

November 7, 2017

TO: Members, Subcommittee on Digital Commerce and Consumer Protection

FROM: Committee Majority Staff

RE: Hearing entitled “Perspectives on Mixed Martial Arts”

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## **I. INTRODUCTION**

The Subcommittee on Digital Commerce and Consumer Protection will hold a hearing on Thursday, November 9, 2017, at 10:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled “Perspectives on Mixed Martial Arts.”

## **II. WITNESSES**

- Randy Couture, President, Xtreme Couture;
- Marc Ratner, Vice President of Regulatory Affairs, UFC;
- Greg Sirb, Executive Director, Pennsylvania State Athletic Commission; and,
- Kristen Dams-O'Connor, M.A., Ph.D., Director, Brain Injury Research Center, Icahn School of Medicine at Mount Sinai.

## **III. BACKGROUND**

### **A. History of Mixed Martial Arts**

Mixed martial arts (MMA) is a full-contact combat sport that allows striking and grappling, both standing and on the ground, using techniques from other combat sports and martial arts. The first documented use of the term mixed martial arts was in a review of UFC 1 by television critic Howard Rosenberg in 1993.<sup>1</sup> During the early 20th century, various mixed-style contests took place in Japan, Taiwan, and other countries throughout Asia. In 1980, CV Productions, Inc. created the first regulated MMA league in the United States, the Tough Guy Contest, which later became known as the Battle of the Superfighters, in which the company sanctioned ten tournaments in Pennsylvania.<sup>2</sup> In 1993, the Gracie family brought Brazilian Jiu-Jitsu, developed in Brazil from the 1920s, to the United States by founding the Ultimate Fighting Championship (UFC) MMA promotion company.<sup>3</sup>

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<sup>1</sup> Rosenberg, Howard (November 15, 1993). *"Ultimate' Fight Lives Up to Name"*. *Los Angeles Times*.

<sup>2</sup> Nash, John S. (May 23, 2012)

*The Martial Chronicles: Before Fighting Was Ultimate It Was Super*, [SB Nation](#)(bloodyelbow.com)

<sup>3</sup> Plotz, David (November 16, 1997). *"Fight Clubbed"*. *Slate*.

MMA consists of both male and female fighters. Whereas the first modern male MMA fight in the United States is generally agreed to be the UFC 1 bout, the origins of professional women's MMA in the U.S. is less certain. Candidates for the first women's fight include the Extreme Challenge in Salt Lake City back in 1998, an Indiana promotion called HookNShoot, and a Hawaiian event called Superbrawl. Women's fight results were not routinely reported prior to 2001.<sup>4</sup>

The MMA industry consists primarily of a handful of national promotions such as UFC, the Professional Fighters League, and Bellator, but also includes several regional promotions. As of April of this year the UFC had 521 fighters under contract, making it the largest MMA promotion in the U.S.<sup>5</sup> Viewers typically access main event UFC fights over pay-per-view (PPV), while Fox Sports covers undercard fights as well as UFC news in general. Licensing fees, PPV sales, and subscriptions to UFC's Fight Pass streaming video service account for about 75 percent of the promotion's revenue.<sup>6</sup> After its establishment in 1993, UFC was purchased by Frank and Lorenzo Fertitta, along with current UFC president Dana White, for \$2 million.<sup>7</sup> The Fertitta brothers, who ran UFC through a company called Zuffa, then sold the promotion to sports agency WME|IMG for approximately \$4 billion.<sup>8</sup> UFC fights are shown in over 156 countries, fights take place in all 50 states, and it is estimated that just under half of its audience is comprised of millennials.<sup>9</sup>

Bellator was founded in 2008 by Bjorn Rebney and several investors and contracts with about 160 fighters.<sup>10</sup> In 2011, Viacom purchased a controlling stake in the promotion, resulting in Bellator programming moving to Viacom's Spike TV.<sup>11</sup> In 2014, Rebney left Bellator and the promotion began to move away from its previous tournament formats in favor of a more traditional "super fight" method of booking fights.<sup>12</sup> Bellator relies less on PPV revenue than

