

**ABA Forum on Communications Law  
Third Annual First Amendment and Media Law Diversity Moot Court Competition  
Mock Exercise Material  
For Educational Purposes Only**

Below is the hypothetical for the 2010-11 competition. The Competition Committee reserves the right to revise the hypothetical before it is disseminated to the teams selected to submit briefs. Teams selected to submit briefs will receive a final Summary of Hypothetical no later than October 18, 2010.

**Summary of Hypothetical**

Following its unsuccessful attempt to ban depictions of animal cruelty, Congress turned its attention to “street fight videos.” “Street fight videos” are videos of persons being beaten up under circumstances that include (but are not limited to) where the fight is initiated so that it can be captured on video. Although some of the attacks consist merely of a single sucker punch, others are extended and quite brutal. In the most extreme form, the videos depict sexual assaults. It is also frequently unclear from the videos where the attacks take place. There is a healthy and burgeoning market for the videos on the Internet. Congress estimates that over \$1,000,000 in transactions for street fight videos took place in 2009 and that 2010 transactions are on a pace to triple that amount.

The original bill drafted in committee sought to outlaw “all depictions of unconsented-to-violence.” However, following the Supreme Court’s decision in *United States v. Stevens*, Congress sought to avoid an overbreadth challenge. The final law, adopted May 3, 2010, thus reads as follows:

**Street Fight Video Elimination Act of 2010**

Sec. 1: Congress makes the following findings in support of the Street Fight Video Elimination Act:

- (a) Street fight videos present an increasingly serious problem throughout the country. Defenseless individuals are being assaulted through senseless acts of violence, and videos are shot and published for the entertainment of a depraved segment of our society that is willing to pay to see these despicable acts.
- (b) Street fight videos contribute to a coarsening of our society. The increasing popularity and profitability of street fight videos is an integral part of the alarming increase in the number of “street-fight” style assaults, especially among young people. Street fight videos have the effect of inciting others to commit or to prolong acts of violence. We thus conclude that street fight videos constitute a proximate link to these acts of violence.
- (c) Existing criminal laws regarding assault, battery and other acts of physical violence are insufficient to address the problem of street fight videos. Moreover, the strong financial incentives created by the market for street fight videos outweigh the risks of criminal prosecution. There is thus a compelling interest in drying up the market for street fight videos.

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Sec. 2: The following definitions apply to all provisions of this Act:

- (a) “street fight video” is a video recording of a physical assault on one or more persons which is initiated and recorded or disseminated primarily for the purpose of entertainment.
- (b) “physical assault” includes the actual touching of another person’s body with an object or body part for the purposes of inflicting upon that person pain, physical injury, extreme emotional distress or humiliation
- (c) 1. A “bonafide news organization” is an organization composed of persons who, with a primary intent to investigate events and/or procure material in order to disseminate to the public news or information concerning local, national or international events or other matters of legitimate public interest, regularly conduct interviews, directly observe or photograph events, or collect, review or analyze documents, reports, records, data and other information. Persons in the organization must have the intent to produce news or to disseminate it by means of print (including newspapers, books, news agencies and magazines) or broadcasting (through networks, cable, satellite carriers, broadcast stations), mechanical, photographic, electronic or other means or over the Internet.  
  
2. A “bonafide news organization” does not include organizations that are engaged in generating or disseminating information primarily for entertainment or commercial purposes.

Sec. 3: It shall be a class 1 felony under this Act to engage in interstate commerce in street fight videos.

Sec. 4: The Act does not apply to the depictions of military operations or the activities of law enforcement agencies.

Sec. 5: The Act does not apply to the dissemination of street fight videos by a bonafide news organization.

HellaCrazyFights.com (“HCF”) is a site about street fight videos. While the three employees of HCF do not write original news reports, they do periodically gather pre-existing news reports and opinion pieces about street fights and provide links for their readers to access these other news reports, including television and cable news stories that contain clips from street fight videos. An example of a news story accessible through HCF is attached.

The company also distributes fight videos through the website. The videos include depictions of sporting events such as mixed martial arts tournaments as well as street fights that are sent to HCF, without compensation, by its “contributors.” HCF does not itself record any video footage. But it does create and sell compilations of the footage it finds and/or which is submitted to it. And it earns advertising revenue from the portion of its website where it makes short fight downloads available for free.

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As part of its website, HCF also runs an active message board. Threads on the message board cover a wide variety of issues and viewpoints. Three examples of such posts follow:

Thread 1:

*sK8tr: This site rocks. Can't w8 til on Twitter.*

*ninjamike: Cool. I'm in one of the videos: that's me with the black hood in yesterday's bum fight post. That's why I did it.*

*Fitefan: That was u? U rock! U dumped that bum bad. Ur gonna be a star!*

*sK8tr: Other websites like this?*

*ninjamike: Lots. More every day. Try [www.almostkilled.com](http://www.almostkilled.com). I also like [www.streetfightdump.com](http://www.streetfightdump.com).*

Thread 2

concernedmomjane: This site ought to be shut down. My son was hurt bad in a street fight. If you feel the same way, join me at [www.MothersAgainstStreetFightVideos.org](http://www.MothersAgainstStreetFightVideos.org). We are a non-profit to educate the public about dangers of street fight videos. Read about us by following the link.

Streetfightskill: Thanks for posting. I could not agree more. Parents, block these sites! My former honor student is in juvenile hall now. He wanted to be a street fight video star so badly that he ambushed a neighbor on his way to school while a friend filmed it. Fortunately the kid he attacked was not badly hurt. But my son's future is shot.

Fightin'mom: I am so sorry for your personal tragedies. But please do not shut down these sites just because of a few bad incidents. Sure, you need to use those sites responsibly. But the vast majority of users do. These fights are just fun to watch. I'd rather have my kids get their aggressions out by watching these videos instead of watching news reports of terrorism attacks and military operations.

Thread 3

rovenreporter: Looking for street fight videos info for news article. Let me know if you can help.

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Thread 4

PhDPghter: Those of you who love street fights and those of you who hate them will be interested to read my doctoral dissertation I recently published, *Street Fight Video Sites: The Modern, Virtual Coliseum*. (available on my website, <http://phdpghter.com>) In the paper, I compare the current craze over street fight videos with historic traditions of fights staged for audiences: the gladiators, jousting, and boxing before the adoption of the Marquis of Queensbury rules. For my next paper, I am looking at spectator fighting in samurai Japan. If you have a sincere academic interest in this area, please contact me. I am always looking for research assistants.

The U.S. Attorney indicted HCF under Section 3 of the Street Fight Video Elimination Act. After the Government and HCF stipulated that HCF was engaged in interstate commerce, HCF moved to dismiss the indictment. The district court bifurcated the motion and asked the parties to address three threshold issues first: (1) is HCF a bona fide news organization, as that term is defined in section 2(c) subject to the exemption of section 5? (2) Is the SFVEA unconstitutionally vague? and (3) Does the SFVEA otherwise facially violate the First Amendment? The district court rejected HCF's contentions that it was a bona fide news organization exempted from the operative provisions of the SFVEA, and also rejected the argument that the law was unconstitutionally vague. However, the district court granted HCF's motion because it found that the SFVEA was facially unconstitutional under the First Amendment. Under the applicable procedural rules, the Government appealed the dismissal of the indictment. HCF cross-appealed the district court's ruling that it was not a bona fide news organization under the SFVEA. HCF has not appealed the district court's ruling on vagueness, and vagueness is thus not at issue in the appeal.