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VIOLENT AND EXPLICIT VIDEO GAMES: INFORMING PARENTS AND PROTECTING CHILDREN

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

OF THE

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HOUSE OF REPRESENTATIVES

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VIOLENT AND EXPLICIT VIDEO GAMES: INFORMING PARENTS AND PROTECTING CHILDREN

WEDNESDAY, JUNE 14, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:39 p.m., in Room 2123 of the Rayburn House Office Building, Hon Cliff Stearns [Chairman] presiding.

Present: Representatives Stearns, Upton, Radanovich, Bass, Pitts, Terry, Murphy, Blackburn, Barton (ex officio), Schakowsky, Markey, Towns and Baldwin.

Also Present: Representative Matheson.

Staff Present: David Cavicke, General Counsel; Chris Leahy, Policy Coordinator; Will Carty, Professional Staff Member; Billy Harvard, Legislative Clerk; Jonathan Cordone, Minority Counsel; and David Vogel, Minority Research Assistant.

MR. STEARNS. Good afternoon. The subcommittee will come to order.

My colleagues, the rise of computer and video games as mainstream entertainment has been nothing short of meteoric. U.S. computer and video game software sales reached almost $10.5 billion in 2005, and more than double that since 1996. Worldwide computer and video games sales have hit over $30 billion. And, according to PriceWaterhouseCoopers, the global revenue of video game companies could reach over $55 billion in 2008, easily surpassing that of the music industry at $33 billion.

While it is a global business, the U.S. computer and video game industry continues to be the benchmark for innovation. This spectacular rise of the video game juggernaut is not hard to understand when you see the creativity, the educational value, and the sheer fun the vast majority of games offer to gamers of every age, especially children, who are still the core market for this burgeoning industry.

According to the Entertainment Software Association, games created for children age 17 and under constitute over 80 percent of the titles rated

by the Entertainment Software Rating Board, or ESRB. However, I also note that the top-selling game in 2004 was now the infamous Grand Theft Auto San Andreas, which is rated by ESRB as "M" for "Mature" audience, indicating that the game's content is inappropriate for children under 17 years of age. Grand Theft Auto sold 5.1 million units in 2004, and pushed out Madden NFL Football from the number one spot. Madden NFL Football was rated "E" for "Everyone" by ESRB, suitable for children 6 years and older.

"Mature"-rated games continue to be top sellers, and continue to push the limits of violence and sexually explicit content every year. Grand Theft Auto, which we will show a few clips from later, includes scenes that allow players to make drug deals, solicit prostitutes, gun down and bludgeon and mutilate police and EMS workers. And as a finale, they can fly a plane into a skyscraper. Now, I hardly call that educational or creative.

This is not just a game. Building a video game around a premise based on very realistic cold-blooded assassination of innocent bystanders and police, the same law enforcement community that stands guard outside the doors of this hearing for our own protection, is not entertainment, in our opinion. This sort of twisted homicidal imagery is more akin to hate speech, not free speech. It targets those who are innocent, it stereotypes, it incites hate, and it breeds disrespect for those who are serving to protect all of us.

Free speech is a constitutionally protected right, but when it involves very suspect expressions, expressions that are more akin to cultural pollution than art, it requires responsible and discreet execution. The costs our children must bear are too great.

But we are not here today to debate the constitutional issue surrounding violent and explicit video games. We are here, my colleagues, to investigate some pretty simple and commonsense issues: whether parents are getting all the information they need and deserve to make decisions about the purchase of video and computer games, the process by which games are rated, and to what extent those games with "M"-rated or "Mature" content are policed at the retail level both on and off line. These are the elements of consumer protection required to protect our most vulnerable and valuable consumers, our children.

This committee and this consumer protection subcommittee has a long and venerable record protecting children, whether it be from on-line pornography, indecency in broadcasting, or, in this case, from certain video games that have no place near children and should be banished to a secure adults-only location, and the video game equivalent of a red-light district.

In addition, my colleagues, a new phenomenon of hidden code and mods is another disturbing development that came to light in the Grand Theft Auto case, and it involves the ability to modify an existing game's underlying code with a downloadable program that can unlock hidden violence and sexually explicit content into the game. Such practices attempt to circumvent the rating process and again demonstrate the sophistication and stealth of the ways inappropriate content can be delivered to our children.

This type of virtual reality, violence, and sexual content undermines the efforts of parents as responsible caregivers to their children. Parents should not be required to defend constantly against the increasing media and marketing onslaught of excessively violent and sexually explicit video and computer games.

Media, marketing, and a delivery technology, computers, PDAs, and cell phones have become omnipresent in and outside the home. More needs to be done by the industries involved which have the money, they have the resources and expertise to better protect our children. Ratings need to be cleaner, clearer, and more universal.

Hidden content and the use of mods to evade ratings need to be met with more severe penalties. Retail stores need to be more vigilant in how they verify the age of customers both on line and at the point of sale. Technology, though, can do a lot. For example, parental control technologies like those found on the Microsoft X-Box allowing playing consoles to read ratings and allow parents to prohibit certain content from being played even if the child has it in hand. And this is progress.

I also very strongly urge the Federal Trade Commission to report to Congress on the Grand Theft Auto controversy as requested by congressional resolution last summer, and it should start getting tough with these companies like Take Two Interactive that flout the law and continue to exploit our kids with violence and hate.

And finally, my colleagues, as they say, a picture is worth a thousand words. After Members' opening statements, I would like to show some clips from Grand Theft Auto, the number one selling game of 2004, that have been meticulously edited to remove some of the more extreme sexual content, but still contain some very disturbing violent content. This should give us a sense of what constitutes a "Mature" or "M" rating under the ESRB system, and perhaps will make us wonder how bad things need to be to warrant an adults only or "AO" mark, a brand that would take this pollution out of mass-media and retail outlets that are frequented by our children and take the profit out of peddling violence and sex to our children.

So I would like to thank the witnesses for being here. I know the sacrifice they had to make for their presence, and their views and their testimony are obviously appreciated.

[The prepared statement of the Hon. Cliff Stearns follows:]

PREPARED STATEMENT OF THE HON. CLIFF STEARNS, CHAIRMAN, SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

Good afternoon. The rise of computer and video games as mainstream entertainment has been nothing short of meteoric. U.S. computer and video game software sales reached almost $10.5 billion in 2005 - more than double since 1996. Worldwide, computer and video game sales have hit over $30 billion. And according to Price Waterhouse Coopers, the global revenue of video game companies could reach over $55 billion in 2008 -- easily surpassing that of the music industry at $33 billion. While it is a global business, the U.S. computer and video game industry continues to be the benchmark for innovation.

The spectacular rise of the video game juggernaut is not hard to understand when you see the creativity, educational value, and fun the vast majority of games offer to gamers of every age - ESPECIALLY children, who are still the core market for this burgeoning industry. According to the Entertainment Software Association, games rated for children (age 17 and under) constitute over 80% of the titles rated by the Entertainment Software Rating Board or "ESRB." I, however, also note that the top selling game in 2004 was the now infamous Grand Theft Auto San Andreas, which is rated by the ESRB as "M" for mature - indicating that the game's content is inappropriate for children under 17 years old. Grand Theft Auto sold 5.1 million units in 2004 and pushed out Madden NFL Football from the number one spot. Madden NFL Football was rated “E” for everyone by the ESRB -- suitable for children 6 years and older.

Mature rated games continue to be top sellers and continue to push the limits of violent and sexually explicit content every year. Grand Theft Auto, which we will show a few clips from later, includes scenes that allow players to make drug deals, solicit prostitutes, gun down, bludgeon, and mutilate police and EMS workers, and as the finale, fly a plane into a skyscraper. I hardly call that fun, educational, or creative. This is not “just a game.” Building a video game around a premise based on very realistic, cold-blooded assassinations of innocent bystanders and police - the same law enforcement community that stands guard outside the doors of this hearing room for our protection- is not entertainment. This sort of twisted, homicidal imagery is more akin to hate speech, not free speech. It targets those who are innocent, it stereotypes, it incites hate, and it breeds disrespect for those who serve to protect.

Free speech is a constitutionally protected right, but when it involves very suspect expressions - expressions that are more akin to cultural pollution than art - it requires responsible and discrete execution. The costs our children must bear are too great. But we are not here today to debate the constitutional issues surrounding violent and explicit video games. We ARE here to investigate some pretty simple and common sense issues: whether parents are getting all the information they need and DESERVE to make decisions about the purchase of video and computer games, the process by which games are rated, and to what extent those games with "M"-rated or "mature" content are policed at the retail level- both on and off-line. These are the elements of consumer protection required to protect our most vulnerable and valuable consumers - our children. This Committee and this Consumer Protection Subcommittee has a long and venerable record protecting children -whether it be from on-line pornography, indecency in broadcasting, or in this case, from certain video games that have no place near children and should be

banished to a secure, "adults-only" location – the video game equivalent of the red-light district.

In addition, the new phenomenon of hidden code and "mods" is another disturbing development that came to light in the Grand Theft Auto case and involves the ability to modify an existing game's underlying code with a downloadable program that can unlock hidden violent and sexually-explicit content in the game. Such practices attempt to circumvent the ratings process and again demonstrate the sophistication and stealth of the ways inappropriate content can be delivered to our children.

This type of "virtual reality" violence and sexual content undermines the efforts of parents as responsible caregivers to their children. Parents should not be required to defend constantly against the increasing media and marketing onslaught of excessively violent and sexually explicit video and computer games. Media, marketing, and delivery technology (computers, PDAs, cell phones) have become omnipresent in and outside the home. More needs to be done by the industries involved, which have the money, resources, and expertise to better protect children. Ratings need to be clearer and more universal. Hidden content and the use of "mods" to evade ratings need to be met with more severe penalties. Retail stores need to be more vigilant in how they age verify customers - both online and at point of sale. Technology can do a lot. For example, parental control technologies, like those found on the Microsoft X-Box, allow playing consoles to read ratings and allow parents to prohibit certain content from being played even if a child has it in hand. This is progress. I also very strongly urge the FTC to report to Congress on the Grand Theft Auto controversy, as requested by congressional resolution last summer, and start getting tough with companies like Take Two Interactive that flout the law and continue to exploit our kids with violence and hate.

And finally, as they say, a picture is worth a thousand words. After member opening statements, I would like to show some clips from Grand Theft Auto –the number one selling game of 2004-- that have been meticulously edited to remove some of the more extreme sexual content but still contain some very disturbing violent content. This should give us a sense of what constitutes a "mature" or "M" rating under the ESRB system and perhaps will make us wonder how bad things need to be to warrant an "adults only" or "AO" mark – a brand that would take this pollution out of our mass media and retail outlets frequented by our children and take the profit out of peddling violence and sex to our kids. I'd like to thank the witnesses before us today for their presence and views. Your testimony is greatly appreciated.

Thank you.

MR. STEARNS. With that, I recognize the Ranking Member Ms. Schakowsky.

MS. SCHAKOWSKY. Thank you, Chairman Stearns. Thank you for holding today's hearing on the violent and explicit materials in video games. I appreciate the chance to further understanding how these games are marketed, sold, and what is being done to keep them out of the hands of children.

While I am a very strong proponent of free speech, and there are many educational and wholesome games on the market, I am no fan of the games that glorify killing and other forms of violence, including rape. Games with such content are irresponsible and dangerous, and have no place in a civil society.

The only thing that is as riling as those who make a business out of creating those deplorable games are those who make profit off of selling

them to children. I am especially concerned about those who in their zeal to make a buck allow for massive loopholes that make it easy for those who are under 17 to get ahold of games rated "Mature" or above without their parents' knowledge or consent. For instance, it is as easy as a click of the mouse to get "Mature"-rated video games on line from stores like Wal-Mart. All one needs to do to get their copy of Grand Theft Auto from Wal-Mart's Web site is to check a box that certifies, quote, that the person ordering is older than 17. With 13-year-olds being issued credit cards or having ready access to their parents' that age verification is a joke. For a so-called family-friendly store that won't carry music with "parental advisories" on the label, that is quite a double standard. Tell me, how does selling violent game to minors fit with Wal-Mart's claim that it is being responsible?

But having lax protections in place to stop the children under 17 years old from buying games rated "Mature" is not a unique phenomenon to on-line purchasing. According to the Federal Trade Commission, mystery shopping investigations that send 13 to 16-year-olds unaccompanied into stores, 42 percent of these children were able to buy "M"-rated games. Sadly, this is an improvement from 69 percent in 2003, but definitely no reason to celebrate it. And I look forward to your testimonies.

I believe that for voluntary standards ratings to be effective, we have to make sure that they are enforced, from the raters of the games to the checkout counter. While I don't condone these games, we need to make sure that parents are getting all the information they need, and that they have the chance to be involved in deciding what is appropriate for their children.

I very much look forward to hearing from our witnesses. I want to learn more about how these games are rated, how they are marketed, and to whom; who is making profit from them, what retailers have to say about selling to under-aged children without parental approval, and what they are going to do about it. Thank you.

MR. STEARNS. I thank the gentlelady.

I know recognize the Chairman of the full committee, Mr. Barton from Texas.

CHAIRMAN BARTON. Thank you, Chairman Stearns, for holding this hearing. I am looking forward to hearing from our distinguished list of witnesses, and we have several distinguished guests in the audience, and I hope at the appropriate time they might be introduced.

But I am very glad that we are holding this hearing. I think it is an important hearing. I hope that the parents of America are paying close attention. Last year it was revealed that there was an explicit sexual scene hidden inside a video game called Grand Theft Auto San Andreas.

It turns out that was one of the best-selling games of the year. This content was not disclosed to the industry's rating board, so the game did not receive the adults-only rating that it deserved. So when we found out about it, we passed a resolution asking that the FTC look into the production and marketing of that particular game. That was about a year ago. The Federal Trade Commission has still not given a report formally to the Congress. Hopefully we will get some glimmer of what they found out in today's hearing. But I think, given the sensitivity of the issue, it is not an acceptable practice by the FTC to respond in such a tardy fashion.

We are going to see in a few minutes some clips of this game, the Grand Theft Auto game. What we are going to see will show policemen being killed, drug dealing, and drive-by shootings. Apparently that is acceptable. It is representative of the content of some mature-only games. There are lots of other scenes we are not going to see simply because this is a public hearing.

It is true that "Mature" and "Adult-Only" games are a relatively small percentage of the games on the market, but unfortunately they appear to be some of the most popular games and are accounting for a disproportionately large percentage of total sales.

I will have to confess, Mr. Chairman, that I am also a video game player. I have worked my way up to Civilization Four. I haven't yet been able to beat it, but I at least understand the fundamentals of it. I think that game is an "E" game, which means that anybody can play it.

Given the fact that the industry is booming and that more games are being purchased than ever before, over $10 billion last year, it is imperative, in my opinion, that parents are informed about the content of the games that their children are playing. I have two stepchildren that are teenagers, and they are playing video games; I have three grandchildren, two of which are playing video games; and I have an infant son who will soon within the next 2 to 3 years almost certainly be game-playing himself.

So this is of a personal interest to me, and I am fed up with games like Grand Theft Auto being marketed under false pretenses. I have got no problem if it is an adults-only game and it is sold in the appropriate adults-only venue. If adults want to buy it, that is their privilege as Americans in a free society. But more violent and more sexually oriented games that are made available to the general public, in my opinion, is simply not acceptable.

So I want to thank you, Mr. Chairman, for holding this hearing. I look forward to hearing the witnesses. And hopefully, on a bipartisan-basis, if legislation is needed to clean up this mess, I am sure that you will lead the way, and I will be one of your most stalwart soldiers.

MR. STEARNS. I thank the Chairman.

[The prepared statement of the Hon. Joe Barton follows:]

PREPARED STATEMENT OF THE HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Good afternoon. Thank you, Chairman Stearns, for holding this hearing. It is important that parents pay close attention to the entertainment that their children are watching and listening to, and this examination of the video game industry and its rating system is an important part of that process.

Last year, controversy erupted when it was revealed that an explicit sexual scene was "hidden" inside a video game called *Grand Theft Auto: San Andreas*, which was one of the best-selling games of the year. This content was not disclosed to the industry's rating board, and therefore the game did not receive the "Adults Only" rating it deserved—the rough equivalent of an NC-17 movie rating. Subsequently, we in Congress passed a resolution asking that the FTC look into the production and marketing of the game. As of now—almost a full year later—the Commission has not explained what they have done. This is simply unacceptable, and I hope that today the FTC will tell us specifically what the investigation has uncovered.

In a few minutes, we will show a short compilation of clips from *Grand Theft Auto* showing cop killing, drug dealing, and drive-by shootings. While it is representative of the content of some "Mature"-rated games, there are a lot of other scenes in these games that we simply cannot show in a public hearing. It is true that "Mature" and "Adult Only" games are a relatively small percentage of the games on the market, but they are some of the most popular games and account for a disproportionately large percentage of total sales. Given the fact that the industry is booming and more games are being purchased than ever before—over $10.5 billion in sales in 2005—it is imperative that parents are informed about the content in the games that their children are playing.

The industry should be commended for developing a rating system voluntarily, and recent FTC studies have shown that retailers are doing a better job educating their customers and checking ID when selling more mature games. But not nearly enough has been done. The *Grand Theft Auto* debacle exposed a serious problem with the rating process, and many have argued that the ratings themselves are not appropriately defined. Consumers must have confidence in the ratings and those ratings must mean what they say. Also, last year's study showed that unaccompanied teenagers were denied "M-rated" games only 58 percent of the time. While that is a huge increase from 2000, it is not nearly good enough. Retailers, large and small, and the industry itself must behave more responsibly.

I understand that there have been efforts on the part of some state and local legislative bodies to regulate access to games. I also understand that all of these efforts have been ruled to be unconstitutional by the Courts. The purpose of this hearing, however, is to have a comprehensive discussion about whether parents are getting the information they need to make educated choices for their children. I believe that is in the best interest of consumers AND the industry.

I want to welcome Ms. Parnes of the Consumer Protection Bureau of the FTC, and thank her for coming in to discuss the Commission's work in this area. I also want to thank the rest of our witnesses for their participation today, and I look forward to learning more about the industry, its ratings, and its marketing.

Thank you, and I yield back the balance of my time.

MR. STEARNS. Ms. Baldwin.

MS. BALDWIN. Thank you, Mr. Chairman. I appreciate the fact that you are holding this important and timely hearing on violent and sexually explicit video games and how we can best protect our children from them.

It has been almost a year since the media first reported a secret sexually explicit minigame that was embedded in the game Grand Theft Auto San Andreas. Through installing a third-party program called Hot Coffee available on line, game players were able to access the embedded content, which was not originally disclosed to the Entertainment Software Rating Board, or ESRB.

Subsequently, the Federal Trade Commission initiated an investigation into the game, and just last week published a settlement with the developers of Grand Theft Auto, Take Two Interactive, and Rockstar Games. The settlement, if made final following a 30-day comment period, would require the companies to disclose all playable or nonplayable content of a game relevant to the game's rating, as well as requiring the companies not to misrepresent the rating or content descriptors for a game. The companies would be fined $11,000 per violation if they did not comply with reporting and game requirements. I believe these are constructive first steps in ensuring that video game developers operate in a socially responsible and consumer-friendly manner.

I know the Entertainment Software Rating Board has been working hard to improve its rating system and aggressively working with retailers to reduce the sale or rental of "Mature"-rated games to minors without parental consent. I am especially heartened by the fact that game console manufacturers have provided password-protected parental control technology to prevent games with inappropriate ratings from being loaded onto their next-generation video game consoles. I applaud the industry for taking self-regulation seriously, because incidents such as the Hot Coffee minigame are not only bad for publicity, they are bad for business, and they are bad for our children.

Nevertheless, we know that much more needs to be done. There are financial incentives for game makers not to be cooperative. Indeed, there is no question that in some instances a "Mature" rating for a game drives interest and sales of that game. While a game rated "Adult Only" or "AO" is automatically rejected by many retailers, it is not difficult to imagine that a company would downplay or misrepresent the content of a game to receive a "Mature" rating when, in fact, the game more closely resembles the violent and sexual content found in an "AO" game and should have received the "AO" rating. Which begs the question are the ESRB ratings truly based on content, or is the content of the game driven by ratings? And I hope our panelists will refer to that and speak to that.

Finally, I want to emphasize that in ensuring video games are available to consumers in a responsible way, we must be careful not to trample on first amendment rights of the game creators. Indeed, every Federal court that has ruled on State laws prohibiting the sales of violent or sexually oriented video games to minors has found such statutes unconstitutional. And that is why I believe that self-regulation remains the best method in providing information to parents about the game's content. For that same reason, it is all the more important that the video game rating system work effectively to provide accurate, objective information to parents. Ultimately, I believe it is up to the gaming industry to cultivate a more responsible culture in fulfilling their obligations not only to the rating board, but to the public in general.

Thank you, Mr. Chairman, again for holding this important hearing.

MR. STEARNS. I thank the gentlelady.

Mr. Terry.

MR. TERRY. Thank you, Mr. Chairman, for holding this important hearing. As the father of three young boys, 11, 8, and 6 who are avid gamers, I am very concerned about the content included in the games that they and other young kids play.

My wife and I really try to be vigilant. The first thing that we pay attention to is the rating on the cover. What we have found out is that even within the ratings, there seems to be a wide disparity, particularly in the "T" or teens ware, especially with something like a car race game. For example, we have kind of given carte blanche even with the "T" rating to buy racing games. And then we found out with one of the racing games that they actually get--or the purpose is to run from the cops, and you score how many points by the damage that you cause during the police chase, including hitting pedestrians, which I thought was pretty graphic.

So we rely on these ratings. And I just want to get a feel for how tight these ratings should be in order to properly educate or provide the basis for whether or not a game is bought to parents.

I am concerned that the merchandisers are selling "M"-rated video games to children, which an FTC recent survey recently documented. In my opinion, some of these games, the "M"-rated games, have pretty graphic violence of which, because the child is gaming, they are part of it. And I think that may actually be more dangerous to the child than watching a violent Hollywood movie on TV or at the movie theater. And then, of course, it scares the heck out of parents to hear about some of these Easter eggs or hidden scenes with graphic sex that wouldn't even be part of the rating. And it is disturbing to me as a Member of Congress that the FTC, although requested by Congress, has not yet acted upon the most insidious of that example.

Now, I look forward to hearing from the witnesses today and an exchange of ideas of how to further protect children and empower the parents in a gaming society. I yield back.

MR. STEARNS. The gentlelady from Tennessee Mrs. Blackburn.

MRS. BLACKBURN. Thank you, Mr. Chairman. I do want to thank the Chairmen of our subcommittee and also of our committee for holding the hearings on this issue. And to our witnesses, we appreciate you, and we appreciate your time for being with us today.

I know that there is going to be a great deal of focus on the violence depicted in the video games and on the ESRB rating structure; however, I want to be certain that we also discuss the depiction of sexually explicit content in video games. Sadly, we know that this is a growing problem and one, I know, that is a cause of concern for many parents across the country and certainly for parents in my district.

During hearings that we have held in other subcommittees, we discussed the alarming increase in the number of teenagers who are being exploited by sexual predators through the Internet. We have got a whole generation facing a threat parents have never had to deal with before, and a generation of kids being desensitized to aberrant sexual behavior. I think we would be remiss not to begin discussing how video game content is contributing to this problem.

What I am reading and hearing from parents is that almost all "Adult-Only" video games have sexually explicit content. But it also has been brought to my attention that some video games rated "Mature" may also contain this sort of content. I would like the ESRB to confirm to this committee that no video games rated "Mature" contained sexual content. And in this, I am referring to indirect reference--not to indirect reference, but to suggestive sexual scenes and acts.

I know the industry has opposed age verification for violence in video games, claiming that such requirements are subject to overly vague standards, but I would like to hear the industry's position on requiring age verification only for video games that may have sexually explicit content.

One other aspect I would like the industry to comment on is the abundance of freeware on the Internet, and whether ESRB rates this software.

And a final comment. I want to hear from the rating agency on whether they consider religious overtones a factor in their ratings. I bring this up because of the recent MPAA rating of PG on a film solely because of a religious aspect, and putting this issue on par with violence, nudity, and foul language.

Mr. Chairman, I again thank you for holding the hearing, and I yield the balance of my time.

MR. STEARNS. Mr. Murphy.

MR. MURPHY. Thank you, Mr. Chairman. I speak today not only as a member of this committee, a Member of Congress, but also as a psychologist who has practiced in this field for many years working with children. I wish I could submit this as part of the record, but it is my only copy left, the book I wrote on The Angry Child. But in that I have worked extensively with children with a propensity towards violent and aggressive behavior.

Researchers consistently told me as a psychologist that children who witness real-life violence even passively experience two and a half times greater risk for psychological and behavior problems. Children who then are involved in an interactive way with video games have an increased tendency to act aggressively, with a decreased tendency to use calmer and more thoughtful approaches. When they witness acts of violence, this leads kids to believe violence is more prevalent and acceptable than it is, and the viewer response becomes dulled, which therefore requires increased violence to perk up the sales of items. From TV and games, we, in summary, have increased aggressive behavior, increased levels of arousal, and increased aggression-related thoughts and feelings.

Now, the thing about video games that I find particularly interesting is anywhere you look in the industry or the literature of psychological and educational science, we have your highly interactive and realistic games. The games reward violent behavior and children involved in repetitive behaviors. Now, learning theory has told us that activity and rewards and repetition is how you get children to learn. It is amazing to me as I see studies that are quoted by the gaming industry ignore that.

I think what we need to start off with here is understanding that clearly what children are exposed to affects their behavior. If that was not the case, then television and video games and even parenting itself and school would have no impact. The fact is it does. And so the issues here are not, it seems to me, the impact of games or the ratings, but perhaps the ease of purchase and the ease by which children can break through any sort of system that is set up there, whether the ratings are themselves--and sometimes we have heard in previous testimony they are false--or whether it is parents not watching over them.

Now, I am not one to mandate a nanny state, where the Federal government or State governments say some things can be made and some things cannot out there. What I do think is important is that we have to understand this: No government has done a good job at mandating common sense and litigating compassion or legislating intelligence. What we have to make sure is that parents themselves are the main factors with that.

I always hope that hearings like this somehow help to increase people's awareness, but in having worked with literally thousands of children with pretty serious problems, unfortunately, that is not the case. And so my hope is in this hearing today one of the things we hear from the people from the gaming industry of what role they wish to play aggressively with the billions of money that they make on these items to help educate parents and children to understand there is a relationship, and they need to be responsible about that.

I yield back.

MR. STEARNS. Thank you.

Mr. Pitts.

MR. PITTS. Thank you, Mr. Chairman, for scheduling this important hearing. And thank you to the witnesses for sharing your expertise with us today. Anyone who has young children or young grandchildren has seen how influential video images can be on young, impressionable minds. They are very influenced as young children, and they learn a lot from video images. And I think you should be commended, the industry, for what you are trying to do in setting up a system of self-regulation ratings.

And parents who monitor what their kids are exposed to clearly have tools to regulate what comes in their home, but that leaves a lot of kids unprotected. A sizeable percentage of kids live in homes where parents don't monitor what they are playing. I think it is safe to say that, by and large, these are kids who are already disadvantaged and at risk, and I would be interested in what the industry is doing to protect these children.

I am also interested in the effect video games have on kids' behaviors. I think it is safe to say that a wealthy kid from the suburbs can play Grand Theft Auto or similar games without turning to a life of crime, but a poor kid who lives in a neighborhood where people really do steal cars or deal drugs or shoot cops might not be so fortunate. And I should add that this isn't a hypothetical question. Grand Theft Auto is one of the best-selling video games in America. There is almost certainly a child somewhere in America who is going to be hurt by this game. Maybe his dad is in jail, or his big brother is already down on the corner dealing drugs. Maybe he has just fallen in with the wrong crowd. But this game could be all it takes to nudge him on to the wrong side of the fence.

And although I am a defender of the first amendment, don't you think that the industry has a moral responsibility to think about at-risk kids and impressionable minds before producing some of the stuff that we are going to witness today?

So I hope you will address some of these questions in the hearing today. And I thank you again, Mr. Chairman, for scheduling it.

MR. STEARNS. I thank the gentleman.

The gentleman from New York, Mr. Towns.

MR. TOWNS. No opening prepared statement, Mr. Chairman. I would like to place it in record.

MR. STEARNS. By unanimous consent, so ordered.

[The prepared statement of the Hon. Edolphus Towns follows:]

PREPARED STATEMENT OF THE HON. EDOLPHUS TOWNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Thank you, Mr. Chairman for holding this timely hearing.

Today we will hear a great deal about what is *wrong* with the video game industry. We will see violent images and hear about how video games are corrupting children and giving them bad ideas. Essentially, we will be hearing a lot about the content that is seen in about 15 percent of video games

In contrast, I would like to stress the benefits and qualities that are found within the games that make up the other 85 percent. Further, I would like to commend the industry for addressing the public's complaints about content and doing its best to alleviate our concerns. Additionally, I look forward to hearing from the FTC and await Ms. Parnes' explanation of its study.

With all of the distractions and negativity our young people face on TV, the internet, and in movies, I am thankful that there are a large number of positive and educational video games available to capture their attention. From "Battlefield 1942" and its stunning World War II scenes and maps, to the wide variety of simulation games that enable a player to plan the layout of his or her own house or of an entire city, games provide our children with amazing opportunities to learn about life, solve problems, and make tough decisions. I *personally* enjoy selecting Tiger's clubs while playing the U.S. Open in Tiger Woods PGA Tour 2006. (Sadly, it's the closest I'll ever come to the real experience!).

The availability of adult video games to minors is certainly a concern, and I hope to hear some new ideas from our witnesses. I was pleased to read the FTC's findings on improvements made by retailers in this regard, and am confident that the ESRB will continue its oversight. I lookk forward to our witnesses.

Thank you, Mr. Chairman. I yield back.

I'm again pleased to see the video game industry represented here today, as it continues to provide consumers with innovative technology and products. That said, I'd like to stress that the protections in the DMCA have helped companies bring their products and intellectual property to market, and we should do our best to preserve their stream of commerce. America's content companies continue to entertain and amaze all of us, and the movie industry at large has aggressively and innovatively embraced the digital marketplace. Movie and television studios are not *"holding back"* their content, as some would have you believe, but rather are exercising due diligence and caution in not licensing a business model that exacerbates piracy.

In an age when consumers want new products and recent movies in their hands as quickly as possible, we must be extremely careful when reviewing the protections and guidelines that govern the distribution of content. I feel that the entertainment industry has made great strides, and I cite Mr. Feehery's ("FEARIE") testimony in that regard. He lists a number of recent digital content deals cut by motion picture companies to distribute their works online, on IPTV services, for the i-Pod, on peer-to-peer services, and through innovative uses of the air waves. These efforts, I believe, are steps in the

right direction. I was intrigued by Mr. Denney's testimony, in which he cites century-old examples of one or another content industry opposing various new technologies. However, it appears to me that a look at more recent history shows the movie industry has embraced and driven the adoption of the DVD player and other consumer electronic devices. Therefore, I look forward to Mr. Denney's comments here today and hearing his rationale.

Finally, I would like to quickly mention that the video industry is not alone in fighting piracy and in need of protection. We must be just as diligent in coming to the aid of those who operate in the *audio* realm, as our music artists are also under siege from rampant piracy and improper file sharing. I look forward to the second session of this two-part hearing, when we will concentrate on audio protections in greater detail.

Thank you, Mr. Chairman. I yield back the balance of my time.

MR. STEARNS. Mr. Radanovich.

MR. RADANOVICH. Thank you, Mr. Chairman. I appreciate the fact that you are holding this hearing.

I, too, am a father of an 8-year-old, and he loves playing video games. He plays anything from sports to action figures and adventures. He is in the "E" for "Everybody" category. He is not getting out of that until he is 30 years old, by the way, because we are going to make sure of that.

His parents, my wife and I, are constantly faced with the challenge of determining what is appropriate for our son to be exposed to. We face the same pressures that all the other parents face, with an impressionable child who sees the latest exciting advertisement for the newest game or game system, and he wants to have it.

These are the difficulties we face, and one of the things that parents rely on critically is the way the games are rated. That is why I am deeply concerned with the developments last year with the Grand Theft Auto game. The game was given a "Mature" rating, but was later discovered to contain hidden content of which the ratings board was unaware. I understand that this situation was addressed, and the rating was up to adults only, but it illustrates the possibility of ratings being inaccurate. These are ratings that parents rely on, and it is our responsibility to make sure that they are reliable and dependable.

I am also concerned with the marketing of games with "Mature" content. These can be presented in a way that is very appealing to young children. And I look forward to hearing about what the FTC is doing to address deceptive marketing within the industry.

This hearing provides us with an excellent opportunity to learn more about the video game industry and its rating system. I am interested in how that process works, how the ratings are enforced at the retail level, and how effective the ratings are in informing parents about the games children are playing.

I understand the ratings board, the industry, and retailers have all made efforts to increase accountability for games content. This is seen

through increasing difficulty for minors to purchase games and a new technology that prevents games of a certain rating from being played. The ESA in particular should be commended for its efforts with the ratings board; however, we need to look and see how effective this system is in practice and determine what is the best way to ensure that our children are protected.

We have come a long way from playing Pong on the old Atari, and right now my wife and I still have a high level of control over what my 8-year-old can play, but he is young, and as children get older, that level of hands-on control can change. We need to ensure that the rating system is accurate and that it is enforced so that parents can rely on it to keep games from ending up in the hands of those not old enough or mature enough to play them.

I want to thank the witnesses for being here today, and I look forward to your testimony and a productive hearing.

Thank you, Mr. Chairman.

MR. STEARNS. I thank the Chairman.

Mr. Upton.

MR. UPTON. Thank you, Mr. Chairman. I have a prepared statement for the record that I want to put in, but I want to say a couple things.

First of all, I appreciate having the hearing today and seeing my old friend and neighbor Warren Buckleitner here today as well.

I would like to think that I have been an outspoken watchdog on this industry. I have got two kids, I am a gamer myself. I was an expert in Pong. That was a good game. But I have got to tell you, as a dad with two teenagers, I understand the rights of the first amendment and folks that can handle some of these games, and obviously some that cannot.

And we in this committee took action on the House floor last year on Grand Theft Auto with the rating that they had, and I have got to tell you, if I had had that game in my house, I would have been outraged. Maybe I would have hired a lawyer to go after some of these people for some of the garbage that they put out, but we didn't. We passed a law instead, passed a resolution asking the FTC to go after them.

And I guess I thought that the FTC had a few more teeth than they apparently have. I have not read the consent agreement that just showed up in my office just this week almost a year after we in the House passed a very strong bipartisan resolution led by Mr. Dingell, Mr. Barton, Mr. Markey, and myself, and Mr. Stearns. And I am not at all happy with the consent agreement. In essence, as I understand it, there are no consequences, none, for the rating that they had before, and merely an acknowledgement that if they mislabel or deceive folks in the future, that there will be a potential fine of up to $11,000 a day. I would have liked to have thought that they would have been able to be fined for millions of

dollars for the trash that they put out across this country with the label that they got.

As a responsible parent, we have the duty to look after our kids, and when they go into a Best Buy or a Target or a Wal-Mart, parents often look at what that rating is. And as Chairman of the Telecommunications Subcommittee, we have had hearings on those ratings with the video industry and with the music industry, and if those labels aren't accurate, parents can't make a decision as to whether their kids ought to participate in those games or listen to that type of music. And to find at least on the surface of what we saw with the Grand Theft Auto, I just can't tell you how disappointed and angry I am that their actions in essence aren't even a slap on the wrist, nothing, for the most popular video game that was sold in America.

So I look forward to this hearing. I look forward to looking at legislation--if the FTC doesn't have the ability to go after them when they deliberately deceive them, I look forward to seeing what we could do to change that. And I obviously am out of time, and I look forward to participating.

And I thank you, Mr. Stearns.

[The prepared statement of the Hon. Fred Upton follows:]

PREPARED STATEMENT OF THE HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Thank you Mr. Chairman, as you know, I have been an outspoken watchdog against explicit video games. I introduced H Res 376, which passed the House overwhelmingly last July, to require the FTC to look into this situation with the game Grand Theft Auto: San Andreas because I was appalled to hear about the game having a back door to porn embedded in its files.

As a parent of two teenagers, I know firsthand that parental involvement is the most important line of defense in determining the type of content suitable for children, and the ratings system empowers parents to do just that. Unfortunately, the incident involving Rockstar Games has severely degraded the integrity of the ratings system. How can parents trust a system in which game makers do an end-run around the process to deliver pornographic material to our kids?

I appreciated the ESRB's swift action in investigating the matter and revoking the M rating and ensuring that any further sales of "Grand Theft Auto: San Andreas" were under an AO rating. But this action should have never been necessary had Rockstar Games complied with industry standards from the outset.

This kind of material would have certainly earned it an "Adults Only" Rating rather than the "Mature" rating that it has been marketing. I cannot imagine how a good player in the video game industry could make an honest mistake of something like that, so you have to wonder just what they are trying to do. I look forward to hearing from the industry about their commitment to rating games accurately and retailers about their initiatives to make sure that Adult Only games don't get into the wrong hands.

I am especially interested in hearing what Warren Buckleitner has to say about this because he and I grew up together in St. Joseph, Michigan. I can only assume that his Midwestern common sense and good judgment will help clarify what is really going on in

the video industry and what may or may not be needed to combat bad video games and bad purchase choices.

I hope the FTC plans to walk through the outcome of the case that they opened against Take Two and Rock Star Games, the makers of Grand Theft Auto and the outcome of this case. I have to be honest, I was hoping for something a little harsher especially after waiting so many months to see the result of this investigation, although I am not sure that the FTC really has the power to punish a bad player to the degree that I would like.

The video game industry has gone into great detail in defining their ratings, (I have them right here) but I want parents to feel confident that the labeling of the video games they allow their kids to play is reliable and that a bad actors do not get away with deceptions like this.

MR. STEARNS. I thank the gentleman.

It is my pleasure to welcome a Member who is not a member of this subcommittee, Mr. Matheson, who has a bill, I think it is H.R. 5345, and I welcome him for a short opening prepared statement, and welcome.

MR. MATHESON. Thank you, Mr. Chairman. I have a written prepared statement I will submit for the record. But I just want to thank you, Chairman Stearns, and Ranking Member Schakowsky for giving me a chance to sit in on your hearing. I am so pleased you are holding this hearing.

There are a number of bills that have been introduced by different Members. You have the capability to assess all those different bills and try to work through the good ideas from all of them. I think I have one point of view that might be helpful, and I just look forward to participating in the hearing, and thank you for the opportunity to be here.

[Additional statements submitted for the record follows:]

PREPARED STATEMENT OF THE HON. MIKE ROSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Good afternoon and welcome. I would like to start off by thanking Chairman Stearns and Ranking Member Schakowsky for holding today's hearing regarding "Violent and Explicit Video Games: Informing Parents and Protecting Children".

As the father of two teenagers, a seventeen year old and a fourteen year old, I know first hand the thoughts and worries that many parents of teenagers in this day and age are facing.

Just like any parent, I want the best opportunities and experiences for my children. And just like any parent, I want to be able to keep up with all aspects of my children's lives, including the situations and content they are exposed to.

With that said I, along with many other parents, strive to do the best we can but know that there are areas where all parents can continue to learn more so as to best help their children be exposed to constructive experiences.

In this day and age, technology moves at an extreme pace, which can yield both the positive and the negative. Advanced technology allows greater opportunities and access to information, education, and entertainment.

Yet, the ever changing world of technology sometimes can get ahead of a parent's ability to adequately track and comprehend each new option that is presented to our children.

I am aware of the existing ratings board in place that continues to monitor and rate video games that are sold in the market to persons of all ages. I am pleased that such a ratings system exists and look forward to learning more about the specifics of this system.

I also look forward to further discussion on ways that we may be able to better utilize this system, as well as ways we can better educate parents on the content of the games that they purchase or allow their children to play.

I believe that all members in the room and witnesses present today are here to see the same guiding principle accomplished, and that is finding ways that we can best protect our children and help them experience and learn from positive components of our ever changing world of technology and entertainment.

Once again, I thank today's subcommittee for holding this hearing and thank all the witnesses who have taken time to come here today to help elaborate on this important issue. I look forward to the upcoming discussions.

MR. STEARNS. Thank you.

With that, I don't think we have any more opening statements, and so we will move to our panel. Before we do, we have an edited video that we intend to show. I caution, it is Grand Theft Auto and other videos. It does have some explicit material. We have put this on the front of this edited version, but we would like to show that to you. And I understand some of you on the panel have videos of your own that you want to show, so we will obviously allow you to do that, but I thought we would give before your opening statements start sort of an overview of what we are talking about. And so with that we will show the video.

[Whereupon a videotape was played.]

MR. STEARNS. I think that concludes the video clips of that. We will start on our panel.

Lydia Parnes is Director of Bureau of Consumer Protection at the Federal Trade Commission; Mr. Gary Severson, Senior Vice President of merchandising, Wal-Mart Stores; Mr. Douglas Lowenstein is President of the Entertainment Software Association; Ms. Patricia E. Vance, President, Entertainment Software Rating Board; Dr. Kimberly Thompson, Director, Kids Risk Project, Associate Professor of Risk and Analysis and Decision Science at Harvard; Dr. Warren Buckleitner, Editor, Children's Technology Review; and, lastly, Dr. David Walsh, President, National Institute on Media and the Family.

