is a work on the copies or phonorecords of which the author is identified under a fictitious name.

“Publication” is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work “publicly” means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

“Registration”, for purposes of sections 205(c)(2), 405, 406, 410(d), 411, 412, and 506(e), means a registration of a claim in the original or the renewed and extended term of copyright.

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“Sound recordings” are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

“State” includes the District of Columbia and the Commonwealth of Puerto Rico, and any territories to which this title is made applicable by an Act of Congress.

A “transfer of copyright ownership” is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

A “transmission program” is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

To “transmit” a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

A “treaty party” is a country or intergovernmental organization other than the United States that is a party to an international agreement.

The “United States”, when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and

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the organized territories under the jurisdiction of the United States Government.

For purposes of section 411, a work is a “United States work” only if—

(1) in the case of a published work, the work is first published—

(A) in the United States;

(B) simultaneously in the United States and another treaty party or parties, whose law grants a term of copyright protection that is the same as or longer than the term provided in the United States;

(C) simultaneously in the United States and a foreign nation that is not a treaty party; or

(D) in a foreign nation that is not a treaty party, and all of the authors of the work are nationals, domiciliaries, or habitual residents of, or in the case of an audiovisual work legal entities with headquarters in, the United States;

(2) in the case of an unpublished work, all the authors of the work are nationals, domiciliaries, or habitual residents of the United States, or, in the case of an unpublished audiovisual work, all the authors are legal entities with headquarters in the United States; or

(3) in the case of a pictorial, graphic, or sculptural work incorporated in a building or structure, the building or structure is located in the United States.

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A “useful article” is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a “useful article”.

The author’s “widow” or “widower” is the author’s surviving spouse under the law of the author’s domicile at the time of his or her death, whether or not the spouse has later remarried.

The “WIPO Copyright Treaty” is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.

The “WIPO Performances and Phonograms Treaty” is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland, on December 20, 1996.

A “work of visual art” is—

(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or

(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

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A work of visual art does not include—

- (A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;
- (ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;
- (iii) any portion or part of any item described in clause (i) or (ii);

(B) any work made for hire; or

(C) any work not subject to copyright protection under this title.

A “work of the United States Government” is a work prepared by an officer or employee of the United States Government as part of that person’s official duties.

A “work made for hire” is—

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the

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purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

In determining whether any work is eligible to be considered a work made for hire under paragraph (2), neither the amendment contained in section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, nor the deletion of the words added by that amendment—

(A) shall be considered or otherwise given any legal significance, or

(B) shall be interpreted to indicate congressional approval or disapproval of, or acquiescence in, any judicial determination,

by the courts or the Copyright Office. Paragraph (2) shall be interpreted as if both section 2(a)(1) of the Work Made For Hire and Copyright Corrections Act of 2000 and section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, were never enacted, and without regard to any inaction

or awareness by the Congress at any time of any judicial determinations.

The terms “WTO Agreement” and “WTO member country” have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.

**17 U.S.C. § 102 - Subject matter of copyright: In general**

**(a)** Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1)** literary works;
- (2)** musical works, including any accompanying words;
- (3)** dramatic works, including any accompanying music;
- (4)** pantomimes and choreographic works;
- (5)** pictorial, graphic, and sculptural works;
- (6)** motion pictures and other audiovisual works;
- (7)** sound recordings; and
- (8)** architectural works.

**(b)** In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

**17 U.S.C. § 106 - Exclusive rights in copyrighted works**

Subject to sections 107 through 122 [*17 USCS §§ 107 through 122*], the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1)** to reproduce the copyrighted work in copies or phonorecords;
- (2)** to prepare derivative works based upon the copyrighted work;
- (3)** to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4)** in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5)** in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other

audiovisual work, to display the copyrighted work publicly; and

**(6)** in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

**17 U.S.C. § 201 - Ownership of copyright**

**(a) INITIAL OWNERSHIP.—**

Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work.

**(b) WORKS MADE FOR HIRE.—**

In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

**(c) CONTRIBUTIONS TO COLLECTIVE WORKS.—**

Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

**(d) TRANSFER OF OWNERSHIP.—**

**(1)** The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

**(2)** Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106, may be transferred as provided by clause (1) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.

**(e) INVOLUNTARY TRANSFER.—**

When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title, except as provided under title 11.

**17 U.S.C. § 411 - Registration and civil  
infringement actions**

**(a)** Except for an action brought for a violation of the rights of the author under section 106A(a), and subject to the provisions of subsection (b), no civil action for infringement of the copyright in any United States

work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title. In any case, however, where the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused, the applicant is entitled to institute a civil action for infringement if notice thereof, with a copy of the complaint, is served on the Register of Copyrights. The Register may, at his or her option, become a party to the action with respect to the issue of registrability of the copyright claim by entering an appearance within sixty days after such service, but the Register's failure to become a party shall not deprive the court of jurisdiction to determine that issue.

**(b)**

**(1)** A certificate of registration satisfies the requirements of this section and section 412, regardless of whether the certificate contains any inaccurate information, unless—

**(A)** the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and

**(B)** the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration.

**(2)** In any case in which inaccurate information described under paragraph (1) is alleged, the court shall request the Register of Copyrights to advise the court whether the inaccurate information, if

known, would have caused the Register of Copyrights to refuse registration.

**(3)** Nothing in this subsection shall affect any rights, obligations, or requirements of a person related to information contained in a registration certificate, except for the institution of and remedies in infringement actions under this section and section 412.

**(c)** In the case of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, the copyright owner may, either before or after such fixation takes place, institute an action for infringement under section 501, fully subject to the remedies provided by sections 502 through 505 and section 510, if, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, the copyright owner—

**(1)** serves notice upon the infringer, not less than 48 hours before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work; and

**(2)** makes registration for the work, if required by subsection (a), within three months after its first transmission.

#### **17 U.S.C. § 501 - Infringement of copyright**

**(a)** Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106

through 122 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a). As used in this subsection, the term "anyone" includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

**(b)** The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

**(c)** For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under subsection (c) of section 111, a television broadcast

station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

**(d)** For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to section 111(c)(3), the following shall also have standing to sue: (i) the primary transmitter whose transmission has been altered by the cable system; and (ii) any broadcast station within whose local service area the secondary transmission occurs.

**(e)** With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 119(a)(3), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.

**(f)**

**(1)** With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 122, a television broadcast station holding a copyright or other license to transmit or perform the same version of

that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.

