

# **Hearing on “Piracy of Live Sports Broadcasting Over the Internet”**

## **Before the United States House of Representatives Committee on the Judiciary**

### **Statement of Lorenzo J. Fertitta Chairman and Chief Executive Officer Zuffa, LLC / Ultimate Fighting Championship®**

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Chairman Conyers, Ranking Member Smith, and distinguished Members of the Committee, thank you for inviting me to appear today to discuss issues raised by certain new websites that stream stolen copyrighted works, including pirated live sporting events. The piracy of live sporting events is illegal; it kills jobs, and threatens the expansion of U.S.-based companies. My name is Lorenzo Fertitta and I am the CEO of Zuffa, LLC, owner of the Ultimate Fighting Championship® (UFC®). It is a true honor for me to be here, and I am pleased to explain how live streaming of our pay-per-view events adversely impacts our business.

My testimony is divided into four parts. Part one provides the background on UFC®’s business model and the sport of Mixed Martial Arts (MMA), and the importance of the delivery of our copyrighted content via pay-per-view, to the success of the UFC®. Part two explains how stealing our copyrighted content and streaming our live events hurts our business. Part three gives an overview of the methods used to distribute our copyrighted content and, finally part four provides some sensible steps that can be taken to address this emerging problem.

## **Part One -- The UFC®, the Sport of MMA and our Copyrighted Content**

The Ultimate Fighting Championship organization is a major creator of copyrighted entertainment content, both live events as well as taped content. Our sport is Mixed Martial Arts or MMA.

MMA has a rich history and tradition dating back to the original Olympic Games in Athens. About 80 years ago, a Brazilian form of MMA known as Vale Tudo sparked interest in the sport that we know today, a sport which is essentially a combination of all martial arts.

In 2001, my brother Frank and I, along with another fan of the sport and a boxing trainer, our friend Dana White, were presented with the opportunity to purchase the UFC® organization which was nearly bankrupt. We saw the great potential that the UFC® had as a real sports league when many thought we were crazy.

Many professional sports leagues have been created and just about as many have failed. We took a great risk, but today the UFC® is a phenomenal success, creating and impacting thousands of jobs for our athletes, licensees, partners and affiliates.

Additionally, the influence of UFC®'s popularity has extended far beyond just the sport of MMA to include UFC® branded gymnasiums, the "UFC® Undisputed" videogame, and other lifestyle products.

Having served as a member of the Nevada State Athletic Commission for four years, I was determined, along with my brother and Dana, to turn MMA into a sanctioned sport,

with proper oversight from the state athletic commissions that would protect the health and safety of the fighters, and preserve the integrity and legitimacy of this exciting sport. The sport is now sanctioned in 42 of the 48 states that have an athletic commission, and the UFC® only holds events in those states that have formally sanctioned the sport.

Mixed martial arts athletes are experts in virtually every discipline – from Tae Kwon Do, Judo, karate, Brazilian Jiu Jitsu, Kung Fu and Sambo. For an athlete to be truly successful he needs to have training in each of the martial arts, wrestling, boxing and kick-boxing. Most of our athletes are college graduates, many even with advanced degrees, and many are former collegiate or Olympic wrestling competitors. While they are fierce competitors inside the Octagon, they are some of the finest people with whom I have had the pleasure to be associated.

We distribute our sporting events to our fans through multiple platforms. We offer twelve to fourteen live pay-per-view events annually through cable and satellite providers to both residential and commercial customers. In fact, we have been the largest pay-per-view provider in the world since 2006, with over 22 million residential transactions during that timeframe. The UFC® is also the largest distributor of content to commercial locations via our network of over 5,000 restaurants and bars in North America. We also distribute content, including the highly rated “The Ultimate Fighter®” reality program on Viacom’s SPIKE TV network. We are growing internationally and currently distribute UFC® programming in over 125 countries and territories. We also provide a wide variety of online and mobile products including our live pay-per-view events.

UFC® content is distributed worldwide to over 400 million households across over 125 countries and territories. Due to its surging popularity, MMA has attracted sell-out crowds at arenas across America, which is good news for arena owners, their employees, and the cities and states that reap increased jobs, tourist expenditures and tax revenues. UFC® sells out nearly every venue where it holds events and frequently breaks attendance and gate records. As an example, over 19,000 people attended a March 2007 event at Nationwide Arena in Columbus, with approximately 40 percent of attendees (8,000) visiting from outside Ohio, a boon for transportation, hotels, restaurants and retail in Columbus. The overall economic impact of our August 8, 2009 event at the Wachovia Center in Philadelphia was \$11.9 million in salaries and wages for 106 jobs. Taxes paid to local governments were \$325,372.