With that, I welcome all of you. And we will start with my left. Ms. Parnes, welcome, for your opening prepared statement.

STATEMENTS OF LYDIA PARNES, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION; GARY SEVERSON, SENIOR VICE

PRESIDENT, MERCHANDISING, WAL-MART STORES, INC.; DOUGLAS LOWENSTEIN, PRESIDENT, ENTERTAINMENT SOFTWARE ASSOCIATION; PATRICIA E. VANCE, PRESIDENT, ENTERTAINMENT SOFTWARE RATING BOARD; KIMBERLY M. THOMPSON, DIRECTOR, KIDS RISK PROJECT, ASSOCIATE PROFESSOR OF RISK ANALYSIS AND DECISION SCIENCE, DEPARTMENT OF HEALTH POLICY AND MANAGEMENT, HARVARD UNIVERSITY; WARREN BUCKLEITNER, PH.D., EDITOR, CHILDREN'S TECHNOLOGY REVIEW; AND DAVID WALSH, PH.D., PRESIDENT, NATIONAL INSTITUTE ON MEDIA AND THE FAMILY

MS. PARNES. Thank you, Mr. Chairman, Ranking Member Schakowsky. I am Lydia Parnes, Director of the Bureau of Consumer Protection at the Federal Trade Commission, and I appreciate the opportunity to appear before you today to discuss the Commission's role in monitoring the marketing of violent video games to children under 17.

As the committee is aware, in response to concerns from Congress and the public, the Commission has maintained an active program of reviewing and reporting on the advertising and marketing of violent entertainment products including movies, video games, and music. The courts have found that the expressive content in these products is protected speech under the First Amendment, leaving a very narrow range of permissible government involvement with their advertising and marketing. We believe, however, that we can play an important role in encouraging industry to maintain active self-regulatory programs and in holding the entertainment industry to its commitments.

The Commission's first report on the marketing of violent entertainment products was issued in September 2000. Since then, the Commission has issued four follow-up reports.

We currently have several ongoing efforts directed to marketing of violent entertainment products. We are developing a survey to determine whether parents are familiar with and use the ESRB's video game rating system. We are currently conducting a new undercover test shopping program to determine whether retailers abide by age restrictions on the marketing of video games and other products. For video games, past results show that retailers are headed in the right direction, but there is still substantial room for improvement. And, as was noted in our most recent shop, 42 percent of teens were still able to buy "M"-rated games.

We are actively monitoring advertising practices to determine compliance with industry standards for the disclosure of rating

information, and we are collecting from the industry itself the information necessary to issue a new report on the state of self-regulation. We hope to release this report by the end of the year.

In addition, as the committee is aware, in response to a congressional resolution, the Commission recently completed an investigation into the undisclosed explicit content in the video game Grand Theft Auto San Andreas. This is obviously a matter of serious concern to us, the public, and the Congress. Parents must be able to rely on the accuracy of the industry rating system.

The staff at the FTC conducted a detailed inquiry, reviewing thousands of internal documents, deposing company officials, interviewing other potential witnesses, and consulting with outside experts. At the conclusion of the investigation, staff believed that the game's developers bore responsibility for what occurred, having created the content that was ultimately made playable by the mod program known as Hot Coffee. Accordingly, last week the Commission accepted for public comment a settlement with the game's developers that seeks to ensure that such events not happen again.

Several members this afternoon have expressed concern that the FTC has failed to report back to Congress on the results of our investigation. The congressional resolution directed the FTC to conduct this investigation and take action, which we did, but of course we would be happy to submit written material to the committee to follow up on this.

Mr. Upton, you also expressed concern about the adequacy of our order to address this conduct. First, I want to assure you that I understand these concerns, and I share them, and I thank you for your longstanding support of the Commission, and especially for our work in this area. But the fact is simply the Commission does not have the statutory authority to impose civil penalties for Rockstar's conduct. Despite that, we have obtained a strong order in this case. It prohibits any future misrepresentations of video game ratings, requires the filing of compliance reports, and subjects the company to the risk of very substantial civil penalties if they violate this order.

Finally, Rockstar's misconduct did have significant financial repercussions for the company. Rockstar has publicly reported to its investors that it spent $25 million recalling and relabeling games as a result of the ESRB's revocation of Grand Theft Auto's rating after disclosure of the hidden content.

Finally, the Commission remains active in consumer education. Most recently, we updated our consumer education material and Web site to make sure that parents understand that game content, especially in PC games, can be modified or changed through mods that are widely available on the Internet.

In conclusion, as the industry continues to produce games with increasingly explicit content, industry self-regulatory efforts become even more important. The Commission will continue to monitor closely industry developments and will initiate law enforcement actions, like our case challenging the marketing of San Andreas, whenever appropriate.

Thank you. And I look forward to responding to your questions.

[The prepared statement of Lydia Parnes follows:]

PREPARED STATEMENT OF LYDIA PARNES, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

I. Introduction

Mr. Chairman, Ranking Member Ms. Schakowsky, I am Lydia Parnes, Director of the Bureau of Consumer Protection at the Federal Trade Commission. I appreciate the opportunity to appear before you today to discuss the Commission's monitoring of the marketing of electronic games (commonly known as video games) to children under 17 and the serious concerns that some parents have about the marketing of some of these games.[1] Our monitoring plays an important role in encouraging industry to maintain active self-regulatory programs and in keeping the entertainment industry to its commitments.

The Commission's involvement in this area dates back to 1999 with the revelation that the teen-aged shooters at Columbine High School had been infatuated with extremely violent movies, music, and video games. This event led to Congressional and Presidential requests that the Commission investigate and report back on the practices of the movie, video game, and music recording industries with respect to the marketing of violent entertainment to children under 17. Since then, the Commission has issued five reports on the marketing of violent entertainment products. These reports have examined voluntary guidelines and industry codes that govern the placement of advertising for violent Restricted (R)-rated movies, Mature (M)-rated games, and Explicit-Content Labeled recordings in media popular with teens, and require the disclosure of rating and labeling information in advertising and on product packaging. Given that the focus of today's hearing is video games, I will limit most of my remarks to that industry, except to point out relevant comparisons.[2]

Over the years, the FTC reports have documented progress by the video game industry in limiting advertisements for M-rated games in popular teen media. The FTC also has found that the video game industry nearly always provides rating information in advertising.

Despite this progress, there remain a number of concerns relating to video games and how they are marketed. First and foremost, there is the question of the usefulness of the rating system widely used by the industry. It is critically important that parents know

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[1] The views expressed in this written statement represent the views of the Commission. My oral statement and responses to questions you may have are my own and are not necessarily those of the Commission or any individual Commissioner.

[2] The Federal Trade Commission is the federal government's principal consumer protection agency. Congress has directed the Commission, under the FTC Act, to take action against "unfair or deceptive acts or practices" in almost all sectors of the economy and to promote vigorous competition in the marketplace. 15 U.S.C. § 45(a). With the exception of certain industries and activities, the FTC Act provides the Commission with broad investigative and enforcement authority over entities engaged in, or whose business affects, commerce. The FTC Act also authorizes the Commission to conduct studies and collect information, and, in the public interest, to publish reports on the information it obtains. 15 U.S.C. §§ 46(b) and (f).

about and use the Entertainment Software Rating Board ("ESRB")[3] ratings and content descriptors[4] when choosing games for their children. Content descriptors – such as *Blood & Gore, Strong Language, Strong Sexual Content, and Violence* – which can be found on the back of the game box, help inform parents about the game's content.

In addition, it is important that parents understand that game content, especially on PC games, can be modified or changed through modifications or "mods" that are widely available on the Internet. Often these modifications are developed by third-party game enthusiasts with no connection to the video game companies. If downloaded and made part of a game, they can add additional content, ranging from simple additions like a different color car used in a street scene, to superimposing new textures or skins on a figure in a game. Many of the mods would likely be of little concern to parents, but others add nudity or enhance the violence or depictions of blood in a game. In light of the easy availability of these "mods," the Commission, in July 2005, issued a Consumer Alert on the video game rating system that highlights for parents the fact that content can be downloaded from the Internet that has not been evaluated by the ESRB and may make a game's content more explicit than the rating indicates.[5]

Similarly, parents need to be concerned about game developers leaving otherwise unplayable content on a game disc that is later made playable by patches or programs developed by third-party modders. The Commission recently investigated this very issue, culminating last week in an announcement that the Commission had accepted for public comment a consent agreement relating to alleged deception in the marketing of *Grand Theft Auto: San Andreas* and the release on the Internet of the so-called "Hot-Coffee" program that, if downloaded and installed, made playable a sex mini-game.[6]

The Commission also has expressed concerns regarding how readily children can buy M-rated video games in stores. Although retailers selling video games have steadily improved their record of denying under-age children access to M-rated games, a significant percentage of children sent in as undercover shoppers are still able to buy these games. Moreover, children are often exposed to advertising for these products. As is the case with the movie and music industries, existing voluntary guidelines for the video game industry still would permit M-rated ad placements in media that are very

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[3] As indicated on its website, the ESRB is a "self-regulatory body established in 1994 by the Entertainment Software Association ("ESA"). The ESRB independently assigns computer and video game content ratings, enforces industry-adopted advertising guidelines and helps ensure responsible online privacy practices for the interactive entertainment software industry." http://www.esrb.org/about/index.jsp.

[4] The ESRB ratings have two parts: 1) rating symbols that suggest what age group the game is appropriate for; and 2) content descriptors that indicate elements in a game that may have triggered a particular rating and/or may be of interest or concern. The ESRB system consists of the following rating symbols: EC (Early Childhood), E (Everyone), E10+ (Everyone 10 and older), T (Teen), M (Mature 17+), and AO (Adults Only 18+). There are more than thirty different content descriptors, including Blood and Gore, Intense Violence, Lyrics, Mature Humor, Mild Violence, Nudity, Sexual Themes, Strong Language, Strong Sexual Content, Use of Drugs, and Violence. *See ESRB Game Ratings & Descriptor Guide*, available at http://www.esrb.org/ratings/ratings_guide.jsp.

[5] *See* FTC Consumer Alert: Video Games: Reading the Ratings on Games People Play (July 2005), available at http://www.ftc.gov/bcp/conline/pubs/alerts/videoalrt.htm. The Consumer Alert also explains how to decode ESRB's descriptors and provides parents with certain tips, such as "Adults who are concerned about the content of certain games may want to check them out by renting and playing them before giving the nod to youngsters in their household" and that parents can use the ESRB's website to "enter the name of a game to see its rating and the descriptions of its content." This alert and other information useful for parents on the ratings systems for video games, movie and music are also available on the Commission's webpage on "entertainment ratings," available at http://www.ftc.gov/bcp/conline/edcams/ratings/ratings.htm.

[6] *See* Makers of Grand Theft Auto: San Andreas Settle FTC Charges
FTC Alleged Companies Game Content Claims Deceptive, available at http://www.ftc.gov/opa/2006/06/grandtheftauto.htm. The comment period ends on July 10, 2006.

popular with large numbers of teens. In the past, all three industries have placed ads for M-rated, R-rated, or labeled products on television programs that are, according to Nielsen rankings, among the most popular shows watched by teens, yet still fall within industry placement guidelines.

Because the expressive content in video games has been considered protected speech under the First Amendment,[7] there is a very narrow range of permissible government involvement with their advertising and marketing. As the industry continues to produce games with increasingly explicit content, it becomes even more incumbent upon industry to enforce and enhance its self-regulatory guidelines governing marketing, and upon retailers to implement and enforce policies restricting children's access to Mature-rated games.

II. The Commission's Studies

A. Scope of the Studies

As stated earlier, the Commission has issued five reports on the self-regulatory and marketing practices concerning violent entertainment by the movie, music, and video game industries.[8] In the course of preparing these reports, the Commission staff requested information from the principal industry trade associations, as well as from major motion picture studios, music recording companies, and video game companies.[9] In addition, the Commission staff contacted interested government agencies, medical associations, academics, and parent and consumer advocacy groups.[10] The Commission collected information from consumers through publicly available surveys and polls and also designed and conducted its own research. In addition, the Commission has conducted four "mystery" shopper surveys of retail stores and movie theaters in an attempt to see if unaccompanied children could purchase or gain access to products labeled as inappropriate or warranting parental guidance. Finally, the Commission staff reviewed Internet sites to study how they are used to market and provide direct access to rated or labeled products.

B. Findings of the Commission's First Report

In September 2000, the Federal Trade Commission issued its first report entitled, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* ("September 2000 Report").[11] That report found that the three entertainment industries had engaged in widespread marketing of violent movies, music, and video games to

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[7] *E.g.*, *Interactive Digital Software Ass'n v. St. Louis County, Mo.*, 329 F.3d 954, 957-58 (8th Cir. 2003); *James v. Meow Media, Inc.*, 300 F.3d 683, 696 (6th Cir. 2002).

[8] The Department of Justice provided the FTC with substantial funding and technical assistance to enable the FTC to collect and analyze public and non-public information about the industries advertising and marketing policies and procedures, and to prepare the Commission's written Reports. The analysis and conclusions contained in these reports are those of the FTC.

[9] The Commission received information from numerous individual companies, as well as the Motion Picture Association of America ("MPAA"), the National Association of Theatre Owners ("NATO"), the Recording Industry Association of America ("RIAA"), the National Association of Recording Merchandisers ("NARM"), the Entertainment Software Rating Board ("ESRB"), the Video Software Dealers Association ("VSDA"), the Interactive Digital Software Association ("IDSA"), the Interactive Entertainment Merchants Association ("IEMA"), and the American Amusement Machine Association ("AAMA").

[10] Among those organizations were the American Academy of Pediatrics, American Psychological Association, Center on Media Education, Center on Media and Public Affairs, Children Now, Commercial Alert, The Lion & Lamb Project, Mediascope, National Institute on Media and the Family, National PTA, and Parents' Music Resource Center.

[11] The Commission's September 2000 Report is available online at: http://www.ftc.gov/reports/violence/vioreport.pdf.

children that was inconsistent with the cautionary messages of their own parental advisories and that undermined parents' attempts to make informed decisions about their children's exposure to violent content. In addition, the Commission found that advertisements for such products frequently failed to contain rating information.

The Commission also conducted national telephone surveys of parents and children on their familiarity and use of the ratings and parental advisories. With respect to video games, our survey in 2000 found that only 61% of parents were aware of the ESRB system, and that 45% of those parents reported that they rarely or never used the ESRB system.[12]

Finally, the Commission reported on the results of an undercover mystery shop by unaccompanied teens, aged between 13 and 16, of retailers and movie theaters. In our 2000 survey, 85% of the unaccompanied young teens bought M-rated video games and parental advisory-labeled music recordings and 46% purchased tickets for an R-rated movie.[13]

The September 2000 Report recommended that all three industries – with respect to products that they themselves rate or label with age restrictions or parental advisories due to their violent content – enhance their self-regulatory efforts by: 1) establishing or expanding codes that prohibit target marketing these products to children and imposing sanctions for violations; 2) increasing compliance at the retail level; and 3) increasing parental understanding of the ratings and labels.

C. Findings of the Commission's Follow-Up Reports in 2001

In response to Congressional requests, the FTC released follow-up reports in April and December 2001.[14] Both reports examined the entertainment industry's practices with regard to marketing violent entertainment products to children. These reports noted progress by the video game industry, as well as the movie industry, in providing clear and conspicuous disclosure of rating information in advertising, as well as new efforts by both industries to limit advertising for M-rated games and R-rated movies in popular teen media venues. The reports also found that the music industry showed virtually no change in its placement of parental advisory-labeled music ads since the September 2000 Report.

The results of the Commission's second undercover shopper survey were included in the December 2001 Report. The video game retailers showed modest improvement from the results in the Commission's undercover survey in 2000, with 78% of the unaccompanied young teens able to buy the product; the movie theaters showed no statistically significant change, with 48% able to buy a ticket to an R-rated movie as compared to 46% in 2000. The music industry had the worst results, with 90% of shoppers able to buy music recordings with an explicit-content label, not a statistically significant change from the 85% result obtained in the Commission's 2000 shop.

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[12] *See* September 2000 Report, Appendix F at 8, http://www.ftc.gov/reports/violence/appendicesviorpt.pdf. Appendix F also contains a detailed discussion of the underlying methodology and findings.

[13] *See id.*

[14] *Marketing Violent Entertainment to Children: A Six-Month Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* ("April 2001 Report"). The Commission's April 2001 Report is available online at: http://www.ftc.gov/reports/violence/violence010423.pdf. *Marketing Violent Entertainment to Children: A One-Year Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* ("December 2001 Report"). The Commission's December 2001 Report is available online at:http://www.ftc.gov/os/2001/12/violencereport1.pdf.

D. Findings of the Commission's June 2002 Report

The Commission's next report, issued in June 2002,[15] showed continued progress by the movie and video game industries and improvement by the music industry in including rating information in advertising that would help parents identify material that may be inappropriate for their children. In the case of video games, the Commission found nearly universal compliance with ESRB standards limiting the advertising of M-rated games in media where children constitute a certain percentage of the audience (35% for television and 45% for print media). Nonetheless, the Commission found that some industry members had placed advertisements for M-rated games on television shows popular with teens, and in youth-oriented game-enthusiast magazines. As the Commission noted in its December 2001 Report, the industry's anti-targeting standards diminished – but did not eliminate – advertisements during programs mainly popular with teens.

E. 2003 Workshop on Industry Marketing Practices

In October 2003, the Commission held a public workshop on industry marketing and retail sales practices. At the workshop, representatives from consumer and parents' groups, as well as the motion picture, video game, and music recording industries' major trade and retailer associations discussed and debated the state of self-regulation in each of these industries. A summary of the workshop appears in the Commission's July 2004 report.[16] Significantly, one positive outgrowth of that workshop was an announcement by the trade group representing video game retailers that they would step up their efforts to restrict sales of M-rated games to children, and by the end of 2004 would have in place an enhanced system to deter such sales.[17] Based upon the results of the Commission's most recent mystery shop (*see* Section II. G., *infra*), it appears that game retailer members have adopted policies to restrict such sales but need to do more to ensure that such policies are being enforced.

F. Findings of the Commission's July 2004 Report

The Commission's July 2004 Report found substantial, but not universal, compliance with ESRB standards governing ad placements and found that industry participants generally were prominently disclosing rating information in advertising and on product packaging. The report further found that ads for M-rated games continued to appear in game enthusiast magazines popular with teens, and that Teen (T)-rated games were advertised in media popular with pre-teens (children under 13). The Commission recommended that the video game industry, as well as the movie and music industries, improve their efforts to avoid advertising restricted or labeled products in venues popular with under-17 audiences. The report also noted that the game industry could improve its efforts to disclose rating information, by including content descriptors in TV ads and on the front of game packages.

The report discussed the results of a mystery shopper survey of retailers conducted on the Commission's behalf in 2003. This survey found that 69% of young teen shoppers (age 13–16) were able to buy Mature-rated games, reflecting some improvement from

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[15] *Marketing Violent Entertainment to Children: A Twenty-One Month Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* ("June 2002 Report"). The Commission's June 2002 Report is available online at: http://www.ftc.gov/reports/violence/mvecrpt0206.pdf.

[16] *Marketing Violent Entertainment to Children: A Fourth Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* ("July 2004 Report"). The Commission's July 2004 Report is available online at: http://www.ftc.gov/os/2004/07/040708kidsviolencerpt.pdf.

[17] *See* Major Retailers Announce New Campaign to Enforce Video Game Rating System, available at http://releases.usnewswire.com/printing.asp?id=24172 (Dec. 8, 2003).

earlier undercover shopping surveys conducted in 2000 and 2001. However, the survey also revealed that retailers still far too often were selling such games to children. The report encouraged retailers to do a better job disclosing ratings and reasons for ratings in advertising, and to more widely implement and enforce sales policies restricting children's access to restricted or labeled entertainment media, and, in particular, R-rated DVDs and homes videos, music with a parental advisory, and M-rated games.

G. Latest Mystery Shop Results

On March 30 of this year, the Commission released the results of its latest nationwide undercover shop of video game stores.[18] The undercover shop saw a substantial decrease in the number of M-Rated video games sold to unaccompanied children, particularly by large retailers. Forty-two percent of the secret shoppers – children between the ages of 13 and 16 – who attempted to buy an M-rated video game without a parent were able to purchase one, compared to 69% of the shoppers in 2003. Notably, large retailers performed better - 35% of the secret shoppers were able to buy the M-rated games. While these results are headed in the right direction, there is still substantial room for improvement. The Commission staff currently is conducting another undercover shop to test whether children under age 17 are able to buy tickets to R-rated films at movie theaters, R-rated movies on DVD, explicit-content labeled music recordings, and M-rated video games.

III. The Commission's Ongoing Activities

A. Survey Research and Ad Monitoring

The Commission staff is currently conducting research for a new report on entertainment industry practices. Among other things, the Commission staff will be surveying consumers on the video game rating system. The surveys are a follow-up to the Commission's surveys in 2000 on consumers' familiarity with and use of the ESRB video game rating system. Because parents' knowledge of and ability to use the rating system is a key factor, the Commission intends to survey both parents and children to find out, among other things, whether parental participation in the selection and purchase of video games has changed since the 2000 survey, whether parental knowledge and use of the ESRB system has changed, and what parents' level of agreement is with the ESRB ratings for games they have personally encountered through purchase or play with their children. The Commission plans to survey 1,000 parents who have one or more children, aged eight to 16, who play video games or personal computer games.[19] The FTC will also survey 500 children aged eight to 16 who play video or personal computer games.

The Commission staff continues to monitor the industry's advertising practices for disclosure of rating information and for the placement of ads for M-rated games, R-rated movies, and music with a parental advisory in media popular with children. As part of this monitoring, the FTC surfs web sites to study the disclosure of ratings information and methods used to preclude the sale of restricted or labeled products to children under 17.

The Commission plans to release a report near the end of this year summarizing the results of these additional surveys and monitoring activities.

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[18] *See* Undercover Shop Finds Decrease in Sales of M-Rated Video Games to Children, available at http://www.ftc.gov/opa/2006/03/videogameshop.htm.

[19] On March 30, the FTC published the second of two Paperwork Reduction Act notices seeking public comment on proposed consumer surveys on the video game rating system. *See* 71 Fed. Reg. 16155 (Mar. 30, 2006); 70 Fed. Reg. 56703 (Sep. 28, 2005).

B. Collection of Media Violence Complaints

On March 17, 2004, the Commission announced an expansion of its consumer complaint handling system to categorize and track complaints about media violence, including complaints about the advertising, marketing, and sale of violent movies, video games, and music.[20] To make it easier for consumers to file a complaint, the Commission's home page - www.FTC.gov - contains a link to the complaint form. The expanded complaint system, implemented in response to Congressional directives, enables the Commission to track consumer complaints about media violence and identify issues of particular concern to consumers. To date, the Commission has received over 1,200 complaints.[21]

C. Law Enforcement Activities

The Commission has completed its investigation into the marketing of the video game *Grand Theft Auto: San Andreas*, having reviewed tens of thousands of documents and the deposition testimony of numerous company officials. As noted earlier, the Commission has accepted for public comment a consent agreement with the developers of *San Andreas* to address alleged deception in the marketing of that game.[22]

The ESRB originally rated *Grand Theft Auto: San Andreas* M (Mature 17+), indicating that the game has content that may be suitable for persons ages 17 and older. As part of the rating, the ESRB had assigned the game the following content descriptors: Blood and Gore, Intense Violence, Strong Language, Strong Sexual Content, and Use of Drugs.

In July 2005, after media reports of a widely available "mod," the ESRB found that the game discs for the originally released PC, PlayStation 2, and Xbox versions of *San Andreas* contained unused nude female textures ("skins") and a sexually explicit mini-game that had been edited out of game play but was embedded in wrapped form in the game's computer code[23]. Users of the originally released PC version of the game could access this content by downloading and installing a third-party program called "Hot Coffee." Later, PlayStation 2 and Xbox users were able to access the same content by taking certain affirmative steps, such as installing special software and/or hardware accessories on their game consoles.

According to the ESRB, its initial rating of *San Andreas* was seriously undermined by the existence of the undisclosed and highly pertinent content on the final game discs, compounded by the broad distribution of the Hot Coffee program.[24] The ESRB therefore re-rated the game as AO (Adults Only 18+), indicating that the game has content that should only be played by persons 18 and older. The ESRB also assigned the game an additional content descriptor for nudity.

Major retailers, most of whom have policies not to sell AO-rated games, promptly removed the original versions of *San Andreas* from their store shelves. Take-Two Interactive, Inc., the game's publisher, agreed to offer retailers the option of either re-stickering existing inventory with an AO (Adults Only 18+) rating or exchanging all unsold inventory for new, M-rated versions of the game with the Hot Coffee content

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[20] *See* FTC to Accept Complaints about Media Violence (Mar. 17, 2004), available at http://www.ftc.gov/opa/2004/03/mediaviolence.htm.

[21] About 60% of these complaints grew out of a coordinated campaign that encouraged parents to complain about the marketing of a toy to young children that was based on a violent TV program.

[22] A "censor flag" that preceded the sex mini-game script code on the game disc acted as a kind of wrapper for that content. When installed, the Hot Coffee program changed that censor flag from a 1 to a 0 at the relevant point in the script code, effectively unwrapping the sex mini-game.

[24] *See* ESRB Concludes Investigation into *Grand Theft Auto: San Andreas*; Revokes M (Mature) Rating (July 20, 2005), available at http://www.esrb.org/about/news/7202005.jsp.

removed.[25] Take-Two also agreed to make a downloadable patch available to all consumers who had previously purchased the PC version of the game, which would make the Hot Coffee program inoperable.

The ESRB clarified its rules to clearly require all game companies to disclose any pertinent content that might impact the rating contained on the game discs sold to the public, even if that content is not intended to be accessed during game play. The ESRB also has stated publicly that it intends to increase the fines available for companies who fail to disclose pertinent content during the rating process to as much as $1,000,000.[26]

Undisclosed explicit content in video games is obviously a matter of serious concern. Parents must be able to rely on the accuracy of the industry rating system. Practices, whether by game manufacturers or a third party, that undermine the integrity of this system need to be addressed.

In the instance of *San Andreas*, the Commission believes that its developers bear responsibility for what occurred, having created the content that was ultimately made playable by the "Hot Coffee" program.[27] Accordingly, the Commission last week published a complaint and accepted for public comment a settlement with Take-Two Interactive and Rockstar Games that seeks to ensure that such events not happen again. The agreement, if made final following a 30-day comment period, would require the companies to make disclosures in their advertising and marketing whenever they include content on a game, whether playable or not, that would likely affect the rating for the game, unless they have disclosed that content to the ESRB or other applicable rating authority. In addition, the agreement includes a requirement that the companies not misrepresent the rating or content descriptors for a game, and implement and maintain a system reasonably designed to ensure that all of the content of a game is considered when the companies prepare a submission for the ESRB or other rating authority.[28]

The Commission believes that last weeks's action complements the steps the ESRB has already taken. Importantly, it also makes clear that companies owe an obligation to the public independent of their obligations to the ESRB, not to misrepresent the content that might become accessible on a video game.

IV. Conclusion

The Commission's follow-up reports have documented progress by the video game industry in complying with and improving its self-regulatory policies restricting ad placements and requiring rating information in advertising. More remains to be done.

Because of First Amendment and other issues, the Commission continues to support private sector initiatives by industry and individual companies to implement the suggestions mentioned above. Nonetheless, the Commission will continue to monitor

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[25] Take-Two reported that it incurred $24.5 million in costs associated with returns of *San Andreas* as a result of the re-rating. *See* Take-Two Interactive Software, Inc., Annual Report (Form 10-K), at 24 n.6 (Jan. 31, 2006).

[26] However, these increased fines are not yet in effect.

[27] The July 25, 2005, resolution of the U.S. House of Representatives asking the Commission to investigate the marketing of *Grand Theft Auto: San Andreas* requested the FTC to determine if the companies had intentionally deceived the ESRB. H. Res. 376 (July 25, 2006). The Commission's published complaint contains no allegation that the companies intentionally misled the ESRB as to the content of the game when they submitted the game for a rating. Indeed, the relatively unpolished production qualities of the enabled mini-game, as well as technical bugs that arose in the game when the first version of the "Hot Coffee" program was released, show that the companies had abandoned development of that content before finishing it.

[28] A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of $11,000.

closely developments in the area and will initiate actions, such as the case challenging the marketing of *San Andreas*, when appropriate.

MR. STEARNS. Mr. Severson.

MR. SEVERSON. Chairman Stearns, Ranking Member Schakowsky, and distinguished members of the committee, Wal-Mart thanks you for holding this hearing today. We support actions to prevent children from obtaining violent and explicit video games, and inform and educate parents regarding the same. We are prepared to work with you on this issue.

I am Gary Severson, Senior Vice President and General Merchandise Manager for Wal-Mart, and I oversee the purchases of toys, electronics, entertainment, computers, and photos for Wal-Mart U.S. stores.

Wal-Mart is pleased to be a part of this process. As a responsible retailer, we take voluntary steps and proactively work to prevent children from obtaining "Mature" and "Adult"-rated video games, and to inform parents about video game content before a purchase is made.

All the video games we carry are rated by the Entertainment Software Ratings Board. ESRB is responsible for rating the content of the games. The rating system is designed to help customers choose the right games for their families. Parents report that they find the rating system helpful and mostly credible.

First, while Wal-Mart represents a good portion of the video game sales in the United States, we feel it important to point out that we choose not to sell any video game with an "Adult-Only" rating.

Second, we have a process in place to help ensure that only customers who are 17 or older can purchase video games rated "Mature." Wal-Mart associates are not permitted to sell "Mature" video games to any person under the age of 17 unless that person is accompanied by a parent or guardian. All "Mature"-rated are prompted at the register to check the age of the customer. The associate is then required to request that the customer provide a current valid form of identification. If they cannot provide that form of identification, we must politely decline the sale. All of our associates are taught and trained in the selling of "Mature" video games.

All of our stores have the ESRB rating system posted in the electronics area next to the video game product. We recently took steps to improve beyond what we had done in the appearance and visibility of those signs. We also use our in-store television network to run public service announcements about the rating system, and we display the rating system when we advertise video games in newspaper circulars.

Compliance with these guidelines is crucial in helping us to be one of the leaders among retailers in terms of compliance with the rating system. Wal-Mart continually works to improve its performance

regarding the sale of video games. We focus on education and ratings enforcement, and are working on new ideas to educate parents about ratings.

It is important to note that we believe self-regulation regarding compliance with the ESRB rating system in this sector works. There has been dramatic improvement among retailers in restricting access to inappropriate content by minors. Specific actions that led to this improvement include installation of digital prompting technology, clear signage at the retail sales floor describing the rating system, and the dissemination and utilization of documents outlining training for sales clerks.

We have systems and procedures in place to timely deal with any issues that may arise in the sale of video games. For example, the recent video game titled Oblivion was originally rated "Teen", but was changed to "Mature" when it was determined to contain mature content. As soon as Wal-Mart was notified of the change, we immediately pulled the video games off the floor, moved them to the back room, waited for relabeling, changed our register prompts in our systems, and put the product back out on the floor when all systems were in place. Further, within minutes of receiving notice from the ESRB regarding the hidden content in the much-discussed Grand Theft Auto today, Wal-Mart stopped all sales of the video game, pulled the video games from the retail sales floor, and returned them to the supplier.

We also have activities and affiliations with other organizations that are making a difference. We are a member of Healthy Media Healthy Children, which is an umbrella organization for Pause, Parent, Play, which is a campaign to empower parents to make decisions about what their kids watch, hear, and play from television and movies to video games and music. Further, Wal-Mart is a member of the Entertainment Merchants Association, the EMA. It is committed to parental empowerment programs. As a family-friendly, responsible retailer, we have been focused on being involved in ways to make sure children do not purchase inappropriately rated video games and in educating parents regarding video game content for almost 5 years. We will always work on ways to improve the process.

Thank you for your time and allowing me to speak on behalf of Wal-Mart regarding this important topic. We look forward to working with you effectively and constructively to address this issue. Thank you.

[The prepared statement of Gary Severson follows:]

PREPARED STATEMENT OF GARY SEVERSON, SENIOR VICE PRESIDENT, MERCHANDISING, WAL-MART STORES, INC.

Chairman Stearns, Ranking Member Schakowsky and distinguished Members of the Committee:

Wal-Mart Stores, Inc. thanks the Committee for its work on this important issue and for holding this hearing today. We support actions taken to prevent children from obtaining violent and explicit video games and to inform and educate parents regarding the same. We are prepared to work with you to avoid the sale of this material to children and to make certain parents understand what they and their children are purchasing.

Background

My name is Gary Severson. I am the Senior Vice President and General Merchandise Manager for Wal-Mart Stores, Inc. I oversee the purchase of toys, electronics, video games, computers, music and movies. I joined Wal-Mart in 1994 as a Buyer. In 1995, I was promoted to Merchandise Manager and was appointed to Vice President and Divisional Merchandise Manager in 1997. In August of 2002, I was promoted to Senior Vice President and General Merchandise Manager. Prior to joining Wal-Mart, for eight years, I served in Merchandising for Venture Stores, a division of the May Company. I hold a Bachelor of Science degree from Brigham Young University in Provo, Utah.

Wal-Mart is based in Bentonville, Arkansas. Our company employs approximately 1.3 million Associates from all 50 states and approximately 1.8 million Associates worldwide. Each week over 176 million customers worldwide choose to shop at Wal-Mart, which we feel reflects the success of our dedication to providing Everyday Low Prices to our customers. Wal-Mart does not just operate stores, clubs, and distribution centers in communities; we take a proactive stance in community involvement on a number of issues.

Purpose of Hearing and Wal-Mart's Role

As we understand it, there are several purposes of this hearing including: (1) to learn about best practices utilized by the private sector to prevent the sale of violent and explicit video games to children and to inform parents about video game content prior to purchase; (2) to explore potential ways in which to best prevent the sale of violent and explicit video games to children and to inform parents about video game content prior to purchase. With this understanding, Wal-Mart is eager to share its information and experiences.

Wal-Mart's policies and procedures

Wal-Mart is pleased to be a part of this process. We make every effort to be a responsible retailer and take the role very seriously. We proactively work to prevent children from obtaining mature and adult rated video games as well as to inform parents about video game content prior to purchase. Wal-Mart has taken and continues to take voluntary steps to address these issues.

All of the video games Wal-Mart carries are rated by the Entertainment Software Ratings Board (ESRB). ESRB is responsible for rating the content of interactive entertainment software or video games. The rating system is designed to help customers choose the right games for their families. Parent customers report that they find the rating system helpful and credible. According to an ESRB nationwide survey of parents, parents agree with the ESRB ratings assigned 82 percent of the time. This is an important statistic to Wal-Mart as we look to our customers for guidance.

First, while Wal-Mart represents about 24 percent of the video game sales in the United States, we feel it is important to point out that we choose not to carry or sell any

video game with an "Adult" rating and in 2005 we sold significantly more "Everyone" and "Teen" rated video games than we did "Mature" rated video games. Second, we have a process in place to help ensure that only customers who are 17 years of age or older can purchase video games rated "Mature." Wal-Mart Associates are not permitted to sell "Mature" rated video games to any person under the age of 17 years of age, unless the person is accompanied by a parent or guardian.

Specifically, we have many checkpoints in place to prevent the sale of "Mature" rated video games to anyone under the age of 17 years of age. All video games have an ESRB rating symbol on the front of the product. Thus, a "Mature" rating symbol will indicate to the Associate that the customer is required to be 17 years of age or older to purchase the item. Further, we have programmed all of our cash registers to prompt Associates to check the age of customers attempting to purchase "Mature" rated video games. Upon seeing the prompt, the Associate is required to request that the customer provide a valid, current, Government issued form of identification. If the customer cannot provide a valid, current, Government issued form of identification, the Associate must politely decline the sale.

Further, salaried managers, Customer Service Managers and Home Entertainment Department Managers are required to ensure that all Associates know and understand the requirements for selling "Mature" rated video games.

In addition to monitoring actual sales, Wal-Mart is committed to making sure customers are satisfied with their purchases by ensuring they understand what they are taking home. To this end, it is policy that all stores have the ESRB rating information posted in the electronics area to help customers make informed decisions about the video and software games they are purchasing. Recently, we took steps to improve the appearance and visibility of the ESRB rating signs. Further, we use our in-store television network to run Public Service Announcements to educate our customers about the ESRB ratings system. When we advertise video games in newspaper circulars we display the ESRB ratings guide. Finally, Wal-Mart Associates play an important role in this process by explaining the rating system and making sure customers are aware of it.

Compliance with all these guidelines is critical in terms of providing excellent customer service, reducing returns from "surprised" customers, and enhancing customer trust. Wal-Mart is one of the leaders among retailers in terms of its compliance with the ESRB ratings and in taking steps to make sure children do not purchase video games inappropriately rated for their age.

Wal-Mart continually works to improve its performance regarding the sale of video games. We are focused on education and ratings enforcement and are working on new ideas to educate parents about ratings in our advertisements in in-store television monitors. Further, we are working with our operations team to train all our associates regarding ratings.

Wal-Mart does not limit its vigilance to in-store sales. Walmart.com is one of the leaders in the industry in terms of warning signals and prompts that we use throughout the interface and checkout flow. A purchaser of a "Mature" rated video game on Walmart.com must check a box confirming they are in fact 17 years old or older before they can proceed to our online checkout and purchase a "Mature" rated video game.

It is important to note that self-regulation regarding the ESRB ratings and compliance in the retail sector has worked and continues to work. There has been a dramatic improvement among retailers in restricting access to inappropriate content by minors. Specific actions that have led to this improvement include the installation of digital prompting technology that requires identification at the cash register, the installation of clear signage on the retail sales floor describing the ratings system, and the dissemination and utilization of manuals and documents outlining training for sales clerks.

WAL-MART'S POLICIES AND PROCEDURES ARE EFFICIENT AND EFFECTIVE

It is important to point out Wal-Mart has policies and procedures in place as well as capabilities which allow it to react to the sometimes quickly changing environment in retail sales. If for example, there is a sudden need to pull a particular video game from our stores, we have the ability to implement that process within minutes.

For example, recently a video game titled "Oblivion" was originally rated "Teen" but was re-rated "Mature" when it was determined to contain mature material. As soon as Wal-Mart was notified of the rating change, we immediately pulled the video games from the floor in all our stores, moved them to the backroom, re-stickered them with a "Mature" rating symbol, and changed our register prompts accordingly before placing the video games back on the floor. Further, within minutes of receiving notice from the ESRB regarding the hidden content and new "Adult" rating for a recent version of "Grand Theft Auto," Wal-Mart stopped all sales of the video game, pulled all the video games from the retail sales floor and returned them to the supplier.

These examples illustrate Wal-Mart's ability to timely address any issue that may arise in the sale of video games. This in turn, improves our ability to remain a responsible retailer providing excellent customer service, protection to children buying video games and information to parents regarding the content of video games.

ADDITIONAL WAL-MART ACTIVITIES AND AFFILIATIONS THAT ARE MAKING A DIFFERENCE

As a responsible retailer and member of communities across the United States, Wal-Mart participates in a variety of activities designed to educate and empower parents to make decisions about what their kids play, watch and hear.

Wal-Mart is a member of Healthy Media Healthy Children which is the umbrella organization for PauseParentPlay, a campaign designed to empower parents to make decisions about what their kids watch, hear and play from television and movies to video games and music. PauseParentPlay is the first comprehensive, nationwide movement that joins the entertainment industry with leaders from private businesses, Congress and family groups. PauseParentPlay was created about four years ago when several corporate CEOs and members of Congress started discussing a private sector initiative aimed at helping parents gauge which media is appropriate for their children. Wal-Mart was a founding member motivated by its belief that parents should be armed with tools to make the best media choices for their children. U.S. Senators Rick Santorum (R-PA), Joseph Lieberman (D-CT), John Ensign (R-NV), and Mark Pryor (D-AR) serve as advisors to this bipartisan group.

PauseParentPlay continually takes steps to reach parents through outlets they use and see everyday such as placing advertisements in magazines and placing displays in retail stores and other venues. The advertisements and displays direct the parents to the website, www.PauseParentPlay.org where they will find information and tutorials about media tools in an easy-to-use format. The site guides parents through available tools such as the v-chip and age and content-based ratings for video games, television, movies and music. The site provides busy parents with easy access to all the information they need to make informed choices about what their kids play, watch and hear.

Further, Wal-Mart is a member of the Entertainment Merchants Association (EMA). The EMA (formerly known as the IEMA and VSDA) is committed to parental empowerment programs. It began in October 1997, when one of EMA's predecessor organizations endorsed the Motion Picture Association of America rating system for motion pictures and encouraged its members to enforce the ratings. Among other things, the EMA facilitates the adoption of voluntary ratings enforcement by retailers, encourages retailers to educate parents about video game ratings through various forms of in-store signage and notification, and provides parents with information how to make the right entertainment choices for their families. The EMA's public education components

include media outreach, a ratings awareness public service announcement that runs on the in-store monitors of more than 10,000 retail establishments, and a website that contains the public service announcement, guidelines for parents, a PowerPoint presentation about the ratings and labeling systems, and other ratings and labeling information.

