

Mixed Martial Arts: Sport or Entertainment? The Uphill Battle for Fighters.

by Robert Maysey
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1. UFC Dominance Distorting “Market”
2. Athletic Commissions—Tail Wags the Dog
3. Contracts-Studio System Entertainers or Professional Athletes?





- The UFC captures perhaps 90% of mixed martial arts revenue
- The Fertittas field pleas from private equity and media firms to sell UFC. Those offers, they assert, exceed \$1 billion

Forbes: Ultimate Cash Machines



UFC Gate Figures

UFC 98	\$3.3M
UFC 100	\$5.1M
UFC 102	\$1.9M
UFC 104	\$1.9M
UFC 106	\$3.0M



Pay Per View Sales Figures

UFC 98	635,000
UFC 100	1,600,000
UFC 102	435,000
UFC 104	500,000
UFC 106	375,000



Average PPV Price of \$50.
UFC share of PPV estimated at 50%.
Combined Revenue (Gate plus PPV):

UFC 98 = \$19,175,000

UFC 100 = \$45,000,000

UFC 102 = \$12,775,000

UFC 104 = \$14,400,000

UFC 106 = \$12,375,000

5-event total: \$103,725,000



Combined Fighter Purses

UFC 98 = \$957,000

UFC 100 = \$1,790,000

UFC 102 = \$1,285,000

UFC 104 = \$922,000

UFC 106 = \$1,021,000

5-event total: \$5,975,000

or 5.7% of Gate/PPV total

***Note: Reported figures do not include PPV bonuses,
“locker-room” bonuses, side letter agreements
or performance bonuses.*



Couture Resigns, UFC Files Suit, and Payment Practices Come to Light

- Dana White reveals that despite the \$250,000 reported base pay for Couture's fights, Couture actually earned \$2.9 million dollars for 2 fights in 2007.
- A signing bonus, PPV bonuses, and non-contractual "locker-room" bonuses account for the difference in actual pay and reported pay.
- Top Stars often have PPV incentives in their promotional contracts, which can add between \$500,000 to \$1,500,000 to a fighter's pay.
- Athletic Commissions, despite reporting forms, do not require MMA Promotions to disclose full compensation. Federal law requires full disclosure in boxing.



The Post-Fight Bonuses Are Predatory

“The news about the discretionary post-fight bonuses confirms a long-rumored trend. . . By keeping the world in the dark about bonuses, nobody really knows what's going on, and nobody can complain. Unfortunately for Dana, word spreads quickly, and this predatory practice of keeping everyone in confusion can't last forever.”



Michael Rome, Bloody Elbow



UFC is top Pay Per View Attraction

- UFC did approximately 8 million buys in the United States and Canada
- Six of the year's top 10 buy rates and 11 of the top 15
--Dave Meltzer, Yahoo Sports

$$8,000,000 \times \$25 = \$200,000,000$$

- PPV and Gate revenue currently accounts for about 75% of the UFC's combined revenue
- Combined revenue for core business estimated at \$300-\$400 million



UFC is top Pay Per View Attraction

UFC is televised in 100 countries and broadband expansion could allow the group to broadcast global pay-per-view events using its own web-based platform.

“When everyone can watch TV on the internet, how many pay-per-view buys do you think we’ll do? Four million? Five million [per event]? We can take this all over the world.”