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<sup>4</sup>Jim Genia, Vice (Jan. 16, 2013), <http://fightland.vice.com/blog/womens-mma-comes-of-age>

<sup>5</sup> Andrew Pearson, *Midnight Mania! UFC has lost 131 fighters in three months*, SB NATION (April 15, 2017), <https://www.mmamania.com/2017/4/15/15310798/midnight-mania-the-ufc-has-lost-131-fighters-in-three-months>

<sup>6</sup> Ben Fowlkes and Steven Marrocco, *How the UFC Bounced Back on Pay-per-View for a Record Year in 2015 – with Help from a Friend*, MMAJUNKIE (Oct. 29, 2016), <http://mmajunkie.com/2016/10/how-the-ufc-bounced-back-on-pay-per-view-for-a-record-year-in-2015-with-help-from-a-friend>.

<sup>7</sup> Noah Kirsch, *The Fertitta Brothers Just Made 2,000x Their Initial Investment in UFC*, FORBES (Jul. 11, 2016) <http://www.forbes.com/sites/noahkirsch/2016/07/11/fertitta-brothers-sell-ufc-for-2000x-initial-investment-net-worths-rise-by-1-6-billion/#3f3fcbb631f2>

<sup>8</sup> Michael J. de la Merced, *UFC Sells Itself for \$4 Billion*, CNBC (Jul. 11, 2016), available at <http://www.cnbc.com/2016/07/11/ufc-sells-to-wme-img-for-4-billion-fertittas-to-remain-minority-investors-as-rousey-conor-mcgregor-takes-it-mainstream.html>.

<sup>9</sup> *Id.*

<sup>10</sup> Brett Okamoto, *Bjorn Rebney Out at Bellator MMA*, ESPN (Jun. 18, 2014), available at [http://www.espn.com/mma/story/\\_/id/11102623/bjorn-rebney-tim-danaher-part-ways-bellator-mma](http://www.espn.com/mma/story/_/id/11102623/bjorn-rebney-tim-danaher-part-ways-bellator-mma).

<sup>11</sup> Daniel Roberts, *Bellator: Bjorn Rebney's Fight Club*, FORTUNE (Nov. 28, 2012), available at <http://fortune.com/2012/11/28/bellator-bjorn-rebneys-fight-club/>.

<sup>12</sup> Brett Okamoto, *Bjorn Rebney Out at Bellator MMA*, ESPN (Jun. 18, 2014), available at [http://www.espn.com/mma/story/\\_/id/11102623/bjorn-rebney-tim-danaher-part-ways-bellator-mma](http://www.espn.com/mma/story/_/id/11102623/bjorn-rebney-tim-danaher-part-ways-bellator-mma).

UFC; its most recent PPV fight aired on June 24, 2017, the first since 2014.<sup>13</sup> There is evidence of direct competition between UFC and Bellator for athletes, as some fighters have left one promotion to sign with the other.<sup>14</sup> Due to the private nature of the promotions and the many factors that contribute to an event's revenue, it is difficult to directly compare fighter salaries.<sup>15</sup> Nonetheless, UFC and Bellator compete to attract fighters with various enticements, including higher pay or sponsorship arrangements.<sup>16</sup>

Beyond Bellator and UFC, MMA fights occur throughout the world. Regional MMA bouts serve as a feeder system for both Bellator and UFC; it has been described as “the structure that underlies the sport at its highest level – a combination of minor league, talent development system and, of course, live and televised entertainment that plays to local crowds.”<sup>17</sup>

Although boxing and MMA are both combat sports, their methods have significant differences. In boxing, a fighter can use a variety of punches—arms and hands only—in order to knock out an opponent or to win on points. An MMA competitor can use arm and hand strikes (as in boxing) as well as Muay Thai or kickboxing skills (which are modified for MMA). MMA also involves leg kicks, takedowns, ground control, and submissions. As in boxing, an MMA fighter can win on points or via knock-out, but he or she can also win by getting an opponent to “submit” by repeatedly tapping on the arm of the competitor, usually in response to extreme pressure applied to a limb or throat.<sup>18</sup>