Conclusion

Wal-Mart seeks excellence and responsibility in everything we do. We constantly strive to improve our business processes and to enrich the communities in which we are located. With regard to preventing the sale of violent and explicit video games to children and educating parents about the content of video games, we believe our model works. We abide by the ESRB ratings and do everything possible to prevent children from obtaining inappropriate video games and to inform parents about video game content.

Thank you for your time in allowing me to speak on behalf of Wal-Mart on this very important topic. We look forward to working with you to effectively and constructively address this issue.

MR. STEARNS. Mr. Lowenstein.

MR. LOWENSTEIN. Thank you, Mr. Chairman, members of the subcommittee. I do appreciate the opportunity to be here today. I appreciate your commitment, Mr. Chairman, to putting together a broad and fair-minded panel, as you always do.

I was going to focus a little bit on some of the economic issues around this industry, but you, more eloquently than I could, in your opening prepared statement touched on how important and how big this

industry is today and how important it has become to the U.S. economy. So let me dive right into some of the issues.

I have raised two daughters, and I understand the concerns that give rise to these hearings about the content of some video games. Some of the entertainment my daughters consumed when they were growing up certainly gave me my share of worries. But I have to tell you, in the end I think they were better for having a diverse array of content whether I approved of it all or not.

I also want to say that I lost an uncle to gun violence years ago, so I have a personal sense of how powerful and how painful it is to be exposed to violence in a profoundly personal way.

Monitoring what our kids see in this society is not easy. The video game industry is part of a larger puzzle. In our industry, the average game player now is 33 years old. They are not kids. And that means, just like books, just like movies, just like music, just like television, just like painting, just like any other form of artistic expression, we produce content for people of all tastes and interests. Some of it is not my cup of tea. Some of it, I think, is extraordinarily powerful and compelling entertainment. Some of it clearly is not appropriate for all audiences.

But context does matter. And as some of you have mentioned, 85 percent of all games sold in 2005 were rated as appropriate for persons under 17.

I think it is important to bear in mind when we talk about this subsection of games that give rise to this hearing, it is not the dominant portion of this market. Yes, some of them are big sellers, undeniably. And it is impossible to avoid that reality. But let us keep this in some kind of context. And even if there is room for disagreement amongst the ratings, and I am sure there is, the fact is that almost everyone who has looked at this rating system finds overwhelming agreement with the ratings the overwhelming portion of the time.

This brings me back to the central question then, which is, what do you do? And I think our industry has tried from start to finish to create a self-regulatory system in partnership with retailers that helps parents control, both give them the choices and give them the way to control the entertainment that comes into the home.

You will hear a great deal about the Entertainment Software Rating Board. I am not going to spend too much time on that. I will note that the Chicago Tribune wrote in January of this year that the video game industry's rating system is more detailed than those of the movie and music industries. We are proud of that. There is much more information about the content of video games than there is about any other media. It may not be perfect, but we have really made a commitment to empowering parents.

Second, we work with retailers, as Gary Severson has said, to create effective self-regulatory systems. On the FTC data about enforcement, I think it is important to note 83 percent of all games are sold through just five retailers. And if you look at the mass merchants, which the FTC did, enforcement is up to 65 percent. That is up from 30 percent in just a year. That is a pretty impressive gross. It is not where it should be. It is not as high as I would like it to be.

But let us put that in context; if you look at movies, which have 69 percent effective enforcement of R-rated movies, so video games retailers are essentially doing as good a job keeping kids from buying "M"-rated games as movie theaters are at keeping kids from getting into R-rated movies, and four times better, I might add, than retailers are doing keeping kids from buying albums with parental warning labels or DVDs rated R or NC 17.

Finally, the latest video game consoles have parental control technologies. That has been touched on. The X-Box 360 has it on the market now, the PlayStation 3, and the Nintendo, we will have it when they come out in the fall. And I think this is a very powerful tool for parents.

Now, this hearing is focused, understandably, on violent games, and we have already seen a tape of Grand Theft Auto, but defining this industry based on its most controversial titles, it would be like defining the film industry based on Kill Bill, The Texas Chainsaw Massacre, and Natural Born Killers; or the music industry based on Eminem, 50 Cent and the Dixie Chicks.

And I would like, with the Chairman's indulgence, to show a brief clip of what I think is a representative sample of games that this industry produces. It is going to look a little bit different from some of the other clips you have seen, but every one of these games we will show is one of the top-selling video games of the last year. If we could show the clip. Thank you.

[Whereupon a video clip is played.]

MR. STEARNS. We will probably need you to wrap it up before we all get mesmerized here.

MR. LOWENSTEIN. The point of this video is to simply suggest to you that there is an enormous variety of games. The Age of Empires you just saw, a historically accurate game about the building of the new world; the Sims, the most popular computer game of all time, 50 percent of the people playing it are women. There was a lot that we offer as an industry. And no ratings system, no parental control technology will work unless the parent is engaged. But if the parent wants to be informed, if the parent wants to be there, then the tools are there. I thank you for the opportunity to be here.

[The prepared statement of Douglas Lowenstein follows:]

PREPARED STATEMENT OF DOUGLAS LOWENSTEIN, PRESIDENT, ENTERTAINMENT SOFTWARE ASSOCIATION

Mr. Chairman, Ranking Member Schakowsky, and Members of the Subcommittee, I appreciate the opportunity to appear before you today. The Entertainment Software Association represents the $10.3 billion US computer and video game software industry, the fastest growing entertainment industry in the world today.

Let me put this industry in some context. Worldwide, the video game industry produced $25 billion in revenue in 2004, with Price Waterhouse Coopers forecasting that it will hit $55 billion in revenue by 2009, far surpassing the global music industry total of $34 billion. A new study prepared for the ESA by U.S. economists Bob Crandall of The Brookings Institution and J. Gregory Sidak of Criterion Economics reports that the video game industry generated $18 billion in direct and indirect economic impacts in 2004 alone, concluding:

> "The video game industry has grown into a vibrant business that creates thousands of jobs, improves the performance of other industries, and spurs technological advancement. Clearly, this is an industry about a lot more than fun and games. It is a serious business that improves training, efficiency, and productivity in a variety of industries and has led to innovation in other high-technology industries. Video games play an important role in maintaining U.S. leadership in information technology, which is critical to the future success of the U.S. economy."

Indeed, that scanner used by your doctor to diagnose medical problems may be powered by a chip developed for the PlayStation 3 video game system; the demand for high speed broadband and high speed wireless networks so critical to the next era of technological progress is being driven in part by consumers appetite for online and mobile games; and kids seeking careers in video game design are being drawn to math and science education, fulfilling a goal of policymakers on both sides of the aisle.

So as this Subcommittee talks about video games, I hope the dialogue can be broader than the stereotypical focus on video game violence; to be sure, it is a fair topic for discussion, but it should occur with an understanding that this industry uniquely fuses together advanced technology and boundless creativity, and is central to building the innovation and knowledge economy elected officials and economists so often talk about. I have attached the Executive Summary of the Crandall-Sidak Report "Video Games: Serious Business for America's Economy" for your information.

I have raised two daughters and I understand the concerns that give rise to these hearings about the content of some video games. As a parent, it was a monumental challenge to, on the one hand protect my kids from things that we felt were not appropriate, either morally, ethically, or developmentally, while on the other hand ensuring that they were exposed to a full range of ideas and expression, including that which we might personally find distasteful. My kids saw movies, read books, watched TV, saw things on the news, heard political speeches and, yes, played video games that caused me more than my share of worry. Some of this I was able to prevent, some of it I could not control. But in the end, I think they are better for it. As Federal Judge Richard Posner said in striking down an effort by the City of Indianapolis to ban violent arcade games, "To shield children right up to the age of 18 from exposure to violent descriptions and images would not only be quixotic, but deforming; it would leave them unequipped to cope with the world as we know it."

As parents, we know that video games are among a wide range of cultural, social, emotional, psychological and political factors that shape our children. And they cannot be viewed in isolation from all these other forces swirling around a child. And if Judge Posner is right that it is neither wise nor possible to shield our kids from everything and anything we might find objectionable, we must find a way to empower parents to make good video game choices for their families.

I don't pretend it is easy. We are well past the days when parents merely had to sort through Mario and Pac Man. You might be surprised to learn that the average age of people playing games is not 12, or 15, or even 20. It is 33 years old. And even when we eliminate people who mainly play solitaire, the average age remains in the late twenties.

So like other forms of entertainment, we serve a mass market audience; the core market for video games is between 18-35 years old. And while there are many video games that provide a stunning and enriching entertainment and educational experience with little objectionable content, there are also some that are clearly not appropriate for younger children. That's another way video games are just like books, movies, music, TV, paintings and other forms of artistic expression. We make games for all ages and tastes; some are brilliant, others, to put it politely, do not ennoble our culture.

But defining the video game industry based on its most controversial titles would be like showing clips of Kill Bill, Texas Chainsaw Massacre, and Natural Born Killers and calling it representative of the film industry, or playing only the music of Eminem, 50 Cent, and The Dixie Chicks and calling it representative of the music industry, or defining Congress by the behavior of its least ethical member.

In fact, 85% of all games sold in 2005 were rated appropriate for persons under 17, and only 15% were rated Mature. That means there is a vast array of quality entertainment ranging from Nintendogs to Madden Football, from World of Warcraft to Super Mario, from Star Wars Battlefront to Shrek 2, from The Sponge Bob Movie to Tom Clancy's Ghost Recon, from The Sims to Roller Coaster Tycoon, from Call of Duty to Gran Turismo. This expanding variety of offerings explains not only why games are played by people of all ages, but why one-third of game players are female, and one half of all those who play online games are adult women.

This brings me back to the central question: how can parents do their jobs when it comes to video games?

We have tried to create a "cradle-to-crave" self regulatory system, in partnership with retailers, which gives parents both choice and control over the games their kids play. How the tools are used and the controls exercised is ultimately the responsibility of parents.

- First, as you will hear in great detail from Patricia Vance, President of the Entertainment Software Rating Board (ESRB), we have created a superior rating, advertising, and enforcement system to give parents accurate information about the age appropriateness and content of every game sold in the United States. The Chicago Tribune wrote in January, 2007, that "The video game industry's rating system is more detailed than those of the movie and music industries." Considering that the FTC reports parents are involved in game purchases and rentals more than eight out of ten times, the use of ESRB ratings by parents is the first line of defense in regulating the games kids play.
- Second, we have worked with retailers to ensure that they implement voluntary programs to require IDs from any minor seeking to purchase Mature or Adult Only rated games, and to post visible signage at the point of sale about the ESRB rating system (we have even supported laws in several states that require retail signage). You will hear testimony from Wal-Mart about these commitments. The latest FTC study found that national retailers successfully prevent minors from buying Mature or Adult Only games 65% of the time,

nearly the same level of success as theater owners have in keeping kids out of R rated movies, and more than four times better than is the case with sales of R rated DVDs.

- Third, game console manufacturers have stepped up with technological solutions to further help parents regulate the games their kids play. The newest video game consoles -– the X-Box 360 available now, and the Sony PlayStation 3 and the Nintendo Wii, available this November -- will all provide password protected parent control technology to enable parents to prevent games with inappropriate ratings from loading on the systems. Similar software is already available for the PC.

In sum, parents can use ratings to make appropriate game purchases, they can rely increasingly on retailers not to sell inappropriate games directly to minors, and if they own the newest consoles they can program them to prevent kids from playing games with inappropriate ratings.

I am aware that there are critics who say the ratings are not reliable, or that they are incomplete. But as Jack Valenti used to say far more eloquently than I, ratings are not Euclidean geometry. There is no formula that ensures a right answer at the end. We have sought to create a video game rating system parents can trust, and by all evidence we have succeeded. Not only does the Peter Hart survey funded by ESRB each year show broad parental agreement with ESRB rating decisions, the Kaiser Foundation has reported that more parents (53%) find the video game rating system "very useful" than any other rating system, including movies. Overall, 91% of parents say the ratings are "very useful" or "somewhat useful."

Here's the bottom line: no rating system known to man will meet with universal approval. Ratings are, by definition, subjective. We live in a pluralistic culture where people bring their own values and morals to all manner of issues, including the entertainment content they find appropriate for their families. Our industry seeks to provide mainstream information that allows informed choice; we do not seek to tell people what is right or wrong for them, and we welcome alternatives such as revues posted by NIMF, Common Sense, and other groups.

Ratings are important, but so is honest debate. And too often, critics of the industry seek to justify attacks on the industry by selectively citing research they claim establishes a definitive link between violent games and aggressive and criminal behavior. I don't want to dwell on this subject here, but I have attached to my testimony some background information on the research in this field. Suffice it to say that six federal judges in five circuits, judges appointed by Democrats and Republicans alike, have struck down bills seeking to ban video game sales. Apart from issuing clarion statements establishing that video games are a form of artistic expression protected by the First Amendment, every one of these jurists has dismissed the weak and flawed science advanced by video game critics, including some at today's hearing, as a basis for state regulation.

For example, after holding a hearing at which the state's academic experts took their best shot at proving that violent games cause aggression, the District Court in Illinois last December concluded that there is "no solid causal link between violent video game exposure and aggressive thinking and behavior." Further, it said even if one accepts a connection, "there is no evidence that this effect is at all significant." Finally, after analyzing the brain mapping studies cited by so many anti-video game researchers, the court said dismissively, that it found the author of the leading research in the field "unpersuasive" and that there is "no basis to permit a reasonable conclusion that" video games produce changes in the brain that could make players more aggressive.

Regarding crime, Harvard researcher Dr. Cheryl Olson wrote in the journal Academic Psychiatry in 2004 that "it's very difficult to document whether and how violent video and computer games contribute to serious violence such as criminal assault

and murder…." Similarly, Dr. Joanne Savage, writing in the journal Aggression and Violent Behavior on whether viewing violent media really causes criminal violence said: "The question addressed here is not whether or not the effect is plausible, but whether the effect has been demonstrated convincingly in the scientific literature–and the answer is 'not so far.'...At this point it must be said, however, that there is little evidence in favor of focusing on media violence as a means of remedying our violent crime problem."

I want to leave you with this thought: In the year 2010, there will be 75 million Americans between the ages of 10 and 30 – as many in this millennium generation as in the Baby Boom Generation – and everyone of them will have grown up with video games as a central part of their DNA. Even today, ESA data shows that 35% of American parents play video games, and 80% of them play with their kids. Video games are the rock and roll music for the digital generation and Halo and The Sims and Zelda are their Beatles and Rolling Stones. Indeed, a decade from now, many of your colleagues on that dais will be gamers and they will be uniquely comfortable with technology and interactivity. Video games are taking their place alongside other forms of mainstream popular entertainment. As an industry, that means we have a responsibility to inform and empower our consumers; at the same time, I hope it encourages public officials to join in that important effort, and not devote time to demonizing an industry which is at once so central to tens of millions of Americans, and one so important to America's technology future.

Thank you.

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Constitutionality of Proposals to Prohibit the Sale or Rental to Minors of Video Games with Violent or Sexual Content or "Strong Language"

Updated January 18, 2006

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Constitutionality of Proposals to Prohibit the Sale or Rental to Minors of Video Games with Violent or Sexual Content or "Strong Language"

Summary

It has been proposed that Congress prohibit the sale or rental to minors of video games that are rated "M" (mature) or "AO" (adults-only) by the Entertainment Software Ratings Board. This board is a non-governmental entity established by the Interactive Digital Software Association, and its ratings currently have no legal effect. The Board's website sets forth the criteria for its "M" and "AO" ratings:

> Titles rated **M (Mature)** have content that may be suitable for persons ages 17 and older. Titles in this category may contain intense violence, blood and gore, sexual content, and/or strong language.
>
> Titles rated **AO (Adults Only)** have content that should only be played by persons 18 years and older. Titles in this category may include prolonged scenes of intense violence and/or graphic sexual content and nudity.

The Supreme Court has never ruled on the constitutionality of a statute that restricted minors' access to violent or sexually oriented video games, but every lower federal court that has ruled on such a statute has found it unconstitutional, or issued a preliminary injunction after finding that the law was likely to be found unconstitutional. Based on the holdings of these courts, it appears that, for a prohibition of the sale or rental to minors of video games with violent content to be upheld, the government would have to present empirical evidence that these games harm minors or cause them to become violent. The prohibition of the sale or rental to minors of video games containing sexual content, however, would seem more likely to be upheld without empirical evidence that such games harm minors.

Nevertheless, the apparent vagueness and broad scope of the current criteria for "M" and "AO" ratings might cause a statutory prohibition on the sale or rental to minors of video games that incorporates those ratings to be found unconstitutional on its face, even if the sale or rental to minors of some of the video games to which the "M" or "AO" rating apply could constitutionally be prohibited by more narrowly tailored legislation.

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Constitutionality of Proposals to Prohibit the Sale or Rental to Minors of Video Games with Violent or Sexual Content or "Strong Language"

Introduction

It has been proposed that Congress prohibit the sale or rental to minors of video games that are rated "M" (mature) or "AO" (adults-only) by the Entertainment Software Ratings Board. This board is a non-governmental entity established by the Interactive Digital Software Association, and its ratings currently have no legal effect. The Board's website sets forth the criteria for its "M" and "AO" ratings:

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>
> Titles rated **AO (Adults Only)** have content that should only be played by persons 18 years and older. Titles in this category may include prolonged scenes of intense violence and/or graphic sexual content and nudity.[1]

The primary constitutional issue that a proposal to prohibit the sale or rental to minors of video games with "M" or "AO" ratings raises is whether it would violate the First Amendment's guarantee of freedom of speech. If it would not violate the First Amendment, then it would constitute a valid regulation of interstate commerce within Congress's power to enact under the Commerce Clause.[2] Congress would also apparently have the power to delegate the promulgation of video game standards to a private entity, as the Supreme Court has upheld Congress's power to delegate regulatory power to private entities in other contexts.[3]

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[1] [http://www.esrb.org/esrbratings_guide.asp] (bold in original). We will refer to "minors" throughout this report, as it seems unlikely that it would make a difference from a constitutional standpoint whether a proposal applied to 17- or 18-year olds.

[2] "The Congress shall have Power . . . To regulate Commerce . . . among the several States . . . ." Art. I, § 8, cl. 3.

[3] *See*, THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION (2004), at 88-90; [http://www.crs.gov/products/conan/Article01/topic_S1_4_4_2.html].

First Amendment Principles

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech," but the Supreme Court allows various exceptions to this prohibition. Obscenity, for example, is not protected by the First Amendment, but most sexually oriented material has not been judged to be obscene and is protected by the First Amendment.[4] Even a statute that restricts protected speech on the basis of its content may be constitutional, but the Supreme Court generally will uphold such a statute only if it passes "strict scrutiny." This means that, to be found constitutional, the statute must be necessary "to promote a compelling interest" and be "the least restrictive means to further the articulated interest."[5] The Supreme Court has "recognized that there is a compelling interest in protecting the physical and psychological well-being of minors. This interest extends to shielding minors from the influence of literature that is not obscene by adult standards."[6]

Violent and sexual material. By "literature that is not obscene by adult standards," the Court was referring to "[s]exual expression which is indecent but not obscene."[7] It was not referring to material with violent content, and the courts tend to treat restrictions on sexual material differently from restrictions on violent and other non-sexual material. With respect to non-sexual material, the Supreme Court requires that, "[w]hen the Government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must . . . demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way."[8] This is true even with respect to governmental restrictions on speech to which, unlike "indecent" speech, the Supreme Court accords less than full First Amendment protection and therefore applies less than strict scrutiny.[9]

With respect to sexually explicit material, by contrast, the courts generally assume, without requiring evidence, that it is harmful to minors, or to consider it "obscene as to minors,"[10] even if it is not obscene as to adults. They therefore find it not entitled to First Amendment protection with respect to minors, whether it is harmful to them or not. A federal district court wrote:

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[4] *See*, CRS Report 95-804, *Obscenity and Indecency: Constitutional Principles and Federal Statutes*, by Henry Cohen.

[5] Sable Communications of California, Inc. v. Federal Communications Commission, 492 U.S. 115, 126 (1989).

[6] *Id.*

[7] *Id.*

[8] Turner Broadcasting System v. Federal Communications Commission, 512 U.S. 622, 664 (1994) (incidental restriction on speech).

[9] *Id. See also*, Edenfield v. Fane, 507 U.S. 761, 770-771 (1993) (restriction on commercial speech); Nixon v. Shrink Missouri Government PAC, 528 U.S. 377, 392 (2000) (restriction on campaign contributions).

[10] Interactive Digital Software Association v. St. Louis County, Missouri, 329 F.3d 954, 959 (8th Cir. 2003); *citing* Ginsberg v. New York, 390 U.S. 629 (1968).

> We are troubled by the absence of evidence of harm presented both before Congress and before us that the viewing of signal bleed of sexually explicit programming causes harm to children and that the avoidance of this harm can be recognized as a compelling State interest. We recognize that the Supreme Court's jurisprudence does not require empirical evidence. Only some minimal amount of evidence is required when sexually explicit programming and children are involved.[11]

The court therefore found that the statute, which required cable operators to prevent "signal bleed" to customers who had not subscribed to channels primarily dedicated to sexually oriented programming, served a compelling governmental interest. It held the statute unconstitutional, however, because it found that it did not constitute the least restrictive means to advance the interest. The Supreme Court affirmed on the same ground, apparently assuming the existence of a compelling governmental interest, but agreeing that a less restrictive means could have been used.

In another case, a federal court of appeals, upholding the statute that bans "indecent" radio and television broadcasts from 6 a.m. to 10 p.m., noted "that the Supreme Court has recognized that the Government's interest in protecting children extends beyond shielding them from physical and psychological harm. The statute that the Court found constitutional in *Ginsberg* sought to protect children from exposure to materials that would 'impair[ ] [their] *ethical and moral* development. . . . Congress does not need the testimony of psychiatrists and social scientists in order to take note of the coarsening of impressionable minds that can result from a persistent exposure to sexually explicit material. . . ."[12] A dissenting judge in the case noted that, "[t]here is not one iota of evidence in the record . . . to support the claim that exposure to indecency is harmful — indeed, the nature of the alleged 'harm' is never explained."[13]

Despite the above rulings, it has been noted that —

> The Court seems to be becoming less absolute in viewing the protection of all minors (regardless of age) from all indecent material (regardless of its educational value and parental approval) to be a compelling governmental interest. In striking down the Communications Decency Act of 1996, the Court would "neither accept nor reject the Government's submission that the First Amendment does not forbid a blanket prohibition on all 'indecent' and 'patently offensive' messages communicated to a 17-year-old — no matter how much value the message may have and regardless of parental approval. It is at least clear that the strength of the Government's interest in protecting minors is not equally strong throughout the coverage of this broad statute." Reno v. American

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[11] Playboy Entertainment Group, Inc. v. United States, 30 F. Supp.2d 702, 716 (D. Del. 1998); *aff'd*, 529 U.S. 803 (2000).

[12] Action for Children's Television v. Federal Communications Commission, 58 F.3d 654, 662 (D.C. Cir. 1995) (en banc), *cert. denied*, 516 U.S. 1043 (1996) (brackets and italics supplied by the court). *Ginsberg*, *supra* note 10, upheld a New York statute that prohibited the sale to minors of what the Court called "'girlie' picture magazines."

[13] *Id.* at 671 (D.C. Cir. 1995) (Edwards, C.J., dissenting).

> Civil Liberties Union, 521 U.S. 844, 878 (1997). In *Playboy Entertainment Group*, 529 U.S. at 825, the Court wrote: "Even upon the assumption that the Government has an interest in substituting itself for informed and empowered parents, its interest is not sufficiently compelling to justify this widespread restriction on speech." The Court also would "not discount the possibility that a graphic image could have a negative impact on a young child" (id. at 826), thereby suggesting again that it may take age into account when applying strict scrutiny.[14]

Overbreadth. The Supreme Court has written:

> The First Amendment doctrine of substantial overbreadth is an exception to the general rule that a person to whom a statute may be constitutionally applied cannot challenge the statute on the ground that it may be unconstitutionally applied to others. The doctrine is predicated on the danger that an overly broad statute, if left in place, may cause persons whose expression is constitutionally protected to refrain from exercising their rights for fear of criminal sanctions. Overbreadth doctrine has wide-ranging effects, for a statute found to be substantially overbroad is subject to facial invalidation.[15]

What this means in the present context is that, if a retailer affected by the proposal under consideration were to challenge it as violating the First Amendment, then it would not matter whether the sale or rental to minors of a particular video game by that retailer could constitutionally be proscribed. Even if the sale or rental to minors of that particular video game could constitutionally be proscribed, the court would strike down the law on its face if it applied to a substantial number of other video games whose sale to minors could not constitutionally be proscribed. Put another way, the overbreadth doctrine renders a statute "invalid in all its applications (i.e., facially invalid) if it is invalid in any of them."[16]

Violent Video Game Decisions

The Supreme Court has never ruled on the constitutionality of a statute that restricted minors' access to violent video games, but every lower federal court that

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[14] *See*, THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION (2004), at 1233, n.1146 (n.1174 in the Web version at [http://www.crs.gov/products/conan/Amendment01/topic_3_12_12.html]).

[15] Massachusetts v. Oakes, 491 U.S. 576, 581 (1989). The same reasoning would seem to apply if a speech restriction imposed only civil sanctions, as civil as well as criminal penalties can chill speech, as the court of appeals noted in *Federal Election Commission v. Lance*, 635 F.2d 1132, 1141 (5th Cir. 1981) ("It is reasonable to suppose that even if section 441b were overbroad it would not have a 'chilling effect' substantial enough to justify invoking the overbreadth exception to the standing rule, since no one need risk criminal or civil penalties to test the statute's constitutionality.").

[16] Ada, Governor of Guam v. Guam Society of Obstetricians & Gynecologists, 506 U.S. 1011 (Scalia, J, dissenting to denial of certioriari). This is apparently an overstatement, in that the doctrine, as noted above, is one of *substantial* overbreadth. The Supreme Court has "insisted that a law's application to protected speech be substantial . . . before applying the 'strong medicine' of overbreadth invalidation." Virginia v. Hicks, 539 U.S. 113, 119-120 (2003) (citation omitted).

has ruled on such law has found it unconstitutional, or has issued a preliminary injunction after finding that the law was likely to be found unconstitutional.

Two federal courts of appeals have considered the constitutionality of local ordinances (St. Louis County's and Indianapolis') prohibiting making violent video games accessible to minors, and both refused to treat violent material like sexual material or to find it "obscene as to minors."[17] Both courts, rather, held the ordinances unconstitutional on the ground that the government had failed to present adequate evidence that violent video games are harmful to minors.

What sort of evidence would be adequate to persuade a court that there was a compelling interest in denying minors access to violent video games? In the St. Louis County case, the Eighth Circuit held:

> Before the County may constitutionally restrict the speech at issue here, the County must come forward with empirical support for its belief that "violent" video games cause psychological harm to minors. In this case, as we have already explained, the County has failed to present the "substantial supporting evidence" of harm required before an ordinance that threatens protected speech can be upheld. We note, moreover . . . that the County may not simply surmise that it is serving a compelling state interest because "society in general believes that continued exposure to violence can be harmful to children." Where first amendment rights are at stake, "the Government must present more than anecdote and supposition."[18]

St. Louis County also asserted that it has a compelling interest in "assisting parents to be the guardians of their children's well-being." As to this the Eighth Circuit said that in no case "does the Supreme Court suggest that the government's role in helping parents to be the guardians of their children's well-being is an unbridled license to governments to regulate what minors read and view."[19]

In the Indianapolis case, Judge Richard Posner, holding for the Seventh Circuit that a preliminary injunction against enforcement of the Indianapolis ordinance was warranted, wrote:

> The City rightly does not rest on "what everyone knows" about the harm inflicted by violent video games. These games with their cartoon characters and stylized mayhem are continuous with an age-old children's literature on violent themes. . . . The City instead appeals to social science to establish that games such as "The House of the Dead" and "Ultimate Mortal Kombat 3," games culturally isomorphic with (and often derivative from) movies aimed at the same under 18 crowd, are dangerous to public safety. The social science evidence on

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[17] *Interactive Digital Software Association*, supra note 10; American Amusement Machine Association v. 244 F.3d 572 (7th Cir. 2001), *cert. denied*, 534 U.S. 994 (2001). The St. Louis "ordinance also restricts minors' access to video games with strong sexual content, but plaintiffs do not challenge those provisions of the ordinance." *Interactive Digital Software Association*, supra, 329 F.3d at 956 n.1.

[18] *Interactive Digital Software Association*, supra note 10 at 959 (citations omitted).

[19] *Id.* at 959-960.

> which the City relies consists primarily of the pair of psychological studies that we mentioned earlier . . . . These studies do not support the ordinance. There is no indication that the games used in the studies are similar to those in the record of this case or to other games likely to be marketed in game arcades in Indianapolis. The studies do not find that video games have ever caused anyone to commit a violent act, as opposed to feeling aggressive, or have caused the average level of violence to increase anywhere. And they do not suggest that it is the *interactive* character of the games, as opposed to the violence of the images in them, that is the cause of the aggressive feelings. The studies thus are not evidence that violent video games are any more harmful to the consumer or to the public safety than violent movies or other violent, but passive entertainments.[20]

Two federal district courts have also struck down statutes that denied minors access to violent video games. In 2004, a district court struck down a statute enacted by the state of Washington, finding that "there has been no showing that exposure to video games that 'trivialize violence against law enforcement officers' is likely to lead to actual violence against such officers."[21] In 2005, a district court struck down an Illinois statute that prohibited both violent and sexually explicit video games, finding, with respect to the prohibition of violent video games, that "defendants have failed to present substantial evidence showing that playing violent video games causes minors to have aggressive feelings or engage in aggressive behavior."[22]

Two other federal district courts granted motions for preliminary injunctions, pending a trial on the merits, against the enforcement of video game statutes. One case concerned a 2005 Michigan statute that the court described as "designed to prohibit the dissemination, exhibiting, or display of certain sexually explicit and ultra-violent explicit video games to minors without the consent of their parents or guardians."[23] The plaintiffs challenged only the portion of the statute that related to violent video games, and the court found that "[a] cursory review of the research relied upon by the state shows that it is unlikely that the State can demonstrate a compelling interest in preventing a perceived 'harm,'" and that, even if the state could demonstrate a compelling state interest, the statute was not narrowly tailored. As for the research upon which the state relied, the court noted that a study that "concluded that both video game and television media violence exposure are related

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[20] *American Amusement Machine Association*, *supra* note 17, 244 F.3d at 578-579 (emphasis in original). Judge Posner also cited great literature with graphic descriptions of violence, including the *Odyssey*, *The Divine Comedy*, and *War and Peace*, as well as "the classic fairy tales collected by Grimm, Andersen, and Perrault," and commented: "To shield children right up to the age of 18 from exposure to violent descriptions and images would not only be quixotic, but deforming; it would leave them unequipped to cope with the world as we know it." *Id.* at 577.

[21] Video Software Dealers Association v. Maleng, 325 F. Supp.2d 1180, 1188 (W.D. Wash. 2004).

[22] Entertainment Software Association v. Blagojevich, No. 05 C 4265, 2005 U.S. Dist. LEXIS 31100 (N.D. Ill., Dec. 2, 2005). The holding with respect to sexually explicit video games is discussed below.

[23] Entertainment Software Association v. Granholm, No. 05-CV-73634, 2005 U.S. Dist. LEXIS 28318 (E.D. Mich., Nov. 9, 2005).

to aggression in adolescents . . . did not evaluate the independent effect of violent video games."

The second case in which a district court granted a preliminary injunction concerned a California statute that, but for the injunction, would have taken effect on January 1, 2006. It requires, in the court's description, "violent video games to be labeled and prohibits the rental or sale of those games to minors." The court, as in the other cases, found the research "insufficient to show . . . a compelling interest."[24]

Sexually Explicit Video Games Decision

As noted above, in 2005, a federal district court struck down an Illinois statute that prohibited both violent and sexually explicit video games. With respect to the prohibition of sexually explicit video games, the district court found:

> The Supreme Court has applied a lower standard of review to regulations of non-obscene speech to protect children, but only in the limited context of television and radio broadcasting. . . . In evaluating regulations of non-obscene, sexually explicit material in the fields of cable broadcasting and the Internet, the Court found them to be content-based and subject to strict scrutiny. Defendants have failed to show that video games are sufficiently similar to broadcast radio and television, to justify applying a lower standard of review in the instant case. . . . Rather, sexually-explicit video games, which almost always have ESRB content-descriptors, and which individuals must decide to obtain and play, are more analogous to sexually-explicit images on the Internet, which usually bear warnings and are not encountered unwillingly.[25]

The court, therefore, applied strict scrutiny rather than a lower standard of review. It assumed that the state had a compelling interest in prohibiting sexually explicit video games, but struck down the statute as not sufficiently narrowly tailored. The court wrote:

> Assuming that the state has a compelling interest that justifies regulating the material prohibited by the SEVGL [Sexually Explicit Video Games Law], the statute is not narrowly tailored to achieve those interests. Defendants cite *Denver Area Educ. Telecommunic. Consortium v. FCC*, 518 U.S. 727 (1996) and *Pacifica* [*FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)] for the proposition that restrictions on non-obscene sexually explicit material are narrowly tailored

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[24] Video Software Dealers Association v. Schwarzenegger, No. C-05-04188 RMW (N.D. Cal., Dec. 21, 2005).

[25] *Blagojevich*, *supra* note 22 (citations omitted). The Supreme Court also applied a lower standard of review to a New York statute that prohibited the sale to minors of what the Court called "'girlie' picture magazines." *See*, *Ginsberg*, *supra* note 10. The statute applied to material that was "harmful to minors," which it defined so as to parallel the Supreme Court's *Miller* test for obscenity, although the statute applied not only to material that was obscene under the *Miller* test. (See text accompanying notes 27-28, *infra*.) This may explain the district court's statement that the Supreme Court has applied a lower standard of review to regulations of *non-obscene* speech to protect children, but only in the context of broadcasting; i.e., the district court may have been referring to the New York statute loosely as applying to obscene material.

so long as adults could still access such speech. In large part, however, the holdings in these cases were also based on the fact that they arose in the broadcasting context. See *Denver Area*, 518 U.S. at 744-45; *Pacifica*, 438 U.S. at 750-51.[26]

The district court also distinguished the Illinois statute from the New York statute that the Supreme Court upheld in *Ginsberg*[27] because the Illinois statute, unlike the New York statute, applied to a broader class of sexually explicit material than was covered New York statute's definition of "harmful to minors." The New York statute's definition of "harmful to minors" paralleled the Supreme Court's *Miller* test definition of "obscenity"; whereas the *Miller* test defines "obscenity" as material that appeals to the prurient interest, is patently offensive, and lacks serious literary, artistic, political, or scientific value, the New York statute defined "harmful to minors" as material that appeals to the prurient interest of minors, is patently offensive with respect to minors, and lacks social importance for minors.[28] The district court applied the law of the Seventh Circuit, which is that the state "may not, consonant with the First Amendment, go beyond the limitations inherent in the concept of variable obscenity in regulating the dissemination to juveniles of 'objectionable' material."[29]

Application of the Decisions to the Proposal

Violent content. With respect to a First Amendment challenge to the prohibition of the sale or rental to minors of video games with violent content, a court following the relevant precedents would apply strict scrutiny, which means that it would uphold the provision only if it finds that it serves a compelling governmental interest by the least restrictive means. The determinative question with respect to whether the prohibition serves a compelling interest would apparently be whether the government can "demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way."[30] All five cases cited above found inadequate the government's evidence as to the harm caused by violent video games, but one cannot know whether a court in

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[26] *Id. Denver Area* involved cable television, but the pages the district court cites suggest that cable and broadcast television are similarly accessible to children and pervasive; that seems to be what the court means when it writes *Denver Area* "arose in the broadcasting context." Subsequent to *Denver Area*, however, the Supreme Court indicated that it would apply strict scrutiny to cable television, and cited with approval *Pacifica*, which applied less than strict scrutiny to broadcast media. United States v. Playboy Entertainment Group, Inc., *supra* note 11, 529 U.S. at 813-815 (2000).

[27] *Ginsberg*, *supra* note 10.

[28] Miller v. California, 413 U.S. 15, 27 (1973).

[29] *Granholm*, *supra* note 23, quoting Cinecom Theaters Midwest States, Inc. v. City of Fort Wayne, 473 F.2d 1297, 1302 (7th Cir. 1973). Justice Breyer has written that another "harmful to minors" statute, also with a definition that parallels the *Miller* test, covers obscenity "and very little more." and expands the definition of "obscenity" "only slightly." Ashcroft v. American Civil Liberties Union, 542 U.S. 656, 678, 679 (Breyer, J. dissenting).

[30] *Turner Broadcasting System*, *supra* note 8.

the future will consider the same research rejected by courts in the past, or, if it does, whether it will find it more persuasive than have courts in the past.

If a court were to find a compelling governmental interest in the prohibition of the sale or rental of video games with violent content, then it would have to decide whether the prohibition constituted the least restrictive means to advance the interest. A point in favor of the proposal's constitutionality with respect to this question is that video game stores would know from the "M" or "AO" rating exactly which videos they could not legally sell or rent to minors. They would not, therefore, face the situation that the court found that stores could face in one of the cases discussed above, namely that, "[w]ithout wholesale, indiscriminate refusals to sell video games to minors by store operators it appears impossible to protect sellers from prosecution. . . . Nor is it reasonable to expect store clerks to play each level of each game to determine if it falls within the act's definition of ultra-violent explicit."[31]

Under the proposal, however, although retailers would know which video games they were prohibited from selling or renting to minors, they could nevertheless argue that the proposal prevented them from selling or renting to minors some video games that are constitutionally protected with respect to minors. In addition, producers of video games could argue that the proposal's vagueness would prevent them from knowing which video games would be rated "M" or "AO" and therefore prohibited from being sold or rented to minors, and that the proposal's overbreadth would prohibit from being sold or rented to minors some video games that were constitutionally protected with respect to minors. In other words, producers of video games could argue that the proposal would chill their speech because it might deter them, for market reasons, from producing video games that were constitutionally protected with respect to minors. Producers, that is, might fear that some video games that were constitutionally protected with respect to minors would be rated "M" or "AO" and therefore would not be sold or rented to minors, and that there was not a sufficient adult market for such games to make it worthwhile for them to produce them, or that, even if there were, the producers would make less money because minors would not be allowed to purchase or rent video games that were constitutionally protected.

A person challenging the prohibition of the sale or rental of video games with violent content as overly restrictive might argue that the language that defines the "M" and "AO" ratings is vague and overbroad. Specifically, such a person might argue that the phrases "intense violence," "sexual content," "strong language," and "nudity" are unconstitutionally vague, and that a video game's having one or more of these features does not necessarily cause it to lose First Amendment protection as to minors, and therefore the prohibition on renting or selling to minors video games with one or more of these features would render the proposal unconstitutionally overbroad.

Note that the use of "and/or" in the "M" and the "AO" ratings means that "intense" violence under the "M" rating need not include blood and gore (nor be "prolonged," as under the AO rating), and that "strong language" is sufficient for an

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[31] *Granholm*, *supra* note 23.

"M" rating, even if it is unrelated to violence or sex. The breadth of the ban on the sale or rental to minors of video with "strong language" might be especially problematic. The Supreme Court has written:

> [M]inors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them. . . . Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.[32]

Furthermore, the Court has also found that the First Amendment applies "not only [to] ideas capable of relatively precise, detached explication, but [to] otherwise inexpressible emotions as well. In fact, words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the overall message sought to be communicated."[33] "Strong language," therefore, is protected speech, including generally for minors; the only exception the Supreme Court has found is with respect to the use of "indecent" language on broadcast radio and television during hours — but not all 24 — when children are likely to be in the audience.[34]

Sexual content. Because the courts generally assume, without requiring evidence, that sexually explicit material is harmful to minors, the proposal's prohibition of the sale or rental of video games with sexual content might more easily pass the "compelling governmental interest" prong of the strict scrutiny test than would the proposal's prohibition of the sale or rental of video games with violent content. Even here, however, the "M" rating refers merely to "sexual content," by contrast with the "AO" rating's reference to "graphic sexual content." Sexual content, especially if it is not graphic, does not necessarily constitute pornography, but may concern such subjects as birth control and sexually transmitted diseases. (Video games may not typically address such matters, but, under the substantial overbreadth doctrine discussed above, it might not be necessary that they do for a court to find the proposal facially invalid.) It might be impossible for the government to demonstrate a compelling interest in denying minors access to *all* material with sexual content.[35] If a court did not rule on this question and instead applied the "least restrictive means" prong of strict scrutiny, then it might find the proposal overbroad

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[32] Erznoznik v. City of Jacksonville, 422 U.S. 205, 212-214 (1975) (citations omitted).

