

## U.S. v. Stevens: Frequently Asked Questions

*Media Coalition, a trade association that defends the First Amendment rights of mainstream media, has filed a friend-of-the-court brief in [U.S. v. Stevens](#) urging the Supreme Court to rule that a law banning depictions of animal cruelty is unconstitutional and unworkable. The case will be argued on October 6, 2009.*

*At issue is a 1999 federal law that makes it a crime to create, sell or attempt to sell videos and other depictions of intentional cruelty to animals. The statute defines depictions of animal cruelty as “any visual or auditory depiction, including any photograph, motion-picture film, video recording, electronic image, or sound recording of conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed, if such conduct is illegal under Federal law or the law of the State.” Violators are subject to up to five years in prison for each count, as well as unspecified fines.*

### **Q1: Why is Media Coalition defending people who stage dogfights or make crush videos?**

A: We’re not defending dogfighting or crush videos. All 50 states ban animal cruelty, and Media Coalition believes those laws should be enforced. No one disputes that the government may penalize acts of animal cruelty. But that does not mean that the government may also penalize speech about or images of animal cruelty.

This case is not about preventing animal cruelty, but about protecting everyone’s free speech rights under the First Amendment. Regardless of the outcome, the degree to which animals are treated humanely in this country will change very little, if at all. By contrast, the degree to which speech on *any* topic deemed “low value” by government can be restricted could increase dramatically should the law be upheld.

As the Supreme Court famously said in rejecting a ban on flag burning: “*If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.*” (*Texas v. Johnson*, 491 U.S. 397, 414 (1989)).

### **Q2: What’s wrong with a law that bans depictions of intentional animal cruelty?**

A: The problem is that the law applies to *any* depiction of intentional harm to animals, even if the act depicted was legal in the place where it was created (for example, as the appeals court pointed out in rejecting the ban, U.S. news footage of a bullfight in Spain). You can be sentenced to up to *five years in prison* for each violation of the law.

In its brief to the Supreme Court, the Justice Department talks about the law in the context of gruesome dogfighting videos and sexual fetish “crush videos,” in which women step on small animals. But, as the government fails to acknowledge, the law is much broader and could cover everything from real cockfighting scenes in the 2009 film [Fast and Furious 4](#) to documentaries about animal welfare such as [Death on a Factory Farm](#) or [The Cove](#), that show explicit images of harm to animals.

Ironically, this statute as written creates a vehicle to suppress animal-rights activists when they seek to expose animal cruelty with photographs or video of the cruelty. The mere threat of a prosecution, given the expense and trauma of fighting criminal charges, could deter such activities for a small organization with few resources.

**Q3: Wasn't this law used to prosecute a dogfighting enthusiast?**

**A:** No. This case arose in 2004, when 63-year-old Robert J. Stevens of Virginia was sentenced to 37 months in prison by a federal court in Pennsylvania for selling videos that showed pit bulls fighting and training to hunt wild boar. Stevens is not accused of organizing dogfighting, and in a book he wrote about raising pit bulls as pets and working dogs, *Dogs of Velvet and Steel*, and in his movies, he argues against dogfighting. For him, the images used in the film conveyed a historical perspective and communicated "what made our breed the courageous and intelligent breed that it is."

Last summer, the Third Circuit Court of Appeals in Philadelphia overturned Stevens' conviction, saying both the law and its application were unconstitutional. Stevens' case is the first such prosecution in the nation to go to trial, and the outcome of this case could determine everyone's free speech rights for years to come.

It is important to note that in the case now before the Court, the United States is attempting to put a man in prison for creating a video that shows *somebody else's* acts, which weren't even illegal in the places where they were filmed.

Robert Stevens was not involved in any of the acts depicted in his videos, nor was he present. Indeed, he was not even involved in recording the acts, only in the compiling of archival footage shot by others (including some footage more than 30 years old). By contrast, football player Michael Vick recently completed a prison term of *less than two years* for running a dogfighting ring, while Stevens, who has never been involved in dogfighting, is facing more than three years behind bars, to be followed by three years of supervised release.

**Q4: Could the government write a law targeting dogfighting videos that is constitutional?**

**A:** Maybe. There is no First Amendment right to speech in furtherance of a crime. For example, a video taken of the inside of a bank as part of a plan to rob the bank is not protected by the Constitution. Had Congress sought to ban only videos that were part of an illegal animal cruelty enterprise it could have done so, and this would be a much different case.

**Q5: What other groups are opposing this law?**

**A:** Opposition to the law is very broad, encompassing groups from across the political spectrum that recognize the dangers to the First Amendment presented in this case. The 15 groups signing on to the Media Coalition brief are: The Association of American

Publishers, Inc., The American Booksellers Foundation for Free Expression, The Association of American University Presses, The Comic Book Legal Defense Fund, The Entertainment Consumers Association, The Entertainment Merchants Association, Film Independent, The Freedom to Read Foundation, Independent Book Publishers Association, Independent Film & Television Alliance, Independent Filmmaker Project, International Documentary Association, The National Association of Recording Merchandisers, The National Association of Theatre Owners, Inc., and PEN American Center.