We are constantly looking for innovative ways to bring our loyal and valued fans content in the format they desire. We distribute our archived products, and provide a transactional model for our content online, and on gaming devices. We are also exploring the possibility of distributing our events via digital technology to movie theatres.

## **Part Two -- The Problem of Copyright Piracy and Unauthorized Streaming Sites**

Protecting our copyrights, like any other content company, is critical to our survival. The challenges we face are not unique to our sport or our company – all the major sports leagues have their content stolen. Furthermore, these challenges are not limited to live entertainment. If you visit some of these websites, you will find almost any type of content, which is likely all pirated, ranging from live NFL games, NCAA basketball

March Madness games, the Olympics, as well as any episode of Entourage, or even the latest theatrical releases of a feature film.

At the outset, let me state that I am not here with any specific legislative solutions. We believe it is important for the Congress, and specifically this Committee, which has played a pivotal leadership role in the protection of intellectual property, to be aware of some of the new technological challenges that are aiding the massive piracy of copyrighted works. If copyrighted works are allowed to be pirated with impunity, the potential effects on US producers of entertainment programming, including the thousands of jobs that they create, will be disastrous.

The challenge that I am speaking about is that these new websites are allowing and encouraging rampant piracy of live events through streaming technologies.

The UFC® is potentially losing tens of millions of dollars in revenues because our content is streamed through these websites. Here is how it works: with a simple adapter that can be purchased at any Radio Shack or Best Buy (that I am holding here), someone with access to one of our live events reproduces the program and retransmits it on the Internet with the aid of these new websites, such as the one represented on this panel today. The website that allows this retransmission then allows any user that can access the site to view the programming without authorization or payment. These unauthorized viewers watch the event live, in the same quality and with the same ease as those who lawfully purchased the content through pay-per-view. An unlimited number of viewers can watch the pirated program from just a single feed uploaded to the website. Just last month, the broadcast of UFC® 106 from the Mandalay Bay in Las Vegas, Nevada, had

over 271 unauthorized streams with over 140,000 views, and those are only the ones that our anti-piracy team and consultants identified. There were likely more streams that we simply couldn't find.

We do our best, at considerable expense, to have our copyrighted content removed from these websites. We have a team of in-house technicians scanning known websites and chat rooms to help find our pirated content. We also have engaged several private vendors to assist us in this effort. Even if one of the streaming websites takes down our pirated content, it is often too late and an insufficient remedy to limit our losses. The value of our content is extremely perishable. A bout can be over in seconds. Even if the website takes the infringed content down within 15 minutes, the damage is done because the pirate viewer has already seen and extracted all of the value of our live content. As you can imagine, once the event is over, there can be a quick dissipation of the economic value of our content, which is perhaps different from other types of non-live programming. Moreover, even if the content is removed, pirate viewers are often directed by other users to continue to watch the event on another stream which has been embedded in other feeds -- and that could happen on the SAME website. It is just another feed of the same program or live event uploaded by another, or the same, pirate.

Streaming live content is unfortunately simple. Coupled with much greater access to broadband and faster processing speeds for personal computers, cell phones and other devices that allow access to the Internet, there is real concern that pirated live streaming content will become the norm. These new websites make it simple to upload live streaming content and actually encourage it. Their entire business model is predicated on

drawing the maximum number of visitors to the site so that they can reap higher and higher advertising revenues. Certainly, few people are signing on to watch live pee wee soccer games. Let's be honest, viewers are signing on to watch pirated copyrighted content.

These websites present the creative community with new challenges similar to those challenges that music publishers and recording artists faced with Napster, Grokster and similar technology just a decade ago. I do not have sufficient mastery of the technical details to venture an opinion on how these streaming technologies will develop, but it is clear that these sites are making their money on the backs of stolen copyrighted works.

I want to emphasize that as a business entrepreneur, I applaud the development of technologies that help consumers access entertainment in more robust and creative ways that take advantage of the efficiencies that new developments can provide. I believe that we must preserve an environment that encourages the creation and advancement of new technologies that provide enhanced quality of content and allow for expanded opportunities for delivering such content to meet the needs of consumers. Indeed, the UFC® constantly employs new technologies to provide our fans with the content they love in the format they desire, and we would in no way want to discourage the development and use of legitimate methods of distribution.

However, the use of technology to circumvent our intellectual property laws and aid in the piracy of our content is something that we can not and should not tolerate.