[33] Cohen v. California, 403 U.S. 15, 26 (1971).

[34] Federal Communications Commission v. Pacifica Foundation, 438 U.S. 726 (1978).

[35] *See*, text accompanying note 14, *supra*, especially the Supreme Court's comment in *Reno* that it would "neither accept nor reject the Government's submission that the First Amendment does not forbid a blanket prohibition on all 'indecent' and 'patently offensive' messages communicated to a 17-year-old — no matter how much value the message may have and regardless of parental approval. It is at least clear that the strength of the Government's interest in protecting minors is not equally strong throughout the coverage of this broad statute."

in applying to all material with sexual content in an effort to deny minors access to some of it. The "M" rating, like the statute that was struck down in the one federal case that addressed a ban on video games with sexual content, is not limited to material that is "obscene as to minors."

An "AO" rating may be imposed on video games with "graphic sexual content and nudity," which suggests that nudity alone would not suffice for an "AO" rating, though it might be considered "sexual content" and suffice for an "M" rating. This seems problematic, because the Supreme Court has written that nudity alone "does not place otherwise protected material outside of the First Amendment."[36] This statement was not made with reference to minors' First Amendment rights, but, if a court, in applying the First Amendment, took into account the ages of minors who typically buy or rent video games, the extent of the nudity portrayed, and the manner in which it is portrayed, then it might find the proposal's coverage of nudity vague and overbroad.

Application to "M"- and "AO"-rated video games. Because the proposal would prohibit the sale or rental to minors of video games with either "M" or "AO" ratings, the constitutionality of each of these prohibitions should be examined separately. Video games with "M" ratings, as noted, "may contain intense violence, blood and gore, sexual content, and/or strong language." If a video game contained any one of these features, then it would be rated "M" and could not be sold or rented to minors. If it would be unconstitutional to prohibit the sale or rental to minors of video games simply because they contain strong language, or simply because they contain sexual content — without regard to the particular strong language or the particular sexual content — then the substantial overbreadth doctrine would seem likely to render unconstitutional a prohibition on the sale or rental to minors of "M"-rated video games, given the current criteria for an "M" rating.

Video games with "AO" ratings, as noted, "may include prolonged scenes of intense violence and/or graphic sexual content and nudity." Applying the same reasoning just applied to video games with "M" ratings, if it would be unconstitutional to prohibit the sale or rental to minors of video games simply because they contained prolonged scenes of intense violence, without regard to their literary value or the possibility of harm, then the substantial overbreadth doctrine would seem likely to render unconstitutional a prohibition on the sale or rental to minors of "AO"-rated video games, given the current criteria for an "AO" rating.

Conclusion

In conclusion, it appears that, for a prohibition of the sale or rental to minors of video games with violent content to be upheld, the government would have to present empirical evidence that these games harm minors or cause them to become violent. The prohibition of the sale or rental to minors of video games containing sexual content, however, would seem more likely to be upheld without empirical evidence that such games harm minors.

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[36] Schad v. Mount Ephraim, 452 U.S. 61, 66 (1981).

Nevertheless, the apparent vagueness and potential overbreadth of the current criteria for "M" and "AO" ratings might cause a statutory prohibition on the sale or rental to minors of video games that incorporates those ratings to be found unconstitutional on its face, even if the sale or rental to minors of some of the video games to which the "M" or "AO" rating apply could constitutionally be prohibited by more narrowly tailored legislation.

Video Games

SERIOUS BUSINESS FOR AMERICA'S ECONOMY

by Robert W. Crandall and J. Gregory Sidak

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Executive Summary and Major Findings

"Every dollar spent on entertainment software in the United States contributes directly to the gross domestic product (GDP). ... the direct, immediately identifiable contribution of entertainment software to the nation's output exceeded $10.3 billion in 2004 and growing quickly."

This paper analyzes the contribution of the computer and video gaming industry ("entertainment software") to the U.S. economy. In 2005, revenues for entertainment software products and directly related accessories were $10.5 billion. By definition, every dollar spent on entertainment software in the United States contributes directly to the gross domestic product (GDP). In 2004, U.S. sales of entertainment software reached $8.2 billion; total world sales reached $25.4 billion. The cumulative average rate of entertainment software sales in the United States is expected to remain at 15 percent per year through 2010. GDP also increases with exports of U.S. video games to foreign countries. According to the annual reports of some U.S.-based video game software firms, these exports totaled $2.1 billion in 2004. Hence, the direct, immediately identifiable contribution of entertainment software to the nation's output exceeded $10.3 billion in 2004 and growing quickly. We analyze these contributions of the entertainment software industry in a section entitled "The Market for Entertainment Software as a Good."

The direct contribution to the nation's output does not reflect the total contribution of the entertainment software industry. The purchase of video game triggers the purchase of a host of complementary products, and thus the sale of software contributes indirectly to the nation's output. We analyze these specific contributions of the entertainment software industry in a section entitled "The Stimulative Effect of Entertainment Software on Technological Innovation and Consumer Demand in Complementary Markets." These complementary products can be placed in four categories: processors, content, devices, and broadband Internet access. By tracing the sales of these complementary products, we estimate that the direct sales of entertainment software stimulate additional purchases of roughly $6.1 billion each year in the United States. Some complementary sales, such as those of specialized gaming personal computers, can be claimed in their entirety. A portion of other sales, such as the sale of high definition televisions and broadband Internet access service, should also be allocated to the entertainment software industry. Not only does entertainment software trigger complementary sales, it triggers those complementary sales faster than they would otherwise occur. For example, but for the demand for video games, computer processing would not have developed as quickly. When one accounts for these complementary sales, the direct and indirect contribution of entertainment software to the nation's output exceeded $16.4 billion in 2004.

As impressive as this $16.4 billion is, the simple calculation of the direct contribution to GDP still understates the total economic contribution of the entertainment software industry because it does not consider two other important sources of economic value. First, the entertainment software industry invests significantly in specialized human capital and other specialized inputs, such as hardware and software, used to make a video game. The industry invests a large percentage of its sales into research and development (R&D) in an effort to generate even more innovative games for the next generation of players. Those investments in human capital and R&D create external

"U.S. sales of entertainment software reached $8.2 billion in 2004. Sales in 2009 are expected to be $15 billion."

benefits that are enjoyed by other sectors of the economy. We analyze these particular contributions of the entertainment software industry in a section entitled "The Demand for Inputs Used in the Production of Entertainment Software." Second, video games find other applications, sometimes intentionally and other times by accident, in other industries throughout the economy. Although these "technological spillovers" are not captured in the GDP numbers, they represent a significant contribution to the overall economy because increases in productivity caused by advances in entertainment software translate into a higher standard of living in the future. We analyze these particular contributions of the entertainment software industry in a section entitled "Technological Transfers from the Entertainment Software Industry."

In what follows, we provide some of our key findings from each section of the report.

PART I: The Market for Entertainment Software as a Good

- U.S. sales of entertainment software reached $8.2 billion in 2004. Sales in 2009 are expected to be $15 billion.
- The entertainment software industry is driven by its own product cycles, thereby insulating it from economic downturns, which implies that the industry is even more important for the overall economy.
- U.S.-based entertainment software producers sold $2.1 billion worth of video games abroad in 2004.
- In 2003, video game rental revenue in the United States was $804 million, and it is expected to grow by seven percent annually through 2008, reaching $1.1 billion in annual revenues.
- The value of video games to consumers exceeds the dollar value of their purchases of these products. Total U.S. consumer welfare, including the "consumer surplus" generated by the consumption of entertainment software, is currently between $9.8 and $11.4 billion per year.

PART II: The Demand for Inputs Used in the Production of Entertainment Software

- The average cost of developing a video game in the early 1990s was $40,000. The average cost in 2004 was $10 million. The increase is due to the recent demand for three dimensional graphics, artificial intelligence, and enhanced voice and sound effects. It is widely estimated that in the next five years these development costs will range from $15 to 25 million per game as new hardware systems with faster and more complex processors drive up the cost of creating more immersive and graphically rich games.
- Entertainment software companies have invested a large share of revenues into research and development in a race to provide ever more innovative games. Electronic Arts spent between 16 and 22 percent of revenues per year on research and development, and we estimate that the industry spent $1.6 billion in 2004.
- Entry-level workers in the entertainment software industry typically earn almost twice as much as the average recent college graduate. Entry-level game developers earn about $67,000 per year.
- There were roughly 50,000 direct employees working in video game development in 1998 in the United States. Consumer expenditures on entertainment software in 2005 supported 144,000 full-time workers in the United States.
- Given the projected increase in sales, the entertainment software industry is expected to support a quarter of a million jobs by 2009.

PART III: The Stimulative Effect of Entertainment Software on Technological Innovation and Consumer Demand in Complementary Markets

- Entertainment software has added significantly to consumer welfare by allowing for the introduction of new products and technologies before they would otherwise be available.
- Entertainment software has stimulated the introduction of newer and faster central processing units (CPUs) in computers. The new IBM/Toshiba/Sony CELL chip is an example of the boundaries in computer technology that are being pushed by the demand for video games.
- Sales of dedicated game consoles reached $1.4 billion in 2004.
- The first movie disk designed for a portable game console reached 100,000 units sold nearly nine times faster than the first DVD to reach 100,000 units sold.
- There is a strong and growing market for high performance PCs specialized for gaming applications. As of 2006, companies such as Alienware, VoodooPC, and Falcon Northwest sold specialized gaming PCs ranging in price from $700 to $10,000.
- Approximately $73 million dollars in high definition television (HDTV) sales can be directly attributed to the Xbox 360 game console.
- Sales of specialty interactive devices for entertainment software, such as dance pads and recliners with built-in joysticks and speakers, reached $1.2 billion in 2004.
- Over 13 percent of online broadband users subscribe to an online gaming service, which suggests that a significant share of the demand for broadband Internet access can be attributed to the demand for video games.
- Mobile gaming surpassed ring tones in 2005 as the largest wireless data application worldwide, with $11.2 billion in sales.

PART IV: Technological Transfers from the Entertainment Software Industry

- Technologies developed for video games have been adapted in the fields of education and advertising to provide innovative solutions that would have otherwise been unaffordable.
- Real estate, rental housing, and hotel reservations provide examples of advertising technologies that have benefited from using software developed for video games that would not have been economically viable to develop on their own.
- The U.S. military is using software developed by video game companies to train soldiers in peace keeping techniques in more realistic and cost effective ways.
- Video game software is allowing nurses and doctors to experience better simulations of medical scenarios for training purposes.
- Supervised video games are allowing for better corporate training, leading to a better prepared and more productive workforce.

Because it is difficult to quantify the benefits associated with technological transfers from the entertainment software industry to other industries in the economy, we do not attempt to do so. But it is likely that beyond the $11.2 billion in impacts described, the migration of video game industry technology to other sectors is having, and will continue to have, a material and positive impact that will ripple through the economy in countless ways. In sum, by focusing on direct sales of entertainment software (including exports) and complementary sales triggered by the demand for entertainment software, and not including any impact associated with this profoundly important effect on technology transfer, our estimate of the industry's total contribution to the U.S. economy is highly conservative.

"The contributions of the entertainment software industry to the U.S. economy are large and growing. According to our best estimates, video games generate $10.3 billion in direct sales per year, and $7.8 billion in sales of complementary products. Future contributions of video games are sure to be equally significant, but they will occur in unpredictable ways."

ESSENTIAL

entertainment software association

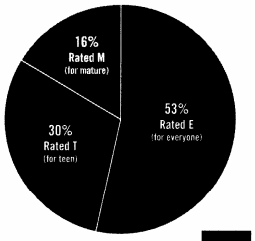
"It is not possible to say anything conclusive about the potentially adverse effects of violent games. The empirical evidence is too limited and the criticism of the extant research too serious...."

To fully understand the debate about violence in games and place it in some rational context, it is important to first understand basic facts about the industry.

FACTS ABOUT GAME CONTENT AND CONSUMERS

- The average American video game *player* is 30 years old. The average game *buyer* is 37 years old.
- Parents are involved in the purchase or rental of games 83 percent of the time, according to a September 2000 Federal Trade Commission report, and industry research in the U.S. shows that 90 percent of games are actually purchased by adults over 18. In other words, in an overwhelming majority of instances, parents are ultimately making the decisions about what games their kids acquire.
- Ninety-two percent of parents report that they monitor the content of the games their children are playing.
- Game players under the age of 18 report that they get their parent's permission 87 percent of the time before purchasing a computer or video game.
- Computer and video games are rated by the Entertainment Software Rating Board (ESRB) whose system includes age recommendations and content descriptors. Even entertainment industry watchdogs such as Senator Joseph Lieberman (D-CT) and the National Institute on Media and the Family have called the ESRB system the best media rating system and a model for other entertainment industries. In short, if people object to games that contain violence, the information is available so they can avoid buying them for themselves and their families.
- Just as there is a wide spectrum of movies, music, and books available to consumers, the video game industry provides a variety of entertainment choices for people of all ages. In 2004, 53 percent of games sold were rated "E" (for "Everyone"), 30 percent were rated "T" (for "Teen"), and 16 percent were rated "M" (for "Mature").

VIDEO GAME SALES, 2004



Sources: The NPD Group / NPD Funworld® TRSTS® and NPDTechworld® / The ESA

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WHAT ABOUT YOUTH VIOLENCE? LOOKING AT THE STATISTICS

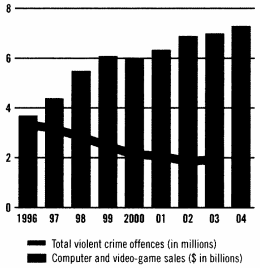
- Violent crime, particularly among the young, has decreased dramatically since the early 1990s while video games have steadily increased in popularity and use.

- Dr. Joanne Savage reviewed the research purporting to show negative effects of media violence on youth. She concluded that there is no causal link between media violence and violent crime. From her 2004 article, "Does Viewing Violent Media Really Cause Criminal Violence? A Methodological Review" that appeared in the journal *Aggression and Violent Behavior*:

  The question addressed here is not whether or not the effect is plausible, but whether the effect has been demonstrated convincingly in the scientific literature — and the answer is 'not so far.'...At this point it must be said, however, that there is little evidence in favor of focusing on media violence as a means of remedying our violent crime problem. Certainly video games haven't had any significant impact on real-world crime.

- Many games with violent content and sold in the United States — and some with far more violence — are also sold in foreign markets. However, the incidence of violent crime in these non-U.S. markets is considerably lower than in the United States. This suggests that the cause of violent crime lies elsewhere.

VIOLENT CRIME, PARTICULARLY JUVENILE CRIME, DECREASED DRAMATICALLY FROM 1996 TO 2004 WHILE AT THE SAME TIME COMPUTER AND VIDEO GAME SALES SOARED



Sources: U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention / The ESA

WHAT DOES THE SCIENCE SAY? INDEPENDENT RESEARCH FINDINGS

Williams, D. & Skoric, M. "Internet Fantasy Violence: A Test of Aggression in an Online Games." 2005.

Williams and Skoric set out to determine the effects, if any, of engaging in a violent massive multiplayer online role-playing game. They found that there was no effect on levels of aggressiveness or in belief and behaviors of the gamers.

They wrote, "Research on violent video games suggests that play leads to aggressive behavior. A longitudinal study of an online violent video game with a control group tested for changes in aggressive cognitions and behaviors. The findings did not support the assertion that a violent game will cause substantial increases in real-world aggression."

The results determined that, "...game play — controlling for gender, age, and time one aggression scores — was not a significant predictor of aggressive cognitions. Compared to the control group, participants after the experiment were not statistically different in their normative beliefs on aggression than they were before playing the game."

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Olson, C. "Media Violence Research and Youth Violence Data: Why Do They Conflict?" *Academic Psychiatry*, 28:2. 2004.

Cheryl K. Olson, professor of Psychiatry at the Harvard Medical School's Center for Mental Health and Media, examines statements about the relation between violent video games and real-life violence in a 2004 article in the journal *Academic Psychiatry*.

First, Dr. Olson notes that "...there is no evidence that targeted violence has increased in America's schools. While such attacks have occurred in the past, they were and are extremely rare events." She goes on to write that, "...there's no indication that violence rose in lockstep with the spread of violent games."

Dr. Olson then details the limitations of current studies on games and youth violence, including: vague definitions of aggression; failure to put use of violent media in context with other known contributors to aggression (such as illegal substance use and family poverty); results which are difficult to generalize to the real world; small, non-random, non-representative samples; and lack of consideration of moderating factors such as the subjects' age or developmental stage.

Dr. Olson concludes: "In summary, it's very difficult to document whether and how violent video and computer games contribute to serious violence such as criminal assault and murder...." She writes, "It's time to move beyond blanket condemnations and frightening anecdotes and focus on developing targeted educational and policy interventions based on solid data. As with the entertainment of earlier generations, we may look back on some of today's games with nostalgia, and our grandchildren may wonder what the fuss was about."

Bensley, L. & Van Eeenwyk, J. "Video Games and Real-Life Aggression: Review of the Literature." Olympia, WA: Washington State Department of Health. 2002.

In a 2002 presentation that updated their earlier comprehensive review of the literature on games and violence, Dr. Van Eeenwyk from the Washington State Department of Health presented information indicating that "after controlling for psychosocial factors, association between aggression and playing video games was not statistically significant." This review was based on available objective research and was conducted by the State of Washington at the request of the state legislature.

Egenfeldt-Nielsen, S., et al. "Playing With Fire? How Do Computer Games Influence the Player?" Commissioned by the Danish Government and published by the Unesco Clearinghouse on Children, Youth and Media. 2004.

In their review of the existing body of research commissioned by the Danish Ministry of Culture, the authors determined that the results of research into the effects of violent games have "often pointed in different directions." The authors state: "...the studies that purport to show [a connection from violent games to violent behavior] have been exposed to serious and continuing criticism. This criticism is primarily that it is an oversimplification to perceive computer games as a phenomenon that can be isolated from the player's everyday life...."

Further, the authors conclude that: "It is not possible to say anything conclusive about the potentially adverse effects of violent games. The empirical evidence is too limited and the criticism of the extant research too serious....We can say that the question of the extent to which computer games in general have an adverse effect on all or on many gamers is too broad for a specific answer."

Baldaro, B., et al. "Aggressive and Non-Violent Videogames: Short-Term Psychological and Cardiovascular Effects on Habitual Players." *Stress and Health*, Vol. 20, pp. 203-208. 2004.

Researchers set out to evaluate the short-term effects of playing violent and non-violent videogames among young adults. The results of the study determined that there were no increases in the participants' hostility measurements.

Specifically, the authors write: "The increasingly widespread use of videogames among young people has led to many studies into their potential negative effects. Research into progress in school and personality of young videogame players has partly eased some general worries. Owning videogames does not in fact seem to have negative effects on aggressive human behaviour....The results of [this] study showed a range of short-term effects of playing violent and non-violent video games on arterial pressure and on the state anxiety of subject, *but not on hostility measurements* (emphasis added)."

Vastag, B. "Does Video Game Violence Sow Aggression?" *Journal of the American Medical Association.* 2004.

In a summary of research, researcher, Brian Vastag, details the results of major studies and their findings. His conclusion is that:

> Consensus is lacking on whether video games with violent content fuel aggressive behavior in children and adolescents... If video games do increase violent tendencies outside the laboratory, the explosion of gaming over the past decade — from $3.2 billion in sales in 1995 to $7 billion in 2003, according to industry figures — would suggest a parallel trend in youth violence. Instead, youth violence has been decreasing.

Tremblay, R. "Physical Aggression During Early Childhood: Trajectories and Predictors." *Pediatrics.* 2004.

Dr. Richard Tremblay, professor of Pediatrics, Psychiatry and Psychology, Canada Research Chair in Child Development, and Director of the Centre of Excellence for Early Childhood Development and widely considered one of the world's leaders in aggression studies, has conducted research on thousands of subjects to determine that:

> Most children have initiated the use of physical aggression during infancy, and most will learn to use alternatives in the following years before they enter primary school. Humans seem to learn to regulate the use of physical aggression during the preschool years. Those who do not appear to be at highest risk of serious violent behavior during adolescence and adulthood. Results from the present study indicate that children at highest risk of not learning to regulate physical aggression in early childhood have mothers with a history of antisocial behavior during their school years, mothers who start childbearing early and who smoke during pregnancy; parents who have low income, and have serious problems living together.

Sternheimer, K. "It's Not the Media: The Truth About Pop Culture's Influence on Children." 2003.

In her book, Dr. Sternheimer researches why the media is a constant target of attack and focal point of blame for society's ills. She looks deeper into our societal dilemmas to see what other common factors could be affecting children.

> Blaming media for changes in childhood and social problems has shifted our public conversation away from addressing the real problems that impact children's lives. The most pressing crisis facing American children is not media culture but poverty [p. 4]....We want research to support our fear so badly that even a minor study filled with flaws will be published and circulated throughout the news media [p. 112]

Dr. Sternheimer concluded that "violent video games are a lot like dreams where we work out our fears or anxieties without actually ever engaging in them." [p.114]

Office of the Surgeon General. "Youth Violence: A Report of the Surgeon General." *U.S. Department of Health and Human Services.* 2001.

After examining the science on violence in video games, the Surgeon General concluded:

> The overall effect size for both randomized and correlational studies was small for physical aggression and moderate for aggressive thinking... The impact of video games on violent behavior remains to be determined. (p.92)

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Essential Facts about Video Games and Court Rulings

There have been many efforts on the part of state and local legislative bodies to regulate access to games. However, the courts have ruled six times in five years that computer and video games are protected speech, and efforts by these legislative bodies to ban or limit access to or the sale of games they find objectionable will inevitably run afoul of the First Amendment of the United States Constitution.

To provide a clear and easy to understand summary of various court rulings, the Entertainment Software Association (ESA) is providing this document with key sections highlighted. For the complete text of a decision, please contact our Manager of Public Relations at 202.223.2400.

Eastern District of Michigan, United States District Court
ESA, et al., v. Granholm, et al.
April, 2006

On April 3, 2006, the Hon.George Caram Steeh, US District Court, Eastern District of Michigan, issued a permanent injunction halting the implementation of this Michigan bill which sought to ban violent video game sales to minors, ruling that the bill is unconstitutional.

In his decision, the judge firmly dismissed the state's claim that the interactive nature of video games makes them less entitled to First Amendment protection. "The interactive, or functional aspect, in video games can be said to enhance the expressive elements even more than other media by drawing the player closer to the characters and becoming more involved in the plot of the game than by simply watching a movie or television show," Judge Steeh wrote. "It would be impossible to separate the functional aspects of a video game from the expressive, inasmuch as they are so closely intertwined and dependent on each other in creating the virtual experience."

Regarding the "science" presented by the state purporting to show a link between violent games and violent behavior and thoughts, the court said, "Dr. [Craig] Anderson's studies have not provided any evidence that the relationship between violent video games and aggressive behavior exists." It added that the evidence introduced alleging that new brain mapping studies show a link between violent games and aggressive thought is equally unpersuasive. "The research not only fails to provide concrete evidence that there is a connection between violent media and aggressive behavior, it also fails to distinguish between video games and other forms of media," the Judge wrote.

Addressing the state's claims that video games are more harmful than TV because the player controls the action, the court said there is no evidence to support such a claim, adding that "it could just as easily be said that the interactive element in video games

acts as an outlet for minors to vent their violent or aggressive behavior, thereby diminishing the chance they would actually perform such acts in reality....Not only does the Act not materially advance the state's stated interest, but it appears to discriminate against a disfavored 'newcomer' in the world of entertainment media. Thus, 'singling out' the video game industry does not advance the state's alleged goal," the Judge concluded.

Northern District of California, United States District Court
VSDA, et al., v. Schwarzenegger, et al.
2005 WL 3579119
December, 2005

In a ruling issued in December, 2005, Judge Ronald Whyte, United States District Judge for the United States District Court for the Northern District of California, handed down a preliminary injunction halting the implementation of a California law that would restrict video game sales and require the unconstitutional and subjective labeling of video games.

In a decision that drew upon the judicial rulings of cases where similar legislation had been deemed unconstitutional, Judge Whyte wrote that "games are protected by the First Amendment and that plaintiffs are likely to prevail in their argument that the Act violates the First Amendment."

Further, regarding research purporting to show a link between violent video games and violent behavior, Judge Whyte cited recent decisions by other federal courts which found that the research does not establish a causal link between violent video games and violent behavior, does not assess the significance of any link, and does not video games to other forms of media violence to which minors are exposed. He found that, "This court anticipates that [the State] here may face similar problems proving the California legislature made 'reasonable inferences based on substantial evidence.'"

Northern District of Illinois, United States District Court
ESA, et al., v. Blagojevich, et al.
2005 WL 3447810
December, 2005

In a strongly worded 53 page decision, Judge Matthew Kennelly permanently enjoined the Illinois' Violent Video Games Law and Sexually Explicit Video Games Law, finding it unconstitutional. Resoundingly dismissing the research in support of the statute presented by the State of Illinois, the judge ruled that the "[state has] failed to present substantial evidence showing that playing violent video games cause minors to have aggressive feelings or engage in aggressive behavior."

In his decision, the judge found fault with the argument that legislation is the answer to protecting children from inappropriate media. He wrote that "if controlling access to allegedly 'dangerous' speech is important in promoting the positive psychological development of children, in our society that role is properly accorded to parents and families, not the State."

Finally, Judge Kennelly determined that, "the state may have a compelling interest in assisting parents with regulating the amount of media violence consumed by their children, but it does not have a compelling interest in singling out video games in this regard. In fact, the underinclusiveness of this statute – given that violent images appear more accessible to unaccompanied minors in other media – indicates that regulating violent video games is not really intended to serve the proffered purpose."

Western District of Washington, United States District Court
Video Software Dealers Association, et al., v. Maleng, et al.
325 F. Supp.2d 1180
July 2004

In granting the plaintiff's motion for summary judgment, Judge Lasnik of the Western District of Washington permanently enjoined a Washington state law that would prohibit the sale of video games that depict violence against law enforcement officers. In his ruling, Judge Lasnik rejected the state's argument that video games should be regulated under obscenity law, and declined the state's invitation to expand the narrowly defined obscenity exception to include portrayals of violence. Judge Lasnik wrote that "such depictions [of violence] have been used in literature, art, and the media to convey important messages throughout our history, and there is no indication that such expressions have ever been excluded from the protections of the First Amendment or subject to government regulation".

Dismissing the claims of the state's expert witnesses and the studies presented, Judge Lasnik determined that "...the Court finds that the current state of research cannot support the legislative determinations that underlie the Act because there has been no showing that exposure to video games that 'trivialize violence against law enforcement officers' is likely to lead to actual violence against such officers. Most of the studies on which defendants rely have nothing to do with video games, and none of them is designed to test the effects of such games on the player's attitudes or behavior toward law enforcement officers. Where the studies do involve exposure to violent video games, the subjects are often asked to play games selected by the researcher and are then evaluated for behaviors that serve as proxies for actual aggression. Assuming, for the sake of argument, that the frustrations inherent in learning a new game or console system are not responsible for any measurable increase in hostility, neither causation nor an increase in real-life aggression is proven by these studies."

Reinforcing that games are protected by the First Amendment, Judge Lasnik wrote:

"The games at issue...[have] story lines, detailed artwork, original scores, and a complex narrative which evolves as the player makes choices and gains experiences. All of the games provided to the Court for review are expressive and qualify as speech for purposes of the First Amendment. In fact, it is the nature and effect of the message being communicated by those video games which prompted the state to act in this sphere."

Additionally, Judge Lasnik found that the state's attempt to ban the sale of games depicting violence against law enforcement officers was impossibly vague and, "failed to give a person of ordinary intelligence a reasonable opportunity to know what is

prohibited, so that he may act accordingly." He wrote: "Would a game built around The Simpsons or Looney Tunes characters be 'realistic' enough to trigger the Act? Is the level of conflict represented in spoofs like the Dukes of Hazzard sufficiently 'aggressive?' Do the Roman centurions of Age of Empires, the enemy officers depicted in Splinter Cell, or the conquering forces of Freedom Fighters qualify as 'public law enforcement officers'?"

United States Court of Appeals for the Eighth Circuit
IDSA v. St. Louis County
329 F.3d 954, 957
June 2003

In a unanimous decision of a three judge panel, the Honorable Morris S. Arnold, of the Eight Circuit Court of Appeals struck down the St. Louis violent video game law and found that First Amendment protects a wide array of content, including video games. The Eighth Circuit held that if "the first amendment is versatile enough to 'shield [the] painting of Jackson Pollack, music of Arnold Schoenberg, or Jabberwocky verse of Lewis Carroll,' ... we see no reason why the pictures, graphic design, concept art, sounds, music, stories and narrative present in video games are not entitled to similar protection." The court elaborated on these First Amendment protections, stating that "[W]e do not mean to denigrate the government's role in supporting parents, or the right of parents to control their children's exposure to graphically violent materials. We merely hold that the government cannot silence protected speech by wrapping itself in the cloak of parental authority... To accept the County's broadly-drawn interest as a compelling one would be to invite legislatures to undermine the first amendment rights of minors willy-nilly under the guise of promoting parental authority."

Regarding the concern the games are harmful to minors because of their content, the Court found the county's evidence, once again, studies by Craig Anderson, et al., to be unpersuasive. The opinion stated that the "conclusion that there is a strong likelihood that minors who play violent video games will suffer a deleterious effect on their psychological health is simply unsupported in the record...[T]his vague generality falls far short of a showing that video games are psychologically deleterious. The County's remaining evidence included the conclusory comments of county council members; a small number of ambiguous, inconclusive, or irrelevant (conducted on adults, not minors) studies; and the testimony of a high school principal who admittedly had no information regarding any link between violent video games and psychological harm...Where first amendment rights are at stake, 'the Government must present more than anecdote and supposition.'"

United States Court of Appeals for the Seventh Circuit
American Amusement Machine Association, et al. v. Kendrick, et al.
244 F.3d 572
March 2001

Writing in a unanimous decision of a three judge panel, the Honorable Richard A. Posner, of the Seventh Circuit declared the Indianapolis Arcade Ordinance unconstitutional, reaffirming that children have First Amendment rights. He wrote that

"[T]o shield children right up to the age of 18 from exposure to violent descriptions and images would not only be quixotic, but deforming; it would leave them unequipped to cope with the world as we know it. Maybe video games are different. They are, after all, interactive. But this point is superficial, in fact erroneous. All literature (here broadly defined to include movies, television, and the other photographic media, and popular as well as highbrow literature) is interactive; the better it is, the more interactive. Literature when it is successful draws the reader into the story, makes him identify with the characters, invites him to judge them and quarrel with them, to experience their joys and sufferings as the reader's own. Protests from readers caused Dickens to revise Great Expectations to give it a happy ending, and tourists visit sites in Dublin and its environs in which the fictitious events of Ulysses are imagined to have occurred. The cult of Sherlock Holmes is well known."

In reference to scientific studies, such as research by Craig Anderson, et al., provided to the Court arguing that interactive games cause violent behavior, the Court wrote "[T]here is no indication that the games used in the studies are similar to those in the record of this case or to other games likely to be marketed in game arcades in Indianapolis. The studies do not find that video games have ever caused anyone to commit a violent act, as opposed to feeling aggressive, or have caused the average level of violence to increase anywhere. And they do not suggest that it is the interactive character of the games, as opposed to the violence of the images in them, that is the cause of the aggressive feelings. The studies thus are not evidence that violent video games are any more harmful to the consumer or to the public safety than violent movies or other violent, but passive, entertainments. It is highly unlikely that they are more harmful, because 'passive' entertainment aspires to be interactive too and often succeeds."

UNITED STATES SENATE

SENATE JUDICIARY COMMITTEE

HEARING BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND PROPERTY RIGHTS

"WHAT'S IN A GAME? STATE REGULATION OF VIOLENT VIDEO GAMES AND THE FIRST AMENDMENT"

TESTIMONY OF DMITRI WILLIAMS, ASSISTANT PROFESSOR,
DEPARTMENT OF SPEECH COMMUNICATION,
UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN

WEDNESDAY, MARCH 29, 2006

I would like to thank Senator Brownback and Senator Feingold for the opportunity to testify here today. The purpose of my testimony is to describe the status of the current social science research concerning the effects of violent video games on those who play them. My remarks about the state of the research on video games are based on accepted principles in social psychology, communication and sociology, my understanding and use of the various standard research methods, my time spent in contact with game players and game developers and my experience as an active researcher of video games.

Background

I am currently an Assistant Professor at the University of Illinois at Urbana-Champaign in the Department of Speech Communication. My department is ranked in the top six nationally according to the National Communication Association Annual Survey, and number two in my research area of technology and communication. I teach courses in video games, virtual communities and the social impacts of new technology.

I have published several articles and book chapters on the topic of video game uses, effects, industrial practices, economics and social history. My work has used a wide range of research methods including content analysis, field and lab-based experimentation, interviews, industrial organization modeling and others. My papers have appeared in my field's top journals, including the *Journal of Communication,* the *Journal of Broadcasting and Electronic Media*, *Information, Communication & Society*, *Journal of Computer Mediated Communication*, *Communication Monographs,* the *International Journal on Media Management*, and in the game-specific journals *Games & Culture* and *Simulation and Gaming*. I regularly present on gaming research issues at the major communication and Internet research conferences, the game-specific research conferences, and at the Games Developer Conference.

With my co-author, I am the only person in the world to have published a field-based, i.e. non-laboratory and real-life, study of video game effects that tests the exposure of violent game imagery for longer than 75 minutes (Williams & Skoric, 2005). As someone who

has completed a test with this method, I am in a relatively strong position to understand and comment on long-term effects in gaming. Yet, as this statement will illustrate, I have simply uncovered more that we have yet to learn about this medium before I or anyone else can make strong claims.

This document will outline my view that the research on video games and violence has not yet met the basic conditions for strong causal claims about the long-term effects of video games.

The research on the effects of video games is generally concerned with the potential for creating violent adolescents because of the harm they might conceivably inflict on others, and so touches on a number of cultural and social tensions (Williams, 2006, in press). It is my position that the research to date has not fulfilled sufficient conditions to establish a causal connection between exposure to violent video games and a general increase in aggression among minors or adults. In layman's terms, the work so far is suggestive, but not enough to support such strong claims.

The Media Violence Issue and Causality

There is a long history of studies on the effects of media violence, chiefly focused on television's effects. I believe that this research generally points to the susceptibility of children to experience effects at a greater rate than adults when watching television (Paik & Comstock, 1994). These effects are most likely to materialize in the acquisition of scripts about violence, emotional desensitization and in potentially aggressive behaviors. I have also found that some games can isolate players and potentially make them more lonely. This should signpost that I have found and published negative effects from gaming and am not interested in defending them for their own sake.

Like other social scientists who have studied video games, I agree that theoretically-driven models are the best way to test for effects and to advance understanding and that media is only one of several variables in the mix of risk factors for children. And I agree that experiments, cross-sectional studies, longitudinal studies and meta analyses are all important tools for advancing understanding. I have no issue with the standard measures used in the research, and have used many of them myself (e.g. scales, word-completion tasks, etc.). Our chief goal is to understand causation: what causes what. In this case, the hypothesis worth testing is that the use and observation of violent video games causes violent behaviors, feelings, beliefs and cognitions.

In assessing the state of the research concerning video games, it is important to keep in mind how causality works in the social sciences. Here, I reference a model that I know every responsible social scientist takes to heart. Causality is an extraordinarily difficult condition to prove (Popper, 1959). All of us who practice the social sciences hope to reach that level, but we are usually conservative in our claims because of the very difficult conditions which we much satisfy. Based on the generally accepted work of John Stuart Mill some 150 years ago, we all accept these three conditions for proving causality:

1) Concomitant variation, i.e. correlation, or "when one thing moves, the other also moves."
2) Time-order control, i.e. one thing must precede the other.
3) Elimination of plausible alternative hypotheses, i.e. every other reasonable explanation must be ruled out.

When these three conditions have all been met, we typically accept statements about causality. It is clear to me that the literature concerning video games to date satisfies the first two conditions. It is equally clear to me that the literature to date does *not* satisfy the third condition. There are a range of plausible, and some even likely, explanations for other causal models to be at work in the realm of video game violence.

Methods and Examples of Violent Video Game Research

There are three major methods appropriate for the study of video games and aggression: experimental designs, cross-sectional designs and longitudinal designs. Some video game researchers have also used meta-analyses guided by theoretical models to draw conclusions. Each type of method has a different set of strengths and weaknesses that address different portions of Mill's three conditions for causality. In reviewing the research, it is my opinion that the use of each method to date falls short of the three conditions.

Experimental Evidence

Experiments are the social scientist's best tool for establishing causality because, when they are designed well, they automatically address the first two conditions that Mill gave us. A well-run experiment can measure correlations through standard survey measures and observational data and can firmly establish time order because the experimenter controls the procedure. Experiments can also rule out the problem of a testing effect because the presence of a control group allows the examination of whether simply being tested causes an effect. Experiments can rarely address all possible alternative explanations, but they remain our best tool short of controlled longitudinal designs.

There have been a number of experimental studies attempting to measure the aggression effects of violent video games. The main shortcomings of these experiments are threefold.

First, they measure events that may not occur outside of a lab. Many critics decry the artificial setting of the laboratory, but I think that a control group at least partially addresses this when done well. Additionally, most well-trained researchers are careful to make the lab settings at least resemble a home environment. A more apparent problem is that experiments typically have people play alone when the majority of game play is a social experience. This presents a significant challenge to the validity of these experimental studies to date (Sherry, 2001), and the most prominent names in aggression research have noted that the research still needs to take social experience into account, but has yet to do so (Anderson et al., 2003). The prior literature on arcades, home settings and the opinion and survey data over the past 25 years shows that game players have played with other game players almost whenever possible (Williams, 2006, in press).

Thus, if experimenters measure people playing solo, it is not clear how useful any findings might be.

The second problem is one advanced by a plausible alternative hypothesis: namely, that the effects observed were not a result of playing the game, but were simply the result of being excited. In other words, it is possible that what was measured in a particular experiment was the result of excitement, not aggression. Critics can easily suggest that the same effects would occur if the subjects were running or playing Frisbee. Much of the early game research was subject to this flaw.

Professor Craig Anderson, who has done much of the research in this area, sought to address this weakness by including a second video game as a control condition (Anderson & Dill, 2000). But this study – which is the most cited in the research[1] – failed to account for the potential effects of excitement. In their study, Anderson & Dill attempted to use violent and non-violent video games that were as equivalent as possible, except for level of violence. But the researchers picked two games – the hyperkinetic violent game *Wolfenstein 3D* and the soothing game *Myst* – which cannot be considered equivalent. On their face, these two games are radically different in terms of excitement. *Wolfenstein 3D* is an exciting, fast-paced, twitch-based shooter game in which the player is hunter and hunted and usually feels intense fear and tension throughout play. In contrast, *Myst* is a deliberate, slow-paced cerebral puzzle and logic game set in an ethereal, beautiful locale with no motion. These two games would not be described by any game player or game researcher as equivalent in terms of action. They are, even to the untrained eye, the equivalent of heavy metal and classical music. The researchers' claim to have tested for equivalence by use of a pre-test raises significant validity problems, as the games are vastly different to even the most casual observer. This is no small point. Many researchers outside of the field of communication appear to be unfamiliar with gamers, game culture and game content, a fact that, as this example demonstrates, can affect the strength of their conclusions.

The third problem with the experimental research to date relates to the duration of effects. Let us ignore the preceding issues and assume for the moment that every test to date had occurred with perfect control and validity, and that the evidence showed that there was aggressive behavior after and because of violent game play. One question is whether these effects persist. Would the same players be aggressive an hour later, a week later or five years later? The typical stimulus time for a game experiment is 10 to 30 minutes, often interrupted by questions. Two studies of the same game offer a test of this hypothesis. Both Ballard & Weist (1995) and Hoffman (1995) ran studies of the aggression effects of *Mortal Kombat* on the same type of subjects. Ballard and Weist tested for 10 minutes and concluded that there was an aggression effect. Hoffman kept testing for 75 minutes. She found that the effect had dissipated almost entirely by the end

[1] This is based on use of the ISI Web of Knowledge, which tracks how many times a paper in a given topic area is cited. Based on the topic "video game" this paper is the most cited paper on effects, with 70 citations. The second-most cited, and therefore next-most influential study, is the Anderson and Bushman 2001 study discussed on the next page.

of the play session. This comparison lends strength to the explanation that the effects are either short-term only, or are simply excitation and not true aggression, which is a possibility raised by Sherry in his meta analysis (2001).

This idea of duration is an important one. It is where I find myself most confused by the frequently-made strong claims about long-term causal effects of video games. Since there are no truly long-term studies of game-based aggression, how can we take the short-term findings and make claims about what will happen in X weeks, months or years? What data are these claims based on?

The reason, as all of us know, is that if you want to make long-term claims, you need long-term studies. And unlike the television literature, these do not exist for games. A longitudinal design follows a group of people over a longer time period than a lab experiment will allow. The reason to do this is to provide a more realistic real-world exposure and to allow for long-term conclusions. If we truly want to know effects over a day, week, month or several years, then that is how long we must observe and measure. 30 minute studies cannot suffice to make lifespan-long claims. And given the two *Mortal Kombat* studies mentioned above, we have strong reasons to be suspicious of long-term claims of more than 30 minutes, let alone many years.