In addition to filing its brief, Media Coalition coordinated the submission of amicus briefs from a wide range of groups with disparate interests and constituents, including respected media outlets and hunting organizations. Among these “strange bedfellows” are: American Civil Liberties Union, Cato Institute, DKT Liberty Project, National Coalition Against Censorship, National Public Radio, National Rifle Association, Professional Outdoor Media Association, Reporters Committee for Freedom of the Press, Safari Club International, The New York Times, and many others. For a complete list, go to [http://www.scotuswiki.com/index.php?title=United\\_States\\_v.\\_Stevens](http://www.scotuswiki.com/index.php?title=United_States_v._Stevens)

**Q6: What kinds of material besides dogfighting videos and crush videos could be banned under this law?**

A: Here are just a few examples of currently available commercial material that could result in prosecution because the activities shown are illegal in some states:

- News footage showing former Alaska Governor Sarah Palin shooting wolves from a helicopter (a practice that is illegal under federal law but that Governor Palin supports in Alaska, according to Slate.com, “Aerial Wolf Hunting 101, Sept. 2, 2008 - <http://www.slate.com/id/2199140/>)
- The Discovery Channel’s program “Pig Bomb” that shows dogs hunting wild boars, similar to images seen in Stevens’ dog hunting video at issue in this case. See YouTube clip at <http://dsc.discovery.com/videos/pig-bomb-sinister-swine.html>
- The Academy Award-winning film *Apocalypse Now*, in which a live water buffalo is hacked to death with a machete.
- A video clip on *The New York Times* website on “Mexico’s Mini Matadors” that depicts children bullfighting. See <http://video.nytimes.com/video/2007/11/08/world/1194817111844/mexico-s-child-bullfighters.html>
- Scenes of actual cockfighting from the 2009 film *Fast and Furious 4*.
- An extensive list of examples of such material is included in the Respondent’s brief as Addendum B. The list is available online <http://www.mediacoalition.org/mediaimages/08-769bs.pdf>

If you think that you or people you know would never sell, buy or view the kinds of images this broad law targets, think again.

**Q7: Isn't the law only limited to intentional cruelty to animals, and therefore will only affect people who deliberately are trying to harm animals?**

A: No. This law affects many other types of activities that harm animals. For instance, hunting is clearly intentional, but if a photographer attempts to sell photos of a type of hunting that is legal in Montana but illegal in Connecticut then he or she could be prosecuted in Connecticut.

**Q8: Could I go to prison just for taking a photo of intentional animal cruelty, even if I'm not involved in the act?**

A: Yes. For instance, an undercover reporter videotaping a dogfighting ring could be liable for prosecution.

**Q9: Isn't it true that the law specifically exempts any material that has serious value?**

A: There is an exemption for material that has "serious religious, political, scientific, education, journalistic, historical, or artistic value." However, the law leaves it up to judges and juries to decide this question on a case-by-case basis, and the material is to be judged in isolation, without any consideration for the work as a whole. This creates what is known as a "chilling effect": many people, rather than face a long prison term and substantial legal bills in the fight to vindicate their rights, will simply choose to abstain from protected speech, thus limiting the marketplace of free ideas and diminishing our democracy.

In the words of the Supreme Court in a recent similar case, "The Government raises serious constitutional difficulties by seeking to impose on the defendant the burden of proving his speech is not unlawful." (*Ashcroft v. Free Speech Coalition*, 2002).

Artists, journalists, sports photographers, hunting enthusiasts and others would understandably hesitate to gamble their very liberty against a local jury's decision about whether their work has serious value.

**Q10: Isn't it obvious that a movie like *Apocalypse Now* would have serious value?**

A: Unfortunately, that's not the way the law works. In this case the trial judge instructed the jury that "serious value" is material of significant or great import. It is questionable if that would include material that was merely entertaining or of general interest. So in *Apocalypse Now*, the scene of a live water buffalo being hacked to death with a machete could be judged to not have serious value, even if the movie as a whole was considered to have serious value, and the filmmaker could be convicted.

More importantly, the issue of whether a work has serious value is *always* going to be a subjective judgment that puts a creator at great risk. The question of what constitutes “serious value” can be easily politicized, and prosecutors seeking to make headlines could use the law to punish the expression of ideas that are unpopular, unwelcome, or unfamiliar. Indeed, as the Supreme Court has said, “[t]he history of the law of free expression is one of vindication in cases involving speech that many citizens may find shabby, offensive, or even ugly.”