-- Dana White, Financial Times

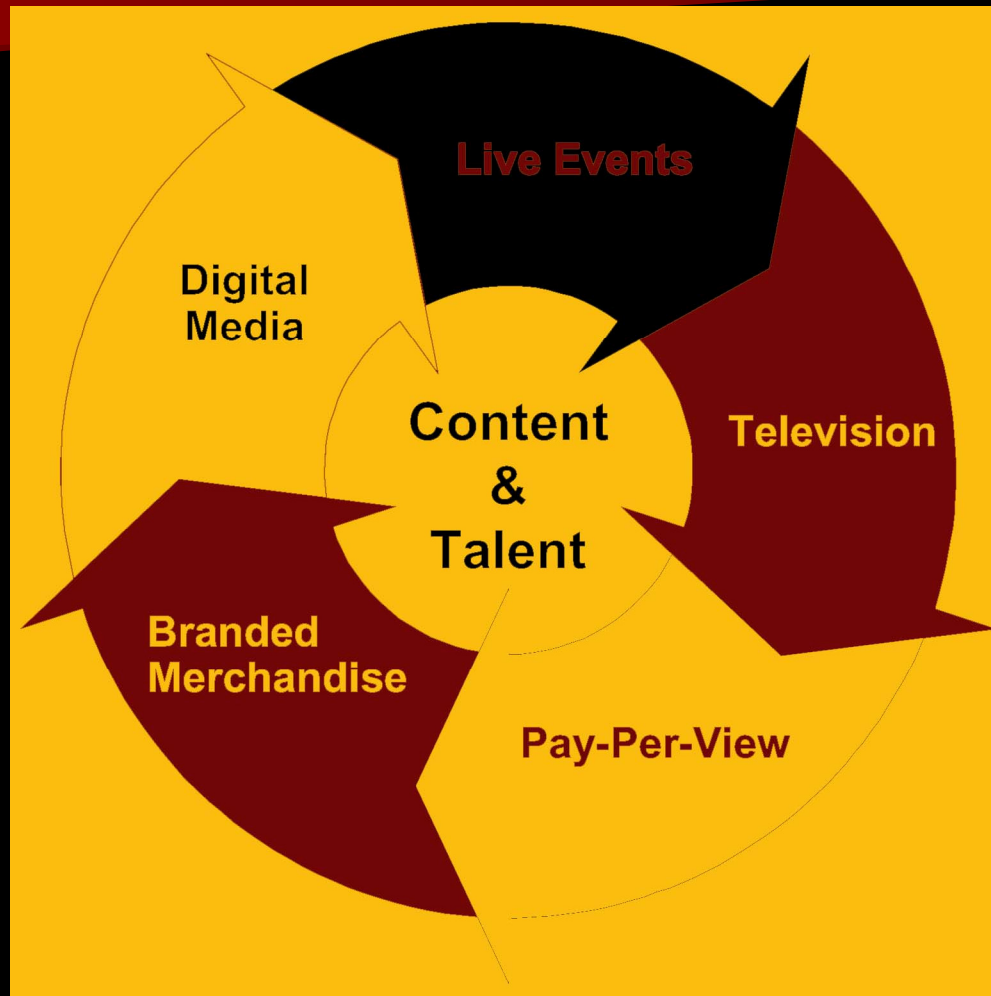


Other Revenue

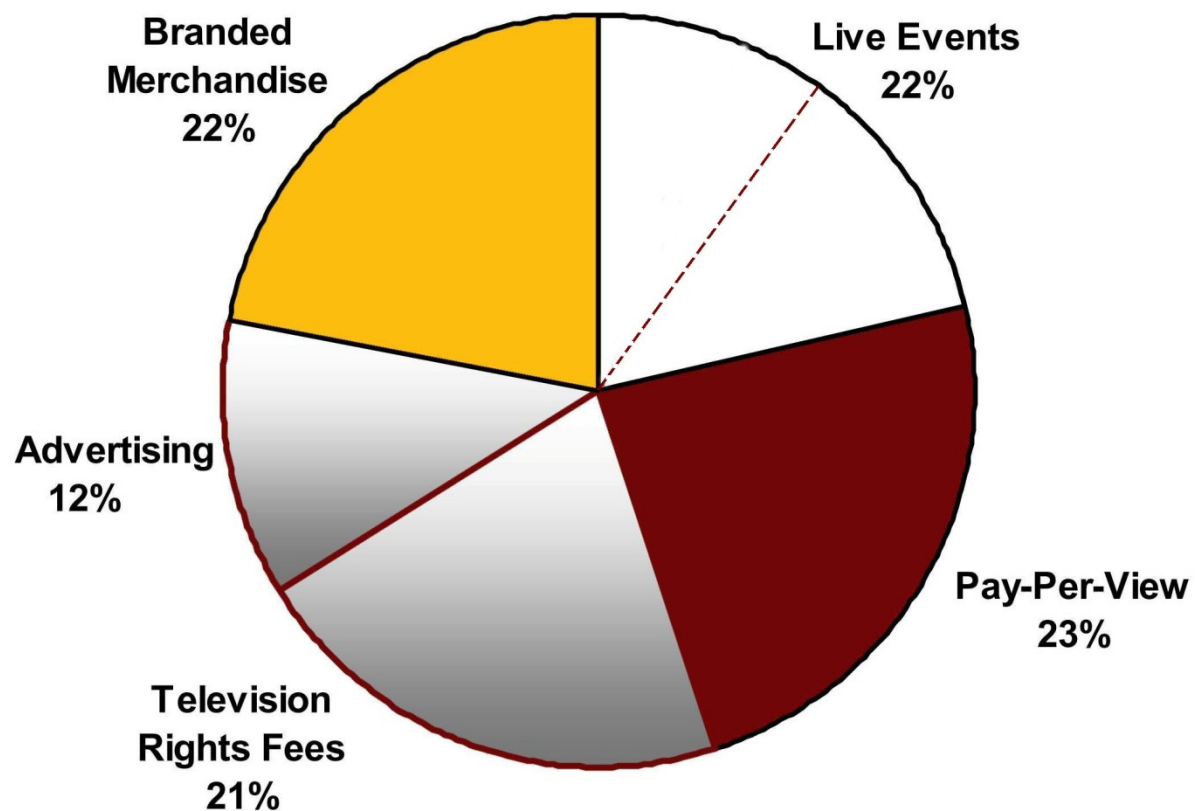
1. Spike TV--\$100 million/3 year deal
2. Event Sponsorship
3. Digital Media and Advertising
4. Branded Merchandise and Memberships
5. Licensing



Revenue Generation Platforms



Diversified Revenue Streams





“I think it's the whole brand focus, the whole brand identity,” Lorenzo Fertitta said. “I think it's trying to be the category killer, really trying to dominate the space you compete in.”

“But we basically sold out the arena in New Jersey and we did very strong. . . It showed that our UFC brand can carry a whole show.” Lorenzo Fertitta

“I’ve been all over the world and I don’t think stars losing or leaving slows things down at all.”
Dana White



Brand Influence Over Media

YAHOO! SPORTS

Home

NFL

MLB

NBA

NHL

NCAAF ▼

NCAAB ▼

NASCAR

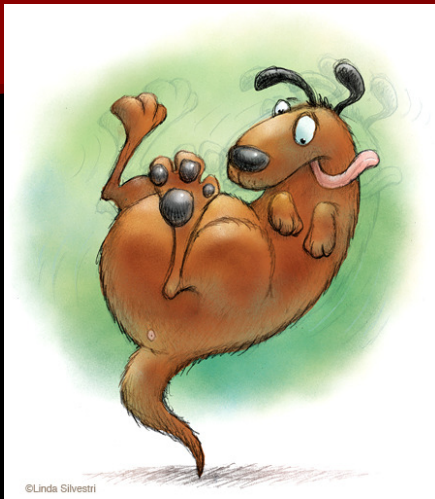
Golf

UFC

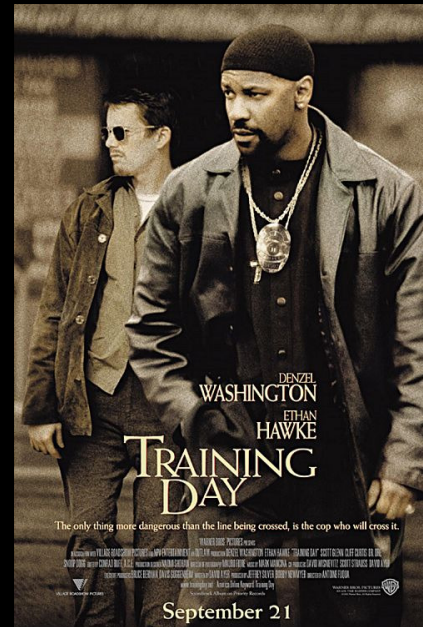
Boxing



Athletic Commissions—Tail Wags the Dog



“Jake-
Its Not What You
Know-
Its What You Can
Prove.”



State and Tribal Athletic Commissions Govern MMA

- Commission officials are typically political appointees
- Goal of commissions is tax revenue generation
- Commission officials from boxing put in MMA positions frequently
- Commissions do not require, unlike boxing, disclosure of all agreements



City of Columbus gained significant economic benefits from March 2007's UFC® 68

- Approximately 40 percent of attendees (8,000) visited from outside of Ohio, a boon for hotels and restaurants in Columbus
- According to the Ohio Athletic Commission, the single MMA event produced \$11 million in external economic activity for the city



