

MEMORANDUM OF LAW

DATE: December 2, 1988

TO: Stephen Shushan, Stadium Business Manager
FROM: City Attorney
SUBJECT: Pay Television - San Diego State University
Agreement for Use of San Diego Jack Murphy
Stadium

By a memorandum to the City Attorney dated November 3, 1988, you asked for our views concerning the definition of "pay television" as it is contained in the agreement between San Diego State University and the City for use of San Diego Jack Murphy Stadium.

Section 13 of that agreement provides in pertinent part as follows:

13. Pay Television

(a) The term "pay television" for purposes of this agreement shall mean any method of transmitting television signals in connection with which a charge is made to the receiver or viewer for the reception of signals in a final usable form. Pay television shall also include, without limitation of the generality of the foregoing, telecasts in theatres to which viewers pay an admission charge and metered, subscriber or so-called "pay-as-you-see" home television. The term "pay television receipts" shall mean the gross amount received by SDSU from or arising out of pay television of Home Games or, if the amount received is a share or portion of receipts paid directly to the conference, then the amount of such a portion received by SDSU from said conference after deductions from either of such amounts (as the case may be) of any part thereof which is

required by the conference or governing body to be paid to the visiting team, to any other university or any other applicable taxes.

In the event that any Home Game is transmitted by pay television, SDSU shall pay City with respect to each Home Game transmitted, ten percent (10%) of SDSU pay

television receipts less any applicable taxes.

It seems to us that the definition is abundantly clear and clearly includes subscription services such as ESPN and Prime Ticket. The first sentence of the "pay television" definition provides that it includes any method of transmission in which a charge is made to the receiver for a signal in final usable form. As I understand it, ESPN is not receivable "over the air." It can be received only by a cable user who pays a charge for the signal "in final usable form." Thus, it is our view that this clause is applicable and that 10% of any payment received by the University directly or indirectly from ESPN for any Home Game televised by ESPN should be remitted to the City.

As to the Prime Ticket transmissions, I understand that this is a separately charged service on cable. It seems to me that this is also clearly covered by the definition. I call to your attention the second sentence of the definition which indicates the inclusion of "metered subscriber or so-called pay-as-you-see home television."

Again it is our view that any Home Game televised on Prime Ticket should result in a 10% of receipts from the telecast.

JOHN W. WITT, City Attorney

By

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Assistant City Attorney

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cc Allisyn Thomas

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