Longitudinal Designs

The television research has the benefit of having a well-known, truly longitudinal design, albeit one without a control condition (Huesmann, 1999). This research, although hotly disputed by some for a lack of rigor and unwarranted claims (Moeller, 2005), is generally accepted by most communication and psychology researchers. The central claims are that exposure to large amounts of televised violence causes short-term and probably long-term increases in aggressive behaviors, thoughts and cognitions.

The problem is that we do not have this kind of data for video game play. According to one well-respected game effects researcher in his meta analysis, longitudinal designs are "conspicuously absent" (Sherry, 2001) (p. 426). The longest published study to date is my own (Williams & Skoric, 2005), which followed gamers playing a violent game for one month. The average exposure time was 56 hours, which offers a much more powerful possible causal model than the typical 10 to 30 minute studies which preceded it (Hoffman's study, i.e. the one where the effects nearly disappeared, was the previous longest exposure time at 75 minutes). The study also had the benefit of being conducted in people's homes (i.e., not in a lab) and, unlike most long-term research, maintained a control group for the duration of the study. The data in my study revealed no statistically significant effects on aggression.

I will make a few observations about this study as it compares to prior studies. Given that no effects materialized after 56 hours of play, it lends credibility to the hypothesis that the short-term studies are either flawed in their settings or are subject to the excitement explanation. Nevertheless, my single study does *not* disprove that games cause violence. One month isn't a very long design, at least compared to the Huesmann work, although

my own has the important advantage of a control group. Then again, I don't make claims for what will happen after my study's time window, whereas many researchers do this regularly.

I would also add that my own study, like the others before it, was a study of only one game. I will not make the case that studying one game proves what all games do. Games are simply more varied and complex than prior broadcast media and the same rules of generalizability do not apply. The research community lacks even a basic typology of content and play variables to aid such a claim. It is an error to collapse multiple games into one variable and expect a coherent result. Nevertheless, reporters have pressed me to state that my findings prove that "games" don't cause violence, but that strength of claim is not warranted by my data. One game and one month is not sufficient to make that claim. 10- and 30-minutes studies are even less able to support such claims.

Unbeknownst to most effects researchers, there actually *are* a handful of long-term game effects papers out there. Indeed, there have been three very in-depth studies of arcades and youth habits, and all of them concluded that games were not having negative impacts on children's aggression (Garner, 1991; Meadows, 1985; Ofstein, 1991). Actually, the studies all concluded that the social milieu of the arcade provided strong peer-based sanctions *against* physical violence and aggressive behaviors. Why? One of the basic appeals of video games for youth is that they are meritocratic: they are a safe play space independent of social status, physical strength, etc. (Herz, 1997). Indeed, many were havens from physical violence. This is an example of why social context, typically missing in lab experiments, is so important. Additionally, there are two now-dated studies of games, families and homes (Mitchell, 1985; Murphy, 1984), and these also concluded that games did not lead to aggression. In all five studies, the researchers took pains to note that the likelihood of aggressive behavior was inevitably related to parenting variables rather than the amount of game play. Murphy and Mitchell also noted that game play typically lead to more active family time because it tended to cut into television viewing, a finding I have also found in my own statistically-based work (Williams, 2004).

Cross-sectional Studies

There have been a number of cross-sectional studies on games and aggression, games and grades, truancy, etc. Many of these have been offered as proof of game effects, yet this is inappropriate. As every statistics student learns, correlation is not the same as causation. Showing that two things are related is very different than proving that one thing causes another. For example, the number of churches and liquor stores are nearly always correlated, but it would be incorrect to then state that going to church leads to drinking or vice-versa. Such thinking obfuscates the possibility that there is some actual third variable that drives both (population). Likewise, correlational video game studies have been offered as "proof" of the harmful effects of games since the early 1980s by showing relationships between games and poor grades, aggressive behavior, truancy, etc. Yet it is equally likely that students with poor grades and aggressive behavior are more likely to

play (likely due to a lack of parental involvement and oversight) and that there is no causal relationship.

These studies are certainly important for theory-building and for establishing the need for future research. They are also useful for ruling out some alternative explanations. But since correlations are only one of the three conditions needed for causal proof, these studies provide necessary, but not sufficient evidence of a causal relationship. Thus, a cross-sectional survey can be used as an inexpensive tool to pave the way for a more involved and expensive experiment or longitudinal design. But they simply do not prove cause and should not take up space in any discussion of causal effects.

Meta-analyses

Meta-analyses are tests which use previous studies as individual data points to look at big-picture outcomes. They are important and useful tools for making sense of a large body of research, but they must be based on solid studies. Given the criticisms laid out in this document, it is my opinion that the source studies used in video game meta-analyses are not safe to use. Still, across the various studies to date, more playing time has lead to *less* aggression (Sherry, 2001). Taken together, the effects picture is anything but clear right now.

Theoretical Models

Lastly, and along the same lines of examining the plausible alternative hypotheses, I would like to review the "General Aggression Model", which guides the bulk of the research in this area. The "GAM" posits that media can affect people in several ways. The model was developed for testing the effects of watching violent television, but it is not clear that it can be used on an entirely different medium without significant modification. The two basic problems are the use of behavioral modeling and the level of active cognition that the model assumes.

By behavioral modeling, I am referring to the foundational work by Bandura (1994), in which children watching a violent act repeat that act after exposure, i.e. the children observe the behavior and then copy it. For anyone with a child, this kind of mimicry is common sense, and it is not a large leap to worry that a child watching TV will imitate an undesired behavior. Children "model" behaviors and then consider trying them.

The problem with exporting this approach to video games is that it is not clear exactly what is being "modeled." With television, the experience is generally assumed to be passive. The viewer on the couch is observing the characters on the screen and is not thinking very actively. They have the potential to model the televised characters. Yet in video games it is far more complex; there are several possible objects that might be modeled, rather than assuming passive observation. First, the player's character on the screen might be mimicked, even though *it is not clear that this is truly mimicry if the player is the one directing the action*. Secondly, the computer-directed characters might be the things observed and modeled. These are sometimes aggressive and sometimes not.

Third, the other player-controlled characters might be being modeled. These are sometimes working against the player aggressively and sometimes are helping the player. Fourth, the other people present live in the room might be modeled for behaviors. This might include other players, other viewers or parents. Any one of these figures might be a source of modeled behavior, and they might cause effects in different directions. For example, seeing a fellow player on a couch become aggressive might help the first player become even more aggressive than they would as compared to TV. Or, seeing a parent disapprove of some action might make the player less likely to internalize the behavior or even to classify it as an unacceptable real-life choice.

There are a wide range of possibilities here and some might lead to better or worse outcomes. The point is that the work to date either wholly ignores these possible sources of modeling by having players play games by themselves (the problem noted above by Sherry), or simply collapses all of these potentially different effects into one source. In social science, we say that the model is not nuanced enough to account for the actual variables that exist in real-life settings. I would note here that it is equally possible that effects are not present or are even worse than some think. The problem is that we simply don't know and it is thus inappropriate to make strong claims in the face of this potential issue.

Secondly, there is an issue with the level of "active cognitions" that occur during game play. Our generally accepted models of cognition include one route for very active thinking ("central processing") and another for relatively inattentive thinking ("peripheral processing") (Chaiken, Liberman, & Eagly, 1989; Petty & Cacioppo, 1981). The television research has always assumed a fairly inactive viewer, who is thought to use this more inattentive peripheral mode of thinking. Yet the assumption has shifted with video games to move the viewer into the more active, centrally processing group. It is not clear that this is the case, and it is even less clear when a game player might be more active or more passive. Mood management theory (Zillmann, 1988) suggests that this level of attention might vary between gamers, games or even play session. One hypothesis I have been considering is the extent to which a truly active cognitive state might either lead to especially stronger or weaker aggression effects. Consider the youth playing a violent shooter game. Is that youth actively considering the violent content? If so, is he/she going to be thinking "yes, this is exactly how I want to behave" or is he/she going to be thinking "this is a game and this is not how I behave when the game is turned off."

This latter possibility is the one found by Holm Sorensen and Jessen (2000), who, when studying very young children, found that they were highly aware of the non-real nature of the games and made separate rule sets for behaviors inside and out of play—much like children do in nearly every other form of play. Yet this kind of filtering is not included in the current approaches to video game research. Similarly, if the player is in a more passive mode, are they more or less likely to acquire these negative scripts? This is a hypothesis that has not been incorporated into the research and might make a tremendous difference. Given this possibility, I do not accept the simple statement that game players are more likely to become violent because they are playing the game rather than watching

it. I find the medium more complicated than that and would need to see this hypothesis systematically tested before accepting such a claim. I find it worrisome that some researchers accept the claim without proof.

On Consensus

I would like to end by referring to the statements made by the APA and other groups (California Psychiatric Association, NAACP, Girl Scouts, etc.) in the various state cases. It is clear that they are all drawing their conclusions and talking points from the same body of research that I have taken issue with here. They repeat the correlational/causal errors and the untested concept of interactivity as a strengthener of effects. They conflate the television research with game research, and they are clearly unaware of the arousal confound in the game research. These are all good organizations (many of which I personally support), clearly trying to do the right thing, but they are uninformed and should not be involved in the policy process until they are aware of the scientific disputes. Meanwhile, other academic organizations take wholly different stands. For example, I attended the Digital Games Research Association (DiGRA) conference last year in Vancouver and the violence issue was, as always, at hand. The difference is that that association, comprised of people who do *only* games-related research, was virulently opposed to the APA statement.

A more appropriate attitude can be found in communication research circles. I am a member of the International Communication Association, the premier international body in mass communication research. This community has recently formed a games research interest group and is being lead by our field's senior scholars, including people convinced of the link between television violence and aggression. A recent event serves to show what kind of consensus there is about game effects: there was a proposal for a debate on the video game aggression issue for this year's conference in June. I was invited to take the "games do not cause aggression" approach, but declined because—even including my own long-term study—I think that the evidence does not support any strong position yet. Yet the notable outcome was that no one (out of 50 social scientists doing games-related work in communication) volunteered to take the "games cause aggression" position. Everyone who expressed an interest in the session wanted to take some more nuanced approach because they did not feel that the data warrants strong claims on either side.

This leads me to ask, Why are some people so *certain* then? The answer, I think, lies in how we as a society react to new technologies. The history of communication shows quite clearly that the advent of every major medium has been greeted with utopian dreams of democracy, but also with tales and visions of woe and social disorder (Czitrom, 1982; Neuman, 1991). The reactions themselves even follow a set pattern in every case (Wartella & Reeves, 1985). This pattern has been consistent and has maintained itself dating from the telegraph (Standage, 1999), and persisting through nickelodeons (Gabler, 1999), the telephone (Fischer, 1992), newspapers, (Ray, 1999), movies (Lowery & DeFluer, 1995), radio (Douglas, 1999), television (Schiffer, 1991), and now with both video games and the Internet. As generations age, we tend to fear the things that are new and not understood. Typically, this lets us avoid thinking about thornier issues that are personally uncomfortable to us (Glassner, 1999). In particular, we

do not want to confront the reality that millions of children suffer real harm through sexual and physical abuse every year (data from the U.S. Department of Health and Human Services, 2003), and that this harm comes from within families, not outside them. About four children die every day from abuse and neglect from known people—not strangers, and not from video games.

In this sense, video games are simply the latest in a long series of contested media, an old wine in a new bottle fulfilling the same social function.

Lastly, I have reviewed the materials used by the state legislatures in Illinois and California, and I'm struck by the fact that they've excluded several major articles and points of view. It appears that they have only included the papers that they might interpret to support the law. That is politics, not science. In science we look specifically for the points of disagreement because we want to learn more, even if it upends our starting position. If 10 papers say black and 10 papers say white, there's usually a good reason why, and finding it is how we advance understanding. But if we ignore the papers that don't support our presumptions, we are only working with half of the facts. This is a poor way to conduct a review and a dangerous way to set policy, especially if it's a policy that purports to be based on a comprehensive review of the science to date.

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MR. STEARNS. Thank you.

Ms. Vance.

MS. VANCE. Before I begin, I would like to thank Chairman Stearns and the entire committee for the invitation to appear today. We applaud and strongly support your commitment to inform parents about the games that they choose to bring into their homes. I respectfully request that my statements, both oral and written, along with instructive appendices, be made a part of the hearing record.

MR. STEARNS. By unanimous consent, so ordered.

MS. VANCE. The ESRB rating system consists of six age-based rating categories with breaks at 3, 6, 10, 13, 17, and 18 years of age. Rating symbols appear on the front and back of each game package, and in addition, wherever appropriate, ESRB assigns one or more content descriptors that appear prominently on the back of the box next to the rating.

Kinds of descriptors, of which there are over 30 currently in use, indicate elements in a game that may have triggered a rating or may be of interest or concern to consumers, especially parents.

While games that are rated for mature audiences tend to get a disproportionately high amount of media attention, the reality is that most of the titles rated by the ESRB receive a rating of "E" or "Everyone", and only about 12 percent are recommended for players 17 or older, a percentage that has remained constant for the last 2 years. In fact, in 2005, not one "Mature"-rated game was listed among the top 10-selling computer or video games.

Virtually every computer and video game sold in the U.S. today carries an ESRB rating. The Council of Manufacturers will not permit games to be published on their system without an ESRB rating, and most major retailers choose to only stock games that have been rated by our organization.

ESRB's highest priority is ensuring that the ratings we assign are accurate and useful to parents. Each year we conduct consumer research with parents in 10 different markets across the U.S. to measure agreement with the ESRB rating assignments. It is critical that our ratings reflect mainstream American tastes and values, especially among parents of children who play video games.

Indeed agreement with ESRB ratings has never been higher; 82 percent of parents agree with our ratings, and another 5 percent think the ratings are too strict. These findings are supported by a 2004 report by the Henry J. Kaiser Family Foundation that found that among all entertainment rating systems, TV, movies, music, and games, parents found the ESRB ratings to be the most useful, with the majority of parents surveyed finding them to be, quote/unquote, "very useful." Moreover the national PTA has called the ESRB ratings an extremely useful and informative tool and urges parents to check the ratings whenever buying game.

Ratings accuracy is solely dependent on our raters' access to all pertinent game content, including the most extreme, no matter how hard it may be to find when playing the game. Many of today's games can take upwards of 50 or even 100 hours to play all the way through. Given the length and complexity of games, playing every game as part of the ratings process, be it for 1 hour, as Professor Thompson did in her study, or 10, would provide no assurances whatsoever that all pertinent content is being considered in the assignment of a rating. That is why we require game publishers to fully disclose to the ESRB in detail, in writing as well as on videotape, exactly what is in their game, even content that may be hidden to the player.

This includes the most extreme instances of pertinent content across a broad range of categories, including violence, sexual, or suggestive themes; language; depiction and use of a controlled substance; gambling, and more. Publishers must also provide information on the frequency of such content, key missions and objectives in the game, and unique interactive elements such as the reward system and player control.

After a game ships, if disclosure is found to have been incomplete, recent enhancements to the ESRB enforcement system will soon allow for the imposition of fines up to $1 million. The power to impose substantial monetary and nonmonetary penalties which may include the revocation of ratings services altogether for repeat offenders, combined with corrective actions that can essentially mount to a full product recall, serve as a tremendous disincentive for any publisher to even consider not disclosing all pertinent content.

As the FDC has noted, ESRB enforcement system is unique in its scope and severity among entertainment rating systems. While certain critics like Professor Thompson and Dr. Walsh continue to try to discredit the ESRB ratings, the fact is that far more often than not, Dr. Walsh's organization and other advocacy groups' age recommendations match our ratings exactly, or very slightly by only a year or two at the most. Similarly, Professor Thompson's research never claims that our age recommendations are inappropriate, just that she would prefer we list all content in the game instead of that which our raters have determined is the most important to communicate to the consumer.

Professor Thompson's studies are based on completely different criteria than the ESRB uses to assign content descriptors, and there is no evidence that her personal opinions on how to assign them are representative of public opinion. Case in point, her first study claimed that 62 percent of the game play in Pac-Man is, quote/unquote, "violent." I would imagine that most parents and perhaps even many of you would disagree with such an assessment.

So are parents paying attention to the ratings? In a study conducted earlier this year by Peter Hart Research, we found that 83 percent of parents with children who play games are aware of the ESRB ratings, and 3 out of 4 use them regularly when buying games. Furthermore, more than half of parents surveyed said they never allow their kids to play games rated "M" for "Mature", and parents are twice as likely to ban "M" games when their kids are under the age of 13.

Despite the high awareness and use of the system, we continue to put significant resources into marketing and education initiatives to encourage parents to use the ratings every time they buy a game. We have received broad media support for our print and radio PSA campaigns, audio news releases, satellite, television, and radio media

tours, and will shortly be launching a new initiative with the national PTA.

In addition, ESRB retail partnership program currently spanning 18 different national retailers generates over a billion consumer impressions each year, educating customers about our ratings. We also encourage and support retailer policies with respect to the sale of "M"-rated games, and we are very pleased that the FTC's most recent mystery shopper audit showed significant progress that national retailers are making in enforcing their store policies, which now matches the level of restrictions for R-rated films in movie theaters at 65 percent of the time.

MR. STEARNS. I will need you to sum up.

MS. VANCE. However, although there has been a significant focus by industry critics on retail enforcement, it is also important to note that the FTC reported in 2000 that the adults are involved in the purchase of video games 83 percent of the time.

I would like to close today by simply stating that nobody takes these issues more seriously than we do. ESRB values immensely the trust that millions of parents have placed in the ratings that we assign, and the vast majority of parents can and do make sensible choices about the games their children play, and our ratings consistently play a critical part in those informed decision. That being said, we all can and should work more cooperatively to ensure that parents are aware of and are using the tools at their disposal.

Thank you for having me here today.

MR. STEARNS. Thank you.

[The prepared statement of Patricia E. Vance follows:]

PREPARED STATEMENT OF PATRICIA E. VANCE, PRESIDENT, ENTERTAINMENT SOFTWARE RATING BOARD

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Written Testimony of Patricia E. Vance
President, Entertainment Software Rating Board (ESRB)

Hearing Before the U.S. House of Representatives
Subcommittee on Commerce, Trade and Consumer Protection

"Violent and Explicit Video Games: Informing Parents and Protecting Children"
June 14, 2006 2:00pm

Before I begin, I would like to respectfully thank Chairman Stearns for the opportunity to appear today to present an overview of the ESRB rating system. The issues being discussed in today's hearing are critically important, especially to parents, to whom I believe our self-regulatory system offers a valuable, reliable and credible tool to make the right video game choices for their families. I ask consent that my full statement, along with instructive appendices, be made a part of the hearing record.

Background

The ESRB was created in 1994 to provide consumers, particularly parents, with the information they need to make informed computer and video game purchase decisions. The ESRB rating system was developed after consulting a wide range of child development and academic experts, analyzing other rating systems, and conducting nationwide research among parents. Through these efforts, ESRB found that what parents really wanted from a video game rating system were both age-based categories and, equally if not more importantly, objective and detailed information about what is in the game. Those surveyed agreed that a rating system should inform and suggest, not prohibit, and that the rating system should not attempt to quantify objectionable incidents, but instead should reflect the overall content and objective of the game.

Since its inception, the rating system has been periodically enhanced, revised and updated to not only ensure that we continue providing the best possible service to those who rely on the ratings, but also to keep pace with what is a rapidly evolving medium and industry. Today, we remain extremely proud of the ESRB rating system and the information it provides. We have assigned over 12,000 ratings in our history, and average over a thousand a year. Millions of parents rely on ESRB ratings to choose games they deem appropriate for their children and families, and we value greatly the trust they have placed in our ratings.

ESRB commissions independent research on an annual basis to measure parental awareness, use and agreement with the ratings. Our most recent studies found that 83% of parents with children who play video games are aware of the ratings, and 74% use them regularly when choosing games. Another study found that parents agreed with the ratings assigned or thought them "too strict" nearly 90% of the time. These findings are supported by a 2004 report by The Henry J. Kaiser Family Foundation that found that among all entertainment rating systems (TV, movies, music, and games), parents found the ESRB ratings to be the most useful, with the majority of parents surveyed finding them "very useful." Moreover, the National PTA has called the ESRB ratings "an

extremely useful and informative tool," and urges parents to check the ratings whenever buying games.

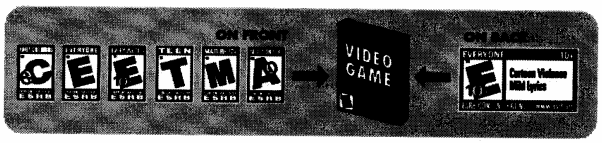
It is important to note that according to the U.S. Federal Trade Commission, 83% of the time adults are involved in the purchase of games. It therefore stands to reason that a mission-critical ESRB activity is raising awareness and use of the rating system among parents, especially as the variety of game genres continue to expand to meet the demands of an aging game consumer. (The average age of a gamer today is over 30.)

The ESRB Rating System

Although voluntary, the rating system has been universally adopted by the game industry, and virtually all computer and video games sold in the U.S. today carry an ESRB rating. Based on the aforementioned research conducted in 1994, the ESRB rating system was created with two equally important parts:

- **rating symbols**, easily identifiable on the front of game packaging that suggest the most appropriate age group for each game, and
- **content descriptors**, found on the back, clearly stating why a game received a particular rating or indicating content that may be of interest or concern.

Here's an illustration of the two parts:



Rating Categories and Definitions

EARLY CHILDHOOD
Titles rated EC (Early Childhood) have content that may be suitable for ages 3 and older. Contains no material that parents would find inappropriate.

EVERYONE
Titles rated E (Everyone) have content that may be suitable for ages 6 and older. Titles in this category may contain minimal cartoon, fantasy or mild violence and/or infrequent use of mild language.

EVERYONE 10+
Titles rated E10+ (Everyone 10 and older) have content that may be suitable for ages 10 and older. Titles in this category may contain more cartoon, fantasy or mild violence, mild language, and/or minimal suggestive themes.

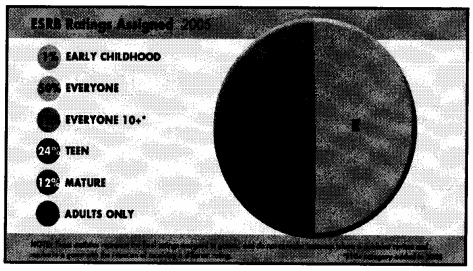
TEEN
Titles rated T (Teen) have content that may be suitable for ages 13 and older. Titles in this category may contain violence, suggestive themes, crude humor, minimal blood, simulated gambling and/or infrequent use of strong language.

MATURE
Titles rated M (Mature) have content that may be suitable for persons ages 17 and older. Titles in this category may contain intense violence, blood and gore, sexual content, and/or strong language.

ADULTS ONLY
Titles rated AO (Adults Only) have content that should only be played by persons 18 years and older. Titles in this category may include prolonged scenes of intense violence and/or graphic sexual content and nudity.

Content Descriptors
Over 30 different content descriptors are currently employed by the ESRB rating system. They span various categories of concern to parents, including but not limited to violence, language, suggestive or sexual content, gambling and use of controlled substances. Content descriptors provide additional information about game content that may have triggered the rating assigned or may be of interest or concern to consumers, and are assigned relative to their respective rating category.

Rating Category Breakdown
Though violent games tend to receive a disproportionately high amount of attention, the reality is that the vast majority of games rated by ESRB are appropriate for younger players. As a point of reference, of the 1,133 ratings assigned by the ESRB in 2005, 50% were rated E (Everyone), 12% were rated E10+ (Everyone ages 10 and up)[1], and 24% were rated T (Teen). Games rated M (Mature) represented 12% of rating assignments, with the EC (Early Childhood) and AO (Adults Only) categories comprising the remainder.



Despite the media's singular focus on M (Mature) rated games, the percentage of M (Mature) rating assignments did not increase in 2005. It is also important to note that in 2005 not one M (Mature) rated game made it onto the Top 10 bestseller list. That being said, with the average age of gamers increasing every year, it is reasonable to expect that the number of games targeting a more mature market will stay at least at the same level, if not increase, in the coming years. However, this reality underscores the need for parents to be educated about the tools at their disposal so they are sure to choose games that are appropriate for their children and families.

Pertinent Content
As stated above, pertinent content spans various categories including violence, profanity, sexual or suggestive content, depiction and/or use of controlled substances,

[1] The E10+ rating category was introduced in March 2005.

gambling, etc. The following chart explains what types of content are considered pertinent from a ratings standpoint:

Destruction Explosions and physical damage, including audio and visual elements of destruction	**Rewards/Penalties** Rewards, punishment, and penalties for certain player behavior, such as ending the game if the player attacks civilians	**Violence** All elements of damage design, including blood effects, gore, death animations, post-mortem damage effects, and screams
Failure What happens when the player dies, crashes, or goes out-of-bounds	**Profanity** Any profanity and how often it occurs, whether it is spoken, gestured, or written in text	**Soundtrack/Lyrics** Soundtracks that contain profanity or adult themes, including edits or "bleeps," and lyric sheets
Controlled Substances Use, implied use, or reference to drugs, alcohol or tobacco, even in the background	**Gambling** Gambling, including instructional lessons or mere reference	**Sexuality** Sexually oriented and suggestive themes or dialogue, character models and dress, nudity, and explicit sexual activities/references
Perspectives Different game perspectives, such as first person, third person, top-down, etc.	**Sound Effects** Sound effects, including those associated with pain, death, explosions, weapons, sexual activity, and bodily functions	**Weapons** Depictions of weapons and the different effects they produce

Game Raters

ESRB game raters are recruited from one of the most culturally diverse populations in the world – New York City. The raters are all adults and are not required to be gamers themselves; a gamer-only rating system would likely bias rating assignments as they would surely bring a different sensibility to content than the pool of raters we have always used. Our raters have no ties to the video game industry, and typically have experience with children. They are specially trained by ESRB to rate computer and video games and work independently of one another on a part-time basis, attending no more than one 2-3 hour rating session per week. The ESRB strives to recruit raters who are demographically diverse by age (must be at least 18), martial status, gender, race, education and cultural background to reflect the U.S. population overall.

Rating Process

Prior to a game being released to the public, game publishers submit a detailed written questionnaire to the ESRB, often with supplements (such as lyric sheets, scripts, etc.), specifying exactly what pertinent content will be in the final version of the game. Along with the written submission materials, publishers must provide a videotape capturing all pertinent content, incorporating the most extreme instances, across all relevant categories including but not limited to violence, language, sexual or suggestive, controlled substances and gambling. Pertinent content that is not programmed to be playable but will exist in the final game's code base must also be disclosed.

Once the submission is checked by ESRB for completeness, which may also involve ESRB staff members playing a beta version of the game, the video footage is reviewed by at least three or more raters. Upon independently reviewing the video, the raters

recommend appropriate rating categories and content descriptors for the content in each scene reviewed and the game overall. Raters consider many elements in their assignments including context, realism, frequency, the reward system, the degree of player control and overall intensity, among others.

The ESRB checks the raters' assignments for majority consensus, conducts a parity examination where appropriate to maintain consistency and trust in the ratings, and issues an official certificate with the rating assignment to the game publisher. If consensus is not reached in the first rating session, additional sessions will be conducted until a clear majority consensus can be identified. Once issued, the publisher is then able to either accept the rating as final or revise the game's content and resubmit the game to the ESRB, at which time the process starts anew. Publishers also have the ability to appeal an ESRB rating assignment to an Appeals Board, which is made up of publishers, retailers and other professionals.

While some suggest that ESRB should play each video game as part of the rating process (play-testing does occur on a limited basis), there are several reasons why this would be impractical. First, since ESRB ratings must appear on game packaging and in all advertising when the product is released, we oftentimes receive games that are not yet fully playable from start to finish, or "buggy," at that point in the development process. Secondly, many games have upwards of 50 hours of gameplay, and so requiring raters to play each of the more than 1,000 games we rate each year would not only be inefficient and unnecessary considering the high degree of repetition in video games, but due to their length and complexity, would offer no greater assurance that ESRB raters would find and review all of the pertinent content.

Lastly, ESRB ratings are based on the consensus of independent raters whose values and judgment reflect those of the mainstream American public, especially parents (see Consumer Research below). Requiring all ESRB raters to be expert gamers (which they would need to be if the rating process depended on playing through every game submitted) may hinder the ESRB's ability to recruit a diverse rater pool that is reflective of mainstream public opinion.

For all of the above reasons, ESRB legally requires publishers to disclose all pertinent content in their game, including the most extreme, no matter how hidden and difficult to find, so that raters can and do assign an accurate rating.

ESRB Enforcement System

As the game industry's self-regulatory body, the ESRB is responsible for the enforcement of its rating system. The ESRB enforcement system has been praised by the U.S. Federal Trade Commission and several government leaders for its efficacy and comprehensiveness, setting it apart from other entertainment media rating systems in terms of its scope and severity[2]. Companies who do not comply with ESRB guidelines are subject to a wide range of ESRB sanctions, including fines, corrective actions, and other penalties. In fact, a complete review of the ESRB enforcement system was recently completed with the expert counsel and support of prominent attorneys Eric Holder, Jr., Partner with Covington & Burling and former U.S. Deputy Attorney General,

[2] See Appendix A, excerpts from FTC reports to Congress and statements by government officials.

and Joseph diGenova, Founding Partner with diGenova & Toensing, LLP, former U.S. Attorney for the District of Columbia and special counsel for some of the most highly visible governmental inquiries in recent history. Their review resulted in a new class of violations for an "egregious" failure to disclose pertinent content, carrying a fine up to $1,000,000, among other enhancements. A letter from both Mr. DiGenova and Mr. Holder, in which they state that the video game industry is "taking great care to protect consumers and to fulfill the responsibilities and obligations of its self-regulatory system," is attached for the consideration of this Subcommittee.[3]

Ratings

Every publisher of a game rated by the ESRB is legally bound to disclose all pertinent content when submitting the game for an ESRB rating, including, as of July 2005, content that is programmed to be inaccessible and will remain "locked out" in the final code of the game.[4] To ensure that all pertinent content was fully disclosed during the rating process, after a game is publicly released, ESRB testers review randomly and hand-selected final product. In the event that material that would have affected the assignment of a rating or content descriptor is found to have not been previously disclosed, the ESRB is empowered to impose corrective actions and a wide range of sanctions, including points, monetary fines up to $1 million for the most egregious offenses, and even suspension of rating services. Corrective actions can include pulling advertising until ratings information can be corrected, stickering packaging with correct ratings information, recalling the product, and other steps the publisher must take so the consumer has accurate information.

Last year, a widely publicized incident involving the game *Grand Theft Auto: San Andreas* showed how effective and forceful an enforcement system we have at our disposal. After ESRB confirmed that the game's publisher, Rockstar Games, had not disclosed sexually explicit content that was "locked out" in the code of the game[5] but which could be accessed if players downloaded from the Internet a modification (dubbed "Hot Coffee") created by a hacker, ESRB swiftly announced the revocation of the game's initial M (Mature) rating and re-rated it AO (Adults Only).[6] Additionally, the publisher agreed to advise retailers to immediately cease sales of the game until all inventory in the retail channel could either be stickered with the AO rating, or existing copies could be exchanged for new versions without the locked-out content, maintaining the original M rating. Further, the publisher agreed to make available on the Internet a patch for parents to download which would make the modification inoperable on the PC version of the game. I submit that there is no other industry self-regulatory system willing or capable of imposing such swift and sweeping sanctions on its own members, which in this particular case resulted in the removal of a top-selling product from the market and a major loss of sales.

Opportunistic activists with their own agendas capitalized on the issue by casting "Hot Coffee" as evidence of a broken rating system and turning it into a political football. However, the facts make it abundantly clear that the actions taken by ESRB are strong

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[3] See Appendix B, March 27, 2006 letter from Eric Holder, Jr. and Joseph DiGenova

[4] See Appendix C, regarding "locked out" content

[5] At the time that *Grand Theft Auto: San Andreas* was submitted for rating, ESRB's published submission rules did not require the disclosure of "locked-out" content.

[6] See Appendix D, ESRB press release on the outcome of the ESRB investigation into *Grand Theft Auto: San Andreas*

evidence of an extremely capable self-regulatory body. In 30 days, the ESRB had thoroughly investigated a complex and unprecedented situation affecting one of the most popular video games ever released, had assessed the implications and scope of the content and its availability, changed its policies regarding disclosure requirements for locked-out content, and imposed prudent corrective actions on the publisher that effectively removed a top-selling product from the marketplace. These actions were taken with the interest of consumers and their trust in the ratings as our highest priority. Contrary to what some may say, there exists no rating system, nor could there ever, that would have discovered this content prior to the game's release. The only course of action was to respond quickly and effectively and revise policies as necessary, which is precisely what we did.

More recently, the ESRB moved to re-rate another top-selling game, *The Elder Scrolls IV: Oblivion* due in part to the failure to disclose pertinent, locked-out content. The primary reason for this re-rating, however, was due to content that was discovered to be in the game that exceeded in terms of intensity and detail that which was disclosed by the co-publisher, Bethesda Softworks, during the rating process. Specifically, the game contained more extreme depictions of blood and gore than were included in the publisher's submission, and after a prompt and thorough review the ESRB changed the rating assigned to the game from T (Teen) to M (Mature). This action required the publisher to sticker all existing, unsold merchandise, reproduce the game without the locked-out content and make a patch available online that consumers could download and install to render the locked-out code inaccessible.

Both of these instances, though rare and unfortunate, demonstrate just how agile and effective the ESRB's enforcement system is, and how willing and able ESRB is to forcefully use it to ensure accurate and reliable ratings.

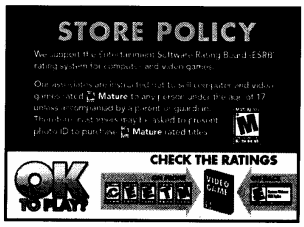
Advertising & Marketing

ESRB self-regulatory activities span advertising and marketing practices, as well. Publishers of games carrying an ESRB rating are also legally bound to follow the industry-adopted "Principles and Guidelines for Responsible Advertising Practices" along with an "Advertising Code of Conduct." The ESRB's Advertising Review Council (ARC) is responsible for the oversight, compliance, and enforcement of all industry-adopted advertising and marketing guidelines. Specific marketing rules codified in the "Code of Conduct" address everything from the required size of rating icons on game boxes to guidelines for cross-sells and cross-promotions. The rules also address inappropriate target marketing; M (Mature) rated products cannot be advertised in media vehicles that have a strong following among minors (i.e., TV – no higher than 35% under 17 audience composition is permitted; Print – no higher than 45% or more under 17 readership composition is permitted).

Guidelines require that game advertisements accurately reflect the nature and content of the product and assigned rating; should not glamorize or exploit the ESRB rating; should be created with a sense of responsibility towards the public; should not contain any content that is likely to cause serious or widespread offense to the average consumer; and must not specifically target consumers for whom the product is not rated as appropriate.

ARC diligently monitors compliance with its marketing guidelines, and actively enforces them, as confirmed repeatedly in the Federal Trade Commission's periodic Report to Congress on the Marketing of Violent Entertainment to Children[7].

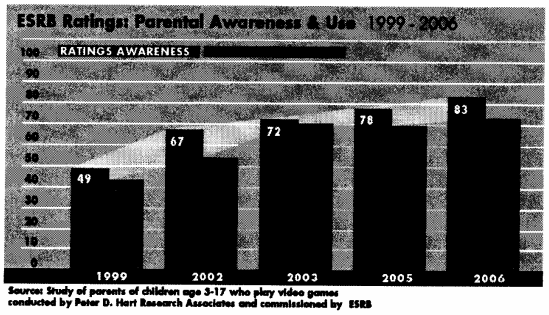
Retailer Support



Most retailers in the U.S. voluntarily refuse to stock games that do not carry an ESRB rating. While the ESRB does not have the authority to stop the sale of M (Mature) rated games to minors, we do work closely with retailers and game centers to display information that explains to consumers how the rating system works and, where appropriate, support their store policy pertaining to the sale or rental of Mature-rated games to minors without parental consent through training materials and in-store signage (see Partnerships below). Major retailers currently implement their own store policies requiring age verification for the sale of games rated M (Mature), and ESRB encourages and supports these efforts. According to a mystery shopper sting conducted earlier this year by the FTC, enforcement of those store policies has improved dramatically over the past couple of years, to a level that is now on par with admission to R-rated movies in theatres.

Consumer Research

In order to ensure that the ratings assigned by ESRB reflect the standards and meet the expectations of average American consumers, we conduct consumer research on an annual basis in ten different markets across the U.S. This research has consistently shown that parents overwhelmingly agree with the ratings that we apply. Peter D. Hart Research Associates, a nationally renowned independent opinion research firm, tests randomly selected video games rated during the prior 12 months with parents of children between the ages of 6 and 17. Parents are shown clips of actual game footage and then asked what rating they would apply. They are then asked to compare their own rating to the one actually assigned by the ESRB and whether they agree with it. Last year, this research found that parents agreed, or even thought our ratings were too strict, 87% of the time. Parents described the actual ratings as "about right" in 82% of all instances and "too strict" 5% of the time.



Source: Study of parents of children age 3-17 who play video games conducted by Peter D. Hart Research Associates and commissioned by ESRB

That said, ratings are only effective if they are being used, and so ESRB also commissions annual research of ratings awareness and use. In our most recent study conducted in March 2006, 83% of parents surveyed were aware of the ESRB ratings (up from 78% in 2005) and 74% use them regularly when choosing games for their

[7] Federal Trade Commission, Report to Congress on the Marketing of Violent Entertainment to Children, 2001-2004

families (up from 70% in 2005). Awareness of content descriptors also continues to grow, and is now at 65% (up from 61% in 2005). Fifty-three percent (53%) of parents "never" allow their children to play M-rated games and 41% "sometimes" do. Parents of kids under the age of 13 are almost twice as likely to "never" allow their children to play an M-rated game. Fully 91% of respondents indicated that they trust the ESRB ratings, saying their trust has either stayed "about the same" (76%) or increased (15%) during the past year. Other opinion polls conducted by Hart Research show that parents not only agree with specific ESRB ratings, but that 90 percent of them say the ESRB rating system provides the kind of information they need.

In fact, the number of messages received through ESRB's Contact Us page on our website from consumers disputing a specific rating is negligible[8]. Between October 2003 and December 2005, ESRB received over 17,000 consumer inquiries, of which only 1% (or approximately 240) involved a complaint about a particular rating assigned by ESRB, whether because they found it too lenient or too restrictive. Among these complaints, consumers were evenly split between claiming that the rating assigned was too restrictive or too lenient. As a point of reference, approximately 585 million computer and video game units were sold in the U.S during this same period[9].

Despite these convincing facts, ESRB is not without its detractors. Associate Professor Kimberly Thompson and graduate student Kevin Haninger of the Harvard School of Public Health have authored three studies to date regarding the "accuracy" of ESRB ratings. However, these studies are fundamentally flawed in many ways, the two most significant being that they are based on completely different criteria than the ESRB uses (and publicly states it uses) to assign content descriptors, and that the authors' conclusions on how to assign content descriptors are not at all representative of public opinion[10]. A great example of this difference of opinion can be seen in their study of titles rated E (Everyone), in which they determined that 62% of the gameplay content in the popular video game *Pac-man*, rated by the ESRB as E for Everyone with no descriptors, was made up of "violent" content based on their criteria and definition. This claim is just one of many that is entirely inconsistent with mainstream public opinion.

That being said, it should be made clear that these studies never venture to say that the age ratings we assign are inappropriate; they merely claim that games should carry additional content descriptors to the ones that ESRB already assigned, based on the erroneous assumption that ESRB content descriptors are – or should be – a listing of every type of content one might expect to encounter in a game. To the contrary, our content descriptors are assigned relative to their respective rating category, and are there to provide consumers with additional information about content in a game that may have triggered the rating assigned, or may be of interest or concern when deciding whether they consider the game to be appropriate. For instance, a Mature-rated game with various descriptors for violent, sexual and language content, in which a character smokes a cigarette, may not necessarily receive a *Use of Tobacco* content descriptor since such content, in the context of the general gameplay and the Mature rating assignment, does not merit nearly as great a concern as other content elements.

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[8] See Appendix E, regarding breakdown of ESRB consumer complaints received between October 2003 and December 2005

[9] The NPD Group

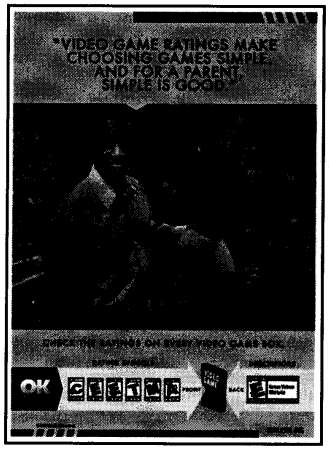
[10] See Appendix F, regarding ESRB assessment of and response to Harvard study of ratings for M-rated video games

The National Institute on Media and the Family (NIMF) has been another vocal critic of ESRB ratings. However, their claim of the ineffectiveness of ESRB ratings is not supported by their own review of games[11]. In fact, the game ratings issued by their group strongly support the reliability and accuracy of ESRB ratings in that they are overwhelmingly similar[12]. A recent review of NIMF's own age recommendations showed remarkably consistent agreement with those assigned by ESRB. In a pluralistic society like ours, which embraces diversity among its citizens, no rating system could ever achieve 100% popular consensus. However, it is clear that ESRB ratings are well within the American mainstream, and that's exactly where we strive to remain.