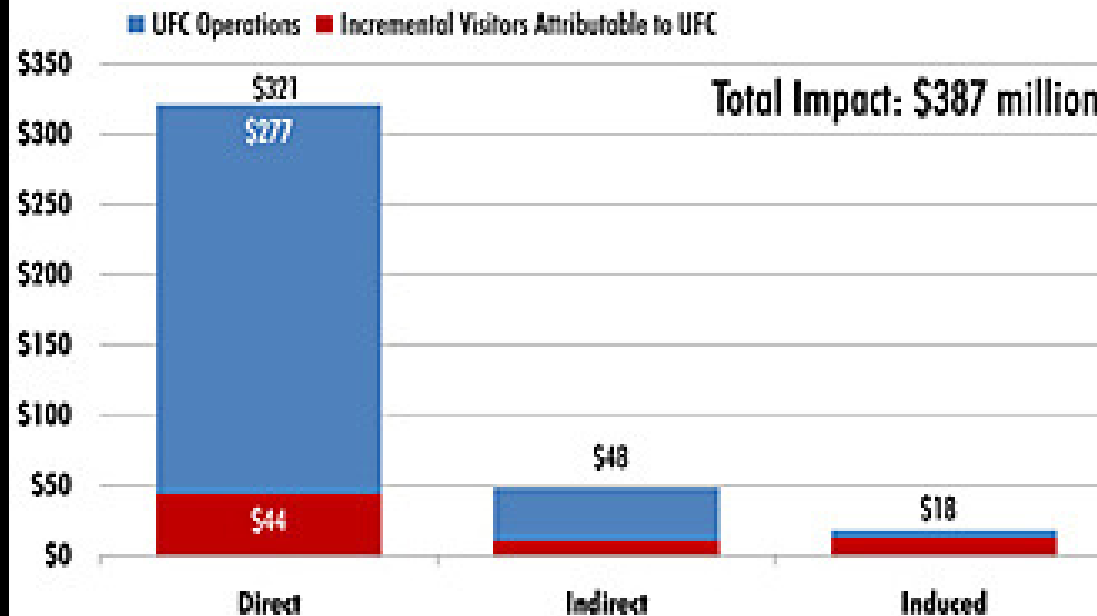
UFC's Economic Impact on Las Vegas

- At UFC® 67, 72 percent of attendees came to Las Vegas from outside of Nevada
- Generated \$86.2 million in nongaming revenue for six events between Feb. 2, 2008, and Jan. 31, 2009
- Attracted 80,087 people, with 56,435 of them coming to Las Vegas for the event
- UFC 94 was the primary reason 90 percent of the attendees traveled to Las Vegas
- UFC visitors have a gambling budget 60% greater than average and spend two times more on non-gambling activities



UFC's Economic Impact on Las Vegas

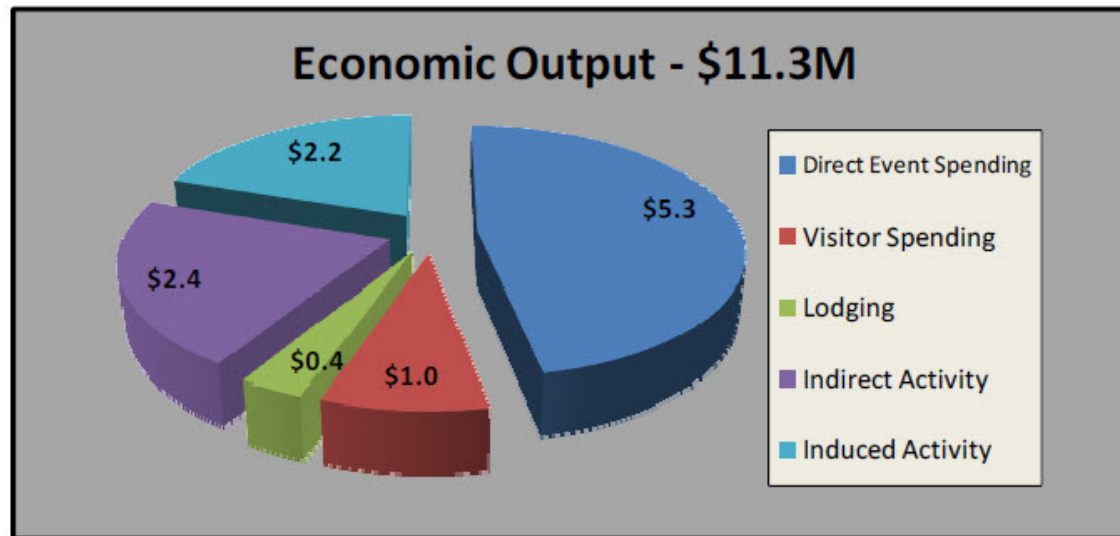
Economic Output: Combined (in millions)



UFC Event Estimated Economic Impact on New York Event:

\$11.3 million in total economic activity for the local economy

\$5.3 million of direct event spending is leveraged 2 times to result in \$11.3 million dollars of total activity in the local economy.



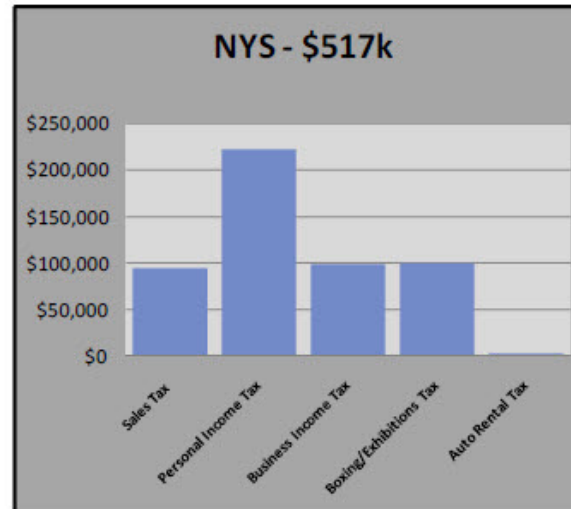
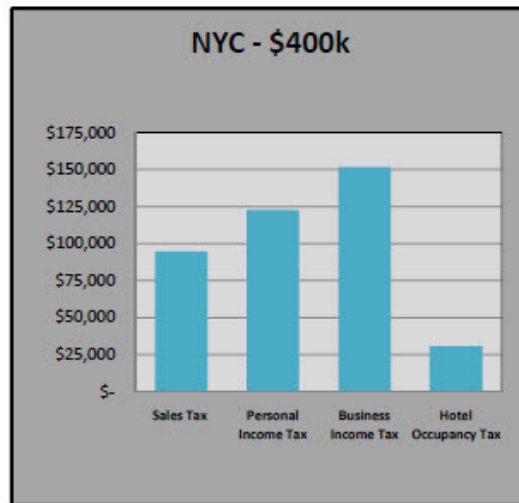
Source: Zuffa, LLC & HR&A input-output analysis using IMPLAN.



Impact to State Government

Direct revenue benefits for both local and state governments

\$0.9 M of total fiscal impacts to New York City and State.



\$0.9 M can fund textbooks for over 15,000 NYS/NYC children



Athletic Commissions' Pressure to Generate Revenue



Big John McCarthy



- Widely recognized as the best mixed martial artist referee
- Officiated nearly 600 professional MMA matches worldwide
- Masters Hall of Fame inductee - Outstanding Contributions to the Martial Arts
- One of the original authors of California's first MMA regulations
- Recognized by the California State Athletic Commission for his "dedication and commitment to other officials in helping developing their skills and concern for athletes"
- Developed and conducted training seminars for the Association of Boxing Commissions

MMA REFEREE & JUDGES TRAINING

MONTREAL - ABC Conference - July 4th and 5th - Delta Montreal Hotel - John McCarthy, Instructor

Please check back again soon. To book a seminar, please contact ABC President **Tim Lueckenhoff**.