**(2)** A television broadcast station may file a civil action against any satellite carrier that has refused to carry television broadcast signals, as required under section 122(a)(2), to enforce that television broadcast station's rights under section 338(a) of the Communications Act of 1934.

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## APPENDIX F

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### DISTRIBUTION AGREEMENT

[Filed: August 30, 2021]

THIS AGREEMENT (“Agreement”), dated effective as of June 20, 2017, is between SHOWTIME NETWORKS INC. and SHOWTIME PAY-PER-VIEW, a division of Showtime Networks Inc. (hereafter, individually and/or collectively, “SNI”) on the one hand, and MAYWEATHER PROMOTIONS, LLC (“Event Promoter”), on the other.

**[REDACTED]**

In consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

#### **1. DEFINITIONS.**

As used herein, the following terms shall have the following meanings:

(a) The “**Blackout Area**” shall mean Clark County, Nevada (i.e., the area encompassing the list of zip codes, annexed hereto as Exhibit A and incorporated herein).

(b) “**CCTV**” shall mean closed circuit television reception and exhibition to commercial venues (or facilities within such venues), including, without limitation, movie theatres.

(c) Intentionally Omitted

(d) The “**Event**” shall mean a scheduled twelve (12) round super welterweight bout between Floyd Mayweather (“**Mayweather**”) and Conor McGregor (“**McGregor**”), and three (3) live undercard matches of customary PPV TV event quality for championship caliber fights (the “**Undercard Bouts**”). It is currently anticipated that the Undercard Bouts will be: Gervonta Davis vs. Francisco Fonseca, Nathan Cleverly vs. Badou Jack, and Andrew Tabiti vs. Steve Cunningham. Except for Mayweather and McGregor, the fighters in the Event are subject to change.

(e) Intentionally Omitted.

(f) The “**Event Site**” shall mean the T-Mobile Arena in Las Vegas, Nevada.

(g) “**License Agreements**” shall mean all agreements between SNI and/or MayMac (on the one hand) and Licensees, on the other hand, for the live PPV TV (and delayed PPV TV video on demand) distribution and/or exhibition of the Event (and for the live Internet Exploitation of the Event, in accordance with paragraph 5(c) below) in the Territory.

(h) The “**Licensees**” shall mean (x) all PPV TV distributors and exhibitors licensed to distribute and/or exhibit the Event live via PPV TV (and on a delayed PPV TV video on demand basis) in the Territory in accordance with the terms of this Agreement, including, but not limited to, iNDEMAND LLC (and its respective affiliates and dual affiliates), cable systems, TVRO packagers and distributors, MDS, MMDS and DBS distributors, including DirecTV, Dish Network, C-

Band, Vubiquity, SMATV operators, hotels and motels (only for in-room viewing), telephone and other video transmission companies, in each case, licensed to distribute the Event, and (y) all distributors and exhibitors licensed or otherwise authorized to distribute and/or exhibit the Event live via Internet Exploitation in the Territory, in accordance with paragraph 5(c) below). The Licensees under subpart (y) of the foregoing sentence are sometimes also referred to as "Internet licensees" hereunder.

(i) The "**Main Event**" shall mean the Mayweather vs. McGregor bout. The "**Main Event Participants**" shall mean the fighters participating in the Main Event.

(j) "**Nonappearance Insurance**" shall mean an insurance policy which insures against the non-occurrence of the Event (including but not limited to the Main Event Participants' nonappearance on the Scheduled Event Date).

(k) "**PPV Event Videotape**" shall mean the physical videotape of the Program.

(l) "**PPV TV**" shall mean television exhibition, ordered on a per-event paid basis by a subscriber, for reception in a private residential home, hotel or motel guest room or other dwelling unit over facilities of a cable television system (CATV), a multipoint distribution system (MDS), a subscription television service (STV), a satellite master antenna television system (SMATV), by direct telecast satellite to receive only satellite antennas (TVRO), or by telephone line, or other television video transmission system.

(m) The “**Program**” shall mean the live televised version of the Event as produced by SNI hereunder for exhibition in the Territory live via PPV TV (and used in the exhibition via delayed PPV TV via “video on demand”), live via the Internet pursuant to paragraph 5(c) below, and live via CCTV pursuant to paragraph 5(d) below. The “Program” shall also mean and include all subsequent versions of the Event or Program produced, edited or otherwise derived by SNI for exhibition and/or distribution pursuant to SNI’s Delayed Rights (as defined below) in the Territory hereunder.

(n) The “**Scheduled Event Date**” shall mean Saturday, August 26, 2017.

(o) “**Signal Insurance**” shall mean PPV TV technical breakdown insurance with coverage for Event Promoter and SNI only.

(p) The “**Territory**” shall mean the United States of America, its territories, commonwealths (including, without limitation, Puerto Rico), protectorates and possessions (including, without limitation, Guam, Saipan and St. Croix (USVI)), Bermuda and Canada.

## **2. THE EVENT.**

(a) Subject to the terms and conditions set forth herein, Event Promoter shall arrange for, present and promote, at its sole cost and expense, the Event at the Event Site on the Scheduled Event Date. The first round of the initial televised Undercard Bout of the Event shall begin at approximately 9:00 p.m. Eastern Time (“ET”), and the first round of the Main Event

shall be scheduled to begin between at approximately 11:30 p.m. ET, or as otherwise agreed to by Event Promoter and SNI (such start times being subject to change with SNI's prior approval exercised in accordance with the Licensees' and Internet licensees' requirements); provided, that Event Promoter shall ensure that the Main Event Participants are prepared to begin their ring entrances no later than 11:00 p.m. ET. Neither of the Main Event Participants shall be a participant in any fight between the date hereof and the Event. The date, time, duration, Event Site and the participation of the Main Event Participants are of the essence of this Agreement, provided, that, subject to subsection (b) below, if a force majeure event results in the incapacity of the Event Site (e.g. fire, flood, act of God), the parties shall mutually agree upon a new Event Site, if time permits.