Whereas boxing matches may last for 12 rounds of three minutes each, MMA fights are usually conducted in three rounds lasting five minutes apiece.<sup>19</sup>

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<sup>13</sup> Dave Meltzer, *Estimated pay-per-view numbers are in for UFC 213, Bellator NYC*, MMA Fighting (July 20, 2017), <https://www.mmafighting.com/2017/7/20/16002482/estimated-pay-per-view-numbers-are-in-for-ufc-213-bellator-nyc>

<sup>14</sup> See, e.g., Adam Guillen, Jr., *Matt Mitrione signs with Bellator MMA, guaranteed six figures per fight*, SB NATION MMA MANIA (Mar. 14, 2016), available at <http://www.mmamania.com/2016/3/14/11223042/matt-mitrione-signs-with-bellator-mma-guaranteed-six-figures-per-fight-mma>; Matt Connolly, *MMA Biz: Big Week For Bellator, Dana White Court Date, Latest On Brock Lesnar, Conor McGregor & More.*, Forbes, March 27, 2017, <https://www.forbes.com/sites/mattconnolly/2017/03/27/mma-biz-ufc-free-agent-exodus-bellator-ppv-debut-brock-lesnar-lawsuit-conor-mcgregor-fine-more/#44ded2ce1f6a>

<sup>15</sup> Cf. *Bellator 154 Fighter Salaries: Phil Davis and King Mo Top List with \$30,000 each*, MMAWEEKLY (May 17, 2016), available at <http://www.mmaweekly.com/bellator-154-fighter-salaries-phil-davis-and-king-mo-top-list-with-30000-each>; Jesse Holland, *UFC 203 payouts and salaries: CM Punk banks \$500,000 for submission loss to Mickey Gall*, SB NATION MMA MANIA (Sep. 12, 2016), available at <http://www.mmamania.com/2016/9/12/12890058/ufc-203-payouts-and-salaries-cm-punk-banks-500000-submission-loss-cleveland-mma>.

<sup>16</sup> See Tristen Crutchfield, *UFC Signs 6-Year Deal with Reebok; Rankings to Determine Fighter Pay*, SHERDOG (Dec. 2, 2014), available at <http://www.sherdog.com/news/news/UFC-Signs-6Year-Deal-with-Reebok-Rankings-to-Determine-Fighter-Pay-78115>; Andrew Brennan, *Why is the UFC-Reebok Deal Exploiting UFC Fighters and Condoning Pay Gaps*, FORBES (May 16, 2016), available at <http://www.forbes.com/sites/andrewbrennan/2016/05/16/is-it-the-ufc-or-is-it-reebok-that-is-exploiting-ufc-fighters-and-condoning-pay-gaps/#2fe3e5fb657f>.

<sup>17</sup> Patrick Wyman, *Sherdog's Top 10: Regional MMA Promotions*, SHERDOG (April 7, 2015) <http://www.sherdog.com/news/articles/1/Sherdogs-Top-10-Regional-MMA-Promotions-84369>

<sup>18</sup> Megan Frydel, *The Difference Between MMA and Boxing*, AlphaSportsBetting, (June 20, 2017), <https://alphasportsbetting.com/sports-betting-tactics/the-difference-between-mma-and-boxing>

<sup>19</sup> Id.