Association of Boxing Commissions

- July 2008—ABC MMA Convention held
- A revised edition of the Unified Rules of Mixed Martial Arts was presented to over 40 attending commissions
- The amended rules were drafted by **ABC's MMA Chairman Dale Kliparchuk**, **New Jersey State Athletic Control Board Deputy Attorney Nick Lembo**, **ABC President Timothy Leuckenhoff**, **California State Athletic Commission Executive Officer Armando Garcia** and veteran referee “Big” John McCarthy
- Revised draft offered rules clarifications and contained revised weight classes
- Additional weight classes added, in particular, breaking up heavyweight division where gaps of 70 pounds between opponents are possible



Big John McCarthy

“A lot of people had input and say and when it came to weight class change, I admit I wanted one weight class change. I wanted there to be a weight class between 205 and 265. I think it's ludicrous to say that because the guys are bigger, you can have that big of a spread. If you have a 220-pound guy and he's going against a 265-pound guy the day he weighs in, but he's 280 pounds the day of the fight, you're talking about a 60-pound gap.”



Big John McCarthy

“I have a problem when you have an official who is put into place to have an impact on the sport I love when they don't understand the sport, when they don't understand what the fighters are doing. They understand someone getting hit in the face. They don't understand the manipulations of the ground game and who is winning the fight. **I probably should've shut my mouth because I've got a big mouth, and it's got me in a lot of trouble, but it's the truth.** I want everyone to understand what is really happening in the sport so they can make educated decisions and judgments.”

Sherdog.com



Voicing Concerns Leads To Banishment

“You have some talented fighters. Unfortunately, you went public and said some negative things about the structure of _____’s contracts in the UG last year. To be honest, I am not sure I can work around that. Not seeing eye-to-eye on certain things is okay, but going public instead of keeping the issues you had private might have been a big mistake.

Wish I could help but I think this is out of my hands.”



Judging Competency

“You have to keep in mind we always favor the fighter who is trying to finish the fight, and leg kicks certainly don't do that.”



July 3-4, 2008

Now it's up to the commissions to take them back and get them passed. But as they did with the Unified Rules, it should be easier for state commissions to pass these rules if they can say to their legislators that this was something that was passed by the majority of the members of the Association of Boxing Commissions and this is what the majority of other commissions allow. We should be in stead with them.

--Nick Lembo
Sherdog.com



July 6, 2008

“There’s going to be a fight. And you know I don’t roll over easily. No, we’re not following that. . . It’s John McCarthy. He doesn’t want to be a referee anymore, now he wants to change the rules. And he’s announcing for Affliction.”

--Dana White reaction to new weight classes

“Dana White is a promoter. If he doesn't like something, he's going to lash out about it. Dana's a guy with power right now. He promotes the biggest promotion there is in the sport, and he truly has a lot of control over the sport right now because the UFC is so powerful. He promotes the UFC. The UFC is what he cares about. Does Dana truly care about fighters that are fighting in EliteXC? Does he truly care about fighters in a TFA event in California -- or in the Backwoods Brawl, or whatever? He doesn't care because it's not the UFC.”

--John McCarthy response



July 6, 2008

Nick Lembo issues press release containing the following statements:

- Unified rules, in my opinion, are crucial to the growth of MMA
- I have decided that I do not support the weight class changes
- Major MMA jurisdictions like **Nevada, California, Ohio, Florida, Quebec** and **New Jersey** need to have an involved role when contemplating serious MMA rule changes

Result: The Rules as voted upon were scrapped, and a new committee formed.



In the ABC Minutes of Meeting, issued months after the convention, the following note was inserted:

Secretary's Note: In the aftermath of the discussions regarding proposed changes to the Professional MMA Unified Rules and the Amateur MMA Rules, it was determined that, in light of the desired result of uniformity and unification, the above measures are to be considered "Guidelines" and not formal changes to the existing Professional MMA Unified Rules. Further, to more fully study the foundation and propriety of any changes to the current Professional MMA Unified Rules and the Amateur MMA Rules, the ABC has created a newly-formed MMA Committee.



Big John McCarthy/ABC

You were in the news after you had suggested some new rules be added to the Unified Rules at the ABC convention last year. The suggestions were sweeping the Internet and then sort of just went away. What happened with that?

“I was made to be the scapegoat of that whole thing. That's fine. . . I didn't say anything about it. It was voted on by the Association of Boxing Commissions, which is basically all the commissions in North America, both the U.S. and Canada. **They passed unanimously.** There was a lot of talk that these were ‘John McCarthy's rules.’ Well, that's not true. . . A lot of people had input and say and when it came to weight class change.”

“All the other ones, I'm not going to say who put them in, but in the end, it was put on me. **I know the truth, and there's other people out there that know the truth. There's e-mails, and there's film of it all – those things are out there. The truth is there.** I just didn't come back to defend myself.”

Sherdog.com



McCarthy Returns to Officiating

- Nevada has not relicensed McCarthy to officiate
- McCarthy has not been assigned to referee WEC or UFC events staged in California and Ohio since returning to active officiating

Dana White's Reaction to NSAC's Decision:

“Wow. That is my reaction. Having a license is a privilege, and John said a lot of s--t about the Nevada commission and other commissions.”

Sherdog.com



Will we ever see John McCarthy as the third man again inside the UFC's Octagon?

"I don't have any control over that. I don't hire myself. Dana's got problems with me, and that's fine. . . I'm sure if I got on the phone with Dana, we would talk for five minutes, and we could work anything out. I'm a pretty stubborn person, he's a pretty stubborn person. So is that phone call going to happen? I doubt it."

Big John McCarthy

Sherdog.com

Though we have many officials who are working their way up, right now we have only a small pool of about 10 referees qualified to work large promotions. We select referees based on experience, training and number of bouts each has to date. . . Our referees are not categorized as 'accepted' by any promoter. They are either qualified for any large promotion, or they're not.

--Dave Thornton, Interim Executive Director, California State Athletic Commission

Sherdog.com



ABC Convention

At the same convention held in July of 2008, the ABC announces the official database and records keeper for mixed martial arts. The records keeper was selected by a special sub-committee in March of 2008.

A private company “won the bid” to become the official records keeper.



MMA Fighters-Second Class Citizens.

- Virtually identical to boxing counterpart with 2 key differences:
 - It does not contain an equivalent “mixed martial artist’s bill of rights” that is part of the boxing counterpart; and
 - It deletes out medical disclosures required by federal law in boxing.

**The Association of Boxing Commissions and
the National Association of Attorneys General “Boxing Task Force”**

PRESENT

The Professional Boxers “ Bill of Rights”

1. You have the right to be treated in a professional manner and to be fully informed about all aspects of your sport.
2. You have the right to have all terms of any contract with a promoter or manager in writing.
3. You have the right to have all contracts read and explained to you, either by the local commission representative or anyone of your choosing (including an attorney).