[REDACTED]

**3. EVENT PROMOTER'S FURTHER RESPONSIBILITIES WITH RESPECT TO THE EVENT.**

[REDACTED]

**4. RIGHTS OVERVIEW.**

(a) **SNI'S Rights Generally.** Subject to the terms and provisions herein, including paragraph 5 below, SNI is hereby acquiring from Event Promoter (A) from the date hereof until the expiration of the SNI Exclusive Window (as defined below): all audio and/or visual rights in the Event (other than live CCTV rights), exclusively, in all media whether now known or hereafter existing, throughout the Territory, subject to

Event Promoter's Internet Exploitation rights as set forth in paragraph 5(c) below (collectively, the "**Exclusive Rights**"); and (B) from the day following the end of the SNI Exclusive Window and continuing thereafter in perpetuity, the non-exclusive audio and/or visual rights in the Event, in all media whether now known or hereafter existing, throughout the world, including the Territory (the "**Non-Exclusive Rights**"). For clarity, the Exclusive Rights and Non-Exclusive Rights include advertising, publicity and promotional rights, subject to the terms and conditions of this Agreement. For clarity, SNI shall own and control the Exclusive Rights exclusively as against the Event Promoter and all third parties.

(b) **Event Promoter's Rights Generally.**

Subject to the terms and provisions herein, Event Promoter shall retain any and all rights in the Event not granted hereunder to SNI (all of such retained rights, as set forth in subparts (x) and (y) of this paragraph, collectively the "**Promoter Rights**"), which rights shall consist of: (x) from the date hereof until the expiration of the SNI Exclusive Window: (1) any and all rights in the Event, in all media whether now known or hereafter existing, throughout the world outside of the Territory, (2) the exclusive right to distribute the Event live via CCTV throughout the Territory, and the right to distribute the Event live via Internet Exploitation in the Territory in accordance with paragraph 5(c) below, [REDACTED]

**(c) Live PPV distribution of the Event via the Internet in the Territory.**

(i) As part of SNI's Exclusive Rights, SNI shall have the exclusive (subject to Event Promoter's/ MayMac's rights set forth in this subparagraph (i)) right to exhibit and distribute, and authorize the exhibition and distribution of, the Program in the Territory live via online services, the world wide web or the Internet (collectively, the "**Internet**") on or via the following third-party platforms: Sony Playstation and Apple TV, and directly to consumers, provided that, there shall be no exhibition or distribution of the Program or Event via the Internet in the Territory at any time during the restricted periods, if any, set forth in the License Agreements (the "**Restricted Period**") by any format (whether video or audio), unless the parties mutually agree otherwise in writing. Notwithstanding anything to the contrary in the foregoing, (x) SNI shall not have, and Event Promoter shall instead grant to MayMac exclusively, the right to exhibit and distribute, and authorize the exhibition and distribution of, the Program in the Territory live via the Internet on or via the following third-party platforms: Roku, Microsoft Xbox, Amazon Fire and so-called "smart TVs", and (y) Event Promoter shall grant to MayMac (on a non-exclusive (as against SNI) basis) the right to exhibit and distribute the Program live via the Internet directly to consumers, in each case subject to any Restricted Period. All the foregoing Internet exhibition and distribution of the Program is sometimes referred to herein as the "**Internet Exploitation**". [REDACTED]

**(d) Live CCTV Distribution of the Event in the Territory.**

(i) Event Promoter shall grant to MayMac the exclusive right to exhibit and distribute, and authorize the exhibition and distribution of, the Program in the Territory live by means of CCTV. MayMac shall handle the discussions and negotiations with potential CCTV licensees, and shall prepare and negotiate each CCTV license agreement, each of which shall require that all revenues thereunder be paid directly into the General Escrow Account and each of which shall be executed by MayMac.

(ii) Event Promoter shall be solely responsible for all expenses incurred in connection with the CCTV telecast of the Program in the Territory, as well as telecasts of the Event outside the Territory, such costs including, without limitation, the production and distribution of marketing materials related thereto.

[REDACTED]

**6. PRODUCTION AND TRANSMISSION OF THE PROGRAM.**

[REDACTED]

**7. ADVERTISING, PROMOTION AND SPONSORSHIP.**

[REDACTED]

**8. FINANCIAL TERMS: [REDACTED]**

**9. INSURANCE**

[REDACTED]

**10. TERM.**

Subject to the terms and conditions set forth herein, the term of this Agreement shall commence as of the date hereof, and shall remain in effect until the conclusion of the Event and the completion of each party's responsibilities hereunder and under the Two-Party Agreement with respect to the Event and Program.

**11. EVENT PROMOTER'S REPRESENTATIONS AND WARRANTIES.**

[REDACTED]

**12. SNI'S REPRESENTATIONS AND WARRANTIES.**

[REDACTED]

**13. INDEMNIFICATION.**

[REDACTED]

**14. INDEPENDENT CONTRACTORS.**

[REDACTED]

**15. CONFIDENTIALITY.**

[REDACTED]

**16. SEVERABILITY.**

[REDACTED]

**17. REMEDIES.**

[REDACTED]

**19. MISCELLANEOUS.**

[REDACTED]

**IN WITNESS WHEREOF**, each of the parties hereto has duly executed and delivered this Agreement as of the date first written above.

**MAYWEATHER PROMOTIONS, LLC**

By: /s/ Illegible

Name:

Title:

**SHOWTIME PAY-PER-VIEW**, a division of Showtime Networks Inc.

By: /s/ Stephen Espinoza

Name: Stephen Espinoza

Title: EVP Showtime Sports

**SHOWTIME NETWORKS INC.**

By: /s/ Stephen Espinoza

Name: Stephen Espinoza

Title: EVP Showtime Sports

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**Exhibit A**

[REDACTED]

**EXHIBIT B**

**Intentionally omitted.**

**Exhibit C**

[REDACTED]

**Exhibit D**

[REDACTED]

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## APPENDIX G

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### COMMERCIAL LICENSING AGREEMENT

**[Filed: August 30, 2021]**

This Commercial Licensing Agreement (“Agreement”) is made and entered into effective as of August 1, 2017 by and among Mayweather Promotions, LLC (Nevada LLC), 2701 Crimson Canyon Drive, Suite 120, Las Vegas, NV 89128, and MAYMAC LLC, with a business address at 6650 S Torrey Pines, Las Vegas, NV 89118, (together, the “**Licensor**”) and JOE HAND PROMOTIONS, INC., a corporation chartered in the State of Pennsylvania with its principal place of business located at 407 E. Pennsylvania Boulevard, Feasterville, Pennsylvania 19053 (“**JHP**”).