### **Part Three -- Websites Facilitating Piracy of UFC® Content**

Based on our observation, many of these new websites are making fortunes by aiding in the theft of our content and making it available through their website. Rather than building businesses that respect intellectual property rights, many of these streaming sites, some of which reside outside the United States, are building their business models by exploiting the infringing potential of the streaming technology.

Justin.tv, which is represented on this panel, is only but one such website. It just happens to be the most user-friendly at the moment. To their credit, they have reached out to us recently to explore ways to stem the streaming of our pirated content. Reserving all of our rights to seek redress to the fullest extent of the law, we are hopeful that these new efforts may present a part of the solution to this dilemma. We wish other websites would also recognize their role in the piracy of our content and work to find technological and other solutions to prevent it.

While these sites purport to be a forum for users to share their own original “user generated” video content, they cannot deny that watching a live pee wee football game will not generate much, if any, viewer interest. Certainly it would not drive enough traffic to create a viable and thriving business based on an advertising revenue model. The truth is that most of the content that is generating any real traffic consists of infringing streams of copyrighted works. To make matters worse, the websites often actively promote or induce infringement by instructing users how to upload live content from their television, computer or other device.

Some of these websites perfunctorily offer tools to copyright owners to engage in self-help take-downs. However, they have deliberately attracted users by allowing and inducing users to upload infringing works, thereby drawing traffic to their website. This has enabled some to gain a commanding market share, earn significant advertising revenues, and presumably increase their enterprise value.

I submit that they have deliberately chosen not to take reasonable precautions to deter the rampant infringement on their sites because they directly profit from the availability of popular infringing streams on those sites.

I think it is wrong and seems unfair for these sites to shift the burden entirely onto copyright owners to monitor the streaming sites on a minute-by-minute basis during our live events to detect infringing video streams and send notices to the sites demanding that it “take down” the infringing material while they profit from the traffic and ensuing advertising revenues.

Moreover, some of these websites have deliberately withheld the application of certain available copyright piracy take-down tools in order to coerce content owners to grant them certain assurances limiting our rights to bring lawsuits.

Mr. Chairman, I am not a lawyer, but my lawyers tell me that it is well established in our laws that those who aid and abet copyright infringement are no less culpable than the direct infringers themselves. Whether it is through “contributory infringement,” which occurs when “[o]ne who, with knowledge of the infringing activity, induces, causes, or materially contributes to the infringing conduct of another,” or through “vicarious

liability,” which occurs when one “has the right and ability to supervise the infringing activity and also has a direct financial interest in such activities,” it is clearly illegal.

We at the UFC® are examining all of our options. Unless these websites voluntarily take the proper measures to prevent pirates from streaming our copyrighted content, we are faced with the unenviable choice of either turning a blind eye to rampant, pervasive and potentially massive theft, or filing infringement actions against the websites and/or the individual users. Neither is a preferred solution, but legal redress may become necessary.

#### **Part Four – Some Sensible Next Steps**

As the Committee examines this important issue, we believe there are some steps that could be taken to help alleviate these problems. It is unfair for content owners to bear the brunt of the costs of this theft. Website operators must be active participants in thwarting the retransmission of stolen live streaming content. For example, they should not permit streaming content through their site unless they receive a positive expression that the person uploading the stream is authorized to do so. They should take whatever steps necessary to disable the ability of pirates from uploading content, including blocking any uploads from their IP address. They should also institute strict limits on the number of viewers that can see a particular stream. We also hope that these sites are keeping and preserving identifying information about their users, and if they currently are not, that they take the responsible step and require such information as a condition of providing users access to their streaming technology hub on their websites.

Finally, increased vigilance by the government, including in the executive branch, at the United States Trade Representatives office, the Department of Justice, the Department of Commerce and others, is needed to help limit and deter this burgeoning criminal activity, which is increasingly international.

### **Conclusion**

Mr. Chairman, we are at a critical moment in the evolution of digital content delivery. We need everyone to be educated that unauthorized redistribution or display through streaming of copyrighted materials is wrong. It is critical that our courts and policymakers send an unambiguous signal that users and companies who engage in these activities should not be allowed to operate beyond the reach of the law, and to examine our laws to see if any updates may be needed, as Congress has done from time to time. If the rampant piracy via these new sites is allowed to continue, it threatens the financial viability of the UFC® and many other businesses that rely upon live broadcasts.

I want to thank the Committee again for giving me the opportunity to testify today. We at the UFC® would be pleased to assist the Committee in its examination of these important issues and I am happy to answer any questions