COLOR PHOTO
(passport type)

ASSOCIATION OF BOXING COMMISSIONS
MIXED MARTIAL ARTS
NATIONAL IDENTIFICATION CARD

APPLICATION FORM
~~AMATEUR~~
☒ PROFESSIONAL

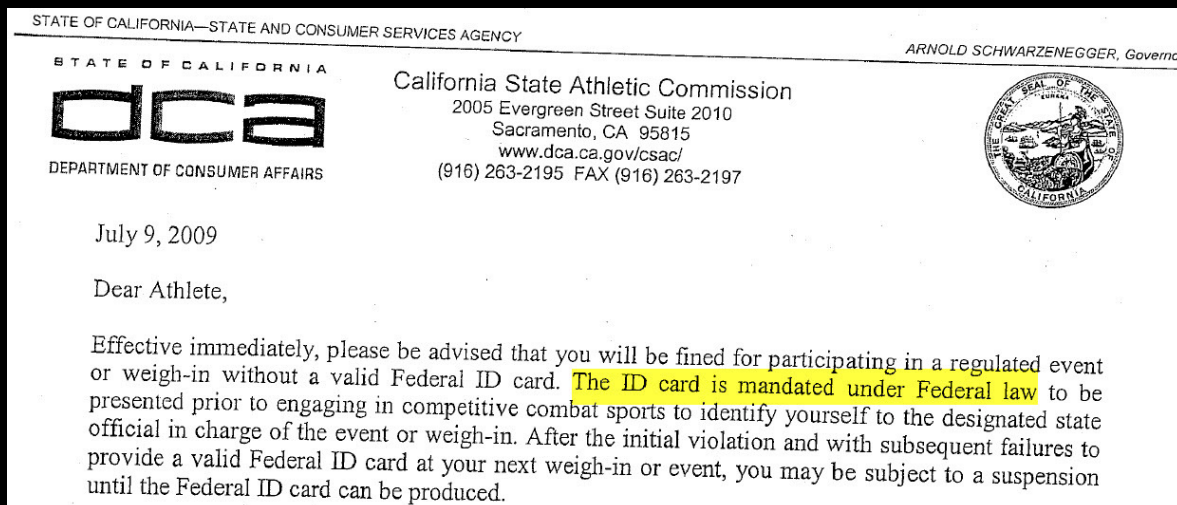
ID #: _____
DATE ISSUED: _____
ISSUING COMMISSION:
Pete Szabo Utah Athletic Commission
EXP. DATE: _____

NAME: _____ DATE OF BIRTH: ____/____/____ SOC SEC #: ____-____-____
ADDRESS: _____ CITY: _____ STATE/PROVINCE: _____ ZIP: _____
HEIGHT: _____ WEIGHT: _____ COLOR OF HAIR: _____ COLOR OF EYES: _____
TELEPHONE: (____) _____ E-MAIL ADDRESS: _____
BIRTHMARKS, SCARS OR TATTOOS: _____
YEARS OF EXPERIENCE: _____



National ID Card

Despite not providing any of the protections provided by Federal law to boxing, the California State Athletic Commission Informs Fighters Federal Law Requires National ID Card:



Standgate: Allegations of the KO Bonus

“The promoters kind of hinted to me and they gave me the money to stand and trade with him. They didn't want me to take him down, let's just put it that way. It was worth my while to try to stand up and punch with him.”

--Fighter - ESPN.com

“What I was insinuating by wanting to stand up was they offered money for a knockout -- and I just wanted to get a knockout so I could get extra money.”

--Fighter

“We're just trying to create exciting fights. Fast-paced energy fights. It's just something we've always done.”

--Jeremy Lappen, EliteXC promoter

“We don't give submission bonuses. But the Fighter “knew a knockout bonus was possible before the fight.”

--Jeremy Lappen, EliteXC promoter - SI.com



Isiah Thomas is Proud:

Lappen, following the failure of ProElite, is awarded the right to supervise and regulate all amateur mixed martial arts in California. The rules being followed are virtually identical to the pro version, with reduced round times.



Contracts—Studio System Entertainers or Professional Athletes?



Onerous Contracts

- “Merit” determined in part by contractual status
- Promotional agreements have far reaching ancillary rights provisions, akin to entertainers in the WWE or American Idol
- Champions are locked into contracts with perpetual renewal provisions (“Champion’s Clause”)
- Titles are ceremonial
- Contracts lack mutuality of obligation
- No standard or objective rankings are utilized



“On the Shelf, Iced, Put on Ice”

- Huerta, with a record of 20-2-1 at the time and one of the UFC’s most marketable and exciting fighters, had his fights deleted from replay broadcasts.
- Arlovski, recent Heavyweight champion with two consecutive wins, was relegated to the undercard of his final UFC match.
- Frank Shamrock, the UFC’s first middleweight champion and arguably biggest stars of the 1990’s, was not included in fights available for fan voting on the UFC’s 100 biggest fights.
- Other fighters have been deleted from the UFC’s website and from UFC history altogether.



Huerta and Arlovski Iced



Loss	Gray Maynard	Decision (Split)	UFC - UFC Fight Night 19	9/16/2009	3	5:00
Loss	Kenny Florian	Decision (Unanimous)	UFC 87 - Seek and Destroy	8/9/2008	3	5:00
Win	Clay Guida	Submission (Rear-Naked Choke)	UFC - The Ultimate Fighter 6 Finale	12/8/2007	3	0:31
Win	Alberto Crane	TKO (Punches)	UFC 74 - Respect	8/25/2007	3	1:50
Win	Douglas Evans	TKO (Punches)	UFC - The Ultimate Fighter 5 Finale	6/23/2007	2	3:30
Win	Leonard Garcia	Decision (Unanimous)	UFC 69 - Shootout	4/7/2007	3	5:00
Win	John Halverson	TKO (Punches)	UFC 67 - All or Nothing	2/3/2007	1	0:19
Win	Jason Dent	Decision (Unanimous)	UFC 63 - Hughes vs. Penn	9/23/2006	3	5:00

Win	Jake O'Brien	TKO (Punches)	UFC 82 - Pride of a Champion	3/1/2008	2	4:17
Win	Fabricio Werdum	Decision (Unanimous)	UFC 70 - Nations Collide	4/21/2007	3	5:00



Ancillary Rights Granted in the Promotional Agreements Alone are Far Reaching:

- Exclusive, worldwide rights to make any other uses of the name, sobriquet, voice, persona, signature, likeness and/or biography of fighter (“Identity”), and anyone associated with fighter (“Rights”);
- The right to sell, assign, lease, license, sublease, use or otherwise dispose of any and all of the Rights and the results of the exercise thereof, and to authorize, license and grant the right to exercise any of the Rights;
- **The exclusive and unrestricted right to use the Identity of Fighter** to exploit the brand, its business activities, and the business activities of any networks, stations, sponsors and other users and exhibitors, for any purpose including, without limitation, **any commercial purpose whatsoever including, but not limited to, product endorsement, whether related to the brand, third-party sponsors or otherwise;** and
- The exclusive and unrestricted right to register Fighter (including any and all variants thereof) as one or more domain names for use on the World Wide Web.