#### RECITALS

**WHEREAS**, Licensor is the exclusive distributor of the live audiovisual closed-circuit broadcast of Mayweather *Vs McGregor* to be held on August 26, 2017 (hereinafter referred to as the “Event”);

**WHEREAS**, JHP is engaged in the business of promoting and distributing commercial closed-circuit events;

**WHEREAS**, Licensor desires to show its Event via closed circuit television at commercial locations and JHP desires to promote and distribute the Event on closed circuit television at commercial locations in continental United States, Alaska, and Hawaii, but

excluding Clark County, Nevada and the Las Vegas strip (the “Market Territory”).

**NOW THEREFORE**, in consideration of the above and for other valuable consideration Licensor and JHP agree as follows:

#### **APPOINTMENT AND NATURE OF JHP**

**1. Appointment of JHP.** Subject to the terms and conditions set forth in this Agreement, Licensor hereby grants JHP the sole and exclusive third party license during the Term (defined below) to distribute, via cable, satellite and/or Internet stream, and authorize the public exhibition of the Event through the Distribution Channel (defined below) in the Market Territory, and JHP agrees fully and faithfully to perform and discharge the duties, obligations, and responsibilities provided for in this Agreement. Licensor represents that it has no other such agreements with any other distributor for the Event in the Market Territory for the Distribution Channel. Permitting distribution of the Event for the Distribution Channel by any other entity in the Market Territory by another distributor shall be considered a breach of this Agreement.

**1.1.** Any and all rights to the Event or any elements thereof not specifically licensed to JHP under the Agreement are expressly reserved to Licensor, including without limitation, territories not licensed herein, all series’ format rights, all other forms of distribution not licensed herein, residential distribution, theatrical distribution, non-Event programming, highlights, clips, videocassette, home

video, digital video disk (DVD), broadband and Internet rights over the world wide web and via mobile devices (i.e. through an open platform made available publically), print, merchandising, or by any other similar or dissimilar means in any media or distribution paths now known or hereafter devised, except as expressly set forth herein. Such reserved rights may be freely exploited by any non-television or television distribution technology at any time throughout the world by Licensor. Nothing herein shall limit, constrain or prevent Licensor from exploiting all rights to the Programs in the Market Territory on its owned, operated and controlled platforms, including without limitation, its Internet and mobile platforms, widgets and applications.

**2. *Distribution Channel.*** JHP shall be the sole and exclusive third party distributor of commercial closed circuit television of the Event and may only distribute the Event through closed circuit television authorizing the public display by commercial establishments (the "Distribution Channel".) Unless prior written approval by Licensor is received, the Market Territory does not include the following (i) any closed circuit television locations at hotels and casinos located in Clark County, Nevada; (ii) the Las Vegas Strip, and (iii) theatrical and movie theater locations, or other national entertainment content provider that broadcasts entertainment events to movie theaters. Additionally, nothing herein shall in anyway limit or restrict Licensor's absolute rights to show the Event to residences, hotel rooms, dormitories, military base residential living, and all similar locations, via any and all means and modes of pay-per-view television,

Internet, wireless, broadband, and all other means or modes now known or hereafter developed.

**3. Authority and Capacity.** JHP is an independent contractor, is not an agent of Licensor, and is not authorized to waive any right or to incur, assume or create any debt, obligation contract or release of any kind in the name of or on behalf of Licensor. Nothing herein shall be construed so as to create an employer-employee, agency, partnership, or joint venture relationship between the parties hereto.

**4. Term.** This Agreement shall become effective upon execution by JHP and Licensor and shall continue in effect until all applicable payments have been made following the Event (the "Term").

### **JHP OBLIGATIONS**

**5. Best Efforts to Market.** JHP shall exercise its best efforts to advertise, promote and market the Event and to promote the goodwill of Licensor and the market reputation of the Event. JHP shall conduct its activities related to the marketing of the Event in a professional manner and in accordance with the reasonable policies and procedures of Licensor and the terms of this Agreement. Marketing expenses to be deducted from the Net License Fee shall be subject to the prior written approval of Licensor.

**6. Advertising.** JHP shall advertise the Event in a manner that will develop customer interest and confidence in Licensor and in the Event. JHP shall be entitled, during the term of this distributorship created by this Agreement to advertise and hold itself out as an authorized distributor of the Event through the

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Distribution Channel. JHP shall submit examples of all proposed advertisements and other promotional materials of the Event to Licensor for Inspection and JHP shall not use any such advertisements or promotional materials without having received the prior written consent of Licensor to do so. JHP shall not, pursuant to this Agreement or otherwise, have or acquire any right, title or interest in or to Licensor's Trademarks. Advertising expenses to be deducted from the Net License Fee shall be subject to the prior written approval of Licensor.

**6.1** JHP shall prepare all documentation necessary to meet the legal requirements of the closed-circuit distribution, including but not limited to: (i) preparation of licenses and technical documentation for each location, (ii) distribution of marketing and promotional materials, and (iii) collection of all funds and preparation of sales and revenue reports in a timely fashion.

**6.2** JHP shall provide direct marketing, such as mailing pieces and other forms of advertising to create awareness of the program. Such direct marketing shall comply with all Federal, State and local laws.

**6.3** With approval by Licensor, JHP may utilize the services of other regional closed-circuit distributors to maximize the sales and distribution efforts on this program. Any such company shall be bound under the same terms and conditions listed in any contract between JHP and Licensor. Licensor shall not be subject to any double commissions and JHP agrees to be solely responsible for any and all commissions, fees and other amounts that may be due to any sub-

distributors. JHP shall indemnify, defend and hold Lessor, its officers, directors, members, employees and agents harmless from and against all claims of other regional closed-circuit distributors.

**7. Security.** Upon written demand, JHP shall provide Lessor with a complete list of verifiable customers. JHP shall use reasonable best efforts to discourage theft of service and the unauthorized exhibition of the Event at commercial locations. In an effort to protect the commercial closed-circuit broadcast rights, JHP will coordinate and finance its own piracy program. JHP shall have the right as exclusive licensee to assert independent claims, including under the Communications and/or Copyright Acts, against commercial infringers that receive and exhibit the Event without authorization. **[REDACTED]**

**8. Event Casino Fees.** JHP agrees that any and all proposed fees for viewing of any Event at any hotel-casino in the Market Territory must be pre-approved in writing by Lessor upon five (5) business days written notice to Lessor.