Competitors in boxing and MMA both wear gloves. The gloves in MMA are much lighter (4 oz.) and more flexible. They also come with exposed fingers to accomplish takedowns and submissions. Boxing gloves, on the other hand, are much heavier and cushioned to give protection while punching. They typically weigh between eight and 12 oz.<sup>20</sup>

## **B. Regulation of MMA**

**State Regulation.** MMA is legal in all 50 states.<sup>21</sup> In return for granting MMA legal status in New York in 2016, the state legislature subjected promotions to higher costs than in most other states. Under the New York law, the State Athletic Commission is directed to adopt MMA regulations, and the state is authorized to collect an 8.5 percent tax on ticket sales receipts and a 3 percent tax on gross receipts from broadcasting and Internet streaming rights.<sup>22</sup> Notably, New York requires promoters of any combative sport, including boxing and MMA, to carry a minimum \$1 million insurance policy on each fighter in any competition specifically to cover “life-threatening” brain injuries.<sup>23</sup> Commenters have observed that the cost could effectively bar smaller promotions and that insurance companies may not be willing to take on the risk of such policies.<sup>24</sup> In general state regulation of MMA is concerned with the following core issues:

**Banned Substances.** State approaches to the regulation of banned substances in MMA vary. For example, the State of Oregon authorizes the Director or a Member of the Oregon Athletic Commission to “order a test for the presence of . . . prohibited substances immediately prior to or after a boxing or mixed martial arts match. . . .”<sup>25</sup> Similarly, Illinois requires fighters to “provide a urine specimen for drug testing either before or after the bout, as directed by the Division representative,”<sup>26</sup> but does not require blood to be submitted. The Nevada Athletic Commission (NAC) recently changed its rules to mirror the list of World Anti-Doping Agency (WADA) banned substances; to require MMA combatants to submit to drug tests upon request of NAC, whether in or out-of-competition; and to require a promoter to submit to NAC each contract between the promoter and any drug testing organization.<sup>27</sup>

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<sup>20</sup> Id.

<sup>21</sup> Chuck Mindenhall, *Gov. Andrew Cuomo signs bill for MMA in New York, UFC 205 planned for MSG on Nov. 12*, MMA FIGHTING (Apr. 14, 2016), available at <http://www.mmfighting.com/2016/4/14/11431018/gov-andrew-cuomo-signs-bill-for-mma-in-new-york-first-event-planned>.

<sup>22</sup> S. 05949A, 201st Leg., 2nd Sess. (N.Y. 2016); Michael McCann, *Analyzing the Legal, Economic Impact of MMA Legalization in New York State*, SPORTS ILLUSTRATED (Mar. 23, 2016), available at <http://www.si.com/mma/2016/03/23/mixed-martial-arts-legalization-new-york-state-legal-economic-impact>.

<sup>23</sup> S. 05949A, § 1015.11, 201st Leg., 2nd Sess. (N.Y. 2016), available at [http://assembly.state.ny.us/leg/?default\\_fld&bn=A02604&term=2015&Summary=Y&Actions=Y&Memo=Y&Text=Y](http://assembly.state.ny.us/leg/?default_fld&bn=A02604&term=2015&Summary=Y&Actions=Y&Memo=Y&Text=Y).

<sup>24</sup> See *Insurance and Why “There’s Not Going to [be] Small Promoters Doing MMA in New York*, COMBAT SPORTS LAW (Mar. 27, 2016).

<sup>25</sup> Or. Admin. R. 230-020-0450.

<sup>26</sup> 68 Ill. Admin. Code § 1370.220(c).

<sup>27</sup> Adopted Reg. of the Nev. Athletic Comm’n, LCB File No. R062-16 (Nev. Athletic Comm’n Sept. 9, 2016), available at <https://canadianmmalawblog.files.wordpress.com/2016/10/new-nevada-combat-sports-regs.pdf>.