Merchandising



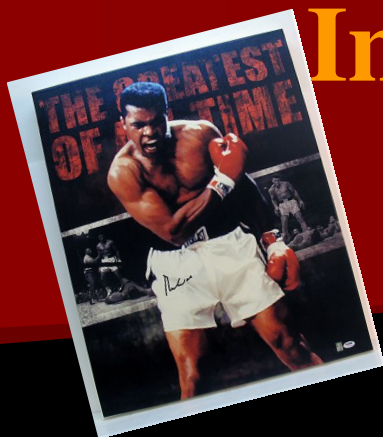


Image Rights Are Extremely Valuable



- In 2006, Muhammad Ali sold an 80% interest in his company controlling his image licensing rights for **\$50 million dollars**.
- Ali still receives payments of approximately **\$1.5 million per year** for his image rights.
- Tiger Woods endorsement earnings approached **\$100 million per year**.

TIGER'S MARCH TO \$1 BILLION
IN HIS FIRST 12 SEASONS AS A PRO
TIGER WOODS HAS EARNED MORE THAN
\$769 MILLION. GOLF DIGEST PREDICTS
HE'LL PASS THE \$1 BILLION MARK BY 2010.

YEAR	WINNINGS	ENDORSEMENTS	TOTAL
1996	\$894,060	\$12,250,000	\$13,144,060
1997	\$2,380,831	\$19,500,000	\$21,880,831
1998	\$2,927,946	\$27,000,000	\$29,927,946
1999	\$7,681,625	\$27,000,000	\$34,681,625
2000	\$11,034,530	\$38,000,000	\$49,034,530
2001	\$7,771,562	\$56,000,000	\$63,771,562
2002	\$8,292,188	\$67,000,000	\$75,292,188
2003	\$6,700,288	\$77,000,000	\$83,700,288
2004	\$6,370,407	\$83,000,000	\$89,370,407
2005	\$11,992,739	\$75,000,000	\$86,992,739
2006	\$11,941,827	\$87,000,000	\$98,941,827
2007	\$22,902,706	\$99,800,000	\$122,702,706
TOTAL	\$100,890,709	\$668,550,000	\$769,440,709

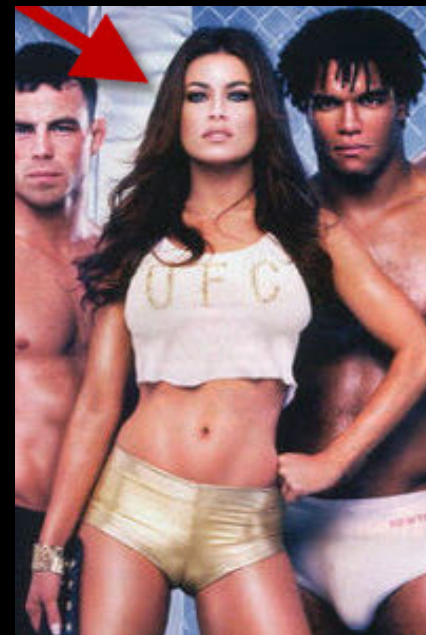
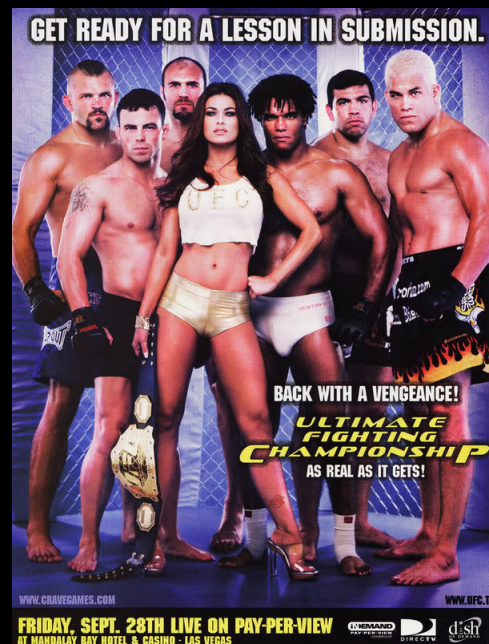
SOURCE: GOLF DIGEST



Couture, then Heavyweight Champion of the UFC, is Airbrushed Out of Ad Campaigns

“I got off on the wrong foot over the ancillary rights in my contract and signing away my name and image, which then led to the video game and having myself pulled out of the video game, pulled out of the ad campaigns with Carmen Electra and all those things. I wasn’t willing to just sign those things away like most fighters had done to date at that point”

--Randy Couture



UFC 2009 Undisputed Reaches “Platinum Hits” Status With Over 3.5 millions units sold

UFC licensing fee for UFC Undisputed estimated at 17% of gross proceeds for a total of (based on sales at \$59.99 retail price):

\$35,694,050 on the first edition alone



An Example Made out of Jon Fitch



- Fitch declined to sign over exclusive, lifetime video game rights to the UFC for no compensation, and was cut from the promotion
- At the time of his dismissal, Fitch was 18-3, and ranked amongst the best fighters in his weight class

“The video game agreement that they have that they wanted us to sign **was basically we don't get anything for it. We get free publicity and promotion** from the game, which is great, no problem. The problem is it's a lifetime exclusive contract. That means we **would never ever be able to work with any video game companies other than the one the UFC provides.**”

“Working for free and selling our rights away for lifetime, that's a little different. We tried to negotiate 5 or 10-year deal with them, but it wasn't good enough. It was all or nothing. He wanted our lifetime. He wanted our souls forever.”

--Yahoo Sports

“It's kind of a principle thing; when's it going to stop? (If) they bully us into signing a bad contract with the video game rights, what's next? What's the next thing they're going to force us into signing?”

--Fitch, USA Today



An Example Made out of Jon Fitch

Do you think UFC is just feeling unassailable at this point? Do you think they're feeling invulnerable?

“That's coming from Dana himself. He said that. When we were saying we didn't think we were going to sign the contract, he was telling us, "Ok, you're going to get cut. Have fun fighting for Affliction. Where are you guys going to go? You have nowhere to go." That was in the threat that he used against us. They know that they have more power now. They know that there's no one who really can hold a candle to them.”

--Fitch, USA Today

“We're looking for guys who want to work with us and not against us, and frankly I'm just so [expletive] sick of this [expletive] it's not even funny. Affliction is still out there trying to build its company. Let [Fitch] go work with them. Let him see what he thinks of those [expletives]. [Expletive] him. These guys aren't partners with us. [Expletive] them. All of them, every last [expletive] one of them.”