Consumer Education & Outreach

As noted earlier, a study conducted by the Federal Trade Commission in September 2000 reported that adults are involved in the purchase of games 83% of the time. The ESA has found in similar research that adults make or are involved in 92% of all game purchases. Regardless of the data source, it is clear that parents are either involved in or ultimately making the decision about what games their kids are playing an overwhelming majority of the time.

Keeping in mind the significant role parents play in making purchase decisions, the ESRB launched a multi-channel consumer marketing campaign in October 2003 featuring the slogan *"Ok To Play? – Check The Ratings."* The campaign, which is primarily composed of a public service announcements (PSA pictured at right) and a retail partnership program, encourages parents to use both components of the rating system (rating symbols and content descriptors) to determine if a game is appropriate for their family.



The campaign generates over a billion consumer impressions annually. Over 20 publications have run the print PSA ads, including publications like *Good Housekeeping, TV Guide, Family Circle, Oprah, Better Homes and Gardens, Ser Padres, Healthy Kids en Espanol, NY Post, Ladies' Home Journal, Entertainment Weekly, Redbook, Parents, Working Mother,* and *Disney Adventures*, among others. More than a dozen top game enthusiast publications support the campaign as well.

Because more than half of all games sold each year in the U.S. are sold during the holiday season, the ESRB also conducts an annual Holiday Outreach initiative that includes satellite television and radio media tours, print and radio PSAs, targeted outreach to parents through print and online outlets, and audio news releases. Last year's campaign generated approximately 150 million impressions during the holiday season alone.

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[11] See Appendix G, regarding ESRB comments on NIMF MediaWise Video Game Report Card 2005

[12] See Appendix H, regarding comparison of age recommendations for ESRB and NIMF

Partnerships

Retail

A critical part of our consumer awareness campaign is its unique retail partnership program. The overall goal of our retailer partnerships is to ensure that consumers are educated about and reminded to check the ratings when they are shopping for computer and video games. Rather than send posters or stand-alone brochures to stores that consumers may not notice, we have succeeded in getting signage displayed in stores representing the 18 top national retail accounts representing 90% of game sales, many of which have incorporated ratings education into their in-store display fixtures. ESRB has also provided many of these retailers with materials for sales associates to learn about the rating system, and has facilitated the training of nearly 45,000 store associates through an online training module.

National PTA

The ESRB has recently been working closely with the National PTA, whose president, Anna Weselak, called the ESRB ratings "an extremely useful and informative tool" while strongly encouraging parents to use it when choosing games for their families. ESRB is working with the NPTA to develop parent education materials that would be distributed to all state and local PTA chapters.

State and Local Governments

ESRB has established partnerships with various state and local governments, working with leaders and officials to promote and educate parents about the ratings. County Executive Andy Spano (Westchester County, NY), Assemblyman Ed Chavez (D-CA), State Attorneys General Mark Shurtleff of Utah and Thurbert Baker of Georgia, Puerto Rico Secretary of Consumer Affairs Alejandro Garcia and others have teamed up with ESRB to implement PSA campaigns, educational brochures and other projects aimed at raising awareness and use of the ratings.

Closing Statement

I hope this testimony has provided you with a clearer and broader understanding of the ESRB's self-regulatory role and responsibilities. As a relatively new and quickly evolving medium, there are many misperceptions about video games in general, and I'm grateful to have had the opportunity to explain what we do and how we do it. We take great pride in our work and the service we provide to parents and other consumers of computer and video games. I look forward to having a constructive dialogue with members of the committee and answering any questions that you may have.

Thank you.

ENTERTAINMENT SOFTWARE RATING BOARD
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APPENDIX A

Comments about the Entertainment Software Rating Board

U.S. Federal Trade Commission

[The electronic game industry is] disclosing rating information in most forms of advertising, and generally are doing so in a clear and conspicuous manner. (page 28 FTC Report 7/2004)

As the Commission has recognized in its prior reports, the electronic game industry has adopted numerous standards that limit children's exposure to ads for Mature-rated products and require the disclosure of rating information in most forms of advertising. The industry is actively enforcing these standards and penalizing those companies found to be in noncompliance. (page 28 FTC Report 7/2004)

[The electronic game industry has] taken positive steps in response to many of the Commission's past recommendations. (page 29 FTC Report 7/2004)

For the electronic game industry, the Commission found widespread compliance with industry standards limiting ads for M-rated games where children under 17 constitute a certain percentage of the audience – 35 percent for television and 45 percent for print. (page iii FTC Report 6/2002)

The Commission reviewed the packaging for 12 popular games. The Commission found a high level of compliance with the ESRB's packaging requirements. The packaging for all but one game fully complied with the requirements for the appearance, location, and size of the rating icons on the packaging, game disks, and game manuals. Compliance was nearly perfect with regard to the appearance and size of the content descriptors and the location of the content descriptor box. All of the rating icons and content descriptors were readable. (page 29 FTC Report 6/2002)

The Commission can report real progress in the disclosure of rating information in most forms of advertising, and nearly universal compliance by both the movie and electronic games industries with industry standards that restrict certain ad placements. (page 30 FTC Report 6/2002)

The ESRB has also undertaken substantial efforts to raise public awareness of the rating system and to educate the industry about compliance. (page 22 FTC Report 6/2002)

The electronic game industry has adopted numerous standards that discourage the targeting of children for Mature-rated products and require the disclosure of rating information in most forms of advertising. In addition, the industry has in place an extensive system to enforce those standards and bring about continued improvement in industry practices. (page 30 FTC Report 6/2002)

The Commission is encouraged by the motion picture and electronic game industries' initial responses to it September 2000 Report, but it is disappointed by the almost complete failure of the music recording industry to institute any positive reforms. (page iii FTC Report 4/2001)

The Commission found that practices adopted in the movie and electronic game industries since the September 2000 Report go a long way toward addressing some of the previously identified shortcomings in these areas. Both industries have taken steps to better communicate rating information to parents, and the game industry and a number of movie studios have placed some specific limits on ad placements to avoid targeting youths. (page 34 FTC Report 4/2001)

The Commission's review shows some improvement in the electronic game industry's advertising practices. The Commission found no ads for M-rated games on the popular teen television programs reviewed. The game company print ads nearly always included the game's rating icon (or the rating pending icon) and, in a large majority of instances, content descriptors. Television ads gave both audio and video disclosures of the game's rating, and more than 80 percent of the official game publisher Web sites displayed the game's rating. (page ii FTC Report 4/2001)

Six months after the Commission's September 2000 Report, it appears that the motion picture and electronic game industries have taken a number of significant steps to limit marketing violent R-rated films and M-rated games to children and to provide parents with more information regarding the content of their products. (page 25 FTC Report 4/2001)

Government Officials & Others

U.S. Senator Joseph Lieberman (D-CT): Praised the ESRB as offering "the best rating system in the entertainment media," and recognized "ESRB's ongoing commitment to helping parents make smart choices for their kids."

U.S. Senator Herb Kohl (D-WI): "The ratings system makes it crystal clear whether or not the content of the video game is appropriate for young children."

U.S. Senator George Allen (R-VA): "As a father, I appreciate that parents want to purchase their children these exciting games. I understand that it's easy just to grab whatever's on the shelf, but I encourage all parents to check a game's rating to make sure that what they're giving as a gift is OK to play."

County Executive Andrew Spano (Westchester, NY): "The ESRB ratings provide a helpful resource for parents in determining whether the video games that their children play are suitable. As the popularity of video games continues to rise, familiarity with the ratings system becomes all the more important."

Anna Weselak, National PTA President: "The ESRB rating system is an extremely useful and informative tool. We urge parents to check the ratings every time they buy video games for their families.

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March 28, 2006

HAND-DELIVERED

The Honorable Deborah Platt Majoras
Chairman
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Dear Chairman Majoras:

By way of this letter, we wish to share with you our perspective on the impressive efforts made by the Entertainment Software Rating Board (ESRB) to ensure the efficacy and credibility of the video game rating system it administers, and encourage you to consider our views in any future reports issued by the Federal Trade Commission touching on entertainment industry self-regulation generally, or the ESRB specifically.

Although we are partners in different law firms, we were both retained by ESRB in September 2005 to evaluate the effectiveness of the industry's enforcement system, which consisted of nine different classes of violations, and advise on changes required to ensure that the sanctions ESRB imposes are sufficient and credible.

It was clear to us when we began our work that ESRB already had a sound system in place. When ESRB concluded that there had been undisclosed content on a disc that undermined the accuracy of its rating, it compelled one of the industry's largest and most successful publishers to effectively recall a best-selling product from the market. This action came at considerable cost to the publisher's fiscal health and its industry credibility. This decisive, effective step by ESRB offers strong validation to our view.

Given the enormous length of video games (anywhere from 10-100+ hours of game play) and their complexity (many games are released with 200-page guides to help players complete a game), it is obviously impractical and arguably unwise for anyone to rate games based solely on playing them from start to finish. Any rating system for this interactive medium, therefore, must necessarily be predicated on full disclosure of all pertinent content by the game creators. A critical question is whether those subjected to ESRB ratings are adequately incentivized to fully disclose pertinent content.

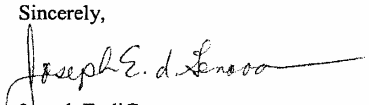
Over the last six months, we have worked with the ESRB and industry members to further strengthen those incentives and its enforcement system overall. Based on our review, and considering the material enhancements voluntarily implemented by the ESRB (including the ability to impose a fine up to $1,000,000 for an egregious failure to disclose pertinent content), we believe that this rating system has no equal in the entertainment sector. In our opinion, this system should be the model of self-regulation for any industry in America.

In addition to the significant enhancements made to its enforcement system, ESRB changed its submission policies last July to require the disclosure of *all* pertinent content shipped in the final product, even if it is never intended to be accessed during game play. Furthermore, to assess what risk, if any, existed in games released during the year leading up to the "Hot Coffee" incident, publishers were required to conduct an audit of the top-selling 100 PC games to determine if any other previously undisclosed "locked out" content existed in the code. The audit results indicate that no other previously undisclosed pertinent content exists in the code of those games, and therefore, one can reasonably conclude that the "Hot Coffee" content was a unique circumstance and the risk of further damage to the consumer is minimal at best.

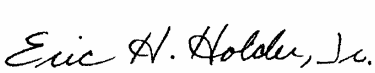
It has become clear to us that this is an industry that is taking great care to protect consumers and to fulfill the responsibilities and obligations of its self-regulatory system.

We are happy to meet with you to discuss these issues in more detail, and appreciate your consideration of these views as the agency conducts its work in this area.

Sincerely,



Joseph E. diGenova
Founding Partner
diGenova & Toensing, LLP



Eric H. Holder, Jr.
Partner
Covington & Burling

cc: The Honorable Pamela Jones Harbour
Commissioner

The Honorable Jon D. Leibowitz
Commissioner

The Honorable William E. Kovacic
Commissioner

The Honorable J. Thomas Rosch
Commissioner

Mr. Richard F. Kelly
Senior Attorney
Division of Advertising Practices

Mr. Keith Fentonmiller
Division of Advertising Practices

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APPENDIX C

COMPUTER AND VIDEO GAMES: LOCKED OUT CONTENT, "MODS" AND ESRB RATINGS

OVERVIEW

Video games are unlike other forms of entertainment media. While film and TV are linear forms of entertainment that are edited to be consumed sequentially, video games are essentially computer software, meticulously constructed of innumerable fragments of interlocking code. These individual pieces of code interact with one another based on input from the user to make a video game work. As the complexity of games advances, the underlying software programming that operates these games continues to get larger and more intricate, oftentimes amounting to millions of lines of code on a single disc.

LOCKED-OUT CONTENT

Because of the inherently complicated nature of computer code, it is oftentimes exceedingly difficult, if not impossible, to simply delete or remove a piece of code the way a scene can be "cut" from a movie or a verse edited out of a song. As a consequence, when developing a video game, undesired or unusable pieces of code are often "locked out" of the game itself while continuing to reside in the overall code. In other words, the game is programmed not to access those pieces of information, but the code itself (called "remnant code") remains. Locking out code and making it inaccessible through normal use has been and will continue to be standard practice in software development.

MODS

Due to the fact that computer and video games are essentially computer software, they are intrinsically prone to being manipulated by individuals with the requisite tools and expertise. The software modifications (called "mods") that these individuals (called "modders") create can alter elements of a game, whether by changing the data that already exists in the code or adding newly developed components. These mods can result in various and occasionally substantial changes to the original game, such as new "skins" on character models, enhanced blood effects, or easier access to/playability of certain levels in a game just to mention a few. Accessing and "modding" of game code, however, is primarily done utilizing the PC version of a game since game consoles do not afford users the ability to view and change the code itself (unless the internal controls and security system of certain hardware devices have been modified). Moreover, consoles do not generally allow a means for mods to be installed without accessory devices, so mods are commonly only usable with the PC version of games.

HOW THESE ISSUES IMPACT ESRB RATINGS

ESRB ratings depend on and require full disclosure from publishers, and have always been based on a review of all pertinent content found in a game, including playable content that is accessed through cheat codes, locked levels, Easter eggs, etc. These game elements are different from mods however, in that they are accessed through the playable portions of the game itself, whereas a mod that alters or introduces new content can only be accessed by external means (i.e., a downloadable software patch).

While mods only affect a relatively small segment of games sold overall*, the ESRB recognizes that they can potentially threaten the accuracy and integrity of game ratings, particularly when they introduce or unlock content that unquestionably undermines that rating. In the case of content created by a modder and introduced into a game, ESRB cannot hold publishers accountable for the actions of individuals over whom they exercise little control. However, with respect to content that was created by the publisher and exists on a game disc, even though programmed to be locked out and inaccessible to the player, the ESRB has revised its content disclosure requirements (as of July 2005) that publishers must disclose any and all pertinent content found on the game disc, regardless of how accessible or playable it is. This is done to ensure that the rating on each game's package is truly and completely reflective of the product inside, and that consumers can continue to trust its overall accuracy.

* PC games sales in the US for 2005 represented less than 14% of total game sales according to NPD.

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APPENDIX D

FOR IMMEDIATE RELEASE
July 20, 2005

Contact: Eliot Mizrachi
(917) 522-3235
emizrachi@esrb.org

ESRB CONCLUDES INVESTIGATION INTO GRAND THEFT AUTO: SAN ANDREAS; REVOKES M (MATURE) RATING

NEW YORK – The Entertainment Software Rating Board (ESRB) today announced the findings of its investigation into the "Hot Coffee" modification for Grand Theft Auto: San Andreas, and its immediate revocation of the game's M (Mature 17+) rating[1]. The game's publisher, Rockstar Games, a subsidiary of Take-Two Interactive Software, Inc., will immediately advise retailers to cease all sales of the game until corrective actions, as mandated by the ESRB, can be taken.

"After a thorough investigation, we have concluded that sexually explicit material exists in a fully rendered, unmodified form on the final discs of all three platform versions of the game (i.e., PC CD-ROM, Xbox and PS2)," said Patricia Vance, president of the ESRB. "However, the material was programmed by Rockstar to be inaccessible to the player and they have stated that it was never intended to be made accessible. The material can only be accessed by downloading a software patch, created by an independent third party without Rockstar's permission, which is now freely available on the internet and through console accessories. Considering the existence of the undisclosed and highly pertinent content on the final discs, compounded by the broad distribution of the third party modification, the credibility and utility of the initial ESRB rating has been seriously undermined."

In addition to directing retailers to cease all sales of the game, Rockstar has agreed to take the following ESRB-mandated corrective actions:

- Offer retailers the option of either re-stickering existing inventory with an AO (Adults Only 18+) rating, or exchanging all unsold inventory for new versions of the game that has the hidden content removed and the original M rating intact.

- Make a downloadable patch available to all consumers who have previously purchased the PC version of the game, which will make the modification that unlocks the material inoperable.

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[1] *Grand Theft Auto: San Andreas was originally released with an M (Mature 17+) rating with Strong Sexual Content, Intense Violence, Strong Language, Blood and Gore, and Use of Drugs.*

Going forward, the ESRB will now require all game publishers to submit any pertinent content shipped in final product even if is not intended to ever be accessed during game play, or remove it from the final disc. Furthermore, the ESRB calls on the computer and video game industry to proactively protect their games from illegal modifications by third parties, particularly when they serve to undermine the accuracy of the rating.

"The integrity of the ESRB rating system rests upon its accuracy and reliability, and we will continue to do whatever is necessary to protect the public's trust in it. Independent research confirms that the overwhelming majority of consumers find ESRB ratings to be an effective tool to help make informed purchase decisions," continued Ms. Vance. "We encourage every parent to always check the ratings before bringing games home for their families, and to actively monitor what their children play."

-30-

About Entertainment Software Rating Board (ESRB)
The Entertainment Software Rating Board (ESRB) is a non-profit, self-regulatory body established in 1994 by the Entertainment Software Association (ESA). ESRB independently assigns ratings, enforces advertising guidelines, and helps ensure responsible online privacy practices for the interactive entertainment software industry.

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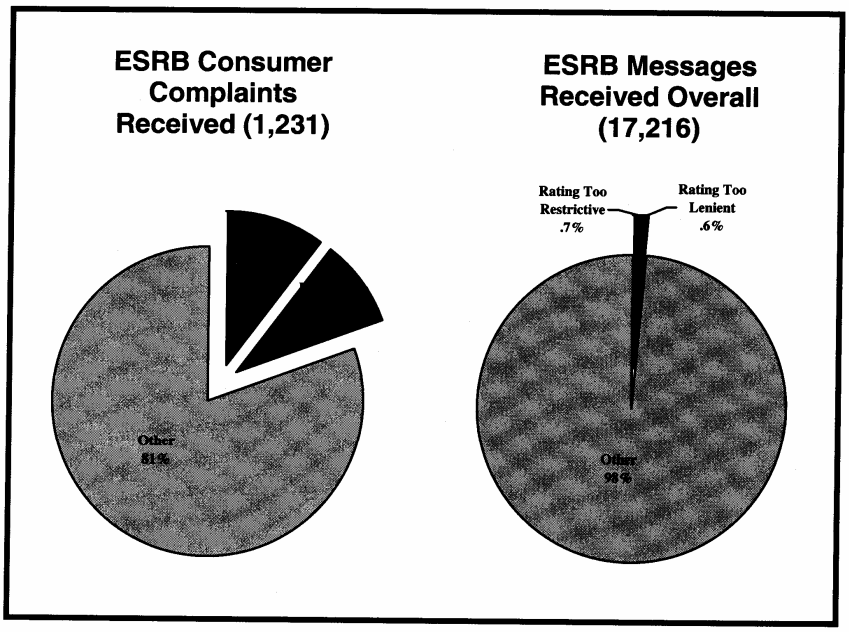
Appendix E

ESRB Consumer Complaint Breakdown
October 2003 – December 2005

Between October 2003 and December 2005, the ESRB received a total of 17,216 consumer inquiries through its website. Of those, 1,231 (7%) were consumer complaints regarding ratings assigned.

As seen in the charts below, a total of 125 messages (10% of all complaints, 0.7% of messages received overall) complained that the rating assigned by ESRB was too restrictive, while 115 of the messages (9% of all complaints, 0.6% of messages received overall) complained that the rating was too lenient.



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Appendix F

ESRB Response to
Harvard School of Public Health Study Regarding
"Content and Ratings of Mature-Rated Video Games"

Overview
The Harvard School of Public Health study of the ratings and content descriptors assigned to games rated M (Mature 17+) by the ESRB, which was released by Associate Professor Kimberly M. Thompson in April 2006, simply serves to confirm the obvious – that M-rated games have content that is not suitable for younger players. The study suffers from numerous methodological flaws, and the results are not reflective of the way that ESRB assigns ratings and content descriptors, nor parents' views about content. Parents overwhelmingly agree with, trust and use ESRB ratings in choosing appropriate games for their families.

Difference of Opinion
What actually becomes clear after reviewing the study is not that ESRB ratings are somehow inaccurate, but that the authors simply think games should be rated differently. One of the most glaring examples of this difference of opinion can be seen in their study of E-rated games, in which they determined that 62% of the gameplay content in *Pac-Man* contained "violence" as they define it (similar examples are found throughout each of the authors' studies on game ratings). The overwhelming majority of parents, however, would likely disagree with such an assessment. One fundamental reason for this disparity is that the authors substitute their own criteria and definitions when evaluating content descriptors, which differ from those used by ESRB raters and are publicly stated on our website. Further, they mistakenly assume that any depiction of potentially pertinent content is worthy of a content descriptor. However, content descriptors are assigned within the context of the corresponding rating category, and so nearly every single instance of unlabelled content cited in the study (see ESRB Review below) can be considered undeserving of a content descriptor in a Mature-rated game.

The role of content descriptors is not to list every type of content in a game regardless of how fleeting or insignificant the depiction, and consumers recognize that an M-rated game contains content that is not intended for children. Absent from mention in both Harvard's release and the published study itself is the official purpose of ESRB content descriptors (i.e., to "indicate elements in a game that may have triggered a particular rating and/or may be of interest or concern") or the official definition of ESRB's M (Mature 17+) rating category, on which this study focuses, which specifically mentions "intense violence, blood and gore, sexual content and/or strong language," the very same types of content considered unlabelled by the study (see http://www.esrb.org/ratings/ratings_guide.jsp). This might serve to explain why the study never once states that any of the instances of unlabelled depictions involve content that is inappropriate given the Mature rating assigned.

ESRB Review
Based on an ESRB review of all 30 games cited by the authors as having unlabelled content using a combination of internal expertise about the games and utilizing the same play-testing methodology employed by the Harvard study, there is not one instance of alleged unlabelled content that warrants a change in the original rating assignment. In all cases the content in question, whether previously disclosed to the ESRB or not, would not have warranted a content

descriptor due to the criteria that ESRB employs or, in several instances, the availability of appropriate content descriptors at the time of the rating assignment. For instance, an M-rated game with several descriptors for content of a certain degree of severity and in which a character smokes a cigarette may not receive a *Use of Tobacco* content descriptor since it presence in the game is less significant considering the overall rating assigned. In other words, it would not be responsible for either "triggering" a rating nor would it rise to a level of "interest or concern" when considering the other types of more extreme content in the game.

It is also worth noting that, contrary to the misleading headline of the study, the authors reported that 97% of games containing violence are labeled by ESRB with a content descriptor that indicates the game contains such content; approximately the same level of agreement was found for the presence of blood in a game.

Full Disclosure of Pertinent Content
The ESRB requires that game publishers complete and submit an extremely detailed written document describing and disclosing all pertinent content found in a game, as well as a videotape that captures these depictions in context. This is done to ensure that raters are presented with all pertinent gameplay content, and therefore can and do assign accurate ratings. Additionally, after a game ships, ESRB staff performs play-tests on randomly and hand-selected games to ensure that disclosure was complete and the rating assigned is accurate. These three components have consistently produced thorough, reliable, accurate ratings with which parents agree or find "too strict" nearly 90% of the time[1].

Assigning Ratings by Playing Games
The recommendation by the authors that ESRB play games as part of the rating process is naïve and impractical given the length, complexity and repetitiveness of interactive gameplay. Many games today take upwards of 50 hours to complete and have 200-page guides to help players complete them. If ESRB were to play-test every game, we would be no more certain that we had seen everything in the game than without doing so, not to mention the fact that it is highly impractical to play through each of the over 1,000 games we rate each year. Further, it would demand that raters be expert gamers, which would likely diminish ESRB's ability to assign ratings that are representative of the views of parents and the public in general. Lastly, since ESRB ratings must appear on game packaging when the product is released, we will oftentimes receive games that are not yet fully playable at that point in the development process. The authors' recommendation is pleasant in theory and senseless in practice; moreover, the ESRB rating process is more thorough and effective than Professor Thompson's, which involves playing a game for only one hour.

Retail Enforcement
The Harvard study discounts recent FTC data on retailer enforcement of store policies not to sell Mature-rated games to minors, instead citing outdated data from a report that is 3 years old. The FTC recently released its most current report citing dramatic improvement in retailer enforcement, especially among national retailers, where minors were stopped from purchasing M-rated games 65% of the time. This is on par with the "gold standard" level of enforcement for R-rated movies at theatres. The authors also failed to state that the FTC found that adults are involved in the purchase of video games 83% the time, which means that the vast majority of purchases are made by adults who are knowledgeable about the ratings and can and do make informed decisions about which games they deem appropriate for their children and family.

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[1] Peter D. Hart Research Associates study conducted November 2005 and commissioned by ESRB

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Appendix G

Comments on MediaWise® Video Game Report Card 2005

NIMF Claim: ESRB Ratings are inaccurate.

ESRB Response: NIMF's own ratings agree with those of the ESRB over 80% of the time.

- NIMF failed to disclose that its own age recommendations for the video games they have reviewed and posted on their website are virtually identical to ESRB age recommendations (see Appendix I). In fact, in most of the cases where there are differences, it is only by a single year, e.g. 17 year old vs. 18 year old, 13 year old vs. 14 year old. In several other cases, ESRB ratings are stricter than those issued by NIMF.

- The examples NIMF provides of inaccurate ESRB ratings focus on games rated M (Mature for 17+), which they believe should have received an AO (Adults Only for 18+). However, there is no scientific or medical justification from a developmental standpoint to distinguish games that are more suitable for 17 year olds vs. 18 year olds, so this seems an extremely shaky basis on which to declare that ESRB ratings are inaccurate. In truth, this has nothing to do with accuracy of ratings. Knowing that retailers generally will not carry AO games, NIMF's attack on ESRB ratings has nothing to do with whether a rating is accurate and everything to do with the real agenda of NIMF, which is to ban the sale of games it does not like.

NIMF Claim: The National PTA supports and will participate in NIMF's conference to overhaul ESRB ratings.

ESRB Response: The National PTA has revoked its agreement to participate in the conference due to their lack of support of NIMF's previously undisclosed agenda.

- Since NIMF's announcement on November 29th, the PTA has since confirmed that it was deceived about the true objective of the summit, and has rescinded its agreement to participate. In a recent letter to Dr. Walsh, National PTA President Anna Weselak reiterates her organization's support of and partnership with the ESRB to "better assist parents and children in understanding the ratings and in making smart choices in purchase and game play."

NIMF Claim: Parents don't agree with ESRB ratings.

ESRB Response: Research on parental agreement with ESRB ratings (NIMF has conducted no such research) indicates overwhelming agreement with ESRB ratings.

- NIMF is free to disagree with ESRB ratings, but its own opinions about how certain games should be rated do not serve as a substitute for scientifically valid and well-documented research of how parents really feel about ESRB ratings.

- Each year the ESRB commissions a leading public opinion research firm, Peter D. Hart Research Associates, to measure parental agreement with the ratings. Its most recent study conducted this past October (with a sample size of 400 parents with children between the ages of 3 and 17 who play video games) found that **parents agree with the ESRB ratings 82% of the time**, and find them to be "too strict" an additional 5% of the time.

- The only other recent independent study on ratings accuracy that ESRB is aware of is one conducted by the Henry J. Kaiser Family Foundation in 2004, in which parents were asked how "useful" each of the entertainment rating systems were in helping them guide their purchase or viewing decisions. **91% of parents stated that the video game ratings were either "very useful" (53%, the highest of any rating system) or somewhat "useful" (38%).** If parents thought ESRB ratings were inaccurate, it is reasonable to assume that they would find the system to be *not* useful. 1,001 parents of children aged 2-17 were included in the Kaiser study.

NIMF Claim: The low number of Adults Only (AO)–rated games proves that ESRB has a conflict of interest and is protecting publishers from the risk of diminished retail distribution.

ESRB Response: The fact is that ESRB has assigned AO ratings on many occasions, and publishers quite reasonably choose to edit titles to obtain a Mature rating due to the limited market acceptance of AO games.

- Game creators and publishers have no influence whatsoever over the assignment of ESRB ratings. The fact is that each ESRB rating is based on the majority consensus of independent raters who have no ties to the game industry whatsoever. ESRB manages a pool of part-time adult raters from diverse backgrounds, all of whom have some type of experience with children. Raters spend 2-3 hours a week viewing content and, using their own personal judgment, assign age ratings and content descriptors that they believe would be most helpful to parents, regardless of the game publisher's marketing objectives or commercial consequences.

- If a game publisher is not satisfied with the rating assignment it receives from the ESRB, it may modify the game and resubmit it, at which point the process starts anew. In other words, if independent raters saw content that they believed should be rated AO, the rating assignment would reflect their views.

NIMF Claim: ESRB ratings don't reflect increasing levels of violence, sex and language.

ESRB Response: NIMF relied on a for-profit company with a vested financial interest in undermining the ESRB (PSVratings, Inc.) to prove this theory. Beyond the obvious conflict of interest, the methodology employed barely passes the laugh test.

- NIMF sought to "quantify" the degree to which games have become more violent, sexual, or crude by hand-selecting a mere 6 M-rated games from the late 1990's and comparing them to 6 completely different M-rated games rated in 2004. This is nonsensical. What does it prove by comparing completely different games from different eras? Such a selection process is without any scientific basis.

- Furthermore, the entire PSV approach is flawed. It derives ratings by counting, for example, how many times particular acts of violence occurs, but the essence of interactive games is that each individual player controls what happens in the game, and thus there could be wide

variations in the level of violence, sex or profanity from player to player. This makes quantifying game content impractical, and even PSVratings' Disclaimer acknowledges this fact.

- The fact is that the percentage of Mature rating assignments overall has continued to increase over the years, although in 2005, the percentage of games rated M for Mature remained level with the prior year at 12%. Furthermore, the assignment of ESRB content descriptors for violence, sexual content and language has also increased significantly in recent years. In other words, ESRB ratings have kept up with the aging demographics of gamers and the increasing sophistication of storyline and character development in gameplay over the years.

NIMF Claim: The "Hot Coffee" mod for *Grand Theft Auto: San Andreas* shows "deep flaws" in the self-regulatory system.

ESRB Response: In fact, the actions taken by the ESRB this summer in response to a hacker's unlocking of previously unrated content prove just how effective the self-regulatory system is, as supported in the public statements of Senator Hillary Clinton, Senator Joe Lieberman, and other governmental officials.

- "I applaud the ESRB for its quick and thorough investigation," stated Senator Hillary Clinton in a press release issued following the ESRB's announcement. "I am pleased that the ESRB moved promptly with their investigation, and demanded immediate corrective action, " stated Senator Joe Lieberman. These are just two examples of statements made by governmental officials praising the swiftness and effectiveness of ESRB actions to address the problem.

- Despite Dr. Walsh's publicly taking credit for discovering the game's previously undisclosed content, not to mention the removal of the game from store shelves – acts over which he had no influence whatsoever – NIMF is well aware that ESRB had begun investigating the alleged undisclosed content before he inquired about it. Moreover, product was removed from retail shelves immediately following ESRB's public announcement of the outcome of its investigation and the actions that Take 2 would be taking to address the situation.

- It's easy to criticize, but given the reality that some games take more than 100 hours to play, requiring great skill to reach every level and access every bit of code, any rating system would naturally have to rely to a large extent on disclosure of content by the creator. And considering the "Hot Coffee" scene had been "locked out" by the game's programmers, no rating entity, even if NIMF was the rating czar it seeks to be, would have found it without the use of sophisticated hacking tools and expert programmers on staff to modify the underlying source code of the game.

NIMF Claim: Efforts to improve the system have not worked and the system is "beyond repair."

ESRB Response: Only 16 months earlier, NIMF issued a press release "applauding the ESRB for its reforms to its rating system," and encouraging parents to use them. Since that time, NIMF has not expressed any issues with the rating system directly to the ESRB.

- In fact, NIMF has never contacted the ESRB to check facts in advance of releasing its Report Card, and yet each edition contains factual errors, hyperbole and highly misleading statements that ignore relevant data points. To make matters worse, ESRB's regular attempts to correct errors and set the record straight for future reports have been repeatedly ignored by NIMF.

Appendix H

RATINGS COMPARISON FOR ESRB AND NIMF

TITLE	ESRB RATING CATEGORY	NIMF MEDIAWISE AGE RECOMMENDATION
Empire Earth 2	T 13+	12+
Pariah	M 17+	17+
Psychonauts	T 13+	13+
Unreal Championship: The Liandri Conflict	M 17+	17+
Star Wars: Republic Commando	T 13+	14+
Kingdom Hearts: Chain of Memories	E 6+	6+
World of Warcraft	T 13+	15+
StarFox Assault	T 13+	12+
MechAssault 2: Lone Wolf	T 13+	13+
Star Wars: Knights of the Old Republic 2: The Sith Lords	T 13+	13+
Mortal Kombat: Deception	M 17+	18+
PSI OPS: The Mindgate Conspiracy	M 17+	18+
Halo 2	M 17+	18+
Doom 3	M 17+	17+
Drive3r	M 17+	17+
Grand Theft Auto: San Andreas	M 17+	18+
Halo: Combat Evolved	M 17+	17+
Star Wars: Knights of the Old Republic	T 13+	14+
Resident Evil: Outbreak	M 17+	17+
Battlefield Vietnam	T 13+	13+
Max Payne 2: The Fall of Max Payne	M 17+	17+
Manhunt	M 17+	17+
Viewtiful Joe	T 13+	13+
Prince of Persia - Sands of Time	T 13+	13+
Diablo II / Diablo II Expansion	M 17+	17+
SimCity 4	E 6+	8+
NBA Street Vol 2	E 6+	6+
Enter The Matrix	T 13+	16+
The Legend of Zelda: The Wind Waker	E 6+	10+
Rise of Nations	T 13+	13+
SSX 3	E 6+	8+
Conker: Live and Reloaded	M 17+	17+
Harvest Moon: More Friends of Mineral Town	E 6+	8+
Kindom Hearts 2	E 10+	12+
Pirates!	E 6+	6+
Tony Hawk's American Wasteland	T 13+	13+
X-Men Legends II: Rise of the Apocalypse	T 13+	11+
Dungeons and Dragons Online: StormReach	T 13+	13+
Black & White 2	T 13+	13+
F.E.A.R.: First Encounter Assault Recon	M 17+	17+
WWE Smackdown vs Raw 2006	T 13+	15+
Lord of the Rings: Battle for Middle Earth	T 13+	13+
Tomb Raider: Legends	T 13+	13+

MR. STEARNS. Dr. Thompson, welcome.

DR. THOMPSON. Thank you. Mr. Chairman and members of the subcommittee, thank you very much for inviting me here today. I appreciate the opportunity to talk with you. As a parent, consumer,

educator and active academic researcher on media content, and videos specifically, I welcome the opportunity to comment on the observations that we have made about the content and ratings of video games in the context of our peer-reviewed studies and questions that I believe that the industry and the ESRB should address related to the process for rated games. So in the context of our studies which are attached to the statement I have submitted to you, I just want to give you a few of the highlights of some of our results.

In our study of "E"-rated games, those are games rated for 6 and up, we found that 64 percent of those games contained violence with injuring characters rewarded or required for advancement in those games. So talking about incentives, as Mr. Murphy raised, we are finding evidence of that starting in the "E"-rated games at 60 percent of those games rewarding violent game play.

We also in our study of "Teen"-rated games observed content that we thought could warrant an ESRB content descriptor in almost half of the games for which ESRB had not assigned a content descriptor.

Let me put in context that what we do is we take a random sample of the games. We play them. We record the game play and code that game play so that what we can do is compare what we find in the actual game play to what the ESRB discloses in the ratings. Because we play them, we are able to then see games where they have assigned a content descriptor and compare the content that they have given those content descriptors to games where they have not. And we see similar content where they have assigned those kind of descriptors and then games where we think they should have it, but that is not assigned. So it is not like it is just based on my personal opinion on any individual game. This is based on a rigorous scientific method.

In our study of "Teen"-rated games, we found that 98 percent of the games involved intentional violence, with 36 percent of the game play time involving violence. And just to give you a number that puts the violence in terms of a death toll, over the entire sample we found that the players were viewing, or in many cases instigating, virtual human deaths at a rate of 61 deaths per hour of game play. That is a virtual human death per minute.

In our sample of "M"-rated video games that we played, we observed content that we thought could warrant an ESRB content descriptor in 81 percent of the games for which the ESRB had not assigned a content descriptor. We found that all the games contained intentional acts of violence. And in this case 78 percent of the games rewarded or required the player to destroy objects, 100 percent rewarded or required the player to injure characters, and 92 percent rewarded or

required the player to kill. In this context we again had 104 virtual human deaths per hour. We are seeing a lot of deaths in these games.

We consistently find that the games contain a significant amount of violent and explicit content that may be of concern to parents, and it is, in our opinion, inconsistently labeled by the Rating Board. Given this research, I believe that there are several important improvements in the rating system that are needed, and I hope that this committee will ask questions about the ratings to ensure that the industry, in fact, has the right incentives to improve them.

Point number one is that I believe the ESRB should play each and every game prior to assigning its age-based ratings and content descriptors. We have said since our 2001 study on "E"-rated games that we thought the ESRB should make playing games part of its ratings process. And we specifically said in one of our 2004 studies on "Teen"-rated games, "Our results also suggest the ESRB should play the video games as part of its rating process to provide a means to ensure the absence of content other than that indicated by the material submitted to the ESRB by the game manufacturers. However, we emphasize that game manufacturers should continue to provide all the information they currently provide to the ESRB because the rater should not have to play the entire game prior to assigning the rating; anyone playing the game could miss specific content."

Thus, to be completely clear, we suggest the ESRB should play the finished game as it would be played by consumers before assigning its ratings, in addition to its current process of collecting information from the publishers. We have not stipulated any length of time they should play, nor have we said the raters themselves must play. We remain very concerned, however, that the inability of the ESRB to play the games prior to assigning its ratings means the ESRB cannot independently evaluate the content of games, which in turn undermines consumer confidence in the ratings.

We also are not able to determine whether the mismatch between our observations and the ESRB content descriptors results from a failure of publishers to disclose content to the ESRB, the ESRB's decisions not to provide content descriptors that we would expect based on its definitions and what we observe in other games that receive the same ESRB content descriptors, or if the game content changes between the assignment of the ratings and the packaging of the final product. Thus, we believe the ESRB should play the finished games before it assigns ratings, and we believe the recent decision by the ESRB to re-rate Elder Scrolls IV: Oblivion, which was mentioned earlier, from "Teen" to "Mature" clearly demonstrates that playing the game made a difference. What was unfortunate in this case, and also, of course, in the case of San Andreas,

is that those games were extensively sold, marketed, and played prior to the time the correction was made. So obviously this is an important concern for the committee.

Point number two is I believe the ESRB should make its rating process and the terms that it uses in its ratings more transparent. Our studies point to the need for clear, consistent, and well-communicated criteria for assigning age-based ratings and content descriptors. Our studies rely on playing the actual games, coding them, and comparing the observed content to what we observe in other games based on the ESRB's published information.

We believe that more clarity and transparency would be very helpful to the industry as well. For example, in response to its decision to change the Elder Scrolls rating on Oblivion, our impression, the comments made by Bethesda Softworks, they said they felt they had properly disclosed to the ESRB. So again, we think that having clear, transparent criteria is not only good for parents, it is probably also good for the industry as well. We do not think we allow the same kind of ambiguity with ingredients in foods, and why should we allow them in quality of our ratings for media products?

Our studies consistently find content that is labeled in some games and not others. We think some of the lack of consistency clearly derives from the lack of transparency in the process and definition. The ESRB has also stated in its press release responding to our most recent study on "M"-rated games that it has "repeatedly informed us about flaws in our methodology." And for the record, I would like to emphasize that the ESRB has never provided any scientific basis for its allegations about flaws in our methods, and we were very surprised to see the ESRB make such statements. We asked the ESRB to provide evidence of this assertion, and we believe that their assertion of "flaws" in our methods is a very serious scientific allegation.

We have met with the ESRB on several occasions to discuss our research, and the ESRB has not provided us with any scientific evidence of flaws in our research. The ESRB has also failed to provide us with any information about their specific criteria for applying ratings beyond what is available on the ESRB Web site. If the ESRB provided us with this information, we could use it as a basis for comparison to our methods.

We believe that Members of this Congress, parents, and the media should ask the ESRB to make public its specific criteria for assigning ratings and content descriptors. The ESRB requires game manufacturers to provide examples of the most extreme content, but do they do so? How would we know? And should parents expect the content descriptors to provide information about all types of content and games,

or have the content descriptors now become like the MPAA rating reasons, indicating only some of the content?

With the information to parents very unclear on this, and parents and kids easily able to observe omissions as they experience actual game play, the ESRB, in my opinion, should focus much more on ensuring the quality of its information and worry less on promoting its ratings system.

MR. STEARNS. Dr. Thompson, we will need you to wrap up.