**9. Consumer Data.** To the extent permitted by law, JHP agrees to collect and report to Lessor data in respect of location/establishment data, including location, address, contact person, price and purchase history on an Event-by-Event basis, as well as non-personally identifiable consumer information, including buying habits, usage behavior and economic data, as applicable (“Consumer Data”) with respect to JHP’s distribution of the Event. JHP acknowledges that such Consumer Data constitutes Confidential Information for purposes of the License Agreement and does not

disclose such Consumer Data to any third parties. JHP represents, warrants and covenants that it does and will comply with all applicable privacy and information security laws and regulations applicable to such Consumer Data.

### **LICENSOR OBLIGATIONS**

**10.** Licensor hereby grants JHP permission to enter into agreements With DirecTV, Dish Network, other DBS satellite providers, individual cable system operators, and Internet Protocol television (IPTV) providers which shall act as authorization sources for their commercial customers utilizing that technology to broadcast the Events. If necessary, JHP shall ask Licensor and Licensore shall cooperate to assist in its negotiations with these digital authorization sources in order to reach an agreement on terms for authorizing the requested commercial account. JHP shall use its best efforts to obtain the most favorable terms and fees from all such providers. JHP agrees that any new media platforms must be approved by Licensore, in its sole and absolute discretion.

### **FINANCIALS**

**11.** As compensation for these exclusive rights, JHP shall pay Licensore the following for each closed-circuit distributed Event:

**11.1 [REDACTED]**

**11.2 [REDACTED]**

**11.3 [REDACTED]**

**11.4 [REDACTED]**

**11.5 [REDACTED]**

**11.6** The Suggested Retail Price (“Rate Card”) shall be determined by Licensor, in its sole discretion, after consultation with JHP. The actual retail price of distribution shall be determined by JHP [REDACTED]

**INTELLECTUAL PROPERTY AND  
INDEMNIFICATION**

**12. *Proprietary Rights.*** Licensor agrees that JHP holds the right to authorize the exhibition of the Event publicly within the meaning of 17 U.S.C. § 106(4)-(5). All other intellectual property including patents and patent applications, trademarks, servicemarks, copyrights, tradenames and other proprietary rights in and with respect to the Event and Promotional Materials are and will remain exclusively the property of Licensor. During the term of this Agreement, JHP may indicate that it is an authorized distributor of the Event for Licensor and may within the direction of Licensor use the trademarks, servicemarks, logos, symbols and tradenames of Licensor applicable to the Event in connection with JHP’s advertising, promotion, distribution and sale of the Event in the Market Territory in accordance with the terms of this Agreement;

**12.1** JHP shall neither acquire nor assert any intellectual property right, title or interest in or directly or indirectly obtain or attempt to obtain at any time any right, title or interest by registration or otherwise in or to the tradenames, trademarks, symbols or designations owned or used by Licensor.

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Any and all work by JHP pertaining in any way to this Agreement is expressly deemed and agreed to be work-for-hire and all rights belong to Licensor. JHP agrees that any and work by JHP and all intellectual property, including without limitation, concepts, ideas, copy, graphics, compilations, sketches, artwork, electronic files, video, film, photography, photograph layouts, any and all derivative works, and other materials related to the Event and will become the sole and exclusive property of Licensor throughout the world in perpetuity. Licensor may use any and all materials generated as it sees fit without any additional compensation; however, Licensor is not under any obligation to use such materials. To the extent that any of the materials may not, by operation of law or otherwise, be a work made for hire in accordance with the terms of this Agreement, JHP hereby irrevocably assigns and transfers to Licensor all right, title and interest in and to any registrations and copyrights, and Licensor shall have the right to obtain and hold in its own name any copyrights, registrations and other proprietary rights which may be available. All reproduction rights are retained by Licensor and any and all work by JHP may not be reproduced in any form without written consent from licensor. JHP hereby assigns to Licensor all JHP's worldwide right, title and interest in Licensor's trademarks, servicemarks, logos, symbols and tradenames, and in any derivation, adaptation, variation or name thereof. Without limiting the foregoing, JHP hereby assigns to Licensor all JHP's worldwide right, title and interest in any material objects consisting of or incorporating any drawings, paintings, or other derivations, adaptations,

compilations, collective works, variations or names relating to Event or the Licensor;

**12.2** Whenever JHP is permitted to employ any trademark or servicemark of Licensor in any form on printed materials, JHP shall place immediately after and slightly above the use of the trademark, “®” or “TM” and indicate that it is the trademark or registered trademark of Licensor.

**13. *Third Party Infringement.*** JHP agrees to actively monitor and give Licensor prompt written notice of any unlicensed use by third parties of the Licensor's intellectual proprietary rights including trademarks and tradenames. JHP shall immediately notify Licensor upon discovery of any theft, piracy or any unauthorized exhibition, distribution, alteration, copying or duplication of the Event or any other Licensor content or programming. JHP will not, without Licensor's written consent, bring or cause to be brought any criminal prosecution, lawsuit, or administrative action for infringement, interference with or violation of any rights to trademarks or tradenames. JHP agrees to cooperate with Licensor, and, if necessary, to be named by Licensor as a sole complainant or co-complainant in any action against an infringer of the Event and Licensor's trademarks or tradenames.

**14. *Mutual Confidentiality.*** The Parties agree to keep the terms and conditions of this Agreement confidential, and shall not disclose such terms and conditions to any third party without obtaining the other Party's prior written consent; provided however, that this Agreement may be disclosed on a need-to-

know basis to Party attorneys and accountants who agree to be bound by this confidentiality provision or by Court order or by subpoena. The Parties may disclose information of a financial nature in this Agreement to their auditors and to financial institutions in the ordinary course of business. In addition, the Parties may have access to information concerning the other Party's business and operations, and/or other matters relating to the other Party's creations or business plans, which information may not be accessible or known to the general public. The Parties agree to keep any and all such information strictly confidential and not to use or disclose such information to any third party without obtaining the other Party's prior written consent.

## **INDEMNIFICATION**

**15.** Lessor shall indemnify, defend and hold JHP, its officers, directors, employees and agents harmless from and against all third party claims that any Event infringes any patent, trademark, servicemark, tradename or other intellectual property rights in the Market Territory. Lessor shall also indemnify, defend and hold JHP harmless for any claim, fine or penalty that may arise out of or involve the content of any Lessor event, including but not limited to charges of obscenity or profanity or any of the violation of FCC rules or regulations that may apply. Lessor shall assume the defense of any suit based on any such claim of infringement brought against JHP specifically relating to the Event by retaining at Lessor's expense counsel to represent JHP. Lessor shall pay any damages assessed against or otherwise payable by JHP

as a result of the final disposition of any such suit relating to the Event.