***Fighter Safety and Licensure.*** The widely-accepted Unified Rules of MMA, which are the basis for the bout rules used by the major national promotions, were first established in 2001 and were quickly adopted by the New Jersey State Athletic Control Board (NJSACB).<sup>28</sup> The most recent version of these rules is still in effect in New Jersey,<sup>29</sup> and several other states have adopted nearly identical rules of sport.<sup>30</sup> All states have adopted some form of MMA rules and the rules are intended to prevent extraordinarily harmful attacks and establish equipment requirements, round length, weight classes, and to empower the referee or a physician to stop a fight. In general, a fighter must also obtain a license to fight in any given state,<sup>31</sup> and in some states, the athletic commission can decide, at its discretion, whether a particular fight may take place.<sup>32</sup>

***Fair Contests.*** States have generally adopted regulations to ensure the competency and impartiality of those officiating an MMA bout. The Association of Boxing Commission's MMA sub-group has encouraged states to require officials to undergo regular training, and offers its own training courses and certification for both officials and judges.<sup>33</sup> Some states also impose stringent licensure requirements for officials. Before licensing a referee to officiate martial arts or kickboxing matches in California, for example, the state requires referees to have officiated at least 100 martial arts or kickboxing matches; perform a demonstration of competency before a representative of the commission; pass a written exam; be in good physical condition with good reflexes in the ring; and undergo a medical exam showing physical and mental fitness.<sup>34</sup> States also typically control the selection of referees and prohibit them from showing "partiality" to avoid unfair officiating.<sup>35</sup>

***Conflicts of Interest and Fighter Contracts.*** In MMA, as in boxing, a fighter's best interests are served if his or her interests are directly aligned with his or her manager. A manager with financial interests tied to a promoter is less likely to obtain the best deal for the fighter. In order to prevent these scenarios, Nevada prohibits promoters from acting as a fighter's manager or holding any financial interest in the fighter's management or earnings from contests.<sup>36</sup> To address perceived bargaining disparities between individual fighters and promotion companies, some states also regulate promoter-fighter contracts. For example, Nevada prohibits bout agreements requiring one fighter to pay for the services of an opponent and requires bout agreements between promoters and fighters to be executed "on a form provided by the Commission."<sup>37</sup> In order to prevent managers from taking advantage of fighters through post-

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<sup>28</sup> See New Jersey State Athletic Control Board, *Mixed Martial Arts Unified Rules of Conduct, Additional Mixed Martial Arts Rules*, Summary of agency proposal, available at <http://www.nj.gov/lps/sacb/docs/martial.html>.

<sup>29</sup> See N.J. Admin. Code § 13:46-1 et seq.

<sup>30</sup> See Brendan S. Maher, *Article: Understanding and Regulating the Sport of Mixed Martial Arts*, 32 HASTINGS COMM. & ENT. L.J. 209, 231 (Winter 2010).

<sup>31</sup> See Cal. Bus. & Prof. Code § 18642.

<sup>32</sup> See Cal. Bus. & Prof. Code § 18640.

<sup>33</sup> See Types of Course & Curriculum, MMAReferee.com, available at <http://www.mmareferee.com/?q=courses> (last visited Dec. 1, 2016).

<sup>34</sup> 4 Cal. Code Reg. § 543.

<sup>35</sup> See 68 Ill. Admin. Code § 1370.100.

<sup>36</sup> Nev. Admin. Code § 467.104.

<sup>37</sup> Nev. Admin. Code § 467.112.

bout modification of managerial contracts, Nevada also requires such contracts to be filed with the NAC before the bout.<sup>38</sup>

**Federal Regulation.** No single federal law applies to the regulation of MMA. As with most commercial organizations, the sport is subject to federal antitrust law, which has been invoked in the past. The Federal Trade Commission (FTC) has investigated the UFC twice for potential violations of Section 5 of the FTC Act, which prohibits “unfair methods of competition.”<sup>39</sup> On November 5, 2015, the FTC sent a letter to UFC closing out its second investigation and clearing it of any alleged Section 5 violations.<sup>40</sup> The FTC determined that UFC was not engaging in unfair methods of competition through its use of long-term exclusive contracts “or other exclusionary conduct.”<sup>41</sup>