DR. THOMPSON. I believe the members of this committee should ask the ESRB to provide in writing the specific actual criteria that ESRB uses. On the point of accuracy, the ESRB, I believe, should also make clear what it believes is possible with respect to accuracy of the ratings. It does say in its mission, and I believe this mission is right, that it is striving to provide consumers, especially parents, with accurate and objective information about the age suitability and content of computer and video games so they can make informed decisions. But I believe that it is important to realize that the ESRB is inconsistent again in this area.

For example, the ESRB said in its recent communication to the FTC that it regularly commissions the Peter Hart Research Associates to conduct surveys on awareness, use and validity, not the accuracy of ratings. It is in stark contrast also to the ESRB's press release, which was titled "New Study Shows Parents Overwhelmingly Agree with Video Game Ratings, ESRB Ratings Found to Be Highly Accurate."

So again, I believe members of this committee should ask the ESRB to clarify its position on accuracy and objectivity in its ratings, and that the Federal Trade Commission should continue to conduct its own studies.

Finally, I think one of the most important things the ESRB needs to do is distinguish real peer-reviewed scientific studies from nonpublicly available market research that it commissions. With respect to the Peter Hart market surveys which Ms. Vance just mentioned, the ESRB commission says they are not peer-reviewed, they are not published, and they are not publicly available. And in this regard they are not comparable to the study of scientific work that we do.

We also note that the Federal Register--and you can find all of the citations to all of these quotes in my statement--says that "the ESRB's validity studies involve the display of 1 or 2 minutes of video game play to parents of children who play video games. The brevity of these clips may limit the use of the results because games typically take many hours to complete. Moreover, it is unknown whether the content selected for these brief video clips fully represents the full range of content that causes the ESRB, whose raters rely on more extensive footage of game play as well as the publisher's responses, to assign a particular game rating."

MR. STEARNS. Dr. Thompson, I will probably have you sum up.

DR. THOMPSON. Yeah, yeah. Sorry.

MR. STEARNS. Your entire statement will be made a part of the record.

DR. THOMPSON. So I appreciate the opportunity to speak here. I do think you should ask them to submit evidence that allows independent researchers to review anything they submit as a study which is otherwise not peer-reviewable. And also it is important for all of us who believe in self-regulation to make sure the system is working as well as it can.

MR. STEARNS. Thank you.

[The prepared statement of Dr. Kimberly M. Thompson follows:]

PREPARED STATEMENT OF DR. KIMBERLY M. THOMPSON, DIRECTOR, KIDS RISK PROJECT, ASSOCIATE PROFESSOR OF RISK ANALYSIS AND DECISION SCIENCE, DEPARTMENT OF HEALTH POLICY AND MANAGEMENT, HARVARD UNIVERSITY

Mr. Chairman and members of the Subcommittee, thank you very much for recognizing the important role of media in the lives of children and for inviting me to present my views on the violent and explicit video games: informing parents and protecting children. As a parent, consumer, educator, and active academic researcher on media content and video games specifically, I welcome the opportunity to comment on:

1 . the observations that we have made about content and ratings of video games in the context of our peer-reviewed studies

2. questions that I believe are important for the video game rating board to address related to its process for rating games

Over the past several years, my research group at the Harvard School of Public Health has conducted several studies that quantitatively evaluated the actual content of video games. This work includes studies on violence in E-rated, T-rated video games, and M-rated video games. Each of these studies yielded significant insights including:

1. We found that 35 of the 55 (64%) E-rated (for "Everyone") video games studied contained violence (http://www.kidsrisk.harvard.edu/faqs3.htm), with injuring characters rewarded or required for advancement in 33 games (60%).

2. We observed content that could warrant an ESRB content descriptor in 39 out of 81 games (48%) T-rated (for "Teen") video games for which the ESRB had not assigned a content descriptor, and we did not observe the content indicated by an ESRB content descriptor within one hour of game play for seven games. These games may be a source of exposure to a wide range of unexpected content (http://www.kidsrisk.harvard.edu/faqs4.htm).

3. In the random sample of 81 T-rated video games we played:
79 games (98%) involved intentional violence, representing 36% of game play time,
73 games (90%) rewarded or required the player to injure characters,
56 games (69%) rewarded or required the player to kill, and
we observed 5,689 human deaths for these 81 games, occurring at an average rate of 61 human deaths per hour of game play time (http://www.kidsrisk.harvard.edu/faqs5.htm).

4. In a random sample of M-rated video games we played, we observed content that could warrant an ESRB content descriptor in 81% of these for which the ESRB had not assigned a content descriptor (http://www.kidsrisk.harvard.edu/faqs8.html).

We consistently find that the games contain a significant amount of violence and explicit content that may be of concern to parents, which is inconsistently labeled by the

rating board. I would be happy to show the members of the Subcommittee examples of some of the unlabeled content that we have observed.

Given this research, we believe that several improvements in the rating system are needed, and that Congress should ensure that the industry has incentives to improve its ratings:

1. The ESRB should play each and every game prior to assigning its age-based ratings and content descriptors. We have said since our 2001 study on E-rated video games that we thought the ESRB should make playing the games part of the rating process. We specifically said in one of our 2004 studies on T-rated games that "Our results also suggest that the ESRB should play the video games as part of its rating process to provide a means to ensure the absence of content other than that indicated in the materials submitted to the ESRB by the game manufacturers. However, we emphasize that game manufacturers should continue to provide all of the information that they currently provide to the ESRB because the raters should not have to play the entire game prior to assigning a rating; anyone playing the games could miss specific content." Thus, to be completely clear, we suggest that the ESRB should play the finished game before assigning its ratings, in addition to its current process of collecting information from publishers. We have not stipulated the length of game play time, nor have we said that the raters themselves must play the game. We remain concerned, however, that the inability of the ESRB to play the finished games prior to assigning its ratings means that the ESRB cannot independently evaluate the content of games, which in turn may undermine consumer confidence in the ratings. We are not able to determine whether the mismatch between our observations and the ESRB content descriptors results from failure of the publishers to disclose content to the ESRB, the ESRB's decisions not to provide content descriptors that we would expect based on its definitions and what we observe in other games that received the same ESRB content descriptors, or if the game content changes between the assignment of the ratings and packaging of the final product. Thus, we believe that the ESRB should play the finished games before it assigns its ratings. We believe that the ESRB's recent decision to change its rating of *Elder Scrolls IV: Oblivion* from Teen to Mature clearly demonstrates that playing the game makes a difference. What is unfortunate in this case is that the ESRB found the more detailed depictions of blood and gore in the Xbox 360 version after assigning its ratings and content descriptors and after the game has already been sold extensively with the Teen rating. It should be noted, however, that the Teen-rated version of the game also received a content descriptor for "Blood and Gore," which raises legitimate questions about where the ESRB draws the line between Teen-rated video games and Mature-rated video games. In our quantitative studies of T-rated and M-rated games, we have observed significantly more blood depicted in M-rated games, but similar amounts of violence.

2. The ESRB should make its rating process and the terms that it uses in its ratings more transparent. Our studies point to the need for clear, consistent, and well-communicated criteria for assigning age-based ratings and content descriptors. Our studies rely on playing the actual games, coding all of the content using definitions that we publish in our papers, and comparing the observed content to what we observe in other games and based on the ESRB's published information. We believe that more clarity and transparency would also be helpful to the industry. For example, in response to its decision to change the rating of *Elder Scrolls IV: Oblivion,* our impression based on Bethesda Softworks' response is that they felt that they had properly disclosed the content to the ESRB (see their press release at: http://www.bethsoft.com/news/pressrelease_050306.htm). The bottom line here is that consumers need to know what the ratings do and do not tell them. We don't allow ambiguity in the ingredients on foods, why should we be so tolerant of low quality in the ratings on media products? Our studies consistently find content that is labeled in some

games and not in others. Some of this lack of consistency clearly derives from lack of transparency in the process and definitions.

The ESRB also stated in its press release responding to our recent study on M-rated games that it has "repeatedly informed" us about flaws in your methodology. For the record, I would like to emphasize that the ESRB has never provided any scientific basis for its allegations about flaws in our methods and we were very surprised to see the ESRB make such statements. We asked the ESRB to provide evidence for this assertion and we believe that their assertion of "flaws" in our methods is a very serious scientific allegation. We have met with the ESRB on several occasions to discuss our research and the ESRB has not provided us with any scientific evidence of flaws in our research. The ESRB has also failed to provide us with any information about their specific criteria for applying ratings beyond what is available on the ESRB website; if the ESRB provided us with this information, we could use it as a basis for comparison to our methods. We believe that members of Congress, parents, and the media should ask the ESRB to make public its specific criteria for assigning ratings and content descriptors. The ESRB requires game manufacturers to provide examples of the most extreme content, but do they do so? Should parents expect the content descriptors to provide information about all of the types of content in the games, or have the content descriptors now become more like the MPAA's rating reasons indicating only some of the content? With the information to parents very unclear on this, and parents and kids easily able to observe omissions as they experience actual game play, the ESRB should in my opinion focus more on ensuring the quality of its information and worry less about its advertising.

3. The ESRB needs to decide whether it believes that ratings can be "accurate" or not and make clear what it means. I believe that the ESRB has the right mission, which according to its website is: "To provide consumers, especially parents, with accurate and objective information about the age suitability and content of computer and video games so they can make informed purchase decisions" (http://www.esrb.org/about/index.jsp). I believe that accurate and objective information is essential, and I am concerned with inconsistencies in the ESRB ratings and in what the ESRB says about its ratings system. For example, on page 2 of its recent comments to the FTC, the ESRB wrote that: "The ESRB regularly commissions Peter D. Hart Research Associates to conduct surveys on awareness, use and validity – not the accuracy – of the ratings" (http://www.ftc.gov/os/comments/entertainindstrystudy/051123esrb.pdf). This is in stark contrast to the ESRB's November 22, 2004 press release about this same commissioned survey that was titled: "New Study Shows Parents Overwhelmingly Agree with Video Game Ratings – ESRB Ratings Found to be 'Highly Accurate.'" (http://www.esrb.org/about/news/downloads/validity_study_11_22_04.pdf).

4. The ESRB needs to distinguish real peer-reviewed scientific studies from non-publicly available market research that it commissions. With respect to the ESRB-commissioned Peter Hart market surveys, we emphasize that these surveys are not peer-reviewed, published, or publicly available. In this regard, they are not scientific studies that can be compared with our research. We are not able to review the methods used, questions asked, or analyses performed, but we believe that these surveys do not ask parents about the ESRB's assignment of content descriptors and they do not show parents the same information that is provided to the ESRB raters. Note that the March 30, 2006 Federal Register (footnote 16 on page 16156) states that: "The ESRB's validity studies involve the display of one to two minute clips of video game play to parents of children who play video games. The brevity of these clips may limit the use of the results because games typically take many hours to complete. Moreover, it is unknown whether the content selected for these brief video clips fully represents the range and frequency of content that caused the ESRB (whose raters rely on more extensive footage of game play as well as the publisher's responses to a detailed questionnaire) to assign the game a particular rating." (http://www.ftc.gov/os/2006/03/060330frnsurveyvideoesrb.pdf)

Given the important role of the media ratings as the current strategy in our self-regulatory system – a system that gives us all the freedoms to create and to choose media and that reflects values deeply held by all Americans – I believe that Congress must hold the industry accountable for the quality of the information that it provides to consumers and ensure that the system works and protects children. Freedom depends on responsibility.

In my view, many of the current problems with the existing systems derive from a lack of a scientific and research-based foundation for providing ratings information. A rigorous system of ratings must begin with some standard definitions that can be used to classify content and to clearly and consistently inform parents. While these definitions and classifying content includes subjectivity, that's no excuse for not trying to be as objective as possible. Our studies have demonstrated that using consistent definitions can work and provide comparative information, and I believe that it's time for the industry to start to perform its own content analyses and accurately report the ingredients of its products to consumers. I believe that the industry can better label its products and in doing so help parents make better choices, and that this is required as media continue to push the boundaries and consume more time in the lives of our children. Thank you very much again for the opportunity to testify today.

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MR. STEARNS. Dr. Buckleitner.

DR. BUCKLEITNER. Thank you, Mr. Chairman. For the record, I was Fred Upton's paperboy. You have done well, Fred.

It is an honor to testify today. I appear before you as an independent software reviewer, a library trustee, a former teacher, and a parent of two daughters. But I guess the reason I am here today is because I play a lot of games, about 7,308 as of yesterday, as editor of a software review publication. I started reviewing software in 1984 on an Apple II. I have traveled the Oregon Trail. I have hunted for Carmen San Diego. I have killed thousands of bad guys. I have squished some cops in Grand Theft Auto. I can hold my own in DDR and load a UMD on a PSP. And I have played tennis with Mario, skated with Tony Hawk, and golfed with Tiger Woods. I filled hot tubs with Sims, and helped Joan of Arc conquer the Mongols all in a weekend.

This is a powerful form of media. At the Mediatech Foundation where I test software, I witnessed two high school boys stay awake for 36 hours trying to fly an airplane, the Spirit of St. Louis, across the Atlantic in an attempt to repeat Charles Lindbergh's famous flight to

Paris in real time. It was fascinating. They used the Microsoft flight simulator using GPS and real weather conditions. But unlike Lindbergh, they crashed four times.

Recently I flew a Harrier jet using the new TS-3 controller, and I conducted an orchestra with the Nintendo remote.

The first point to take away from my testimony is that improving technology driven by Moore's law is going to make the next 5 years very interesting. We need to protect our children, but from what? There is little consensus on the short or long-term effects of violent games on human development. Most would agree, however, that normally developing children, which is a different population than Mr. Terry worked with, can distinguish between fantasy and reality. Most parents are taking their cues directly from children. That is why you go buy a "Teen"-rated Star Wars game for a third-grader who loves Star Wars.

There are less obvious things to protect children from, in my opinion, including ethnic and gender stereotyping, commercialism, being left alone for hours, and unsupervised use of the Internet. And what about plain old old-fashioned low quality, which is certainly less newsworthy than "Hot Coffee."

I have also wondered why the software publishing business seems to be authorless, hence blameless, unlike books or movies where an author like Rowling or director's game name is prominently displayed. There should be a way to see who is behind the games. I would like to know the guy that put that add-on to that game so I can know what he stands for. The logic is you would be less likely to put racy content in a game if your mother knew it was you who put it in.

It is important in this hearing not to confuse linear versus nonlinear media. I see it all the time. Unlike books and movies where you can see the beginning through the end, interactive media which we are talking about here today is slippery and three-dimensional. We need a ratings system that is smart on these issues.

The current ESRB system lets people who know their content the best, the publishers, take responsibility for disclosing what is in their product and pay the price if they do not. In my opinion, there is no better way to do this.

Over the next few years we are going to see many more interactive options seep into the lives of our children. It will be increasingly harder to define a video game versus software versus TV toy versus mobile phone, and any future ratings system will have to deal with this.

Let me talk specifically about the ESRB. We and the parenting magazines we work with have come to count on the ESRB to reliably tell us if a title is appropriate for a certain age range, and if the type of content may be inappropriate. If they were not accurate, we would hear

about it in seconds after the papers hit the deadline. But the way the ratings are interpreted is less solid. Some parents and retailers do not seem to mind "M"-rated games, and they probably should, and the descriptors tend to be overlooked.

In my testimony I have pictures that I just took yesterday of the KB Toys Web site of "Mature"-rated games right next to Curious George. That is not right, and this is a toy store where kids go. Why shouldn't a toy store sell Bud Light and cigarettes as well and other "M"-rated products?

Finally, there is a new kind of digital divide to think about. Participation in the video game culture is expensive. These games cost $50. What about the families who are not participating in this culture? It is a whole new conversation.

In conclusion, trustworthy consumer information such as that provided by the current ESRB ratings system is a foundation for the development of an interactive publishing business and for higher-quality use by families. We need accurate labels. The biggest challenge we face is to help parents, grandparents, and teachers use existing descriptors and to continue to study the effects of interactive media in light of the next generation of connected consoles and HDTVs. As researchers we need to raise the level of dialogue by citing references and trying the games ourselves firsthand, observing real kids, and grounding our opinions in firm data. It is safe to say there has never been a better time to pick up a controller and play along with a child. Thank you.

MR. STEARNS. Thank you.

[The prepared statement of Dr. Warren Buckleitner follows:]

PREPARED STATEMENT OF DR. WARREN BUCKLEITNER, PH.D., EDITOR, CHILDREN'S TECHNOLOGY REVIEW

It is an honor to testify today. I appear before you as a software reviewer, library trustee, former teacher, and parent of two daughters, ages 11 and 14.

I guess the reason I've ended up here today is because I've played a lot of games (about 7,308 as of yesterday) as editor of a software review publication. I started reviewing software in 1984 on an Apple II, traveling the Oregon Trail, hunting Carmen Sandiego and coloring with *KidPix*. I've killed thousands of bad guys, squished some cops in Grand Theft Auto, and punched myself silly in *Mortal Kombat*. I can hold my own in *DDR*, load a UMD on a PSP; but I still can't beat my youngest daughter in *Hot Wheels Turbo Racing*. I've played tennis with the *Mario Bros.*, skated with *Tony Hawk* and golfed with Tiger Woods. I've filled hot tubs with *Sims* and helped Joan of Arc conquer the Mongols, all in a single weekend.

At the Mediatech Foundation, where I test software, I witnessed two high school students stay awake for 36 hours trying to fly The Spirit of St. Louis across the Atlantic, in a failed attempt to repeat Charles Lindbergh's flight to Paris with *Microsoft Flight Simulator*, using real time weather conditions and modern GPS. Lately I've seen children competing against one other using an innovative wireless networking title, called *Brain Games*, on math facts. Recently, I flew a Harrier jet, using the new PS3 controller, which

uses the position and motion of your hands to control the aircraft; and I conducted an orchestra using the Nintendo Wii remote. The first point to take from this testimony– improving technology, driven by Moore's Law, will make the next five years very interesting.

What have I learned, and what does it mean for US families?

• We need to protect our children—but from what? There is little consensus on the short or long-term effects of violent games on human development. Most would agree, however, that normally developing children can distinguish between fantasy and reality. I certainly do. Most parents are taking their cues directly from their individual children, and perhaps that is why they have no problems buying a T rated Star Wars game for their third grader. This is not known issue.

• There may be less obvious things to protect children from, including ethnic and gender stereotyping, hidden commercialism, being left alone for hours and unsupervised use of the Internet. And what about plain, old-fashioned "low quality," which is certainly less newsworthy than "hot coffee." Some games are just poorly designed; a waste of family resources and precious childhood time. Others load your computer with commercial links that can slow a computer to a crawl. There's a growing category of web-based content for sale, such as services for SAT test prep, where you can find typos on the sample tests.

• Software publishing seems to be authorless, and hence blameless, unlike books or movies, where the author and/or director's name is prominently displayed. There should be a way to see who is behind games. You'd be less likely to put racy content in a game, if you knew your mother or children could tell it was you that decided to put it in.

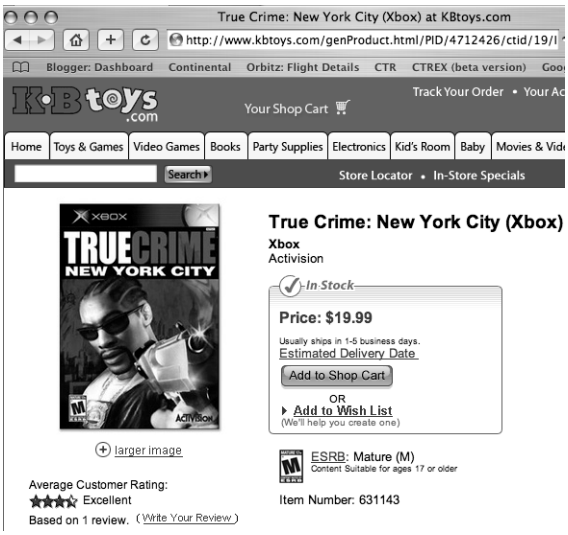
• It is important in this hearing to make the distinction between interactive and non-interactive (linear vs. non-linear) media. Unlike movies, where you can see the beginning through the end, or a book where you see how many pages you have, interactive media is three dimensional, fluid and dynamic. To this end, we need a rating system that can capture the complexity of millions of lines of code, or the inner working of an MMOG (Massively Multiplayer Online Game). The ESRB system lets the people who know their content the best—the publishers—take responsibility for disclosing what is in the product. There is no better way to do this.

• With more platforms comes more consumer confusion. A single movie, such as Disney/Pixar *Cars*, will generate nine video games, which are different for each platform. These differences should be better defined for the consumer.

• As hardware improves over time, more interactive options will seep into the lives of children. It will become increasingly harder to define a "video game" vs."software" vs. "TV toy" vs. "mobile phone" It helps to turn the question around and look at it through the eyes of a child, at all developmental levels. What quality interactive options does a child have to explore, at any given time? Is there quality? Is there balance?

• We have found the ESRB rating system to be both necessary and reliable. We, and the parenting magazines we work with, have come to count on the ESRB to tell us if a title is appropriate for a certain age range and if the type of content might be inappropriate. The validity of the ratings (or the way they are interpreted), however, is less solid. Some parents and retailers don't seem to mind M rated games when they probably should, and the descriptors tend to be overlooked. Mature-rated games are easy to find in toy stores.

Why do toy stores mix M rated games with obvious children's content? Why are there no descriptors online? (Both screens, from www.kbtoys.com captured on June 12, 2006)



• We have found the ESRB staff to be responsive to our questions.
• Video games are no longer just for kids. Increasingly, more titles will be designed for older audiences, and the ratings will reflect this. But it is important to remember (and less newsworthy) that 85% of the current 11,937 games have no worrisome content, and many have positive educational outcomes.
• There's a new kind of digital divide to consider. Participation in the video game culture can be expensive. The best quality online activities cost $10 per month, and games cost $50 each. Kids without the money and access to expensive game systems are being left out. There are new faces to the digital divide.

Trustworthy consumer information, such as that provided by the current ESRB rating system, is the foundation for the development of interactive publishing, and for higher quality use by families. The biggest challenge we face now is to help consumers use the existing descriptors, and to continue to study the effects of interactive media in light of the next generation of connected consoles and HDTVs. As researchers, we should

raise the level of dialog by citing references and trying games ourselves first hand, observing real kids and grounding opinions with firm data. There has never been a better time to pick up a controller and to play along with a child.

MR. STEARNS. Dr. Walsh.

MR. WALSH. Thank you very much. I am the founder of the National Institute on Media and the Family and proud that over the last 10 years we have issued an annual video and computer game report card in which we have taken a snapshot of the industry as it affects children, and that has been our interest. We are also the group that alerted the public to the "Hot Coffee" scenario last July 7 in our first ever national parent advisory.

I would like to divide my 5 minutes into a couple of different sections. One is I would like to amplify on Congressman Murphy's comments about the impact of these games on children. Congressman Murphy made some very, very important points, and I would only like to add to them by mentioning that the new research about the developing brain adds a new level of importance in terms of understanding the impact of these games.

I would like to mention three things. One is that one of the basic principles that we now know about children's brain development is that very simple principle of the brain cells that fire together wire together. The more they fire together, the stronger the connection becomes.

Secondly, while experience is key in determining how a child's brain gets wired, not all experiences are equal. Some experiences have a greater impact than others. And those that have the greatest impact are those that happen during a brain's growth spurts.

The third point I would like to make is that we thought up until very recently that the brains' growth spurts were finished by the age of 10. That turns out to be not true. We now know through the recent research that the teenage brain is not the finished product that we thought it was from a physical point of view. It is a work in progress, a series of major construction zones. And as we understand what those construction zones are, that helps us understand why they act the way they do.

Two of the major construction zones in the teenage brain have to do with impulse control, and the other is what I call the acceleration center of the brain, and both of those are undergoing major change. So when we think about kids and teenagers playing these games, we need to understand that in addition to everything Congressman Murphy said, the new brain research shows that these games do indeed have a very, very big impact on kids.

The second category of comments that I would like to make has to do with where the technology is going. Over the 10 years we have issued the video and computer game report card, we have seen

tremendous change in terms of the power of the technology. We are headed very quickly toward virtual reality. That is the stated goal of the industry. When we think of the benefits of that technology, it can be exciting. When we think of the potential harm, it is scary.

Another development that has been mentioned by different Congresspeople in their opening comments has to do with, I think, the emergence of sexual content. Last week for the first time ever there was a meeting between video game developers and the pornography industry. One of the people in that meeting made the statement, "Don't tell me I have to abide by this little Disneyesque palette. I may never even use the hard core end of my palate in any game that I make, but don't tell me that I can't."

So I think increasingly we are going to see games similar to the one that is coming out next month called Naughty America, which is literally a game that features virtual sex.

The other thing that is going to be more and more true in the future is that games are going to be more of an on-line environment, which is going to make the challenge even more difficult because right now most gamers have to walk into a Wal-Mart or a Target or a Best Buy to buy the game. Increasingly they will be downloaded off the Internet, which makes everything that we talk about today even more important.

There are a number of recommendations I have made in my written comments. I will not repeat all of them, but I would like to just highlight a couple. I think one of the things that would be helpful to parents as they exercise their responsibility is to have one universal ratings system for all forms of media. The present alphabet soup is just confusing. I think it is important for the industry to stop giving double messages to parents. On the one hand, the industry and the ESRB tell parents to pay attention to the ratings. On the other hand, they consistently deny the research that shows that these games do have an impact on children. I think we need to be clear about why it is important to pay attention to the ratings.

In sum, I would like to suggest a comparison, that video games in a sense are like medicine. We all know there are medicines that are very, very helpful for children, and there are also medicines that are toxic. And so part of what we do with medicines is we label them, and we talk about the impact, we talk about the effects, we talk about the side effects, and those are clearly labeled so people can make decisions.

With regard to medicines, there are two important parts. One is dosage, how much; the other is what the medicine is. I think increasingly we have to look at both. Dosage has to do with what is emerging as video game addiction for some kids, and the content, of course, is what we are focusing on in this meeting.

The National Institute on Media and the Family, in conjunction with Iowa State University, is in the process of convening is a national summit in October of the leading child advocacy groups and experts in the country to take a look at video games. We will be happy to submit a set of recommendations from that meeting when we are concluded. Thank you very much.

[The prepared statement of Dr. David Walsh follows:]

PREPARED STATEMENT OF DR. DAVID WALSH, PH.D., PRESIDENT, NATIONAL INSTITUTE ON MEDIA AND THE FAMILY

Video games have become a favorite activity for American children and youth. 96% of boys and 78% of girls play video games on a regular basis with girls playing an average of five hours per week and boys thirteen.[1] While the majority of games produced are appropriate for young players, a growing number of titles feature extreme violence and gore as well as sexual content. While they represent only a fraction of games on the market these ultra-violent games are particularly popular with pre-teen and teenage boys. 78% of boys report that M-rated games are among their top five favorites and 40% name an M-rated game as their favorite. 77% of boys under seventeen own an M-rated game.[2]

Over the past ten years the National Institute on Media and the Family has tracked and monitored the growth of the video game industry. Last fall we released our tenth Video and Computer Game Report Card as well as a ten year retrospective on the industry. It is clear that the games have become more violent, more sexually explicit and more profane. Ratings creep and the reluctance of the industry sponsored ESRB to use the AO rating (Adults Only) mean that these games are available to more and more children and youth.

A growing body of research shows that games influence young players. While the industry touts the studies that show the positive effects, they discredit those that demonstrate any harm. The psychological and behavioral studies show that violent video games increase real world aggression in kids.[3] The newest frontier in research is brain based and point to a number of important factors related to the impact of video game violence on youth.

1. Experiences that happen during a young brain's growth spurts have a greater impact than at any other time.
2. Contrary to earlier beliefs, the teenage brain is still under construction with the growth spurts involving impulse control, anger management, and the control of sexual urges undergoing major development. [4]
3. The discovery of "mirror cells" explains why young players are likely to imitate the behaviors they rehearse on the screens.[5]

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[1] Gentile, D.A., Paul Lynch, Jennifer Ruh Linder, & David Walsh. "The effects of violent video game habits on adolescent hostility, aggressive behaviors, and school performance. *Journal of Adolescence* 27 (2004) 5-22.

[2] National Institute on Media and the Family. "Eight Annual Video and Computer Game Report Card" December 8, 2003.

[3] Anderson, C.A. & Brad Bushman, (2001) Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior: A Meta-analytic Review of the Scientific Literature. *Psychological Science*, 12 (2001) 353-359.

[4] Walsh, DA. *Why Do They Act That Way? A Survival Guide to the Adolescent Brain for You and Your Teen.* New York: Free Press, 2004.

[5] Gallese, V. "The Roots of Empathy: The Shared Manifold Hypothesis and the Neural Basis of Intersubjectivity. *Psychopathology* 36 (2003) 171-180.

4. Brain research shows that the circuits related to aggression activate while playing violent video games while those responsible for impulse control de-activate.[6]

The combination of psychological and brain based research provide a growing rationale for the need to prevent young gamers from playing very violent and sexually explicit games. The urgency grows because of the following factors.

1. Game technology continues to advance making the games more realistic and engaging. The goal of the industry is virtual reality.
2. Some game producers seem intent on pushing the boundaries of violence. Take Two Entertainment has the games *Bully* and *Grand Theft Auto 4* in the production pipeline.
3. Sexual content will increase. The game *Naughty America,* a sex simulation game, will be released this summer. Last week video game producers met with leaders from the sex entertainment industry. A veteran game designer was quoted as saying, "Don't tell me I have to abide by this little Disney-esque palette. I may never even use the hard-core end of the palette in any game I make. But don't tell me I can't do that."
4. The future of games is in the on-line environment making it more difficult to control sale and access.

Therefore, it is more urgent than ever to inform and educate parents to become MediaWise®. Education is going to be more effective than legislation prohibiting the sale of games for two reasons:

- All legislative efforts have been invalidated by the judicial system as violations of first amendment rights. The exception to this may be the sexually explicit games which may be covered under laws prohibiting the sale of sexually explicit material to minors.
- As game sales migrate to an on-line environment access will be easier and retail sales will be less important.

Therefore I would recommend that policy leaders support efforts to educate parents. The following steps would be useful.

1. Develop a universal rating system for all visual media. The current alphabet soup of ratings is confusing to parents and is the reason that so many parents still do know understand the ESRB ratings.
2. Instruct the industry to be clearer about the potential harm for youth. Currently the industry sends a double message. On the one hand, they tell parents to pay attention to ratings and at the same time they deny that games can have any harmful effects. The tobacco industry, for example, has to label their products as potentially harmful to users.
3. Instruct the game industry and retailers to accelerate their efforts to keep M-rated games out of the hands of minors.
4. Instruct on-line game producers and distributors to have effective age verification policies.
5. The current distinction between M-rated and AO-rated (adults only) games is confusing and almost meaningless since so few games ever receive the AO rating. This should be revised.
6. Independent validity and reliability evaluations of the ESRB rating system should be done and reported to policy makers.

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[6] Philips, H. "Violent videdo games alter brain's response to violence," http://www.newscientist.com/article.ns?id=dn8449 (Accessed June 9, 2006)

7. Support the promotion and distribution of independent ratings.
8. Support public education efforts to educate parents, youth professionals, communities and organizations serving youth. Programs like our MediaWise® program strive to do exactly that. Our website at mediawise.org provides independent ratings, research findings, information, and education resources for parents.

MR. STEARNS. Staff told me that you might be showing a video. Did you want to show a video?

MR. WALSH. No. I just restricted my comments.

MR. STEARNS. I appreciate that all of you would like to have more than 5 minutes, but as you can see, we are all confined here as Members, we have to go vote and so forth, so we would like to keep things going.

I will start with the questioning. Mr. Severson, I went to the Wal-Mart Web site where you sell Grand Theft Auto, and it is rated "M" on the Web site. And so from there I read what the "M" rating said. It says, "this game contains intense violence, blood and gore, sexual contents and/or strong language. You must be 17 years or older to purchase this item. This product is intended for mature audiences only. By ordering this item you are certifying that you are 17 years of age. If you agree to the above terms click 'I agree'." So if you click "I agree," you can get this pretty easily.

Mr. Lowenstein, what we are talking about here is not just singling out Grand Theft Auto. We are talking, as Mr. Walsh just said, about a grander problem here in which children can get access to Grand Theft Auto, or even people that get this game do not realize that once they get it, as I understand the manufacturer of this game, Rockstar Games, put in two codes, one dealing with explicit sex, and another, I guess, with explicit violence that is not part of the game.

And it turns out that somebody in Holland put on the Internet, Mr. Severson, a way so that a child can get that connection so that he or she can go into Grand Theft Auto and, by gosh, can get into this whole scene, and Mr. and Mrs. America have no idea about it, and yet it is easy to go to your Web site. And you might stop selling the game, but today I can go on your Web site and get this, and I can get anybody to agree, and, bingo, they got the game, and then they go to the other to get this.

So we are not singling out, Mr. Lowenstein, like you talked about the idea that one movie would make a barrel of apples bad. This is more talking about how you control so that the parent has control of what the child sees.

Ms. Vance, how many games a year are there brand new?

MS. VANCE. How many games?

MR. STEARNS. How many video games are there every year? We were told there might be as many as 12,000 total games you rate.

MS. VANCE. We rate over 1,100 games a year. Over the course of the time since 1994, I think we have rated something in the vicinity of 12,000.

MR. STEARNS. So over the timeframe. Now, how many of those games have you actually played?

MS. VANCE. How many have I personally played, or does our--

MR. STEARNS. Let me ask you this: How big is your board?

MS. VANCE. Our rater pool is about 35 members at the given time. Those are the people that actually assign the ratings.

MR. STEARNS. You are the one person on this board, and then you subcontract out to raters to do this?

MS. VANCE. We have a pool of part-time raters who come in.

MR. STEARNS. So there are really not 12 members on this board. You are the one person on the board; is that correct?

MS. VANCE. No, no, no. I am president of the organization. We report to, as any self-regulatory body, we have a board of directors composed of publishers of games, so it is a self-regulatory environment, and I report to that board.

MR. STEARNS. But I understand from staff there is really no board per se. This perception that there is a board like a board of directors at General Electric, you do not really have a board.

MS. VANCE. We do have a board of directors, absolutely, that is made up of the game publishers.

MR. STEARNS. There is not really a board that sits down and says, okay, as Dr. Thompson says, we are going to play these games out ourselves to determine the content and the advisability.

MS. VANCE. No. As my testimony indicated, we rely on publishers to fully disclose to us. Our raters--

MR. STEARNS. Who are these publishers?

MS. VANCE. The game publishers.

MR. STEARNS. Do you think they would have a conflict of interest in rating their own thing?

MS. VANCE. They do not rate the games. They submit the content to us. We have a pool of independent raters who are all adults. They have no ties to the industry whatsoever. They come in for about 2 to 3 hours every other week.

MR. STEARNS. Let me ask you this question. I'm sorry for interrupting. Of the 12,000 games, how many were rated "Adult" out of those 12,000 games, 20? I was told maybe only 20.

MS. VANCE. That is how many stuck. What happens if we assign an "AO" rating, which is far more than the 20, what will happen is because of the limited distribution that that product--

MR. STEARNS. But historically you have only rated--out of the 12,000 games, only 20 have been rated--

MS. VANCE. That is not true. We have assigned an "AO" rating more than 20 times. The problem is--

MR. STEARNS. Twenty-two? How many?

MS. VANCE. I do not know the exact number, but I can tell you it is significantly more than 20.

MR. STEARNS. Is it under 100?

MS. VANCE. Yes, it is under 100.

MR. STEARNS. Under 50?

MS. VANCE. It is under 100. But the point being that companies have the option of making changes to the product and resubmitting it to get a different rating, because I said in my testimony, the Council of Manufacturers will not publish "AO" games on their platforms, which limits the market, and many of the retailers, including Wal-Mart, will not carry "AO" games. So companies do have the option of changing the product if they get an "AO" rating assignment project.

MR. STEARNS. Dr. Thompson, you made some great recommendations about asking the board to play each game, and I do not have a feeling that they played each game. Your other recommendation is transparency in the criteria for assigning this. I do not see that. And your last thing is that you want to have a real peer review involved.

We talk about a company that says, we are making $100 million a year, then you have an outside auditor come in and tell you if you are doing that, but there is nobody that is doing this.

So those three are very powerful, and Congressman Murphy made a great point. I just do not agree when you say these children are not impacted at all by this violence where 61 people are killed an hour or 1 a minute. That has got to have an impact, and I think what is so disturbing is I could go to the Wal-Mart site today, and I could get this Grand Theft Auto, and there are going to be four versions of it. I can get all four, and I can then go to this other site and get this, when this occurred that you could get this site to go in and get this hugely explicit sex scene, and the poor parents would not even know. So I think what we do have here is more of a trying to understand it, as Dr. Thompson has outlined.

With that, my time has expired.

Ms. Schakowsky.

MS. SCHAKOWSKY. Thank you, Mr. Chairman. I thank all the witnesses.

I want to ask Ms. Parnes, were any of the stores that were checked by your mystery shoppers Wal-Marts?

MS. PARNES. We did; yes, we did.

MS. SCHAKOWSKY. Did you break out the results by retail?

MS. PARNES. I cannot break it out. I do not believe that we are able to break it out by specific retailer, but I think we can by large store and smaller.

MS. SCHAKOWSKY. Can you tell me that?

MS. PARNES. The national stores asked the child's age in 55 percent of the instances. The local and regional in 35 percent of the instances. And basically that is what we found across the board, that national retailers--

MS. SCHAKOWSKY. Did better?

MS. PARNES. Did better than local and regional. They posted information about ratings about half the time, while local and regional outlets did it less than a quarter of the time.

MS. SCHAKOWSKY. Thank you.

Mr. Severson, do you think that clicking an I agree box is enough to ensure that teens or younger are not buying "M"-rated games without their parents' consent?

MR. SEVERSON. That is a limitation of the Internet, and the vast majority of children under 17 do not have a credit card or would need a credit card from their parents, which would imply consent on that. But I think that is something we need to look at to see what is available to help improve that.

MS. SCHAKOWSKY. I am wondering if you truly "make every effort to be a responsible retailer and take the role very seriously." Have you considered stopping selling "M"-rated games on line?

MR. SEVERSON. Currently we continue to sell those, and we continue to try and be responsible and sell those to adults and make sure that that is the case, because these are adult games that are marketed to adults, and we want to sell them to adults.

MS. SCHAKOWSKY. But Wal-Mart did make a decision that it was not okay to sell music with sexually explicit lyrics, but it is okay to sell explicitly violent video games, explicit and violent.

MR. SEVERSON. That is a current music policy that we have in our store. And the current music and video game policy that we have in our store is that we will not sell those videos games to minors.

MS. SCHAKOWSKY. I understand, but you have stopped selling music.

MR. SEVERSON. No, we never started selling.

MS. SCHAKOWSKY. You do not sell, fine.

Is somehow violence on these games and sexual violence more family friendly than sexually explicit lyrics?

MR. SEVERSON. No, but we just sell those to adults.

MS. SCHAKOWSKY. No, you do not just sell them to adults. Your stores were still among those where only 45 percent you asked whether or not--and teens can, in fact, just click on a box.

MR. SEVERSON. I cannot speak to the individual store results of the survey, and I am not suggesting that the policy is perfect.

MS. SCHAKOWSKY. It is far less than perfect; would you not agree with that?

MR. SEVERSON. I think there is room for improvement on that, I agree.

MS. SCHAKOWSKY. That is not an I think, that is a fact.

MR. SEVERSON. Yes, I think that in our stores we perform better than the average that is being put out there.

MS. SCHAKOWSKY. Do you have evidence of that? I would be interested in it if you do.

MR. SEVERSON. I do not have data that proves that.

MS. SCHAKOWSKY. Mr. Buckleitner, you said in your statement--and I looked at the pictures that KB Toys sells "M"-rated games on line, and the toys in that picture are right next to each other. Do you think this is something that the Entertainment Software Association should condone, and have you found other toy stores that are selling "M"-rated games?

DR. BUCKLEITNER. I have. I do not have as much problem with Wal-Mart selling these because they sell ammo.

MS. SCHAKOWSKY. They sell a lot of that stuff, so that is okay.

DR. BUCKLEITNER. I am just telling you it is not a place for children specifically.

MS. SCHAKOWSKY. I hear you. Toy stores.

DR. BUCKLEITNER. They sell a lot of things that you would not want your kid to deal with. I think if you look at the book rack, it is the same thing. You will see books you do not want your kids reading.

MS. SCHAKOWSKY. In toy stores?

DR. BUCKLEITNER. In toy stores there is this confusion, specifically like Toys R Us and KB Toys, where you are seeing "M"-rated games, and to me this is a complete mismatch. It doesn't belong.

MS. SCHAKOWSKY. Ms. Vance, this issue of the methodology, that Dr. Thompson's methodology is flawed, what is wrong with it?

MS. VANCE. Well, we have several issues with her methodology. One primary issue is that she uses very different criteria than we have used in assigning content descriptors. Our criteria is very plain and public, which is our raters are instructed to assign content descriptors based on what they think triggers a particular rating or what they think in the context of that rating category parents are going to be most interested in.