**16.** Licensor's indemnity of JHP hereunder is conditioned upon: (a) JHP giving prompt written notice of Licensor of any such claim or of the commencement of any such suit, or threats thereof after JHP has received notice of same; (b) Licensor having full opportunity to conduct the defense thereof; and, (c) the co-operation of JHP in the defense of such claim. JHP shall not incur any defense costs without Licensor's prior written consent.

**17.** JHP shall indemnify, defend and hold Licensor, its affiliates, members, parents, successors, officers, directors, employees and agents, harmless during and after the term hereof against all claims, demands, suits, judgments, losses, liabilities (including settlements entered into in good faith with JHP's consent, not to be unreasonably withheld) and expenses of any nature (including reasonable attorneys' fees) arising out of JHP's activities under this Agreement, including but not limited to, any actual or alleged: (a) negligent acts or omissions on JHP's part; (b) personal injury; (c) infringement of any rights, other than intellectual property rights of the Event, of any other person by the manufacture, sale, possession or use of the Event; (d) breach on JHP's part of any covenant, representation or warranty contained in the Agreement; (e) claims, litigation and publicity as a result of claims made against commercial locations on behalf of JHP, include letters of demand, and litigation, or, (f) failure of JHP to comply with applicable Laws, including but not limited to, violations of antitrust

laws. JHP shall pay any damages assessed against or otherwise payable by Licensor as a result of the final disposition of any such suit.

**18.** JHP's indemnity of Licensor hereunder is conditioned upon: (a) Licensor giving prompt written notice to JHP of any such claim or commencement of any such suit, or threats thereof after Licensor has received notice of same; (b) JHP having full opportunity to conduct the defense thereof; and, (c) the co-operation of Licensor in the defense of such claim. Licensor shall not incur any defense costs without JHP's prior written consent.

## **TERMINATION**

**19.** JHP and Licensor may terminate this Agreement at any time by giving each other [REDACTED] written notice of the intention to terminate. No damages or other compensation shall be payable to either party on account of such termination excepting, however, that any revenue then due shall be distributed in accordance with this Agreement. Any event scheduled to take place [REDACTED] of the notice of termination shall be distributed and broadcast in accordance with this Agreement and all revenues generated thereby shall be paid pursuant to this Agreement.

**20.** Licensor may terminate this Agreement, by giving JHP at least [REDACTED] notice of the intention to terminate, in the event of any of the following occurrences:

**20.1** Any act of dishonesty or violation of laws by JHP arising in relation to this Agreement, which

could affect JHP's ability to perform hereunder or which, in the sole judgment of Licensor, could be detrimental to Licensor or its business;

**20.2** The unauthorized release to third parties by JHP proprietary, confidential or commercially sensitive information, which refers to or relates to Licensor or the Event(s);

**20.3** Changes in laws or governmental policies making it impractical for the Event to be produced or for JHP to act as a distributor for the Event;

**20.4** The cessation of business activities by JHP;

(a) The insolvency or admission by JHP of its inability to pay its debts as they mature,  
(b) the filing of a petition for bankruptcy or similar proceedings by or against JHP or,  
(c) a general assignment for the benefit of JHP's creditors or similar acts;

**20.5** Any material breach by JHP of any term or condition set forth in this Agreement other than those set forth above, provided, however, that for any such breach, JHP shall not have cured such breach has been given to JHP by Licensor; or

**20.6** The failure of JHP to cure to Licensor's satisfaction any material breach by JHP of any term or condition of this Agreement (other than those set forth immediately above) within [REDACTED] written notice of such breach to JHP.

**21. *Effect of Termination or Expiration.*** Upon termination of the Agreement:

**21.1** JHP shall discontinue the use of any and all Licensor's intellectual property, including, but not limited to tradenames, trademarks, symbols or designations associated with Licensor or the Event and shall immediately discontinue designating itself as an authorized distributor of Licensor.

**21.2** JHP shall immediately return to Licensor all items of proprietary or confidential information delivered to JHP hereunder.

**21.3** With exception of a termination for cause, Licensor shall return a pro-rata refund of Net License Fees to JHP relating to future Event during the Term.

**22. *Remedies.*** Neither the right to terminate nor the actual termination of this Agreement upon breach of any provision hereof shall limit either party from pursuing whatever relief it deems appropriate for such breach, in accordance with, and subject to any limitations contained herein.

**23. *Regulatory Termination.*** In the event that a Regulatory Problem (as hereinafter defined) arises at any time as a result of this Agreement or the underlying relationship between the Licensor and JHP (or any of their affiliates, members or subsidiaries), Licensor shall take all action deemed reasonably necessary by its officers, members, managers or advisors, including, without limitation, amending or terminating this Agreement, in order to eliminate such Regulatory Problem. For purposes of this Section, "Regulatory Problem" means any circumstances such

that Licensor's continued affiliation or contractual relationship with JHP (or any affiliate thereof), is deemed likely, in the reasonable judgment of Licensor, based on a verbal or written inquiry or verifiable information or information received from any gaming or athletic authority, to preclude or materially delay, impede, jeopardize or impair the ability of Licensor or any of its officers, owners, members, managers, employees or affiliates to obtain or retain any gaming or athletic license, or such as may result in the imposition of materially burdensome terms and conditions on any such gaming or athletic license, or such as could subject Licensor or any of its officers, owners, members, managers, employees or affiliates to any disciplinary proceedings by any gaming or athletic authority, or such as would constitute a violation of the gaming or athletic laws.

#### **FORCE MAJEURE AND COMPLIANCE WITH LAWS**

**24. *Force Majeure.*** If either party is delayed, or interrupted [Illegible] prevented from the performance of its obligations hereunder by reason of an act of God, fire, flood, war, public disaster, strikes or labor difficulties, governmental enactment, regulation or order, or any other cause beyond its control, and if such party has given the other party prompt notice hereof and, on request, such confirmatory documentation as the other party may reasonably request and has in good faith kept the other party apprised of when the delay, interruption or prevention is expected to be resolved, the time for the performance of the party's obligations shall thereupon be extended for a period

equal to the duration of the contingency that occasioned the delay, interruption or prevention, but not exceeding sixty (60) days unless otherwise mutually agreed. If the force majeure condition continues for more than sixty (60) days, either party may terminate this Agreement upon written notice to the other party.