**Q11: The government argues that free speech rights can be limited to promote a “social interest in order and morality,” and that the Constitution only protects material with “serious social value” that serves a “higher purpose.” What’s wrong with that?**

A: Many people are skeptical of a “Father Knows Best” approach to lawmaking, and rightly so. It’s one thing to have your own views about a social interest in morality, it’s quite another for a government to put someone in prison for five years because they don’t agree with your views. Banning speech based on upholding a nebulous “social interest in order and morality” creates a dangerous slippery slope in which there is no limit to what could be banned.

Imagine how you would feel if the government decided to extend this position to banning the following:

- Speech that is offensive to a religion -- Remember the furor in Denmark over the cartoon depicting the prophet Mohammad?
- Racially motivated hate speech -- Why argue about whether a comment is racist when you can just ban it?
- Prime-time TV -- “[CSI](#),” “[24](#),” and many other popular shows depict illegal acts like torture and murder that government may decide conflict with the “social interest in order and morality.”
- Movies showing illegal drug use such as [Dazed and Confused](#), Cheech & Chong’s [Up in Smoke](#), [Fast Times at Ridgemont High](#), and [Permanent Midnight](#) – take them all off your Netflix list.

Giving government officials and juries the power to decide what ideas are morally and socially acceptable is not only unconstitutional, it is dangerous to our democracy. The

Supreme Court has explicitly rejected this kind of “balancing test” when it comes to free speech, precisely because the stakes are too high.

**Q12: One of the government’s arguments is that the law deters future animal cruelty and other antisocial behavior. Isn’t it worth upholding this law in order to prevent future antisocial acts, whether against animals or people??**

A: Certainly we all believe in preventing antisocial acts, including animal cruelty. But the law should focus on actual harm, not depictions of harm. The Supreme Court has said in recent years that “the mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it,” and that “[t]he prospect of crime...by itself does not justify laws suppressing protected speech.”

Otherwise, any kind of image of violence, whether real or fictional, whether against animals or humans, could be banned -- from the evening news to prime time crime dramas to documentaries about war. We don’t criminalize any of these images, nor should we. The only exception is child pornography, because it involves actual abuse of a child, and because the continued existence of the image is a lasting reminder to the victim of the abuse (see Question 14 for more on the child pornography exception).

In any case, the government’s argument doesn’t hold up because the law in question only covers videos for sale, not those offered free on Youtube or elsewhere. So the law is not even achieving its stated purpose of banning depictions of animal cruelty or of preventing people from becoming “desensitized” to cruelty to animals.

**Q13: But doesn’t banning videos of dogfighting result in shutting down actual dogfights?**

A: There’s no evidence of a cause-and-effect link between the two. In fact, the government has failed to present any evidence that the law in question has succeeded in “drying up the market” for dogfighting videos.

By contrast, [an analysis](#) by the First Amendment Center that looked at arrest and prosecution records in dogfighting cases concluded that the videotapes of dogfighting can actually help convict offenders. “Hence, by outlawing and thereby deterring videotaping of cruelty, Section 48 may not only fail to promote the justice of animal cruelty prosecutions, it may also actively impede such justice,” the analysis concluded.

Ultimately, law enforcement dollars are better spent on breaking up dogfighting rings, not putting documentary filmmakers and hunting photographers in prison.

**Q14: The Government also argues that intentional harm to animals should be viewed in the same way as child pornography, with the same kinds of penalties. After all, both involve actual harm to an actual being, right?**

A: Some people agree with this view, but the fact is that there is a very different standard in the law for how humans and animals are viewed. We raise animals for food, we wear clothing made of animal skins, and we exploit animals in many ways for our benefit.

The Supreme Court has placed only a few narrow categories of speech beyond the protections of the First Amendment, among them obscenity, imminent incitement to violence, threats, fighting words and child pornography. There are a number of reasons why this case is not analogous to those exceptions. Among them:

- The creation of child pornography always constitutes a crime, whereas the material that could be prosecuted under the animal cruelty law could well be images of activities that are legal in the place where they were created, e.g., a video of bullfighting in Spain.
- While child pornography’s “continued existence causes the child victims continuing harm by haunting the children in years to come,” the appeals court found that there is no such “continuing harm” to animals from depictions of their abuse, however horrific the images may be.

In sum, as the appeals court found, the government’s attempted analogy to the ban on child pornography “fails because of the inherent differences between children and animals.”

**Q15: If the Court rejects this law, won’t people who stage dogfights or create crush videos be off the hook for animal cruelty?**

A: No. Acts of animal cruelty will still be illegal. In fact, if someone videotapes a dogfight or “crush” video, they are actually making it potentially easier to prosecute those activities, according to some analysts. See Question 13, above.

**Q16: If the appeals court decision is correct and the law is so clear, then why did the Supreme Court take this case?**

A: The Supreme Court almost always grants review when an Act of Congress is found to be unconstitutional, and this is the first such case under this law to reach a trial court. Further, in this case the government is presenting a radical interpretation of the law that would overturn years of Supreme Court precedent in First Amendment cases.

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