--Dana White, Yahoo Sports

Dana White extended his threat to fighters not even under contract with the UFC, declaring that any fighter who signs to appear in the EA Sports video game “won't be in the UFC.”



MMAFA



The Champion's Clause: A Champion May Never Leave

“Basically I can't leave undefeated. I can't give interviews, appear in films or advertising. I don't have the right to do anything without the UFC's agreement. I could do nothing without the OK from the UFC. I didn't have the right to compete in combat sambo competition. It's my national sport. It's the Russian sport, which in his time our president competed in, and I no longer have the right to do so. There were many such clauses; the contract was 18 pages in length. It was written in such a way that I had absolutely no rights while the UFC could at any moment, if something didn't suit them, tear up the agreement. We worked with lawyers who told us that it was patently impossible to sign such a document.”

Fedor Emelianenko, Sherdog.com



Champion's Clauses

UFC version:

“if, at the expiration of the Term, Fighter is then UFC champion, the Term shall be automatically extended for a period commencing on the Termination Date and ending on the earlier of (i) one (1) year from the Termination Date; or (ii) the date on which Fighter has participated in three (3) bouts promoted by ZUFFA following the Termination Date (“Extension Term”). Any references to the Term herein shall be deemed to include a reference to the Extension Term, where applicable.”

Strikeforce version:

“The initial term of this Agreement shall commence upon the date of this Agreement is signed by Fighter (Effective Commencement Date”) and shall expire two years from the date that Fighter signs this Agreement or two years from the first bout in which Fighter fights hereunder whichever is the later date, unless terminated or unless extended or suspended in which case this Agreement shall expire no later than seven years from the Effective commencement date hereof. Fighter grants EXPLOSION the option and the right but not the obligation to extend the term of this Agreement (“extended term”) upon the same terms and conditions except as hereinafter set forth for an additional one year if Fighter at any time during the term hereof holds or held a Strikeforce Championship Title.”

Bellator version:

“If, at any time during the term, FIGHTER is declared the champion of his weight class, a Tournament winner, or a Tournament runner-up, the Term shall be automatically extended for a period commencing on the Termination Date and ending on the earlier of (i) eighteen (18) months from the Termination Date, or (ii) the date in which FIGHTER has participated in three (3) bouts promoted by PROMOTER following the Termination Date (“Extension Term”). Any reference to the Term herein shall be deemed to include a reference to the extension term where applicable.”



Titles are Ceremonial, but Can Not Be Voluntarily Vacated



DISTRICT COURT
CLARK COUNTY, NEVADA

BJ PENN, also known as, JAY DEE PENN,
an individual

Plaintiff,

vs.

ZUFFA, LLC, a Nevada Limited Liability
company, d/b/a ULTIMATE FIGHTING
CHAMPIONSHIP; et al.,

Defendants.

No. A488461
Dept. No. 1

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION TO FILE
AN AMENDED COMPLAINT**

Date: November 22, 2005
Time: 9:00 a.m.

UFC championship titles or belts

Zuffa grants ceremonial championship titles or belts to the best fighters in each weight-class then under contract to the UFC brand. The ceremonial title or belt symbolizes recognition of that fighter as the best UFC fighter in that weight class then fighting for or under contract with Zuffa.

(*Id.* at ¶ 8.)



Titles are Ceremonial, but Can Not Be Voluntarily Vacated

Plaintiff was aware that Zuffa was referring to the UFC welterweight title as "ceremonial" as early as September 2004. In Zuffa's Opposition to Plaintiff's Motion for Preliminary Injunction, Zuffa repeatedly referred to the welterweight title as a "ceremonial title" to symbolize recognition as the best UFC fighter in that weight class then fighting for or under contract with Zuffa. (See Exhibit A, pg. 1, 2, 3, 4, 5, 6, 7, 9, 10, 13, 18.) A true and

“Additionally, Fighter expressly agrees that ZUFFA is not a sanctioning organization and Fighter does not possess and cannot assert any property right or similar legal interest in the UFC Title or in being the UFC Champion.”

1. Zuffa's contention the UFC welterweight championship title is only "ceremonial."

From the first page and continuing throughout its Opposition, Zuffa portrays the UFC welterweight championship title as "ceremonial." Zuffa argues "[t]he ceremonial title or belt symbolizes recognition of that fighter as the best UFC fighter in that weight class then fighting for or under contract with Zuffa." *Id.*, at 3:18-20. As best as can be determined, this is the first time Zuffa has taken the position its championship titles are "ceremonial." Zuffa's Opposition fails to cite any rule, contract provision, past representation, or the like supporting its current attempt to downplay the importance of Penn's UFC welterweight championship title. In fact, just the opposite is true.



Ken Shamrock Vs. Zuffa

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

**KEN SHAMROCK,
INCORPORATED, a California
Corporation,**

Plaintiffs,

Vs.

**ZUFFA, LLC, a Nevada Limited
Liability Company; and DOES 1
through 50, inclusive,**

Defendants.

**Case No. A561085
Dept. No. XIII**

11. Of significance, the Agreement's Recitals included "G," which stated:

Fighter has determined the first Bout will be his final, after which he will retire, but has agreed to one additional Bout with ZUFFA in the event Fighter should elect not to retire, or to come out of retirement to fight again.



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12. The Agreement also provided, *inter alia*:

4.5 During the Term,⁹ ZUFFA shall have the exclusive right to promote all of Fighter's bouts and Fighter shall not participate in or render his services as a professional fighter or in any other capacity to any other mixed martial art, martial art, boxing, professional wrestling, or any other fighting competition or exhibition, excluding participating as a corner, manager and coach to other fighters except as otherwise expressly permitted by this Agreement.

13. The Agreement also provided, *inter alia*:

10.3 If at any time during the Term, Fighter decides to retire from mixed martial arts or other professional fighting competition, then ZUFFA may, at its election, (i) suspend the Term for the period of such retirement; (ii) declare that ZUFFA has satisfied its obligation to promote all future Bouts to be promoted by ZUFFA hereunder, without any compensation due to Fighter therefore, or (iii) elect to provide Fighter with notice of an Acceleration.