**25. Compliance with United States Laws and Regulations.** It is understood that imports and sales of the Event by JHP may require approvals pursuant to and in compliance with federal and state laws and regulations of the Market Territory. In order to assure that imports and sales of the Event made pursuant to this Agreement do not violate any applicable laws or regulations, the parties agree as follows:

**25.1** JHP shall promptly provide to Licensor information on laws, rules, and regulations of the Territory or of any state or political sub-division thereof insofar as such laws, rules, or regulations affect or are likely to affect (i) JHP's rights to distribute or sell the Event; or (ii) Licensor's rights under this Agreement.

**25.2** JHP shall at all times comply with, and shall require its dealers at all times to comply with, all applicable laws, rules and regulations of the Territory or of any State or political subdivision thereof that affect or impact this Agreement and each party's rights and obligations hereunder or that affect or regulate the manufacture of the Event or their importation into the Market Territory.

## GENERAL PROVISIONS

**26. Notices.** All notices, demands, requests, consents, approvals or other communications (collectively “Notices”) required or permitted to be given hereunder or which are given with respect to this Agreement shall be in writing, addressed to the party to be served at the address set forth on page 1 of this Agreement, with copies for Licensor at May Mac LLC to Ike Lawrence Epstein, Senior EVP & COO, Wm. Hunter Campbell, EVP & GC, and to Mayweather Promotions, LLC, c/o Showtime Pay Per View, a division of Showtime Networks Inc. (a Delaware corporation), 1663 Broadway, New York, NY 10019, Attn: Stephen Espinoza, Stephen.Espinoza@Showtime.net, fax (212) 708-7498. Notice may be served personally or by depositing the same address as herein provided (unless and until otherwise notified), postage prepaid in the United States Mail. Such Notice shall be deemed served upon personally delivery or upon the date of mailing; provided however, that Licensor shall be deemed to have been served with a notice of request for approval of materials under this Agreement only under Licensor’s actual receipt of the request.

**27. Counterpart.** This Agreement may be executed in counterparts, each shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

**28. Governing Law; Forum Selection; Consent to Jurisdiction.** This Agreement and its incorporated Exhibits have been delivered at and shall be deemed to have been made and entered into in Las Vegas, Nevada. Accordingly, the rights and liabilities of the

parties shall be determined in accordance with the laws of the state of Nevada, without regard to its principles of conflicts of laws. The parties agree that the exclusive jurisdiction and venue for the resolution of any dispute arising from or relating to this Agreement shall lie in the United States District Court, District of Nevada, sitting in Las Vegas, Nevada. Each party irrevocably consents to the service of process in any such dispute if served in accordance with the notice provisions contained herein.

**29. Remedies Cumulative.** Unless otherwise provided for under this Agreement, all rights of termination or cancellation, or other remedies set forth in this Agreement, are cumulative and are not intended to be exclusive of other remedies to which the injured party may be entitled by law or equity in case of any breach or threatened breach by the other party of any provision in this Agreement. Use of one or more remedies shall not bar use of any other remedy for the purpose of enforcing any provision of this Agreement. JHP's sole remedy for breach of this Agreement by Licensor shall be an action for money damages and in no event shall JHP be entitled to injunctive or other equitable relief. However, Licensor may seek equitable relief against JHP under this Agreement, including but not limited to injunctive relief.

**30. Entire Agreement.** The terms of this Agreement are intended by the parties as a final expression of their Agreement with respect to such terms as are included in this Agreement and may not be contradicted by evidence of any prior contemporaneous agreement. The parties further intend that this

Agreement constitutes the complete and exclusive statement of its terms and then no extrinsic evidence whatsoever may be introduced in any judicial proceeding, if any, involving this Agreement

**31. *Modification and Amendments.*** This Agreement may not be modified, changed or supplemented, nor may any obligations hereunder be waived or extensions of time for performance be granted, except by written instrument signed by the party to be charged or by its duly authorized agent or as otherwise expressly permitted herein.

**32. *Waivers and Extensions.*** No waiver or breach of any Agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts.

**33. *Titles and Headings.*** Titles and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provisions of this Agreement.

**34. *Schedules.*** Each of the Schedules referred to herein and attached hereto is an integral part of this Agreement and is incorporated herein by reference.

**35. *Consents and Approvals.*** Whenever consent or approval of either party is provided for in this Agreement, such consent or approval shall be given in writing to the requesting party.

**36. *Further Assurances.*** The parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm the agreements contained herein in the manner contemplated hereby.

**37. *Assignments and Sublicenses.*** The services to be provided by JHP hereunder are peculiar and special in nature. Therefore, neither JHP nor Licensor shall assign this Agreement in whole or in part without the prior written consent of the other party. Notwithstanding the foregoing, Licensor may assign this Agreement or any of its rights hereunder, without the other's consent, to any entity with which it may be merged or consolidated or which acquires all or substantially all of its assets, provided that such an entity agrees in writing to assume all applicable obligations under this Agreement. Any purported assignment or transfer by Licensor of any of its rights or obligations under this Agreement other than in accordance with the provisions of this Section shall be void, unless otherwise approved by the parties. JHP agrees it shall maintain a consistent level of integrity, quality and exposure level of the Event during the entire Term of this Agreement to Licensor's satisfaction. This Agreement will bind and inure to the benefit of the respective successors and permitted assigns of JHP or Licensor.

**38. *Partial Validity.*** If any provision of this Agreement is found to be invalid by any court, the invalidity of such provisions shall not affect the validity of the remaining provisions hereof.

**39. *Survivability.*** The respective obligations of the parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, including but not limited to indemnification, audit rights and piracy settlement payments, shall survive termination, cancellation or expiration of this Agreement.