MS. SCHAKOWSKY. I am running out of time. What I wanted to ask is if you would provide for our committee a detailed report on what about her methodology is scientifically questionable.

MS. VANCE. Well actually, attached to my written testimony is an appendix that does address many of the issues we have with her study.

MS. SCHAKOWSKY. We will look at that and see if that meets the question that I really wanted to see. Okay. Thank you very much.

MR. STEARNS. Thank you.

Mrs. Blackburn.

MRS. BLACKBURN. I thank the Chairman for the time.

Dr. Thompson, you mention game publishers. How many game publishers do we have in the country; do you know?

DR. THOMPSON. I do not know exactly. There are large publishers, and then there are also some smaller publishers. I think that is a question really for Mr. Lowenstein. He would be the person who would know that.

MRS. BLACKBURN. Mr. Lowenstein, do you know the total number of publishers?

MR. LOWENSTEIN. I do not know the total number, but I would say there are approximately 25 to 30 publishers of which probably 10 or so are responsible for probably 70 or 80 percent of all the sales.

MRS. BLACKBURN. Are those domestic or global companies, or do you know?

MR. LOWENSTEIN. Both.

MRS. BLACKBURN. Dr. Thompson, back to you again. Do you think that ESRB is objective or subjective in these ratings?

DR. THOMPSON. Well, I think that what the ESRB does is it hands to raters a package of material which we do not know how they then come up with their ratings. So that is subjective.

MRS. BLACKBURN. So they subjectively select the material that they give to the raters.

DR. THOMPSON. And the raters subjectively review it.

MRS. BLACKBURN. Ms. Vance, let me come to you for just a moment. Let us see. Are you a for-profit or not-for-profit entity? How are you structured?

MS. VANCE. Not for profit.

MRS. BLACKBURN. You are structured as a not-for-profit. So that means you would have members of your board or your association, and some of these publishing companies would be members of your board; is that correct.

MS. VANCE. Members of our board are members of the publishing community, yes.

MRS. BLACKBURN. How many members of your board do you have?

MS. VANCE. Approximately 15.

MRS. BLACKBURN. Fifteen members of your board who are game publishers.

MS. VANCE. That is correct.

MRS. BLACKBURN. U.S. companies or foreign companies?

MS. VANCE. They are U.S. companies, but some of them are global companies, but it is the U.S. operation.

MRS. BLACKBURN. So U.S. companies that are members of your board, and you are a not-for-profit entity.

MS. VANCE. We are.

MRS. BLACKBURN. So then how do you receive your operating funds? Do people pay for a rating?

MS. VANCE. They do just like in the film industry. Companies who want their films--

MRS. BLACKBURN. So they are paying you for a rating of their product, and they are choosing what they give to you to rate that game by. Am I saying this correct?

MS. VANCE. That is correct.

MRS. BLACKBURN. And you do not see a problem with this?

MS. VANCE. If they do not disclose product to us, there are serious consequences for doing so.

MRS. BLACKBURN. How many times have you brought somebody before the board for inappropriate actions or for nondisclosure?

MS. VANCE. We have an enforcement system that runs through --

MRS. BLACKBURN. How many times have you brought somebody before the board?

MS. VANCE. We issue numerous enforcement--

MRS. BLACKBURN. How many times --

MS. VANCE. I don't know the number. I would suspect it is over 100 on an annual basis.

MRS. BLACKBURN. That is fine.

Do you rate freeware that independent designers produce and freely distribute on the Internet?

MS. VANCE. Typically not.

MRS. BLACKBURN. Do you see a need to rate things that are going to go on the Internet, considering Dr. Walsh's comments about more of this is going to be an on-line process?

MS. VANCE. We would love to get submissions from anybody who wants their product to be rated. As long as it is a game, we will rate it.

MRS. BLACKBURN. Do they have to be a member of your board to submit to you and get a rating?

MS. VANCE. Absolutely not.

MRS. BLACKBURN. What would you think about having one rating system for all electronic media or all video games or all movies?

MS. VANCE. I do not have a fundamental problem with the universal rating system. I do not see anything fundamentally broken with ours. There is fairly high awareness in use of the system that we have today. I certainly would not want to water down our system. We have a very strong and detailed system, and I would want to keep it that way.

MRS. BLACKBURN. All righty. And your board was created in 1994 by who?

MS. VANCE. By the Entertainment Software Association, by the industry. It is a self-regulatory body.

MRS. BLACKBURN. All righty. And what would be your opinion of a law requiring age verification for sexually explicit video games?

MS. VANCE. We do not have a position on laws about regulating the video game industry. We do support retailer policies, and we encourage retailers to post signage about those policies.

MRS. BLACKBURN. Do you have an idea of what the total revenue generated by the "Adult-Only" video game industry is every year?

MS. VANCE. I do not.

MRS. BLACKBURN. You do not. Thank you for your time.

I yield back, Mr. Chairman.

MR. STEARNS. Thank you very much.

Mr. Pitts.

MR. PITTS. Mr. Severson, I understand you have to go. I would like to ask you a couple of questions. I am glad Wal-Mart has a policy to make sure kids cannot buy "M"-rated games like Grand Theft Auto, but even if you have a perfect system for making sure you only sell games like this to adults, why would you want to sell them at all?

MR. SEVERSON. The nature of our business is that in a lot of different products that we sell, there is someone who is against that. We sell Bibles in our stores, and there are people who are against that.

MR. PITTS. Why would you want to sell a game that makes a sport of dealing drugs or killing police officers with chainsaws or flying passenger jets into skyscrapers? Why would you not have a policy that you will not sell any video that role plays cop killing or terrorism or torture or drug dealing or prostitution or murder?

MR. SEVERSON. Those are difficult questions, and I do not personally condone all of the things that happen on this--

MR. PITTS. Well, who in your company does?

MR. SEVERSON. We try to purchase products that our customers want to purchase. That is what we do as a business. There are a number of game players that are adults who choose to want to play different

games, and we want to be able to sell those to the adults that want to play them.

I am a father of six children, four who are teenagers, and personally my children do not play those games, and as a parent I enforce that. We try to have the same information to parents in our stores to allow them to make those decisions and have that enforcement at the cash registers to prevent the children from doing that as well.

MR. PITTS. Thank you.

Mr. Lowenstein, a couple of questions. What is the industry doing to protect the children? I mentioned parents who do not monitor what the kids are playing.

MR. LOWENSTEIN. Congressman, I wish it was in our power to protect all the children by coming up with ways to mandate good parenting. There are a lot of social ills in this country that are beyond the capacity of our industry to solve. Our focus has been on providing information for parents who are prepared to take responsibility.

I fully understand that we live in a culture where parenting is difficult, where there are absentee parents and so forth, but at the end of the day, as an industry our capacity is to provide information and tools and let people know about the information and the tools. We have endeavored to do so. We will continue to try to enrich that and strengthen that system.

MR. PITTS. But you do not feel you have a responsibility towards at-risk children? There are lots of at-risk children in society.

MR. LOWENSTEIN. There certainly are a lot of at-risk children for a lot of things, and, again, if I knew as an industry how we could uniquely help those children, I would certainly look into it. But if those parents are not in the picture, I do not know what we can do.

We support the retail enforcement. We support education and empowerment. I do not know how those kids are getting the games. The FTC has reported that 83 percent of the time the parents are involved in the purchase and rental of games. So chances are if Grand Theft Auto is in the home, Mom and Dad bought it. Now I do not know how we fix that problem as an industry other than continuing to focus on education and empowerment.

MR. PITTS. Well, one way you can do it is not contribute towards it by offering that kind of a video.

MR. LOWENSTEIN. Well, we are a mass-market entertainment industry, and as I said in my opening statement, we are no different from the book industry, the music industry, or the film industry. There is a wide range of product, some of which I may not personally particularly care for, but it is protected speech, and it is not within my power at the

end of the day to compel someone or restrict somebody from producing a constitutionally protected product whether I like it or not.

MR. PITTS. Thank you.

Dr. Walsh, you mentioned the need for having one source of ratings for all media. Would you expand on the need for that a little bit?

MR. WALSH. Most of our work is with parents. Last year I gave over 200 workshops and speeches to PTA groups, school groups, and educators across the country, and one of the things that parents often say, "why isn't there just one rating system? Why do there have to be three? It would be so much easier. The alphabet soup is confusing."

I think if the end user of the rating system is the parent, then I think we should be listening to what they want and not what the industry wants to do.

MR. PITTS. And the evidence that you have received from talking to parents is that there is some confusion in their minds as to all the different types of ratings systems?

MR. WALSH. Absolutely. In spite of the market surveys that are done, we talk to parents, and if you ask parents what does the different rating system mean, most of them cannot give that answer.

MR. LOWENSTEIN. Congressman, can I just add one thing to that?

MR. PITTS. Yes, please.

MR. LOWENSTEIN. The Kaiser Foundation, which is not affiliated with this industry, one of the most respected research groups in the country, reported a year ago that when they asked parents whether they wanted universal ratings, an overwhelming majority said they didn't. My personal view, by the way, is that I think it is a wonderful goal, and I personally would sit down with anybody to see how you could develop such a rating system because it is obvious that a single rating system makes everybody's life easier. The devil is in the details.

DR. THOMPSON. I would like to volunteer to sit down with you and talk about that.

MR. PITTS. Dr. Thompson, with regard to the games based on movies, should the ratings correspond? If they do not, does this add to confusion? Would you expand on that?

DR. THOMPSON. In our studies we have observed a few examples of games and movies that have been cross-marketed. This is also something the Federal Trade Commission reports have raised an issue on. But, for example, we observed the Enter the Matrix video game, which was rated "Teen", was cross-marketed very heavily with the Matrix movies, which were rated R. And in the other direction, the Chronicles of Riddick is another example.

I think the key issue is that parents really need good information about what is in the media products that they are trying desperately to

make sure they are consuming responsibly, and we need to make sure that they are getting good information, and that the information does not put them into a compromised position from the get-go.

MR. PITTS. Thank you, Mr. Chairman.

MR. STEARNS. Mr. Matheson, I will ask a few questions, and then I will let you have it.

Mr. Lowenstein, what would it take to make an "Adult-Only" rating on Grand Theft Auto? What more would you have to do besides--Mr. Pitts just mentioned all the things that the game does. What, in your mind personally, would it take to tell Ms. Vance we need an "Adult Only"? This is a little bit asking you out of sort of your subjective, but how much more do you have to do?

MR. LOWENSTEIN. You are right. It is a very subjective question, and that is part of the fundamental issue when it comes to any ratings system is ratings are by definition subjective. We all bring our own values. It is a pluralistic society and a pluralistic culture. So what it takes for me is almost, with all due respect, irrelevant, because my standards may not be reflective of the rest of the user base. Am I ducking the question? I do not have an answer for you.

MR. STEARNS. I understand.

Ms. Vance, what would you say? Without the hidden programs that are coming with the explicit sex and violence, it is already killing emergency people who are trying to come help, it is killing cops, and it is killing civilians. How much more would you need, in your mind, to make it an "Adult Only"?

MS. VANCE. Well, again, it is a subjective call. No question about it, Grand Theft Auto is a very high--our definition of an "AO" game typically requires prolonged scenes of intense violence. In other words, something like a torture scene and player control may add an element to torture that takes it into a different realm. You could have obviously sexually explicit content that would take it into an "AO" category.

MR. STEARNS. How about taking a chainsaw to somebody? That is in here. That does not count?

MS. VANCE. It depends on how explicit it is, but that could qualify. It depends on the depiction.

MR. STEARNS. In this case there is blood everywhere. In the video we showed here from Grand Theft, it was pretty clear it was pretty explicit, but that would not make it.

MS. VANCE. I would ask you, you have seen plenty of R-rated movies before with plenty of pretty graphic content in that, and it is the difference between an R and an NC-17. It is subjective.

MR. STEARNS. Dr. Thompson, for you. Can you give a better definition of what would push Grand Theft Auto to "Adult Only", or is it

something that we just cannot even come up with a definition in your mind?

DR. THOMPSON. We have not actually studied the small subset of "AO" games to figure out what are the typical characteristics of those games. But the reality is that when we do study games within an individual age-based category, there is a wide range of variability with some games that are at the top, and we do find games that we would say might overlap in that gray space. I think it is hard to say right now.

MR. STEARNS. Ms. Parnes, how is the Federal Trade Commission going to regulate hidden programs? You buy X, Y, Z game, and it might be to a child under 17, and yet there are connections to the Internet for hidden programs that can get you into a whole new--how are you going to stop that? What is your agency going to do?

MS. PARNES. I think that one thing is that case that we brought against Grand Theft Auto San Andreas. We are sending a message to the industry that there is certain conduct --

MR. STEARNS. But do you think an $11,000 fine is going to be sufficient?

MS. PARNES. Well, we can obtain an $11,000 fine per violation for an order violation. And it could be $11,000 per day for the amount of time for the violation.

MR. STEARNS. Is that what it is today?

MS. PARNES. It is per violation. And you can define it by per day, perhaps per sale.

MR. STEARNS. I see.

What assurance do you have from Take Two and Rockstar Games that they will not include hidden content? I mean, you can't do anything. You just wait until it already occurs, and by the time it occurs, for example, we understand at Wal-Mart they sold over 5 million copies of Grand Theft Auto before they stopped it. I mean, aren't you behind the curve? Is there anything that you can suggest that we do here?

MS. PARNES. Well, in some respects that is just a function of our law enforcement. When we are enforcing orders, we think we are actually not behind the curve. We think we are ahead of it in this case because we have laid down the marker for what they need to do.

MR. STEARNS. Are you investigating the Oblivion video game for violence? Do you do any investigation at all pre, like this Oblivion video game? Do you investigate that at all?

MS. PARNES. We can't comment on whether or not we are conducting an investigation. That would be nonpublic information.

MR. STEARNS. But you are capable of investigating something before you hear about it.

MS. PARNES. Oh, absolutely. Absolutely.

MR. STEARNS. Mr. Murphy.

MR. MURPHY. Thank you, Mr. Stearns.

I have some questions for Ms. Vance. Do you have children?

MS. VANCE. Yes, I do.

MR. MURPHY. How old are they?

MS. VANCE. Fourteen and twenty-one.

MR. MURPHY. I just want to make sure I understand this. So a publisher of a game, they give a list of content. That is how that information comes across?

MS. VANCE. They fill out a form, and they provide us with a videotape and a script and lyrics sheets usually.

MR. MURPHY. And then from that, that is handed over to what you called a group of people recruited out of New York City.

MS. VANCE. Well, it first gets scrubbed by our internal staff to make sure that everything is there and that the videotape encompasses everything in the written materials.

MR. MURPHY. But they are not actually playing the game. So these are New Yorkers, they don't actually play the game, but it is a list of content.

MS. VANCE. They look at the videotape, is what the raters actually get.

MR. MURPHY. It is not actually playing the game, Correct?

MS. VANCE. They don't play the game.

MR. MURPHY. Thank you.

So they rate the game without playing it based upon this system; that is, the SRB is not an independent board, but they are part of the game industry. Is that correct?

MS. VANCE. That is correct.

MR. MURPHY. Then what I see here is you said that three out of four games purchased are purchased by adults, correct?

MS. VANCE. It is actually more than that. It is more like 9 out of 10.

MR. MURPHY. You said three out of four. Okay.

MS. VANCE. Three out of four regularly use the ratings.

MR. MURPHY. You said 83 percent of adults paid attention to those ratings.

MS. VANCE. Eighty-three percent are aware, and 74 percent regularly use it either most of the time or all the time.

MR. MURPHY. So as I am trying to do some math here, so 75 percent of the time they may use it, but that 75 percent of the use, only 83 percent are aware. So it started with 83 percent, and 75 percent of them are aware.

MS. VANCE. That is incorrect. No; 75 percent regularly use it.

MR. MURPHY. We are down to 65 percent. And then of the games that are in people's homes, parents--

MS. VANCE. Seventy-five percent out of the whole base. It is not 75 percent--

MR. MURPHY. You said three out of four people are aware.

MS. VANCE. No; 83 percent are aware, and 74 percent regularly use it, which means most of the time or all the time.

MR. MURPHY. Fine. Eighty-three percent are aware. And out of those that are aware, 74 percent--

MS. VANCE. It is not 74 percent out of 83.

MR. MURPHY. It is clearly not all. Let me continue on here.

Then out of that, not all parents watch those games. So we have people who the publisher provides the content. People out of New York are supposed to represent the rest of the Nation. I love New Yorkers, but I don't think they represent the whole Nation. They are basing their ratings on some rating scale that the industry has provided, paid for by the industry, not independent. Not all parents are aware of it. Of those parents who are aware, not all pay attention to it when they purchase the game. And of those who paid attention and are aware and purchased it, not all of them watch the game. And even if they do watch the game, not all of them see all the content, because sometimes there is hidden content. And because no one has watched the whole video that has rated them and parents aren't sitting down for hours, they can't possibly know all the things in there.

Now, let me ask you this. Would you accept that sort of system--now, I am concerned as a psychologist and as a parent that there are effects here. And I don't know if you agree that there are effects of video game repeated use with perhaps violent or sexually content games, but I am concerned that it has an effect on a child. Now, let me ask you this. Let us say 75 percent of the time, would you accept--maybe you call it a babysitter service to provide babysitting or a nanny for your kids. Would you accept if they said that 75 percent we are correct on screening these people for whether or not they are pedophiles? Would you accept that rating?

MS. VANCE. I am not clear what you are asking.

MR. MURPHY. I am asking you--you are setting the bar down pretty low, it seems to me, as a parent, to a pretty low number. You are saying, I thought someone from Wal-Mart said that a pretty good number, 69 percent of the time, people adhere in their staff. My point is--

MS. VANCE. We can't force parents to use the system. Is that what you are getting at?

MR. MURPHY. I am asking you this. What is acceptable? The system is the publishers provide you the information on some rating

scale, summarized and reviewed by a number of people who may or may not see the game, providing a scoring system that is from the industry itself, and that parents themselves may or may not use this system. My point is that you start to chip away and whittle this down. And yet, again, I believe that repetitive viewing, interactive, of violent and sexually explicit video games can have an impact upon children's behavior.

MS. VANCE. That is why they are rated "M" for "Mature" for 17 and older.

MR. MURPHY. But you say the parents may not see these. And my point is--and I don't believe they have a direct causal effect on every child. I mean, that clearly doesn't, just the same as not every person who smokes cigarettes automatically gets cancer. But it does have an interactive effect based upon the child's temperament, personality, repetitive behaviors, things like that.

What I am concerned about is I wish there was more alarm. I wish there was more efforts. I am pleased that there are going to be some ads or there are ads at stores, hey, pay attention, folks, that are increasing parents' awareness, because ultimately I am concerned about parent awareness. I just don't think the industry is doing enough to let parents know.

And as we are going down this, the reason I say those numbers is if you went through this same kind of rating, if the police said, this is how well we screen pedophiles and whether or not they are going to live next door to you, this is how well we screen babysitters of whether or not they can be left alone with your children, because since your child is left alone with this game for a long period of time, I don't think you would accept that.

MS. VANCE. Well, this is content that is finite, that it is not controlled in terms of what we rate, it is not controlled by other people. It is finite content that we are asking the--

MR. MURPHY. I don't understand what that means. All I know is as a person who has spent my career working with children who have serious problems, and many of them aggressive or violent behavior, disturbed children, who, whether it is the game that attracts them or they are attracted to the game, there is an interactive effect. And I just don't believe the industry is using enough with this system. I think there are recommendations that you would have people rate this who actually play the games, watch children in the games, and have a reliable, valid system of reviewing those. I think that is very important. And I would recommend industry pursue that as well, because as a parent and as a psychologist, I really don't find that this is an unbiased system. And my concern is, is that your comments and criticisms of Dr. Thompson and

Walsh and others about this, I think they have got some recommendations you ought to look at. And rather than pooh-poohing it, I think you ought to look at it.

But I want to ask this final question. Do video games repetitively played with violent content affect the behavior of some children?

MS. VANCE. I think the research is inconclusive. But I think the point is that parents need to be actively monitoring.

MR. MURPHY. I didn't ask about parents. I asked about this. And it seems to me--

MS. VANCE. Is the material inappropriate, some of the violent and sexual material inappropriate? Absolutely. And that is why it is rated as such.

MR. MURPHY. Well, I don't agree.

Thank you, Mr. Chairman.

MR. STEARNS. I thank the gentleman. I thank you for your patience. I think we had overall a balanced hearing, and I appreciate all of you. We have had to reschedule a couple of times and so forth. So I want to thank all of you for coming.

By unanimous consent, I will put Mr. Matheson's opening statement as a part of record for him.

[The prepared statement of the Hon. Jim Matheson follows:]

THE PREPARED STATEMENT OF THE HON. JIM MATHESON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Chairman Stearns, Ranking Member Schakowsky, thank you for allowing me to participate in today's hearing. Most importantly, thank you for holding today's Subcommittee hearing on Explicit Video Games—it's an incredibly important topic.

As a parent and a legislator, I really worry about what our kids can access without parental consent. I believe that parents should be the first line of defense when it comes to children. But, I recognize that parents can't be with their children at all times. I think there is a reasonable place for government and the industry to work together to help families.

For my part, I've introduced legislation with my friend and colleague Rick Renzi of Arizona called the Video Game Ratings Enforcement Act. I think that it presents a simple approach to ensuring that kids can no longer purchase adult-rated content. It also keeps the government out of the business of assessing content by using the industry's own ratings system.

Simply put, this bill would require all retailers to check identification for any children trying to buy or rent Mature-rated or Adults Only-rated games. It also requires that ratings system explanations be posted in stores. However, the Video Games Ratings Enforcement Act does not prevent a parent from buying any available game. It only helps to ensure that children can only access age appropriate content with parental permission.

This legislation presents a reasonable approach for retailers and manufacturers, because families deserve real ratings enforcement. Today, video games are by far the most popular activity for kids and most games are probably fine for anyone to play.

However, given that 190 million video game units were sold in 2005 here in the U.S. there's room for concern as to what kids can actually buy at the store.

A 2004 Federal Trade Commission report found that 69% of unaccompanied 13-16 year-olds in the study were able to purchase "M" rated video games from retailers. The National Institute on Media and the Family published its tenth annual MediaWise Video Game Report Card late last year and it included the results of a survey of more than 600 students ranging from 4th-12th grade, conducted in classrooms. Almost half (45%) said they have bought M-rated games and 7 out of 10 children reported playing M-rated games.

And let's not kid ourselves about some of the content in Mature-rated and Adults Only-rated games—high scores are often earned by players who commit "virtual" murder, assault and rape. Adults may be ok to choose what they want to play and what they want to buy, but it's not ok for 13 year olds to be prime consumers of adult-rated games, in my opinion.

I worry about how many Mature-rated and Adults-Only rated games are being purchased by young children every single day in this country. As lawmakers, I think almost all of us are very comfortable insisting that retailers verify the age of people who want to purchase alcohol or cigarettes because we've decided as a society that those products are only appropriate for adults. I know that as a parent, I'm glad that retailers help me by performing this service. I don't doubt that at one point in time, retailers weren't thrilled about point of sale restrictions for alcohol or tobacco but I'm willing to bet that almost every retailer would now say that it's a valuable service.

In the case of video games, the industry that makes these immensely popular video games has acknowledged on its own that some games—many of which are best sellers—are really only for adults. So why is it unreasonable for Congress to insist that retailers only sell these games to adults?

If a parent chooses to purchase a game for their child and they are fine with the content, then that of course is their right as a parent. Marketers and game manufacturers do not have the right to sell to kids just because kids are willing to buy the products. Kids aren't expected to know what is right for them in the long run—that's where parents come in and that's where I think Congress should be—on the side of parents trying to make sure that important choices are made at home, not at the store.

I acknowledge that some retailers are already trying to do the right thing and I commend those companies for proactively looking out for American families. I welcome the opportunity to discuss these issues at today's hearing.

Thank you, Mr. Chairman.

MR. STEARNS. And with that, the subcommittee is adjourned.

[Whereupon, at 4:52 p.m., the subcommittee was adjourned.]

SUBMISSION FOR THE RECORD BY CROSSAN R. ANDERSEN, PRESIDENT, ENTERTAINMENT MERCHANTS ASSOCIATION

Entertainment
Merchants
Association

Statement of
Crossan R. Andersen
President, Entertainment Merchants Association

Hearing on
Violent and Explicit Video Games: Informing Parents and Protecting Children

Subcommittee on the Commerce, Trade and Consumer Protection
Committee on Energy and Commerce
United States House of Representatives

June 14, 2006

Dear Mr. Chairman,

On behalf of the Entertainment Merchant Association (EMA), representing more than the 20,000 retail outlets in the U.S. that sell and/or rent DVDs and computer and console video games, I appreciate the opportunity to submit this statement to the subcommittee.

Home entertainment retailers are committed to preventing children from buying or renting video games their parents do not want them to have, and assisting parents in making well-informed entertainment choices for their families. Recent findings by the Federal Trade Commission (FTC) highlighted in our statement demonstrate the breadth of this commitment. The EMA pledges to continue working with all stake-holders to ensure that this record of commitment continues in the months and years ahead.

Retailers Aggressively Enforce Ratings System

The response by retailers to concerns expressed over access by children to inappropriate video game content has been swift and aggressive. Just as the motion picture industry restricts access for minors to inappropriate content through its rating system, EMA retailers have committed to a similar self-regulatory enforcement system.

In December 2003, major retail chains voluntarily committed to a sweeping carding program in an effort to inhibit the sale of Mature-rated games to minors. (As a matter of policy, major retailers do not sell video games rated "Adults Only.") Additionally, retailers have incorporated ratings training into staff manuals so that new store clerks will understand our policies and procedures. Many of our stores have developed cash register prompting technology, which tells the clerk to ask for ID when the bar code is scanned at the point of sale.

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In addition, retailers educate parents about video game ratings through posters, brochures, shelf talkers, kiosks, other in-store signage, and their websites. Placement of these materials varies, but video retailers try to place them so that they are prominent and noticed by parents. Some even add their own advisories. The most recent survey of retailer signage conducted by the Entertainment Software Rating Board, which covered more than 8,100 retail locations, found that 79% of the stores had signs explaining the video game rating system.

Rental stores also assist parents through the "Pledge to Parents" program used by Movie Gallery and many other EMA members and the similar, company-specific programs used by Blockbuster, Hollywood Video, and others.

The centerpiece of Pledge to Parents, established by one of EMA's predecessor organizations in 1991, is a commitment by participating retailers:

1. Not to rent or sell videos or video games designated as "restricted" to persons under 17 without parental consent, including all movies rated "R" by the Motion Picture Association of America (MPAA) and all video games rated "Mature" by the Entertainment Software Rating Board (ESRB).
2. Not to rent or sell videos rated "NC-17" by the MPAA or video games rated "Adults Only" by the ESRB to persons age 17 or under.

In addition, as part of Pledge to Parents and similar programs, many video specialty retailers solicit from customers written instructions regarding what types of video games and movies can be rented by family members. Typically, these parental instructions become part of the check-out process and govern the transaction in those few occasions where the parent is not present at check-out. Thus, the voluntary systems of video stores allow parents, if they so choose, to be even more restrictive than any government-enforced system would be.

FTC Surveys Demonstrate Significant Improvement

As a result of these efforts, the ability of minors to purchase Mature-rated games has been dramatically curtailed. Your subcommittee may be aware that since 2000, the Federal Trade Commission (FTC) has periodically conducted "mystery shopper" surveys to determine retailers' compliance with the voluntary ratings enforcement policies. The latest findings of the FTC on the ability of minors to purchase Mature-rated video games shows a substantial increase in self-regulation, particularly by major retailers (see http://www.ftc.gov/opa/2006/03/videogameshop.htm). The FTC found that *retailers have improved their enforcement of store policies restricting the sale of Mature-rated games by 362%* – from a 16% to a 58% turn-down rate – since the FTC's first shopping survey in 2000 and almost doubled the turn-down rate since the immediately prior survey in the fall of 2003, when it was 31%:

FTC Mystery Shop Results by Year

Q. Was unaccompanied child age 13-16 able to buy Mature-rated video game?

	Yes	No
2000	**85**	**16**
2001	**78**	**22**
2003	**69**	**31**
2005	**42**	**58**

The current turn-down rate is even higher, 65%, for the national retail chains where the vast majority of video games are purchased (note that the FTC does not weight its findings based on market share). This figure closely mirrors that of movie theatre owners, whom legislators and watchdog groups often point as the "gold standard" for ratings enforcement.

It is also important to understand the breadth of EMA's member base, whose members represent more than 75% of all sales, ranging from large mass merchandisers and electronics stores to major video rental and toy chains. Our members employ hundreds of thousands of workers in each, and are located in every one of the 50 states. Many EMA members are Fortune 500 corporations and are publicly traded. Our executives have gone on the record committing to that which we have stated here. It is for that reason that we are confident that the rate of voluntary ratings enforcement and education will continue to improve.

The Best Control of Entertainment Is Parental Control

According to industry statistics, parents are present 83% of the time when children purchase or rent video games. EMA encourages parents to take a few simple steps to ensure that the video games brought into their homes are appropriate for their family. The following is an excerpt from our advice to parents:

- "First, look at the video game's rating and the content descriptors and use them to make sure the game is appropriate for your child. Every video game sold in a store carries a rating, much like the motion picture rating system. The game's rating is clearly displayed on the front of the package. On the back of the package is a 'content descriptor' that explains why the game got the rating that it did.
- "Second, play video games with your children to gain an understanding of what today's video games are like. Talk to your children about the games. Make sure they understand the game, its rules, and what they can learn from it.
- "Third, set appropriate limits. Like any form of entertainment, video games should not be permitted to interfere with schoolwork, exercise, and other important activities.
- "Finally, for those lucky enough to have an Xbox 360, check out the parental controls. You can set the console so that Mature- and Adult Only-rated video games will not play on the system. (The soon-to-be-released PlayStation 3 and Nintendo Wii will also contain parental-control mechanisms.)"

In sum, there are games for every age group and interest, but not every game is right for every audience. Parents should make the choice whether a particular game is right for their family.

EMA also promotes parental empowerment through Entertainment Ratings & Labeling Awareness Month. Each year, June is designated as Entertainment Ratings & Labeling Awareness Month by the Coalition of Entertainment Retail Trade Associations (CERTA), of which EMA is a member. The purpose of the designation is to increase awareness and utilization of the music labeling and motion picture and video game rating systems by consumers and to remind retailers to reinforce ratings education and enforcement in their establishments.

As part of Entertainment Ratings & Labeling Awareness Month, CERTA developed and distributed a ratings education public service announcement that will appear on in-store monitors in more than 10,000 retail establishments and arranged for guidance for parents on how to control their children's media consumption to appear in thousands of newspapers around the nation.

Legal Restrictions Overreach

While not the direct focus of today's hearing, it is important that the subcommittee understand the consistency with which federal courts have struck down legislative efforts to regulate the sale of video games. In the past five years, there have been six federal court decisions that have enjoined on First Amendment grounds local and state laws that attempted to restrict minors from playing, purchasing, or renting video games depicting violent imagery. *See American Amusement Machine Ass'n v. Kendrick*, 244 F.3d 572 (7th Cir. 2001), *cert. denied*, 534 U.S. 994 (2001); *Interactive Digital Software Ass'n v. St. Louis County*, 329 F.3d 954 (8th Cir. 2003); *Entertainment Software Ass'n v. Granholm*, No. 05-73634, ___ F. Supp. 2d ___, 2006 WL 901711 (E.D. Mich., Mar. 31, 2006); *Entertainment Software Ass'n v. Blagojevich*, 404 F. Supp. 2d 1051 (N.D. Ill. 2005); *Video Software Dealers Ass'n v. Schwarzenegger*, 401 F. Supp. 2d 1034 (N.D. Cal. 2005); *Video Software Dealers Ass'n v. Maleng*, 325 F. Supp. 2d 1180 (W.D. Wash. 2004).

Given U.S. Supreme Court decisions on entertainment products, it is clear that, in order for government restrictions on minors' access to computer or video games to be permissible, either: the material must be legally "obscene" or "obscene for minors"; or the restriction must be based on a compelling state interest and be narrowly tailored to alleviate the asserted problem. The restrictions on video games proposed by various legislative bodies meet neither of these criteria.

In fact, many of these measures would place retail clerks in the position of making a legal determination as to whether a particular computer or video game is considered "violent" or "harmful," based on such legal prongs as whether the game appeals to the "prurient" or "shameful" interests of minors, or whether it is offensive to prevailing community

standards. Courts have rightly noted that few clerks, no matter how well-meaning, can reasonably make this determination. Fining and incarcerating store employees as criminals for this failure is an excessive overreach of the state's authority, and one that courts are loath to embrace. (*See the Interactive Digital Software Ass'n v. St. Louis County*, where the ordinance in question threatened retail clerks with a maximum penalty of one year in jail and a $1,000 fine. St. Louis County Ordinance No. 20,193 (Oct. 26, 2000)).

As indicated, most retailers have a uniform store policy of carding for Mature-rated computer and video games. Sales clerks would be confused, as would be parents who have been recently educated on the rating system, if this standard were changed. It is also worthy of note that for each retailer to begin to understand a game's intricacies would require in excess of 30 person-hours per game, and even then there is no guarantee that hidden levels containing potentially objectionable material may be missed. Having a retailer determine which computer or video games are considered "offensive" imposes many burdens upon the retailer, particularly a mass merchant selling multiple entertainment products such as movies and music. Courts have noted as much, stating that "a retailer cannot reasonably, economically, or easily make a determination whether the content of a particular video game is prohibited." *Entertainment Software Ass'n v. Granholm*, 404 F. Supp. 2d at 983. *See also Entertainment Software Ass'n v. Blagojevich*, 404 F. Supp. 2d at 1076-77 (striking down the Illinois Violent Video Game Law for vagueness).

We are also compelled to note that video games are animation and many video games are populated by fantasy characters. Aliens, zombies, supernatural beings, and other creatures that combine imaginary and human-like characteristics are common. Characters can appear to die or suffer grievous injuries, but reappear later with no apparent harm. Many of the laws struck down by the courts apply real-world standards of violence to the fictional and fanciful world of video games, an environment in which they have no meaning.

Again, we thank the subcommittee for this opportunity to present our views.

Entertainment Merchants Association

The Entertainment Merchants Association (EMA) was established in April 2006 through the merger of the Video Software Dealers Association (VSDA) and the Interactive Entertainment Merchants Association (IEMA). EMA is the not-for-profit international trade association dedicated to advancing the interests of the $32 billion home entertainment industry. EMA represents more than 1,000 companies throughout the United States, Canada, and other nations. Its members operate more than 20,000 retail outlets in the U.S. that sell and/or rent DVDs and computer and console video games. Membership comprises the full spectrum of retailers (from single-store specialists to multi-line mass merchants), distributors, the home video divisions of major and independent motion picture studios, and other related businesses that constitute and support the home entertainment industry.

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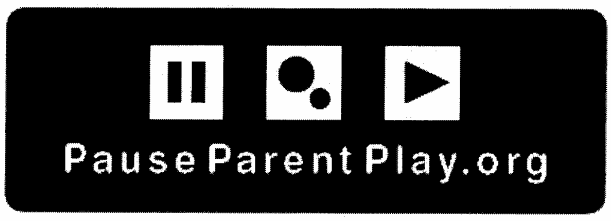
SUBMISSION FOR THE RECORD BY CYNTHIA MERIFIELD TRIPODI, EXECUTIVE DIRECTOR, PAUSE PARENT PLAY



PREPARED STATEMENT OF

Cynthia Merifield Tripodi,
Executive Director

Pause Parent Play

SUBMITTED TO

The House Committee on Energy & Commerce,
Subcommittee on Commerce, Trade, and Consumer Protection

Hearing on

"Violent and Explicit Video Games:
Informing Parents and Protecting Children"

June 14, 2006

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Today's hearing "Violent and Explicit Video Games: Informing Parents and Protecting Children" provides great opportunity to discuss how having the right information is integral to parents making media decisions for their children. Pause Parent Play recognizes the many choices parents face in deciding what media – video games and otherwise – their children see, hear and play, and we applaud the Subcommittee for holding this hearing. Our mission is to help parents, and we believe that information about available ratings and parental controls is vital to their everyday media decisions.

Today's children are exposed to more media than ever before. Recent, in-depth surveys have shown that children 8 to 18 years old spend an average of 6 ½ hours a day using some form of screen media[i]. That means quite simply that our youth spend more than a quarter of each day using the computer, watching movies or TV and playing video games. Children's exposure to these forms of media is occurring, moreover, during their earliest and formative years: children under 6 years old on average watch just over an hour and half of screen media a day[ii]. In simplest terms, our children see, hear and play more media than ever before.

Any parent who has taken the time to watch educational programming with their child or rented a documentary on DVD to help with their child's schoolwork, knows that different forms of media include a wealth of content that is as informative as it is entertaining. Likewise, a parent need only witness the violent content in some media to learn the importance of selecting appropriate entertainment for their children. According to research, as high as 89% of parents are 'concerned that children are being exposed to too much inappropriate content in entertainment media'[iii]. Yet parents recognize that this concern translates into greater responsibility; A March 2005 Pew Research Poll found that 86% of parents believe that they are 'most responsible for screening kids from inappropriate content'[iv]. Parents understand that not all media is fitting for children of different ages, and there is a clear demand for information to help parents choose what media is appropriate for their children.

A variety of parental tools, ratings and information to make parents' choices easier *is* available in the current marketplace. Beginning with the Motion Picture Association's introduction of a voluntary ratings system in 1968, the recording industry, TV broadcasters and video game manufactures have followed suit with informative, detailed ratings and labeling to advise parents of the content in various types of media. For its part, since 1994 the Entertainment Software Ratings Board (ESRB) has served as the self-regulatory body responsible for developing and implementing the age and content-based rating system for the nearly 250 million video games sold each year. These ratings appear on the front and back of all ESRB-reviewed games and are also displayed by national and local retailers near registers and in larger store displays. The new generation of video game consoles will also incorporate these ratings into parental controls that allow parents to block their children from

playing games they deem inappropriate. These and similar ratings and labeling systems, parental controls, media tools and information have been made available by nearly every major content-provider industry to help parents make informed decisions. Our mission is to bring these tools together in an easy-to-use and simple resource for parents.

At present, there remains a disconnect between parents and the available media tools and information. To give just one example, since 1999 all televisions with screens larger than 13" have been required to include a v-chip, allowing parents to block programming with certain ratings. With this sweeping regulation, the v-chip became to most widely-available parental control. Yet most parents know little about the v-chip and even fewer make use of it. The Kaiser Family Foundation in 2005 reports that only 15% of parents in a nationwide survey responded that they had used the v-chip. One fifth of all parents in that same survey reported that they knew they had a v-chip and have not used it. From just this example, it is clear that there is a need for better awareness of the array of parental controls, labeling and ratings systems that already exist.

Pause Parent Play is a coalition that seeks to solve the "awareness" problem by bridging the gap between the available media tools and parents. We are the first-ever, nationwide group led by parents that provides a comprehensive approach to help other parents make choices about what their kids watch, hear and play. We work *with* the entertainment industry, business representatives, national non-profits and congressional leaders to help educate parents on these important issues.

Pause Parent Play is unique in that we provide a one-stop resource for parents. A parent looking to buy a video game for her child can go to Pause Parent Play.org and use the ESRB site to look up the game's rating. If she wants, this parent can use our Website to reach other independent, non-industry reviews of that video game's content as well. The same Website that features tools for understanding TV and movie ratings systems, tutorials on how to use the V-Chip and explanations of music labeling gives this information to parents in an easy-to-use format. All a parent needs to remember is one Website – www.pauseparentplay.org – for all their media decisions.

Our goal is to reach parents with the information they need to make informed media choices. The Pause Parent Play Website helps parents sift through this information, providing easy-to-use tutorials, a simple format and the tools they need in just a few simple clicks. The information and tools are available – Pause Parent Play just makes it simple.

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[i] *Generation M: Media in the Lives of 8-18 Year-olds.* Kaiser Family Foundation, March 2005.
[ii] *The Media Family: Electronic Media in the Lives of Infants, Toddlers Preschoolers and their Parents.* Kaiser Family Foundation, May 2006.
[iii] Kaiser Family Foundation, September 2004
[iv] Pew Research Foundation, Poll conducted March 17, 2005.

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PARENTS THWART FLESH-EATING CYBORGS

from invading their children's game console.

Now you can control what your kids watch, hear and play. At *PauseParentPlay.org*, we're dedicated to helping parents make informed media choices for their kids. All the information parents need is there. It's simple, and easy to use. You'll find step-by-step demonstrations on how to use technology such as parental controls, the V-chip, ratings and labeling information. That way you can keep your kids from media that's not intended for them. So even if the most dangerous alien life form comes your way, you'll be the one with the superior technology.

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SUBURBAN MOM WIPES OUT ARMY OF BLOODTHIRSTY NINJA ASSASSINS

with eject button on dvd player.

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SMALL TOWN DAD DISARMS CHAINSAW WIELDING PSYCHOPATH

with skillful use of the remote.

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