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CONCLUSIONS OF LAW

1. Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration. May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254 (2005), *citing* Keddie v. Beneficial Insurance, Inc., 94 Nev. 418, 421, 580 P.2d 955 (1978)(Badger, C.J., concurring). A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite. *Id.*

2. Generally speaking, when a contract is clear on its face, it “will be construed from the written language and enforced as written.” Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). The Court has no authority to alter the terms of an unambiguous contract. *Id.*, *citing* Renshaw v. Renshaw, 96 Nev. 541, 543, 611 P.2d 1070, 1071 (1980).¹⁹



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noted above, "Recital G" reads: "Fighter has determined the first Bout will be his final, after which he will retire, *but has agreed to one additional Bout with ZUFFA in the event Fighter should elect not to retire, or to come out of retirement to fight again.*" (Emphasis added). These terms specifically state MR. SHAMROCK agreed to an additional bout if he either did not retire or he later came out of retirement. However, there is nothing within this recital to indicate the promise was mutual, or in other words, that ZUFFA, LLC was obligated to provide or promote a second fight for MR. SHAMROCK if he elected not to retire after the October 10, 2006 bout or he later came out of retirement. To wit, on this ground alone, this Court concludes Defendant ZUFFA, LLC did not breach the Agreement by refusing to promote or provide a second bout to Plaintiff KEN SHAMROCK INCORPORATED upon MR. SHAMROCK'S leaving retirement in or about June 2007. In the Court's view, Defendant ZUFFA, LLC was not required pursuant to the Agreement to promote or provide Plaintiff KEN SHAMROCK INCORPORATED a second bout; MR. SHAMROCK, however, was obligated to an additional fight promoted by ZUFFA and the UFC if he did not retire, or later came out of retirement for the term of the contract.

performance there under. Section 10.3 provides that "[i]f at any time during the Term, Fighter decides to retire from mixed martial arts or other professional fighting competition, then ZUFFA may, at its election, (i) suspend the Term for the period of such retirement; (ii) declare that ZUFFA has satisfied its obligation to promote all future Bouts to be promoted by ZUFFA hereunder, without any compensation due to Fighter therefore; or (iii) elect to provide Fighter with notice of Acceleration," or termination. (Emphasis added) In Plaintiff's view, by use of the conjunctive "or," Section 10.3 provides for an election of only one among three remedies in the event of MR. SHAMROCK'S retirement, and further, ZUFFA, LLC never provided notice of suspension during the retirement. Defendant ZUFFA, INC'S positions are it could exercise any of the elections at any time after MR. SHAMROCK decided to retire, and further, this contractual provision allows an election of one or more remedies.

8. There is no question the conjunctions "or" and "and" may be construed interchangeably when necessary to effect the parties' intention.

Dumont v. United States, 98 U.S. 142, 143, 25 L.Ed. 65 (1878), cited by Noell v.

Congressional Findings

- (1) Professional mixed martial arts differs from other major, interstate professional sports industries in the United States in that it operates without any private sector association, league, or centralized industry organization to establish uniform and appropriate business practices and ethical standards. This has led to repeated occurrences of disreputable and coercive business practices in the mixed martial arts industry, to the detriment of professional mixed martial artists nationwide.
- 2) State officials are the proper regulators of professional mixed martial arts events, and must protect the welfare of professional mixed martial artists and serve the public interest by closely supervising mixed martial arts activity in their jurisdiction . State mixed martial arts commissions do not currently receive adequate information to determine whether mixed martial artists competing in their jurisdiction are being subjected to contract terms and business practices which may violate State regulations, or are onerous and confiscatory.
- (3) Promoters who engage in illegal, coercive, or unethical business practices can take advantage of the lack of equitable business standards in the sport by holding mixed martial arts events in States with weaker regulatory oversight.
- (4) The sanctioning organizations which have proliferated in the mixed martial arts industry have not established credible and objective criteria to rate professional mixed martial artists, and operate with virtually no industry or public oversight. Their ratings are susceptible to manipulation, have deprived mixed martial artists of fair opportunities for advancement, and have undermined public confidence in the integrity of the sport.
- (5) Open competition in the professional mixed martial arts industry has been significantly interfered with by restrictive and anticompetitive business practices of certain promoters and sanctioning bodies, to the detriment of the athletes and the ticket-buying public. Common practices of promoters and sanctioning organizations represent restraints of interstate trade in the United States.
- (6) It is necessary and appropriate to establish national contracting reforms to protect professional mixed martial artists and prevent exploitive business practices, and to require enhanced financial disclosures to State athletic commissions to improve the public oversight of the sport."



Purposes of the Act

- (1) to protect the rights and welfare of professional mixed martial artists on an interstate basis by preventing certain exploitive, oppressive, and unethical business practices;
- (2) to assist State mixed martial arts commissions in their efforts to provide more effective public oversight of the sport; and
- (3) to promote honorable competition in professional mixed martial arts and enhance the overall integrity of the industry.



Coercive Contractual Provisions

§ 6307b. Protection from coercive contracts

(a) General rule

(1)(A) A contract provision shall be considered to be in restraint of trade, contrary to public policy, and unenforceable against any mixed martial artist to the extent that it--

(i) is a coercive provision described in subparagraph (B) and is for a period greater than 12 months; or

(ii) is a coercive provision described in subparagraph (B) and the other mixed martial artist under contract to the promoter came under that contract pursuant to a coercive provision described in subparagraph (B).

(B) A coercive provision described in this subparagraph is a contract provision that grants any rights between a mixed martial artist and a promoter, or between promoters with respect to a mixed martial artist, if the mixed martial artist is required to grant such rights, or a mixed martial artist's promoter is required to grant such rights with respect to a mixed martial artist to another promoter, as a condition precedent to the mixed martial artist's participation in a professional mma match against another mixed martial artist who is under contract to the promoter.



Coercive Contractual Provisions

§ 6307b. Protection from coercive contracts (cont'd)

(b) Promotional rights under mandatory bout contracts

No mixed martial arts service provider may require a mixed martial artist to grant any future promotional rights as a requirement of competing in a professional mma match that is a mandatory bout under the rules of a sanctioning organization.

--The Association of Mixed Martial Arts Commissions (MMAC) shall develop and shall approve by a vote of no less than a majority of its member State mma commissioners, guidelines for minimum contractual provisions that should be included in bout agreements and mixed martial arts contracts. It is the sense of the Congress that State mma commissions should follow these MMAC guidelines.



Supporters of the Ali Act

“The day this bill is signed into law cannot be soon enough. I pray justice will be done and somehow, along the way, honor can be restored to this sport.”

--Muhammad Ali

“If I said that, I would get sued. If I said what he just said, I would have a lawsuit in 2 days in front of my door, getting served, because I am a fighter and I have to go get a lawyer, and I have to go pay for litigation. It would drain me out. I would get sued. I mean, this is amazing to me--excuse me for cutting you off, I do not want to be ignorant---- but it is amazing that he said what he said, and--just assuming--and I am going to tell you, he is telling you the truth. I am telling you, Bernard Hopkins, Tom Hauser is telling the truth, but if I say that as a fighter.”

--Bernard Hopkins

"Imagine a world in which fighters are not taken advantage of financially, title shots are awarded to legitimate contenders, and bogus alphabet organizations slowly fade from existence. [I]f the Ali Act passes * * * that boxing heaven may just be located right here on earth.”

--Ring Magazine

Bert Sugar, **Boxing** Historian and former editor of Ring Magazine

Thomas Hauser, **Boxing** Historian

19 US Attorneys General





MMAFA