**40. *Audit Rights.*** JHP shall keep full, clear and accurate books of account and records with respect to all financial terms, including and not limited to gross license fees, Net License Fees, authorization fees, credit card fees and any miscellaneous event license taxes pursuant to this Agreement. The books and records shall be maintained in such a manner that the reports required herein shall be readily verifiable. Licensor, and Licensor's designated agent (designated in writing by the Licensor), shall have the right to examine and audit JHP's records at JHP's business premises upon reasonable prior notice to JHP and during normal business hours. Licensor shall be entitled to examine and audit JHP's records once in any calendar year unless a prior audit by Licensor in that year revealed a deficiency. If Licensor's audit reveals an overpayment in any payments due to Licensor pursuant to this Agreement, such amounts will be credited against the payments next due. If Licensor's audit reveals a deficiency in any payment due under this Agreement, JHP shall remit the amount of the deficiency within 10 days after demand therefore together with interest at a rate of seven percent (7%) per annum. If any such audit shows a deficiency of greater than five percent (5%) with respect to the amounts that should have been paid to Licensor, the

reasonable cost of such audit shall be paid by JHP. After twelve (12) months from the date of any report and corresponding payment, that report shall be deemed final and binding and Licensor shall have no further right to contest the report or payment of Licensor's revenue share as specified therein. Notwithstanding the foregoing, if JHP disagrees with the results of an audit by licensor, JHP and the Licensor shall mutually agree upon a third party accounting firm to review Licensor's audit and the results thereof shall be binding on Licensor and JHP.

**41. *Corporate Authority.*** Each individual executing this Agreement on behalf of any corporation which is a party to this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation, and that this Agreement is binding upon said corporation on accordance with its terms.

**IN WITNESS WHEREOF,** the parties have executed this Agreement effective as of the first written above.

**MAYWEATHER PROMOTIONS LLC**

By: [Illegible]

Printed Name: [Illegible]

Title: CEO

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**MAYMAC LLC**

By: [Illegible]

Printed Name: \_\_\_\_\_

Title: CFO

**JOE HAND PROMOTIONS, INC.**

By: [Illegible]

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## APPENDIX H

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[Filed: August 30, 2021]

**SNI draft 11/30/17**

### AGREEMENT

This Agreement is made and entered into as of the 21<sup>st</sup> day of November 2017, between **Showtime Networks Inc.** (“SNI”) and **Joe Hand Promotions, Inc.** (“JH”).

### **AGREED TERMS**

#### **DEFINITIONS:**

**Commercial Premises:** All commercial/non-residential viewing locations including but not limited to: bars, taverns, public houses, restaurants, clubs (including members' clubs, social clubs and private clubs), offices, shops, cafes, and public venues or public viewing areas, but excluding theaters, amphitheaters and other similar-type public venues.

**Commercial Rights:** The exclusive right to distribute and publicly perform the Event live on August 26, 2017 to Commercial Premises in the Territory.

**Event:** The entire pay-per-view television broadcast of the August 26, 2017 Mayweather vs McGregor bout, including all undercard matches contained therein.

**Territory:** The United States of America, its territories and possessions.

**WHEREAS**, SNI is the author and owner of the copyright to the Event (Application No. 1-5790385861 filed on October 25, 2017);

**WHEREAS**, JH is engaged in the business of promoting and distributing commercial closed-circuit events, as well as the prosecution of commercial establishments and locations who distributed and/or publicly displayed closed-circuit events without authorization pursuant to the copyright laws of the United States and the Federal Communications Act;

**NOW THEREFORE**, in consideration of the above and for other good and valuable consideration, the sufficiency and receipt of which is hereby agreed and acknowledged, the parties hereto agree as follows:

- i) JH has been granted the sole and exclusive Commercial Rights (as defined above) in the Territory in the Event, under the copyright laws of the United States.
- ii) JH has the exclusive right in the Territory to take enforcement measures, prosecute and commence legal actions with respect to any unauthorized exploitation of the Commercial Rights in the Event in the Territory, and SNI hereby assigns and grants to JH such rights, interests or powers in the Event as are held by SNI solely to the extent necessary under the copyright laws of the United States to enable JH to enforce and to initiate legal proceedings in the courts of the Territory solely in the name of JH for copyright infringement or

violation of the Federal Communications Act relating solely to the Commercial Rights in the Event in the Territory. SNI hereby additionally assigns to JH any right or remedy that may be available to SNI related solely to the piracy of the live Event by Commercial Premises in the Territory, which rights shall only be exercised in accordance with the terms of this Agreement and its intent. JH may not further re-assign, transfer or convey any of its rights or obligations under this Agreement without the express written permission of SNI.

### **ENFORCEMENT OF RIGHTS**

In an effort to protect the Commercial Rights in the Event granted to JH, JH will coordinate and finance its own piracy program. Insofar as SNI is concerned, JH shall have the right and standing, as exclusive assignee, to assert independent claims, solely in the name of JH, for copyright infringement under the copyrights laws of the United States and violations of the Federal Communications Act, in either case solely relating to the unauthorized exploitation of the Commercial Rights in the Event in the Territory. JH agrees to notify SNI promptly in the event any issue is raised relating to the validity of SNI's copyright in the Event.

### **SEVERABILITY**

If any term or provision of this Agreement shall be held by a court of competent jurisdiction to be illegal or unenforceable in whole or in part under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this

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Agreement but the other parts of this Agreement shall remain in full force and effect and the parties shall endeavor to agree to such amendment as will, to the extent possible, give full effect to their intentions as expressed in this Agreement.

### **NO PARTNERSHIP**

This Agreement shall not be deemed to create any partnership, joint venture, employment or agency relationship between any of the parties.

### **THIRD PARTIES**

This Agreement is for the benefit of the parties to it and is not intended to benefit, or be enforceable by, anyone else.

### **COUNTERPARTS**

This Agreement may be executed in one or more parts by the parties, each of which will be deemed an original and which together shall constitute one and the same Agreement. Executed copies of the signature pages of this Agreement sent by facsimile or transmitted electronically shall be treated as originals, fully binding and with full legal force and effect.

### **AUTHORITY**

Each party signing this Agreement represents that it is fully authorized and empowered to enter into this Agreement and that the performance of its obligations under this Agreement will not violate any agreement between it and any other person, firm or organization.

By signing in the spaces provided below, the parties accept and agree to all the terms and conditions of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective as of the date first written above.

**SHOWTIME NETWORKS INC.**

By: /s/ Stephen Espinoza  
Printed Name: STEPHEN ESPINOZA  
Title: PRESIDENT, SPORTS + EVENT PROG.

**JOE HAND PROMOTIONS, INC.**

By: /s/ Joseph Hand  
Printed Name: Joseph P. Hand  
Title: President

**ACCEPTED AND AGREED:**

**MAYMAC LLC**, a wholly owned subsidiary of Zuffa, LLC

By: [Illegible]  
Printed Name: Ike Lawrence Epstein  
Title: SEVP & COO

**MAYWEATHER PROMOTIONS LLC**

By: [Illegible]  
Printed Name: Leonard [Illegible]  
Title: CEO, Mayweather Promotions