### **C. Anti-Trust Lawsuit Against UFC**

In December 2014, UFC fighters Cung Le, Jon Fitch, and Nathan Quarry filed an anti-trust lawsuit against the UFC, claiming the organization monopolized the output and input markets in MMA using long-term exclusive contracts to lock them into the UFC in perpetuity and foreclose rival MMA promotions.<sup>42</sup> According to the complaint, the UFC has acquired, driven out of business, foreclosed the entry of, and/or substantially impaired the competitiveness of multiple actual and potential MMA Promotion rivals. The lawsuit alleges that UFC’s monopolistic practices suppress fighters’ incomes.<sup>43</sup>

The lawsuit, originally filed in the United States District Court for the Northern District of California, San Jose Division, was transferred to the United States District Court for Nevada upon motion by the UFC in 2015. In September of that year, UFC’s motion to dismiss was denied and the litigation remains ongoing.

## **IV. LEGISLATION**

The “Muhammad Ali Expansion Act,” H.R. 44, was introduced by Rep. Markwayne Mullin on January 3, 2017. The bill would amend the Professional Boxing Safety Act of 1996 to apply to mixed martial arts.

The Professional Boxing Safety Act of 1996, as amended by the Muhammad Ali Act in 2000, directed the Association of Boxing Commissions (ABC) to develop and approve

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<sup>38</sup> Nev. Admin. Code § 467.102.

<sup>39</sup> Luke Thomas, *Federal Trade Commission ends second investigation of UFC*, MMA FIGHTING (Nov. 24, 2015), available at <http://www.mmafighting.com/2015/11/24/9796478/federal-trade-commission-ends-second-investigation-of-ufc>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Paul Gift, *UFC antitrust lawsuit heads into its first big motions in Nevada*, SB Nation Bloody Elbow (July 16, 2015), <https://www.bloodyelbow.com/2015/7/16/8975527/ufc-class-action-antitrust-lawsuit-motion-to-stay-discovery-mma-news>

<sup>43</sup> See *Cung Le, et al v. Zuffa, LLC, d/b/a Ultimate Fighting Championship and UFC*, available at <https://www.scribd.com/document/250327867/Cung-Le-et-al-v-Zuffa-LLC-d-b-a-UFC>

guidelines for boxing contracts and the rating of fighters. It also declared certain boxing contracts to be void and contrary to public policy if the contract contains certain coercive provisions. The law prohibits a promoter from having a direct or indirect financial interest in the management of a boxer; or a manager from having a direct or indirect financial interest in the promotion of a boxer, or from being employed by or receiving compensation or other benefits from a promoter, except for amounts received as consideration under the manager's contract with the boxer. The law also prohibits a boxing service provider from requiring a boxer to grant any future promotional rights as a requirement of competing in a professional boxing match that is a mandatory bout under the rules of the sanctioning organization, and prohibits a sanctioning organization from receiving compensation unless it provides certain notices to boxers, the ABC, and the Federal Trade Commission regarding boxer rankings.

H.R. 44 would amend the Act by establishing definitions for “fighter,” “combat sport competition,” and “mixed martial arts,” and brings such entities under the provisions of that law.

The bill requires the ABC within two years after enactment, to establish: (1) guidelines for minimum contractual provisions that should be included in bout agreements and mixed martial arts and other combat sport contracts, and (2) guidelines for objective and consistent written criteria for the ratings of mixed martial arts and other combat sports. The proposal also applies conflict of interest provisions that would prohibit a promoter from having a financial interest in the management of a boxer, or a manager from having a financial interest in the promotion of a boxer, to fighters participating in a mixed martial arts or other combat sport competition scheduled for 11 minutes or more.

## **V. ISSUES**

The following issues may be examined at the hearing:

- How has MMA evolved and changed since its beginnings in the early 1990s? Do these changes suggest a need for new business or regulatory approaches?
- How does MMA compare to other combat sports? Do any similarities or differences offer insights into public policy options?
- How does current regulation of MMA protect the interests of fans, fighters, and sponsors? Are there areas for improvement?

## **VI. STAFF CONTACTS**

If you have any questions regarding this hearing, please contact Melissa Froelich, Gregory Zerzan, or Bijan Koohmaraie of the Committee staff at (202) 225-2927.